
(1960) 09 BOM CK 0019

In the Bombay High Court

Case No : Reference (I.T.) No. 56 of 1960

Western India Vegetable Products, Ltd.

APPELLANT

Vs

Its Workmen (Excluding Clerical and Supervisory Staff)

RESPONDENT

Date of Decision : 08-09-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 36(2), 36(4)

Citation : (1960) 2 LLJ 609

Hon'ble Judges : Syed Taki Bilgrami, J

Bench : Single Bench

Judgement

1. This is a reference under S. 10(1)(d) of the Industrial Disputes Act by the Government of Bombay for adjudication of a dispute between the Western India Vegetable Products, Ltd., Amalner, and its workmen (excluding clerical and supervisory staff) over the demand by the latter for bonus for the year ending 31 March 1958.

2. The company wishes to appear through Sri Kolah. The Khandesh Vegetable Worker's Union objects under S. 36(4) of the Act to the appearance of a legal practitioner. The company's answer to this is that Sri Kolah is a member of the executive committee of the Employers' Federation of India, and therefore an officer of the association of employers and is entitled to appear under S. 36(2)(a) of the Act. That section runs as follows :-

"An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -

(a) an officer of an association of employers of which he is a member;"

It requires that a person appearing should be an officer of the association of employers. That the Employers' Association of India is an association of employers is not denied. The only point that has to be decided is whether Sri Kolah, as a member of the executive committee, can be considered an officer. An "officer" has been defined in the Oxford Dictionary as

"Holder of public, civil, or ecclesiastical office, king's servant or minister, appointed or elected functionary like the president, treasurer, secretary, etc., of society."

The essential thing is he should be a functionary having duties to perform and powers which he could exercise individually. As was pointed out by Cockburne, C.J., In *Heartley v. Banks* 5 C.B.N.S. 55 an office necessarily implies that there is some duty to be performed. The case of *Standard Vacuum Refining Company of India Ltd., Bombay and Another Vs. Their Workmen*, , cited on behalf of the company is distinguishable. There Sri Pai was allowed to appear on behalf of the company because he was both an officer of Employers' Federation of South India, and also a member of the committee of that federation as will appear from the following remark of the tribunal at p. 438 :

"He has stated that he is an officer of the Employers' Federation of South India since 6 years and a member of the committee of that federation . . ."

I cannot hold that a member of the executive committee under rule 22 of the "rules and regulations of the federation" is an officer. Rule 22 says that the federation shall be under the control and management of the executive committee which will consist of the president, four or more vice-presidents and director-general. Sri Kolah is not a president, vice-president or the director-general. The managerial and controlling powers are given to the committee and are exercisable by its members collectively. A member individually has no duties and powers. He therefore cannot fall under the definition of an officer. For example, all the members of the committee of Millowners' Association, though they may manage and control the association to some extent or entirely, or the members of a club who do the same, cannot be called officers. Some members who are allotted particular functions, and given certain powers, alone can be called officers. I asked Sri Ramdas who appeared for the company to give me exact information as to what Sri Kolah's duties and functions are as member of the committee. I waited for this for more than ten days, but no information was furnished. In the absence of this, I will presume that Sri Kolah, as the certificate dated 22 August, 1960 shows, is only a member of the executive committee. As such I cannot allow him to appear as he is, for the aforesaid reasons, not an officer of the Employers' Federation. The objection against Sri Kolah's appearance must therefore be allowed.

3. The Khandesh Vegetable Workers' Union also objects to the appearance of Sri Dudhia on behalf of the Western India Vegetable Products Workers' Union. Sri Dudhia, in answer to this objection, states that there are only two parties to a reference. There are workmen on the one side, and the employer on the other. The objection must come from the opposite party. If one set of workmen appear through one union and the others appear through another union, both the unions should be considered as one party, and not two different parties. Sri Kulkarni on behalf of the Khandesh union is therefore not competent to raise the objection under S. 36(4) against his appearance. In my opinion, the words "with the

consent of the other parties" that occur in S. 36(4) denote that not only the opposite party but also parties on the same side must consent. If it was intended that the employers on the one hand should be taken as one party, and all the workers as the other party, then the word "parties" in plural would not have been used. It is also not true to say that all workers must be treated as one party even though they take up different stand and choose to appear through different unions. There may be cases where the workers inter se may have differences or conflict of interest, for example, where one group of workers claim seniority or preference over others. In such cases, workers of one group would be able to object to the appearance of other workers through a legal practitioner. It was held by Esher, M.R., in *Shaw v. Smith* 56 L.J.Q.B. 175 that a co-plaintiff and a co-defendant are parties within the rule 3, order 50 (English Civil Procedure Code); so long as there is some dispute between them, but they do not fall within that rule if there is none. In the present case there is no conflict of interest between the workers of the two unions in the demand they make, and the grounds on which they base their claims, or even the calculations submitted by them are the same. Under these circumstances, they cannot be considered as separate parties and the Khandesh Vegetable Workers' Union cannot object to Sri Dudhia's appearance on behalf of the Western India Vegetable Products Workers' Union. When there is doubt about the meaning of the word used, the intention of the legislature must be looked into. The whole object of S. 36(4) appears to me to be to avoid putting any one party at a disadvantage against the other. The unions or workers are not always in a position to engage legal practitioners. Their employers who can do so have an unfair advantage over them. In order that the union may not object to the employer appear through a lawyer and they themselves may do so, the right to object has been given to both the parties. The question of being placed at a disadvantage can only arise when there is a conflict of interest. The right to object therefore was never intended to be conferred against someone, who is fully supporting the case of the party who wishes to object. For the aforesaid reasons, the objection of the Khandesh Vegetable Workers' Union against Sri Dudhia's appearance on behalf of Western India Vegetable Products Workers' Union is disallowed.

The case may be posted for further hearing.