

**(1973) 08 P&H CK 0027**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ No. 1671 of 1973

The British India Corporation  
Ltd., New Egerton Woollen Mills  
Branch, Dhariwal

APPELLANT

Vs

Mohd. Sadiq and others

RESPONDENT

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**Date of Decision:** Aug. 6, 1973

**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 33(2)(b)

**Hon'ble Judges:** Bal Raj Tuli, J

**Bench:** Single Bench

**Advocate:** Bhagirath Dass with M/s. B.K. Jhingan and S.K. Hirajee, for the Appellant; B.S. Bindra with Mr. J.C. Verma for the Respondents 1, 3 and 5 and Mr. I.S. Tiwana, Dy. Advocate General, Punjab for Respondents 2 and 4, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Bal Raj Tuli, J.

The British India Corporation Limited, the petitioner herein, is a joint stock company registered under the Companies Act, with its registered office at Kanpur in the State of Uttar Pradesh. It runs a mill at Dhariwal known as New Egerton Woollen Mills which employs about 3500 workmen. Mohd. Sadiq, respondent 1, was a mistri employed in the petitioner Company in the Weaving Department. It is alleged that on September 4, 1970, at about 9 A.M., he left his appointed place of duty and attacked Shri V.N. Jajoo, the General Manager of the Mills at Dhariwal, from behind and gave him a few blows with shoes while Shri Jajoo was inspecting the motors in the Weaving Department where water had accumulated on account of heavy rains. Mohd. Sadiq was charge-sheeted for this misbehaviour and he was asked to submit his explanation to the charge-sheet and show cause why disciplinary action should not be taken against him as provided in clause 22(g) of the Modified Certified Standing Orders. Respondent 1 submitted his explanation in which he denied the

allegations and asserted that he was beaten by Mr. Jajoo as a result of which he fainted and was carried to the Civil Hospital, Gurdaspur, where he remained under medical treatment for some days and was still under treatment of E.S.I. Dispensary. Notwithstanding this explanation, an Inquiry Officer was appointed to conduct an enquiry into the charge. Respondent 1 was informed by letter dated September 16, 1970, by the petitioner-company that Shri D.R. Bhandari had been appointed as the Inquiry Officer and that he should appear before him on September 21, 1970, at 3.30 P.M. in the office of Woollen Superintendent where the enquiry proceedings would take place. The Inquiry Officer held the proceedings in the absence of respondent 1, who did not attend and submitted his report dated September 24, 1970. In this report it is mentioned that the registered letter sent to respondent 1 was received by him on September 17, 1970, and in spite of having information about the place and time of the enquiry, he did not present himself to participate in the enquiry. After waiting for half an hour the proceedings were taken ex parte. Since the General Manager himself was concerned in the incident, the report of the Inquiry Officer was sent to the Commercial Manager, Mr. Desouza, for consideration. Mr. Desouza agreed with the finding of the Inquiry Officer and decided to dismiss respondent 1. The order of dismissal dated September 29, 1970, was issued to respondent 1 which was received by him on October 1, 1970. At the time of his dismissal, proceedings were pending before the Industrial Tribunal Punjab, in which respondent 1 was a concerned workman although he was not connected with the dispute. An application u/s 33(2)(b) of the Industrial Disputes Act (hereinafter called the Act), was, therefore, made to the Industrial Tribunal, Punjab, for approval of the action of the management, which was granted on March 3, 1971.

2. On December 26, 1970, the Dhariwal Karkhana Workers Union Regd., Dhariwal-respondent 5, sent a demand notice requiring the petitioner-Company to reinstate respondent 1 within 15 days as his services had been illegally terminated with effect from October 1, 1970, and that his service should be treated as continuous. It was further stated that he should be paid full compensation from the date of termination of his services till the actual date of reinstatement to which he was legally entitled, failing which the Union would seek legal remedy and the entire costs would have to be borne by the management. This demand was not accepted by the management and the matter was referred to the Labour Commissioner, Punjab, who informed respondent 1 by letter dated October 14, 1971, that the case had not been considered fit to be sent to the Labour Court for adjudication because no case could be established. The record produced by respondent 2 shows that on November 17, 1971, the President, Dhariwal Karkhana Workers, Union Regd. Dhariwal, sent a letter to the Labour Commissioner, Punjab, with reference to his letter dated October 14, 1971, pointing out that the matter had not been properly considered and he was urged to reconsider the matter. It appears that no action was taken on his letter by the Labour Commissioner till Shri Raj Kumar, who was the President of the Union, was elected M.L.A. in March, 1972, and thereafter he met the

Labour Commissioner and urged him to take strong action in the matter of respondent 1. This is clear from the letter dated May 9, 1972, issued by the Secretary of the Union to the Labour Commissioner. Thereafter, on June 6, 1972, the Deputy Labour Commissioner, Punjab, sent a letter to the petitioner-Company informing it that it was intended to reopen the case of respondent 1 and that the representative of the management should appear before him on July 16, 1972. On receipt of this communication, the petitioner-Company wrote letter dated June 24, 1972, to the Deputy Labour Commissioner, Punjab, expressing surprise at the intention of the Department to reopen the case of respondent 1 and it was stressed that in the interest of maintenance of discipline in the organization, it was essential that such cases should not be reopened under any undue pressure of any kind. It was pointed out that respondent 1 was dismissed for having assaulted the General Manager of the Company during his inspection round of the Weaving Department. A request was, however, made to intimate the circumstances under which it had been thought advisable to explore the possibilities of reopening the case. No reply was sent to this letter. On October 24, 1972, Shri Raj Kumar, M.L.A. respondent 3, addressed another letter to the Labour Commissioner, Punjab, stating that a few months back he had requested the Labour Commissioner that the reference of the case of respondent 1 had been wrongly refused and that conciliation proceedings in the matter should be again tried and case referred for adjudication if no reconciliation was possible. On receipt of this letter, the petitioner-Company was informed by telegram dated October 24, 1972, to attend conciliation meeting on November 2, 1972, at 3 P.M. at Chandigarh regarding the pending industrial dispute of respondent 1. In reply to that telegram, the petitioner sent letter dated October 27, 1972, expressing surprise at the receipt of the telegram regarding the conciliation meeting and pointing out that the request for reference of the dispute for adjudication had already been rejected after thoroughly going into the matter and that the specific reasons for reopening the case should be intimated to the Company or a copy of the application on which the case was being reopened should be supplied so that the representative of the Company could come fully prepared to discuss the case. There is no record as to what happened on November 2, 1972, but there is a letter of that date by the General Secretary of respondent 5 (Kundan Singh) to the Labour Commissioner, Punjab, wherein it is mentioned that "it is learnt that our application dated November 17, 1971, for the reconsideration of the case of Mohd. Sadiq for reference for adjudication has been rejected". It was requested that the case might be reconsidered as it was a very genuine and fit case for reference. The facts of the case were again reiterated and it was submitted that the workmen had been victimised on account of his trade union activities and he expected justice at least from the Labour Department. After the receipt of this letter, on November 17, 1972, the Secretary of the Union and the petitioner-Company were informed to meet the Deputy Labour Commissioner in the office of the Labour-cum-Conciliation Officer, Batala, at 10.30 A.M. On December 1, 1972, with all records for consideration of the case of respondent 1. It appears that the Deputy Labour Commissioner, Punjab, did

not keep up the appointment on December 1, 1972, and the petitioner-Company wrote letter dated December 6, 1972, informing him that the Administrative Officer of the Company had called at the office of the Labour-cum-Conciliation Officer, Batala, on December 1, 1972, at the appointed time but had to return disappointed because he had not arrived there. It was again pointed out that the demand notice dated December 26, 1970, had been considered thread-bare before the order refusing to refer the dispute for adjudication had been passed on October 14, 1971. It was requested that that order should be maintained. On December 20, 1972, the date for conciliation was fixed as December 23, 1972, at 11 A.M. at Batala but it was changed to December 26, 1972, on which date a public holiday was declared owing to the death of Shri Rajagopalachari, the Ex-Governor General of India. The petitioner-Company sent its representative to find out as to whether any proceedings would take place on that date. He reported that neither the Deputy Labour Commissioner nor respondent 1 nor any representative of his or any officer of the respondent-Union to represent him was present at the appointed time and place. The Deputy Labour Commissioner, however, came to Dhariwal but could not contact the Administrative Officer since he was out of station. In reply to this allegation, it has been stated by the Labour Commissioner that on December 26, 1972, one Shri Kartar Singh Saggar, a clerk employed in the office of the petitioner-Company attended the office of the Labour-cum-Conciliation Officer and informed the Deputy Labour Commissioner verbally that the employers were not available at Dhariwal. Shri Kundan Singh, General Secretary of the Union, who attended the meeting on behalf of the workmen contested this point and requested the Deputy Labour Commissioner to verify personally that the Administrative Officer of the mills was available at Dhariwal. It is not stated whether the Deputy Labour Commissioner went there to verify that fact but it is admitted that no further conciliation meeting was held after December 26, 1972. The Labour Commissioner thereafter, by notification issued in the Punjab Government Gazette dated January 19, 1973, referred the following industrial dispute between the management and the workman for adjudication to the Labour Court, Jullundur :--  
Whether termination of services of Modh. Sadiq workman is justified and in order ?  
If not, to what relief/exact amount of compensation is he entitled ?"

The Presiding Officer of the Labour Court issued notice dated May 7, 1973, requiring the petitioner-Company to appear before him on May 29, 1973, at 10 A.M. either in person or through a duly authorised representative etc. On receipt of this notice, the present petition was filed by the petitioner-Company on May 28, 1973, challenging the jurisdiction of respondent 2 to make a reference of the dispute to the Labour Court.

3. Written statements have been filed by respondent 1 and respondent 2. Respondent 3, Shri Raj Kumar, M.L.A., although served, has not chosen to file any return or to deny the allegation of bringing pressure on the Labour Commissioner

for getting the dispute referred to to the Labour Court.

4. The first submission made by the learned counsel for the petitioner is that after having rejected the request of the Union for making a reference of the dispute to the Industrial Tribunal or Labour Court for adjudication on October 14, 1971, the Labour Commissioner had no Jurisdiction to reconsider that decision and make a reference particularly when no new facts were brought to his notice. Reliance is placed on a Division Bench judgment of this Court in *Workmen of New Snow View Transport (P) Ltd., v. The State of Punjab* (1970) 72 PLR 613. That judgment instead of supporting the petitioner goes against it. It is based on the decision of their Lordships of the Supreme Court in [Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others,](#) . The relevant observations are contained in paras 8 and 9 of the Supreme Court judgment and are as under :--

In the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision, it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute.

After referring to certain decisions, their Lordships continued :

The reason given in these decisions is that the function of the Government either u/s 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as *res judicata* applicable to judicial acts do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact, when the Government refuses to make a reference, it does not exercise its power ; on the other hand, it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to a dispute was, by the earlier refusal, led to believe that there would be no reference and acts upon such belief, does not affect the jurisdiction of the Government to make the reference.

In view of these observations, it cannot be said that the State Government could not make a reference after once having refused to make it. It may be noted that soon

after the refusal was conveyed, a representation was made by the President of the Union to the Labour Commissioner to reconsider the matter and certain facts of the case were highlighted in that representation on the plea that they were probably not properly appreciated and comprehended by the Labour Commissioner while refusing to make a reference. When the meeting for conciliation took place on November 2, 1972, the petitioner's representative did not attend and the Labour Commissioner was still not satisfied that there was a case for reference with the result that although he did not issue any such order, the Secretary of the Union got the impression that he had rejected their request for reference of the dispute for adjudication. He then immediately addressed a letter on that very day on which it was decided to hold another meeting for conciliation. The facts have been stated above in what circumstances that meeting was called for December 26, 1972, but was not attended by any representative of the management. In any case, in view of the observations of the Supreme Court quoted above, it cannot be said that the power of the Government to make a reference had been exhausted once it had refused to refer. The power was, in fact, exercised for the first time when the reference was made. I, therefore, find no merit in the submission of the learned counsel and repel the same.

5. The next submission made by the learned counsel for the petitioner is that in any case before making the reference for adjudication of the dispute to the Labour Court, the petitioner should have been given an opportunity of hearing. It was an administrative act of the State Government to make a reference of an industrial dispute and there was no right in any of the parties to have a notice of any proceedings at which it was to be considered whether reference should be made or not, but in the present case the notice was issued to the petitioner-Company and it was afforded an opportunity of being present at the conciliation proceedings but it decided not to attend because it was not supplied the fresh grounds which necessitated the reopening of the case. That was evidently a wrong notion of the law as enunciated by their Lordships of the Supreme Court in *M/s. Western India Match Co. Ltd. v. The Western India Match Co. Workers Union* (supra). There is no merit, therefore, in the submission that the petitioner was not granted any opportunity of hearing.

6. It is then contended by the learned counsel for the petitioner that the reference has been made by the Labour Commissioner u/s 2-A of the Act treating the dispute as an individual dispute between the petitioner and Mohd. Sadiq respondent 1 Mohd. Sadiq did not issue any demand notice to the petitioner-Company and, therefore, there was no dispute between him and the petitioner. Reliance has been placed on the judgment of Division Bench of the Delhi High Court in [Fedders Lloyd Corporation Pvt. Ltd. Vs. Lt. Governor, Delhi and Others](#), wherein it was observed in para 13 of the report that--

We are of the view that the decision of the Supreme Court in [The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others](#), referred to above, has finally established the proposition that a demand by the workmen must be raised first on the management and rejected by them before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who reject the same, is not sufficient to constitute an industrial dispute. The decisions and dicta of some of the High Courts to the contrary can no longer be considered good law.

It is true that Mohd. Sadiq himself did not issue any demand notice to the petitioner-Company but a demand notice was issued on December 26, 1970, by the General Secretary of the Union, wherein it was stated that if respondent 1 was not reinstated in his post within 15 days and his services were not treated as continuous, the Union would seek legal remedy. It was thus a notice of demand issued by the Union on behalf of Mohd. Sadiq and in pursuance of this demand notice, the conciliation proceedings admittedly took place in which the petitioner took part. As a result of the conciliation proceedings the letter dated October 14, 1971, was issued refusing to make a reference of the dispute for adjudication to the Labour Court. It cannot, therefore, be said that the demand notice with regard to the illegal termination of service of respondent 1 and the reliefs claimed by him was not communicated to the petitioner-Company. It is true that the demand notice was issued by the Union of workmen but it was concerning respondent 1 and no objection was raised before the Conciliation Officer that no demand notice with regard to the dispute had been issued, by respondent No. 1 himself and, therefore, conciliation proceedings could not take place. This objection is not open to the petitioner at this stage in the writ petition. I consequently repel the same.

7. The last submission made by the learned counsel for the petitioner is that the reference which has been made by the Labour Commissioner is incompetent. It has been stated by the Labour Commissioner in his affidavit that the dispute related to a single workman who had given written authority to the Union in form F to take up his case for reinstatement with the Department through the Labour Commissioner and, therefore, the case fell within the purview of section 2-A of the Act and it was within his competence and jurisdiction to make a reference as he had been authorised to do so by Government notification dated October 25, 1972, particulars of which are mentioned in the notification making the reference. It has, therefore, to be determined whether the dispute fell within the purview of section 2-A of the Act. This section was inserted in the Act by the Industrial Disputes (Amendment) Act, 35 of 1965, with effect from December 1, 1965, and reads as under :-

2-A. Where any employer discharges, dismisses, retrenches or otherwise terminate the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge,

dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

The necessity of enacting this section arose because it had been held in various decisions that an industrial dispute must be between the employer on the one side and the workmen collectively on the other side or if it related to a single workman, it must be sponsored collectively by the other workman or by a union of workmen to constitute an industrial dispute which could be referred for adjudication u/s 10 of the Act. In order to do away with the necessity of the dispute between the management and a single workman being sponsored by the workmen collectively or by a union of workmen, the Parliament enacted section 2-A to provide that a dispute between the management and a single workman will be an industrial dispute even if it is not sponsored collectively by the other workmen or by a union of workmen. If the dispute had been raised by Mohd. Sadiq with the management without the intervention of the Union, the case would have been covered by the provisions of section 2-A of the Act ; it does not cover the case of an industrial dispute of an individual workman which is sponsored by other workmen or a union of workmen. Since the dispute between Mohd. Sadiq and the petitioner-Company was sponsored and espoused by the union of the workmen, it changed its character from an individual dispute covered by section 2-A to a collective dispute and, therefore, could be referred for adjudication to the Labour Court by the Punjab Government and not by the Labour Commissioner by virtue of the authority vested in him under the notification dated October 25, 1972. It has been observed by their Lordships of the Supreme Court in *West India Match Co.'s case* (supra), in para 5 of the report that-- The parties to the industrial dispute are obviously the parties to the reference, and therefore, the dispute must be an industrial dispute between such parties. It follows, therefore, that though a dispute may initially be an individual dispute, the workmen may make that dispute as their own, that is to say, espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. This premise pre-supposes that though at the date when the cause of the dispute arises, that dispute is an individual dispute, such a dispute can become an industrial dispute if it is espoused by the workmen or a substantial section of them after the cause of the dispute, e.g., dismissal, has taken place.

8. In the present case, the notice of demand dated December 26, 1970, was issued by the union and not by respondent 1 and all correspondence, thereafter, with the Labour Commissioner was carried on by the President and the General Secretary of the Union and at no stage respondent 1 by himself figured in the whole drama in spite of the fact that letter dated October 14, 1971, refusing to make a reference to the Labour Court, was addressed to him by the Labour Commissioner. Thereafter, it was again the Union which pressed for reconsideration of the entire matter by



letters dated November 17, 1971, and November 2, 1972, and not respondent 1 himself. In view of these facts, it is quite clear that the dispute had been espoused and sponsored by the Union of workmen and could not be considered an individual dispute not espoused by the Union. Section 2-A of the Act does not state "whether espoused by other workmen or any Union of workmen or not" and it was not enacted to provide for such cases in which reference could be made under the Act. To provide for such cases no amendment was required. Section 2-A was enacted to provide for the cases of individual workmen who were not supported by other workmen or any other Union. Section 2-A, thus, covers only such cases in which the dispute of an individual workman has not been sponsored or espoused by other workmen or any Union of Workmen. The Labour Commissioner, had, therefore no jurisdiction to treat this industrial dispute as an individual dispute Between the petitioner and respondent 1 ; it could only be treated as an industrial dispute between the petitioner and respondent 5 which sponsored it. On this premises, the dispute, not being within the ambit of section 2-A of the Act, could not be referred to the Labour Court for adjudication by the Labour Commissioner as said above. The notification dated October 25, 1972, therefore, deserves to be quashed.

9. As regards the allegation of mala fides levelled against respondent 3, it is true that he has not chosen to file his affidavit denying the allegation. But from the facts brought on the record and detailed above, it is patent that he took a very keen interest in the matter and did not rest content till the Labour Commissioner made the reference. His persistence bore fruit but it cannot be held that he was motivated by any mala fides. He was the President of the Union-respondent 5--even before he was elected M.L.A. and in that capacity it was his duty to plead and agitate for justice being done to a workman who was a member of the Union. It cannot be said that any other President would not have taken such keen interest as respondent 3 did. Equally vigilant was Kundan Singh, the General Secretary of the Union. The Labour Commissioner has denied that he acted under any pressure brought to bear upon him by respondent 3 and that assertion is borne out by the fact that on November 2, 1972, when respondent 3 was M.L.A., he reject the Union's request to reopen the case. I, accordingly, hold that it has not been proved on this record that respondent 3 was actuated by any mala fides in pursuing the case with the Labour Commissioner vigoursly and in which he ultimately succeeded.

10. In the result this petition is accepted and the impugned notification, which was published in the Punjab Government Gazette dated January 19, 1973, and a copy of which is annexure "M" to the writ petition, is hereby quashed as also the consequential proceedings before the Labour Court. It will, however, be open to the State Government to make a reference of the dispute to the Labour Court if considered necessary and expedient. In view of the partial success, the parties are left to bear their own costs.