

(1961) 12 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 65 of 1961

West Bengal Press Workers" and Employees" Union	APPELLANT
Vs	
Art Union Printing Works Private Ltd. and Others	RESPONDENT

Date of Decision : 21-12-1961

Acts Referred:

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

Citation : AIR 1962 Cal 649 : 66 CWN 395 : (1962) 4 FLR 89 : (1962) 2 LLJ 62

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—An objection to the maintainability of the present application has been raised as a preliminary objection.

2. The petitioner, tile West Bengal Press Workers and Employees" Union, claims to be a trade union of workmen employed in different printing presses in West Bengal, including a press known as the Art Union Printing Works Private Ltd., (respondent No. 1).

3. The working conditions, scales of pay and dearness allowance of workmen in printing presses became the subject-matter of certain awards, more or less on industry wise basis, during the last several years. One such award between 169 printing presses in Calcutta and Howrah (including the respondent No. 1 press) and their workmen was published in the Calcutta Gazette, dated May 11, 1948. The other such award between 90 printing presses (including the respondent No. 1 press) and their workmen was published in the Calcutta Gazette, dated March 1, 1951.

4. The dispute, out of which this Rule arises, is the third of the series of industrial disputes between the respondent No. 1 press and its workmen. The State Government referred the dispute limited to the following issues, to the Fourth Industrial Tribunal for adjudication, viz.,

(a) scales of pay and dearness allowances,

(b) whether the termination of employment of the following workmen is justified :

To what relief, if any, they are entitled?

1. Shri Gobardhan Banerjee.

2. Shri Pataki Charan Karmakar.

5. The Tribunal, inter alia held,

(a) that there could be no fresh adjudication on the question of scales of pay because in the absence of termination, the previous award on this question was binding between the parties;

(b) that, in the course of the conciliation proceedings, preceding the reference, the respondent No. 1 increased the dearness allowance from Rs. 28/- to Rs. 30/- per month and that was fair and appropriate dearness allowance;

(c) that Gobardhan Banerjee having been reinstated during the pendency of the dispute, nothing further was required to be done in that matter;

(d) that there was no reason to interfere with the action of the management in retrenching Pataki Charan Karmakar;

and made an award accordingly.

6. The petitioner trade union moved this Court, under Article 226 of the Constitution, against the award and obtained the present Rule. In the cause title, the petitioner union described itself as, "West Bengal Press Workers and Employees Union, 84/1-A, Bowbazar Street, Calcutta -12 (representing the workmen of Messrs. Art Union Printing Works Private Ltd.)".

7. Mr. Phanindra Kumar Sanyal, learned Advocate for the respondent No. 1, raised a preliminary objection to the maintainability of the application. The form in which the objection was taken is to be found in paragraph 2 of the affidavit-in-opposition, viz.,

" * * * the petitioner union has no locus standi to make the application under Article 226 of the Constitution of India in the manner it has done and the same is not maintainable in law."

8. In support of the preliminary objection Mr. Sanyal placed strong reliance on the following authorities, which I need consider at this stage:

(1) Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others, . In this case the Petitioner Association moved the High Court of Allahabad, under Article 226 of the Constitution, against an order made by the State Government of Uttar Pradesh, whereby it accepted the recommendations of a Court of Enquiry and directed payment of all bonuses and retainer allowances by certain sugar mills to their respective workmen. A

preliminary objection was raised on behalf of the Uttar Pradesh State to the effect that inasmuch as the application was not filed by the sugar mills, whose rights had been affected by the order, the application must fail on that ground. A Full Bench of the Allahabad High Court observed that though Article 226 of the Constitution made no mention as to who shall apply for an appropriate order under the Article, other writs, directions or orders should not be placed on the same footing as the writ of habeas corpus and only those persons whose interests were directly affected by a statute or an order can apply for redress under the Article. In that view the Full Bench held that the Association had no such legal interest and was not entitled to apply for a writ.

(2) Industrial Employees Union, 106/371, Hiraganj, Kanpur Vs. State of Uttar Pradesh and Others, . In that case the service of an electric wireman was terminated by the Kanpur Tannery Ltd., and the matter was taken up by the Industrial Employees Union, which was registered as a "miscellaneous" trade union and the dispute was referred by the Stats of Uttar Pradesh to an adjudicator. The adjudication held that the wireman was rightly discharged (SIC) was not entitled to any relief. The union there (SIC) applied under Article 226 of the Constitution (SIC) challenging the order. The Allahabad High Court (SIC) held that the petitioner union had no right (SIC) present the petition on behalf of the discharged (SIC) workman because, (i) in the writ jurisdiction (SIC) was only the individual or the corporation, whose rights were affected, who could come to the High Court for redress and (ii) since the case of the discharged wireman had not been taken up by any of the unions of the leather industry, the petitioner union, registered as a "miscellaneous" trade union, was not entitled to take up the case and to represent the discharged workman.

(3) General Secretary, Eastern Zone Insurance Employees" Association Vs. Zonal Manager, Eastern Zone, Life Insurance Corporation and Others, . In that case the petitioner association applied for a writ of mandamus against the Zonal Manager of the Life Insurance Corporation and two others in respect of service conditions of the employees of a particular unit of business, taken over by the Life Insurance Corporation. The maintainability of the petition was challenged on the ground that the petitioner had no locus standi to file the petition as it could of be considered to be an aggrieved party or as party whose legal rights were infringed. The challenge as to the maintainability was sought to (SIC) repelled on the plea that the petitioner was an association to which various trade unions were affidavits including the trade union of the employees of the Eastern Zone of the Life Insurance Corporation and, as such, it could maintain an application on behalf of them. Upholding the objection against maintainability, G. K. Mitter, J., held that the petitioner association could not be considered to be an aggrieved party and as such, entitled to maintain the application. The relevant extract from His Lordship's judgment is set out below:-

"Mr. Chaudhury contended that an application under Article 226 of the Constitution for the issue of a writ of the nature therein mentioned can only be

made at the instance of an individual who is himself an aggrieved person and if someone who is not himself aggrieved by any action wants to move the Court for redress, it must be shown that he is competent under the law to make application. (SIC) in a suit under the provisions of Order 1, Rule 8, the person seeking to represent others must himself be a person who has a cause of action against the defendants. Mr. Chaudhury contended that Section 36 of the Industrial Disputes Act provides that the power given to an officer of a registered trade union or an officer of a federation of trade union and others to represent a workman is limited to proceedings under the Industrial Disputes Act itself and as the present application is not such a proceeding, no such representation is permissible. He also drew my attention to Section 13 of the Trade Unions Act which empowers a trade union to sue and be sued in its name and argued that as the petition was not by (SIC) registered trade union, this could be of no (SIC)

Mrs. Chaudhury relied on several decisions of the (SIC) me Court in support, of his contention that (SIC) unless affected by a law or act personally (SIC) challenge it. In Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . approved of the dictum of McCabe v. Atchinson (1914) 235 US 151 that "in order to justiciable grant of extraordinary relief, the complainant's need of it and the absence of an adequate remedy at law must clearly appear. The complainant cannot succeed because someone else may be hurt. * * * It is the fact, clearly established, of injury to the complainant--not to others--which justified judicial interference." Similar observations occurring in other cases were cited by Mr. Chaudhury. As against this it was argued by Dr. Gupta that as our Constitution had made no provisions in this respect. Courts should follow the principles of Section 36 of the Industrial Disputes Act. I find myself unable to accept this argument. Section 36 of Industrial Disputes Act does not permit a representation of an aggrieved person by another who is not himself aggrieved but such representation is only in a proceeding; now under the Act the same procedure should be followed. Procedure is but a hand-maiden of the legislature and can only work at the will of the latter. Courts of law are not free to adopt procedure prescribed by law in a particular case to another set of circumstances unless sanctioned. As I find no such sanction in this case I must hold in favour of the respondents."

(4) (1961) 2 Lab LJ 583 : (AIR 1962 Mys 25) Government Press Employees" Association Bangalore v. Government of Mysore: In that case, the Government Press Employees" Association, represented by its General Secretary as the petitioner, applied under Article 226 of the Constitution for the quashing of an order, made by the Government of Mysore, promoting certain employees in the Government Press and for a direction on the said Government to promote other employees named in the petition. It appeared from the affidavits filed in the case that the subject-matter of the petition was not the grievance of the Employees" Association, as a corporate body, but was made up of individual grievances of the several employees, who claimed that they should have been promoted in

preference to several others, which several grievances the Employees' Association purported to espouse for the reason that the aggrieved employees were its members. The maintainability of the application on being challenged, it was contended that the Association was a trade union registered under the Trade Unions Act 1926 and as such was a body corporate with perpetual succession and was empowered under the Act to sue or be sued. Its object was to protect the interests of its members with regard to service conditions and their emoluments and having had espoused the cause of employees aggrieved by the impugned orders, it was entitled to represent them in all legal proceedings in respect of trade disputes and the subject-matter of the writ petition was such a dispute. In upholding the objection as to the maintainability of the application, Narayana Pai, J., observed:-

"The learned counsel for the petitioner apparently has in mind the rights of a recognised trade union to negotiate on behalf of its members with the employer u/s 28-F, sought to be introduced into the Trade Unions Act of 1926 by the amending Act of 1947 (which amending Act is not yet brought into force), and the position of a union or association of employees in the industrial law by virtue of which it can, by espousing the cause of employees, raise an industrial dispute or represent the employees before tribunals or authorities under the Industrial Disputes Act, Payment of Wages Act or similar legislative enactments. These considerations, however, have no bearing on the question now before us. We are not dealing with industrial dispute properly raised or properly referred for adjudication to a competent tribunal in accordance with the relevant provisions of law or to which the Government Press Employees' Association may be said to be a party. The position in this case, as already stated, is that the grievances which are the subject-matter of the proposed writ petition are clearly those of certain individuals and not of the Association as a corporate body, even though the aggrieved person might be its members in whom the Association might be vitally interested.

We respectfully agree with the principles stated by a Bench of the old Mysore High Court in *Bangalore District Hotel Owners' Association v. District Magistrate of Bangalore* AIR 1951 Mys 14, to the effect that under Article 226 of the Constitution, an application for issue of a writ must be by an aggrieved party and that an association, although registered under the Society's Registration Act, has no locus standi to make an application under the said Article for the personal and individual grievances of some of the members and not of the Association itself."

9. In trying to repel the preliminary objection, Mr. K.B. Roy, learned Advocate for the petitioner, placed strong reliance on a judgment of the Supreme Court in *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, . In that case the appellant, a workman, was dismissed by his employer Bata Shoe Co., Private Ltd., on a charge of anti-union activities. An industrial dispute was raised on this question of dismissal by the union and was referred, along with a number of other disputes, to an Industrial Tribunal. Before the Tribunal negotiations for

settlement started between the company and the Union and, on January 31, 1957, the company and the Union filed a joint petition of compromise settling all points of dispute. Prior to this, on January 12, 1957, the appellant had made an application praying that two of his Co-workers be allowed to represent his case before the Tribunal instead of the Secretary of the Union, whom he did not want to represent him any more. This application was dismissed by the Tribunal as also another application by the appellant wherein he stated that the settlement on his behalf was unauthorised and that he or his agent should be heard before the disposal of the case. Thereupon, there was an award made in terms of compromise. The appellant moved against the order before the Patna High Court, under Article 226 of the Constitution but that application was summarily dismissed. Thereafter, the appellant filed an appeal before the Supreme Court by special leave. In dismissing the appeal, Das Gupta, J., observed:-

"(a) It is now well settled that a dispute between an individual workman and an employer cannot be an industrial dispute as defined in section a (k) of the Industrial Disputes Act unless it is taken up by a Union of the workmen or by considerable number of workmen. * * *

(b) This view * * * recognises the great importance in modern industrial life of collective bargaining between the workmen and the employers. It is well-known how before the days of collective bargaining labour was at a great disadvantage in obtaining reasonable terms for contract of service from his employer. As trade unions developed in the country and collective bargaining became the rule, the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workman, not only for the making or modification of contracts but also in the matter of taking disciplinary action against one or more workmen and as regards all other disputes.

The necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the union. The union or those work men who have by their sponsoring turned the individual dispute into an industrial dispute can, therefore, claim to have a say in the conduct of the proceedings before the tribunal.

It is not unreasonable to, think that Section 36 of the Industrial Disputes Act recognises this position by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member. While it will be unwise and indeed impossible to try to lay down a general rule in this matter, the ordinary rule should, In our opinion, be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the tribunal to permit other representatives of the workmen concerned."

10. To the catena of cases cited at the bar, I desire to, add another viz., the case of Barrackpore Bus Syndicate Vs. Serajuddin and Others, . What happened in

that case was as hereinafter stated. The respondent Sk. Sirajuddin owned ten stage carriages, plying on different routes in Calcutta and its suburbs. Permits for 8 out of 10 buses were subsequently cancelled and permits for 2 buses only were granted to the said respondent to ply on a stated route. The said route was thereafter taken over by the Government of West Bengal for the plying of State buses and the Government directed the respondent to ply the two buses on another stated route. The respondent thereupon made an application for transfer of the route permit to a route of his choice. Notice of the said application was given by the Regional Transport Authority to the petitioner Barrackpore Bus Syndicate, a local bus owners' association. The petitioner Association objected to the transfer on the ground that there were sufficient number of buses already operating on the route and that further increase would be uneconomic. The petitioner did not succeed in its objection before the administrative bodies and moved this court under Article 226 of the Constitution for the quashing of the order of transfer. There was an objection taken as to the maintainability of the application, under Article 226 of the Constitution filed by the Association. In repelling the objection, Sinha, J., observed : --

"Mr. Chaudhury has next taken the point that the petitioner Association cannot maintain this application. He argues that the Association does not own any vehicle and, therefore, the members may be affected but not the Association itself. Further, he argues that the Association has no legal right which has been affected and so a writ in the nature of Mandamus does not lie. In *Sabitri Motor Service Ltd. Vs. Asansol Bus Association*, it was held by a Special Bench presided over by Harries, C.J. that the word "Association" in Sections 47 and 64 of the Act does not necessarily mean an incorporated Association. This was an application under Article 227 of the Constitution and it can, therefore, be implied that an application by even an incorporated association lies under that article. Mr. Chaudhury argues that although such an application lies under Article 227, it does not lie under Article 226, an argument which I find difficult to follow. In the present case, the petitioner Association is registered under the Indian Trade Unions Act XVI of 1926 and is a corporate body with right to sue or being sued in its own name see Sections 4, 9 and 13). In order to maintain an application for a writ of Certiorari, the applicant must be a party affected by the impugned order. The question is whether the petitioner Association can be said to be a party affected by the orders of the authorities whereby the respondent No. 1 has been enabled to add his buses to the large number of vehicles belonging to the members of the Association, which are already operating on Route 78. The registered rules of the Association have been placed before me. One of the objects of the Association is as follows:-

"(ix) To manage, control and regulate through route committee or committees the omnibus service of the 24-Parganas--Route 78....."

"Another object : to check all unhealthy competition which is ruinous to motor transport as a trade."

It appears to me therefore that an excess in the number of vehicles plying in route 78, that is to say, an uneconomic excess, would be a matter directly coming within the purview of the objects for which the Association came to be formed, and it is impossible to say that it is not affected by an order which affects the proper running of the transport services in route 78. u/s 47 of the Act, even an incorporated association interested in the provision of road transport facilities is permitted to make representations against the issue of a permit in a route. It is unthinkable that it has been given this right by statute and yet it is deemed to be unaffected by grant of permit to which it objects. * * The petitioner has stated that it is interested in road transport facilities and vitally interested in the matter of transfer. Such interest has been admitted in the affidavit in opposition. * *

I hold, therefore, that the petitioner Association is affected by the orders of the Appeal Subcommittee and the Appeal Committee, mentioned above, and therefore an application for a writ in the nature of Certiorari is in order. Coming now to the case of a writ in, the nature of Mandamus, I do not see why the petitioner has not a legal right. As I have mentioned above, Section 47 confers a statutory right of representation upon such an Association. The right of representation implies that the petitioner is affected by the grant of a permit and if it is a person affected by the grant of a permit, then like any other member of the public it has a legal right to see that the provisions of law relating to the grant of a permit are observed. I do not, therefore, find any difficulty in granting a writ in the nature of Mandamus in this case."

11. These are all the cases I need refer to for the present purpose. Generally speaking, nobody has a right to apply under Article 226 of the Constitution unless he is himself an aggrieved person or unless his rights are affected by any order made by a Government or a statutory body. But different considerations apply when a trade union moves, under Article 226 of the Constitution against an award made by an industrial tribunal. The case reported in *General Secretary, Eastern Zone Insurance Employees' Association Vs. Zonal Manager, Eastern Zone, Life Insurance Corporation and Others*, does not stand against the view that I am taking, because in that case the trade union or the association was not moving against any award made by an industrial tribunal in which the trade union or the association was a party and the question in the form that I need consider did not come up for consideration.

12. As pointed out by the Supreme Court in *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, individual workmen are at no stage parties to an industrial dispute independently of the union; the union or those workmen who by their sponsoring turn the individual dispute into an industrial dispute have only a say in the conduct of the proceedings before a Tribunal. It is true that the Supreme Court did not consider the question as to whether the union of the sponsoring workmen were entitled to move against an award made by an Industrial Tribunal, under Article 226 of the Constitution. But I do not think that

different considerations should apply in a proceeding, under Article 226 of the Constitution, when a union moves against the award in an industrial dispute.

13. To hold otherwise would entail difficulties. If none but the union or the sponsoring Workmen are parties to an adjudication before an Industrial Tribunal, how can other workmen who were not parties thereto move for the quashing of an award made by an Industrial Tribunal, under Article 226 of the Constitution? If the union or the sponsoring workmen agree to a certain form of award, on the basis of collective bargaining, how can a workman or a minority group of workmen, though disgruntled or aggrieved by the award, move for the quashing of the award? In *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, before the Supreme Court, one of the workmen tried to upset an award based on a settlement with the workers union and his grievances notwithstanding it was held that he was not entitled to do so. Then again the dispute may not relate to an individual work man but may be a general dispute concerning all workmen. If the award of the Industrial Tribunal be against the workmen and if the union be not competent to move against the award, then unless each of the workmen move against the award, under Article 226 of the Constitution, the award cannot be quashed as a whole. In large Industrial Establishments thousands of workmen may be involved. To expect that each one of them would move may be to expect too much. If some of them only move the High Court, under Article 226 of the Constitution, and others do not, the result may be that an award has to be quashed in respect of some and maintained in respect of others, because if the aggrieved persons only are entitled to move under Article 226, those who move will not represent others who do not move. To hold in that way would be to consign collective conciliation of industrial disputes to the graveyard.

14. Since the workers' union or association of employees are in a position to raise an industrial dispute and to help the workmen before Courts and Tribunals under the Industrial Disputes Act, on a reference made on such a dispute, and since such unions or organisations are deemed to be parties before the Industrial Courts or Tribunals and since it is their duty to look after, to maintain and to further the interests of workmen, it is unthinkable that such unions or organisations are to be deemed to be unaffected by an award to which they object. Also, if the law confers on them a right to raise an industrial dispute and also a right of representation, then there is no reason to hold that they do not have a legal right to enforce those rights by a writ petition. Their right is the collective right of workmen or the right which entitles them to espouse individual grievances. Theirs is the right to see that workers are not victimised, subjected to unfair labour practice and that they are paid fair wages, bonus and other emoluments and be allowed to work under fair working conditions. If industrial awards go against the rights of workmen it is for the unions of workmen to seek relief elsewhere. If they are not allowed to Carry on the fight in vindication of the right, there is a limitation put on that right, which the Industrial Disputes Act does not contemplate.

15. In the view that I take, I respectfully dissent from anything to the contrary contained in the two Allahabad decisions reported in *Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others*, and *Industrial Employees Union, 106/371, Hiraganj, Kanpur Vs. State of Uttar Pradesh and Others*, . The Mysore judgment in *Government Press Employees' Association, Bangalore Vs. Government of Mysore*, expressly left the special features of Industrial Disputes Act out of consideration in arriving at the actual decision and need not be further considered. In the Calcutta case reported in *General Secretary, Eastern Zone Insurance Employees' Association Vs. Zonal Manager, Eastern Zone, Life Insurance Corporation and Others*, , G.K. Mitter, J., was not at all concerned with the locus standi of workers' union in moving against an award made by an Industrial Tribunal and, therefore, that decision does not stand against the view that I take. The decision of Sinha J., in *Barrackpore Bus Syndicate Vs. Serajuddin and Others*, and the observations of the Supreme Court in *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, , although not concerned with the particular point that I have to decide, do not go against the view that I take. On the other hand, I draw inspiration from the principles enunciated in the aforesaid two judgments in arriving at my conclusion. I therefore, overrule the preliminary objection taken by Mr. Sanyal, in the form it was taken.

16. Although I do so, I need say a few word as to the form of the cause title. The (SIC) given to Workers' Unions and Associations is (SIC) of representation of aggrieved workmen or workman. Therefore, if Unions should move against industrial award, under Article 226 of the Constitution, they should describe themselves not (SIC) principals but as "workmen of (name the industrial establishment) represented by (name of the Union) (SIC) Section 36 of the Industrial Disputes Act, dealing with the representation of parties, need not concern me in this respect because that deals with representation of parties in proceedings under the Industrial Disputes Act. A proceeding under Article 226 of the Constitution is not such a proceeding and nothing in Section 36 of the Industrial Disputes Act applies thereto.

17. The form in which the petitioner described itself in the cause title is not the correct form, although it is not substantially different. In these circumstances, I do not make much of the defect.

18. The preliminary objection is overruled. The hearing of the application shall now proceed on merits. Let the matter come up for hearing on January 4, 1962.