

## In Re: Duncan Bros. and co.

**Court:** Calcutta High Court

**Date of Decision:** Dec. 3, 1984

**Acts Referred:** Industrial Disputes Act, 1947 " Section 10, 2(s), 7A

**Citation:** 89 CWN 1162

**Hon'ble Judges:** U.C. Banerjee, J

**Bench:** Single Bench

**Advocate:** Bhaskar Gupta, for the Appellant; Nigam Chakravorty, for the Respondent

### Judgement

U.C. Banerjee, J.

The question which falls for determination in this case is a, short one viz. whether the State Government is justified in

referring a dispute to the 1st Industrial Tribunal by a Memorandum dated 16th May, 1984 bearing No. 1283-LR/IIL-279/82 u/s 10 of the

Industrial Disputes Act, 1947.

At this stage it is convenient to narrate briefly the facts. M/s. Duncan Brothers and Company limited was carrying on business as managing agents of

various companies prior to 1975. On the abolition of the managing agency system, the staff of the. petitioner company on and from 1st January,

1976 were transferred to various companies to whom the petitioner used to render services.

2. Long prior to 1975 an organisation under the name, and style of Duncan Brothers" Sports Association was formed purely on a voluntary basis

and at the initiative of some of the Directors, and employees of the company. The membership was purely voluntary, though the subscriptions of

the said Association Were deducted from the salaries payable to the member concerned by the company at the instance of the Directors,

Executives and Employees. Admittedly the company used to contribute to the fund of the Sports Association. The activities of the Sports

Association are however restricted to arranging of picnics, cultural programmes, various sports events and games both indoor and outdoor etc.

3. There is no dispute in regard to the fact that the petitioner company contributed an equal sum as that has been raised by way of subscription

without any variation whatsoever.

4. The case of the petitioner is that by reason of severe financial stringency it is no longer possible to contribute as was done in the past and also

for reasons stated in the petition which need not detail herein as the same, in my view, are not relevant for the purpose of disposal of this

application. The position, however, is that there was a refusal on the part of the company to continue with the said contribution to the Sports

Association. On that refusal the matter was referred to the Labour Commissioner and there was a conciliation proceedings in which the company

also participated. Subsequently however at, the instance of one of the recognised unions of the company the State Government referred the matter

to the First Industrial Tribunal for adjudication of the following issue viz. whether the withdrawal of grants to the Duncan Brothers Sports

Association by Messers Duncan Brothers Ltd., is justified. What relief, if any are the workmen entitled to?

5. The order of reference itself is under challenge and as such it would be convenient to set out the order of reference. The order of reference

reads as follows :

Whereas an industrial dispute exists between Messrs Duncan Bros. & Co. Ltd., Duncan House, 31, Netaji Subhas Road, Calcutta - 700001 and

their workmen represented by the Duncan Bros. & Co. Ltd., Employees Union 12A, Netaji Subhas Road, Calcutta - 700001 Relating to the

under mentioned issue being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS it Expedient that the said dispute should be referred to an Industrial Tribunal constituted u/s 7A of the said Act;

NOW, THEREFORE, in exercise of the powers conferred by Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor is

pleased hereby to refer the said dispute to the First Industrial Tribunal, constituted under Notification No. 808-I.R/3A-2/57, dated the 11th

March, 1957 for adjudication.

6. Mr. Bhaskar Gupta, appearing for the writ petitioner contended that initiation of the reference by the State Government is illegal. Mr. Gupta

submitted that contribution to the Sports Association being a purely voluntary act of the company, cannot be said to create any right to the

Association for such benefit. Mr. Gupta further contended that the activities of the Sports Association have no bearing and/or concern with the

nature of the work nor can it be termed to be a condition of service and as such the order of reference is unjustified as not maintainable and

without jurisdiction.

7. Mr. Nigam Chakravorty, appearing for the Employees Union however contended that by reason of long and uninterrupted contribution, a right

has accrued in favour of the association. Mr. Chakraborty contended that as a matter of fact it has turned out to be a condition of service. In any

event, it is further contended by him that item 4 in Schedule 2 to the Industrial Disputes Act categorically lays down that the withdrawal of any

customary concession or privilege is a matter within the jurisdiction of Labour Courts. And it is for the Labour Courts to decide the matter as to

whether there was such a withdrawal. Mr. Chakravorty therefore contended that the writ court ought not to interfere at this stage.

8. The object of the Industrial Disputes Act, as its preamble indicates, is to make provision for the investigation and settlement of industrial disputes

which means adjudication of such disputes also. The Act envisages collective bargaining contracts between union representing the workmen and

the management, a matter which is outside the realm of common law or the Indian Law of Contract. The expression ""Industrial Dispute"" is defined

in Sec 2(k) to say that : industrial dispute means any dispute or difference between, (i) employers and employees or (ii) between employers and

workmen or (iii) between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or

with the conditions of labour of any person.

9. The expression ""workman"" has also been defined in section 2(s) to say that : workman means any person (including and apprentice) employed

in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment

be express implied, and for the purpose of any proceeding under this act in relation to an industrial, dispute, includes any such person who has

been dismissed, discharged or retrenched in this connection with or as a consequence of, that dispute or whose dismissal, or discharge or

retrenchment has led to that dispute, but does not include any such person -

(i).....

(ii).....

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding Rs. 500/- per mensem or exercises, either by the nature of the duties

attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

10. The Industrial Disputes Act is a beneficial legislation and has been engrafted in the statute books for the purpose of eradicating the long

standing grievances of the workmen The definition of workman itself suggests that the affluent persons are not to take advantage of the remedial

measures available to the workmen, there is an express bar to the applicability of the Act in so far as the supervisory category of employees

drawing more than a specific amount per month. Admittedly, the Sports Association is having members not only from the workmen, but also from

the supervisory categories and as a matter of fact, the Directors of the company are also members of the association,

11. There is no compulsion, but the Association being a voluntary organisation employees of the company need not be or continue to be members

of the Sports Association. In my view, contribution of the company, though at a definite proportion, cannot be termed to confer any right to claim

the same, the payment being strictly voluntary in nature and the same cannot be said to be a privilege of an employee. The membership being

voluntary, it cannot also form part of the terms and condition or even deemed terms and conditions of the employees. Participation in the activities

of the Sports Association, in my view, cannot be associated with his course of employment. The definition of Industrial Dispute as in Sec. 2(k)

makes the position very clear. A dispute or difference must arise in connection with the employment or non-employment or the terms of

employment or with the conditions of labour of any person. It cannot also be termed to be a customary concession associated with his

employment, the basic reason being that there is no compulsion of being a member of the Sports Association.

12. Further, the expression customary concession and privilege obviously refers to the benefit and privilege in the course of his employment.

Participation in a sporting activity or at a picnic organized by the Sports Association can not in my view be termed to be in the course of his

employment. It must have a direct relationship with the nature and course of his employment. Participation in the conciliation proceeding in my view

cannot also be treated as a waiver of the petitioner's right to contend that the order of reference is bad on the face of the document. It is Well

settled that in order to constitute a waiver there must be an abandonment of right. In the facts of the case under consideration the position is

otherwise as the petitioner company consistently contended that no dispute can be raised in regard to the withdrawal of the voluntary contribution

to the Sports Association. While it is true that the petitioner company has claimed tax relief for the contribution to the association, but the same in

my view cannot be termed to be conferring a right on the part of the association to claim the same.

13. In that view of the matter I am of opinion that the initiation of the proceeding before the 1st Industrial Tribunal is bad and illegal.

14. In the view I have taken, it is not necessary for me to deal with the other contentions of Mr. Gupta in regard to the maintainability of the writ

petition by the employees' union when the aggrieved party in any event is the Sports Association. That being the position this application succeeds.

Let the writs be issued in terms of prayers B and C of the petition. In the facts and circumstances of the case there will however be no order as to

costs.

Stay of operation of this order prayed for, but is refused.