In the Supreme Court of Judicature of Jamaica

Before : Mr. Justice Parnell
Mr. Justice Henry
Mr. Justice Carey

Suit No. M. 2 of 1976

Re: Sun Enterprises Ltd - application for order of certiorari to quash order of the Industrial Disputes Tribunal

H. O. A. Dayse and R. Taylor for the applicant

K. Knight for the National Workers Union

L. B. Ellis and E. Harris of the Attorney General's Department for the Tribunal.

June 9 and 10, 1976

Parnell, J., delivered the following judgment of the Court.

On 8th January last, the applicant obtained leave to apply for certiorari to quash the order of the Industrial Disputes Tribunal dated 2nd January, wherein it was directed that certain industrial action which had begun in contemplation or furtherance of an industrial dispute should cease from the dates set out.

The applicant operates an essential service, that is, public passenger transport services on certain routes. It carries on its business at 114, Maxfield Avenue, Kingston 13. About the latter part of November, 1975, the workers at the business premises - about seventy-six of them - went on strike. The picture is painted by the General Manager in a letter dated 26th November, and addressed to the Commissioner of Police. The following points are stressed in the letter.

(1) The workers are picketing the place;

(2) They have refused to allow anyone to enter the compound and have refused to allow security guards and watch dogs to enter;

(3) The workers are unruly and violent and have threatened violence to anyone trying to safeguard the premises and have declared their intention to burn down and do damage to the building.

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An earnest prayer was offered for police protection.

On the same day, the General Manager wrote the Ministry of Labour and Employment in these words:

> " Dear Sir,
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> The workers are carrying placards bearing 'N.W.U. strike on!.
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> We have no agreement with N.W.U. The workers are striking without any justification, legal or moral, and if they do not return to work within 24 hours they will be dismissed. "

On the said date, namely, November 26, the Permanent Secretary in a letter addressed to the Manager of applicant's business in which he is informed that the N.W.U. had reported the existence of a work stoppage amongst the employees of the company "and has requested the intervention of this Ministry."

It appears that the applicant did not entertain the idea of having unionised workers at its plant. But the Labour Relations and Industrial Disputes Act of 1975 has brought about certain changes which may not be palatable to some employers. Under the Act, every worker has the right, as between himself and his employer, to be a member of a trade union as he may choose and to take part in the activities of the trade union of which he is a member. The employer is bound by the Act to accept this radical change.

The genesis of the dispute is put clearly in a letter from the N.W.U. and addressed to the Permanent Secretary of the Ministry of Labour and Employment. The letter is dated December 18, 1975, and it states in part:

> " The dispute arose out of the dismissal of two employees after a claim for representational rights was made on the company. After the dismissal, the workers stopped working in protest against the dismissal. Your Ministry was immediately informed and it intervened. "

The letter continues to outline the history of the dispute:

> " The company served a 24 hour ultimatum on the workers during which period a meeting was arranged and the workers were instructed to resume work within the time mentioned by the company.
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> When they reported for work they were locked out by a company official. "

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An examination of the correspondence attached to the bundle shows that efforts were made between the Union and the applicant to resolve their differences. The various points in issue were resolved save two in respect of which the applicant took a strong stand.

Up to December 29, 1975, the dispute had not been settled. An illegal strike in an essential service was raging for nearly three months. The Minister of Labour and Employment was not prepared to wait any longer to see if the Union and the applicant could bring back normalcy to the enterprise. Acting under sec. 9 of the Act, he referred the dispute to the Industrial Disputes Tribunal for settlement with the following terms of reference:

> " To determine and settle the dispute between Sun Enterprises Ltd., on the one hand and certain workers employed by the Company, members of the N.W.U. on the other hand. "

Section 9(6) of the Act provides as follows:

> " The Minister may, so soon as he is satisfied that any unlawful industrial action in contemplation or furtherance of an industrial dispute in an undertaking which provides an essential service has begun, refer that dispute to the Tribunal for settlement. "

The Minister becomes "satisfied" after he has studied the history of the dispute and the nature of the industrial action taken. He is the one empowered to act in the public interest. And a reference having been made to the Tribunal, power is given to it under sec. 12(5)(a) to order:

> " that any industrial action which has begun in contemplation or furtherance of that dispute shall cease from such time as the Tribunal may specify. "

Parliament has put in a statutory form a practice which many industrial tribunals had followed for years in Jamaica. And it is this; it is undesirable that a Tribunal should enter into the merits of a dispute referred to it for settlement unless normalcy is restored before the hearing should begin. And this preliminary move is what the Tribunal followed on the 2nd January, when it met and which is the order which we are asked to quash on the main grounds that:

(1) There was no proof that there was any industrial dispute existing within the meaning of the Act;

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(2) There was a breach of natural justice in that at the hearing the applicant's attorney requested that the dispute which had been referred to the Tribunal should be stated and defined:

> " before any hearing of the dispute should proceed or before any order made pursuant to powers conferred on the Industrial Disputes Tribunal upon the reference to it of an industrial dispute, be made. "

At the hearing, Mr. Dayes who appeared for the Tribunal took, in our view, a technical stand. As if he was appearing for a party charged with some offence before a Court, he wanted full particulars of the "charge" to be stated with clarity. And if this was not forthcoming he would not be put in a position to represent his client effectively. Mr. Dayes was told in substance that there was a stoppage of work and that the Company had refused to take back workers who had been dismissed. That there was an "illegal strike" in an essential service was well known to Mr. Dayes. He himself had made this point in a letter he wrote on behalf of the applicant on December 8, 1975, and addressed to the Ministry of Labour and Employment. The cause of the strike could be ascertained with patience and with a careful examination of the correspondence attached to the judge's bundle some of which he himself wrote.

Yesterday Mr. Dayes spent the entire day examining the correspondence which passed between the parties and the Ministry. He then made certain submissions all to the effect that there was no "industrial dispute" within the meaning of that term and in any event, what is an "industrial dispute," is a question fit for this Court.

This morning we observed that Mr. Taylor who has taken over from where Mr. Dayes left off, took a different - and we would add - refreshing approach to the issues raised in the grounds relied on for certiorari to issue.

Mr. Taylor conceded - and we think that it was a proper concession - that if the Minister acted under sec. 9(6) of the Act, to which reference has already been made, then a prima facie case of an unlawful industrial action would have been referred to the Tribunal for

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settlement and the Tribunal would have had full power to deal with it. With this frank concession, the ingenious argument of Mr. Dayes yesterday is now placed as an academic exercise.

With regard to the second limb of the complaint, Mr. Taylor submitted that a reference under sec. 9 of the Act would not be valid where the issues to be resolved are not identified for the tribunal or are vague and uncertain. What this amounts to, involves the proposition that unless a reference is elaborately framed with lucidity to cover all the dispute with its particulars, then jurisdiction or power to determine and settle any such dispute does not arise and the Tribunal is impotent until this is done. Before Mr. Taylor developed his argument, the Court brought to his attention the judgment of the Privy Council in Beetham v. Trinidad Cement Ltd. [1960] 1 A.E.R. 274; [1960] 2 W.L.R. 77. The observation of Lord Denning at p. 280 E of the All England Report (p. 85 of the Weekly Law Report) was pointed out. We gave Mr. Taylor a short adjournment in order for him to digest the passage in the judgment. When we resumed, Mr. Taylor confessed that he was unable to take the argument any further.

In Beetham's case - an appeal from the Supreme Court of Trinidad - an argument similar to what Mr. Taylor propounded was urged when a reference was made to a tribunal for settlement but the nature of the dispute was not stated in specific terms. This is what Lord Denning said when dealing with that argument:

> " Then it was said that the governor did not make a valid reference to the board of inquiry because he did not, in the minute of appointment, specify the nature of the dispute. There is nothing in this point. If there is a dispute in existence, the parties must know of it and there is no need to tell them about it. They may not be able to formulate it themselves, at that stage, or at any rate, not precisely. So how can the governor be expected to do so? Suffice it for it to be formulated by the parties themselves, when they get before the board. "

We think that the observation of Lord Denning is applicable here. But apart from this, if the particulars of the dispute were not known to the applicant's attorney up to the time when he appeared before the Tribunal, a different approach to that adopted would have enlightened him as the hearing progressed. The stand of the Tribunal was that

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ore the merits were examined, normalcy should be restored to the under-
king and that the unlawful industrial action should be arrested without
y delay. No farsighted Tribunal could have done otherwise and instead of
eeking an order to quash its decision, one would have thought that the
ction taken should have applauded and upheld inasmuch as the Tribunal acted
within the power which Parliament has bestowed on it.

Just two other matters. We are a little concerned whether what was being pursued was not more-or-less an academic exercise because when he look at page 35 of the bundle it seems to us that most, but not all, of these persons who were on strike have now left the employment and we are not sure whether there is a live issue as far as this matter is concerned.

Could you help us on that Mr. Knight? Is there any live issue remaining?

MR. KNIGHT: I am not quite sure M'Lord. The Union did contact me quite recently and the manner in which they spoke did suggest that the issue was still alive.

PARNELL, J: Oh! I see. We are happy to hear that. We thought it was an airy dispute that was being pursued.

So then, in all the circumstances, the order will be that the motion is dismissed. I do not know if the other side will ask them for their solace.

MR. ELLIS: M'Lord, well there are certain things I would ask Your Lordship to take judicial notice of. Yes, we are asking for solace on this.

PARNELL, J: So the motion is dismissed with costs.

MR. KNIGHT: M'Lord, the Union is also seeking the cost but perhaps Your Lordship will recall that there was an outstanding matter at the end of yesterday as regards my representation.

CAREY, J: As to the workers?

MR. KNIGHT: Yes

PARNELL, J: I don't think as we feel at this stage you could perfect that at that point.

MR. KNIGHT: Indeed M'Lord I would say I would abandon that.

PARNELL, J: Quite rightly so. Motion is dismissed with costs and the order nisi is discharged.