

(1967) 06 MAD CK 0015
In the Madras High Court

T.S. Sivasubramanyam and Another

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 22-06-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(k)

Citation : (1968) 1 MLJ 214

Hon'ble Judges : T. Venkatadri, J;T. Venakatadri, J

Bench : Division Bench

Judgement

T. Venakatadri, J.—The question that arises for consideration in this petition under Article 226 of the Constitution is whether the order of the Government, refusing to refer the dispute in this case for adjudication on the ground that it is not an "industrial dispute" as defined in Section 2(k) of the Industrial Disputes Act, is one passed without jurisdiction.

2. Briefly stated, the facts of the case are these. The first petitioner was employed as a fitter in the Tondiarpet Installation of the Burmah-Shell Oil Storage and Distributing Company of India Limited, the second respondent herein. The first petitioner is a member of the second petitioner-Union. The Union is a registered one recognised by the management. That union is formed for the workers of the various companies dealing in kerosene oil storage and distribution. It is seen from the counter-affidavit filed by the first respondent-Government that out of 310 workers in the second respondent-Establishment only 65 were members of the second petitioner-Union. In 1963, the first petitioner was charge-sheeted for theft of certain articles in the installation. After a domestic enquiry, he was dismissed from service. Thereupon, the second petitioner-Union raised an industrial dispute in regard to the non-employment of the first petitioner. The Labour Officer held conciliation proceedings, and reported to Government that there was no possibility of a settlement through conciliation. The Government considered the report of the conciliation officer. It was also reported to Government that the Union did not have sufficient representative

capacity to raise the demand. The Government were of the opinion that an industrial dispute did not exist, and therefore did not make a reference for adjudication. This petition is for the issue of a writ of mandamus to direct the State Government to refer the dispute raised on behalf of the first petitioner by the second petitioner-Union for adjudication u/s 10(1) of the Act.

3. As to what constitutes "industrial dispute", there has been acute controversy and conflict of opinion among the various High Courts, In 1953, in D.N. Banerji Vs. P.R. Mukherjee and Others, , their Lordships of the Supreme Court had an occasion to discuss the meaning of the expression "industrial dispute" and were of the opinion that a single employee's case might develop into an industrial dispute when it was taken by a Trade Union of which he was a member and there was concerted demand by the employees for redress. In Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, at 108, his Lordship Venkatarama Ayyar, J. observed:

The question whether a dispute by an individual workman would be an industrial dispute as defined in Section 2(k) of the Act XIV of 1947 has evoked considerable conflict of opinion both in the High Courts and in Industrial Tribunals and three different views have been expressed thereon : (i) A dispute which concerns only the rights of an individual worker, cannot be held to be an industrial...dispute (ii) A dispute between an employer and a single employee can be an industrial dispute as defined in Section 2(k).... (iii) A dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen.

4. His Lordship further observed in his characteristic manner (at page 109):

Notwithstanding that the language of Section 2(A) is wide enough to cover a dispute between an 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 member of workmen.

Their Lordships of the Supreme Court observed in Indian Cable Co., Ltd. v. Its Workmen (1962) 1 L.L.J. 409, that a dispute in order to become an industrial dispute must be such as to lead to an inference that the dispute was one which affected workmen as a class. In the words of their Lordships (page 415):

What imparts to the dispute of a workman the character of industrial dispute is that it affects the rights of the workmen as a class.... No hard and fast rule can be laid down as to the number of workmen whose association will convert an individual into an industrial dispute. That must depend on the facts of each case, and the nature of the dispute. The group might even be a minority.... But it must be such as to lead to an inference that the dispute is one which affects workmen as a class.

In the instant case, the second petitioner-Union, which is espousing the cause of the first petitioner-workman, is not a Union of all the workmen of the second respondent-Establishment. Even according to the affidavit of the first petitioner there are about 400 workers employed in the company at its Tondiarpet Installation that 80 of these workers belonged to the second petitioner-Union and that out of these 80 persons only 47 voted for the resolution authorising the Union to espouse the cause of the first petitioner. On these facts, can we say that a considerable section of the workmen has made common cause with the individual worker to raise an industrial dispute and whether this would impart to the dispute of the workman the character of an industrial dispute as to affect the rights of the workmen as a class. More or less a similar situation arose in *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, . In that case the services of a journalist of the Hindu, Bombay, were terminated by the management, and the journalist questioned the propriety of his termination. At the relevant time, the management of the Hindu, Bombay had ten employees at Bombay, seven on the administrative side and three on the journalistic side. The dispute was espoused by the Bombay Union of Journalists. That union was a union not of employees of one employer but of all employees in the industry of journalism in Bombay. Only two journalists of the Hindu, Bombay, including the affected journalist were members of this union. The State of Bombay referred the dispute for, adjudication. The management of the Hindu challenged the validity of the reference on the ground that it was only an individual dispute which was not supported by an appreciable number of employees of the Hindu, Bombay. The Industrial Tribunal upheld the contention of the management, and on appeal their Lordships Of the Supreme Court observed (at page 439):

The dispute, in the present case, being *prima facie*, an individual dispute, in order that it may become an industrial dispute it had to be established that it had been taken up by the union of employees of the Hindu, Bombay or by an appreciable number of employees of the Hindu, Bombay....

By its constitution the Bombay Union of Journalists is a union not of employees of one employer, but of all employees in the industry of journalism in Bombay. Support of the cause, by the union, will not in our judgment convert the individual dispute of one of its members into an industrial dispute.... The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our view, applies to this class of cases also; persons who are not employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute.

This principle has been followed by the Andhra Pradesh High Court in *Employers of Express Newspapers (Private) Ltd., Madras Vs. Labour Court, Andhra Pradesh, Hyderabad and Others*, . There it is held that a union which is not a union of employees of the company but a union of the employees of other employers

cannot be said to be directly or substantially interested in the employment or non-employment of an individual workman in the establishment. The Division Bench of that Court observed at page 204:

There should be community of interest between the workers or the union representing them and the employee or employees whose dispute is sponsored by them. If such community of interest does not exist, the other workmen or their union cannot adopt the dispute.

The learned Judges have observed at page 205 that mere promise of help by an outside agency in any attempt it may make to secure the redressal of the grievances of an individual worker is not tantamount to sponsoring the cause of an individual worker and as such an individual dispute cannot acquire the status of an industrial dispute. The Calcutta High Court has taken the same view in *Gobordhandas Jeerambhai v. Sixth Industrial Tribunal* (1963) 1 L.L.J. 163. In this partnership business carrying on business in the export of tea and gunny had about 25 workmen. At the relevant time, five workmen were employed in the tea department and two of them were members of a general union. When one of the two was retrenched from service and the union espoused his cause, it was held that when a union unconnected with the employer industry concerned took up the cause of a dissatisfied workman, the dispute did not automatically transform itself from an individual dispute to an industrial dispute. The learned Judge observed thus at page 165:

The real test is whether the stranger union has the backing, sympathy or collaboration of the majority or a large section of the workmen employed in the particular industry and such workmen feel themselves concerned in the dispute.

In *Vazir Sultan Tobacco Co. v. State of Andhra Pradesh* (1964) 1 L.L.J. 622, a workman was dismissed from service. The dispute in regard to his dismissal was taken up by 104 co-workmen out of 2,170 workmen in the establishment. It was held by the Andhra Pradesh High Court that the support of 104 workmen was not sufficient to convert the individual dispute into an industrial dispute i.e., the number of workmen who supported; the cause of the dismissed workmen could not be called appreciable or substantial and that the workmen in other establishments though engaged in the same line of business could not be said to have any direct or substantial interest in the cause of such dismissed employee and hence their support could not convert the individual dispute into an industrial dispute.

5. It is clear from the above decisions that the test of conversion of an individual dispute into an industrial dispute is that it should affect the workers as a class, that it should be sponsored by a considerable number of workers of the establishment, that there should be community of interest between the workers or the union representing, them and the employee whose dispute is sponsored by them and that a majority or a large section of the workman employed in the particular industry should back the stranger union and that further such

workmen should feel themselves concerned in. the dispute. Only in such circumstances can an individual dispute be said to become an industrial dispute.

6. Let me analyse the facts of this case with this background in view. The workman was employed as a fitter in the Tondiarpet installation of the second respondent company. There are about 400 workers in that establishment. Only SO workers are members of the union, which is not of the employees of one employer but of employees of several companies dealing in kerosene storage and distribution. It is stated that only 47 workers supported the cause of the worker who was dismissed from service for theft of certain articles from the installation. The workman has been dismissed after a properly conducted domestic enquiry. It is a case of misconduct on the part of the first petitioner. Though the first petitioner is a member of the second petitioner union, his cause has not been sponsored by a large section or a substantial number of workmen of the establishment. Further it is a dispute concerning the conduct of an individual workman. It cannot be a matter which would affect the workers as a class, like bonus, conditions of service, etc. Only a handful of employees of the particular establishment have made common cause with the: workman concerned. He has not the backing or sympathy of a large number of workmen employed in the establishment. For these reasons, I hold that the present dismissal of the workman by the employer has not converted what is an individual dispute into an industrial dispute.

7. During the course, of the arguments, the question whether at all a writ of mandamus could lie on the facts and circumstances of the case came up for consideration. Learned Counsel for the petitioners contended that the order passed by the Government was very cryptic, that it had taken into consideration extraneous matters such as the confidential report of the Labour Officer and that in such circumstances a writ of mandamus would lie against the Government.

8. The Supreme Court had an occasion to consider under what circumstances a writ of mandamus would lie, in *State of Bombay Vs. K.P. Krishnan and Others*, . They have held that a writ would lie when the Government does not record and communicate to the parties its reasons for refusing to make the reference, when the refusal is not bona fide, and when the refusal is based on consideration of wholly irrelevant facts and circumstances. It is also held that the Government is not bound to base its decision only on a consideration of the report of the conciliation officer and that it would be open to the Government to consider other relevant facts which may come to its knowledge. It has been held in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , that it is not necessary for the Government to write an elaborate order indicating exhaustively all the reasons that weighed in its mind in refusing to make a reference. It has been held in *Workmen in Southern Textiles v. State of Madras (1965) II L.L.J. 73*, that the Government need not confine its attention only to the failure report submitted by the conciliation officer but could also take into account all relevant circumstances and the confidential report. In the present

case, the Government have considered the report of the officers and have come to the conclusion that the Union does not have sufficient representative capacity to raise the demand. Applying the principles stated above, I hold that the order of the Government is a proper order and that no writ can issue against the Government, on the facts and circumstances of this case.

9. The petition is accordingly dismissed but without costs.