Sk. Ahamad HossaIn Vs. Tittagarh Paper Mills Co. Ltd. and ors.

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Court : Kolkata

Decided On : Dec-08-1958

Reported in : AIR1959Cal374

Judge : Sinha, J.

Acts : Industrial Disputes Act, 1947 - Sections 10 and 33

Appeal No. : Civil Revision No. 1146 of 1956

Appellant : Sk. Ahamad Hossain

Respondent : Tittagarh Paper Mills Co. Ltd. and ors.

Advocate for Def. : N. Noni Coomar Chakravorty, ;Dipti Kana Bose and ;B.C. Ghose Roy, Advs.

Advocate for Pet/Ap. : Salil Kumar Dutt, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Sinha, J.

1. The opposite party No. 1 in this case is the Titagarh Paper Mills Co. Ltd. This is a well-known paper mill situate in West Bengal. It has a mill situate at Titagarh called Paper Mill No. 1 there being another mill situate at Kankinara known as Titagarh Paper Mill No. 2. These two Mills employ more than six thousand workmen. In the years 1947, 1948 and 1949 the Company allowed basic wages for one month as advance wages before the Durga Puja festival, to help the workmen in meeting costs incidental to the Pujas. This advance was realised from the wages of the workmen by monthly instalments. It appears that in December 1949, a certain award of the Industrial Tribunal imposed a scheme of Production Bonus. Under the scheme, the workmen were paid a bonus calculated upon a proportion of the basic pay, dependant upon a specific tonnage of production. In 1950, the opposite party No. 1 indicated its intention to discontinue the Puja advance and to pay 'production Bonus. It appears that this decision became unpopular with the workmen and on the morning of 19-9-1950, an incident happened at the No. 1 Mill of the Company. A large group of workers collected outside the main office and demanded that Puja advance must be given. What happened thereafter is a matter of dispute between the parties. According to the Company, the Manager was willing to discuss the mutter with a

small delegation of workers in his office, but that this offer was refused by the workmen who insisted that the manager should come out and meet the crowd. This the manager declined to do. It is alleged that at 1 p.m. the Manager and the Cost Accountant left the office and were walking through the Finishing Department to their residential quarters for the purpose of taking their lunch. When going through the machine house they were surrounded by a large mob of workers and particularly 11 workmen including the petitioner in this case and it is said that they were forcibly prevented from leaving the place and were confined therein against their wishes. The police having been informed, arrived there and extricated them. It is also alleged that two other officers were similarly detained and had to be extricated by police help. As I have stated above, the incident happened on 19-9-1950. On 20-9-1950, the Management of the Mill concerned, issued charge sheets upon the said 11 workmen including the petitioner, charging them with having caused a disturbance in the factory premises and requiring them to show cause why action should not be taken against them under Sections 19(b)(3)and 19(b)(5) of the Company's Standing Orders. Ten of the eleven workers refused to accept the charge sheet, and one alone accepted the charge sheet and submitted the explanation. Notice was given to the eleven workmen concerned, to attend an enquiry on the 23rd of September. With the exception of the petitioner in this case, all refused to accept the notice. On 23-9-1950, only one workman, Mohammad Rashid turned up but the others were absent. At the enquiry, evidence was taken of several witnesses. It was found that between the 21st of September 1950, and 23th of September 1950, certain talks were going on at the intervention of the Assistant Labour Commissioner, regarding the forcible detention of the Managerial staff, as also the matter of Production Bonus. On 23-9-1950, the eleven workmen concerned were found guilty in the domestic enquiry and were dismissed from the service of the Company. It is admitted that no permission of the Conciliation Officer was taken before passing the order of dismissal. In the meanwhile, the police were also proceeding in the matter upon the complaint of the management, and a criminal prosecution was launched against the said eleven workmen including the petitioner, charging them under Sections 143 and 342 of the Indian Penal Code. On 15-12-1951, the trying Magistrate acquitted all the accused persons, holding that no offence under Sections 143 and 342 of the Indian Penal Code had been substantiated. After the acquittal by the Magistrate, the eleven workmen concerned, claimed reinstatement. The conciliation proceeding was revived but it was not successful and by an order dated 26-11-1952, the Government of West Bengal referred an alleged industrial dispute between Messrs. Titaghar Paper Mill No. 1 and their workmen as represented by the Paper Mills Employees Union, Titaghar. The disputes referred were two in number, the first being as to whether the dismissal of these eleven workmen including the petitioner was justified, and the second issue referred was whether they were entitled to reinstatement and/or compensation. Before the Tribunal, the Union took certain preliminary objections. One of the objections taken was that the dismissal was illegal as it was effected in violation of Section 33 of the Industrial Disputes Act, inasmuch as the conciliation proceeding over the matter was pending before the Assistant Labour Commissioner, Barrack-pore on the date of dismissal, but no permission was taken of the Conciliation Officer for the order of dismissal dated 23-9-1950. This is the point that has been urged before me in this application and will have to be considered in detail presently.

2. The first Industrial Tribunal which adjudicated upon the matter held, that as a fact, conciliation proceedings were pending when the dismissal orders were made, and no leave was obtained of the Conciliation Officer. It was urged before the Tribunal, as it is urged before me now, that once the Tribunal came to finding that the ban imposed

by Section 33 of the Industrial Disputes Act had been violated, it was bound to order reinstatement and to set aside the orders of dismissal. It had no jurisdiction to go into the merits of the case. This contention was rejected by the Tribunal. The Tribunal found that in numerous cases decided by the Appellate Tribunal and various High Courts in India, it has been held that in a proceeding under Section 33A of the Industrial Disputes Act; following violation of Section 33 by the Employer, the Tribunal not only can, but must, adjudicate on the substantive dispute, and upon an analogy held that in the circumstances of. the present case the Tribunal was not precluded from going into the merits simply because no leave of the Conciliation Officer had been taken. The Tribunal went into the facts of the case and held that the eleven workmen concerned were guilty of misconduct contravening the provisions of Section 19(b)(3) of the Standing Orders. It, however, decided that the dismissal order should not stand but that the workmen concerned should be discharged under Section 18 of the Standing Orders and should be given seven days' wages in lieu of wages and gratuities at the rate of 15 days' basic pay for each complete day of service subject to a minimum of three months' basic wages in the circumstances of the case, being their average earnings for three months previous to September 1950. Against this order, both the workmen as well as the Company appealed to the Labour Appellate Tribunal. The appeal of the Company was numbered as Appeal No. Cal.-37/53 and that of the workmen as Appeal No. Cal.-40/53. The appeal of the workmen was dismissed by the Appellate Tribunal by its order dated 19-12-1955. So far as the Company's appeal is concerned, the appeal was directed only against the punishment order. It was found by the Appellate Tribunal, and I think quite rightly, that Clause 18 of the Standing Orders did not apply to a case of dismissal for misconduct, and that once misconduct was found as a fact, there was no justification for awarding compensation of any sort and further that in such circumstances, whether Clause 18 applied or 19, of the Standing Orders, there was no provision for the payment of gratuity. The appeal of the Company was, therefore, allowed except as against one of the workers, Ramesh Gupta, and the order of discharge on payment of wages and gratuity was set aside and in its place was restored the order of dismissal passed by the Management. There is a consolidated judgment in both these appeals, a copy whereof is Annexure 'B' to the petition.

3. This application is directed against the judgment of the Appellate Tribunal mentioned above. So far as the original award of the first Industrial Tribunal is concerned, neither is that Tribunal a party before me nor is its award challenged. The point that is urged before me is the point urged before the first Industrial Tribunal, and which I have referred to above. It is argued that there being a finding to the effect that no leave was taken of the Conciliation Officer when conciliation proceedings were pending, the order of dismissal is violative of Section 33 of the Industrial Disputes Act and, therefore, as soon as the Tribunal came to the conclusion that the ban imposed by Section 33 existed, it had no jurisdiction to go into the merits of the case, and should at once have set aside the dismissals and reinstated the workmen. It is argued that the Tribunal had no other course open to it. This argument had certainly been advanced before the first Industrial Tribunal and was negatived by it. It does not appear that in this form it was ever argued before the Appellate Tribunal. There, it was brought up incidentally, saying that the conduct of the Management in failing to obtain such leave was rightly taken, as an extenuating circumstance which justified the granting of compensation. The Appellate Tribunal rightly held that want of leave cannot be an extenuating circumstance. Mr. Chakraborty appearing on behalf of the Company has taken the preliminary point that this point not having been taken before the Appellate Tribunal should not be allowed

to be taken in this Court. I do not say that he is not justified in taking this objection. I think, however, that it would be better to deal with this point and decide it. As the first Tribunal has pointed out, there are a number of cases which have held that in an application under Section 33A, in a case where leave under Section 33 had not been obtained, the Tribunal not only can, but must, go into the merits and adjudicate upon the matter before it. The point is now beyond controversy, since the principle has now been confirmed by the Supreme Court in Automobile Products of India Ltd. v. Rukmaji Bala, (S) : (1955)ILLJ346SC . Section 33A of the Act is confined to a case where proceedings were pending before a Tribunal, and an order of dismissal etc. was made without obtaining leave from the Tribunal. Section 33, however, lays down that leave must be obtained not only where proceedings were pending before a Tribunal, but also where conciliation proceedings were pending before a Conciliation Officer, or a Board, or any proceeding was pending before a Labour Court or Tribunal Or the National Tribunal. Therefore, we have high authority so far as a proceeding before a Tribunal is concerned, but there is no direct authority so far as the other kinds of proceedings mentioned above are concerned. In the present case, we are concerned with a conciliation proceeding pending before a Conciliation Officer. The question is whether the principle adumbrated in the decisions mentioned above, and particularly the Supreme Court decision cited, is applicable to the facts and circumstances of this case. In order to decide this point, it would be necessary to consider further the Supreme Court decision mentioned above. In that case, there was an appeal pending between the Company and its workmen, before the Labour Appellate Tribunal. While the appeal was pending, the Government of India having removed the name of the Company from its approved list, the Company found it necessary to retrench a number of workmen. As these workmen were concerned with the pending appeal, the Company applied to the Appellate Tribunal under Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 for permission to retrench certain workmen. Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 corresponded to Section 33 of the Industrial Disputes Act, 1947. Section 23 of the Appellate Tribunal Act corresponded to Section 33A of the Industrial Disputes Act. Das, J. (as he then was) said as follows:

'It is also clear that under Section 33-A of the 1947, Act the authority is to adjudicate upon the complaint as if it were a dispute referred to or pending before it and under Section 23 of the 1950 Act the authority is to decide the complaint 'as ii it were an appeal pending before it.' These provisions quite clearly indicate that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate reliefs.

The extreme contention that under Section 33-A of the 1947 Act, on a finding that there has been a contravention of the provisions of Section 33 the Tribunal's duty is only to make a declaration to that effect, leaving the workmen to take such steps under the Act as they may be advised to do, has been negatived by the Labour Appellate Tribunal in Serampore Belting Mazdoor Union v. Serampore Belting Co., Ltd. (1951) 2 Lab LJ 341 and by the Bombay High Court in Batuk K. Vyas v. Surat Borough Municipality : AIR1953Bom133 . The same principle has been accepted and applied by a Full Bench of the Labour Appellate Tribunal to a case under Section 23 of the 1950 Act in Baj Narain v. Employer's Association of Northern India (1952) 1 Lab LJ 381.

We find ourselves in agreement with the construction placed upon Section 33-A of the

1947 Act and Section 23 of the 1950 Act, by these decisions. In our view the scope and ambit of the jurisdiction conferred on the authority named, in those sections is wider than that conferred on the Criminal Court by Section 31 of the 1947 Act and Section 29 of the 1950 Act. The Criminal Court under the two last mentioned sections is only concerned with the first issue hereinbefore mentioned, namely yea or nay whether there has been a contravention of the respective provisions of the sections mentioned therein, but the-authority exercising jurisdiction under Section 33-A of the 1947 Act and Section 23 of the 1950 Act is to adjudicate upon or decide the complaint 'as if it were a dispute referred to or pending before it' in the first case or 'as if it were an appeal pendng before it' in the second case.

The authority is, therefore, enjoined to go into the merits of the act complained of under Section 33-A of the 1947 Act and. Section 23 of the 1950 Act. In this sense the jurisdiction of the authority named in these two sections is certainly wider than that of the Criminal Court exercising jurisdiction under the penal section referred to above. Having regard to the scone of the enquiry under Section 33-A of the 1947 Act and Section 23 of the 1950 Act it must follow that the power of the authority to grant relief must be coextensive with its power to grant relief on a reference made to it or on an appeal brought before it, as the case may be.

* * * * It follows, therefore, that the authority referred to in these sections must have jurisdiction to do complete justice between the parties relating to the matters in dispute

In short, these two sections give to the workmen a direct right to approach the Tribunal or Appellate Tribunal for the redress of their grievance-without the intervention of the appropriate Government which they did not possess before 1950 and they provide for speedy determination of disputes and avoid multiplicity of proceedings .....'

4. It has been argued on behalf of the petitioner that this case is clearly distinguishable inasmuch as Sections 33A or 23 expressly grant power to the Tribunal concerned to go into the merits of the case, whereas there is no such power given in the case of proceedings pending before a Conciliation Officer. As has been held by the learned Judge above, Section 33A or Section 23 was introduced in order to grant speedy relief without intervention of the Government. But these two sections limit themselves to the case of proceedings pending before Tribunals. What happened then, when proceedings are pending before a Conciliation Officer? In such a case, neither Section 33A nor Section 23 applies in terms. When a proceeding is pending before a Tribunal, a violation of Section 33 or Section 22, as the case may be, can be brought before tile Tribunal for redress. So far as the Conciliation Officer is concerned, the proceedings before him are of an administrative nature, and he has obviously no power to judicially decide any dispute. Nor is there any provision in such a case to take the matter straightway to any Tribunal. In other words, so far as the Conciliation Officer is concerned, Section 33 imposes a ban and gives the power to the Conciliation Officer to grant permission but without doing anything further. If, therefore, the permission is not obtained, then what is the remedy? Plainly, neither Section 33 nor Section 22 provides a remedy, and as stated above, the provisions of Section 33A and Section 23 which do provide a remedy, are not applicable to conciliation proceedings. It would be impossible, however, to argue that a ban is provided, but not any remedy. The only solution is that the violation must be referred to Government & an order obtained under Section 10 of the Industrial Disputes Act,

When such a contingency arises, it partakes of the nature of a fresh industrial dispute. I have already mentioned above that in the case of the more summary remedy under Section 33A or Section 23, the Tribunals have power to go into the merits of the case. Indeed, it is their duty to do so. In my opinion, it would be absurd to hold that even where a substantive industrial dispute is referred under Section 10 of the Industrial Disputes Act, the Tribunal concerned cannot go into the merits. To start with, once such a dispute is referred under Section 10, the Tribunal is bound to decide that dispute, and the dispute must be so decided as to make the adjudication complete so that the question referred is decided in all its aspects. Thus, although the principle laid down in the Supreme Court decision cited above is not directly attracted, the principle laid down therein may be applied by analogy and comparison. In other words, in a case where conciliation proceedings were pending and there is a dismissal etc, without leave of the Conciliation Officer, in contravention of Section 33 of the Industrial Disputes Act, the proper procedure would be to approach Government to intervene, and when an order is made under Section 10 of the Industrial Disputes Act, the Tribunal is at liberty to decide the dispute so referred, and indeed it is its bounden duty to do so. In this case, the Government might have referred a limited dispute, namely, as to whether the dismissal of the workmen concerned was bad because no leave of the Conciliation Officer had been obtained. If it was couched in that restricted form, then the Tribunal would have to decide the limited dispute and the only point to be considered would be as to whether the dismissal was hit by the ban. Here, however, the dispute that has been referred is in general terms. Since the reference is in that general or wide form, the Tribunal has ample jurisdiction to decide the dispute as a whole. Since it has been asked to decide as to whether the dismissal of the workmen was justified, it had no option but to go into the merits of the case and decide the whole dispute upon that point. If it had restricted itself merely to the question of the ban, it would be guilty of a failure to exercise its jurisdiction and the reference would not have been completely decided. In my opinion, therefore, the first Industrial Tribunal was justified in going into the merits and the Appellate Tribunal is justified in approving of it, or at least in not disapproving of such an approach. This is the real point involved in the case and is the only point that has been argued before me. So far as the facts are concerned, there is of course no appeal before me on facts nor has an argument been advanced before me that I should go into the facts. The facts have been gone into by the Tribunals below and there appears to be no patent error in their findings.

5. In the premises, this application fails and must be dismissed. The Rule is discharged. Interim orders, if any, are vacated.

6. There will be no order as to costs.