

(1949) 03 BOM CK 0023
In the Bombay High Court
Case No : Appeal No. 8 of 1949

The India Paper Pulp Co. Ltd.

APPELLANT

Vs

The India Paper Pulp Workers" Union

RESPONDENT

Date of Decision : 30-03-1949

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1950) 52 BOMLR 176

Hon'ble Judges : Patanjali Sastri, J; Mukherjea, J; Mahajan, J; Harilal Kania, J; Fazl Ali, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Harilal Kania, Kt., C.J.—This is an appeal from a judgment of the High Court of Judicature at Fort William in Bengal and involves principally the question of the re-instatement of 109 employees of the appellant company, who were discharged after notice was given to them on December 4, 1947. Their service was terminated as at the end of January and their full pay for the months of December 1947 and January 1948 was paid to them.

2. The relevant facts are these. On September 10, 1946, the employees of the appellant company formed into an union, which was registered on December 3, 1946. It was alleged that almost all the employees of the company became members of the union. On December 24, 1946, the union submitted to the company a memorandum of the demands of the employees, for the amelioration of their condition. The company declared a lock-out on February 28, 1947, and negotiations through the Labour Commissioner for re-opening the factory having failed, the Government of West Bengal on May 6, 1947, referred the dispute to Mr. Simpson and subsequently to Dr. Waight for adjudication. The lock-out was withdrawn. The proceeding" before Dr. Waight ended with his award on August 22i 1947. The workmen and the union alleged that the company failed and neglected to implement the terms of the award and started transferring workmen

from department to department to victimize those who had actively pressed their demands for acceptance. On November 28, 1947, the company asked the President of the union to come and discuss on December 4, 1947, certain specific matters as mentioned in their letter, at the factory office. That did not show that there was any excess labour. The President of the union could not attend the meeting and the company give notice of termination of employment to 109 workmen. The union and workmen contended that the allegation of excess labour was mala fide and it was a case of victimization and adoption of unfair labour practice. They claimed that the discharged workmen be re-instated without break of service and for compensation. Dispute having thus arisen between the company and union and workmen, the Government of West Bengal issued the following order on June 3, 1948.

Calcutta January 8, 1948.

Whereas an industrial dispute has arisen between the India Paper Pulp Co., Ltd., managing agents Messrs. Andrew Yule & Co., Ltd., 8, Clive Road, Calcutta and their discharged workmen whose names are mentioned in the list annexed: hereto, as represented by the India Paper Pulp Workers' Union, and it is expedient that the said dispute should be referred to the Tribunal constituted under the Industrial Disputes Act, 1947, the Governor is pleased under Sections 7 and 10 of the said Act, to appoint Mr. A.T. Das Gupta, Additional District Judge, to be the Tribunal for adjudication of the said dispute.

The said Tribunal shall meet at Writers Buildings on such dates as the said Mr. Das Gupta, Additional District Judge, shall direct.

3. Mr. Das Gupta proceeded to hold his sittings within the limits of the Ordinary Original Civil Jurisdiction of the High Court at Calcutta when the discharged former workmen of the company claimed re-instatement and compensation. The company contended that Mr. Das Gupta had no jurisdiction to adjudicate on the claim for re-instatement and/or compensation. Mr. Das Gupta in spite of that notice of the company's contention notified his intention to hold a sitting of the Tribunal and on March 11, 1948, the appellant filed a petition in the High Court for the issue of a writ of prohibition and a writ of certiorari prohibiting Mr. Das Gupta from exercising jurisdiction in respect of the claims of the workmen for re-instatement of, and payment of compensation to, the company's discharged former workmen. There were also prayers for orders u/s 45 of the Specific Relief Act asking Mr. Das Gupta to forbear from awarding such re-instatement and/or compensation. When the petition came before Mr. Justice Majumdar, realising the importance of the matter, he directed the parties to request the Chief Justice to form a bench to hear the petition. Sir Arthur Trevor Harries, G.J., and Mr. Justice Chakarvarty thereafter heard the petition and dismissed it. On November 14, 1948, the company asked for leave to appeal to this Court and the same having been granted this appeal is filed here.

4. In the High Court the learned Judges considered that the High Court had no

jurisdiction to issue the writ of prohibition and certiorari because the factory of the company in which re-instatement was claimed was outside its Original Civil Jurisdiction, and the workmen also lived outside its jurisdiction. The Court, however, held that the clear words of Section 45 of the Specific Relief Act imparted jurisdiction to the Court to issue an order against Mr. A.T. Das Gupta who was holding his sittings within the Original Jurisdiction of the Court and who, if he proceeded with the reference, would consider and decide the question within the jurisdiction of the Court. Having regard to our decision on the question of the jurisdiction of the Tribunal it is not necessary to decide the question of jurisdiction of the Court to issue the writ of prohibition and certiorari.

5. On behalf of the appellant it was contended that there was no jurisdiction in the Industrial Tribunal to decide anything because, firstly, no dispute was referred to the Tribunal. This is admittedly a technical defence and is based on the wording of the order of the Government of West Bengal dated January 8, 1948, In this connection it was pointed out that the order of January 8, 1948, of the Government of West Bengal did not mention any industrial dispute. Secondly, the order, as worded, was only an order of appointment and there were no words of reference to the Tribunal. It was argued that the words "and it is expedient that the said dispute should be referred to a Tribunal "did not constitute a reference; they were in the preamble and did not form an operative part of the order. The order is far from satisfactory and is not carefully drafted. Section 10(7) of Act XIV of 1947 provides as follows :

If any industrial dispute exists or is apprehended, the appropriate Government may by an order, in writing.... (c) refer the dispute to a tribunal for adjudication.

The section does not require that the particular dispute should be mentioned in the order. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the tribunal are clear from the order. To that extent the order does not appear to be defective. Section 19 of the Act however requires a reference of the dispute to the tribunal. The Court has to read the order as a whole and determine whether in effect the order makes such a reference. It is material in this connection to notice that in the order there is a reference not only to Section 7 but also to Section 10 of the Act and the order further goes on to say that the appointment is for adjudication of the said dispute. Section 7 empowers the appropriate Government to constitute one or more tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act, If the order was only intended to establish a tribunal, the reference to Section 10 of the Act would be out of place. The express reference to that section in our opinion could be reasonably construed to constitute a reference to the Industrial Tribunal of the dispute, generally referred to in the first part of the order. In our opinion therefore this contention has no substance.

6. The question of jurisdiction of the Tribunal to order re-instatement is fully discussed in the judgment of the Court delivered to-day in Western India Automobile Association Vs. The Industrial Tribunal, As the question of non-

employment is an industrial dispute, the claim for compensation for wrongful dismissal, i.e. non-employment, is, in our opinion, clearly a dispute in connection with non-employment. "No other contentions were urged before us in the appeal.

7. The appellants' contentions being thus rejected, the appeal fails and is dismissed. The appellants to pay the costs of the first respondent.