

(1961) 10 MAD CK 0048
In the Madras High Court

Visalakshi Mills Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 25-10-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 36

Citation : (1962) 2 LLJ 93

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—This is a petition under Article 226 of the Constitution to quash the preliminary award of the Labour Court, Madurai. The Government by their order dated 15 June 1959 referred to that Court for adjudication the question whether Sankaran working as a doffer in Visalakshi Mills, Ltd., should be appointed as a spinner. His case was that he Joined the service of the mills in May 1955 as a ringframe spinner, that he was transferred on 1 September 1955 to work as a doffer on the assurance that as and when a vacancy arose in the spinning section, he would again be given the first chance of working as a spinner, that contrary to the assurance they failed to appoint him as a spinner when occasions arose. According to Sankaran the management bypassed him with a view to victimize him for his trade union activities. He, therefore, raised a dispute in May 1958, which the labour officer having failed to conciliate, it was finally referred to adjudication.

2. One of the grounds on which the management resisted the reference was that the dispute was only an individual dispute. This contention was based on the fact that on the date of the reference it was not shown that the dispute had the backing of a substantial or a considerable section of the workmen of the Visalakshi Mills, Ltd. This question was tried by the labour Court as a preliminary issue. It found that on the date of reference, namely, 15 June 1959, there were 442 workmen in the mills out of whom 102 were members of the Madurai Textile Workers' Union. On this basis the labour court considered that this represented

nearly 25 per cent of the total workmen employed in the mills and this could be considered to be a substantial or considerable section of the Workmen in order to clothe the dispute with the status of an industrial dispute. The labour court further found that in any case taking the ringframe section by itself, there were at the time of the reference 96 workmen of whom 51 were members of that union be that a majority of the workmen in the ringframe section were behind the dispute. On that view, the labour court overruled the preliminary objection and held that the dispute was an Industrial dispute.

3. On the part of the management, which is the petitioner in this Court, it is contended by Sri M.K. Nambiar, that in the approach the labour Court made to the preliminary objection to its jurisdiction in the above manner, it misdirected itself inasmuch as it was not merely a question of the number of workmen of the mills being members of the Madurai Textile Workers' Union. But the labour court totally failed to address itself to the question whether even the 102 workmen who were held to have been members of that union had collectively met and resolved to back up the dispute. In the absence of at least 51 out of 96 workmen working in the ringframe section shown to be supporting Sankaran in his demand, the dispute remained to be an individual dispute. It is further urged that the workmen of the mills have their own union called the Visalakshi Mills Workers' Union, in which a large body of the workmen of the mills were members, but this union was neither approached for the purpose, nor backed up the demand. On these considerations, It is contended that the award is vitiated.

4. It is now well settled that an individual dispute in order to be an industrial dispute must have the collective support from a considerable or substantial number of workman in the mills. What a substantial or a considerable section would be in a given case would, of course, depend upon the particular facts. That an individual dispute is supported by other workmen will also have to be established either in the form of a resolution of a union of which the workmen may be members or of the workmen themselves, who support the dispute, or in any other manner. In the absence of an indication that there is a concerted understanding on the part of a sizable number of workmen of the mills, the very basis of a collective dispute will be wanting. The main object of the Industrial disputes Act is to conserve and promote industrial peace. It is from that standpoint the Act provides that when a number of workmen forming a substantial or considerable section of workmen working in a mill make a common cause with an aggrieved workman in respect of his demands, it should be settled by an adjudication. Where therein is no evidence of the workmen collectively acting and supporting the individual dispute the Act obviously can have no application.

5. In *Kandan Textiles v. Industrial Tribunal* 1949 L.L.J. 875 a Division Bench of this Court observed:

In the absence of any definite particulars as to the membership of this union, and its representative character, and in the absence of anything to show that it

was decided by the workmen-members of this union by resolution or otherwise to take up the cause of the aggrieved workmen and in the absence of evidence to show that the aggrieved workmen put forward the president of this union as their representative and spokesman, it is impossible to hold in law that an industrial dispute existed between the employer and the workmen to enable the Government to make an order u/s 10(1) of the Act.

6. In this case this essential requisite, namely, that it must be proved that there was a collective expression of the will on the part of a considerable or substantial section of the workmen to support the individual cause of a workman, was lost sight of by the labour court. It seems to have assumed that if the general union, at whose instance an industrial dispute was referred for adjudication, had on its rolls a few of the workmen of the mills as its members, that in itself would be sufficient to assume that there was a collective dispute. This approach in my view is incorrect. 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, those 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. In ascertaining whether there is such a collective expression and support, reference to workmen of other establishments who happened to be members of the general union will be irrelevant, for, it is one of the requisites of an industrial dispute that the workmen who decide to support an individual dispute should be workmen of the employer concerned, and should also have a direct and substantial interest in the dispute raised. In *Bombay Union of Journalists and Ors. v. Hindu* which is not yet reported but a copy of the judgment therein is shown to me [since reported-vide *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, , the Supreme Court has observed:

In the present case members of the union who were not workmen of the employer against whom the dispute was sought to be raised, seek by supporting the dispute to convert what is prima facie an individual dispute 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. The mere support to his cause by the Bombay Union of Journalists cannot, therefore, assist the claim of Salivateeswaran so as to convert it into an industrial dispute.

7. In that case, out of three journalists one of whom was dismissed, two including the dismissed journalist were members of the Bombay Union of Journalists, a general trade union in which membership was open to all workman of any establishment. At the Instance of the union a dispute as to reinstatement

of the dismissed journalist was referred for adjudication. The tribunal held that the dispute was only an individual dispute and this view was affirmed by the Supreme Court. In doing so, the Supreme Court pointed out that it was not shown that the two of the three journalists employed in the ""Hindu "" and who were members of the Bombay Union of Journalists had participated at any meeting or discussion to resolve to take up the cause of the dismissed workmen and support it.

8. As I said, the labour court in this case merely proceeded on the basis of the number of workmen who are members of the Madurai Textile Workers" Union without reference to whether there was any collective decision expressed in any form to support the cause of Sankaran. In the absence of such a collective expression by a considerable or a substantial section of the workmen of the mills, the dispute raised by him cannot be said to have been converted into an Industrial dispute Apparently the labour court proceeded in that manner because the question was not placed before it in that form. Nevertheless, on the above ground the award will have to be quashed so that the labour court may consider the reference to it afresh.

9. A further contention has been urged by Sri M.K. Nambiar, namely, that no demand on the part of Sankaran or those who are alleged to support his cause has been proved to have been ever made to the management. The learned Counsel also contended that the Secretary of the Madurai Textile Workers" Union cannot, having regard to the provisions of Section 36 of the Industrial Disputes Act, properly represent the workmen of the mills. But neither of these points seems to have been raised before the labour court, much less considered and decided by it. I will not, therefore, be justified in dealing with them myself in a petition under Article 226 of the Constitution. But the management will be at liberty to urge these points as well before the labour court when it considers the reference afresh.

10. The writ petition is allowed and the preliminary award of the labour court is quashed. The labour court will dispose of the reference afresh. There will be no order as to costs.