
(1957) 03 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No's. 550 and 551 of 1956

The Management of Newtowne Studios

APPELLANT

Vs

T.R. Ethirajulu and Others

RESPONDENT

Date of Decision : 01-03-1957

Acts Referred:

Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 22
Industrial Disputes Act, 1947 — Section 33

Citation : AIR 1957 Mad 737 : (1957) ILR (Mad) 1141 : (1957) 70 LW 476

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : K. Venkataramani, for the Appellant; S.N. Balaraman, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—These applications filed under Article 226 of the Constitution for the issue of writs of certiorari, to set aside the orders of

the Chairman, Central Government Industrial Tribunal, Madras, raise an identical question for consideration, and they can be disposed of by a

common order.

2. The petitioner is the same in both the petitions, the Management of Newtowne Studios Ltd., Madras. On 7th May 1955, the Management

dismissed from service Ethirajulu, one of their workmen. On 20th June 1955, the Management ordered the retrenchment of 20 workers including

respondents 1 to 6 in W. P. No. 551 of 1956. The workmen complained that the termination of their services was in contravention of Section 22

of the Industrial Disputes (Appellate Tribunal) Act, 1950, (Act XLVIII 06 1950), and they preferred applications u/s 23 of the Act which were

eventually disposed of by the Chairman, Central Government Industrial Tribunal, Madras. The Tribunal upheld the contentions of the workmen and

ordered their reinstatement. In W. P. No. 550 of 1956 the petitioner sought to avoid the order of the Tribunal directing the reinstatement of

Ethirajulu, and in W. P. No. 551 of 1956 the relief sought was to set aside the order "of the Tribunal directing the reinstatement of respondents 1

to 6. It should be convenient to refer to these seven workmen in the rest of this judgment as tile respondents.

3. The only ground on which the validity of the orders of the Tribunal was challenged was that the respondents, who had applied to the Tribunal u/s

23 of Act XLVIII of 1950, were not workmen concerned in the appeal then pending before the Appellate Tribunal, and that in the absence of

contravention of Section 22 of the Act, the Tribunal had no jurisdiction to grant any relief to the respondents.

4. It should be noted even at the outset that this objection to the jurisdiction of the Tribunal does not appear to have been preferred at any stage of

the proceedings before the Tribunal itself. The real defence then was that the Management were not aware that an appeal had been preferred

against the award of the Industrial Tribunal. Whether there was a contravention of Section 22 of Act XLVIII of 1950 was a question which the

Tribunal was bound to decide if that had been put in issue before it. The submission of the petitioner to the jurisdiction of the Tribunal on the

assumption, mistaken or otherwise, that there had been violation of Section 22 of the Act by the employer should, under normal circumstances,

have sufficed to bar an investigation of the plea now put forward by the petitioner in its application under Article 226 of the Constitution for the

issue of writs of certiorari. I am not, however, resting my decision on that ground. The respondents did not put forward such a specific plea either.

5. It should be taken as well settled now that only a contravention of Section 22 of Act XLVIII of 1950 gives the workmen affected a right to

apply u/s 23 of the Act. In The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others, , the Supreme Court pointed out:

A cursory perusal of Section 33-A of the 1947 Act (the Industrial Disputes Act) as well as Section 23 of the 1950 Act (Act XLVIII of 1950) will

at once show that it is the contravention by the employer of the provisions of Section 33 in the first case and of Section 22 in the second case that

gives rise to a cause of action in favour of the workmen to approach and move the respective authority named in the Section and this contravention

is the condition precedent to the exercise by the authority concerned of the additional jurisdiction and powers conferred on it by the sections. The

authority referred to in the sections is, as we have seen, a Court of limited jurisdiction and must accordingly be strictly confined to the exercise of

the functions and powers actually conferred on it by the Act which constituted it.

Section 22 of Act XLVIII of 1950 runs:

During the period of thirty days allowed for the filing of an appeal u/s 10 or during the pendency of any appeal under this Act, no employer shall -

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(a) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing of

such appeal, or

(b) discharge Or punish, whether by dismissal of otherwise, any workmen concerned in such appeal, save with the express permission in writing of

the Appellate Tribunal.

It is not the termination of the services of every workman without the express sanction of the Tribunal that constitutes a contravention of Section 22

of Act XLVIII of 1950. For the ban imposed by Section 22 to apply, the workmen whose services have been terminated by dismissal or

discharge must be workmen concerned in the appeal pending then before the Appellate Tribunal.

6. There was no occasion for the Supreme Court to discuss or decide in *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, ,

the precise scope of the expression "workmen concerned in such appeal" in Section 22 of the Act. But the passages in which their Lordships

traced the "history of the legislative changes and explained the purpose Sections 22 and 23 of Act XLVIII of 1950 and the corresponding Sections

33 and 33-A of the Industrial Disputes Act were intended to achieve should help to a considerable extent in constraining the scope of the statutory

expression "workmen concerned in such appeal".

7. Section 33 of the Industrial Disputes Act, 1947, was amended in 1950 to bring it in line with Section 22 of Act XLVIII of 1950. Before it was

amended in 1950, Section 33 of the Industrial Disputes Act ran:

No employer shall during the pendency of any conciliation proceedings or proceedings before a Tribunal, in respect of any industrial dispute, alter

to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of

such proceedings, nor, save with the express permission in writing of the Conciliation Officer, Board or Tribunal, as the case may be, shall, during

the pendency of such proceedings, discharge, dismiss, or otherwise punish any such workmen, except for misconduct not connected with the

dispute.

As pointed out by the Supreme Court in *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, :--

It may be noted that under this section the ban on the alteration of the conditions of service was absolute and that permission was necessary only

in case of discharge or dismissal or punishment and even in such cases no permission was necessary when the workman was guilty of misconduct

not concerned with the pending dispute. The only deterrent against a contravention by an employer of the provisions of Section 33 was the

prosecution of the employer under S, 31. This was hardly any consolation for the workmen, for if an employer took the risk of a prosecution and

acted in contravention of Section 33, the workmen could only raise an industrial dispute and ask the appropriate Government to refer the same to

a Tribunal but if the Government declined to accede to their prayer the workmen were without any remedy. This was the position under the 1947

Act before it was amended in 1950.

The result of the changes effected by Act XLVIII of 1950 was summed up by Das, J., at p. 153 (of Mad LJ):(at p. 263 of AIR):--

When an employer contravenes the provisions of Section 33 of, the 1947 Act or of Section 22 of the 1950 Act, the workmen affected thereby

obviously have a grievance. The grievance is two-fold. In the first place it is ""that the employer has taken a prejudicial action against them without

the express permission in writing of the authority concerned and thereby deprived them of the salutary safeguard which the Legislature . has

provided for their protection against victimisation. In the second place, and apart from the first grievance which may be called the statutory

grievance, the workmen may also have a grievance on merits which may be of much more seriousness and gravity for them, namely, that in point of fact they have been unfairly dealt with in that their interest has actually been prejudicially affected by the highhanded act of the employer. These sections give the workmen the right to move the authority by lodging a complaint before it. This is a distinct benefit given to them, for, as we have seen, apart from these sections, the workmen have no right to refer any dispute for adjudication.

At p. 155 (of Mad LJ): (at p. 265 of AIR) of the report, Das, J., laid down:--

The object of Section 22 of 1950 Act like that of Section 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the subject-matter of pending proceedings against victimisation by the employer on account of their having raised industrial disputes or their continuing the pending proceedings. It is further the object of the two sections to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should, during the pendency of these proceedings, take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relation between the employer and the workmen. To achieve this object, a ban has been imposed upon the ordinary right which the employer has under the ordinary law governing a contract of employment. Section 22 of the 1950 Act and Section 33 of the 1947 Act which impose the ban also provide for the removal of that ban by the granting of express permission in writing in appropriate cases by the authority mentioned therein.

8. The ban imposed by Section 33 of the Industrial Disputes Act applies during the pendency of an industrial dispute. That imposed by Section 22 of Act XLVIII of 1950, which is similar in its scope, comes into play after the Industrial Tribunal has, given its award and is in force till the appeal preferred against it is disposed of by the Appellate Tribunal. In both cases the ban applies only to the discharge or punishment whether by dismissal or otherwise of workmen concerned in such industrial dispute or concerned in such appeal.

9. The ban imposed by Section 23 of the Industrial Disputes Act and by the

analogous Section 24 of Act XLVIII of 1950 is different. Section 24 runs:--

Notwithstanding anything contained in any law for the time being in force, no workman who is employed in any industrial establishment shall go on strike and no employer of any such workman shall declare a lock-out --

- (a) during the period of thirty days allowed for the filing of an appeal u/s 10, or
- (b) during the pendency of an appeal before the Appellate Tribunal.

Forgetting for the moment the period allowed for preferring an appeal against the award of an industrial Tribunal, all that is necessary to establish

contravention of Section 24 of the Act XLVIII of 1950 is (1) the pendency of an appeal and (2) that the person who joined the strike during the

pendency of that appeal was a workman of the employer. Section 24 does not require further that the workman himself should be concerned in

that appeal, which is what Section 22 of the Act requires. The workmen concerned in an industrial dispute or concerned in an appeal obviously

constitute a group which may be less comprehensive in its scope than all the workmen employed in that industry or even in one of the

establishments of that industry. Every workman need not necessarily be a workman concerned in a pending industrial dispute or in a pending

appeal.

10. Section 18 of the Industrial Disputes Act of 1947 should also help in deciding the scope of the workmen concerned in an industrial dispute

within the meaning of Section 33 of that Act and workmen concerned in such appeal within the meaning of Section 22 of Act XLVIII of 1950. The

relevant portion of Section 18, which sets out the persons on whom the awards are binding runs;--

.....an award which has become enforceable 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,
- (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"".

Thus as every workman within the scope of Section 23 of the Industrial Disputes Act need not necessarily be a workman concerned in the

industrial dispute, every workman bound by the award u/s 18 need not necessarily be a workman concerned in that industrial dispute. That would

also apply to the expression ""workmen concerned in such appeal"" in Section 22 of Act 48 of 1950.

11. From what I have stated above it should be clear that the three groups (1) workmen, (2) workmen bound by an award in an industrial dispute

and (3) workmen concerned, in the industrial dispute or workmen concerned in an appeal against an award in an industrial dispute may not be

identical in all cases, though there may be a good deal of overlapping in any given case. Section 22 of Act 48 of 1950 is confined to workmen

concerned in the appeal. In the absence of any statutory definition of the expression ""workmen concerned in such appeal"" the word ""concerned

has to be given its ordinary meaning in English language. It is not however my endeavour to attempt a comprehensive definition of the expression

""workmen concerned in such appeal"", It may not be possible to devise a formula of universal application. The question, when it arises, must

necessarily be answered with reference to all the circumstances of that case, when no doubt one of the main factors to be taken into account will

be the subject matter of the industrial dispute referred for adjudication and the subject matter of the appeal arising out of that industrial dispute. My

limited problem in this case is to see whether the workmen-respondents in these proceedings were workmen concerned in the appeal that was

admittedly pending before the Appellate Tribunal when the petitioner-management terminated their services.

12. Before that question is answered it is necessary to verily (1) who were the parties to the industrial dispute and the appeal that arose out of it,

and (2) what was the industrial dispute that constituted the subject matter of the appeal.

13. On 10-9-1953, the management of the Newtowne Studios, the petitioner in these proceedings before me, ordered the retrenchment of 54 of its

employees. They did not include any of the workmen who are respondents in the proceedings before me. That retrenchment led to an industrial

dispute, which the Government of Madras referred on 22-3-1954 u/s 10(1)(c) of the Industrial Disputes Act for adjudication by the Industrial

Tribunal, Madras. The Industrial Tribunal gave its award which was published on 19th July 1954. The points that arose for determination in that

industrial dispute were (1) whether the retrenchment of the 54 workers is justified, and (2) whether the workers are entitled to any and what

compensation. The management was prepared to reinstate four out of these 54 workmen. The Industrial Tribunal found that the retrenchment of

the other 50 workmen was justified, as admittedly there was a slump in the trade. The Industrial Tribunal further held that these 50 workmen were

entitled to retrenchment compensation calculated with reference to the reduced basic wages of which they were in receipt before the retrenchment.

14. The parties to the industrial dispute were described in the award as follows:

The workers represented by the Madras State Cinema and Studio Employees' Union and the Madras National Cinema and Studio Worker's

Union, Madras, and the management of Messrs. Newtowne Studios, Madras.

15. The workers of the Newtowne Studios represented by their two Unions appealed to the Appellate Tribunal against the award of the Industrial

Tribunal. The management of the Newtowne Studios was the respondent in the appeal. The Appellate Tribunal recorded:

In the appeal, the finding of the Industrial Tribunal on the justifiability of the retrenchment is not questioned and the only points urged before us are

with respect to the directions in the award concerning the payment of retrenchment compensation and the reinstatement of the abovesaid four workers.

The Appellate Tribunal upheld the claim of the workers-appellants that the compensation equivalent to 15 days wages in lieu of notice should also

include the dearness allowance to which these workers were entitled. That was obviously based on the definition of wages as amended by Act 43

of 1953 which came into force on 24-10-1953, that is subsequent to the date of retrenchment. The correctness of this additional award by the

Appellate Tribunal was successfully challenged by the management in W. P. No. 946 of 1955.

16. One other fact has to be recorded at this stage. Ethirajulu who was dismissed and the six workmen who were retrenched were employed In

the studios from before the date on which the industrial dispute resulting from the retrenchment of 54 workmen in 1953 was referred for adjudication.

17. It is with reference to these factors I have to decide now whether these respondents were ""workmen concerned in the appeal"" within the meaning of Section 22 of Act 48 of 1950. It was a collective dispute between the workers of the Newtoue Studios on the one hand and the

management on the other. The workers and the management were parties to the industrial dispute, and they were parties to the appeal. AS

ETHRAJULU and the six retrenched workmen were also among the workers, they were also parties to the industrial dispute and they were-

parties to the subsequent appeal. As parties to the appeal, they would certainly appear to be workmen concerned in that appeal within the meaning

of Section 22 of Act 48 of 1950. Besides, the nature of the industrial dispute was such that all the workmen then in the employ of the management

were concerned in that industrial dispute, in the sense they were interested in this settlement of the principles that should govern the right of the

management to effect a retrenchment and the conditions subject to which that right should be exercised. That the question of reinstatement or

compensation could only apply to the 54 retrenched workmen had no real bearing on determination of the issue, were all the workers who were

parties to the industrial dispute workmen concerned in the appeal. No doubt the scope of the appeal was more restricted than the scope of the

industrial dispute. Nonetheless, the position was that the respondents were parties to the appeal and the question that still remained for adjudication

in the appeal was one in which all the workers who were parties to the appeal were interested. That certainly made the respondents ""workmen

concerned in the appeal"" within the meaning of Section 22 of Act 48 of. 1950.

18. The contention of the learned counsel for the petitioner was that only the 54 workmen who had been retrenched in 1953 should be viewed as

workmen concerned in the appeal within the meaning of Section 22 of Act 48 of 1950. Acceptance of that contention would really render

ineffective the statutory provision in Section 22, which, as the Supreme Court pointed out, in *The Automobile Products of India Ltd. Vs. Rukmaji*

Bala and Others, , was designed to promote and preserve the industrial harmony.

No question could possibly arise with reference to these 54

workmen, who were out of employ even before the reference of the industrial dispute u/s 10(1)(c) of the Industrial Disputes Act, which could fall

under Clause (a) or Clause (b) of Section 22 of Act 48 of 1950. Acceptance of the narrow interpretation placed by the learned counsel for the

petitioner on the scope of Section 22 would mean, for example, that during the pendency of the appeal, the management could effect further

retrenchment, and that the only remedy of the workers affected by that retrenchment was to seek a fresh reference u/s 10(1)(c) of the Industrial

Disputes Act treating it as a fresh industrial dispute. That such was not the scope of Section 22 of Act 48 of 1950 was clearly explained. by the

Supreme Court in *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, .

19. It is on an examination of the undisputed facts in this case that I have come to the conclusion that the respondents (first respondent in W. P.

No. 550 of 1956 and respondents 1 to 6 in W. P, No. 551 of ,1956) were workmen concerned in the appeal within the meaning of Section 22 of

the Act. Termination of their services, admittedly effected without sanction of the Appellate Tribunal, constituted a contravention of Section 22 of

the Act.

20. During the arguments before me reference was made to decision of the Labour Appellate Tribunal which should at least have served as

precedents for that Tribunal to govern the decision on applications preferred by the respondent in these cases. None of them however was an

authority directly in point even from the point of view of the Tribunal.

21. In *Shankar Rao Domajee v. Model Mills Ltd.*, Nagpur, 1956 1 Lab LJ 433 (B) and in *Kalachan Talukdar v. Standard Vacuum Oil Co.*, 1956

1 Lab LJ 616 (C), the industrial dispute that was referred for adjudication was whether the workers were entitled to any bonus for the period

specified in the order of reference. There was an award in each case and an appeal. In each of these cases the workmen whose services were

terminated during the pendency of the appeals came into the employ of the management after the industrial disputes had arisen. The appellate

tribunal held that they were not workmen concerned in the appeal within the meaning of Section 22 of the Act. Obviously the scope of an industrial

dispute in relation to bonus for a given period is quite different from that of an industrial dispute arising out of the retrenchment of some employees.

As was pointed out by the Appellate Tribunal in 1956 1 Lab LJ 616 (C), a workman who entered the service of the employer after such a dispute

with reference to the bonus had arisen could not be viewed as a party to the industrial dispute at all. At p. 618 the Tribunal recorded:

It has not been shown that the applicant could become a party to the appeal or could be made a party. Admittedly the applicant was not a party

to the appeal and it was not shown that he could have been made a party.

Dewaram v. Kanan Devan Hills Produce Co. Ltd., 1958 1 Lab LJ 711 (D), dealt with an industrial dispute concerning (1) bonus for 1952, and

(2) strike pay for the period from 27th July 1953 to 7th August 1953. The workmen whose case had to be considered in that case entered the

service of the employer long after, on 1st August 1954. The Tribunal pointed out that the workmen had no concern in the appeal. They could not

participate in the bonus. They were of the "staff", and the question of strike pay was confined only to the "operatives" which did not include

members of the staff.

22. Obviously industrial disputes involving a claim to bonus stand on a footing of their own, and the principle involved in such cases for determining

whether a given workman was a workman concerned in such appeal within the meaning of Section 22 could not have been extended by the

Tribunal to an industrial dispute arising out of retrenchment.

23. The learned counsel for the respondents referred to Islam v. Pannalal Binjraj Oil Mills, 1956 1 Lab LJ 171 (E). In that case the Industrial

Dispute was whether the closure of the mills from 30th December 1951 to 25th March 1952 was justified and whether the workmen who were

laid off were entitled to compensation during that period. The workmen whose services were terminated during the pendency of that dispute were

appointed subsequent to 25th March 1952. The Appellate Tribunal held that the industrial dispute was a collective one and therefore all the

workmen were concerned in that industrial dispute. It may not be necessary for me to examine the correctness of that decision of the Appellate

Tribunal in this case, except to point out that as every industrial dispute has necessarily to be a collective dispute, acceptance of the test of

collective dispute would really obliterate the distinction between workmen and workmen concerned in the appeal.

24. If, as in this case, the respondents-workmen were parties to the appeal pending before the Appellate Tribunal, it would be difficult to hold that

they were not concerned in the appeal, even if none of the respondents could himself derive any direct pecuniary advantage from the award that

might be given in that appeal. There was the additional factor to which I have referred in this case, that the nature of the industrial dispute and the

appeal clearly established that the respondents as among the parties to the appeal, were concerned in that appeal.

25. The Tribunal was right in holding that the termination of the services of the respondents ""was in contravention of Section 22 of Act 48 of 1950.

It had therefore jurisdiction to grant relief to the respondents. The legality of the relief granted was not in issue. The only point taken was that there

was no contravention of Section 22 of Act 48 of 1950 and that failed.

26. The rule nisi in each of these cases is discharged and the petitions are dismissed. No order as to costs.