

Mathura Electric Supply Company ... vs State Of Uttar Pradesh And Ors. on 6 May, 1981

Equivalent citations: AIR1981SC1526, [1981(42)FLR386], 1981(1)SCALE809, (1981)3SCC623, 1981(13)UJ441(SC), AIR 1981 SUPREME COURT 1526, 1981 ALL. L. J. 756, 1981 UJ (SC) 441, 1981 SCC (L&S) 557, (1981) 42 FACLR 386, (1981) 2 LAB LN 10, (1981) 2 SERVLR 619, 1981 (3) SCC 623

Bench: A.C. Gupta, D.A. Desai

JUDGMENT

1. In this appeal by special leave the only question for determination is whether the dispute referred by the Deputy Labour Commissioner, Uttar Pradesh, on May 17, 1958 to the Labour Court at Meerut under Section 4-K of the U.P. Industrial Disputes Act, 1947 was really an industrial dispute. The question arises on the following facts. The third respondent, Sumnera, (hereinafter referred to as the respondent) an employee of the appellant company, was dismissed from service on August 22, 1955. It appears that before the impugned order of reference was made to the Labour Court, the Government of Uttar Pradesh had by an order dated January 7, 1957 referred the dispute concerning the dismissal of respondent Sumnera to the Regional Conciliation Officer, Agra, for adjudication in exercise of powers conferred by Sections 3, 4 and 8 of the said Act. The opening words of that order were: "Whereas an industrial dispute...exist between the concern known as M/s. Mathura Electric Supply Co. Ltd., Mathura, and its workman Shri Sumnera...." The description of the dispute in this order as one between the company and an individual workman prompted the Company to file a writ petition in the Allahabad High Court challenging the validity of the reference. Thereafter the Government of Uttar Pradesh by an order made on April 15, 1957 amended the earlier order by substituting for the words "M/s. Mathura Electric Supply Co. Ltd., Mathura and its workman Shri Sumnera occurring in the earlier order, the words "M/s. Mathura Electric Supply Co. Ltd., Mathura and its workmen." Ultimately on, December 30, 1957 the State Government passed an order withdrawing the reference made to the Regional Conciliation Officer, Agra, which made the writ petition infructuous and it was accordingly dismissed. The impugned order of reference was made on May 17, 1958. The Labour Court, Meerut, made its award on September 30, 1958 in which it was held that Sumnera's dismissal was wrongful. The Labour Court directed that the workman should be reinstated without a break in service and paid all arrears of wages. The company filed a writ petition in the Allahabad High Court challenging the validity of this Award. A single Judge of the High Court did not accept the contention raised on behalf of the company that it was an individual dispute and agreeing with the finding of the Labour Court that this was an industrial dispute the learned Judge dismissed the writ petition. A Division Bench of the High Court dismissed the appeal preferred by the Company against the decision of the single Judge on the preliminary ground that the appeal was incompetent by reason of non-joinder of a necessary party, namely, the Electric Workers Union, Mathura. However, we heard counsel for both sides on the main question as to whether the dispute arising on the dismissal of the respondent was espoused by other workmen to

make it an industrial dispute.

2. The impugned order of reference dated May 17, 1958 describes the dispute as one existing between the "employers and the workmen of the concern known as M/s. Mathura Electric Supply Co. Ltd., Mathura". In support of the claim that this was an industrial dispute the respondent in his counter affidavit filed in the High Court annexed copies of two documents. One of these documents is a letter dated June 15, 1956 addressed by the Secretary of the Electric Workers Union, Mathura to Shri P. N. Bhargava, Vice-President of the Uttar Pradesh Indian National Trade Union Congress, Agra, saying that efforts should be made immediately to get the case of the respondents' dismissal referred for adjudication. By the other document which is dated November 15, 1956 the Secretary, Electric Workers Union, Agra authorised Shri P.N. Bhargava, Vice President, Uttar Pradesh Indian National Trade Union Congress, Agra branch, to represent the respondent's case "before the Conciliation Board, Adjudicator, Labour Tribunal or any other Tribunal in connection with the industrial dispute regarding the termination of his services or before any Government Officer in connection therewith." It was added that the respondent was a member of the aforesaid union.

3. On behalf of the appellant company the only point argued before us was that in the absence of any convincing evidence that a large number of workmen of the company espoused the cause of the respondent, the dispute remained an individual dispute and did not acquire the character of an industrial dispute. We have already referred to the letter of June 15, 1956 addressed by the Secretary of the Electric Workers Union, Mathura to the Vice-President of Indian National Trade Union Congress, Agra, and the document dated November 15, 1956 authorising the Vice-President to represent the respondent's case. Shri Ramjidas Gupta, President of Electric Workers Union, Mathura also filed an affidavit in the High Court praying that the Union be 30 added a party in the writ proceeding. This affidavit contains inter alia the following statements:

1. That the deponent is a President of the Electric Workers Union, Mathura which is a trade union registered by the Government of U.P. and recognised by the Mathura Electric Supply Company Limited.
2. That Shri Summera with regard to whom adjudication proceedings are pending before the Labour Court at Meerut and who is opposite party No. 3 in these writ proceedings is a member of the aforesaid Union.
3. That the said Union espoused the case of Shri Summera....
4. That in this writ proceeding it is necessary that the Union should be permitted to be made a party with a view to safeguard the interests of the workmen of the Mathura Electric Supply Co. Ltd., Mathura.

4. It appears that the learned single Judge of the High Court who dismissed the writ petition did not record any order on the prayers made in this affidavit. As stated already the Division Bench of the High Court that heard the appeal preferred by the company from the decision of the single Judge took the view that the Union was a necessary party to the proceeding and dismissed the appeal only

on the ground of non-joinder of a necessary party. Perhaps it was not right to dispose of the appeal on this preliminary ground but there is no doubt that the appeal was bound to fail on the main question as to whether the dispute in this case was an industrial dispute. The stand taken by the company before the Labour Court was that the respondent was not a member of the Union. The affidavit of the President of the Union states categorically that, respondent was a member of the Union, and that the Union had taken up the respondent's cause. Before us Mr. Malhotra contended that the said Union was not a Union of the establishment concerned and that unless it was proved that a large number of the workmen of this establishment were members of the said Union it was not possible to infer that an appreciable number of the workmen of the company supported the respondent converting an individual dispute into an industrial disputes. This point was not raised either before the Labour Court or in the High Court. Apart from that, the Labour Court found as a fact that a large number of workmen of the company did support the respondent' in the dispute arising out of the termination of his service. The Award of the Labour Court discloses that the respondent filed an affidavit in that court to the effect that the workmen were interested in his case. In support of this claim he attached to the affidavit an application signed by a large number of workmen of the establishment addressed to the President of the Electric Workers Union. It further appears from the Award that as a counter move an application was made on behalf of the company stating that the signatures of the workmen on the application accompanying the respondent's affidavit were not given by them voluntarily. The Labour Court refused to give any credence to the application filed by the company. The finding ultimately recorded by the Labour Court on this point was as follows:

In view of these facts I am inclined to believe that the workmen are interested in the case of Shri Summera... I consider that it is an industrial dispute and the Objection of the employers is set aside.

There is thus no merit in this appeal with is which is accordingly dismissed costs to respondent No. 3.