

**Santosh Kumar Vs. Uoi and ors**

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**Court :** Delhi

**Decided On :** May-23-2011

**Judge :** Rajiv Sahai Endlaw, J.

**Acts :** [Industrial Disputes Act, 1947](#) - Sections 10, 33

**Appeal No. :** W.P.(C) 3484/2011 & CM No.7282/2011

**Appellant :** Santosh Kumar

**Respondent :** Uoi and ors

**Advocate for Def. :** Mr. Anuj Aggarwal, Adv.

**Advocate for Pet/Ap. :** Mr. Atul T.N, Adv.

**Judgement :**

1. At the instance of the Container Corporation of India Employees Union (which has not been made a party to the present petition), the following reference came to be made under Section 10 of the [Industrial Disputes Act, 1947](#):

**"Whether the action of the management of Container Corporation of India Ltd., Ashoka Road, New Delhi is not giving to its employees any incentives for family planning for promoting small family norms of the Govt. is justified? If not to what relief and benefits the employees are entitled to?"**

2. While the said reference was pending and the matter was listed next before the Industrial Adjudicator on 16th March, 2006 for cross examination of the workmen, an application dated 3 rd January, 2006 came to be filed before the Industrial Adjudicator on behalf of the Union aforesaid. In the said application it was inter alia stated that the Union during the pendency of the proceedings before the Industrial Adjudicator had come to know that a Scheme viz. "Policy on Grant of Incentives for Adopting Small Family Norms" was in existence in the respondent No.2 Container Corporation of India Ltd. (CCIL); it was further stated that the Union was satisfied about the existence of the said Scheme and that the employees / workmen of the CCIL were availing of the benefits under the said Scheme; the Union expressed its acceptability of the said Scheme and applied for making of an award holding that in view of the Scheme prevalent in the CCIL, no further relief was called for.

3. On the aforesaid application of the Union, statement was recorded by the Industrial Adjudicator on 4th January, 2006 of Mr. Vinay Kumar Chaudhary, President of the Union and the Industrial Adjudicator decided the reference in accordance with the said Policy / Scheme in the CCIL of which existence was admitted by the Union.

4. An application was filed by one Mr. Suresh Kumar Ranga before the Industrial Adjudicator pleading that he was the General Secretary of the Union and had been pursuing the dispute aforesaid before the Industrial Adjudicator and while the matter was posted for 16 th March, 2006 as aforesaid, it was mischievously got decided before the said date and seeking recall of the order making the award aforesaid.

5. While the said application of Mr. Suresh Kumar Ranga was pending consideration, the petitioner herein claiming to be one of the workmen of CCIL and further claiming that the reference of dispute aforesaid was made on espousal by him and the other workmen, also made an application before the Industrial Adjudicator for impleadment as a party in the proceedings before the Industrial Adjudicator.

6. It is the case of the petitioner that inspite of repeated opportunities, no reply was filed to his said application for impleadment. The said application of the petitioner for impleadment was dismissed in default and for non prosecution on 18th April, 2011.

7. The Industrial Adjudicator vide detailed order dated 16 th May, 2011 dismissed the application of Mr. Suresh Kumar Ranga aforesaid. In the said order, it is recorded that Mr. Suresh Kumar Ranga had ceased to be the General Secretary of the Union and in the elections of the Union held in April, 2005 one Mr. Rajeev Kumar was elected as the General Secretary; Mr. Vinay Kumar Choudhary on whose application the consent award aforesaid had come to be made, was the President of the Union when Mr. Suresh Kumar Ranga was the General Secretary and continued as the president of the Union even when Mr. Rajeev Kumar had come in place of Mr. Suresh Kumar Ranga as the General Secretary. The Industrial Adjudicator has further recorded that the said Mr. Suresh Kumar Ranga had filed a Civil Suit to restrain the said Mr. Rajeev Kumar and Sh. Vinay Kumar Choudhary from functioning as the office bearers of the Union and the application for interim relief in the said suit was dismissed and the appeal preferred thereagainst was also dismissed. It was yet further recorded that the services of Mr. Suresh Kumar Ranga had also been terminated by CCIL. The Industrial Adjudicator accordingly held that Mr. Suresh Kumar Ranga had no right to apply for recall of the order/consent award.

8. The petitioner also moved an application for recall of the order by which his application was dismissed in default. The Industrial Adjudicator vide order dated 16th May, 2011 impugned in this petition has held that once the application of Mr. Suresh Kumar Ranga and seeking impleadment in which the petitioner had applied, stood dismissed on merit, no purpose would be served in reviving the application of the petitioner for impleadment.

9. The petitioner now claims that in fact he is the affected workman; that Mr. Vinay Kumar Choudhary had no right; that it is he who is suffering; that CCIL stage-managed the consent award to obviate recourse to Section 33 of the I.D. Act since it was contemplating action against the workmen. Reliance in this regard is placed

on (i) R. Bharathidasan v. The Presiding Officer, Industrial Tribunal MANU/TN/2214/2009; (ii) K.K. Rattan v. Presiding Officer, Labour Court (1994) II LLJ 378 P&H; and (iii) Usha Spinning & Weaving Mills (Ex-Workmen) Ass. v. Usha India Ltd. MANU/DE/0299/1999 to contend that without the workmen being signatory to the settlement, there could be no settlement.

10. No error is found in the order of the Industrial Adjudicator. The petitioner had not applied for recall of the consent award. The petitioner had merely applied for impleadment in the proceedings initiated by Mr. Suresh Kumar Ranga for recall of the consent award. The said proceedings initiated by Mr. Suresh Kumar Ranga stand dismissed on merits. Once the proceedings in which impleadment was sought stood concluded, the question of reviving the application of the petitioner for impleadment did not arise.

11. The reference was made at the instance of the Union and it stands established that the award has been made with the consent of the Union. The present appears to be a case of inter se rivalry between the Union members. Once the dispute has been raised by and referred at the instance of the Union, if the workmen are dissatisfied with the actions of the office bearers of the Union, their remedy is through the democratic process of the Union and they cannot individually agitate the matter and cannot challenge the award of the Industrial Adjudicator in accordance with the consent of the Union and especially without, as aforesaid, impleading the Union even as a party to the present petition.

12. I have enquired from the counsel for the petitioner whether Mr. Suresh Kumar Ranga has agitated the matter further. The answer is in the negative. Now, the counsel for the petitioner states that he is going to file the challenge on behalf of Mr. Suresh Kumar Ranga also. It is quite clear that the petitioner is acting in conspiracy with and at the behest of Mr. Suresh Kumar Ranga and not for the benefit of workmen in general.

13. The judgments cited are not found applicable. The Division Bench of the Madras High Court in R. Bharathidasan (supra) held that there is no complete bar on an individual workman to pursue the dispute, if the settlement arrived at by the Union is tainted with mala fide, fraud or corruption. However such is not the case

here. It was Mr. Suresh Kumar Ranga who was seeking revocation of the consent award. The petitioner was merely seeking impleadment in those proceedings. No case of mala fide, fraud or corruption is made out. A lone workman, without agitating the matter in the Union, cannot be allowed to so agitate the matter. If the same were to be permitted on asking, the employers will hesitate to deal with Unions for fear of the Union being not entitled to enter into agreements/settlements. It is not shown that in the last five years since the consent award, any other workman has expressed dissatisfaction therewith. The Division Bench of the Madras High Court itself has noticed several judgments laying down that when the Union has raised the dispute, it is the Union alone which is empowered and entitled to pursue the same and/or to enter into settlement on behalf of all the workmen and the workmen would be deemed to be parties to the settlement and not entitled to go behind the settlement. The Division Bench of Punjab and Haryana High Court in K.K. Rattan (supra) was concerned only with the procedure to be followed upon the workmen absenting and not with the controversy as has arisen. As far as the judgment of the Division Bench of this Court in Usha Spinning (supra) is concerned, it was faced with the situation where the workmen were not members of the Union which had entered into the settlement and it was for this reason that they were held to be not bound by the settlement.

14. There is no merit in the petition. The same is dismissed. No order as to costs.

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