THE TATA IRON AND STEEL CO. LTD.

v.

D. R. SINGH

March 19, 1965

[P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO AND V. RAMASWAMI, JJ.]

Industrial Disputes Act, 1947 (14 of 1947), *s. 33—Application—Request to Tribunal to consider whether workman—Refusal—Propriety of.*

Because certain industrial disputes were pending before the Industrial Tribunal at the relevant time between the appellant and its employees, the appellant filed an application under s. 33(2) (b) asking for approval of action which it proposed to take against its employee—the respondent. The appellant urged that this application was made as a matter of abundant caution and it wanted the Tribunal to consider the question as to whether the respondent was a workman concerned in the relevant industrial dispute at all before dealing with the merits of the application. The Tribunal, being of the view that if the appellant thought that s. 33 did not apply, it should withdraw the application and take the consequences, dealt with the merits of the application. In appeal by special leave:

HELD: The Tribunal was in error in not considering the preliminary point raised by the appellant that the respondent was not a workman concerned with the main industrial dispute and as such the application made by it was unnecessary. [431E]

It is plain that in a situation like the present, where judicial decisions differed on the construction of the words "workman concerned in such dispute", even if the appellant took the view that the workman against whom it was taking action was not a workman concerned with the main industrial disputes, it would be justified in refusing to take the risk of deciding the said point for itself. It would be legitimate for an employer to make an application under s. 33 without prejudice to his case that s. 33 did not apply. [431D-E]

Case law referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 423 of 1964.

Appeal by special leave from the order dated October 5, 1962 of the Central Government Industrial Tribunal at Dhanbad in Application No. 53 of 1961 in Reference Nos. 45, 56, 63 and 65 of 1961.

S. V. Gupte, Solicitor-General and *I. N. Shroff*, for the appellant.

Jitendra Sharma and *Janardan Sharma*, for the respondent.

The Judgment of the Court was delivered by

Gajendragadkar, C. J. This appeal raises a very short point for our decision. The appellant, the Tata Iron & Steel Co. Ltd.,

Jamadoba, filed an application under s. 33(2)(b) of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter called "the Act"), before the Central Government Industrial Tribunal, Dhanbad (hereinafter called "the Tribunal"), asking for its approval of the action which it proposed to take against its employee, the respondent D. R. Singh. This application was made by the appellant, because certain industrial disputes were pending at the relevant time between the appellant and its employees under References Nos. 45, 56, 63 and 65 of 1961. This application was opposed by the respondent who filed his written statement. At the hearing of the application, the appellant urged before the Tribunal that though it had made the present application as a matter of abundant caution, its case was that it was not necessary to apply under s. 32(2), because the respondent was not concerned with the industrial disputes which were pending between the appellant and its employees in the different References to which we have already referred. In other words, the appellant wanted the Tribunal to consider the question as to whether the respondent was a workman concerned in the relevant industrial disputes at all, before dealing with the merits of its application. The appellant's case was that one of the conditions precedent for the applicability of s. 33 is that the workman against whom the employer seeks to take action falling under s. 33(2), must be a workman concerned in the main industrial disputes; if he is not so concerned, s. 33(2) will not apply. In order to avoid any complications and with a view to save itself from the charge that it had contravened s. 33 of the Act, the appellant had no doubt made an application as a precautionary measure; that is why it wanted the Tribunal to consider its contention that s. 33 did not apply as a preliminary point. The Tribunal took the view that the appellant could not raise such a contention. It held that if the appellant thought that s. 33 did not apply, it should withdraw the application and take the consequences. On that view, it refused to entertain the plea raised by the appellant and proceeded to deal with the merits of the application. In the result, the Tribunal was not satisfied that a *prima facie* case had been made out for the dismissal of the respondent, and so, approval was not accorded to the action which the appellant wanted to take against the respondent and its application was accordingly dismissed. It is against this order that the appellant has come to this Court by special leave.

The learned Solicitor-General for the appellant contends, and we think rightly, that the Tribunal was in error in not dealing with the preliminary point as to whether s. 33 applied to the facts of this case. It is plain that in a situation like the present, even if the appellant took the view that the workman against whom it was taking action was not a workman concerned with the main industrial disputes, it would be justified in refusing to take the risk of deciding the said point for itself. It would be legitimate for an employer like the appellant to make an application under s. 33, without prejudice to his case that s. 33 did not apply. The question

A about the construction of the words "a workman concerned in such dispute" which occur in s. 33(1) and (2) has been the subject matter of judicial decisions and somewhat inconsistent views had been taken by different High Courts on this point. Some High Courts canstrued the said words in a narrow way, *vide New Jehangir Vakil Mills Ltd., Bhavnagar* v. *N. L. Vyas & Ors.*,(1) while others B put a broader construction on them, *vide Eastern Plywood Manufacturing Company Ltd* v. *Eastern Plywood Manufacturing Workers' Union*(2). *Newton Studios Ltd.* v. *Ethirajulu (T. R.) & Others*(3), and *Andhra Scientific Company Ltd.* v. *Seshagiri Rao (A.)*.(4). This problem was ultimately resolved by this Court in its two recent decisions, viz., *New India Motors (Private) Ltd.* v. C *Morris (K.T.)*(5) and *Digwadih Colliery* v. *Ramji Singh*(6). In this latter case this Court considered the conflicting judicial decisions rendered by the different High Courts and has approved of the broader construction of the words "workmen concerned in such dispute". Where judicial decisions differed on the construction of the words "workmen concerned in such dispute", it would be idle D and unreasonable to suggest that the employer should make up his mind whether s. 33 applies or not, and if he thinks that s. 33 does not apply, he need not make the application; on the other hand, if he thinks that s. 33 applies, he should make an application, but then he cannot be permitted to urge that the application is unnecessary. Such a view is, in our opinion, wholly illogical and unsatisfac- E tory. Therefore, we must hold that the Tribunal was in error in not considering the preliminary point raised by the appellant that the respondent was not a workman concerned with the main industrial disputes and as such, the application made by it was unnecessary.

That raises the question as to the course that we should adopt in dealing with the merits of the present appeal. Logically, it would F be necessary to make a finding on the preliminary point raised by the appellant before the merits are considered, because if the appellant is right in contending that the respondent is not a "workman concerned with such disputes" within the meaning of s. 32(2), the application would be unnecessary and there would be no jurisdiction in the Tribunal either to accord or to refuse approval G to the action proposed to be taken by the appellant against the respondent. In the present case, however, we do not propose to adopt such a course. The order terminating the services of the respondent was passed on December 4, 1961 and it was to take effect from December 9, 1961. The Award was pronounced by the Tribunal on October 5, 1962, and when the appeal has come for final disposal H before us, more than three years have elapsed since the date of dismissal of the respondent. The learned Solicitor-General fairly conceded that the appellant has come to this Court not so much to enforce its order of dismissal against the respondent, as to have a

(1) [1958] II LLJ 575.
(2) [1952] I LLJ 628.
(3) [1958] I LLJ 63.
(4) [1959] II LLJ 717.
(5) [1960] I LLJ 551.
(6) [1964] II LLJ 143.

decision from this Court on the point of law raised by it before the Tribunal. Accordingly, we have decided that point in favour of the appellant; but having regard to the long passage of time between the date of the impugned order and the date when we are pronouncing our judgment in the present appeal, we think it would be inexpedient and unjust to send the matter back to the Tribunal with a direction that it should decide the preliminary point raised by the appellant as to whether the respondent is a "workman concerned in such disputes" within the meaning of s. 33(2) of the Act. That is why though we have reversed the finding of the Tribunal on the preliminary point, we do not propose to give this litigation any further lease of life.

In the result, without examining the merits of the findings recorded by the Tribunal for not according approval to the dismissal of the respondent, we direct that the appeal fails and is dismissed. There would be no order as to costs.

Appeal dismissed.