

**Simpson and Co. Ltd. Vs. State of Andhra Pradesh and ors.**

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**Court :** Andhra Pradesh

**Decided On :** Jan-22-1960

**Reported in :** (1960)ILLJ611AP

**Judge :** Seshachalapati, J.

**Appellant :** Simpson and Co. Ltd.

**Respondent :** State of Andhra Pradesh and ors.

**Judgement :**

ORDER

**Seshachalapati, J.**

1. This is a petition filed under Article 226 of the Constitution of India for the issue of a writ of prohibition or any other appropriate writ or order to interdict the further proceedings in pursuance of the notification in G.O. Ms. No. 60, Home (Labour-1), dated 6 January 1959, and the passing of the award in pursuance thereof.

2. The petitioner is a public limited liability company registered under the Indian Companies Act, 1913, and doing business under the name and style of Simpson & Co., Ltd., having its registered office at Madras and a branch in Secunderabad. The respondent 3 was employed in the service of the Secunderabad branch of Simpson & Co., as a salesman. For some alleged misconduct on the part of the respondent 3 the petitioner-company took action against him and terminated his

services. It is necessary for me to refer to the nature of the complaint against the respondent 3 or his defence thereto in this petition. There were certain conciliation proceedings and those having proved abortive, the Government of Andhra Pradesh, being satisfied that there was an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947, referred the matter for adjudication by the appropriate authority, the labour court of Hyderabad, The labour court registered the dispute as Case No. 2 of 1959. The respondent 3 workman filed a statement of claims. A notice was duly served upon the petitioner-company.

3. The company tried to get themselves represented by two gentlemen and also filed written statement in answer to the statement of claims filed by the workman. The labour court took the view that the representation of the petitioner-company in the case was not proper and as not being in terms of Section 36(2) of the Industrial Disputes Act and so set the Simpson & Co. ex parte and purported to decide the dispute.

4. It is at that stage that the present writ has been filed by the petitioner, Simpson & Co. On behalf of the petitioner three principal points have been raised:

(1) that the respondent 3 Sri Homi F. Major is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act;

(2) that even if the respondent 3 is a workman, the dispute in this case is between an individual workman and the management and such a dispute is not an industrial dispute within the meaning of Section 2(k) of the Act; and

(3) that the order of the tribunal setting aside petitioner-company ex parte, is not only opposed to principles of natural justice but is so obviously afflicted with a patent error of fact and law.

5. As regards the first two questions, I am of opinion that the petitioner cannot raise them in this Court at this stage in an application under Article 226 of the Constitution. Whether a particular person is a workman or not and whether, in the circumstances of a case, there is an industrial dispute or not especially when a

reference under Section 10(1)(c) has been made by the appropriate Government, are matters entirely for the labour court to consider and determine including such preliminary objections as to jurisdiction as the parties may choose to raise. I do not therefore propose to consider these two questions at all.

6. The only question that falls to be determined is whether the labour court was right in the circumstances of this case to set the petitioner ex parte.

7. It will be necessary to refer to a few facts. From the record forwarded to me by the labour court it is seen that the reference by the Government in G. O. Ms. No. 50 was made on 6 January 1959 and in pursuance of that the labour court registered Case No. 2 and issued a notice to the management of Simpson & Co., Ltd., Secunderabad, and the secretary to Andhra Pradesh Iron and Metal Workers' Union, Hyderabad, fixing a date of hearing to 17 January 1959. On that date the workman and his representative Sri K. Datta were present and Mr. Ramanathan, the assistant manager of the company, was also present. The latter did not produce any letter of authority for his appearance and only asked for time which was granted by the Court and the matter was posted to 19 January 1959. On that date one Mr. Mascarenhas also appeared on behalf of the management with a letter of authority signed by the manager of Secunderabad branch, who appeared to be Mr. Mascarenhas himself. The Court took the view that he must file his appointment order and as both sides asked for time, adjourned the case to 28 January 1959. On that date one Mr. Ramalinga Ayyar, a lawyer who is now in the whole-time employment of the petitioner Simpson & Co., Ltd., filed a letter of authority executed in favour of himself and Mr. Mascarenhas. The labour court thought that Mr. Mascarenhas did not produce his service agreement and that the case, therefore, should stand adjourned to 2 February 1959 and that the workman should be given Rs. 12 as a day-cost. On 2 February 1959 the petitioner-company was represented by Messrs. Ramalinga Ayyar and Mascarenhas in whose favour the director of the company executed a letter of authority. It is obvious that the letter is in conformity with form F made in reference to Rule 36 in appendix I of the Industrial Disputes Act, but some objections seem to have been taken that the letter of authority produced by these two persons-Messrs. Ramalinga Ayyar and Mascarenhas not in compliance with Section 36(2) of the Act, Section 36 of the

Industrial Disputes Act is in these terms:

36. Representation of parties.-(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of a registered trade union of which he is a member;

(b) an officer of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated ;

(c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in Clause (a) is affiliated;

(c) where the employer is not a member of any association of employers; by an officer of any association of employers connected with, or by any other employer engaged in the industry in which the employer is engaged and authorized in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceeding under this Act or in any proceedings before a Court.

(4) In any proceeding before a labour court, tribunal or national tribunal, a party to dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the labour court, tribunal and national tribunal as the case may be.

8. The labour court held that the objection raised on behalf of the workman was not satisfactorily controverted by Mr. Ramalinga Ayyar and since Mascarenhas

failed to produce his service agreement, the management ought to be set ex parte.

9. The question is now only with respect to giving the petitioner Simpson & Co., Ltd., an opportunity to defend the case and adducing evidence, if any, in support of their contentions. It is well known and cardinal principle of Judicial procedure that a party should be found to be in the wrong unless it had been heard and all reasonable opportunities within the confines of law have been granted to it. A right of defence denied is really justice denied and unless the considerations that weigh with the labour court are so compelling-in my view they are not that the Simpson & Co. should not have been set ex parte and they should have been heard on merits. The Sub-section (1) and (2) to Section 36 are only enabling provisions as pointed out by the Chief Justice Mr. Chagla in *Mulchand v. Mukund Shivram Bhide* : AIR1952 Bom296 . To hold that Clauses. (a), (b) and (c) of either Sub-secs. (1) or (a), (b) and (c) of Sub-section (2) exclude either the workman or the employer to appear and make the representations before the labour court, would be straining the language of the section for which there is absolutely no warrant. As to disqualification under Sub-section (3) there is absolutely no force. In the counter-affidavit filed by the workman in this writ petition it is clearly admitted that Mr. Ramalinga Ayyar is a whole time paid employee of Simpson Co., Ltd., and is not a legal practitioner. In those circumstances he is perfectly entitled to defend Messrs. Simpson & Co. Mr. Mascarenhas is the manager of the Secunderabad branch. Neither of them therefore is under the disability within the meaning of Sub-section (3). They have both been authorized by the director of Simpson & Co. by a duly executed letter of authority to act for the company in the present Industrial Case No. 2 of 1959.

10. In those circumstances, I am of opinion that the order of the labour court in setting the petitioner ex parte and purporting to proceed with the enquiry is incorrect and must be quashed. The order of the labour court is therefore set aside. It will now proceed to inquire into the case on the merits giving both parties full opportunity to raise all their contentions and adducing such evidence as they choose to tender and deciding the case in accordance with law. There shall therefore be issued to the labour court a writ of certiorari quashing the order dated 9 September 1959 setting the petitioner ex parte and with a direction that the case

should be heard on the merits and in accordance with law including such preliminary objections as to jurisdiction as the parties may choose to raise. In the circumstances of this case, I make no order as to costs.

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