(1971) 08 CAL CK 0019

Calcutta High Court

Case No: None

Mitsubisha Shoji Kaisha Limited		APPELLANT
	Vs	
The Fourth Industrial Tribunal and Others		RESPONDENT

Date of Decision: Aug. 16, 1971

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10, 18, 2, 2A, 33

Citation: (1972) 1 CALLT 95 : 76 CWN 753 : (1973) 1 LLJ 146

Hon'ble Judges: Sabyasachi Mukherji, J

Bench: Single Bench

Judgement

Sabyasachi Mukherji, J.

The petitioner is a company incorporated under the laws of Japan. It carries on business of general importer and exporter at No. P-17, Mission Row Extension in Calcutta. In its business the petitioner employed certain number of workmen. Such workmen include drivers of motor vehicles belonging to the petitioner. Such workers of the petitioner who are employees for driving the motor vehicles are three in number. In March, 1963. a trade union by the name of the Calcutta Motor Workers'' Union raised certain demands including conveyance allowance for the drivers and stoppage of the ''Log Book'' system on behalf of the petitioner''s drivers. It is the case of the petitioner that the said workers'' union was not at any material time a trade union of the collective body of the petitioner''s workmen nor were a substantial number of the petitioner''s workers members of the said trade union. The petitioner further contends that the petitioner''s workmen collectively never raised any dispute with the petitioner in relation to the aforesaid demands. In the premises, it was the case of the petitioner that the said union was incompetent to take up any matter on behalf of the petitioner''s workmen with the petitioner. However, in spite of the petitioner''s aforesaid contentions a conciliation proceeding was started by the

Assistant Labour Commissioner, West Bengal, who is the 4th respondent to this application. During the continuance of the said conciliation proceeding one of the petitioner''s drivers, namely K. Jha, was charged with certain alleged acts of misconduct warranting his dismissal. The petitioner held a domestic enquiry into the matter, as a result of which it has been said that the said Jha was found guilty of misconduct alleged against him. The petitioner, therefore, decided to dismiss the said workman from service. The said alleged acts of misconduct related to certain alterations unauthorisedly made by (he said Jha in his log book. The petitioner on the plea that such a misconduct might be connected with the dispute in respect of which the conciliation proceedings were pending before the 4th respondent, made an application u/s 33(1)(b) of the Industrial Disputes Act, 1947 for the permission to dismiss the said workman. Thereupon the said 4th respondent expressed the view that the said alleged misconduct was not connected with the conciliation proceedings and as such there was no scope of an application u/s 33(1)(b) of the said Act. In the premises the petitioner on 18th June, 1968 made another application u/s 33(2)(b) of the said Act to the 4th respondent for approval of the dismissal of the said Jha. It is further the case of the petitioner that neither Jha nor any person on his behalf nor any other workman of the petitioner raised any dispute with the petitioner over his dismissal. Without deciding the application for approval of dismissal the reference was made by the Government u/s 10 to the 4th Industrial Tribunal. It is necessary in view of the contentions raised in this case to set out the issues referred:

1. Whether the dismissal of Sri K. Jha, driver is justified? To what relief if any is he entitled ?

2. Conveyance allowance for drivers.

3. Whether the change in service conditions of drivers by stopping the system of log book is justified ? To what relief are they entitled?

Thereafter the 4th Industrial Tribunal, namely, the 1st respondent herein, entered into the reference and directed the parties to file their respective written statements. The petitioner contended that there was no industrial dispute and as such there could not be a reference u/s 10. Upon this contention a preliminary issue was decided by the 1st respondent. The 1st respondent by his order dated 17th December, 1969 has decided the preliminary objection that the Tribunal had jurisdiction to proceed with the reference. Being aggrieved by the said order dated 17th December, 1969 the petitioner has moved this Court under Article 226 of the Constitution.

2. The first contention that was urged on behalf of the petitioner before the 4th Industrial Tribunal was that the Calcutta Motor Workers Union which presented the charter of demands and between whom and the company the conciliation proceeding was pending did not represent at any point of time a majority or even a substantial portion of the workmen of the company and as such this union had no locus standi to represent the workmen concerned in the present dispute. It has to be mentioned that the union which

was purporting to represent the workmen was Calcutta Motor Workers'' Union and by the order of reference the dispute that has been referred to is a dispute between the petitioner company and their workmen represented by Motor Workers'' Union, Calcutta, Howrah and 24-Parganas and Hooghly. It was contended on behalf of the petitioner before the Tribunal and the said contention was repeated here in this Court that the two unions were different. The Tribunal on an appraisement of the evidence had come to the conclusion that the said two unions were the same. The Tribunal relying on Ext. A read with Ext B(1) held that the union which presented the charter of demands had subsequently changed its name as Motor Workers'' Union, Calcutta, Howrah, 24 Parganas and Hooghly as mentioned in the order of reference. Counsel for the petitioner contended that such a finding was erroneous. I am unable to accept this contention. In the context of the facts the Tribunal has come to the conclusion that the charter of demands had been presented by the same union that was representing the workmen at the reference. Therefore such finding has not suffered, in my opinion, from any infirmity.

3. It was next contended, however, that most of the workmen of the petitioner-company were not parties to the dispute. As a matter of fact 21 of the workmen of the company had written to the company stating that they were not interested in the dispute and the union in question did not represent them. There was no evidence that anyone apart from the 3 motor drivers were members of the said union. Upon this it was contended on behalf of the petitioner that the substantial section of the workmen did not raise this alleged dispute and as such there was no scope of a reference u/s 10 of the Industrial Disputes Act, 1947. There was evidence before the Tribunal that the three motor drivers had joined the union in question. There was also evidence before the Tribunal and the Tribunal has accepted that the workmen had written to the conciliation officer that they were not supporting this cause and that they were not members of the union. Upon this the Tribunal has come to the conclusion that the union in question had locus standi to represent the workers in this dispute and as such the first contention against the validity of the order of reference was rejected by the Tribunal. Counsel for the petitioner challenges the propriety of this finding before me. Counsel for the petitioner contended that in order to be an industrial dispute capable of a reference u/s 10 it has to be a dispute by the workmen and the company, and an individual dispute of three workmen can be a dispute apart from Section 2A only if these disputes were taken up by a substantial section of the workmen of a particular industry. This was not a reference u/s 10 read with Section 2A of the Act between the company and three workmen. Counsel first drew my attention to the decision of the Supreme Court in the case of Niemla Textile Finishing Mills Ltd. and Ors. v. The 2nd Punjab Tribunal and Ors. reported in [1957■IL LJ. 460]: A.I.R.. 1957 S.C. 229 and relied on the observations of the Supreme Court at page 337. There a contention was raised that u/s 10 an unguided discretion had been granted to the State Government in making an order of reference. Repelling the contention the Supreme Court observed that the basic idea underlying all the provisions of the Act was the settlement of industrial disputes and the promotion of industrial peace so that production might not be interrupted and the community in general might be

benefited. This was the end which had got to be kept in view by the appropriate Government when exercising the discretion which was vested in it in the matter of making the reference to one or the other of the authorities under the Act and also in the matter of carrying out the various provisions contained in the other sections of the Act including the curtailment or extension of the period of operation of the award of the Industrial Tribunal. The Supreme Court also observed that the purpose sought to be achieved by the Act had been well defined in the preamble to the Act. The scope of industrial dispute was defined in Section 2(k) of the Act and there were also provisions contained in the other sections of the Act which related to strikes and lock-outs, lay-off and retrenchments as also the conditions of service, etc., remaining unchanged during the pendency of proceedings. These and analogous provisions, according to the Supreme Court, sufficiently indicated the purpose and scope of the Act as also the various industrial disputes which might arise between the employers and their workmen which might have to be referred for settlement to the various authorities under the Act. Reliance was also placed on the decision of the Supreme Court in the case of Newspapers Ltd. v. State Industrial Tribunal, U.P. and Ors. [1957■11 L.LJ. 1] ; AIR 1957 S.C. 533. There the Supreme Court observed that the Act was based on the necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The object of the Act was the prevention of industrial strife, strikes and lock-outs and the promotion of industrial peace and not to take the place of ordinary tribunals of the land for the enforcement of contract between an employer and an individual workman. Reliance was then placed on the decision of the Supreme Court in the case of Re Express Newspapers (Private) Ltd. Vs. First Labour Court West Bengal and Others, . There D.N. Sinha, J. (as his Lordship then was) held that an individual dispute between an employer and one of his workmen was by itself not. an industrial dispute which could be referred u/s 10 of the Industrial Disputes Act, but such an individual dispute might be transformed into an industrial dispute, provided that the cause of the particular workman concerned was taken up by a majority of workmen concerned in the particular industrial establishment, or by an union of such workmen. The Court was concerned in that case with the dispute before the introduction of S, 2A of the Industrial Disputes Act, The Court further observed that the Industrial Disputes Act was a legislation intended to ensure industrial harmony and when an individual case was taken up by a class of workmen, then it became an industrial struggle and lost its limited scope. But a workman''s cause could not be taken up by a union unconnected with the employer or the industry concerned. The employer was not concerned with the workmen who were not in is employ. He could not possibly have an industrial dispute or any dispute with such persons. The real lest appeared to be as to whether the majority, or a large portion of the workmen employed in the particular industry, were concerned in the dispute or not. Where the union was of the workmen employed in that particular industry, it might be presumed that when the union took up the cause of an individual workman it signified a concerted action on the part of the workmen who were members of that union. But it was not possible for a union of workmen unconnected with the particular industry concerned to take up such a cause and transform it into an industrial dispute between a particular employer and his workmen.

Counsel for the petitioner also drew my attention to the decision in the case of Workmen of Indian Express (P) Ltd. Vs. The Management, . There a dispute relating to two workmen in a newspaper establishment in Delhi arose in July, 1959. Thereafter the dispute was espoused by the Delhi Union of Journalists, an outside union, whose membership was open to the members of the newspaper establishment concerned. The dispute was referred to the Industrial Tribunal in August, 1961. The question arose whether the dispute was an industrial dispute and not an individual dispute as the Delhi Union of Journalists not being exclusively a union of the workmen employed in the newspaper establishment concerned, had espoused the said cause. It was found that about 25 per cent of the working journalists of the newspaper establishment concerned at least were members of the Delhi Union of Journalists. It was clear from the evidence that at the material time there was no union of working journalists employed by the newspaper establishment concerned and upon these facts the Supreme Court held that the Delhi Union of Journalists could be said to have a representative character qua the working journalists employed in the newspaper establishment concerned, and the dispute was transformed into an "industrial dispute."

4. Counsel for the respondent drew my attention to the case of The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, . He drew my attention to the observations appearing at page 324. There the Supreme Court observed that in each case in ascertaining whether an individual dispute had acquired the character of an industrial dispute the test was whether at the date of the reference the dispute was taken up or supported by the union of the workmen of the employer against whom the dispute was raised or by an appreciable number of workmen. Reliance was also placed on the observations of the Kerala High Court in the case of E.J. John, Sole Proprietor, St. George Estates Vs. Industrial Tribunal, Alleppey and Another, . In the case of State of Bihar Vs. Kripa Shankar Jaiswal, the Supreme Court observed that it would be an erroneous view if it were said that for a dispute to constitute an industrial dispute it was a requisite condition that it should be sponsored by a recognised union or that all the workmen of an industrial establishment should be parties to it. A. dispute became an industrial dispute even where it was sponsored by a union which was not registered as in that case or where the dispute raised v. by some only of the workmen because in either case the matter fell u/s 18(3)(a) and (b) of the Act. The Supreme Court was of the view that a dispute by a minority section of the workmen would be as much an industrial dispute as a dispute raised by a majority section of the workmen. Reliance was then placed on the decision in the case of A. C. C. Ltd. v. Their Workmen [1960-1 L.L.J. 491],

5. In my opinion before the introduction of Section 2A an individual dispute was incapable of becoming an industrial dispute unless it was taken up by a trade union of the particular industry or by a substantial section of the workmen of a particular employer. It has to be remembered that the purpose of the Industrial Disputes Act was to maintain the interest of the workers as a class in their collective bargaining as against making provision for redress of individual grievances. In order, therefore, to be an industrial dispute in a

particular industry there must be certain amount of community interest for the workers concerned and the dispute raised, whether the dispute is regarding the condition of employment of the workers themselves or the dispute is regarding the condition of employment of a particular employee of that industry. The purpose of the adjudication machinery provided by the Industrial Disputes Act is to maintain harmony in the industrial establishment in order to facilitate the smooth operation of the industry. Judged by the aforesaid standard a dispute can only become an industrial dispute, provided it is raised between the employer and the workmen and provided further that the workmen concerned are such that they can affect the working of the particular industry. Such an effect or impediment may be caused by a substantial number of workmen. It may be caused by the particular type of work done by the workmen concerned. It would depend upon the facts and circumstances of each case.

6. Judged by the above standard it is necessary to decide the first contention In this case, namely, whether the dispute in question was an industrial dispute capable of reference u/s 10. Admittedly, the union is not the union of the majority of the workmen. Admittedly, the union is not the union in which 21 of the 25 employees or workmen of the petitioner''s employment were not interested and were not members. It is also a union which has as its members other employees, namely, the employees other than the employees of the petitioner. That, however, would not in my opinion affect the position. It is also an admitted position that three of the workmen concerned in this controversy were members of the union; a substantial section of the workmen of the petitioner, or such section of the workmen of the petitioner who could affect or impede the operation of the industry if they had taken up the cause of the three workmen could have transformed this into an industrial dispute. The Tribunal in my opinion has misdirected itself on this aspect of the matter. The Tribunal has relied on the question whether three workmen were members of the union or not. Assuming that they were members of the union, and that position has to be accepted as was found by the Tribunal, it does not in my opinion conclude the matter. In order to be an industrial dispute it has to be further found whether that union had a representative character in the light of the test indicated above. Therefore, this finding in so far as the Tribunal has found that the three workers were members of the union and as such the dispute was an industrial dispute cannot be sustained.

7. The next contention raised in support of this application was that there was an application pending before the conciliation officer for permission to dismiss Shri K. Jha but pending that application there could not be a reference u/s 10. This contention has to be judged along with the other contention namely, issues Nos. 2 and 3 could riot be referred to as there was no dispute pending at the time of the reference. These two issues in my opinion may be conveniently dealt with together. Counsel for the petitioner drew my attention to the decision of the Supreme Court In the case of Tata Iron and Steel Co. Ltd. Vs. S.N. Modak, , for the preposition that an application u/s 33(2)(b) should have been dealt with expeditiously. Reliance was also placed on the decision in the case of Strawboard Manufacturing Co. Vs. Gobind, , for the proposition that until an order u/s

33(2)(b) was passed dismissal was not final. Counsel for the respondent on the other hand contended that in order to make a dismissal final approval was not necessary and a reference was not dependent on an order u/s 33(2)(b). Reliance was also placed on the decision in the case of Hindustan General Electrical Corporation Ltd. Vs. The State of Bihar and Others, , as well as in the case of T.V. Sundaram Iyengar and Sons (P) Ltd. by Managing Director, T.S. Krishna, Madurai Vs. State of Madras and Others, . Counsel for the petitioner naturally drew my attention to the decision in the case of The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, , for the proposition that until a demand has been made there could not be an industrial dispute capable of reference. On the other hand counsel for the respondent contended that there could be a reference of either an existing dispute or an apprehended dispute. It was urged that in case of an apprehended dispute a reference was possible even though no demand had been made to the employer prior to the order of reference. In my opinion, counsel for the respondent is right that u/s 10 the dispute which is capable of reference can be either an existing dispute or an apprehended dispute. Therefore, u/s 10 a reference is possible even in cases where there had been no prior demand or refusal if there is apprehension in the mind of the State Government that a dispute might arise. The decision of the Supreme Court in the case of The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, , must be understood in the background of the facts of that case. The said decision did not have occasion to consider whether u/s 10 a dispute which was apprehended could or might, be raised and whether in such a case a prior demand or refusal was necessary. But in the instant case the controversy is narrowed down in view of the order of reference itself. The order of reference states that what is being referred is an existing industrial dispute. Counsel for the respondents contended that that was not conclusive and it could still be considered to be a reference of an apprehended dispute. I am unable to agree. It is not necessary for me to decide in this application whether in a reference under the Industrial Disputes Act it is necessary for the State Government to state specifically whether the reference is made of an existing dispute or on apprehension of a dispute. But where the State Government has chosen to express itself and has given its reason, it is not possible to consider that reason in such a way as to bring it within the wider ambit of the section. The Tribunal seemed to have relied on Section 2A of the Industrial Disputes Act, Section 2A of the Industrial Disputes Act which was introduced by the Amending Act, 1965, made an individual dispute possible which was incapable of becoming an industrial dispute unless it was taken up by a trade union or a substantial section of the workmen,-but even in such a case the existence of a dispute is necessary where u/s 10 Government has purported to refer an existing dispute. In this case there is specific finding that no dispute was raised by the workmen concerned, that is to say, Shri K. Jha or by a union, regarding his dismissal. Therefore, reference of issue No. 1 in the facts and circumstances of the case as an existing dispute u/s 10 was illegal and improper. I am also of the opinion that until and unless the application u/s 33(2)(b) is disposed of, there cannot be a reference to the Tribunal. So far as issues Nos. 2 and 3 are concerned, these can only qualify an industrial dispute, provided these issues are taken up by a substantial section of the

workmen of the petitioner or by such workmen of the petitioner who are capable of impeding or hampering the production of the particular industry concerned.

8. In the view I have taken the finding of the Tribunal, so far as issue No. 1 is concerned, is hereby quashed and set aside. The said Tribunal would have no jurisdiction to decide that question. The respondents are restrained from proceeding with the reference in respect of issue No. 1. So far as issues Nos 2 and 3 are concerned, the finding of the Tribunal and the order dated the 17th December, 1965 are set aside and quashed. But the Tribunal is directed to determine the preliminary point of jurisdiction in respect of these two issues In the light of the observations made in this judgment and would determine the question whether the dispute was taken up by a substantial section of the workmen or by a union to which a substantial section of the workmen belonged or by such workmen who are capable of impeding or hampering the production or operation of the particular industry. The Tribunal after deciding the preliminary issues in the light of the observations made above should proceed in accordance with law. Let writs in the nature of mandamus and certiorari issue accordingly.

9. The rule is made absolute to the extent indicated above. There will be no further order in this application. Save and except to the extent indicated above all other interim orders are vacated. There will be no orders as to costs. After the file is sent back, the matter should be disposed of as expeditiously as possible.