

(1958) 04 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 40 of 1957

The All India Tea and Trading Co. Ltd.	APPELLANT
Vs	
R.N. Hazarika and Others	RESPONDENT

Date of Decision : 07-04-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2

Citation : (1958) 04 GAU CK 0012

Hon'ble Judges : H. Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : S.K. Ghosh and P. Choudhury, for the Appellant; D.N. Medhi, Sr. Govt. Advocate, F.A. Ahmed and M.C. Pathak, for the Respondent

Judgement

G. Mehrotra, J.—This Rule was issued by this Court on an application under Articles 226 and 227 of the Constitution of India, praying for quashing of the proceedings under the Industrial Disputes Act and for setting aside an award dated 30-1-1957, made by the Judge, Industrial Tribunal, Assam in Reference No. 11 of 1956.

2. The opposite party No. 3 - Shri R.C. Saikia was a Supervising Jamadar at Rupithal outgarden of the All India Tea and Trading Co. Ltd. The General Manager of the company by his letter dated 2-1-50 framed certain charges against him and no explanation being preferred by him, by his letter dated 7-1-50 Sri Saikia was asked to vacate the quarters.

He however, did not comply with the orders of the General Manager. Certain allegations were made thereafter by him against the General Manager before the proper authorities. On 10-3-1950, Sri Saikia was discharged by the Managing Director from service with compassionate pay of a month in lieu of notice.

Thereafter, on or about 9-12-50, the Labour Officer, Mangaldai started conciliation proceedings and on 25-1-50, the company was advised by the

Labour Commissioner that the matter should be referred to the Tribunal for adjudication. On 23-5-52, at the instance of the Zonal Officer, conciliation proceedings were initiated anew and the Petitioner was advised by the Labour Commissioner that the dismissal of Sri Saikia will be heard by the Appellate Board.

On or about 4-12-57, the Labour Officer, Tezpur informed the Petitioner that fresh conciliation proceedings in connection with the dismissal of Sri Saikia were to be held on 20-12-54 and the proceedings were actually held on 30-6-54. The Labour Officer directed that if no settlement was arrived at by the 20th August, 1955, the matter would be referred to the Tribunal for adjudication.

On 7-11-55, certain terms of settlement were asked for by the Labour Officer, Tezpur: but nothing came out of these conciliation proceedings. Thereafter at the instance of the Assam Cha Karmachari Sangha, Dibrugarh, notice was published in the Assam Gazette on 14-2-56 to the effect that the alleged Industrial Dispute was referred to the Tribunal for adjudication.

A number of objections were taken by the Petitioner before the Tribunal inter alia that Sri Saikia was not a workman and in view of the acceptance of one month's pay in lieu of notice, no dispute could be raised regarding the termination of his service. It was also contended that the dispute was neither of the nature which affected a large number of workmen nor was taken up by the workmen of the Union to which the Petitioner belongs or the Union of workers of the similar industries.

The dispute was essentially of an individual nature and the Assam Cha Karmachari Sangha, Dibrugarh had no right to represent Sri Saikia and that the reference was illegal as there was no industrial dispute. It was also pleaded that there could not be multiple proceedings with regard to the same dispute and the earlier conciliation proceedings having failed, no conciliation proceedings could start afresh. The proceedings thus commencing from 20-12-54 were ultra vires and the reference thereafter was also illegal.

3. According to the Petitioner, the post of Jamadar was abolished since 1952 and the opposite party had taken service elsewhere. The Tribunal held that the management of Singrimari Tea Estate were not justified in dismissing Sri Saikia. According to the Tribunal - Sri Saikia was not given sufficient opportunity to defend himself and there was thus failure of the principles of natural justice in ordering his discharge without giving him any opportunity.

The Tribunal directed his re-instatement. Sri Saikia was dismissed in March, 1950 and the reference was reported in the Gazette of 1956. The Tribunal, under the circumstances of the case, directed the company to pay Sri Saikia his back wages and Rs. 55/- for one year only and the amount of Rs. 92/2/- which was already sent by money order to him was not directed to be refunded. It is this award which has been challenged by means of this petition.

4. Two points have been mainly urged before us. Firstly it is contended that multiplicity of proceedings are not contemplated under the Industrial Disputes Act. As will appear from the facts stated above, there have been several conciliation proceedings in respect of the present dispute and that the reference to the Tribunal for adjudication arose out of the last conciliation proceeding commenced in the year 1954.

There is no bar under the Act to several proceedings for conciliation. It is admitted that none of the proceedings resulted into any settlement. In fact, the first two conciliation proceedings had not materialised at all and in the last one the terms of settlement were not acceptable to the parties. It cannot therefore be said that there was any conciliation proceeding such as to operate as a bar for any adjudication proceeding.

Moreover, it cannot be said that the proceedings before the Tribunal were illegal as there had been earlier conciliation proceedings. The conciliation proceedings, by themselves, are no bar to a proceeding for adjudication. Under the Industrial Disputes Act, Industrial Courts may be constituted and the matter may be referred to a Conciliation Officer for conciliation and in event, whatever may be the result of the conciliation proceedings, the matter can be referred to the Tribunal for adjudication.

In the result therefore, we do not think that there is any substance in the contention of the Petitioner that the award should be set aside as being without jurisdiction inasmuch as it arose out of the last reference when the earlier conciliation proceedings had failed in respect of the same dispute.

5. The next contention raised by the Petitioner is that the reference itself is bad in law inasmuch as there had been no Industrial Dispute and that the dispute between the parties was in the nature of an individual dispute. Industrial dispute has been defined in the Industrial Disputes Act, 1947 as follows:

Industrial dispute means any dispute or difference between employees and employers or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

The word "industrial dispute" had been subject of great judicial controversy; but it is not necessary to go into that controversy inasmuch as the matter has been set at rest by the decision of the Supreme Court in the case of Central Provinces Transport Service Ltd., Nagpur v. Raghunath Gopal Patwardhan reported in (S) AIR 1957 SC 104 (A), in which it was observed that the decided cases in India lay down that (1) A dispute which concerns only the rights of individual workers, cannot be held to be an industrial dispute. (2) A dispute between an employer and a single employee can be an industrial dispute. (3) A dispute between an employer and a single employee cannot be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen. It was further observed in that case as follows:

The preponderance of judicial opinion is clearly in favour of the last of the three views stated above, and there is considerable reason behind it. Notwithstanding that the language of Section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen.

In an earlier case their Lordships of the Supreme Court, in the case of D.N. Banerji Vs. P.R. Mukherjee and Others, at p. 310 : AIR 1953 SC 58 at p. 61 (B), observed as follows:

The words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests - such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays and so on.

Even with reference to a business that is carried on, we would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful. But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when as often happens, it is taken up by the trade union of which he is a member and there is a concerted demand by the employees for redress.

This view was again reiterated by their Lordships of the Supreme Court in the case of The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P., In the last case referred to, it was further held by the Supreme Court that in spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an "industrial dispute" at all and therefore the jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge.

On the facts of that case, it was held by their Lordships of the Supreme Court that the matter was not taken up by the workers.

In view of this decision, it cannot be questioned that if it is established by the Petitioner that the dispute was an individual dispute and was not taken up by a trade union or a number of workmen, the reference was bad and the award was

thus without jurisdiction.

In the affidavit, filed by the Petitioner, in support of the petition, it has been asserted that the dispute was never taken up by the union of which the Petitioner was a member or that by the workmen of the Petitioner concern. The matter was taken up by Assam Cha Karmachari Sangha, Dibrugarh which was neither the union to which the workman belonged nor the workmen of the Petitioner-company were the members of Assam Cha Karmachari Sangha, Dibrugarh.

6. In paragraph 5 of the petition, it is averred that the reference was made at the instance of the Assam Cha Karmachari Sangha of Dibrugarh and that Sri Saikia was not a workman and that there was no dispute with the workmen of the Petitioner-company over this matter, the dispute was one essentially of an individual employee and the Assam Cha Karmachari Sangha, Dibrugarh had no right to represent Sri Saikia.

In the affidavit filed in opposition on behalf of the opposite party No. 3 i.e., Sri Saikia, there is no denial of the fact that the dispute was never taken up by the other workers of the Petitioner company nor that the Assam Cha Karmachari Sangha, Dibrugarh was not the union to which the opposite party No. 3 belonged. There is no other affidavit filed disputing these facts.

In the circumstances we are constrained to hold that the dispute was an individual dispute, it never developed into an Industrial dispute as it was never taken up by the other workmen of the concern, or by the union to which the opposite party No. 3 belonged and the reference itself was without jurisdiction.

It was contended by the opposite party that the point does not seem to have been discussed by the Tribunal in its award inasmuch as it was not pressed.

7. Reliance was placed on the following observations in the award:

The learned representative of the company, at the time of argument could not advance any substantial ground in regard to the company's legal plea. Therefore, the legal objections raised by the company are taken as not pressed.

The point was raised in the objections and it could not be said that the point was not argued before the Tribunal. The Tribunal may not have considered the arguments as substantial and agree with the contentions raised by the company; but it cannot be said that the objections were not pressed.

8. In the result, therefore, we allow this petition, set, aside the award directing the reinstatement of the Petitioner. It should be pointed out that the counsel for the Petitioner did not press for the refund of the amount of one year's salary paid to the opposite party No. 3.

In view of this concession by the counsel for the Petitioner on behalf of his client, we do not direct the opposite party No. 3 to refund Rs. 660/- paid to him and the award is set aside in so far as it directs reinstatement of opposite party No. 3. We make no orders as to costs.

H. Deka, J.

9. I agree.