1962

Employers in Relation to the Bhoura Colliery v. Their Workmen

Sarkar J.

these malis were on personal work. The word "personal" is obviously used in the sence of work for an individual as distinguished from work for the Coal mine as an institution. These malis were undoubtedly working for the officers as individuals. Therefore they were on personal work.

For these reasons in our view the malis in the present case were not entitled to any bonus under the Bonus Scheme. As in our opinion the order of reference does not raise any question as to whether the malis were entitled to bonus apart from the Bonus Scheme, it is unnecessary for us to express any opinion on that question and we do not do so.

The result is that this appeal is allowed and we set aside the award of the Tribunal in so far as it is concerned with the two points of dispute earlier set out which had been referred to it. We do not think it a fit case to make any order for costs.

Appeal allowed.

1962

January 30.

GIRJA SHANKAR KASHI RAM

v.

THE GUJARAT SPINNING & WEAVING CO. LTD.

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Exclusive right of Representative Union to represent employees—Bombay Industrial Relations Act (XI of 1947) ss, 27A, 32, 33, 42 (4).

The Gujarat Spinning & Weaving Co. Ltd., closed its business on May 14, 1953, and sold its assets to Tarun Commercial Mills Co. Ltd. The old company had discharged all its workmen when it closed its business. The new company re-started the business after a week and took in its service the workmen of the old company. When the closure took place a dispute was pending between the old company and its workmen with respect to bonus. The Textile Labour Association, which is a Representative Union of the textile workers in the city of Ahmedabad, filed an application before the Labour

Appellate Tribunal where the dispute was pending. The matter was compromised and the old company agreed to pay some agreed bonus. The textile Labour Association gave an undertaking not to claim compensation in any other way in any future proceeding.

Later on, 376 employees of the old company gave a notice under s. 42(1) of the Bombay Industrial Relations Act, 1947, and claimed compensation. The Textile Labour Association made an appearance before the Labour Court and contended that the application should be dismissed in view of the compromise arrived at before the Labour Appellate Tribunal. The Labour Court accepted the contention and dismissed the application. The workmen went in appeal to the Industrial Court but their appeal was also dismissed. They made a petition in the High Court under Art. 227 of the Constitution but that was summarily rejected. They have come in appeal to this Court by special leave.

Held, that where a Representative Union appears in any proceeding under the Act, no one else can be allowed to appear, not even the employee at whose instance the proceedings might have been started under s. 42(4). Where the appearance is by any representative of the employees other than a Representative Union, the authorities under s. 32 can permit the employee to appear himself in all proceedings before them. The employee is entitled to appear through any person in certain proceedings specified in s. 33. However, whenever the Representative Union makes an appearance, even the employee cannot appear in any proceeding under the Act, and the representation must be confined only to the Representative Union. The complete ban laid by s. 27A on representation otherwise than through a representative of employees remains complete where the representative of employees is a Representative Union that has appeared. If the representative of employees that has appeared is other than the Representative Union, ss. 32 and 33 provide for exceptions.

The *bona fides* or *mala fides* of the representative of employees can have nothing to do with the ban imposed by s. 27A on the appearance of any one else except the representative of employees as defined in s. 30.

The argument based on the so called tyranny of a Representative Union or its motives in taking the action it may choose to take in any proceedings after it appears can have no relevance if the intention of the legislature is perfectly clear from the provisions of the Act.

CIVIL APPELLATE JURISDICTION : Civil Appeal o. 189 of 1961.

1962

Girja Shankar Kashi Ram v. The Gujarat Spinning & Weaving Co. Ltd.

Appeal by special leave from the judgment and order dated November 27, 1957, of the Industrial Court, Bombay, at Ahmedabad in Appeal (I. C.) 187 of 1957.

C. T. Daru, V. L. Narasimhamoorthy, E. Udayarathnam and *S. S. Shukla,* for the appellants.

C. K. Daphtary, Solicitor General of India, I. M. Nanavati, J. B. Dadachanji and O. C. Mathur, for the respondent No. 1.

N. M. Barot, Secretary of the Textile Labour Association, for respondent No. 2.

1962. January 30. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This appeal by special leave against the order of the Bombay High Court summarily dismissing the petition of the appellants under Art. 227 of the Constitution raises an important question with regard to the right of a Representative Union under the Bombay Industrial Relations Act, No. XI of 1947, (hereinafter called the Act) to appear in a proceeding under the Act to the exclusion of an employee desiring a change under s. 42(4) of the Act. The question arises in this way. The Gujarat Spinning and Weaving Company Limited (hereinafter called the old Company) closed its business on May 14, 1953 and sold its assets to the Tarun Commercial Mills Company Limited (hereinafter called the new Company). The old Company had discharged all its workmen when it closed its business which happened before s. 25F relating to retrenchment was introduced in the Industrial Disputes Act, (No. XIV of 1947). The new Company re-started the business after a week and took in its service the workmen of the old Company. It appears that at the time the closure took place a dispute was pending between the old Company and its workmen with respect to bonus. As the closure had taken place while that

dispute was pending, the Textile Labour Association (hereinafter called the Association), which is a Representative Union of the textile workers in the city of Ahmedabad, filed an application under s. 22 of the Industrial Disputes (Appellate Tribunal) Act of 1950 before the Labour Appellate Tribunal where the dispute was pending. In that matter there was a compromise, and though, according to the old Company, there was no available surplus to give bonus, the old Company agreed to pay bonus by way of settlement to the extent of 1/8th of the earnings of the workmen for the year in dispute; and in consideration of this the Association on behalf of all the workmen discharged as a result of closure agreed not to press for any compensation for their discharge and the workmen who accepted the bonus by this agreement gave an undertaking not to claim compensation in any other way in any future proceeding. This happened in March 1955. Thereafter in July 1956, 376 persons who had been in the employ of the old Company and were a minority of its workmen gave notice under s. 42(1) of the Act and claimed compensation for the closure which had taken place in 1953. As no settlement could be arrived at between the parties this was followed by an application under s. 42(4) of the Act before the labour court in October 1956 and these workmen claimed that they should be paid adequate compensation for the closure of the mill in view of their past services. To this application both the old Company and the new Company were made parties. The application was opposed by both the companies on various grounds with which we are however not concerned in the present appeal. In January 1957, the Association made an appearance before the labour court and contended that the application should be dismissed in view of the compromise which had been arrived at before the Labour Appellate Tribunal in 1953. The labour court accepted this contention and dismissed the application.

1962

Girja Shanker Kashi Ram
v.
The Gujarat Spinning & Weaving Co. Ltd.

Wanchoo J.

Thereupon some of the workmen went in appeal to the industrial court and their contention seems to have been that, though no individual can be permitted to appear in any proceeding where the Representative Union appears as representative of employees, in this case the action of the Association after its appearance in not supporting the case of the workmen before the labour court was *mala fide*; therefore the Association should not have been allowed to appear on behalf of the employees who had applied to the labour court and they should be permitted to carry on their application. This contention was rejected by the industrial court, which was of opinion that it was not for an industrial court to go into the question of *bonafides* or *malafides* for appearance of a Representative Union and that the law under the Act was clear that where a Representative Union appeared it alone could represent the applicants even in a case under s. 42(4) of the Act. The appeal was therefore dismissed. Thereupon the employees appear to have filed a petition before the High Court under Art. 227 of the Constitution, which was summarily rejected. The High Court also refused to give leave to appeal. Then there was a petition to this Court for special leave which was granted, and that is how the matter has come up before us.

The main contention on behalf of the appellants before us is that reading the various provisions of the Act, an employee making an application under s. 42(4) of the Act is not debarred from appearing in the labour or industrial court and carrying on with his application even though the Representative Union makes an appearance. It is submitted that if the interpretation pressed on behalf of the respondents were accepted it would amount to tyranny of the Representative Union and this could not be the intention of the legislature in framing the Act. It is also contended that if the interpretation pressed on behalf of the respondents is correct, the

provisions in the Act may be liable to be struck down as *ultra vires* the Constitution.

The case of the respondents on the other hand is that the provisions of the Act are perfectly plain and provide that where a Representative Union appears in any proceeding it alone, to the exclusion even of the employee who might have made an application under s. 42 (4), is entitled to carry on with the proceedings and the employee concerned has no *locus standi* in the matter after the application has been filed by him, if the Representative Union chooses to appear. It is urged that the so-called tyranny by the Representative Union can have no bearing on the interpretation of the provisions of the Act if they are plain in their intent. Further it is contended that there is no question of the constitutionality of the various provisions of the Act in this case as at no stage has the constitutionality of the provisions been challenged by the appellants, not even in their special leave petition.

Before we deal with the interpretation of the various provisions of the Act in this behalf we may point out that the constitutionality of the provisions has never been challenged so far and we therefore express no opinion as to the constitutionality of these provisions. We are further of opinion that the argument based on the so-called tyranny of a Representative Union or its motives in taking the action it may choose to take in any proceeding after it appears can have no relevance if the intention of the legislature as it can be gathered from the various provisions is perfectly plain.

Let us therefore see what the Act provides in this behalf. The main provisions with which are concerned are contained in Chap. V of the Act which deals with "representatives of employees and employers, and appearance on their behalf". It may be stated at the outset that the Act contains elaborate provisions for registration of unions and approved unions in

1962

Girja Shanker Kesho Ram
v.
The Gujarat Spinning & Weaving Co. Ltd.

Wanchoo J.

Chapters III and IV respectively and is in this respect different from the Industrial Disputes Act. Under Chap. III the Registrar is given the power to register a Representative Union for any industry in any local area and also the power to cancel such registration under certain circumstances and there is also a provision for appeal where a registration is cancelled. Then comes Chap. V which deals with the representatives of employees and employers and appearance on their behalf in proceedings under the Act. Section 27 provides for recognition of an association of employers and its right to appear in proceedings under the Act. Section 30 enumerates the representatives of employees and gives an order of preference in which the six classes of representatives of employees mentioned in that section can appear or act in any industry in any local area, the first being a Representative Union for such industry. It is not in dispute that the Association in the present case is a Representative Union in the textile industry in that region and has the most preferential right to appear or to act as the representative of employees in the textile industry in that area. Sections 28 and 29 provide for election of representatives of employees where there is no Representative Union in respect of any industry in any local area and such elected representatives under s. 30 are respresentatives of employees and are fifth in order of preference. Then we come to ss. 27A, 32 and 33 with which we are particularly concerned in this appeal. They may be read *in extenso*.

> "27A—Save as provided in sections 32 and 33, no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees."
>
> "32—A conciliator, a Board, an Arbitrator, a wage Board, a Labour Court and the Industrial Court may, if he or it considers it

expedient for the ends of justice, permit an individual, whether an employee or not, to appear in any proceeding before him or it ;

Provided that no such individual shall be permitted to appear in any proceedings in which a Representative Union has appeared as the representative of employees."

"33—Notwithstanding anything contained in any other provision of this Act, an employee or a representative union shall be entitled to appear through any person.

(a) in all proceedings before the industrial court ;

(aa) in all proceedings before a wage board ;

(b) in proceedings before a Labour Court for deciding whether a strike, lock-out, closure or stoppage or change or an order passed by an employer under the standing orders is illegal or for deciding any industrial dispute referred to it under section 72 ;

(c) in such other proceedings as the Industrial Court may, on application made "in that behalf, permit ;

Provided that a legal practitioner shall not be permitted under clause (c) to appear in any proceeding under this Act except before a Labour Court as provided in section 83A or the Industrial Court ;

Provided further that no employee shall be entitled to appear through any person in any proceeding under this Act in which a Representative Union has appeared as the representative of employees."

1962

Girja Shanker Kashi Ram
v.
The Gujarat Spinning & Weaving Co. Ltd.

Wanchoo J.

It will be seen that s. 27A provides that no employee shall be allowed to appear or act in any proceeding under the Act, except through the representative of employees, the only exception to this being the provisions of ss. 32 and 33. Therefore, this section completely bans the appearance of an employee or of any one on his behalf in any proceeding after it has once commenced except through the representative of employees. The only exceptions to this complete ban are to be found in ss. 32 and 33, to which we shall presently refer. But it is clear that *bona fides* or *mala fides* of the representative of employees can have nothing to do with the ban placed by s. 27A on the appearance of any one else except the representative of employees as defined in s. 30 and that if anyone else can appear in any proceeding, we must find a provision in that behalf in either s. 32 or s. 33 which are the only exceptions to s. 27A. It may be noticed that there is no exception in s. 27A in favour of the employee, who might have made an application under s. 42 (4), to appear on his own behalf and the ban which is placed by s. 27A will apply equally to such an employee. In order however to soften the rigour of the provisions of s. 27A, for it may well be that the representative of employees may not choose to appear in many proceedings started by an employee under s. 42 (4), exceptions are provided in ss. 32 and 33. The scheme of these three provisions clearly is that if the Representative Union appears, no one else can appear and carry on a proceeding, even if it be begun on an application under s. 42 (4) but where the Representative Union does not choose to appear there are provisions in ss. 32 and 33 which permit others to appear in proceedings under the Act.

Section 32 gives power to a conciliator, a board, a wage board, a labour court and the industrial court to permit an individual, whether an

employee or not, to appear in any proceeding before him or it. This shows that the complete ban imposed by s. 27A can be removed if the authorities under the Act think it expedient to permit another person to appear and that person may be an employee or not. Thus the employee who has made an application under s. 42(4) may be permitted to appear before the authorities under the Act; but this provision is subject to a proviso namely that no such individual which would include an employee who has himself made an application under s. 42(4), shall be permitted to appear in any proceeding in which the Representative Union has appeared as the representative of employees. Reading therefore ss. 27A, 30 and 32 together, it is clear that no one else can appear in any proceeding under the Act except a representative of employees; but the authorities are empowered to permit anyone to appear whether he be an employee or not, if they consider it expedient for the ends of justice (and we have no doubt that where representative of employees does not choose to appear the authorities will generally permit the employee who has made the application under s. 42(4) to appear), but this power is subject to the proviso, namely, that no one will be allowed to appear if the Representative Union has made an appearance. It will be seen that the proviso puts the Representative Union in a special position out of the six classes mentioned as representatives of employees in s. 30. Thus s. 32 makes it clear that where the Representative Union of the six classes in s. 30, appears no one else can appear, including the person who might have made an application under s. 42 (4). If the other five classes which are mentioned in s. 30 as representatives of employees appear, the authorities have the power to allow the employee or any other person to appear along with them.

1962

Girja Shankar Kashi Ram
v.
The Gujarat Spinning & Weaving Co. Ltd.

Wanchoo J.

Then we come to s. 33, which starts with a *non obstante* clause and deals with the appearance of an employee or a representative union through any person. Section 33 thus is an exception to s. 27A and authorises an employee who could not appear in any proceeding under the Act except through the representative of employees under s. 27A, to appear through any person in certain proceedings mentioned in s. 33, but this again is subject to provisos, with the first of which we are not concerned here. The second proviso lays down that no employee shall be entitled to appear through any person in any proceeding under the Act in which the Representative Union has appeared as the representative of employees. This proviso again gives a special position to the Representative Union out of the six classes of representatives of employees provided in s. 30 and makes it clear that though an employee may appear in certain proceedings specified in s. 33 through any person in spite of s. 27A, he cannot do so where a Representative Union has appeared as the representative of employees. Here again the position is the same as in s. 32; if a representative of employees other than a Representative Union has appeared in the proceeding the employee can also appear through any person in the proceedings mentioned in s. 33; but he cannot do so where the representative of employees which has appeared even in proceedings under s. 33 is the Representative Union.

The result therefore of taking ss. 27A, 32 and 33 together is that s. 27A first places a complete ban on the appearance of an employee in proceedings under the Act once it has commenced except through the representative of employees. But there are two exceptions to this ban contained in ss. 32 and 33. Section 32 is concerned with all proceedings before the authorities and gives power

to the authorities under the Act to permit an employee himself to appear even though a representative of employees may have appeared but this permission cannot be granted where the representative Union has appeared as a representative of employees. Section 33 which is the other exception allows an employee to appear through any person in certain proceedings only even though a representative of employees might have appeared; but here again it is subject to this that no one else, not even the employee who might have made the application, will have the right to appear if a Representative Union has put in appearance as the representative of employees. It is quite clear therefore that the scheme of the Act is that where a Representative Union appears in any proceeding under the Act, no one else can be allowed to appear not even the employee at whose instance the proceedings might have begun under s. 42 (4). But where the appearance is by any representative of employees other than a Representative Union authorities under s. 32 can permit the employee to appear himself in all proceedings before them and further the employee is entitled to appear by any person in certain proceedings specified in s. 33. But whenever the Representative Union has made an appearance, even the employee cannot appear in any proceeding under the Act and the representation must be confined only to the Representative Union. The complete ban therefore laid by s. 27A on representation otherwise than through a representative of employees remains complete where the representative of employees is the Representative Union that has appeared ; but if the representative of employees that has appeared is other than the Representative Union then ss. 32 and 33 provide for exceptions with which we have already dealt.

1962

Girja Shankar Kashi Ram
v.
The Gujarat Spinning & Weaving Co. Ltd.

Wanchoo J.

There can therefore be no escape from the conclusion that the Act plainly intends that where the Representative Union appears in any proceeding under the Act even though that proceeding might have commenced by an employee under s. 42 (4) of the Act, the Representative Union alone can represent the employee and the employee cannot appear or act in such proceeding.

In this view of the matter the appeal must fail and is hereby dismissed. In the circumstances we pass no order as to costs.

Appeal dismissed.

1962

January 31.

THE COMMISSIONER OF INCOME-TAX BOMBAY

v.

MANILAL DHANJI, BOMBAY

(S.K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income Tax—Trust created in favour of minor child—No benefit accruing to minor in accounting year—Whether income from trust taxable as income of assessee—Trust by assessees father—Assessee directed to use income for benefit of himself, his wife and children—Whether income taxable as income of assessee—Indian Income-tax Act 1922 (*XI of* 1922) *ss.* 16(3) 41(*1*)—*Indian Trusts Act*, 1882 (*II of* 1882) *s. 8.*

In 1953 the assessee created a trust in respect of a sum of money and provided that the interest on that amount was to be accumulated and added to the corpus and that his minor daughter C was to receive the income from the corpus increased by the addition of interest when she attained the age of 18 years. In the relevant account year, when C was still a minor, the income derived from the trust fund was Rs. 410 Earlier in 1941, the assessee's father had created a trust in respect of certain shares and money directing the trustees to pay the net interest and income thereof to the assessee "for the maintenance of himself and his wife and for the maintenance, education and benefit of all his children till his death". In the relevant account year a sum of Rs. 14,170 accrued as income in the hands of the assessee from the said trust funds,