

(1961) 07 KL CK 0042
In the High Court Of Kerala

Travancore Rubber Works Employees" Union	APPELLANT
Vs	
Industrial Tribunal and Others	RESPONDENT

Date of Decision : 20-07-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 17A, 2

Citation : (1961) 5 KLJ 1119 : (1962) 1 LLJ 478

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Judgement

C.A. Vaidialingam, J.—Sri P. Subramonian Potti, learned Counsel for the writ petitioner, attacks the award of the Industrial tribunal, Trivandrum, In Industrial Dispute No. 21 of 1959.

2. This is rather a curious case, because the dispute, as it now turns out to be, is not really between the management, on the one hand and its workmen, which is generally the case in other industrial disputes; but really between two unions which take in the workmen of its establishment. The union which is the petitioner before me, has been throughout styled in the award as the second anion and the respondent who is opposing its claim, has also been called as the first union. Therefore, for purposes of convenience. I will call the respective unions, in the manner in which they have been characterized in the award itself. The question that was referred for decision, was "employment in the store section of the Travancore Rubber Works, Trivandrum." The management appears to have effected certain changes in or about 1959 in respect of recruitment and appointment to the stores section on lesser wages. This method of recruitment and appointment was taken objection to by the first union, though no doubt, that action of the management appears to have had the support of the petitioner, second union. Then the management appears to have deferred further recruitments and ultimately there was no agreement. In the circumstances, the dispute was referred by the Government to the industrial tribunal for adjudication.

3. A prima facie reading of the award which, in my opinion, has considered the

various points that seem to have been raised before the tribunal, leaves the impression in my mind, that all points have been adverted to and a decision arrived at one way or the other, on the materials placed before it. Mainly, most of the points that were argued and ultimately decided, appear to be questions of fact, on which findings have been recorded.

4. But before me Sri P. Subramonian Potti, learned Counsel, urged that the petitioner union has taken a point to the effect that the persons whose cause is sought to be taken, and espoused by the first union, are not workmen and that, therefore, the first union has no power or authority to take up the cause. This again, according to Sri Subramonian Potti, raises a question of jurisdiction as to whether the dispute that has been referred by the State Government to the industrial tribunal for adjudication, amounts to an "industrial dispute" as defined in Section 2(h) of the Act. Again Sri P. Subramonian Potti urged that in consequence of the contention raised by his client, the further question arises as to whether the persons whose cause the first union was espousing, are really "workmen" as defined u/s 2(s) of the Industrial Disputes Act. Sri Subramonian Potti urged that these persons are only casual employees and therefore they cannot be considered to be workmen as defined in the Act. The other larger contention which was rather strenuously pressed by the learned Counsel is that in order to constitute an industrial dispute u/s 2(k) of the Act, at any rate, one of the essential ingredients is that the dispute between the workmen and the workmen must be connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. In that connexion, the learned Counsel has relied very strongly upon the decision of the Supreme Court in *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate* 1958--1 L.L.J. 500 to show that the expression "any person" in Section 2(k) of the Act has been considered. It is the further contention of the learned Counsel that according to the test laid down by the Supreme Court in that case, the casual employees in the case before us cannot be considered to be workmen and that it follows that the first union is not entitled to espouse the cause of such casual employees. This point of law has been controverted by Sri M.P. Menon, learned Counsel for the first union and also the learned Government Pleader appearing for the State. I will advert to this aspect a little later. According to Sri P. Subramonian Potti, though this point was raised as a jurisdictional point", it has not been properly considered by the tribunal and hence the award itself is Invalid.

5. In order to appreciate this contention of the learned Counsel, it is necessary to note what exactly was the contention that was taken before the tribunal. So far as I could see, the petitioner union appears to have raised a point that the workmen represented by the first union, namely, casual workers, are not "workmen" u/s 2 of the Industrial Disputes Act. I will consider, whether in order to constitute an industrial dispute, it is really necessary for those casual labourers to be "workmen" as defined in the Act. I am stressing this aspect because during the course of arguments, Sri P. Subramonian Potti attempted to

raise, what I may call, a dispute on a fact, namely, that there is no community of interest between the workmen of the first union and the casual labourers, whose cause they are attempting to espouse in these proceedings and hence, the first union cannot raise an "industrial dispute." This point, in my view, is probably raised because of the principles laid down by the Supreme Court in such cases, viz., that one of the essential ingredients to constitute an "industrial dispute" is that there must be community of Interest between the workmen of the management and those whose cause, such workmen are espousing. But I am certainly not inclined to permit the petitioner to enlarge the scope of the pleas raised by him before the tribunal; because if permitted, a further Investigation will have to be made on facts. Farther, In this case, there was absolutely no basis even laid by proper averments in the petitioner union's statement. The only point that was raised in its statement related to the question that the persons, whose cause is sought to be espoused by respondent 2, cannot be considered to be "workmen" and, therefore, the first union was not espousing the cause of "workmen" in these proceedings and in consequence, it is not an "industrial dispute." There was no allegation whatever that there is no community of interest between the workmen represented by the first union and the casual labourers.

6. No doubt, the exact connotation of the expression "any person" occurring in Section 2(k) of the Act defining an "Industrial dispute" has been, if I may say so with respect, elaborately considered by their lordships of the Supreme Court in *Workmen of Dimakuchi Tea Estate v. Management, Dimakuchi Tea Estate* 1958--1 L.L.J. 500 (supra). After a consideration of the various aspects. Das, J., who spoke for the Court, observes at p. 509 as follows:

The expression "any person" In the definition clause means, in our opinion, a person in whose employment, or non-employment, or terras of employment, or conditions of labour the workmen as a class have a direct or substantial Interest--with whom they have, under the scheme of the Act, a community of interest.

7. It must be noted that the test laid by their lordships is that there must be community of interest between the workmen and the persons, whose cause is espoused by the workmen. Sri P. Subramonian Potti, very strongly relied upon this decision to show that in this case, the casual labourers, whose cause is being sought to be taken by respondent 2 in these proceedings, cannot be considered to be identical with the workmen comprised in respondent 2 union as such. That decision, it must be remembered, related to the espousing of a cause by a union of workmen in respect of a medical officer, who was no doubt, employed under the same employer. It was in considering whether the union of workmen can espouse the cause of the doctor in whom they cannot be considered to have any community of Interest that was considered by their lord-ships of the Supreme Court in that case. Ultimately, their lordships came to the conclusion that in the particular circumstances of the case, it was not competent for that union to espouse the cause of the doctor concerned.

8. In fact, Sri P. Subramonian Potti very strongly urged that the case before me has to be considered on the principles laid down by their lordships of the Supreme Court in *Workmen of Dimakuchi Tea Estate v. Management, Dimakuchi Tea Estate* 1958--1 L.L.J. 500 (supra). That decision has been considered by the Supreme Court in certain later decisions, to two of which I will have to make a reference presently. In *Workmen Dahingeapar Tea Estate v. Dahingeapar Tea Estate* 1958--2 L.L.J 498, the earlier decision has been adverted to and Das, J., again observes at p. 503:

On the majority decision of this Court in the *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate* 1958-1 L.L.J. 500 (supra), the present dispute is undoubtedly an industrial dispute within the meaning of the Act. That decision lays down that where the workmen raise a dispute as against their employer, the person or persons regarding whose employment or non-employment the dispute is raised need not be, strictly speaking, "workmen" within the meaning of the Act but must be persons in whose employment or non-employment the "workmen" as a class have a direct or substantial interest.

9. These observations will clearly show that that the contention of Sri P. Subramonian Potti, that the persons, whose cause is sought to be espoused by respondent 2 union, must also be "workmen" as defined in Section 2(s) of the Industrial Disputes Act, cannot certainly be accepted. In my view, this case has to be really decided on the basis of the decision rendered by their lordships of the Supreme Court in a later case in *Standard Vacuum Refining Co. of India; Ltd. v. Their workmen* 1960--2 L.L.J. 233. In fact, In that case, Wanchoo, J., delivering the judgment on behalf of the Court, has referred to the earlier decision reported in *Workmen of Dimakuchi Tea Estate v. Management, Dimakuchi Tea Estate* 1958--1 L.L.J. 500 already referred to by me. In that case, the dispute arose between the management and its workmen in a peculiar manner. The dispute that was raised by the workmen of the company, was not any dispute relating to the term of employment or non-employment of any of the workmen concerned, but with respect to employment of contract labour by the company for cleaning and maintenance of the refinery plant belonging to the company. The workmen of the said management therein, namely, Standard Vacuum Refinery Company of India, Ltd., took up the cause of the contract labour and agitated for that labour being taken into the company as permanent employees and that is how the dispute arose between the management and its workers. The dispute was referred to the tribunal by the Government of Bombay. The reference was to decide the dispute regarding the taking in of the contract workers, working under the contractor.

10. One of the contentions that was raised by the learned Solicitor-General for the management was that there is no dispute between the management and the contract labour as such and therefore, it is not an industrial dispute as defined in Section 2(k) of the Act. In fact, it will be seen that the learned solicitor-General further contended that it was not open to the workmen of the management to

raise a dispute with respect to the workmen of some other employer, namely, the contractor. In support of these contentions, he relied upon the decision of the Supreme Court in *Dimakuchi Tea Estate v. Management, Dimakuchi Tea Estate* 1958--1 L.L.J. 500.

11. After dealing with the contention of the learned solicitor-General, Wanchoo, J., has stated the three requirements that are necessary to constitute an industrial dispute u/s 2(k) of the Act. They are:

- (1) There should be a dispute or difference;
- (2) The dispute or difference should be between employers and employees, or between employers and workmen or between workman and workmen; and
- (3) The dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

12. So far as the first two requirements are concerned, their lordships held that they are satisfied that those conditions exist. The more important aspect that appears to have been pressed before them was as to whether the third requirement was satisfied. The learned Judges considered, in the light of the principles laid down in *Dimakuchi Tea Estate v. Management, Dimakuchi Tea Estate* 1958--1 L.L.J. 500, the question, as to whether the workmen therein, who have raised the dispute in respect of the contract labour therein, there is community of interest between the workmen and those whose cause was being espoused. The learned Judges came to the conclusion that there is community of interest in that case between the workmen of the particular management and also the workmen of the contractor in that they belong to the same class and they do work of the same employer and that it is possible for the company to give relief which the workmen there were claiming. The learned Judges also held that the workmen there, have also a substantial interest in the subject-matter of the dispute, namely, the abolition of the contract system. Taking into consideration all these aspects mentioned above, the Supreme Court came to the conclusion that the necessary ingredients of Section 2(k) regarding the third test as laid down in *Dimakuchi Tea Estate v. Management, Dimakuchi Tea Estate* 1958--1 L.L.J. 500 are present and therefore, the dispute between the parties is an industrial dispute.

13. Applying the various principles laid down by their lordships in the case referred to above, the position is almost the same in the case before me. By whatever name they may be called, the workmen whose cause is espoused by the first union, are working under the same management and there is nothing to show that there is no community of Interest between those persons and respondent 2 union whose members are the workmen under the management. No such lack of community of interest has been even pleaded before the tribunal by the second union.

14. In this case, as I mentioned earlier, In or about 1959, the management was attempting to make recruitments in respect of posts in the stores section. Respondent 2 union objected to the same and protested against the said policy of the management on the ground that the casual workers, who were doing work under the management should be appointed to the stores section, so that they can become regular employees of the management. No doubt, the petitioner union objected to the demands of respondent 2 union and supported the policy of the management and wanted recruitment from their field. It was because of this dispute raised that the matter was referred for adjudication to the Industrial tribunal. Therefore, the requirement about the existence of an Industrial dispute is satisfied.

15. Further, there was a dispute raised by respondent 2 union with the management and therefore, the second requirement also is satisfied. There is certainly a dispute or difference between the employer and the first union, namely, respondent 2. If, can even be characterized as a dispute between the workmen represented by the petitioner union and the workmen represented by respondent 2 union, both of whom were employed under the same management.

16. Then the question is whether the third ingredient for constituting an Industrial dispute u/s 2(k) is satisfied also. That requirement, as already stated, is that the dispute or difference must be connected with the employment or non-employment or the terms of employment, or with the conditions of labour, of any person. If as held in the Standard Vacuum Refining Company case 1960--2 L.L.J. 233 (supra) referred to earlier, the sponsoring of the cause by the workmen of the said company of the employment or non-employment of the workmen working under an independent contractor, but doing work for the management, constitutes an industrial dispute and the third requirement stated above is satisfied, I fail to see how in this case, when respondent 2 union espouses the cause of the casual labourer, working under the same management and raising a dispute with the management in this case regarding that, cannot be characterized as an Industrial dispute satisfying the third requirement also.

17. I have already held that the first two requirements are satisfied. The casual labourers, whose cause is espoused by respondent 2, are admittedly doing work under the same employer. I have also indicated that the petitioner union has not even alleged that there is no community of Interest between the workmen of respondent 2 union and the casual labourers whose cause the latter is espousing. Therefore, it follows that the workmen of respondent 2 union and the casual labourers belong to the same class and both sets of people do work of the same employer and it is also possible for the company to afford relief as claimed by respondent 2 and it should also be held that respondent 2 has a substantial interest in the subject-matter of the dispute, namely, the employment of the casual labourers being recruited to the stores department and enabling them to have all the benefits of a permanent employment under the management. From what is stated above. It follows that in this case, all the three Ingredients

required to constitute an "industrial dispute" u/s 2(k) of the Industrial Disputes Act are satisfied. In consequence, the main contention of Sri P. Subramonian Potti that the dispute referred to, was not an "industrial dispute" has to be rejected. No doubt, the tribunal has not adverted to this question directly.

18. A further contention was raised by Sri P. Subramonian Potti based upon the provisions of Section 17A(1) of the Act. Sri P. Subramonian Potti urged that in this case, the directions given by the tribunal in the concluding portion of its award, namely, to post the five persons mentioned therein for work in the stores section within fifteen days from the date of publication of the award in the gazette, is Illegal and contrary to the provisions of Section 17A(1). u/s 17A(1) leaving out the proviso, it is provided that an award (Including an arbitration award) shall become" enforceable on the expiry of thirty days from the date of its publication u/s 17. It is the contention of Sri P. Subramonian Potti that when the statute provides that an award becomes enforceable only after thirty days from its publication, the tribunal baa acted illegally in bringing Into force the award within fifteen days from the date of publication in the gazette.

19. This contention, as pointed out by the learned Government Pleader, is concluded against Sri P. Subramonian Potti by the decision of my lord the Chief Justice sitting with Ragbavan, J., reported in Caltex (India) v. Industrial Tribunal 1961-1 L.L.J. 85. More or less under similar circumstances, the same contention appears to have been raised before the learned Judges and Ragbavan, J., after a consideration of Sub-sections (1) and (4) of Section 17A of the Industrial Disputes Act, delivering judgment on behalf of the Division Bench, observes at page 88":

...It is clear that there is difference between the enforceability of the award and the coming Into operation of the same. The award becomes enforceable on the expiry of thirty days from the date of its publication, whereas it comes into operation with effect from any date as may be specified in the award; but where no date is so specified, it comes into operation when it becomes enforceable. This is positive indication that the tribunal has jurisdiction to make its award operative from any date as may be specified in the award. In view of this provision in the Act, the jurisdiction of the tribunal to give retrospective effect to its award cannot be doubted.

20. No doubt, in the said decision, the learned Judges have upheld the validity of a direction contained in an award making the award operate even from a date anterior to the award.

21. From that decision, it dearly follows that there is absolutely no illegality or lack of jurisdiction in the directions contained in the concluding portion of the award which is attacked by the learned Counsel, Sri P. Subramonian Potti. Therefore, this contention also will have to be rejected.

22. The learned Counsel also urged a subsidiary contention to the effect that the question referred for adjudication is very vague and indefinite. I am not

impressed with this contention either. The question referred was of a general character regarding the "employment in the stores section of the Travancore Rubber Works, Trivandrum." It was comprehensive enough to give jurisdiction to the tribunal, to adjudicate upon the question referred to as well as on matters incidental thereto.

23. In the result, the writ petition falls and is dismissed. There will be no order as to costs.