

Chalthan Kamdar Mandal and anr. Vs. Commissioner of Labour and ors.

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Court : Gujarat

Decided On : Dec-27-1979

Reported in : (1979)2GLR169

Judge : B.J. Divan, C.J. and; B.K. Mehta, J.

Appellant : Chalthan Kamdar Mandal and anr.

Respondent : Commissioner of Labour and ors.

Judgement :

B.J. Divan, C.J.

1. The first petitioner is Chalthan Kamdar Mandal and the second petitioners are the five elected representatives of Magdoot and United Dyeing & Printing Works, Kabilpore, Navsari. The grievance of the petitioners is that the first respondent herein, the Commissioner of Labour for the State of Gujarat, is not issuing to them failure certificates on failure of conciliation proceedings before the Conciliator who is the second respondent in this special civil application. The case of the petitioners is that Chalthan Kamdar Mandal, the first petitioners, is that approved union under the Bombay Industrial Relations Act so far as the dyeing and printing works in Navsari Taluka of Valsad District are concerned. In order to expedite solution of labour problems, the Mandal applied to Government Labour Officer, Bulsar, to elect live representative under the Bombay Industrial Relations Act, Section 28, so far as Meghdoot Dyeing & Printing Works were concerned. Five representatives were duly elected so far as Meghdoot Dyeing & Printing Works and the five elected representatives of Unitex Dyeing & Printing Works, Kabilpore, Navsari, the fourth respondent herein, applied in Forms 'L' and 'N' regarding notice of change, along with the demands of labourers in both these Dyeing & Printing Works. The Conciliator functioning under the Bombay Industrial Relations Act admitted both the 'L' Form and 'N' Form and started conciliation proceedings under the Act. On September 28, 1979 the Mandal asked the Conciliator to issue a failure certificate so as to enable the five elected representatives to go to the Industrial Court as there was no further possibility for settlement through conciliation. The Conciliator who is the Assistant Commissioner of Labour, Surat, refused to give the failure certificate on the ground that he would submit the failure certificate to Government and the Government in its turn would send a notification to the Industrial Court referring the dispute to the Industrial Court.

2. It is his refusal to issue a failure certificate to the Mandal and to the elected representatives of the workers that has led to the filing of this special civil application.

3. Under Section 28 of the Bombay Industrial Relations Act, 'where there is no Representative Union in respect of any industry in any local area, the employees in each undertaking in the industry and in each occupation therein, may, in the prescribed manner, elect five persons from among themselves to represent them for the purposes of this Act,' and under Sub-section (2), 'The persons, if any, elected under Sub-section (1) shall function in such manner as may be prescribed.' It is obvious from the scheme of Sub-section (1) and (2) of Section 28 that the elected representatives elected in accordance with Section 28(1) are to take the place of a representative union for the industry in the particular local area. If there is no representative union, elected representatives represent the workers for the purpose of the Act, a registered union which is a representatives of employees and which is also an approved union may refer any industrial dispute for arbitration to the Industrial Court.' The proviso to Section 73-A is not material for the purposes of this judgment. It is true that the Chalthan Kamdar Mandal is not a representative union but it is an approved union and, at the same time, the five elected representatives who are the second petitioners before us are, under Section 28, entitled to represent the workers of the undertaking for the purposes of the Act. The Mandal is a registered union and through its agency the second petitioners, the five elected representatives, have been elected had hence under Section 28(1) the elected representatives represent the employees for the purposes of the Act. Representative union on the light of Section 28(1), though there is no representative union on the scene in the instant case, still, we have got five elected representatives who represent the employees for the purposes of the Act and they are functioning through the approved union, namely, the Chalthan Kamdar Mandal. Under these circumstances, the requirements of Section 73-A are satisfied when the provisions of Section 28(1) are read into and along with the provisions of Section 73-A. Hence in our opinion, it was obligatory on the Commissioner of Labour and the Assistant Commissioner of Labour, as the case may be, issue a failure certificate indicating that the conciliation proceedings have failed, so that the elected representatives can refer the industrial disputes between the workers and the employers for arbitration to the Industrial Court under Section 73-A, obviating two rounds, namely, the round of report by the Conciliatory to the Government and the second round where the Government would on its own make a reference to the Industrial Court. The machinery of Section 73-A is intended to eliminate, as far as possible, unnecessary procedural hold-ups and it is for this purpose that the whole scheme of Section 28 has been evoked by the Legislature to take care of a situation where though there is a registered union which may be regarded as approved union, still there is no representative union for the purposes of the Act. Otherwise we fail to understand what function the elected representatives have to perform if they are not to represent the employees for the purposes of the Act.

4. Hence we allow this special civil application and direct the second respondent to issue failure certificate of the five elected representatives of Meghdoot Dyeing and Printing Works and also to the five elected representatives of the Unitex Dyeing & Printing Works so that a reference of the industrial disputes to the Industrial Court may be made directly by the five representatives of the concern acting together, and appropriate reference under Section 73-A can therefore be made in the above manner.

This Special Civil Application is therefore allowed and it is made absolute in terms of Prayer (1) and the the Commissioner of Labour and the Conciliator are directed to issue failure certificates to the five elected representatives of the Meghdoot Dyeing &

Printing Works and to similar five elected representatives of the Unitex Dyeing & Printing Works. Rule is made absolute accordingly. There will be no order as to costs.

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