
(1949) 08 MAD CK 0010

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 3894 of 1949

The Kandan Textile Ltd.

APPELLANT

Vs

The Industrial Tribunal (1) and Others

RESPONDENT

Date of Decision : 28-08-1949

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2
Trade Unions Act, 1926 — Section 8

Citation : AIR 1951 Mad 616

Hon'ble Judges : Rajamannar, C.J; Mack, J

Bench : Division Bench

Advocate : V.K. Thiruvengkatachari and G. Vasanta Pai, for the Appellant; A.G., instructed by Government Solicitor, S. Viswanathan and V. Srinivasan, for the Respondent

Judgement

Rajamannar, C.J.—This application is made by the Kandan Textiles Ltd., for the issue of a writ of certiorari to call for the records in the

matter of the industrial dispute between the workers and the management of the Kandan Textiles Ltd., before the Industrial Tribunal 1, Madras

and the award therein dated 23-5-1949 and to quash the same.

2. The applicant company is the proprietor of a small weaving mill located in Tiruvottiyur, Madras, employing 60 looms and about 200 workers.

On 21-1-1948, one R.M. Sundaram, one of the workmen in the mill was dismissed by the management on the ground that he was responsible for

the loss of a flexible shaft. He made attempts through the Labour Conciliation Officer to get himself reinstated but did not succeed in his attempt.

On 23-8-1948 the boiler in the mills broke down and the mills were closed from 24-8-1948 till 11-10-1948. On the intervention of the Labour

Authorities, 14 days' wages were paid to practically all the workers. On 12-10-1948 the mill re-opened. Most of the workmen who had been working in the mill on the date of the closure were taken in, but 48 of them were left out. The mills were not working at their full strength of three shifts. On 28-10-1948 the management put up a notice of having a third shift on and from 3-11-1948. On 13-11-1948, 21 of the workers who had been left out resumed duty. They were asked by the manager of the mills to work on looms other than those which had been allotted to them prior to the closure of the mills, but they declined to do so, and thereupon the manager asked them to leave the mills. A notice was put up at the mills informing the workers that their services were dispensed with as they had refused to accept the allocation of looms made by the manager. On 20-11-1948 seven more workers of whom one was a jobber and the rest were weavers were called back to duty and new looms were allotted to the six weavers. They too declined to work on the new looms and were dismissed. Six of the weavers who had been in service of the mills before the boiler broke down were not called back at all. Two of the workmen who had been jobbers before the closure were entertained again not as jobbers but only as weavers.

3. There are in existence two rival unions of the workmen of the mills. The Kandan Textiles Labour Union, evidently sponsored by the management, was formed in June 1947 and it is common ground that the majority of the workmen are members of this union. On 17-3-1948 this union made an application for registration under the Trade Unions Act, but for reasons which need not be discussed here it was registered only on 24-12-1948. The other union is the Kandan Weaving Workers' Union. An application for the registration of this union, was made on 7-10-1948 long after the application for registration made by the first union, but it was registered on 18-10-1948. It may be mentioned that Sundaram who had been dismissed in January 1948 purports to be its secretary, and one Sreenivasan who is not a workman of the mills, its president. As regards this latter union, the Tribunal has found that it is not known when exactly it was formed and no particulars of its membership or of the election of the office bearers are available. The Tribunal was of the opinion that its members are fewer than that of the other union. The capacity of this union

to represent the general body of workers or any section of the workmen was questioned by the applicant before the Tribunal.

4. The president of the union appears to have been addressing letters to the Commissioner of Labour from time to time, but it was admitted by its

counsel appearing before us that the union never addressed any communication to the management complaining against any action on their part. On

4-12-1948 the president of this union addressed a letter to the Secretary to the Government (EX. Y) giving a list of disputes existing between the

management and the workers of the mills praying for a reference to a Tribunal under the Industrial Disputes Act (XIV [14] of 1947). On 8-12-

1948 the Government of Madras passed an order directing the Indus. trial Tribunal having its place of residence at Madras to adjudicate on an

industrial dispute between the workers and the management of the Kandan Textiles Ltd. in respect of 11 matters mentioned in an annexure to the

order. The material portion of the order is as follows:

The Commissioner of Labour, Madras, has reported that an industrial dispute has arisen between the workers and the managements of the

Kandan Textiles Ltd Madras, in respect of the matters mentioned in the annexure, that the parties to the dispute are unable to arrive at an amicable

settlement and recommends that the dispute may be referred to the Industrial Tribunal, Madras, for adjudication u/s 10(1)(c), Industrial Disputes

Act, 1947.

The annexure contained the following eleven items :

(1) Whether any retrenchment is necessary and if so how should the retrenchment be effected ;

(2) Whether temporary workers who had put in more than six months service be made permanent ;

(3) Whether Badli system should be abolished ;

(4) Whether the customary bonus has been paid or withheld and what bonus should be paid to the workers ;

(5) What leave privileges, casual, sick and festival holidays should be given to the workmen ;

(6) Whether the 48 workers who are non-employed at present are entitled for their wages from 12-10-1948 till the date of employment ;

(7) Whether the Union Secretary Sri R.M. Sundaram should be reinstated ;

(8) Whether the Badli workers are entitled for the notice wages as per orders of the Commissioner of Labour ;

(9) Whether the workers are entitled to the refund of their contribution of Rs. 2 each contributed towards the erection of the stature of Mahathmaji

within the company compound and annual celebrations as detailed in the petition dated 24-8-1948 addressed to the Commissioner of Labour :

(10) Whether the management is justified in departing from the usual practice and directing the weavers to change over looms ;

(11) Whether the workers' Union registered under the Trade Unions Act should be recognised by the management of the Kandan Textiles; if so

on what conditions.

The order made specific reference to two letters from the Commissioner of Labour, Madras, dated 29-10-1948 and 2-12-1948, presumably

con-taining the report of the Commissioner of Labour, Madras, mentioned in the text of the order.

5. In pursuance of this order the Industrial Tribunal after notice to the management, to the Kandan Weaving Workers' Union and the Kandan

Textiles Labour Union held an enquiry and made an award on 23-5-1949. On 2-6-1949 the Government declared that the said award shall be

binding on the management of the Kandan Textiles Ltd., Madras, and the workers employed therein and directed that the said award shall come

into operation on 2-6-1949 and remain in operation for a period of one year. It is to quash this order that the present application has been filed.

6. Before dealing with the grounds on which the applicant prays for this relief, it is convenient to briefly dispose of a preliminary objection raised on

behalf of the respondents that a writ of certiorari cannot be issued in this case because the Governments had u/s 15 of the Act declared the award

to be binding and it is not competent for this Court to issue a writ of certiorari against an act of the Governor. This objection must be overruled on

the authority of the ruling in Smt. Deivasikamani Ponnambala Desikar Vs. Board of Commissioners for Hindu Religious Endowments, . In that case

the Madras Hindu Religious Endowments Board notified certain temples under chap. VI-A, Madras Hindu Religious Endowments Act, 1926. In

accordance with the decision of the Board, the Government declared the temples to be subject to the provisions of the Chapter. It was contended

that this Court could not issue a writ of certiorari to quash the order of the Board, because of the bar contained in the provisions of Section 306,

Government of India Act, 1935, but the contention was rejected. Leach C. J. observed as follows :

In the first place the petitioner does not ask for the issue of a writ against the Government, but against the Board, which is not the act of the

Government. In the second place, if the Board has abused its powers the Court has power to quash the Board's orders on which the notification is

based, and, if the basis of the notification is illegal, the notification is illegal.

In view of this decision, the learned Advocate-General did not seriously press this objection as to the maintainability of this application.

7. The main grounds on which learned counsel for the petitioner sought to have the award of the Tribunal quashed were : (i) that there was no

industrial dispute in existence between the employer and the workmen, (ii) that the reference to the Tribunal made by the Government by their

order of 8-12-1948 was invalid, because ex facie the Government had before it no material to arrive at a conclusion that the matters mentioned in

the annexure to the order were matters in dispute between the workmen and the management.

8. In developing both these grounds, several interesting questions relating to the construction of the provisions of the Act were raised on which we

heard the arguments of the counsel on behalf of the petitioner and the contesting respondent, viz., the Kandan Textiles Workers' Union and also

the learned Advocate-General who represented the Government. Many of these questions are res integra.

9. We have no hesitation in holding that the petitioner must succeed on the second ground that the order of the Government referring to the

Tribunal eleven matters set out in the annexure to the order is bad. The order purports to have been passed in exercise of the power conferred by

Section 10(1)(c) of the Act which runs thus :

10(1) If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing

(c) refer the dispute to a Tribunal for adjudication." Obviously, the Government before it makes an order under this provision must be satisfied that

the industrial dispute which is being referred for adjudication exists or is apprehended, and the Government should have material before it to form

an opinion that an industrial dispute exists or is apprehended. This position was conceded by the learned Advocate-General. On the face of the

order, it is made abundantly clear that the Government passed the order on and accepting the recommendation made by the Commissioner of

Labour and the reference to the two letters from him indicates that the recommendation is contained in these two letters.

10. It is now admitted before us by counsel for the contesting respondent and by the learned Advocate-General that none of the eleven matters

mentioned in the annexure to the order is to be found in the said two letters of the Commissioner of Labour to the Government. The letter dated

29-10-1948 (and the other letter dated 2-12-1948 carries us no further) refers to a dispute as to the principle of seniority not being accepted by

the management in taking back the workers after the mills reopened in October 1948. This question of seniority is not admittedly one of the items

of dispute set out in the annexure. Evidently what happened was that the list of eleven matters contained in the letter addressed by the President of

the Kandan Workers' Union to the Secretary to the Government on 4-12-1948 was copied verbatim as an annexure to the Government order. It

is not suggested--and it would be idle to suggest--that the Government called for a report from the Commissioner of Labour to ascertain whether

those matters were really in dispute and that they acted on such report. The learned Advocate-General did not--and could not--contend that

simply because some individual or organization addressed a communication to the Government saying that there was an industrial dispute between

the employer and the workmen of a concern, the Government would be justified in passing an order referring the matters to a Tribunal for

adjudication without being satisfied on the material placed before them that the disputes did exist or were apprehended. It is incumbent upon the

Government to apply its mind to the relevant material placed before it before deciding that an industrial dispute exists or is apprehended and

making an order u/s 10(1) of the Act. With great respect, I agree with the following observations of the learned Judges who decided the case in Sri

T.D. Ramayya Pantulu, Industrial Tribunal for Engineering Firms and Type Foundries Vs. Kutty and Rao (Engineer) Ltd. and Another, .

When a notification is issued and a reference made to a Tribunal, the Government must have in mind some dispute that has actually happened or one that is likely to arise from circumstances known to the Government. It seems to us on a fair reading of Section 10, that the Government must have reason to believe that in a particular business a definite dispute is known to exist or is apprehended by reason of demands and discussions taking place amongst the workers and management, It seems to us from the general purport of the Act that a responsibility lay upon the Government of considering the existence and the nature of a dispute and to exercise their mind and decide whether it is necessary to refer that dispute to a Tribunal for an award.

Taking the present case, if the Government had considered the truth of the existence of a dispute and had exercised their mind on the material placed before them, they would have certainly come to the conclusion that the items set out in the annexure to their order were not matters of dispute, and there was no material before them that a dispute existed as to them.

11. Most of these items had nothing to do with the case of the dismissed and non-employed workmen. Item 5 is: What leave privileges, casual, sick and festival holidays, should be given to the workers ? Now, there was nothing before the Government on which they could have decided that

a dispute existed as regards these matters. In fact, at the inquiry before the Tribunal the contesting respondent before us, namely, the Kandan

Weaving Workers" Union did not press items 3, 5, 8, 9 and 11. The management did not raise any dispute as regards Item 2. In these

circumstances I have no hesitation in holding that the reference made by the Government in this case was neither competent nor valid.

12. Moreover, there is no evidence appearing on the face of the award from which the conclusion can be drawn that an industrial dispute existed

on the date of the order of reference. It is true that one R.M. Sundaram was dismissed in January 1948 and other workmen were dismissed or

discharged in November 1948 and some of the workmen who had been employed before the closure of the mills were not re-employed after the

mills reopened. But there is no clear evidence that there was a dispute between the management and the workers within the meaning of the Act.

There is no evidence that either the aggrieved workers or the other workers on

their behalf ever made a demand on the management for

reinstatement and that the demand was refused by the employer. As pointed out in the judgment of the Federal Court in AIR 1949 111 (Federal

Court) :

Demand as to reinstatement may arise in several ways. It may be a demand of the workmen, in service that unless the dismissed workmen are

reinstated, they will strike work. It may be a demand of the workmen on strike refusing to resume work unless persons victimized are put back in

service or it may be a demand of the dismissed employees themselves.

There is no evidence of a demand in any of these several ways. No doubt the president of the Kandan Weaving Worker's Union was addressing

letters to the Commissioner of Labour from time to time, but admittedly he never addressed any letter to the management. In the absence of any

definite particulars as to the membership of this union, and its representative character, and in the absence of anything to show that it was decided

by the workmen members of this union by resolution or otherwise to take up the cause of the aggrieved workmen and in the absence of evidence

to show that the aggrieved workmen put forward the president of this union as their representative and spokesman, it is impossible to hold in law

that an industrial dispute existed between the employer and the workmen to enable the Government to make an order u/s 10(1) of the Act. In one

place the Tribunal says that while this union cannot represent the majority of the workers who are members of the Kandan Textiles Labour Union

who have no dispute with the management, it can represent Sundaram and other aggrieved workers, because, it is not denied that these 36

workers are members of the latter union. Surely, this is not a matter in the knowledge of the petitioner to expect a specific denial from him. If no

particulars were furnished even to the Tribunal as regards the membership of this union and its proceedings, it follows that the petitioner was not in

a position to make any assertion. In our opinion, it was incumbent on the union by production of the relevant records to positively establish the fact

that the union is entitled to represent and that it is, as a matter of fact, representing these 36 aggrieved workers.

13. The Tribunal has sought support for its conclusion from the provisions of Section 86(1) of the Act which provides that a workman, who is a

party to an industrial dispute shall be entitled to be represented in any proceedings under the Act by an officer of a registered trade union. This

provision has nothing whatever to do with the question whether there is an industrial dispute within the meaning of the Act. We have only before us

the letters addressed by the president of the union who, as already mentioned, is not himself a workman in the mills, and there is nothing on record

to show that he has been authorised by the resolution or other proceeding of the union to represent the workers of the mills or any section thereof.

We are far from suggesting that the workmen who did not secure re-employment did not feel themselves aggrieved, but this circumstance alone

cannot support a finding that an industrial dispute exists within the meaning of the Act. A dismissed workman may feel himself aggrieved but may

make no demand on the management, or after a demand and refusal may not pursue the matter further ; in which case it would be wrong to say

that an industrial dispute exists.

14. The application before us can be disposed of in favour of the petitioner on these findings of ours, namely, that the reference by Government

was bad and that it is not established that there is a dispute between the employer and the workers, because the authority of the Weaving

Workers' Union to represent any worker has not been proved to exist.

15. Mr. Thiruvengkatachariar, the learned advocate for the petitioner has argued further that even assuming there is a dispute between the

management and the 36 workers mentioned above, such a dispute cannot be deemed to be an industrial dispute within the meaning of the Act.

According to his contention, before it can be held that an industrial dispute exists between the employer and the workmen, it must be established

that there is a dispute between the employer and a majority of the workmen or the concerned section of the workmen as regards one of the

matters mentioned in the definition of "industrial dispute". If A, a workman, is dismissed and he demands re-instatement and his demand is refused

by the employer, there may be an individual dispute between A and the employer, but such a dispute cannot be called an industrial dispute, unless

the majority of the workers or a definite section of the workmen takes up his cause and makes it a common dispute. So his arguments ran.

Industrial dispute" according to Section 2(k) of the Act means,

any dispute or difference between employers and employees, 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.

Besides this definition, the following other provisions of the Act were also relied on by learned counsel in support of his contention :

Section 10(2) : Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the

dispute to a Board, Court or Tribunal the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall

make the reference accordingly.

18. A settlement arrived at in the course of conciliation proceedings under this Act or an award which is declared by the appropriate Government

to be binding under Sub-section (2) of Section 15 shall be binding on :

(a) all parties to the industrial dispute ;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board or Tribunal, as the case may be, records the

opinion that they were so summoned without proper cause ;

(e) where the party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which

the dispute relates ;

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of

the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed

in that establishment or part.

16. I must confess that the language of the definition of "industrial dispute" is so wide that giving the words their ordinary meaning, even a dispute

between an employer and one of the workmen or between one workman and another workman which is connected with one or other of the

matters mentioned therein would fall within the definition. But it was contended that in construing the definition, the objects of the Act and the

scheme of the several provisions of the Act have to be taken into consideration, A reference was made to the statement of objects and reasons

published along with the Bill before it became law and reliance was placed on the following passage :

The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government

to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising

from the imposition of restraints on the rights of strike and lock-out, which must remain inviolate, except where considerations of public interest

override such rights.

From this passage learned counsel sought to draw the inference that it was only a dispute which otherwise would have resulted in a strike or lock-

out which was intended to be referred to Industrial Tribunals for determination. We however, do not think it safe to construe the language, of the

definition in the Act by something which might be implied from the Statement of Objects and Reasons. It has been often pointed out that in

construing an enactment such statement of objects and reasons would be irrelevant. Not infrequently the objects and reasons of a legislation as

announced at the initial stage of a Bill do not coincide with the enactment when finally passed.

17. Some assistance was sought by learned counsel from the provisions of Section 10(2) of the Act which provides that when the parties to a

dispute apply for a reference, the Government must be satisfied that the persons applying represented the majority of such party before making a

reference. We do not think that this provision necessarily leads to the conclusion that there could be no industrial dispute unless the majority of

workmen is ranged as one of the parties, and it must not be overlooked that in Section 10(1) of the Act there is no such condition which requires

to be fulfilled before the Government makes an order referring a dispute to a Tribunal. The provisions of Section 18 do provide food for thought.

The award is declared to be binding not only on all parties to the industrial dispute, but where a party is composed of workmen on all persons who

were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all

persons who subsequently become employed in that establishment or part. This undoubtedly suggests that something more than an individual

dispute between a worker or a few workers and the employer is meant by an industrial dispute. It suggests that it must be a collective dispute, i.e.,

a dispute between the employer on the one hand and the entire establishment or a part of the establishment on the other hand in which case it is

reasonable to presume that at least a substantial number of the employees in the establishment as a whole or in the concerned part of the

establishment should be at dispute.

18. Reference was made to observations in cases decided in England in which the definition of "trade dispute" corresponds to the definition of

industrial dispute" in our Act. In *National Association of Local Government Officers v. Bolton Corporation*, (1943) A.C. 1666: 1942-2 ALL E.

R. 425 legislation similar to the Industrial Disputes Act was described by Lord Wright as "dealing with collective bargain, trade practices and so

forth." In *Ex parte Keable Press, Ltd.*, (1943) 2 ALL E. E. 633, a member of a trade union had formerly been employed by a newspaper which

for a time ceased publication. When it resumed publication, the newspaper applied to the Union for suitable workmen. The Union sent the former

employee in question, but the newspaper refused to accept him. The Union insisted on his reinstatement and called a strike in consequence. It was

contended that it was not a trade dispute since it was a dispute between the employers and the Union and not between the employers and their

employees. This contention was negatived, because there was evidence that the Union in insisting on the reinstatement of the workmen in question

was acting on behalf of or with the approval of its members who were all workmen. There could be no better proof of the existence of a dispute in

relation to the reinstatement of the employee that the fact that the men came out on strike, because he had not been reinstated. Mr.

Thiruvengkatachari relying on this decision contended that merely because the union raised a dispute of its own accord, it could not be said that

there was an industrial dispute. It was only when the workmen back up the Union by supporting its demands for reinstatement that it can be said

that a dispute existed. In the case before us, there is nothing to indicate that the demands of the Union in the communication addressed to the

Government were ever adopted by the workers. This decision is certainly authority for the position that there could be an industrial dispute over

the reinstatement of a single individual worker. But that dispute had been converted into a collective dispute by the Union acting on behalf of the

workmen in general and by the workmen backing up the Union by obeying the call to come out on strike. The question whether in the absence of

these circumstances, an individual dispute could be treated as an industrial dispute did not arise for decision. On the other hand assuming that in its

origin the dispute was not a trade dispute, it was decided that it could become a trade dispute in its later stages (vide also per Lord Parmoor in

Larkin-v. Long, (1915) A. C. 814 : 84 L. J. P. C. 201.

19. There are observations in the well-known case of Conway v. Wade, (1909) A. C. 506 : 78 L. J. K. B. 1025 which were pressed into service

by counsel on both sides. Counsel for the petitioner relied upon the following dicta of Lord Loreburn, L. C.

If this section is to apply there must be a dispute, however the subject matter of it be defined. A mere personal quarrel or a gambling or an

agitation will not suffice. It must be something fairly definite and of real substance,

For the contesting respondent the following passage from Lord Atkinson's speech was relied on-

In order that a dispute may be a trade dispute at all, a workman must be a party to it on each side, or a workman on one side and an employer on

the other. . . .

In the context in which these words occur, we do not think that they meant anything more than that there could not be a trade dispute when one of

the parties was an outsider, neither an employer nor a workman and when he had no authority from the Trade Union body to act as he did. In the

same case Lord Shaw said:

But I cannot see my way to hold that "trade dispute" necessarily includes accordingly every case of personal difference between any one

workman and one or more of his fellows. It is true that after a certain stage even such a dispute, although originally grounded it may be, upon

personal animosity, may come to be a subject in which aides are taken, and may develop into a situation of a general aspect containing the

characteristics of a trade dispute; but until it reaches that stage I cannot hold that a trade dispute necessarily exists.

None of the English decisions cited have any direct bearing on the question in issue before us.

20. The observations in the Australian cases are even less helpful because there is no definition of an industrial dispute which was construed in

those cases. In *Jumbunna Coal Mine v. Victorian Coal Miners' Association*, (1908) 6 C. L. R. 309, Griffith, C. J. said:

An industrial dispute exists where a considerable number of employees engaged in some branch of industry make common cause in demanding

from or refusing to their employers (whether one or more) some change in the conditions of employment which is denied to them or asked of

them.

In *Federated Saw Mill & Co., Employees of Australasia v. James Moore & Sea Proprietary Ltd.*, 8 O. L. B. 465 the same learned Judge said:

""The word "Industrial" as used in Section 51(XXXV) points, I think, to the nature or quality of the disputes, and denotes two qualities which

distinguish them from ordinary private disputes between individuals namely (1) that the dispute relates to industrial matters, and (2) that on one side

at least of the dispute the disputants are a body of men acting collectively and not individually.

In the judgment of Isacs J. in *George Hudson Ltd. v. Australian Timber Workers' Union*, 32 C. L. R. 413 the difference between an industrial

dispute and an individual dispute is well drawn. The learned Judge observed:

The very nature of an ""industrial dispute"" as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the

specific individuals then working from the specific individuals then employing them, and not for the moment only, but for the class of employees

from the class of employers limited by the ambit of disturbance or dislocation of public services which has arisen or which might arise if the demand

were not acceded to and observed for a period really indefinite, It is a battle by the claimants, not for themselves alone, and not as against the

respondents alone, but by the claimants as far as they represent their class, against the respondent so far as they represent their class.

As already observed, these observations only give expression to what is generally understood by an industrial dispute and they were not on any

specific language of any enactment.

21. In the judgment of the Federal Court in AIR 1949 111 (Federal Court) delivered by Mahajan J., there are certain general observations which

were not strictly necessary for the decision of the case before the Court, but they are entitled to great weight. After pointing out that

"non employment," is the negative of "employment" and would mean that disputes of workmen out of service with their employers are within the ambit of the definition,

the learned Judge went on to give four illustrations to elucidate the point of which the third is as follows:

An employer may dismiss a man, or decline to employ him. This matter raises a dispute as to non-employment.

Difficult questions arise when the only parties to a dispute are the employer on the one hand and certain dismissed employees on the other hand. If

the dismissal is the origin of the dispute, it is doubtful if the dismissed workman could be deemed to be a workman within the meaning of the Act,--

see definition of "work-man" in Section 2(s) of the Act. Of course, if there was an industrial dispute and during that dispute a workman is

discharged, he may be treated as a workman for the purposes of proceedings under the Act. But if there was no preceding industrial dispute and

the dispute started with the dismissal, it can be contended with great force that the dismissed workman cannot be held to be a workman within the

meaning of the Act. As we have already mentioned, in the view we take as to the validity of the order of reference made by the Government, all

these questions need not be finally decided. I must, however, suggest that the intention of the Legislature may be expressed in a more clear and

unambiguous language than, it is at present, to decide whether an individual dispute between an employee or employees on the one side and the

employer on the other side is an industrial dispute which could be referred to a Tribunal for determination even when a substantial section of the

entire establishment or a recognised part of the establishment does not take up his or their cause.

22. As we have held that the order of reference made by the Government is invalid, it follows that the proceedings of the Industrial Tribunal in

pursuance of that order are without jurisdiction. They and the award of the Tribunal in which they culminated must be and are hereby quashed.

There will be no order as to costs of this application.

Mack, J.

23. I am in complete agreement, with my Lord, the Chief Justice and would add a few observations. The Industrial Disputes Act was never

intended to provide a machinery for redress by a dismissed workman or even by a group of workmen who may be simultaneously punished or

dismissed. They cannot by joining in a demand for re-instatement create an industrial dispute after their dismissal. If such a dismissal however even

of an individual workman is taken up by a Workers' Union or a substantial body of workmen who continue in employment and espouse his cause

then an industrial dispute may arise.

24. The definition of "industrial dispute" in Section 2(k) of the Act has to be gleaned from the scope and context of the whole Act, as interpreted

by decisions to which the learned Chief Justice has referred. u/s 10(2) of the Act which provides for a reference to a Court or Tribunal on the

application of the parties to an industrial dispute the Government if satisfied that the persons applying represent the majority of each party shall

make the reference accordingly. Section 33 of the Act protects a workman from discharge, dismissal or punishment during the pendency of

proceedings before a Tribunal except for misconduct not connected with the dispute. The framers of the Act were very careful to provide for the

maintenance of discipline and order amongst the workmen-during an industrial dispute and never intended the Act to be misused as a lever by

individual disgruntled workers discharged, dismissed or punished for misconduct. The employer retains-under the Act, therefore, the right to

dismiss, discharge or punish a workman for misconduct, or disobedience to orders unconnected with an industrial dispute pending before a

Tribunal.

25. It is extremely difficult to follow how in this case the dismissal of R.M. Sundaram in January 1948 an isolated case of disciplinary action not

taken up then and there by the other workmen could have been made the subject-matter of an industrial dispute specifically referred by

Government to the Tribunal on 8-12-1948.

26. The Government's reference to the Tribunal though it purports to be u/s 10(1) which gives Government a discretion to so refer if an industrial

dispute exists or is apprehended is really a hybrid one under Sections 10(1) and 10(2). The only documents, read in the Government order issuing

the reference were two letters from the Commissioner of Labour. The only industrial dispute envisaged in these letters was the insistence of the

management on a right to take back the remaining twenty-seven workers in order of proficiency and not of seniority. This may have been in law an

industrial dispute brought as it was to the notice of the Government by one of its responsible officers, which would have justified a reference to a

Tribunal of a dispute of a very limited scope. But the astonishing feature of this reference is that the annexure to the Government order which lays

down the points of dispute for determination omits the very one reported by the Commissioner for Labour, but reproduces verbatim no less than

eleven points of dispute for determination as set out in a letter of the President of the Kannan Weaving Workers' Union dated 4-12-1948. The

Government's reference on the basis of this letter, therefore, saddles on the Tribunal an enquiry of an extremely wide scope which could not but

have caused it great embarrassment, one being whether R.M. Sundaram dismissed in January 1948 should not be re-instated and another being

what leave privileges casual, sick and festival holidays should be given to the workers and, so on.

27. I come now to the Kandan Weaving Workers' Union who alone pressed the demands of the workers before the Tribunal. The great majority

of the 200 employees belonged to the Kandan Textiles Labour Union sponsored by the management. There was some delay in its registration

which was only effected on 24-12-1948. But as the Tribunal has observed there was ample documentary evidence to show that it was in fact

formed in June 1947 and that office bearers were elected in January 1948 (vide Ex. I, I (a) and II). Its first president was examined as M. W. 5

and one Ellappa Mudaliar, M. W. 4, a jobber in this mill, was its first secretary. At the enquiry before the Tribunal the locus standi of the rival

union, the Kandan Weaving Workers' Union, to represent the general body of workers was challenged and made the subject of a separate

additional issue. The Tribunal found this issue in favour of the rival union, it would appear, merely on the ground that it too had been registered

under the Trade Unions Act and could therefore represent the workers u/s 86, Clause (1), Industrial Disputes Act. But the Tribunal at the same

time committed itself to other findings with which we are in complete agreement. When examined in the light of the materials on record they show

that the Kandan Weaving Workers' Union was a mere bogus affair which had no legitimate origin and in fact no real existence at all. The Tribunal

observed that there was absolutely no evidence adduced before them to show that this Union was in existence prior to August 1948, when it

appeared for the first time in letter head correspondence with the Government. Though its locus standi as a Union was challenged neither the

president, nor the secretary, the dismissed Sundaram, was able to produce any minute book or document showing that a meeting of the workers at

which they were elected was held or any record in fact showing the origin or existence of the Union. Reliance was placed solely on the certificate

of registration under the Trade Unions Act, from 18-10-1948. According to the written statement filed before the Tribunal this Union was formed

on 7-6-1948. In the application for registration, the Union is said to have come into existence at a general body meeting held on 6th July. In the

evidence before the Tribunal, an attempt was even made to show that this Union was started before Sundaram's dismissal in January 1948.

Registration of an Union under the Indian Trade Unions Act is not conclusive proof of its real existence. It may raise a presumption to this effect.

Certain formalities appear to have been complied with before the Registrar who without calling for further information u/s 7(1), Trade Unions Act

directed registration considering that requirements under Sections 5 and 6 had been satisfied. In view of the inability of this Union when its locus

standi was directly challenged before the Tribunal to produce any documentary evidence even of its inaugural meeting, it is a reasonable inference

that had the Registrar called for such information it would not have been forthcoming before him and the Union would not have been registered.

Everything therefore points to the Kandan Weaving Workers' Union being an artificial and bogus creation by the dismissed Sundaram with the

assistance, and connivance of Srinivasa the alleged first president who is said to be a member of the Tamil Nadu Congress Committee. In the

circumstances the so-called Kandan Weaving Workers' Union was not a Union of workmen in fact and it had clearly no locus standi to represent

any workers. The entire reference of disputes listed by this Union in a letter addressed to Government signed by this president is clearly for this

reason also bad in law and unsustainable. Unions of this kind can be created by mere letterheads and self designations. Registrars of Unions and

societies would be well advised to use very freely the discretionary power vested in them u/s 7, Trade Unions Act and other corresponding

provisions of other Acts regulating the registration of associations of other kinds.

28. Perhaps the strongest indictment on the ""Kandan Weaving Workers" Union"" comes from the lips of two witnesses this Union examined before

the Tribunal. They are still working obviously in contentment with the remaining workmen in these mills. They are W. W. 1 and W. W. 2 who while

they said in chief-examination that they belonged to both Unions, in cross-examination said quite clearly and unambiguously that they were not

interested in the re-instatement of any of the workers, The inference is obvious that the great majority of workmen have no grievance at all against

the management with no interest in the reinstatement of Sundaram and other discharged workers sent away for disobedience to orders and other

causes.

29. This reference by Government is a very unfortunate one, bad in law and worse in its effects on labour in general, creating as it does industrial

disputes where none existed and referring them in the widest terms to an Industrial Tribunal which has really no option but to go into each matter

set out in the reference as being an industrial dispute. The greatest caution should be exercised by Government before referring any point for

determination for a Tribunal, in arriving at a decision, whether it is in law an industrial dispute or not. Nothing can be more calculated to undermine

the morale and discipline of labour than illegal and unnecessary references of this kind which put a premium on mischievous insubordination and

discourage and undermine the loyalty of the great majority of workmen who in this concern obviously are quite contented, and ""have no interest"" in

the re-instatement of the other workmen including the dismissed Sundaram.

30. I agree that the entire award should, in the circumstances, be quashed.