

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT APPEAL No.998 of 2007

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% 01.05.2015

Abdul Latheef and another.

...Appellants

vs.

\$ Coromandel Fertilizers Limited,

And others.

... Respondents

!Counsel for the Appellants : Sri A.Satya Prasad

Learned Senior Counsel

^Counsel for the Respondents : Sri C.R.Sridharan

Learned Senior Counsel

<Gist :

>Head Note :

? Cases referred

1. (2001) 7 SCC 1
2. 2015 SCC Online SC 363
3. (1995) 5 SCC 27
4. AIR 1960 SC 1328
5. (1985) 2 SCC 136
6. AIR 1963 SC 318
7. 1970 (1) SCC 225
8. (1975) 4 SCC 838
9. 1962 Supp (3) SCR 589
10. AIR 1963 AP 223
11. 1966 (2) ALT 159
12. (1995) 5 SCC 75
13. (2007) 1 SCC 610

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JUDGMENT: (per the Hon'ble Sri Justice A.Ramalingeswara Rao)

This Writ Appeal arises out of an order passed by the learned single Judge in W.P.No.9595 of 1998 dated 12.10.2007.

2. The short but important question of law raised in this Writ Appeal is whether a reference under Section 12 (5) of the Industrial Disputes Act, 1947 (for short, the Act) can be made at the instance of two workmen without intervention of the Union. The learned single Judge held against the workmen.

3. The case of the workmen, who are the appellants herein, is that they have been working as Pump Operator and Electrician respectively in the respondent company. The respondent company, in order to meet its daily requirements of water, sunk infiltration bore wells and established a plant under the control of its utilities department at a place six kilometres away from the factory. The services of the appellants were engaged for maintenance of the said water plant. The first appellant was appointed on 10.09.1984, whereas the second appellant was appointed on 03.12.1982. Their further case is that their work was of perennial nature and they were provided with bachelor's accommodation at the plant site and were required to stay all the 24 hours of the day and throughout the year without weekly off or holidays or earned leave or casual leave or sick leave or

substitute, etc. They were also supplied with walkie talkie to contact with the Deputy Manager of the utilities plant. They were assigned Provident Fund numbers and were also covered by Employee State Insurance Scheme. Though the other employees who were working in the company and discharging identical duties were getting higher wages, the appellants were not being paid those wages. Their further case is that in order to avoid payment of wages on par with the regular staff, the respondent employed a contractor and using their services through the said contractor. While so, one E.Gurunadha Rao, styling himself as a contractor, issued a notice of one month to the appellants on 30.10.1991 indicating the notice for termination of their services. In fact, the said E.Gurunatha Rao had no connection with the appellants, as they were not appointed by him. However, he was bringing wage packets of the appellants once in a month or once in two months along with officers of the respondent company. Prior to the said contractor, some other contractors were also doing

like that. However, there is no employer and employee relationship between them and the said contractors. After receipt of the said notice, the appellants raised an industrial dispute before the Deputy Commissioner of Labour, Visakhapatnam. Pending the dispute, the appellants filed W.P.No.15434 of 1991 and the same was disposed of on 29.11.1991 at the admission stage. It is their further case that though the Government issued G.O.Ms.No.375, Labour, Employment, Nutrition & Technical Education (Lab.II) Department, dated 05.06.1981, prohibiting employment of contract labour in the jobs performed by the appellants, the respondent has been continuing the same. They rendered continuous service of more than one year preceding the date of termination and termination of their services is illegal. Accordingly, when the conciliation failed, on reference by the Government in G.O.Rt.No.649, dated 06.04.1993, the reference was registered as I.D.No.123 of 1995 by the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short, the Labour Court).

4. The respondent filed a counter stating that the appellants were never their employees and their work did not fall within the 3 categories of work for which the engagement of contract labour was prohibited in G.O.Ms.No.375 dated 05.06.1981. It is also their case that the water pumping operations do not form part of the factory. The jobs alleged to have been performed by the appellants at the site were not “electrical wiring and winding jobs, casual odd jobs or canteen operations” which were prohibited under the said Government Order. The appellants are the employees of the contractor and they are not entitled for any relief against the respondent. The infiltration bore wells, where the appellants were claiming to be employed, were installed only after 24.05.1988 and the first appellant was appointed by a contractor, Swaran Singh and the second appellant by another contractor, B.Chinna Rao. The appellants continued to work as the employees of the contractors even though the contractors were changed. The appellants became the members of the Employees Provident Fund and the Employees State Insurance in view of the legal obligation cast on the contractors.

5. The Labour Court framed 8 points for consideration. On behalf of the

workmen, W.Ws.1 to 3 were examined and Exs.W.1 to W.32 were marked. On behalf of the management, M.Ws.1 to 5 were examined and documents Exs.M.1 to M.240 were marked. Exs.X.1 and X.2 were also marked. The Labour Court, by its Award dated 24.01.1998, directed the respondent to absorb the appellants as regular employees with all the concomitant benefits as their demand forming the subject matter of this reference is justified.

6. Challenging the said Award of the Labour Court, the management filed W.P.No.9595 of 1998 and the learned single Judge, by order dated 12.10.2007, allowed the Writ Petition by holding that the findings arrived at by the Labour Court that two individuals are an association between themselves, as such, the dispute raised by them is an industrial dispute and the Government had rightly referred the same to it and it can entertain the same and adjudicate upon are not correct. Accordingly, the learned single Judge set aside the Award and gave liberty to the appellants to workout their remedies as available under law. He did not record the findings on other issues. Challenging the same, the present Writ Appeal was filed.

7. In view of the above facts, the only point that arises for consideration is whether the reference of the dispute by the Government at the instance of the appellants (two workmen) is correct and valid.

8. Sri A.Satya Prasad, learned Senior Counsel appearing for the appellants, contended that the employment where the appellants were discharging their duties was prohibited by G.O.Ms.No.375 dated 05.06.1981 and in view of their continuous work, they are entitled for regularisation of their services.

9. The learned Senior Counsel for the appellants contended that it is not necessary that a union should espouse the cause of a workman and if the workmen are more than one, it is sufficient for making a reference and the Trade Union Act gives emphasis on workmen and not on the union. He relied on **Steel Authority of India Ltd. v. National Union Waterfront Workers, ONGC Ltd. v. Petroleum Coal Labour Union, Gujrat Electricity Board v. Hind**

Mazdoor Sabha and Newspapers Ltd., Allahabad v. U.P.State Industrial Tribunal.

10. Sri C.R.Sridharan, learned Senior Counsel appearing for the respondent, on the other hand, contended that the view taken by the Labour Court was not correct and the learned single Judge considered various decisions and came to the conclusion that the reference by the Government at the instance of two workmen was bad and since the said finding was based on the decisions of the Supreme Court, no interference with the order of the learned single Judge is warranted. He submitted that no relationship of employer and employee existed between the appellants and the respondent as they were admittedly employed through a contractor and hence reference at their instance cannot be called as an industrial dispute and relied on **Workmen of FCI v. Food Corporation of India** for his submissions. He also submitted that, after failure of consideration, the appellants should have resorted to the provisions under Section 2-A of the Act instead of Government invoking Section 12(5) of the Act. He relied on **Bombay Union of Journalists v. The Hindu, W.I.Match Co. v. W.I.Match Co. Workers Union, State of Punjab v. Gandhara Transport Co., Indian Cable Co. Ltd. v. Workmen, Employers of Express Newspapers (Private) Ltd., Madras v. Labour Court, Andhra Pradesh, Hyderabad, Tirupathi Cotton Mills Ltd. v. Labour Court**, a single Judge decision of this Court in W.P.No.586 of 1962 dated 07.10.1963, **Rajasthan State Road Transport Corporation v. Krishna Kant, Bharat Heavy Electricals Ltd. v. Anil** and a Division Bench judgment of this Court in W.A.No.516 of 2007 dated 25.06.2007. He also submitted that since the reference was wrongly made by the Government, the Award also should go. He also submitted that if it is the case of the appellants that they were employed by a contractor in respect of the prohibited categories, prohibited under G.O.Ms.No.375 dated 05.06.1981, their remedy was different and they should not have resorted to the provisions of the Act.

11. The case of the appellants is that they have been working since 10.09.1984 and 03.12.1982 as Pump Operator and Electrician respectively attending to the

maintenance of infiltration bore wells located at 6 kilometres away from the factory. The case of the respondent is that infiltration bore wells plant was established after 24.05.1988 only and hence the appellants cannot claim that they have been employed prior to that date, even assuming that they were working as such. The payment of wages through a contractor was not disputed either by the appellants or by the respondent. As per the case of the workmen when the contractor issued a notice on 30.10.1991, the appellants raised a dispute before the Deputy Commissioner of Labour, Visakhapatnam and pending the same, they filed W.P.No.15434 of 1991. In the said Writ Petition, the contractor was made a party, fourth respondent. This Court, by order dated 29.11.1991, disposed of the Writ Petition at the admission stage as follows:

“ Petitioners claim to be the workmen effectively under the 3rd respondent, but were engaged through the 4th respondent, an independent contractor. That contractor has terminated their service by notice dated 30-10-1991. The termination is to be effective from 4-12-1991. Petitioners submit that the contract labour system having been abolished, they are entitled to be treated as workmen of the 3rd respondent. Petitioners have challenged the termination of their service by filing representations before the Deputy Commissioner of Labour, 2nd respondent, on 21-10-1991 and 5-11-1991. Petitioners submit that the 2nd respondent has not initiated conciliation proceedings and as a consequence of the delay on the part of the 2nd respondent, they are likely to be thrown out of service. It is in these circumstances that the petitioners seek issue of a writ of mandamus directing the 1st respondent to refer to the Industrial Tribunal, Visakhapatnam for adjudication the dispute between the petitioners and respondents 3 and with regard to their absorption in the direct employment of the 3rd respondent.

2. Government Pleader, Social Welfare, takes notices for respondents 1 and 2.

3. Under Section 12 of the Industrial Disputes Act ('the Act', for short), the conciliation officer appointed under the Act has to initiate conciliation proceedings where any industrial dispute exist or is apprehended. He shall try to bring about settlement without delay. He is also obligated to investigate the dispute and all matters affecting the merits and the right settlement thereof. He is also obligated to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. In case all such efforts fail, he has to submit a

report to the appropriate Government of the failure of conciliation proceedings. On receipt of the report, it is for the appropriate Government, in this case State Government, to consider whether there is a case for reference to a Board Labour Court, Tribunal or National Tribunal and refer the matter to such Board, Court or Tribunal as the case may be.

4. The delay on the part of the 2nd respondent in initiating conciliation proceedings is not understandable. I, therefore, direct the 2nd respondent to initiate conciliation proceedings immediately and terminate the same in accordance with the obligation, which he has under the statute, either by inducing the parties to arrive at a settlement or by submitting a report of failure of conciliation. On receipt of such report, the State Government shall consider the same and pass appropriate order as are called for under Section 12(5) of the Act. In the meantime, it is open to the petitioners to move the Labour Court for necessary orders under Section 2-A of the Act.

5. Writ petition is disposed of with the above direction. No costs.”

12. After failure of the conciliation, the Government issued G.O.Rt.No.649, dated 06.04.1993, referring the following dispute between the appellants and the respondent to the Labour Court.

“Whether the demand of the two workman 1. Abdul Latheef, 2) Y.Venkateswarlu to absorb them as regular employees of the company by the management of Coromandel Fertilizers Limited, Visakhapatnam in view of the G.O.Ms.No.375, dt.5.6.81 is justified?

If so, to what relief the workmen are entitled?”

13. Though the said two issues were referred, the Labour Court framed as many as 8 points for consideration and one of the points is “whether the reference was valid and whether the Tribunal can go into that question at all”. While dealing with the said point, the Labour Court held that two workmen can very well be recognised as an association and in any event it cannot go into the validity of the reference. While answering the said point in favour of the workmen, the Labour Court held as follows:

“16) Point No.7: The learned counsel for the management took an objection to the very validity of this reference. He urged this basing upon two grounds. His first ground is that the tribunal has no jurisdiction to go

beyond the reference. In this connection here relied upon 3 decisions, 1979 (38) FLR page 38, 1981-3 Supreme Court Cases page 451 and 1994(2) CLR 299. There could absolutely be no quarrel with the proposition laid down in those celebrated cases. But one nullity or two nullities coming in the way of adjudicating the matter, they can as well be held as such to brush them aside and still remain within the four corners of the reference. That is what is being done in this case. He next submitted that the very reference was bad as the dispute was not espoused by any trade union. For that there is a complete answer in a Supreme Court Judgment relied upon by the workman in News Papers Limited, Allahabad and State Industrial Tribunal, UP. and Others 1960-2 LLJ 37 SC. The Hon'ble Supreme Court categorically held that the cause of a workman can be taken up by an unregistered association of workmen employed in the same establishment. Here we have two workmen and the two workmen can very well be recognised as an association because they associated in between themselves to make a common cause against the management. In that view of the matter, the objection raised is untenable. The third point raised by the learned counsel for the management to assail the validity of the reference, is that the management was not a party to the writ petition and therefore the reference that was made in pursuance of a direction in such a writ petition that was ordered at the admission stage itself cannot be held as a competent reference. I think there is absolutely no force in this submission.

17) In any view of the matter, I feel that it is not competent for this court to go into the validity of the reference. As laid down in Supreme Court 516 para 24 right column the tribunal derives its jurisdiction by the order of reference and not on the determination of a jurisdictional fact. So the validity of reference cannot be equated with any other jurisdictional fact. In this connection another decision of the Supreme Court in the State of Madras Vs. P.Saradhi (1953-I) LLJ 174 referred to in another case 1959-I LLJ page 544 also makes it clear that the court cannot canvass (comment or discuss) the order of reference though it can very well examine whether the subject matter of the reference is really an industrial dispute or not."

In view of the above finding recorded by the Labour Court on the basis of the pleadings and evidence of the parties, it is necessary to examine the provisions of the Industrial Disputes Act and Trade Union Act.

14. Sections 2(k), 2-A and 12(5) of the Act are relevant and they read as follows:

"2 (k) "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or

between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:- Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute.

(2) Notwithstanding anything in Section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of the Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute.

12. Duties of conciliation officers.-

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5. If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, ² Labour Court, Tribunal or National Tribunal,] it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

15. "Trade Union" is defined in the Trade Unions Act, 1926 and it reads as follows:

"2 (h) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen,

or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Provided that this Act shall not affect—

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.”

16. In view of the above rival contentions and in view of the Award, which was set aside by the learned single Judge, the reliance on the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, Act of 1970), loses its significance though they have got some relevance to the facts of the present case. Here we are not examining the factual aspect of the matter, but our examination is confined only to the reference made by the Government at the instance of two workmen of a dispute relating to them to the Labour Court in exercise of the powers under Section 12 (5) of the Act. Hence, the reliance placed by the learned Senior Counsel for the appellants in **Steel Authority of India Ltd's** case (supra), **ONGC Ltd's** case (supra) and **Gujrat Electricity Board's** case (supra) need not be dealt with, as they relate to the provisions of the Act of 1970. The only decision that has to be examined is **Newspapers Ltd., Allahabad's** case (supra). The facts in the said case are different. The Newspapers Limited, which is a publisher of 3 newspapers, retrenched the services of respondents 3 to 5 therein. Their dispute was referred by the Government, whereupon the Labour Court passed an Award in favour of the retrenched employees on the ground that the management has not followed the principles of “first come last go”. The appeal against the said Award also failed. Pending the appeal, the junior most workmen were also removed and they filed a Writ Petition challenging the Award of reinstatement of their seniors. The management also filed a Writ Petition challenging the appellate order. Both the Writ Petitions were dismissed by a learned single Judge. Both went in appeal

and the Division Bench dismissed both the appeals. The management carried the matter to the Supreme Court. Before the Supreme Court, the management raised the point that the dispute does not come within the meaning of industrial dispute as it was not sponsored either by any union or even by a body of persons. The Supreme Court negatived the said contention in view of the finding recorded by both the Courts below, who held that there was an association known as Leader Press Karmachari Sangh and the cause of the workmen was sponsored by the said association. When a further point was raised stating that the said association was an unregistered one, the said point was also negatived and it was held that it is not necessary that it should be a registered body, but that body of workmen either acting through their union or otherwise should sponsor workmen's case. Hence, the ratio laid down in the said case is that even in respect of three workmen who were before the Supreme Court as respondents in view of the espousal of their case by an unregistered union, it was held that the reference made by the Government was valid. In the instant case, there is neither a registered trade union or an unregistered trade union or a body of persons, who espoused the cause of the appellants herein. Hence, the decision relied on by the learned Senior Counsel for the appellants is clearly distinguishable and does not apply to the facts of the present case.

17. Even after brushing aside the case of the appellants based on the above decision, on the facts of that case, we have to independently examine whether the reference by the Government at the instance of two workmen in the instant case was valid or not. The learned single Judge disposed of W.P.No.15434 of 1991 dated 29.11.1991 at the admission stage merely reiterating the procedure envisaged in the provisions of the Act and in the last line of the said order, he made it clear to the appellants to move the Labour Court for necessary orders under Section 2-A of the Act. In spite of the same, the appellants did not take any action. After a reference by the Government, the matter was taken up by the Labour Court which dealt with the point as aforesaid. It mainly relied on the **Newspapers Limited's** case (supra) for coming to the said conclusion and we have examined the said case as above. Hence, we are of the opinion that the

Labour Court came to the wrong conclusion based on misreading of the decision of the Supreme Court in **Newspapers Limited's** case (supra).

18. Now we consider the decisions cited on behalf of the respondent. In **Food Corporation of India's** case (supra), the relationship between the workmen and the employer was considered in the light of introduction of system of direct payment by employer by abolishing contract labour system and it was held that consequent to the introduction of the said system, the workmen acquired status of direct workmen of the employer and reintroduction of contract labour system after its abolition and introduction of system of direct payment by employer was held bad and it amounts to termination of their services which would be invalid in the absence of compliance with law.

19. In **Bombay Union of Journalists's** case (supra), it was held that an individual dispute cannot be regarded as an industrial dispute within the meaning of Section 2(k) of the Act. The Supreme Court held as follows:

“7. The terms of reference by the Government of Bombay under Section 12(2) indicate that the dispute was primarily between The Hindu, Bombay and the appellant – a single employee relating to his individual claim in which the other employees of The Hindu, Bombay, were not directly interested. [In Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan](#) {(1956) SCR 956}, this Court after setting out the three possible views on the question whether a dispute by an individual workman may be regarded as an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 observed,

“The preponderance of judicial opinion is clearly in favour of the last of the three views, stated above (i.e. a dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen and there is considerable reason behind it. Notwithstanding that the language of Section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen.”

This view was reiterated in *Newspapers Ltd. v. The State Industrial Tribunal*. U. P., {(1957) SCR 754}. Therefore, the applicability of the Industrial Disputes Act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make common cause with individual workman.

8. The dispute, in the present case, being prima facie, an individual dispute, in order that it may become an industrial dispute it had to be established that it had been taken up by the Union of employees of The Hindu, Bombay, or by an appreciable number of employees of The Hindu, Bombay. Counsel for the appellant contended that the dispute was supported by the Bombay Union of Journalists of which Salivateeswaran was a member and that, in any event, it was supported by Venkateswaran and Tiwari, who were the only other employees in this establishment. He also contended that in any event the dispute having been taken up by the Indian Federation of Working Journalists after it was referred to the Tribunal, it had become an industrial dispute.”

When a resolution passed by the Indian Federation Working Journalists, after reference, supporting the case of the workmen was produced before the Supreme Court, the Supreme Court held that if the dispute was in its inception an individual dispute and continued to be such till the date of the reference by the Government of Bombay, it could not be converted into an industrial dispute, by support subsequent to the reference even of workmen interested in the dispute. It was held that the subsequent withdrawal of support will not take away the jurisdiction of an Industrial Tribunal. Hence, it is clear that as on the date of reference, it should be a dispute involving a group of workmen or espoused by the Union. The said decision was followed in **W.I.Match Co.’s** case (supra).

21. In **Gandhara Transport Co.’s** case (supra), it was held that espousal of the cause of dismissed workmen by only one-twelfth of the employees was not an espousal by an appreciable or substantial body of workmen. The Constitution Bench of the Supreme Court in **Indian Cable Co. Ltd.’s** case (supra), held as follows:

“ (3) It is next contended for the appellant that the disputes raised by the respondent-workmen were not industrial disputes as defined in the Act but merely individual disputes, and that in consequence the Government had no

power to them to a tribunal under Section 10 of the Act. Section 2 (k) defines industrial dispute as meaning "any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person." According to the appellant a dispute can be an industrial dispute within this definition only when it is raised by workmen and not merely by one of them. The respondents, on the other hand, contend that on its true construction, s. 2(k) will comprehend even a dispute between an employer and a single workman, and the observations in R v. National Arbitration Tribunal {(1951) 2 AIR 828, 831} are relied on as supporting that position. There the question discussed was whether the expression "dispute or difference between employers and workmen" in Article 7 of the Conditions of Employment and National Arbitration Order, 1940, would cover a dispute between an employer and one workman, and Lord Goddard, C. J., answered it in the affirmative, basing himself on s. 1 (1) of the Interpretation Act, 1889, which provides that words in the plural shall include the singular. The argument is that, having regard to the rule of interpretation embodied in s. 13 (2) of the General Clauses Act, 1897, the ratio of this decision is equally applicable to the construction of Section 2(k) and that it must be held to include a dispute between an employer and a single workman.

This question however is not *res integra*. It has been considered in a number of cases in this Court and decided adversely to the present contention of the respondents. [In Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan](#) {(1956) SCR 956} the point in controversy was whether an individual dispute was an industrial dispute within Section 2 (k) of the Act. After stating that three divergent views had been expressed on the question and that the preponderance of judicial opinion was in favour of the view that a dispute between an employer and a single employee could not per se be an industrial dispute but that it might become one if it was taken up by a Union or a number of workmen, this Court observed:

"there is considerable reason behind it. Notwithstanding that the language of s. 2 (k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen." (p. 964).

This view was adopted in [Newspapers Ltd. v. The State Industrial Tribunal, U. P.](#) {(1957) SCR 754} where the point arose directly for decision. Discussing the meaning of the expression "industrial dispute" in the U.P. Industrial Disputes Act which is the same as Section 2(k) of the Act, this Court observed that though on the rule of construction laid down in Section 13(2) of the General Clauses Act, 1897, the plural would include the singular, in the context of the, legislation, the word "workmen" did not include "a workman", and that a dispute between an employer and a single workman did not fall within the definition of industrial dispute. Both these decisions were followed by this Court in *Bombay Union of Journalists v. "Hindu"*, Bombay {(1961) 2 LLJ 436} and the law was thus stated:-

"Therefore, the applicability of the Industrial Disputes Act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded,

unless the workmen as a body or a considerable section of them make common cause with the individual workman". (p. 439).

The respondents seek to distinguish these decisions on the ground that in all of them the dispute was raised by a single workman, whereas in the present case six of the workmen have joined in making a demand. They urge that a dispute ceases to be an individual dispute and becomes an industrial dispute when more than one workman, joins in it. It is true that in the decisions cited above the dispute was raised by a single workman. But the reasons on which these decisions rest, viz., that the policy behind the Industrial Disputes Act is to protect workmen as a class against, unfair labour practices and not to enact special provisions for enforcing the claims of individual workmen, would equally militate against the contention that a dispute which is essentially individual in character would become an industrial dispute merely because two persons have joined in it. What imparts to the dispute of a workman the character of industrial dispute is that it affects the rights of the workmen as a That is why the above decision lay down that the, dispute of a single workman would become an industrial dispute when it is sponsored by a Union or by a considerable number of workmen; for it (,an then be taken that it does affect them as a class. No hard and fast rule can laid down as to the number of workmen whose association will convert an individual into an industrial dispute. That must depend on the facts of each case, and the nature of the dispute. The group might even be a minority, as held by this Court in [Associated Cement Companies Ltd. v. Their Workmen](#) {(1960) 3 SCR 157}. But it must be such as to lead to an inference that the dispute is one which affects workmen as a class."

22. A Division Bench of this Court in **Employers of Express Newspapers (Private) Ltd.**'s case (supra), considered the issue and held that the dispute between an employee and employer is an individual dispute and it cannot be branded as an industrial dispute and they have to be enforced before ordinary Courts. The industrial dispute mentioned in Section 2(k) of the Act affects interest of large group of workmen. In the said case also, two workmen were involved. However, in view of the subsequent amendment made to the Act by introducing Section 2-A, the recourse of the individual workman to approach the other Courts is avoided and they were given liberty to approach the Labour Court under the said provision. In **Tirupathi Cotton Mills Ltd.**'s case (supra), a learned single Judge of this Court considered the competency of the Labour Court under Section 2(k) of the Act in respect of an individual workman. The learned single Judge held as follows:

"9. In *Visalskhi Mills, Ltd v. Labour Court, Madurai and Anr.* 1962-I L.L.J.93, the Madras High Court, on a review of the various earlier full age summarised the position of law thus:

It is new well settled that as individual dispute in order to be an industrial dispute must have the collective support from a considerable or

substantial number of workmen in the establishment.

What a substantial or considerable section would be in a given case would, of course; depend up on the particular facts.

That an individual dispute is supported by other workman will also have to be established either in the form of a resolution of a union of which the workman may be members or of the workmen themselves who support the dispute, or in any other manner.

From the mere fact that a general union at where instance an individual workmen is referred for adjudication; has on its rolls a few of the workmen in the establishment as its members, it could not be assumed that the individual dispute was converted into a collective dispute; In such a case not only should it be proved that the workmen who are members of the general union formed a substantial or a considerable section of the workmen of the particular mills but also that in order to vest the dispute with the character of an industrial dispute, these members participated in or acted together and arrived at an understanding either by a resolution or by other means, and collectively supported on the date of the reference the demand or the cause of an individual dispute.

That with respect correctly represents the position as established by the authorities on the subject.”

23. A reading of the above cases clearly shows that unless an industrial dispute involving a class of workmen was raised by a body of workmen whether registered or unregistered, the Labour Court is precluded from considering the reference. In this case, though a reference was made in respect of two workmen, the issue was taken up by the Labour court and an Award was passed. The Award was rightly set aside by the learned single Judge. The appellants, though were given an opportunity by the learned single Judge in W.P.No.15434 of 1991, did not avail the remedy under Section 2-A of the Act and instead they pursued the proceedings before the Labour Court.

24. In view of the settled legal position, we are of the view that the Award passed by the Labour Court is unsustainable in law, the order of the learned single Judge does not warrant interference and accordingly we dismiss the appeal. Miscellaneous petitions, if any, pending in this Writ Appeal shall stand disposed of.

DILIP B.BHOSALE, J

A.RAMALINGESWARA RAO, J

Date: 01.05.2015

L.R.Copy to be marked: Yes.

B/o. TJMR