

(1997) 01 MAD CK 0114
In the Madras High Court

The Workmen Employed in Wadva Bros. Engineers	APPELLANT
Vs	
Wadva Bros. Engineers and Others	RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(K), 2A

Citation : (1998) 1 MLJ 218

Judgement

1. The above appeal has been filed by the workmen, who succeeded before the Labour Court but lost before the learned single Judge, challenging

the order of the learned single Judge dated 26.11.1990 in W.P. No. 3266 of 1987. The writ petitioner before this Court is the Management and

the writ petition came to be filed for a writ of certiorari is call for and quash the award of the II Additional Labour Court, Madras, dated

2.12.1986 in I.D. No. 16 of 1985.

2. The dispute came to be entertained as noticed above on a reference made by the Government in G.O. Ms. No. 1 Labour dated 3.1.1985 as to

the question whether the stoppage of work in Wadva Bros. Engineers from 1.1.1984 is a case of lock out or clo-sure and as to what relief the

workmen would be entitled to? The averments before the Labour Court were that the workmen were all working in the respondent Management

company that the workmen in the Company had never been kept on the rolls of the Company for more than few years, they were all members of

the INTUC Union, that they raised a charter of demands on 15.11.1983 and during the pendency of negotiations, the Management issued a

closure notice and the closure was not genuine but merely an attempt to break the Union. It was also their case since the INTUC Union was not

espousing the cause of the workers, the workers jointed the socialist workers' Union to prosecute their case and this Union espoused the cause

contending that the alleged closure of the respondent's machine shop was only a lock out. The Management was said to have agreed that it was

run-ning the concern by leasing out to one Sekar and Munuswamy and the claim of the Management that the workers had settled their dues was

incorrect and that the workmen, who have not settled their dues according to the workmen before the Labour Court are entitled to the relief of

reinstatement with attendant benefits.

3. The respondent Management contended that the claim of the workmen that the Management never kept the workmen on rolls for more than

few years and that they were meagrely paid is false. 11 out of 13 have settled their accounts and the respondent showed the settlement receipts

given by the workmen to the Commissioner of Labour and therefore, the Union has no locus standi to raise the dispute u/s 2(K) of the Industrial

Disputes Act. It was also claimed for the Management that the machine shop of the Company was not working properly for some time due to

various reasons resulting in dwindling of production and therefore it was found to be uneconomical to carry out the work particularly in the light of

the non-co-operative methods alleged to have been adopted and the alleged subversive activities resulting in repairs to machines, necessitating the

closure of the machine shop, the Management has issued a notice to all the 13 workmen offering one months' pay in lieu of notice and

compensation and that 11 workmen, as noticed earlier, have settled their accounts by receiving their legal dues and passing on due receipts in final

settlement of their claim. The workmen by name Samuel and Sethumadhavan refused to settle their accounts. Sekar and Munuswamy were said

to be lessees, who entered into the lease agreement. Finally, the contention of the Management was that what has happened was not a lock out as

contended by the Union and it was really a closure.

4. Before the Labour Court, both parties adduced oral and documentary evidence. The Management has filed an application seeking for

adjudication on a preliminary issue as to whether there had been community of interest and proper representation and adjudication of the dispute

warranting interference.

5. The Labour Court ultimately found under the award that the Union in question which espoused a cause of the workmen in the machine shop of

the respondent-Management was well within its rights to do so and the contention of the Management that the Union has no locus standi was not a

tenable one. As for the other question, whether it was a closure of lock out, the Labour Court was of the view that what has really been effected

was only a lock out and not a closure as claimed by the Management. The claim of the Management that 11 out of 13 workmen settled their claims

even before the Conciliation Officer was repelled and therefore the Industrial Dispute was held to exist and that there has been proper

representation by the Union on behalf of the workers of the respondent-Management. Consequently, the Labour Court passed an award stating

that the stoppage of work in Wadva Bros. Engineers from 7.1.1984 was a case of lock out and therefore the six workmen whose names have

been mentioned are entitled to reinstatement in service with back wages and all attendant benefits from 7.1.1984.

6. Aggrieved, the Management filed, as stated earlier, W.P. No. 3266 of 1987, challenging the award of the Labour Court, learned single Judge

has accepted the challenge to the award projected by the Management by holding that there was no proper representative capacity for the

Industrial Dispute being sponsored and projected for adjudication, in that, according to learned Judge, except two of the workmen, there was no

other who could be said to have joined together and resolved to espouse the cause of the work-men in question and that being the position, in

respect of 13 workers, the industrial dispute cannot be entertained under the Act. Learned Single Judge also differed from the finding of the

Labour Court on merits and held that what has happened was only a closure and this was obvious according to learned single Judge from the fact

that the establishment was under the Management of two persons, who became lessees and who were said to have been running the same after

7.1.1984. As for the claim of the Management that 11 out of 13 workers have settled their claims during the conciliation proceedings which claim

has been held to have not been proved by the Labour Court, learned single Judge came to the conclusion that the claim of the Management stood

established also on the basis of the records made available by learned Government Pleader on the directions of this Court from the file of the

conciliation officer. On the above conclusions arrived, at the writ petition came to be allowed resulting in the filing of the above appeal.

7. Mr. K.M. Ramesh, learned Counsel appearing for the appellant-workmen strenuously argued that the learned single Judge was in error in

recording the findings differing from the one recorded by the Labour Court on every one of the three issues noticed supra and that in exercise of

the jurisdiction under Article 226 of the Constitution of India, it was not given to learned single Judge to re-appreciate the evidence as if on an

appeal and consequently, the findings recorded by learned single Judge are liable to be set aside. It was also contended that learned single Judge

ought not to have relied on the receipts produced by the Government Pleader from the files of the Conciliation Officer and that such production

and acceptance at this stage of the proceedings under Article 226 of the Constitution of India resulted in denial of an effective opportunity to the

workmen to substantiate their claim that those materials are not legally acceptable. Learned Counsel also took great pains to substantiate the

grievance of the workmen that the learned single Judge was not right in coming to the conclusion that there was no proper espousal of the dispute

on behalf of the workmen by the required number of workmen and that we should agree with the finding recorded by the Labour Court than that

of the learned single Judge for the reason that five workmen whom the learned single Judge has held to be not workmen of the Management are

really workmen of the respondent-Management and therefore, the Labour Court was right in including them also as the workmen of the concern.

8. Learned Counsel invited our attention to two decisions of the Apex court to substantiate his claim that the espousal of the cause was in

accordance with law and the dispute referred and entertained by the Labour Court was valid. First is the decision reported in *Workmen of*

Rohtak General Transport Company v. R.G.T. Company (1962) 1 L.L.J. 634. That was a case wherein in an establishment employing 22

workmen the dispute in regard to two workmen came to be espoused by five workmen excluding the two concerned workmen. The Apex Court

before whom a challenge on the entertainment of the dispute came to be made, held that since no such point was taken before the Labour Court

on behalf of the management that the five workmen did not espouse the cause before it was referred for adjudication, the Labour Court was not

right in rejecting the reference on the preliminary ground. In our view, the issue that was urged and actually decided was not in the manner which is now sought to be projected before us. While posing the question for adjudication in that case as to whether the dispute has been sponsored by the workmen before it was referred for adjudication, it was held by Their Lordships of the Supreme Court that in view of the fact that no point was taken on behalf of the Management that the five workmen supported the cause of the two workmen after reference and not prior to the reference, the two documents filed before the Labour Court should be taken as prima facie evidence to show the support of the five workmen to the cause of the two workmen before the same was referred for adjudication and is really such a point had been taken before the Labour Court, the five workmen would have been examined to show that they supported the cause before the date of reference. We find nothing in the said decision to support the claim made now before us in this proceedings. 9. The next decision referred and reported in *Workmen of Dharampal Premchand v. Dharampal Prem Chand* (1965) 1 L.L.J. 668 dealt with a case wherein 18 out of 45 workmen in an establishment who were members of Union whose membership was not confined to the establishment in question were under dispute only, but at the same time, all those workmen who were members of the Union and who were dismissed from service having joined together to make their claim for reinstatement espoused by such Union of which none of the other workmen in service was amended was held to be valid reference. A perusal of the said decision would go to show that the principles laid down in the context of the fact situation in that case will have no relevance or application to the case on hand. There was no dispute about the very workers who were said to have joined to project the dispute being either workmen or not of the very establishment in which the dispute arose. On the other hand, that appears to be a case on facts wherein though 45 workmen were there in that particular establishment, it is only 18 were members of the particular Union and all the 18 workers who were dismissed joined together to fight their cause and it is that cause which has been espoused by the particular Union, the membership of which was not only confined to the establishment in respect of which the dispute arose but the workers of other establishment as well. It is in the court the 18 persons joining together to vindicate their

rights through the Union of which they were members were found to be in order and not on account of the fact that 18 could be said to be the

sufficient number out of 45 to constitute the required representative status to vindicate an industrial dispute within the meaning of Section 2(K) of

the Industrial Disputes Act, 1947.

The terms "Industrial Dispute" has been always construed to convey the meaning that the machinery provided under the act except those covered

u/s 2-A of the Act should be set in motion and espoused by all the workmen or even by a majority of the employees/members of the union

concerned. 10. We have carefully considered the submissions of learned Counsel appearing for the appellant as also that of Mr. Vijayakumar,

learned Counsel for the respondent, who while reiterating the submissions made before learned single Judge and adopting the reasons assigned by

the learned single Judge also contended that the Labour Court committed a patent error in ignoring the attendance rolls produced to substantiate

the claims that the five workmen who were treated by the Labour Court as workmen of the Company in question not really their workmen and that

learned single Judge was right in interfering with the award of the Labour Court on account of such serious lapses on the part of the Labour Court.

We find that the Labour Court, as urged for the respondent Management, has not adverted to the attendance rolls and these aspects which go to

the root of the matter as to the status of the five workmen in question, which are essentially necessary in finding out as to whether the dispute has

been properly espoused and duly referred has been overlooked by the Labour Court. On the other hand, learned single Judge, has adverted to

these aspects and also the move made by the respondent-Management to have to issue relating to the locus standi decided as a primary issue

making the relevant and required factual allegations, which according to learned Single Judge had not been properly adverted to or considered or

adjudicated warranting his interference. We could see no error in the procedure adopted by learned single Judge to interfere with the said

findings. We are unable to agree with the explanation now sought to be given by learned Counsel for the appellant that the five workmen who were

held to be not workmen of the concern by the learned single Judge must have been treated as casuals whom the company was in the habit of not

including in the attendance register. Learned Judge, at any rate, in our view, cannot be found fault with, for going on the basis of the statutory attendance register maintained and periodically inspected by the competent inspecting Authorities as the basis for deciding the status and character of a worker. The relevant materials on record but ignored by an Adjudicating Authority like the Labour Court could very well be adverted to even in proceedings under Article 226 of the Constitution of India and findings of fact rendered in utter disregard of the relevant vital materials could be interfered in exercise of jurisdiction under Article 226 of the Constitution of India since such finding would suffer the vice of perversity in arriving at them. This position has by now come to be well settled and we do not see any error whatsoever. That apart and we do not see any error whatsoever. That apart, we cannot also find any error in the finding of learned single Judge that 11 out of 13 workers have settled their claims as earlier noticed. Learned Counsel for the appellant took strong exception to the learned single Judge placing reliance upon the records produced by the Government Pleader. Though no doubt the Management could have taken effective steps to summon those receipts evidencing settlement of the claims of 11 workers, the said lapse alone could not be the basis for once and for all rejecting the claim of the Management of such settlement which has been indisputably projected even before the Labour Court. The materials produced in the form of receipts passed on by the concerned workers at the stage of proceedings before this Court under Article 226 of the Constitution of India were from the custody of the Conciliation Officer and from his records and not by the management from their possession. Since the fact that such settlement has been effected by 11 workers has been projected even before the Labour Court by the Management if the move of the workmen is really genuine and sincere nothing precluded the workmen making arrangements to examine those workmen on their side before the Labour Court to prove that they have not really settled their claims. This not having been done and in the teeth of the records having come from out of the official custody of the competent authority before whom during the course of conciliation, the said settlement was stated to have been arrived at, the learned Judge could not be found fault with for relying upon those materials and the finding recorded in this regard does not call for our interference. The alleged denial of an

opportunity therefore, has no merits of acceptance. Though receipts as such were made available, at the stage of the writ petition, from the custody of the Conciliation Officer, the plea has been specifically projected event at the easiest stage and as noticed by us, nothing precluded the workmen from being examined on behalf of the Union even before the Labour Court. In the light of our conclusions on the above two issues sustaining the order of learned single Judge on these two aspects, we consider it even unnecessary to enter into an adjudication of the question whether it is lock out or closure. For all the reasons stated above, we do not find any merit in the above appeal. The appeal therefore fails and shall stand dismissed.

No costs. The direction with reference to Samuel, a worker issued by the learned single Judge will stand and if not already settled, shall be complied with, notwithstanding the dismissal of this appeal.