
(1966) 02 AP CK 0014
In the Andhra Pradesh High Court

Tirupathi Cotton Mills, Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 11-02-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1968) 2 LLJ 723

Hon'ble Judges : Kumarayya, J

Bench : Single Bench

Judgement

Kumarayya, J.—This is a petition for issue of a writ of Certiorari quashing the Order of the Labour Court, gantur, in Industrial Dispute Nos. 5 of 1956, 17 of 1964 27 of 1964 and 33 of 1964 dated 29th May 1995 and for the further directions as the circumstances of the case may warrant.

2. Who facts leading of this petition are these who petitioner ? company, an industrial under taking carries in business of purchase of cotton manufacture and sale of farm, It has on its employment about 800 workers It is the case of the petitioner that there is a labour union concerned there with known as Tripathi Cotton mills National Labour Union ? duly registered in accordance with the provision of the Indian Trade Union Act of 1926, of which most of the workers are the members that there is no other union of workers for this industrial establishment and the most of the settlements with the management were entered into regarding various matter such as sales of wages etc.; through this union. While so certain workers in the establishment absented themselves for a long period and consequently, they lost their lion on their jobs as per the standing orders Likewise the services of certain other were terminated by the management as a result of enquiry into some serious charges against them The case of these workers was not caused either by the said union or a substantial number of workman Another union grew up meanwhile under the name and style of? Chittoor District cotton Mills Employees ? Union ? It was registered on 24 October 1988. It was not the union specially concerned with the petitioner ?s

company. It was in fact a general union of workers in Chittoor district. Thus it was said that it is an outside union having nothing to do with petitioner ? under taking or its workers who person who lost their jobs approached the officer bearers of this union to take up their cause. The union accordingly welcome them and made a demand on their behalf, consequent on its representation, conciliation proceeding stated but they proved abortive. The Government then made reference of the various dispute u/s 10(i)(c) of the Industrial Dispute Act (Central Act 14 of 1947) on 4 February 1984; 8 June 1984, 2 September 1984 and 28 November 1986 which were numbered by the labour court, Guntur as Industrial Dispute Nos. 5 of 1984, 17 of 1984 27 of 1984, and 33 of 1984. The management, which took part in the conciliation proceeding earlier, questioned the validity of reference on the ground that the subject matter of reference did not fall within the definition of ?industrial dispute ? Then they moved this Court by with petition Nos 580 of 1984 and 1337 of 1984 of issuance of writ in the nature of a writ prohibition restraining the labour court from proceeding further in pursuance of the references date 4 February as Industrial Dispute Nos. 5 of 1986 and 17 of 1984 on the file of the labour court to main point raised was that the union that supported the cause of the workman was an outside union of which sizable number of workman of this establishment were not member; nor did a substantial number of workers make common cause with the said workman. The workman challenged the truth of either assertion. They averred that for the petitioner's establishment there was no other cotton mill that had goes into production in Chittoor district that the workers of the petitioner establishment are the member of that union, that that union has the members of that union, that It is not therefore true to say that a substantial majority of the workman of the petitioner's industrial undertaking did not take up their cause of that the dispute was in controversy and could not be determined without detailed inquiry into questions of fact which could, be legitimately come into by the labour court the petitioner deemed it best not to be press their writ petitions which were accordingly dismissed on 20 October 1984. There were four separate references before the labour court Industrial Dispute No. 5 of 1984 was concerned with 11 workman Industrial Dispute No. 17 of 1984 related to 14 persons and Industrial Dispute No. 83 of 1984 was with regard to only 1 workman industrial Dispute No. 27 of 1984 by the term of reference does not disclose how many workman were involved therein. The case of the respondents, however is that it referred to as many as about 300 workman.

3. On the objection of the management as to the jurisdiction, the labour court entered into an inquiry as to the nature of dispute i.e. whether it is an industrial dispute, witnesses were called to testify to the contention raised. It was clear to the labour court that what was in dispute was whether the cause of the aggrieved workman was espoused by a representative union of the workers of that establishment or at any rate by a substantial or appreciable number of workers thereof. In fact the labour court question whether the subject-matter of the reference in not an industrial dispute as it was not sponsored by the

representative union of the workers or by a substantial or appreciable number of workers of the establishment. This was essentially a question of fact to be more precise, if the inferential aspect is taken into account it is a mixed question of law and fact. But the labour court did not in its order give its finding as to how many workers of the establishment were the members of the union which has espoused the cause of the respondent and how many have taken part in passing the resolution. In its approach to the problem the labour court misapprehended the true scope of the problem. Without being borne in mind that the facts essential for determination of the question have to be first found, it observed thus:

at any rate it cannot be said on any account that the reference made is not an industrial dispute applying any standard either on the question of fact or on the question of law. Moreover evidence has been recorded in part and it will be easy to record the remaining evidence else and an award on the issues framed by the Government can be submitted in a short time.

With these observations it held that the labour court has jurisdiction to proceed further with the references. The petitioner as a result, as came once again to this Court, this time requesting the Court for issuance of a writ of certiorari quashing the said order of the labour court and for further direction. It is alleged in this petition that the labour court without properly going into the merit of the contention and applying its mind to the factual aspect of the matter rejected the preliminary objection as to jurisdiction moved by extraneous or irrelevant consideration. In the counter filed by the respondent, it was stated that as many as 300 workmen are directly concerned with the references; that it must therefore be necessarily an industrial dispute, that the labour court after recording evidence held that it was an industrial dispute and that that being a question of fact any error in relation thereto cannot be corrected in the exercise of writ jurisdiction. Even otherwise there has been no error either of law or of jurisdiction which may warrant interference by this Court.

4. The main point for consideration is whether the reference is incompetent on the ground that the dispute referred to is not an industrial dispute.

What then is an industrial dispute?

5. That expression has been defined in Section 2(k) of the Industrial Disputes Act, 1947, thus:

Industrial disputes? means any disputes or differences between employees and employers; or between employers or workmen; or between workmen and workmen; which is connected with the employment or the terms of employment or non-employment or the terms of employment or with the condition of labour, of any person.

So then one of the component parts or essential requisites is that the dispute must be connected with employment, etc. It is indisputable that the present dispute satisfies that condition as it is evidently connected with non-employment

or conditions of labour of certain workers in which these workers are directly and substantially interested. But Sri K. Srinivasamurthi, leader counsel for the petitioner, contends that the other requisite must also be fulfilled to bring it into the category of the industrial dispute. His contention is that the dispute must assume the character a dispute between employer and workmen as a body and must met be a dispute between employer and a workmen or workmen as a individual or individuals for in the case of the letter the remedy lies before the ordinary tribunals of the land. To constitute a dispute of that nature it is urged that it is also essential that the workmen as a body or a considerable section of them must make common cause with the individual workmen directly affected. This can as well be done through the union of the employees of the establishment for as a representative body, it has substantial interests in the dispute. Of course, the persons who are not employees of the same interest and through their⁶ support they cannot convert an individual dispute into an industrial dispute. learned Counsel, therefore, submits that the union espousing the cause must have a substantial number of workers of the establishment as its members and the said union must have passed a resolution in the general body meeting in which a substantial or an appreciable number of workers took part. In these premises it is urged that the present dispute is not an industrial dispute.

6. The law on the point is beyond doubt and is well settled. This Court had occasion to deal with this question in several cases. Satyanarayan Raju; (as he then was), in Padarth Ratnam and Company Vs. Industrial Tribunal and Others, being of the view that an industrial dispute must imply that the disputes should be a dispute where in the workmen as a class are substantially interested and besides there should be a concerned demand by the employees for redress, referred, and inter alia., to the observations of the Supreme Court hearing on the meaning of the expression ? Industrial dispute? adapted in D.N. Banerji v. P.R. Mukherjee 1958I L.L.J. 195 which I many use fully extract here:

It conveys the meaning to the ordinary mind that the dispute must be such as would affect large group of workmen and employers ranged on opposite sides. But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and setting them on the basis of the theory that in union is strength; and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when, as often happens, it is taken up by the trade union of which he is a member, and there is a concerned demand by the employees for redress.

The learned Judge referred also to the following further observations made by the Supreme Court in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, at 5:

The preponderance of judicial opinion is clearly in favour of the last of the three views stated above, and there is considerable reason behind it. Net with standing that the language of Section 2(k) is wide enough cover a dispute between as

employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the union or a number of workmen.

7. A divisional Bench of this Court which I was a part in *Express Newspapers (Private), Ltd, Madras v. Labour Court, Hyderabad and Ors.* 1962 IIL.L. 200, observe at p.202:

It is now well-established that in order to answer the description of an industrial dispute as defined in Section 2(b) of the Act, it must be such as would affect large group of workmen and their employers ranged on opposite sides. A dispute between an employee and his or their employee is only an individual dispute and not an industrial dispute and as such falls outside the pale of the Act.

Dealing with the union which can sponsor the dispute so as to invest it with the status of industrial dispute, was observed in that case thus at p.204:

...There should be community of interest between the workers or the union representing them and the employees or the employee whose dispute is sponsored by them. If such community of interest does not exist, the other workmen of their union cannot adopt the dispute. Any decision on the question as to whether the dismissal of the two concerned workmen was wrongful or not does not in any way affect the rights of the union. The union; which sought to raise the dispute against the appellant, cannot get any relief from it. Hence, it could not be predicated that it is interested directly or substantially in the employment or with the condition of labour of the aggrieved workmen within the scope of Section 2(k). Hence; the union has no locus standi to sponsor the dispute so as to invest it with the status of an individual.

In this connexion, reference was also made to the Supreme Court case in *Bombay Union of Journalists v. The Hindu, Bombay* 196 IIL.L.J.486 as an authority for the proposition that in order that an individual dispute; the persons who seek to espouse the cause of the workmen must themselves be directly and substantially interested in the dispute and those who were not employees of the same employer could not be regarded as so interested.

8. To the similar effect were the observations of Jaganmohan Reddi; S; in *Vasir Sultan Tobacco Co. Ltd., Hyderabad v. State of Andhra and Ors.* 1964 I L.L.J.622, based on the above-cited authorities.

9. In *Visalskhi Mills, Ltd v. Labour Court, Madurai and Anr.* 1962 I L.L.J.93, the Madras High Court, on a review of the various earlier fullage summarised the position is law thus:

It is now well settled that as individual dispute in order to be an industrial dispute must have the collective support from a considerable or substantial

number of workmen in the establishment.

What a substantial or considerable section would be in a given case would, of course; depend up on the particular facts.

That an individual dispute is supported by other workman will also have to be established either in the form of a resolution of a union of which the workman may be members or of the workmen themselves who support the dispute, or in any other manner.

From the mere fact that a general union at where instance an individual workmen is referred for adjudication; has on its rolls a few of the workmen in the establishment as its members, it could not be assumed that the individual dispute was converted into a collective dispute; In such a case not only should it be proved that the workmen who are members of the general union formed a substantial or a considerable section of the workmen of the particular mills but also that in order to vest the dispute with the character of an industrial dispute, these members participated in or acted together and arrived at an understanding either by a resolution or by other means, and collectively supported on the date of the reference the demand or the cause of an individual dispute.

That with respect correctly represents the position as established by the authorities on the subject.

10. It is unnecessary to multiply cases. Sufficient to say that unless there is a concerned action evidencing indication on the part of a substantial or appreciable number of workmen of the establishment it will be impossible to hold that the dispute, which on the face of it must be regarded as an individual dispute, has been converted into an industrial dispute. It is only then we may assume that it was a collective bargaining on the part of the workers with the employers. This concerned action may as well be evinced by a union which is substantially interested in the dispute as having a large number of members of the employees of that establishment

11. So then the first point that had to be determined by the labour court was whether the union which has sponsored the cause was substantially interested in the dispute, i.e., whether the members of that union were predominantly the employees of the establishment. The second would be whether the substantial number of employees by resolution of other wise indicated their condition to convert this dispute into an industrial dispute or of making common cause with the aggrieved workers. The determination of these points was essential to come to a decision whether the dispute referred to was an industrial dispute. It was only then that the Government would make a valid reference which may be lawfully decided by the labour court. Thus, these question went to the root of jurisdiction and it was incumbent on the labour court on the objection being raised to decided objectively whether it has jurisdiction or not. While deciding the question, the labour court cannot afford to ignore the settled principles bearing on the point. The question being a mixed question of law and fact, the facts

necessary for the decision of the may be settled in view thereof. Had the labour court given its finding based on evidence on the question of fact, certainly that finding would not have been subjects to review in these writ proceedings. But it is clear that the labour court did not give specific finding on questions of fact. It did not find out how many of them took part of were represented in passing resolutions of espousing the cause of workmen. In fact, it did not consider the evidence from that point of view. It did not apply at all its mind be the facts of the case having in view the establishment principles which have been referred to above. In other words, it failed to exercise its mind judicially over the matter, having regard to the law on the point and facts of the case as proved by evidence. The conclusion reached, if I may say so, is mechanical rather than judicial. Is this situation, the order of the labour court holding that it is an industrial dispute is liable to be quashed.

12. It is argued nevertheless by Sri P.A. Chowdari, learned Counsel for the respondent that as the dispute involved and affected directly 300 workmen, that being a afzable number, it should be held to be an industrial dispute. I am unable to accept to this request. Firstly, there are four references. There is no material to show that the workers of each reference have made common cause with the workers of the other reference on that matter. Secondly, the total number alleged does not appear from the reference. Thirdly, it is necessary that the workers other than the workmen affected should make common cause to invest the dispute with the character of industrial dispute. Of that there must be proof. In short, the principles conciated above must needs be satisfied. As I have pointed out, the labour court has not considered the question in that manner. The order of the labour court is, therefore, quashed. It does not mean that the labour court will not be at liberty to proceed afresh with the matter and decided the question in accordance with law. The writ petition is thus allowed with costs. Advocate?s fee Rs. 50.