Employers in relation to New Chirimiri Ponri Hill Colliery Vs Their Workmen

Court: Madhya Pradesh High Court

Date of Decision: April 18, 1969

Acts Referred: Constitution of India, 1950 â€" Article 226, 227

Citation: (1969) JLJ 776 : (1969) MPLJ 605

Hon'ble Judges: Shiv Dayal, J; S. P. Bhargava, J

Bench: Division Bench

Advocate: R. K. Thakur, for the Appellant; Y. S. Dharmadhikari, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shiv Dayal, J.

This is a petition under Articles 226 and 227 of the Constitution for a writ of certiorari and other suitable directions to quash the award dated April

17, 1967, made by Shri G. C. Agarwala, Presiding Officer of the Central Industrial Tribunal-cum-Labour Court, Jabalpur, in the matter of an

industrial dispute between the employers of New Chirimiri Ponri Hill Colliery (hereinafter called the "Colliery"), and their workmen.

The Government of India in the Ministry of Labour and Employment, referred the following dispute to the Central Government Industrial Tribunal,

Bombay, by a notification dated September 10, 1965 :-

Whether the management of New Chirimiri Ponri Hill Colliery was justified in dismissing the following workmen ?

(1) Ramna Pande. (2) Dharni Kar, (3) Triveni. (4) Noni Gopal.

(5) Nikhil Kumar Dutt. (6) G. Mohanti.

If not to what relief are they entitled ?

Later on, the matter was transferred to the Central Industrial Tribunal-cum-Labour Court, Jabalpur, by notification dated September 17, 1966. By

his award the learned Tribunal found that the action of the management in dismissing the six workers was unjustified. Accordingly, he ordered their

reinstatement and also directed the employers to pay these employees, except Triveni, back wages from the date of their dismissal till

reinstatement. Aggrieved by the award, this petition was filed by the employers for the above relief.

At the very outset the Tribunal has given the genesis of the dispute. M. P. Koyala Mazdoor Panchayat is a registered Union with its office at the

Kurasia Colliery in the Korea coal-field. Its membership is open to all workers of the collieries in the Madhya Pradesh. The New Chirimiri Ponri.

Colliery is one of the neighbouring collieries of the Kurasia Colliery. When the M. P. Koyala Mazdoor Panchayat (hereinafter called the "Union")

was approached by the workmen, this Union decided, by resolution dated December 27, 1964, to extend its activities for enrolment of members

in the employer-colliery also. Between November 30, 1964, and January 9, 1965, about 130 members were enrolled, including the 6 concerned

workmen. Thereafter, these 6 workmen were charge-sheeted and dismissed, after holding domestic enquiries by the Labour Welfare Officer.

According to the Union the action of the management was mala fide and was calculated to victimise the workmen for becoming members of this

Union, and the termination of their services was not due to any misconduct. The management of the Colliery denied the allegations and contended

that the workmen concerned were guilty of misconduct so that the action taken by the management was justified.

Shri Thakur, learned counsel for the petitioner, raised a preliminary point before us, as was also raised before the Tribunal. The contention is that

the Tribunal had no jurisdiction, as the dispute referred to it was not an "industrial dispute" and the Union was not competent to raise that dispute.

The point taken before us precisely is that the number of workmen who had joined the Union was not appreciable. The Tribunal had found that

about 100 workmen out of 1,600 had become members of the Union. According to Shri Thakur, at least 30 of them had disowned membership

and made affidavits so that there were left only 70 who had joined the Union.

The question arose in the present case before the insertion of section 2-A in the Industrial Disputes Act by the Industrial Disputes (Amendment)

Act, 1965 (Act No. 35 of 1965). Under the new section 2A, even an individual dispute, arising out of discharge, dismissal, retrenchment or

termination, in an industrial dispute notwithstanding that no other workmen or any union of workmen is a party to the dispute. But, before the

enactment of this new section, it was established by a long line of decisions that an individual dispute could not, per se, be an industrial dispute; it

could be one, if the cause was espoused by a registered Trade Union or an appreciable number of work men. The Industrial Disputes Act

contemplates primarily that the machinery it provides can be set in action to settle only such disputes as involve, the rights of workmen as a class.

Before an individual dispute can be called an industrial dispute it has to be seen whether the workmen concerned or the workmen sponsoring his

cause satisfy the conditions of section 2-A of the Act. The work men have the right of collective bargaining with regard to various matters in which

they are interested. Collective bargaining is ""an agreement between a single employer or an association of employers on the one hand, and a labour

union upon the other, which regulates the terms and conditions of employment"". (per Ludwig Teller on Labour Disputes and Collective Bargaining,

Vol. I, page 476).

Even a single employee''s dispute could be an industrial dispute, if it was taken up by a Union or a number of workers, who make a concerted

demand for redress. Before the decision in Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, ., there were three

different views: (1) An individual dispute could not be an industrial dispute. [See, for instance, J. Chowdhary v. M. N. Benarjee (1951) 55 Cal. W

N 256.]. (2) It was an industrial dispute [See, for instance, Swadesi Cotton Mills Ltd. v. Ramzani (1953) ILL J 277 (FB).], (3) It could not per se

be an industrial dispute, but could become one, if it was taken up by a Trade Union or a number of workmen. [See, for instance, Bilas Chandra

Mitra v. Balmer Lawrie and Co. (1953) I LL J 337.]. The Supreme Court, in Central Provinces Transport Services Ltd. (1) upheld the last of the

three views and it was affirmed in The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P., ., where the Supreme Court observed that ""in

spite of the feet that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, it is

not destructive of the rights of the aggrieved party to show that what was referred was not an industrial dispute at all

It will thus be seen that before the 1965 amendment {supra), it was only a collective dispute which could constitute an industrial dispute, but the

collective dispute did not mean that all the workmen or a majority of them of the establishment concerned must sponsor and support the dispute.

Support of a section of the workmen concerned in the establishment is sufficient and even a minority group of workmen of the establishment can

make a demand and thereby raise an industrial dispute. There is no hard and fast rule regarding the number of workmen requisite for espousal of

such disputes. It depends upon the facts of each case and the nature of the dispute, as was held in Indian Cables Co. Ltd. v. Its Workmen (1962)

I LL J 409 (415).

In the present case, the learned Tribunal has, in his elaborate award, referred to the evidence which he recorded on this preliminary point. He has

found that the Union was competent to enlist members among the workers of all coal mines in Madhya Pradesh. In the employer-colliery, the

workmen had not been paid for load and lift so that there was dissatisfaction and they approached the Union to open a branch in this colliery. All

the six dismissed employees were members of the Union. They were enrolled between November 30, 1964, and January 9, 1965. Thus,

undoubtedly, the six workmen concerned were members of the Union. The Colliery had about 1,600 workers, about 100 of whom became

members of the Union. By its resolution dated March 25, 1965, the Union decided to take action against the dismissal of the six workmen

concerned.

No number is fixed, either by the Act or by any decision of the Supreme Court, which will be called as ""appreciable"". In Workers v. Dharampal

Premchand (Saughandhi) (1956) I LL J 668., their Lordships considered and explained the observations made in The Bombay Union of

Journalists and Others Vs. The ''Hindu'', Bombay and Another, . It was observed:

In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or

not, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a

way that its support to the cause would make the dispute an industrial dispute.

There, 18 workmen were dismissed. It was held that they themselves could form a group of workmen which would be justified in supporting the

cause of one another. The total number of workmen in the establishment was 45.

In the present case, the Union was a registered Trade Union. All the six dismissed employees concerned were members of that Union and at least

70, if not 100, workmen of the employer-colliery were members of the Union. That being so, if the Tribunal has held that the dispute raised by the

Union was an industrial dispute, we see no error. The first contention is, therefore, rejected.

The Tribunal has pointed out that a strange procedure was adopted by the Enquiry Officer. The workmen were first cross-examined with the

object of shattering them. He has then dealt in detail the manner in which and the prejudice with which the enquiries were conducted. It is

unnecessary to repeat the grounds contained in the award. Suffice to reproduce the conclusions reached by the Tribunal:

The result is that the show of domestic enquiries against the three acts of workmen cannot be taken as a bona fide action on the part of the

management. The management made no honest attempt to ascertain whether the workmen were really guilty, but prejudging the whole thing,

resorting to the device of the empty formality of domestic enquiries, the concerned workmen have been dismissed. The enquiries, therefore, remain

completely vitiated.

This conclusion is based on the reasons stated in the award. There is no error apparent on its face.

Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen, . But, in our opinion, that decision does not support his contention. In that

case, the Tribunal had held that the enquiry had not been properly conducted. One of the reasons was that the enquiry was held immediately after

the investigation without taking the explanations of the workmen. The Supreme Court did not up hold this reason and observed thus ":

Although it may be desirable to call for such an explanation before serving a charge-sheet, there is no principle which compels such a course. The

calling for an explanation can only be with a view to make an enquiry unnecessary, where the explanation is good but in many cases it would be

open to the criticism that defence of the workman was being fished out. If after a preliminary enquiry there is prima facie reason to think that the

workman was at fault, a charge-sheet setting out the details of the allegations and the likely evidence may be issued without offending against any

principle of justice and fairplay.

As regards the allegation that before examining the workman was subjected to cross-examination and that it offended the principles of natural

justice, their Lordships did not reject the contention, but only pointed out whether an exception can or should be made and the case before their

Lordships was one which fell within the exceptions. The relevant observations are these:

These cases no doubt lay down that before a delinquent is asked anything, all the evidence against him must be led. This cannot be an invariable

rule in all cases. The situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case, it may be

permissible to draw the attention of the delinquent to the evidence on record which goes against him and which if he cannot satisfactorily explain

must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the

point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and

fairplay.

Adverting now to the individual cases, we again think it wholly un necessary to retravel the grounds covered by the Tribunal. We would be con

tent to point out some of the glaring features of each of the three cases.

The charge-sheet dated January 13, 1965, against Ramna Pandey, Dharni Kar and Triveni, was that they misguided, misled and exercised

coercion on workers. It is at once remarkable that no facts are stated in the charge-sheet, which would show that these three workmen misguided,

misled or practised coercion. These could be inferences from facts but no such facts are given. For instance, it is not stated what these workmen

told others whom they enrolled as members of the M. P. Koyala Mazdoor Panchayat, and that those statements were false, misleading or

misguiding. Similarly, there are no facts to show what threats they held out or what they actually did which amounted to coercion. Much stress was

laid on Triveni''s admission dated January 13, 1965, which the learned counsel calls a confession. We have perused his statement. All that he says

in this admission (Exh. E) is that at the instance of Ramna Pandey, he enrolled 9 members, but there is no admission that he misled, misguide! or

practised coercion on any of them. No doubt, he alleges that Ramna Pandey misled him, but that cannot be called to be an admission of Triveni; it

is an allegation against Ramna Pandey. In conclusion he states that he committed a mistake and apologised, but that does not mean that he

confessed to have committed any misconduct within the meaning of the Standing Orders and which was punishable with dismissal.

In the charge-sheet, there is an expression which is indicative of the inner working of the mind of the management. There it is said :

Whilst we have absolutely no objection for our workers forming an Union and whilst in our knowledge we have one recognised I. N. T. U. C.

Union, which is sponsored by all our workers, we are yet to hear from any one worker about their desire to formally and voluntarily get

dissociated from this I. N. T. U. C. Union or in forming another Union

The charge-sheet against these three workers was that they committed breach of Standing Order 27 and in particular the following clauses thereof,

namely (2) Dishonesty; (5) Indecent behaviour; (7) Neglect of work; (9) Causing damage to work in progress; (11) Malingering; and (19) Breach

of Mining Regulations. We are clearly of the view that case of these workers does not fall under any of these categories.

Regarding clause (7), it was said in the charge-sheet that on January 5, 1965, in the night shift, Triveni, neglecting his duties and gathering a crowd

of workers near the Travelling Road took signatures by coercion and without explaining the contents for forming a new Union. Now, clause (7) of

the Standing Order 27, reads thus:

Habitual negligence or neglect of work.

The word ""Habitual"" is significant. It cannot mean neglect of duties for a short while in a single shift. We see no error in the findings reached by the

Tribunal. The Tribunal has held that the Enquiry Officer, without discussing the evidence at all and applying his mind, found proved wholly

inapplicable clauses of the Standing Orders condemning them as guilty of dishonesty, indecent behaviour, causing damage to the work and breach

of mining laws. There is no error apparent on the face of the record.

The charge-sheet dated January 23, 1965, supplemented by another charge-sheet of January 27, 1965, against Nani Gopal and Nikhil Dutt was

substantially this. A quarter was allotted to Nikhil Dutt. The workman was permitted to use a bulb of 60 wts. only. Nikhil went to live with his

brother at Kurasia about 8 or 10 miles away. Nani Gopal occupied that quarter. Apart from the reasons given by the Tribunal, we have to observe

that nothing was shown which would bring the case under any Standing Order to justify dismissal even if the allegations against these two workmen

are assumed to be correct. We asked Shri Thakur repeatedly to show us the rule under which if a workman uses one or two bulbs of 100 wts.

instead one bulb of 60, it would justify his dismissal. But he could not. The Tribunal has concluded thus:

The finding of the Enquiry Officer (Exh. M/22) is a laboured document, full of perversity which need not be staled. The Manager by his order

dated 13th February 1965 (Exh. M/35) found them guilty and recommended punishment of dismissal; and the Agent, Shri Srinivasan, by an order

dated 13-2-1965 (Exh. M/36J conceding that the misconducts were not covered by Standing Orders, yet were serious, dismissed Them. The

whole thing is devoid of fair play and basic principles of natural justice and was a calculated design to get rid of them. (Underlined by us.)

In our opinion, there is no ground to quash the conclusions reached by the Tribunal.

On January 30, 1965, a charge-sheet was given to G. Mohanty (Exh. 2). The case against him was that he was given railway fare upto his home

town and back but he did not go to his home town and remained at an intermediate station from where he returned to his work. On this charge, he

has been dismissed. We asked Shri Thakur to show us the rule under which the workman incurred this penalty. No such rule is on the record nor

was shown to us. Shri Thakur merely told us that that was an unwritten ""practice"". Thus as regards G. Mohanty''s case also there is no error

apparent on the face of the award.

The petition is dismissed. The petitioner shall pay to the Union M. P. Koyala Mazdoor Panchayat, Rs. 200 as costs in this Court.