1958

February 4.

WORKMEN OF DIMAKUCHI TEA ESTATE

v.

THE MANAGEMENT OF DIMAKUCHI TEA ESTATE

(S. R. DAS C. J., S. K. DAS and A. K. SARKAR JJ.)

Industrial Dispute—Definition, Interpretation of—Test—'Any person'. Meaning of—Industrial Disputes Act, 1947 (Act XIV of 1947, s. 2(k).

The question for decision in this appeal was whether a dispute raised by the workmen relating to a person who was not a workman could be an industrial dispute as defined by s. 2(k) of the Industrial Disputes Act, 1947, as it stood before the amendments of 1956. The appellants, who were the workmen of Dimakuchi Tea Estate, espoused the cause of one Dr. K. P. Banerjee, Assistant Medical Officer, who had been dismissed unheard with a month's salary in lieu of notice but who had accepted such payment and left the garden and the dispute raised was ultimately referred by the Government for adjudication under s. 10 of the Act. Both the Tribunal and the Appellate Industrial Tribunal took the view that as Dr. Banerjee was not a workman within the meaning of the Act, the dispute was not an industrial dispute as defined by s. 2(k).

Held, (per Das, C.J., and S.K. Das, J., Sarkar J, dissenting) that the expression 'any person' occurring in s. 2(k) of the Industrial Disputes Act, 1947, cannot be given its ordinary meaning and must be read and understood in the context of the Act and the object the Legislature had in view. Nor can it be equated either with the word 'workman' or 'employee'.

The two tests of an industrial dispute as defined by the section must, therefore, be—(1) the dispute must be a real dispute, capable of being settled by relief given by one party to the other, and (2) the person in respect of whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be), the parties to the dispute have a direct or substantial interest, and this must depend on the facts and circumstances of each particular case.

Applying these tests, the dispute in the present case which was in respect of a person who was not a workman and belonged to a different category altogether, could not be said to be a dispute within the meaning of s. 2(k) of the Act and the appeal must fail.

Narendra Kumar Sen v. *All India Industrial Disputes (Labour Appellate) Tribunal*, (1953) 55 Bom. L.R. 125 approved.

Western India Automobile Association v. *The Industrial Tribunal, Bombay*, [1949] F.C.R. 321, distinguished.

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Case-law discussed.

Per Sarkar, J.—There is no reason why the words 'any person in s. 2(k) of the Act should not be given their natural meaning so as to include an employee who is not a workman within the meaning of the Act. Consequently, a dispute concerning a person who is not a workman may be an industrial dispute within that section.

The primary object which the Act has in view is the preservation of the industrial peace.

The Act does not make the interest of the workmen in the dispute a condition of the existence of an industrial dispute. Such interest is incapable of definition and to make it a condition of an industrial dispute would defeat the object of the Act.

Western India Automobile Association v. *The Industrial Tribunal of Bombay*, [1949] *F.C.R.* 321; *Narendra Kumar Sen* v. *The All India Industrial Disputes (Labour Appellate) Tribunal*, (1953) 55 *Bom. L.R.* 125 *and United Commercial Bank Ltd.* v. *Kedar Nath Gupta*, (1952) 1 L.L.J., 782, referred to.

Even assuming that the workmen must be interested in order that there can be an industrial dispute, the present case satisfies that test and falls within the purview of s. 2(k) of the Act.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 297 of 1956.

Appeal by special leave from the judgment and order dated August 30, 1955, of the Labour Appellate Tribunal of India, Calcutta in Appeal No. Cal. 220 of 1954.

C. B. Aggarwala and *K. P. Gupta*, for the appellants.

Purshottam Tricumdas for N. C. Chatterjee, P. K. Goswami, S. N. Mukherjee and *B. N. Ghosh*, for the respondent.

1958. February 4. The Judgment of Das, C. J., and S. K. Das, J., was delivered by S. K. Das, J. Sarkar, J., delivered a separate Judgment.

S. K. Das J.

S. K. DAS J.—This appeal by special leave raises a question of some nicety and of considerable importance in the matter of industrial relations in this country. The question is the true scope and effect of the definition clause in s. 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The question has arisen in the following circumstances.

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S. K. Das J.

The appellants before us are the workmen of the Dimakuchi tea estate represented by the Assam Chah Karmachari Sangha, Dibrugarh. The respondent is the management of the Dimakuchi tea estate, district Darrang in Assam. One Dr. K. P. Banerjee was appointed assistant medical officer of the Dimakuchi tea estate with effect from November 1, 1950. He was appointed subject to a satisfactory medical report and on probation for three months. It was stated in his letter of appointment: "While you are on probation or trial, your suitability for permanent employment will be considered. If during the period of probation you are considered unsuitable for employment, you will receive seven days' notice in writing terminating your appointment. If you are guilty of misconduct, you are liable to instant dismissal. At the end of the period of probation, if you are considered suitable, you will be confirmed in the garden's service." In February 1951 Dr. Banerjee was given an increment of Rs. 5 per mensum, but on April 21, Dr. Banerjee received a letter from one Mr. Booth, manager of the tea estate, in which it was stated: "It has been found necessary to terminate your services with effect from the 22nd instant. You will of course receive one month's salary in lieu of notice." As no reasons were given in the notice of termination, Dr. Banerjee wrote to the manager to find out why his services were being terminated. To this Dr. Banerjee received a reply to this effect: "The reasons for your discharge are on the medical side, which are outside my jurisdiction, best known to Dr. Cox but a main reason is because of the deceitful manner in which you added figures to the requirements of the last medical indent after it had been signed by Dr. Cox, evidence of which is in my hands."

The cause of Dr. Banerjee was then espoused by the Mangaldai Circle of the Assam Chah Karmachari Sangha and the secretary of that Sangha wrote to the manager of the Dimakuchi tea estate, enquiring about the reasons for Dr. Banerjee's discharge. The manager wrote back to say that Dr. K. P. Banerjee was discharged on the ground of incompetence in

his medical duties and the chief medical officer (Dr. Cox) had found that Dr. Banerjee was incompetent and did not have sufficient "knowledge of simple everyday microscopical and laboratory work which befalls the lot of every assistant medical officer in tea garden practice." It was further stated that Dr. Banerjee gave a faulty, inexpert and clumsy quinine injection to one Mr. Peacock, an assistant in the Dimakuchi tea estate, which produced an extremely acute and severe illness very nearly causing a paralysis of the patient's leg. The reasons given by the manager for the termination of the services of Dr. K. P. Banerjee did not satisfy the appellants herein and certain conciliation proceedings, details whereof are not necessary for our purpose, were unsuccessfully held over the question of the termination of the service of Dr. Banerjee. The matter was then referred to a Board known as the tripartite Appellate Board consisting of the Labour Commissioner, Assam, and two representatives of the Assam branch of the Indian Tea Association and the Assam Chah Karmachari Sangha respectively. This Board recommended that Dr. Banerjee should be reinstated with effect from the date of his discharge. After the recommendation of the Board, the respondent herein appears to have offered a sum equal to 28 month's salary and allowances in lieu of re-instatement; to this, however, the appellants did not agree. In the meantime, Dr. K. P. Banerjee received a sum of Rs. 306-1-0 on May 22, 1951 and left the tea garden in question. Then, on December 23, 1953, the Government of Assam published a notification in which it was stated that whereas an industrial dispute had arisen between the appellants and the respondent herein and whereas it was expedient that the dispute should be referred for adjudication to a Tribunal constituted under s. 7 of the Act, the Governor of Assam was pleased to refer the dispute to Shri U. K. Gohain, Additional District and Sessions Judge, under cl. (c) of sub-s. (1) of s. 10 of the Act. The dispute which was thus referred to the Tribunal was described in these terms:

1958

Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate

S. K. Das J.

"(i) Whether the management of Dimakuchi Tea Estate was justified in dismissing Dr. K. P. Banerjee, A. M. O.?

(ii) If not, is he entitled to re-instatement or any other relief in lieu thereof?"

Both parties filed written statements before Mr. Gohain and the respondent took the plea that Dr. K.P. Banerjee was not a "workman" within the meaning of the Act; therefore, there was no industrial dispute in the sense in which that expression was defined in the Act and the Tribunal had no jurisdiction to make an adjudication on merits. Mr. Gohain took up as a preliminary point the question if Dr. Banerjee was a "workman" within the meaning of the Act and came to a conclusion which may be best expressed in his own words:

"Dr. Banerjee being not a 'workman', his case is not one of an "industrial dispute" under the Industrial Disputes Act and his case is therefore beyond the jurisdiction of this Tribunal and the Tribunal has therefore no jurisdiction to give any relief to him."

There was then an appeal to the Labour Appellate Tribunal of India, Calcutta. That Tribunal affirmed the finding of Mr. Gohain to the effect that Dr. Banerjee was not a workman within the meaning of the Act, The Appellate Tribunal then said:

"A dispute between the employers and employees to be an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act, must be between the employers and the workmen. There cannot be any industrial dispute between the employers and the employees who are not workmen."

The appeal was accordingly dismissed by the Labour Appellate Tribunal. The appellants herein then moved this Court for special leave and by an order dated March 14, 1956, special leave was granted, but was "limited to the question whether a dispute in relation to a person who is not a workman falls within the scope of the definition of industrial dispute contained in s. 2 (k) of the Industrial Disputes Act, 1947."

It is clear from what has been stated above that the

question whether Dr. K. P. Banerjee is or is not a workman within the meaning of the Act is no longer open to the parties and we must proceed on the footing that Dr. K. P. Banerjee was not a workman within the meaning of the Act and then decide the question if the dispute in relation to the termination of his service still fell within the scope of the definition of the expression "industrial dispute" in the Act.

We proceed now to read the definition clause the interpretation of which is the only question before us. That definition clause is in these terms:

"S. 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;"

It must be stated here that the expression "workman" is also defined in the Act, and the definition which is relevant for our purpose is the one previous to the amendments of 1956; therefore, in reading the various sections of the Act, we shall read them as they stood prior to the amendments of 1956 and refer to the amendments only when they have a bearing on the question before us. The definition of 'workman' as it stood at the relevant time stated:

"S. 2(s): "Workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government."

Now, the question is whether a dispute in relation to a person who is not a workman within the meaning of the Act still falls within the scope of the definition clause in s. 2(k). If we analyse the definition clause it falls easily and naturally into three parts: first, there must be a dispute or difference; second, the dispute or difference must be between employers and employers, or between employers and

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S. K. Das J.

workmen or between workmen and workmen; third, the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour, *of any person*. The first part obviously refers to the factum of a real or substantial dispute; the second part to the parties to the dispute; and the third to the subject matter of that dispute. That subject matter may relate to any of two matters—(i) employment or non-employment, and (ii) terms of employment or conditions of labour, of any person. On behalf of the appellants it is contended that the conditions referred to in the first and second parts of the definition clause are clearly fulfilled in the present case, because there is a dispute or difference over the termination of service of Dr. K. P. Banerjee and the dispute or difference is between the employer, namely, the management of the Dimakuchi tea estate on one side, and its workmen on the other, even taking the expression "workmen" in the restricted sense in which that expression is defined in the Act. The real difficulty arises when we come to the third part of the definition clause. Learned counsel for the appellants has submitted that the expression "of any person" occurring in the third part of the definition clause is an expression of very wide import and there are no reasons why the words "any person" should be equated with "any workman", as the Tribunals below have done. The argument is that inasmuch as the dispute or difference between the employer and the workmen is connected with the non-employment of a person called Dr. K. P. Banerjee (even though he was not a workman), the dispute is an industrial dispute within the meaning of the definition clause. At first sight, it does appear that there is considerable force in the argument advanced on behalf of the appellants. It is rightly pointed out that the definition clause does not contain any words of qualification or restriction in respect of the expression "any person" occurring in the third part, and if any limitations as to its scope are to be imposed, they must be such as can be reasonably inferred from the definition clause itself or other provision of the Act.

A little careful consideration will show, however, that the expression "any person" occurring in the third part of the definition clause cannot mean anybody and everybody in this wide world. First of all, the subject matter of dispute must relate to (i) employment or non-employment or (ii) terms of employment or conditions of labour of any person; these necessarily import a limitation in the sense that a person in respect of whom the employer-employee relation *never existed* or *can never possibly exist* cannot be the subject matter of a dispute between employers and workmen. Secondly, the definition clause must be read in the contex of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act. It is well settled that " the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained." (Maxwell, Interpretation of Statutes, 9th Edition, p. 55).

It is necessary, therefore, to take the Act as a whole and examine its salient provisions. The long title shows that the object of the Act is "to make provision for the investigation and settlement of industrial disputes, and for certain other purposes." The preamble states the same object and s. 2 of the Act which contains definitions states that unless there is anything repugnant in the subject or context, certain expressions will have certain meanings. Chapter II refers to the authorities set up under the Act, such as, Works Committees, Conciliation Officers, Boards of Conciliation, Courts of Enquiry, and Industrial Tribunals. The primary duty of a Works Committee is to promote measures for securing and preserving amity and good relations between the employer and his workmen and, to that end, to comment

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S. K. Das J.

upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters. Conciliation Officers are charged with the duty of mediating in and promoting the settlement of industrial disputes. A Board of Conciliation may also be constituted for the same purpose, namely, for promoting the settlement of an industrial dispute. A Court of Enquiry may be appointed for enquiring into any matter which appears to be connected with or relevant to an industrial dispute. Section 7 of the Act empowers the appropriate Government to constitute one or more Tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act. Chapter III contains provisions relating to the reference of industrial disputes to Boards of Conciliation, Courts of Enquiry or Industrial Tribunals, and the reference in the present case was made under s. 10 of that Chapter. Under s. 10(c) of the Act where an appropriate Government is of opinion that any industrial disputes exist or are apprehended, it may, at any time, by order in writing, refer the dispute or any matter appearing to be connected with or relevant to the dispute to a Tribunal for adjudication. Chapter IV of the Act deals with procedure, powers and duties of the authorities set up under the Act. Where an industrial dispute has been referred to a Tribunal for adjudication, s. 15 requires that the Tribunal shall hold its proceedings expeditiously and shall as soon as practicable on the conclusion thereof submit its award to the appropriate Government. Section 17 lays down *inter alia* that the award of a Tribunal shall within a period of one month from the date of its receipt by the appropriate Government be published in such manner as it thinks fit. Section 17-A lays down that the award of a Tribunal shall become enforceable on the expiry of thirty days from the date of its publication under s. 17; it also contains certain other provisions which empower the appropriate Government to modify or reject the award. Section 18 is important for our purpose, and in so far as it relates to awards it states that an award which has become enforceable shall be binding on—

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Tribunal records the opinion that they were so summoned without proper cause;

(c) where a party referred to under clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; and

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who are employed in the establishment or part of establishment as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Section 19 lays down the period of operation of settlements and awards and states *inter alia* that an award shall, subject to the provisions of the section, remain in operation for a period of one year. Chapter V of the Act deals with strikes and lock-outs, Chapter V-A with lay-off and retrenchment, Chapter VI with penalties and Chapter VII with miscellaneous matters. It is important to note that though in the definition of "lock-out", s. 2 (1) of the Act, and "strike", s. 2(q) of the Act, the expression 'any person' has been used, in ss. 22(2) and 23 of the Act which deal with 'lock-out" and "strike", only the word 'workmen' has been used. Section 33 provides that during the pendency of any conciliation proceedings or any proceedings before a tribunal of any industrial dispute, no employer shall (a) alter to the prejudice of the *workmen* concerned, the conditions of their service etc. or (b) discharge or punish by dismissal or otherwise any *workman* concerned in the dispute. Section 33 A, however, uses the word 'employee', but read with s. 33, the word employee must mean there a workman. Section 36 which deals with representation of parties has some bearing on the question before us. It lays down that a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by—

1958

Workmen of Dimakuchi ea Estate v. The Management of Dimakuchi Tea Estate

S. K. Das J.

(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; and

(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 authorised in such manner as may be prescribed.

An employer who is a party to a dispute shall be entitled to be represented in any proceedings under the 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; and

(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 authorised in such manner as may be prescribed.

Sub-section (3) of s. 36 states that no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under the Act or in any proceedings before a court. Sub-section (4) states that in any proceeding before a Tribunal a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Tribunal The point to note is that there is no particular provision for the representation of a party other than a workman or an employer, presumably because under the second part of the definition clause the parties to an industrial dispute can only be employers and employers, employers and workmen or workmen and workmen.

Thus, an examination of the salient provisions of the Act shows that the principal objects of the Act are—

(1) the promotion of measures for securing and preserving amity and good relations between the employer and workmen;

(2) an investigation and settlement of industrial disputes, between employers and employers, employers and workmen, or workmen and workmen, with a right of representation by a registered trade union or federation of trade unions or association of employers or a federation of associations of employers;

(3) prevention of illegal strikes and lock-outs;

(4) relief to workmen in the matter of lay-off and retrenchment; and

(5) collective bargaining.

The Act is primarily meant for regulating the relations of employers and workmen—past, present and future. It draws a distinction between 'workmen' as such and the managerial or supervisory staff, and confers benefit on the former only.

It is in the context of all these provisions of the Act that the definition clause in s. 2(k) has to be interpreted. It seems fairly obvious to us that if the expression "any person" is given its ordinary meaning, then the definition clause will be so wide as to become inconsistent not merely with the objects and other provisions of the Act, but also with the other parts of that very clause. Let us see how the definition clause works if the expression "any person" occurring therein is given its ordinary meaning. The workmen may then raise a dispute about a person with whom they have no possible community of interest; they may raise a dispute about the employment of a person in another industry or a different establishment—a dispute in which their own employer is not in a position to give any relief, in the matter of employment or non-employment or the terms of employment or conditions of labour of such a person. In order to make our meaning clear we may take a more obvious example. Let us assume that for some reason or other the workmen of a particular industry raise a dispute with their employer about the employment or terms of employment of the District Magistrate or District Judge of the district in which the industry

1958

Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate

S. K. Das J.

is situate. It seems clear to us that though the District Magistrate or District Judge undoubtedly comes within the expression "any person" occurring in the definition clause, a dispute about his employment or terms of employment is not an industrial dispute; firstly, because such a dispute does not come within the scope of the Act, having regard to the definition of the words "employer", "industry", and "workman" and also to other provisions of the Act; secondly, there is no possible community of interest between the District Magistrate or District Judge on the one hand and the disputants, employer and workmen, on the other. The absurd results that will follow such an interpretation have been forcefully expressed by Chagla C. J., in his decision in *Narendra Kumar Sen* v. *All India Industrial Disputes (Labour Appellate) Tribunal*(1):

"If "any person" were to be read as an expression without any limitation and qualification whatsoever, then we must not put even any territorial restriction on that expression. In other words, it would be open to the workmen not only to raise a dispute with regard to the terms of employment of persons employed in the same industry as themselves, not only to raise a dispute with regard to the terms of employment in corresponding or similar industries, not only a dispute with regard to the terms of employment of people employed in our country, but the terms of employment of any workman or any labourer anywhere in the world. The proposition has only to be stated in order to make one realise how entirely untenable it is."

Take, for example, another case where the workmen raise an objection to the salary or remuneration paid to a Manager or Chief Medical Officer by the employer but without claiming any benefit for themselves, and let us assume that a dispute or difference arises between the workmen on one side and the employer on the other over such an objection. If such a dispute comes within the definition clause and is referred to an industrial tribunal for adjudication, the parties

(1) [1953] 55 Bom. L.R. 125, 129, 130.

to the dispute will be the employer on one side and his workmen on the other. The Manager or the Chief Medical Officer cannot obviously be a party to the dispute, because he is not a 'workman' within the meaning of the Act and there is no dispute between him and his employer. That being the position, the award, if any, given by the Tribunal will be binding, under cl. (a) of s. 18, on the parties to the dispute and not on the Manager or the Chief Medical Officer. It is extremely doubtful if in the circumstances stated the Tribunal can summon the Manager or the Chief Medical Officer as a party to the dispute, because there is no dispute between the Manager or Chief Medical Officer on one side and his employer on the other. Furthermore, s. 36 of the Act does not provide for representation of a person who is not a party to the dispute. If, therefore, an award is made by the Tribunal in the case which we have taken by way of illustration, that award, though binding on the employer, will not be binding on the Manager or Chief Medical Officer. It should be obvious that the Act could not have contemplated an eventuality of this kind, which does not promote any of the objects of the Act, but rather goes against them.

When these difficulties were pointed out to learned counsel for the appellants, he conceded that some limitations must be put on the width of the expression "any person" occurring in the definition clause. He formulated four such limitations:

(1) The dispute must be a real and substantial one in respect of which one of the parties to the dispute can give relief to the other; e.g., when the dispute is between workmen and employer, the employer must be in a position to give relief to the workmen. This, according to learned counsel for the appellants, will exclude those cases in which the workmen ask for something which their employer is not in a position to give. It would also exclude mere ideological differences or controversies.

(2) The industrial dispute if raised by workmen must relate to the particular establishment or part of establishment

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S. K. Das J.

in which the workmen are employed so that the definition clause may be consistent with s. 18 of the Act.

(3) The dispute must relate to the employment, non-employment or the terms of employment or with the conditions of labour of any person, but such person must be an employee discharged or in service or a candidate for employment. According to learned counsel for the appellants, the person about whom the dispute has arisen need not be a workman within the meaning of the Act, but he must answer to the description of an employee, discharged or in service, or a candidate for employment.

(4) The workmen raising the dispute must have a nexus with the dispute, either because they are personally interested or because they have taken up the cause of another person in the general interest of labour welfare. The further argument of learned counsel for the appellants is that even imposing the aforesaid four limitations on the width of the expression "any person" occurring in the definition clause, the dispute in the present case is an industrial dispute within the meaning of s. 2 (k) of the Act, because (1) the employer could give relief in the matter of the termination of service of Dr. K.P. Banerjee, (2) Dr. K.P. Banerjee belonged to the same establishment, namely, the same tea garden, (3) the dispute related to a discharged employee (though not a workman) and (4) the workmen raising the dispute were vitally interested in it by reason of the fact that Dr. Banerjee (it is stated) belonged to their trade union and the dismissal of an employee without the formulation of a charge and without giving him an opportunity to meet any charge was a matter of general interest to all workmen in the same establishment.

We now propose to examine the question whether the limitations formulated by learned counsel for the appellants are the only true limitations to be imposed with regard to the definition clause. In doing so we shall also consider what is the true scope and effect of the definition clause and what are the correct tests to be applied with regard to it. We think that there is no real difficulty with regard to the first

two limitations. They are, we think, implicit in the definition clause itself. It is obvious that a dispute between employers and employers, employers and workmen, or between workmen and workmen must be a real dispute capable of settlement or adjudication by directing one of the parties to the dispute to give necessary relief to the other. It is also obvious that the parties to the dispute must be directly or substantially interested therein, so that if workmen raise a dispute, it must relate to the establishment or part of establishmen in which they are employed. With regard to limitation (3), while we agree that the expression 'any person' cannot be completely equated with 'any workman' as defined in the Act, we think that the limitation formulated by learned counsel for the appellants is much too widely stated and is not quite correct. We recognise that if the expression 'any person' means 'any workman' within the meaning of the Act, then it is difficult to understand why the Legislature instead of using the expression 'any workman' used the much wider expression 'any person' in the third part of the definition clause. The very circumstance that in the second part of the definition clause the expression used is "between emyloyers and workmen or between workmen and workmen" while in the third part the expression used is "any person" indicates that the expression "any person" cannot be completely equated with 'any workman'. The reason for the use of the expression "any person" in the definition clause is, however, not far to seek. The word 'workman' as defined in the Act (before the amendments of 1956) included, for the purposes of any proceedings under the Act in relation to an industrial dispute, a workman *discharged during the dispute.* This definition corresponded to s. 2 (j) of the old Trade Disputes Act, 1929 except that the words "including an apprentice" were inserted and the words "industrial dispute" were substituted for the words "trade dispute". It is worthy of note that in the Trade Disputes Act, 1929, the word 'workman' meant any person employed in any trade or industry to do any skilled

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S. K. Das J.

or unskilled manual or clerical work for hire or reward. It is clear enough that prior to 1956 when the definition of 'workman' in the Act was further widened to include a person dismissed, discharged or retrenched in connection with, or as a consequence of the dispute or whose dismissal, discharge or retrenchment led to the dispute, a workman who had been discharged earlier and not during the dispute was not a workman within the meaning of the Act. If the expression "any person" in the third part of the definition clause were to be strictly equated with 'any workman', then there could be no industrial dispute, prior to 1956, with regard to a workman who had been discharged earlier than the dispute, even though the discharge itself had led to the dispute. That seems to be the reason why the Legislature used the expression 'any person' in the third part of the definition clause so as to put it beyond any doubt that the non-employment of such a dismissed workman was also within the ambit of an industrial dispute. There was a wide gap between a 'workman' and an 'employee' under the definition of the word 'workman' in s. 2(s) as it stood prior to 1956; all existing workmen were no doubt employees; but all employees were not workmen. The supervisory staff did not come within the definition. The gap has been reduced to some extent by the amendments of 1956; part of the supervisory staff (who draw wages not exceeding five hundred rupees per mensem) and those who were otherwise workmen but were discharged or dismissed earlier have also come within the definition. If and when the gap is completely bridged, 'workmen' will be synonymous with 'employees', whether engaged in any skilled or unskilled manual, supervisory, technical or clerical work, etc. But till the gap is completely obliterated, there is a distinction between workmen and non-workmen and that distinction has an important bearing on the question before us. Limitation no. (3) as formulated by learned counsel for the appellants ignores the distinction altogether and equates 'any person' with 'any employee'—past, present or future: this

we do not think is quite correct or consistent with the other provisions of the Act. The Act avowedly gives a restricted meaning to the word 'workman' and almost all the provisions of the Act are intended to confer benefits on that class of persons who generally answer to the description of workmen. The expression 'any person' in the definition clause means, in our opinion, a person in whose employment, or non-employment, or terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest—with whom they have, under the scheme of the Act, a community of interest. Our reason for so holding is not merely that the Act makes a distinction between workmen and non-workmen, but because a dispute to be a real dispute must be one in which the parties to the dispute have a direct or substantial interest. Can it be said that workmen as a class are directly or substantially interested in the employment, non-employment, terms of employment or conditions of labour of persons who belong to the supervisory staff and are, under the provisions of the Act, non-workmen on whom the Act has conferred no benefit, who cannot by themselves be parties to an industrial dispute and for whose representation the Act makes no particular provision? We venture to think that the answer must be in the negative. Limitation (4) formulated by learned counsel for the appellants is also too generally stated. We recognise that solidarity of labour or general interest of labour welfare may furnish, in some cases, the necessary nexus of direct or substantial interest in a dispute between employers and workmen, but the principle of solidarity of the labour movement or general welfare of labour must be based on or correlated to the principle of community of interest; the workmen can raise a dispute in respect of those persons only in the employment or non-employment or the terms of employment or the conditions of labour of whom they have a direct or substantial interest. We think that Chagla C.J., correctly put the crucial test when he said in *Narendra Kumar Sen* v. *All India Industrial Disputes (Labour Appellate) Tribunal*(1).

(1) [1953] 55 Bom. L.R. 125, 129, 130.

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S. K. Das J.

"Therefore, when s. 2 (k) speaks of the employment or non-employment or the terms of employment or the conditions of labour of any person, it can only mean the employment or non-employment or the terms of employment or the conditions of labour of only those persons in the employment or non-employment or the terms of employment or with the conditions of labour of whom the workmen themselves are directly and substantially interested. If the workmen have no direct or substantial interest in the employment or non-employment of a person or in his terms of employment or his conditions of labour, then an industrial dispute cannot arise with regard to such person."

We reach the same conclusion by approaching the question from a somewhat different standpoint. Ordinarily, it is only the aggrieved party who can raise a dispute; but an 'industrial dispute' is put on a *collective basis*, because it is now settled that an individual dispute, not espoused by others of the class to which the aggrieved party may belong, is not an industrial dispute within the meaning of s. 2 (k). As Isaacs J. observed in the Australian case of *George Hudson Ltd.* v. *Australian Timber Workers' Union*(1):

"The very nature of an 'industrial dispute' as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individuals then working from the specific individuals then employing them, and not for the moment only, but for the *class of employees* from the *class of employers*.....It is a battle by the claimants, not for themselves alone."

Section 18 of the Act supports the aforesaid observations, in so far as it makes the award binding not merely on the parties to the dispute, but where the party is an employer, on his heirs, successors or assigns and where the party is composed of workmen, on all persons employed in the establishment and all persons who subsequently become employed therein. If, therefore, the dispute is a *collective dispute*, the party raising the dispute must have either a direct interest in the subject matter of dispute or a substantial interest therein in the sense that the class to which the aggrieved party be-

(1) 32. C.L.R. 413, 441.

longs is substantially affected thereby. It is the *community of interest* of the class as a whole—class of employers or class of workmen—which furnishes the real nexus between the dispute and the parties to the dispute. We see no insuperable difficulty in the practical application of this test. In a case where the party to the dispute is composed of aggrieved workmen themselves and the subject matter of dispute relates to them or any of them, they clearly have a direct interest in the dispute. Where, however, the party to the dispute also composed of workmen, espouse the cause of another person whose employment, or non-employment, etc., may prejudicially affect their interest, the workmen have a substantial interest in the subject matter of dispute. In both such cases, the dispute is an industrial dispute.

Learned counsel for the appellants has also drawn our attention to the definition of a 'trade dispute' in the Indian Trade Unions Act, 1926. That definition is also in the same terms, but with this vital difference that the word 'workmen' means there "all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises." It is obvious that the very wide definition of the word 'workmen' determines the ambit of the definition of a 'trade dispute' in the Trade Unions Act, 1926. The provisions of that Act have different objects in view, one of which is the expenditure of the funds of a registered Trade Union 'on the conduct of trade disputes on behalf of the Trade Union or any member thereof'. We do not think that that definition for the purposes of an Act like the Trade Unions Act is of any assistance in construing the definition in the Act with which we are now concerned, even though the words employed are the same; for one thing, the meaning of the word 'workman' completely changes the ambit of the definition clause, and for another, the objects, scheme and purpose of the two Acts are not the same. For the same reasons, we do not think that with regard to the precise problem before us much assistance can be obtained by a detailed

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S. K. Das J.

examination of English, American or Australian decisions given with regard to the terms of the statutes in force in those countries. Each Act must be interpreted on its own terms—particularly when the definition of a 'workman' varies from statute to statute and, with changing conditions, from time to time, and country to country.

The interpretation of s. 2(k) of the Act has been the subject of consideration in various Indian decisions from different points of view. Two recent decisions of this Court considered the question if an individual dispute of a workman was within the definition of an industrial dispute. The decision in *C. P. Transport Services Ltd.* v. *Raghunath*(1), related to the C. P. and Berar Industrial Disputes Settlement Act (No. XXIII of 1947) and the decision in *Newspapers Ltd.* v. *State Industrial Tribunal, U. P.*(2), to the U. P. Industrial Disputes Act (No. XXVIII of 1947). Both these decisions considered s. 2(k) of the Act, but with reference to a different problem. The definition clause in s. 2(k) was considered at some length by the Federal Court in *Western India Automobile Association* v. *The Industrial Tribunal, Bombay*(3), and learned counsel for the appellants has placed great reliance on some of the observations made therein. The question which fell for decision in that case was whether "industrial dispute" included within its ambit a dispute with regard to re-instatement of certain dismissed workmen. It was held that re-instatement was connected with non-employment and, therefore, fell within the words of the definition. It appears that the finding of the Court from which the appeal was preferred to the Federal Court was that the workmen whose re-instatement was in question were discharged during the dispute and were, therefore, workmen within the meaning of the Act. Therefore, the problem of interpretation with which we are faced in this case was not the problem before their Lordships of the Federal Court. The observations on which learned counsel for the appellants has relied are these:

> "The question for determination is whether the defini-

(1) [1956] S.C.R. 956. (2) A.I.R. (1957) S.C. 532.
(3) [1949] F.C.R. 321, 329-330, 346-347.

tion of the expression "industrial dispute" given in the Act includes within its ambit, a dispute in regard to re-instatement of dismissed employees.....The words of the definition may be paraphrazed thus: "any dispute which has connection with the workmen being in, or out of service or employment". "Non-employment" is the negative of "employment" and would mean that disputes of workmen out of service with their employers are within the ambit of the definition. It is the positive or the negative act of an employer that leads to employment or to non-employment. It may relate to an existing employment or to a contemplated employment, or it may relate to an existing fact of non-employment or a contemplated non-employment. The following four illustrations elucidate this point: (1) An employer has already employed a person and a trade union says "Please do not employ him". Such a dispute is a dispute as to employment or in connection with employment. (2) An employer gives notice to a union saying that he wishes to employ two particular persons. The union says "no". This is a dispute as to employment. It arises out of the desire of the employer to employ certain persons. (3) An employer may dismiss a man, or decline to employ him. This matter raises a dispute as to non-employment. (4) An employer contemplates turning out a number of people who are already in his employment. It is a dispute as to contemplated non-employment. "Employment or non-employment" constitutes the subject matter of one class of industrial disputes, the other two classes of disputes being those connected with the terms of employment and the conditions of labour. The failure to employ or the refusal to employ are actions on the part of the employer which would be covered by the terms "employment or non-employment". Re-instatement is connected with non-employment and is therefore within the words of the definition."

.....

"It was contended that the re-instatement of the discharged workmen was not an industrial dispute because if the

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S.K. Das J.

union represented the discharged employees, they were not workmen within the definition of that word in the Industrial Disputes Act. This argument is unsound. We see no difficulty in the respondents (union) taking up the cause of the discharged workmen and the dispute being still an industrial dispute between the employer and the workmen. The non-employment "of any person" can amount to an industrial dispute between the employer and the workmen, falling under the definition of that word in the Industrial Disputes Act. It was argued that if the respondents represented the undischarged employees, there was no dispute between them and the employer. That again is fallacious, because under the definition of industrial dispute, it is not necessary that the parties to the proceedings can be the discharged workmen only. The last words in the definition of industrial dispute, viz., "any person" are a complete answer to this argument of the appellants." It is true that two of the illustrations—Nos. (2) and (3)—given in the aforesaid observations seem to indicate that there can be an industrial dispute relating to persons who are not strictly speaking "workmen"; but whether those persons would answer to such description or what community of interest the workmen had with them is not stated and in any view we do not think that illustrations given to elucidate a different problem can be taken as determinative of a problem which was not before the court in that case.

A reference was also made to the decision of this Court in *D. N. Banerjee* v. *P. R. Mukherjee*(1). The question there was whether the expression "industrial dispute" included disputes between municipalities and their employees in branches of work analogous to the carrying on of a tarde or business.

More in point is the decision of the Full Bench of the Labour Appellate Tribunal in a number of appeals reported in 1952 Labour Appeal Cases, p. 198, where the question now before us arose directly for decision. The same question arose for decision before the All India Industrial Tribunal (Bank Disputes) and the majority of members (Messrs. K. C.

(1) [1953] S.C.R. 302.

Sen and J. N. Majumdar) expressed the view that a dispute between employers and workmen might relate to employment or non-employment or the terms of employment or conditions of labour of persons who were not workmen, and the words 'any person' used in the definition clause were elastic enough to include an officer, that is, a member of the supervisory staff. The majority view will be found in Chap. X of the Report. The minority view was expressed by Mr. N. Chandrasekhara Aiyar, who said:

"It is fairly clear to my mind that "any person" in the Act means any one who belongs to the employer class or the workmen class and the cases in whose favour or against whom can be said to be adequately presented by the group or category of persons to which he belongs.

As stated already it should be remembered that the cases relied upon for the view that 'any person' may mean others also besides the workmen were all cases relating to workmen. They were discharged or dismissed workmen and when their cases were taken up by the Tribunal the point was raised that they had ceased to be workmen and were therefore outside the scope of the Act. This argument was repelled.

In my opinion, there is no justification for treating such cases as authorities for the wider proposition that a valid industrial dispute can be raised by workmen about the employment or non-employment of someone else who does not belong and never belonged to their class or category.

My view therefore is that the Act does not apply to cases of non-workmen, or officers, if they may be so called." Both these views as also other decisions of High Courts and awards of Industrial Tribunals, were considered by the Full Bench of the Labour Appellate Tribunal and the Chairman of the Tribunal (Mr. J. N. Majumdar) acknowledged that his earlier view was not correct and expressed his opinion, concurred in by all the other members of the Tribunal, at p. 210—

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S.K. Das J.

"I am, therefore, of opinion that the expression 'any person' has to be interpreted in terms of 'workmen'. The words 'any person' cannot have, in my opinion, their widest amplitude, as that would create incongruity and repugnancy in the provisions of the Act. They are to be interpreted in a manner that persons, who would come within that expression, can at some stage or other, answer the description of workman as defined in the Act."

It is necessary to state here that earlier a contrary view had been taken by the Calcutta High Court in *Birla Brothers, Ltd.* v. *Modak*(1), by Banerjee J. in *The Dalhousie Jute Co. Ltd.* v. *S. N. Modak*(2), and by the Industrial Tribunal, Madras, in *East India Industries (Madras) Ltd.* v. *Their Workmen*(3). It is necessary to emphasise here two considerations which have generally weighed with some of the learned Judges in support of the view expressed by them; these two considerations are that (1) normally workmen will not raise a dispute in which they are not directly or substantially interested and (2) Government will not make a reference unless the dispute is a real or substantial one. We think that these two considerations instead of leading to a strictly grammatical or etymological interpretation of the expression "any person" occurring in the definition clause should lead, on the contrary, to an interpretation which, to use the words of Maxwell, is to be found in the subject or in the occasion on which the words are used and the object to be attained by the statute.

We are aware that anybody may be a potential workman and the concept of "a potential workman" introduces an element of indefiniteness and uncertainty. We also agree that the expression "any person" is co-existensive with any workman, potential or otherwise. We think, however, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the

(1) I.L.R. (1948) 2 Cal. 209.
(2) [1952] L.L.J. 122.
(3) [1951] 1 L.L.J. 145.

dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances.

Two other later decisions have also been brought to our notice: *Prahlad Rai Mills* v. *State of Uttar Pradesh*(1) in which Bhargava J. expressed the view that the expression 'any person' in the definition clause did not mean a workman and the decision in *Narendra Kumar Sen* v. *All India Industrial Disputes (Labour Appellate) Tribunal*(2), being the decision of Chagla C. J. and Shah J. from which we have already quoted some extracts.

An examination of the decision referred to above undoubtedly discloses a divergence of opinion: two views have been expressed, one based on the ordinary meaning of the expression 'any person' and the other based on the context, with reference to the subject of the enactment and the objects which the legislature has in view. For the reasons which we have already given, we think that the latter view is correct.

To summarise. Having regard to the scheme and objects of the Act, and its other provisions, the expression 'any person' in s. 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a 'workman' within the

(1) A.I.R. (1955) N.U.C. Allahabad 664.
(2) (1953) 55 Bom. 1 R. 125.

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

S.K. Das J.

meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest.

In the case before us, Dr. K. P. Banerjee was not a 'workman'. He belonged to the medical or technical staff—a different category altogether from workmen. The appellants had no direct, nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same Trade Union, it cannot be said, on the tests laid down by us, that the dispute regarding his termination of service was an industrial dispute within the meaning of s. 2(k) of the Act.

The result, therefore, is that the appeal fails and is dismissed. In the circumstances of this case there will be no order for costs.

SARKAR J.—On November 1, 1950, Dr. K. P. Banerjee was appointed the Assistant Medical Officer of the Dimakuchi Tea Estate, whose management is the respondent in this appeal. On April 21, 1951, the respondent terminated Dr. Banerjee's service with effect from the next day and he was offered one month's salary in lieu of notice. He accepted this salary and later left the Tea Estate. The workmen of the Tea Estate raised a dispute concerning the dismissal of Dr. Banerjee. On December 23, 1953, the Government of Assam made an order of reference for adjudication of the dispute by the Industrial Tribunal under the provisions of s. 10 of the Industrial Disputes Act, 1947. The order of reference was in the following terms

Whereas an industrial dispute has arisen in the matters specified in the schedule below between:

(1) The workmen of Dimakuchi Tea Estate, P.O. Dimakuchi, District Darrang, Assam represented by the Secretary, Assam Chah Karmachari Sangha, I.N.T.U.C. Office, P.O. Dibrugarh, Assam and,

(2) The management of Dimakuchi Tea Estate, P.O. Dimakuchi, District Darrang, Assam whose agents are Messrs. Williamson Magor and Company Limited, Calcutta.

And whereas it is considered expedient by the Govt. of Assam to refer the said dispute for adjudication to a Tribunal constituted under section 7 of the Industrial Disputes Act, 1947 (Act XIV of 1947)

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10, as amended, of the Industrial Disputes Act (XIV of 1947), the Governor of Assam is pleased to refer the said dispute to Sri Uma Kanta Gohain, Additional District and Sessions Judge (retired) who has been appointed to constitute a Tribunal under the provisions of the said Act.

SCHEDULE

(i) Whether the management of Dimakuchi Tea Estate was justified in dismissing Dr. K. P. Banerjee, A. M. O.?

(ii) If not, is he entitled to re-instatement or any other relief in lieu thereof?

The Tribunal held that Dr. Banerjee was not a workman as defined in the Act and, therefore, the dispute referred was not an industrial dispute and consequently it had no jurisdiction to adjudicate upon such a dispute. The workmen preferred an appeal to the Labour Appellate Tribunal. That Tribunal dismissed the appeal holding that Dr. Banerjee was not a workman within the definition of that term in the Act and as the dispute was connected with his employment or non-employment, it was not an industrial dispute, and was therefore beyond the jurisdiction of the Industrial Tribunal. From that decision the present appeal by the workmen of the Tea Estate arises with leave granted by this Court under Art. 136 of the Constitution. In granting the leave this Court limited it to the question whether a dispute in relation to a person who is not a workman, falls within the scope of the definition of "Industrial Dispute" contained in s. 2(k) of the Act. That, therefore, is the only question before us.

Section 2(k) is in these terms:

"Industrial dispute means any dispute or difference between employers and employers or between employers and

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

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."

The dispute that was raised was between an employer, the respondent in this appeal and its workmen, the appellants before us and concerned the employment or non-employment of Dr. Banerjee, a person employed by the same employer but who was not a workman. The question that we have to decide has arisen because of the use of the words "any person" in the definition. These words are quite general and very wide and according to their ordinary meaning include a person who is not a workman. If this meaning is given to these words, then the dispute that arose concerning Dr. Banerjee's dismissal would be an industrial dispute because the dispute would then be clearly within s. 2(k). This indeed is not disputed. Unless there are reasons to the contrary these words have to be given their ordinary meaning. In *Birla Brothers Ltd.* v. *Modak*(1) and in *Western India Automobile Association* v. *Industrial Tribunal of Bombay*(2) it was held that the words "any person" were not meant to refer only to workmen as defined in the Act but were wide and general and would include others who were not such workmen. In *The Dalhousie Jute Co. Ltd.* v. *S. N. Modak*(3), Banerjee J. said, "Any person means whatever individual is chosen. I see no reason to restrict the meaning of the word 'person'." The same view was expressed in *East India Industries (Madras) Ltd.* v. *Their Workmen*(4), which was the decision of an Industrial Tribunal. There is then some support for the view that the words 'any person' should have no restriction put upon them.

It is pointed out on behalf of the respondent that it is not its contention that the words 'any person' should be understood as referring only to a "workman" as defined in the Act but that those words should include all persons of

(1) I.L.R. (1948) 2 Cal. 209. (2) [1949] F.C.R. 321.
(3) [1951] 1 L.L.J. 154. (4) [1952] 1 L.L.J. 122.

the workman class and so they would include discharged workmen. It is then stated that the first two of the cases mentioned above were concerned with a dispute regarding discharged workmen and did not therefore decide that the words 'any person' included all. It is no doubt true that these cases were concerned with a dispute regarding discharged workmen but I do not understand the decision to have proceeded on that basis. Sen J. said in *Birla Brothers* case(1) (p 213) that, "It cannot be argued that workmen dismissed prior to the Act are not 'persons' ". And in the *Western India Automoble Association case*(2), it was said (p. 346-7).

"It was contended that the reinstatement of the discharged workmen was not an industrial dispute because if the union represented the discharged employees, they were not workmen within the definition of that word in the Industrial Disputes Act. This argument is unsound. We see no difficulty in the respondents (union) taking up the cause of the discharged workmen and the dispute being still an industrial dispute between the employer and the workmen. The non-employment "of any person" can amount to an industrial dispute between the employer and the workmen, falling under the definition of that word in the Industrial Disputes Act. It was argued that if the respondents represented the undischarged employees, there was no dispute between them and the employer. That again is fallacious, because under the definition of industrial dispute, it is not necessary that the parties to the proceedings can be the discharged workmen only. The last words in the definition of industrial dispute, viz., "any person", are a complete answer to this argument of the appellants."

The last two of the cases mentioned earlier were not however concerned with any dispute regarding discharged workmen. In *The Dalhousie Jute Co. case*(3) the dispute was with regard to the employment of persons who sought employment as workmen and in the *East India Industries (Madras) Ltd.* case(4) the dispute concerned the dismissal of a member of

(1) I.L.R. (1948) 2 Cal. 209.
(2) [1949] F.C.R. 321,
(3) [1951] 1 L.L.J. 145.
(4) [1952] 1 L.L.J. 122.

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sirkar J.

the supervisory staff, that is, another employee of the same employer who was not a workman. It is however said that in none of these cases the arguments that are now advanced appear to have been advanced and they were not considered in the judgments. This comment is justified. I shall therefore lay these cases aside in deciding the question that has arisen.

Are there then good reasons for not giving to the words "any persons" their plain meaning? Several have been advanced and I shall examine them a little later. I wish now to discuss how it is proposed to restrict the meaning of these words. I have already stated that the contention is that the words are not confined to a workman but refer only to a person of the workman class. This, I confess, I do not follow. The word "workman" is a term defined in the Act. Outside the definition it is impossible to say who is a workman and who is not. That being so, the words "workman class" would be meaningless unless they meant all persons who were workmen as defined in the Act. So read the words "any person" would mean only a workman. But it is conceded that this is not so. And, of course, it cannot be so, for, if that was intended, there was no reason for the legislature not to have used the words "any workman" instead of the words "any person". Again if this was the intention, then a dispute concerning the dismissal of a workman would not be an industrial dispute for a dismissed workman was not a workman within the definition of that word in the Act as it stood in 1953, that being the Act with which we are concerned. Such a result is against all conceptions of industrial disputes laws. It is indeed not contended that a dispute concerning the dismissal of a workman would not be an industrial dispute. It therefore seems to me that the words "any person" cannot be said to refer only to persons of the workman class. If they cannot be restricted as being understood to refer only to a person of the workman class, it is not suggested that they can be restricted in any other manner.

It is then said that the words refer to "workmen", dis-

missed as well as in employment as also those, who in future, become "workmen". Again I am in difficulty. So understood the words would not include a person who seeks employment as a workman because he has not become a workman till he is employed. That being so, it would have to be said that a dispute raised by workmen in employment when new workmen are to be appointed, that only those of the candidates as agree to join their union should be appointed and others should not be, would not be an industrial dispute. That again seems to me to be against all conceptions of industrial dispute laws. Furthermore, I am wholly unable to appreciate what is meant by a dispute concerning a person, who is not at the time the dispute arises, a workman but in future becomes one. When is such a person to become a workman? I find no answer. Again, is it to be said that whether a dispute is an industrial dispute or not may have to depend on future circumstances for there is no knowing whether the person concerning whom the dispute arises will later become a workman or not? If he becomes one, there can be no dispute concerning him referable to a point of time before he became one, and, if he does not, he cannot be one who in future becomes a workman.

It is said that the words "any person" were used instead of the word workman because it was intended to include within them persons who had been dismissed before the dispute arose and who were not within the definition of workmen in the Act as it stood in 1953. If that was the reason, why could not the legislature use the words "workmen and dismissed workmen?" There was nothing to prevent that being done. In fact the definition of "workman" has been amended in 1956 to include workmen discharged in consequence of an industrial dispute or whose discharge has led to that dispute. So, as the definition now stands, it includes persons dismissed before the dispute arose. Yet the words "any person" have been left untouched in s. 2 (k) and not been replaced by the word workman. This, to my mind,

1958

Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate

Sirkar J.

shows that it was not the intention to confine the words "any person" to workmen in employment or discharged.

But it is said that the words "any person" were left in the Act because it was intended to include not only workmen in employment and dismissed workmen but also persons who in future become workmen. It is said that, that this is so appears from s. 18 of the Act. I shall presently consider this section but I desire to observe now that this argument much weakens the argument noticed in the preceding paragraph, for if the words "any person" were used so that persons who in future become workmen might be included in them, they could not have been used to avoid such dismissed workmen as were not workmen as defined in the Act being excluded from them. It seems to me that if it is argued that the words "any person" were used so that persons who in future become workmen may be included in them, it cannot be argued that those words were used instead of the word "workman" because it was intended to include within them certain dismissed workmen who were not workmen within the definition of that term in the Act as it stood in 1953.

Coming now to s. 18 it is in these terms:

A settlement arrived at in the course of conciliation proceedings under this Act or an award which has become enforceable shall be binding on—

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board or Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

I entirely fail to see how that section assists at all in finding out who were meant to be included in the words "any person". Is it to be said that s. 18(d) by making the award binding on those who become in future employed in the establishment as workmen, indicates that such persons are treated in the same way as workmen in actual employment and therefore it must have been intended to include them within the words "any person" along with present and dismissed workmen. I am wholly unable to agree. The object of s. 18(d) is quite clear. The Act is intended to compose a dispute between an employer and his workmen by a settlement or an award brought about by the machinery provided in it and the period during which an award or a settlement is to remain in force is also provided. The idea behind s. 18 is that whoever takes up appointment as a workman in the establishment to which the dispute relates during the time when the award or settlement is in force, would be bound by it. If it were not so, the award or settlement would have little effect in settling a dispute, for any newly recruited workmen could again raise the dispute. Any one having any experience of industries knows that workmen are largely a shifting population and that the need for replacement of the workmen leaving and for addition to the strength of the workmen employed, is not infrequent. To meet the exigency arising from this need and to make the award or settlement effective it was necessary to enact s. 18(d). Its object was not to place workmen in employment and workmen recruited in future in the same position for all purposes of the Act. On the same reasoning, in view of s. 18(a), it has to be said that it was the intention of the Act to give the heirs, successors or assignees of an employer the same position for all purposes of the Act as that of the employer. But that would be absurd. Section 18(d) deals with a person who in future becomes employed. The section does not say employed as a workman but I will assume that that is what is meant. I do not understand what is meant by saying that such a person is within the words "any person" in s. 2(k). What is the point of time that

1958

Workman of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate

Sirkar J.

has to be considered? If it is after he has become employed, then he is a workman and admittedly within the words "any person". Is it to be said that before such employment also he is within the meaning of those words. But it is difficult to follow this. It is conceivable that any person whatsoever may in future be employed as a workman for there is nothing in the quality of a human being that marks him out as a workman. In this way the words "any person" would include all. That, however, is not meant, for it will defeat the very argument based on s. 18(d). Is it to be said then, only such future workmen are meant as apply for jobs as such? But the section makes no reference to such people at all and cannot therefore be of any assistance in showing that it was intended that such applicants would be included within the words "any person". I am therefore wholly unable to accept the argument that s. 18(d) shows that future workmen were intended to be included within the words "any person". I wish also to say this. Assume that s. 18(d) shows that it was intended to include within the words "any person" one who in future becomes a workman. But where is the reason for saying that the words do not also include others? Section 18 provides none.

I proceed now to discuss the reasons advanced for restricting the generality of the words "any person". They were put as follows:

1. In certain sections of the Act the words "any person" have been used but there the reference is to workmen, and therefore in s. 2(k) the words "any person" should mean persons of the workman class.

2. The scheme and the purpose of the Act generally and the object of the Act specially being to benefit workmen, the words "any person" should be confined to people of the workman class.

3. The word "dispute" in s. 2(k) itself indicates that the person raising the dispute must be interested in the dispute and therefore since the dispute must concern the employment, non-employment, terms of employment or the conditions of labour of a person, that person must be of the workman class.

The first reason, then, is that in certain sections, the Act uses the words "any person". I will assume that by the use of these words only workmen are intended to be referred to in these sections. But the question arises why is such intention to be inferred? Clearly, because the context requires it. I will refer to some of these sections to make my point clear. Section 2(1) defines a lock-out as "the closing of a place of employment, or the suspension of work, or the refusal by the employer to continue to employ any number of persons employed by him". Section 2(q) defines a strike as "a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment." Lock-outs and strikes are dealt with in ss. 22, 23 and 24 of the Act. Section 22(2) says that no employer carrying on any public utility service shall lock-out any of his workmen except on certain conditions mentioned in the section. Section 23 says that no employer of any workman employed in any industrial establishment shall declare a lock-out during the periods mentioned in the section. Section 24 states that a strike or a lock-out shall be illegal if commenced or declared in contravention of s. 22 or s. 23. The definitions of lock-outs and strikes are for the purposes of ss. 22, 23 and 24. There are other sections in which lock-outs and strikes are mentioned but they make no difference for our present purpose. The lock-outs and strikes dealt with in ss. 22(2), 23 and 24 are lock-outs of and strikes by, workmen. It may hence be said that in s. 2(1) and (q) by the word person a workman is meant. Therefore it is these sections, viz., 22(2), 23 and 24, which show what the meaning of the word 'person' in the definitions is. I would like to point out in passing that s. 22(1) says that no person employed in a public utility service shall go on strike except on certain conditions and there is nothing in the Act to show that the word "person" in s. 22(1) means only a workman. Proceeding however with the point we are concerned with,

1958

Workman of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

the question is, is there any provision in the Act which would show that the words "any person" in s. 2(k) were meant only to refer to persons of the workman class. I have not been able to find any and none has been pointed out. Therefore the fact that in s. 2, sub-ss. (1) and (q) the word "persons" means workmen is no reason for concluding that the same word must be given the same restricted meaing in s. 2(k). The position with regard to s. 33A, in which the word employee has to be read as meaning a workman because of s. 33, is the same and does not require to be dealt with specially. I may add that if it has to be said that because in certain other sections the word "person" has to be understood as referring to a workman only, in s. 2(k) also the same word must have the same meaning, then we have to read the words "any person" in s. 2(k) as meaning only a workman as defined in the Act. This however is not the contention of the learned counsel for the respondent. I may further say that it was not contended that the word "person" in s. 2, sub-ss. (1) and (q) and the word employee in s. 33A has to be read as including not only a workman in employment but also a discharged workman and a person who in future becomes a workman, and it seems to me that such a contention would not have been possible.

I proceed now to deal with the second group of reasons based on the object and scheme of the Act. It is said that the Act makes a distinction between employees who are workmen and all other employees, and that the focus of the Act is on workmen and it was intended mainly for them. This was the view taken in *United Commercial Bank Ltd.* v. *Kedar Nath Gupta*(1). I will assume all this. It may also be true that the Act is not much concerned with employees other than workmen. But I am unable to see that all this is any reason for holding that the words "any person" must mean a person of the workman class. The definition in s. 2(k) would be fully concerned with workmen however the

(1) [1952] 1 L.L.J. 782.

words "any person" in it may be understood because the dispute will be one to which a workman is a party. Is it to be said that the Act would cease to be intended for workmen or the focus of it displaced from workmen or that the distinction between workmen and other employees would vanish if a dispute relating to the dismissal of one who is not a workman is held to be an industrial dispute, even though the dispute is one to which workmen are parties? I am unable to subscribe to such an argument. But it is said that in such a case the workmen would not be interested in the dispute, the dispute would not really be with them and they would not be in any real sense of the word parties to it. So put the argument comes under the last of the three reasons earlier stated, namely, that in order that there may be an industrial dispute the workmen must be interested in that dispute. This contention I will consider later. It is also said in the *United Commercial Bank Case*(1) that the main purpose of the Act is to adjust the relations between employers and workmen by securing for the latter the benefit provided by the Act. It is really another way of saying that the workmen must be interested in the dispute, for if they are not interested no benefit can accrue to them from an adjustment of it. This, as I have said, I will discuss later.

It is also said that the Act is for the benefit of workmen and therefore if a dispute concerning a person who is not a workman, is an industrial dispute capable of being resolved by adjudication under the Act, then, if the award goes in favour of the workmen raising it, a benefit would result to a person whom the Act did not intend to benefit. So it is said, an industrial dispute cannot be a dispute concerning one who is not a workman. But the benefit resulting to the person in such a case would only be incidental. The workmen themselves would also be benefited by it at the same time. To adopt this argument would be to deprive the workmen of this benefit and there is no justification for doing so. How the workmen would be benefited would appear later when I discuss the question of the workmen's interest in the dispute.

(1)[1952] 1 L.L.J. 782.

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

I will show later that if the workmen were not interested in the dispute so that they could get no benefit under it, there would be no reference by the Government and there would be no benefit to a person who was not a workman. Further, I am unable to agree that the Act is intended to confer benefit on workmen. Its object is admitted by all to preserve industrial peace. It may confer some benefit on workmen but at the same time it takes away their power and right to strike and puts them under a disadvantage.

We were referred to the note of dissent to the award of the majority of the *All India Industrial Tribunal (Bank Disputes)*, dated July 31, 1950. This note was by Mr. Chandra Sekhar Aiyer who later became a Judge of this Court. In that note he expressed the view that "any person" in s. 2(k) means any one who belongs to the employer class or the workmen class and the cases in whose favour or against whom, can be said to be adequately represented by the group or category of persons to which he belongs. I have already stated my difficulties in agreeing that the words "any person" mean only persons of the workman class. I will presently deal with the reasoning on which Mr. Aiyer bases his view but I wish to say now that it seems to me that the words "any person" cannot refer to anyone belonging to the employer class because the dispute must be in connection with the employment, non-employment, or terms of employment or the conditions of labour of any person and it is not possible to conceive of any such thing in connection with a person in his capacity as an employer.

Mr. Aiyar first stated that a necessary limitation to be put on the words "any person" is that the person should have something to do with the particular establishment where the dispute has cropped up. He said that it could not be that the workmen in Bank A could raise a valid and legitimate industrial dispute with their employer because some one in Bank B had not been treated well by his employer. Assume this is so. But it does not follow that an industrial dispute must be one concerning a person of the workman class alone, for a person having something to do with an establishment

need not necessarily belong to the workman class. An officer in an establishment where the dispute crops up would be as much a person having something to do with that establishment as a workman there and, therefore, even assuming that the limitation suggested by Mr. Aiyar applies, there would be nothing in it to prevent an industrial dispute concerning him arising. The question is not whether the person concerning whom an industrial dispute may arise, has to be employed in the establishment where the dispute arises, but whether he must belong to what has been called the workman class. The decision of the former question which has not arisen in this case, is of no help in deciding the question that has arisen and I do not therefore feel called upon to express any opinion with regard to it.

Mr. Aiyar next referred to a case where workmen of a Bank raise a dispute with that Bank about an employee of the Bank who was not a workman, for example an officer who had been dismissed. He assumed that the Bank and the officer had no dispute as between themselves. In his view, if in such a case the dispute was an industrial dispute and could be made the subject matter of an award by an Industrial Tribunal, the award would not be binding on the officer because he had no concern with the dispute. According to him, it would be absurd to suggest that the Bank was under an obligation to give effect to the award. Therefore, in his view, such a dispute would not be an industrial dispute. Now, whether the award would be binding on the officer or not, would depend on whether he could be made a party to the dispute under s. 18(b). It is not necessary to discuss that question now. But assume that the award was not binding on the officer. Why should not the Bank be under an obligation to give effect to the award in so far as it lay in its power to do so? If the dispute was an industrial dispute, the award would be binding on the Bank and it must give effect to it. Then the argument comes to this that the dispute is not an industrial dispute because the award

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

would not, as assumed, be binding on the officer concerning whom the dispute arose. I cannot accept this view. Take this case. An employer dismisses five of his workmen. The workmen dismissed make no grievance. Three months later the employer dismisses twenty five more and again neither the dismissed workmen nor the workmen in employment raise any dispute. Two months after the second dismissal the employer dismisses fifty workmen. These workmen make no complaint and leave. The workmen in employment now begin to take notice of the dismissals and think that the employer is acting on a set policy and raise a dispute about all the dismissals. The dispute is then referred for adjudication and an award is made in favour of the workmen. Assume that all the dismissed workmen could be made parties to the adjudication proceedings but for one reason or another, were not made parties. This award would not be binding on the dismissed workmen and certainly not on those who had been dismissed on the two earlier occasions. They would not be covered by any of the provisions of s. 18. Is it to be said that for that reason the dispute is not an industrial dispute? I am wholly unable to agree. Such a dispute would be entirely within the definition even on the assumption that the words "any person" mean only persons of the workman class. It follows, therefore, that in order to decide whether a dispute is or is not an industrial dispute, the question whether the award would be binding on the person concerning whose employment the dispute was raised, is no test. I therefore find nothing in the minute of dissent of Mr. Aiyar to justify the putting of any restriction on the plain meaning of the words "any person" in s. 2(k). As I shall show later, if certain disputes concerning foremen who are not workmen and who I will assume would not be bound by the award, are not to be industrial disputes, the object of the Act would clearly be defeated. I cannot therefore agree that the fact that an award is not binding on one affords a reason for holding that there cannot be an industrial dispute concerning him.

The matter was put from another point of view. It is

said that if workmen could raise an industrial dispute with their employer concerning the salary of a manager, who was not a workman, and an award was made directing the employer to pay a smaller salary to the manager, the employer would be bound by the award but not the manager. Then it is said, suppose the employer had made a contract with the manager to employ him at the higher salary for a number of years. It is pointed out that in such a case the award being binding on the employer, he would be compelled to commit a breach of his contract and be liable to the manager in damages. It is said that it could not have been the intention of the Act to produce a result whereby an employer would become liable in damages and therefore such a dispute cannot be an industrial dispute. But I do not agree that the employer would be liable in damages. The award being binding on him under the Act, the performance of his contract with the manager would become unlawful after the award and therefore void under s. 56 of the Contract Act. The employer would not, by carrying out the award, be committing any breach of contract nor would he be liable in damages. To hold that the dispute contemplated is an industrial dispute, would not produce the absurd result suggested. The reason suggested for not holding that dispute to be an industrial dispute, therefore, fails.

Take another case. Suppose there was a dispute between two employers A and B concerning the wage to be paid by B to his workmen, A complaining that B was paying too high wages, and the dispute was referred for adjudication by a Tribunal and an award was made that B should reduce the wages of his workmen. Assume the workmen were not parties to the dispute and were not made parties even if it was possible to do so. The award would not be binding on the workmen concerned under s. 18. None the less it cannot be said that the dispute was not an industrial dispute. It completely satisfies the definition of an industrial dispute even on the basis that the words 'any persons" mean only workmen. So again it would appear that the

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

words may include one on whom the award would not be binding.

I may add here, though I do not propose to decide the question it being wholly unnecessary for the case before us, that it seems to me that when a dispute concerns a person whether a workman or not, who is not a party to the dispute, he can, under s. 18(b), be properly made a party to appear in the proceedings arising out of that dispute. I find nothing in that section to prevent such a course being adopted. If he is made a party, there is no doubt that the decision, whichever way it went, would be most satisfactory to all concerned. If this is the right view, then all arguments based on the fact that the words "any person" can only include one on whom the award would be binding would disappear, for on being made a party the award would be binding on that person. It would on the contrary show that it was intended that the words "any person" should include one who is not a party to the dispute, and therefore not in the workman class.

An argument based on s. 33 was also advanced. That is this. The section provides that during the pendency of conciliation proceedings or proceedings before a Tribunal in respect of an industrial dispute the conditions of service of workmen concerned in the dispute cannot be changed by the employer, nor such workmen dismissed or otherwise punished by him except with the permission of the Board or Tribunal. It is said that this section shows that it was intended to protect only workmen and therefore the words "any person" in s. 2(k) should be understood as meaning workmen only. I do not follow this argument at all. Section 33 gives protection to workmen concerned in the dispute which can only mean workmen who are parties to the dispute. A workman concerning whom a dispute arises may or may not be a party to the dispute. The object of the section is clear. If workmen could be punished during the pendency of the proceedings, then no workman would raise a dispute or want to take part in the proceedings under the Act concerned with its adjudication. Further, such punishment would surely give

rise to another dispute. All this would defeat the entire object of the Act which is to compose disputes by settlement or adjudication. Section 33 gives protection to workmen who are parties to the dispute and does not purport to concern itself with the person concerning whom the dispute arises. Such being the position, the section can throw no light on the meaning of the words "any person" in s. 2(k). Suppose a workman was dismissed and thereupon a dispute arose between the employer and the other workmen in employment concerning such dismissal. Such a dispute would be undoubtedly an industrial dispute. And it is none the less so, though no protection can be given to the dismissed workman under s. 33 for he is already dismissed.

Reference was also made to s. 36 which provides for the representation of the parties to a dispute in a proceeding arising under the Act out of such dispute. Sub-section (1) of s. 36 provides how a workman, who is a party, shall be represented and sub-section (2) provides how an employer who is likewise a party, shall be represented. The section does not provide for representation of any other person. It is said that this shows that the words "any person" must mean only a workman, because they must mean an employee, past, present or future and only such employees as are workmen can be parties to the dispute under the definition. I am unable to agree. Section 36 provides for the representation of workmen besides employers and of no one else, because no one but a party need be represented in the proceedings and under the definition, a party to an industrial dispute must either be an employer or a workman. This section has nothing to do with the person concerning whom the dispute arises. If, however, he is also a party to the dispute, then the section makes a provision for his representation in the proceedings arising out of that dispute as such a party and not as one concerning whom the dispute has arisen. I have earlier said that there may be a case in which though the person concerning whom the dispute arises is a workman, still he may not be a party to it. The fact that besides an

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

employer, the Act makes provision for the representation in the proceedings arising out of an industrial dispute of workmen alone does not show that an industrial dispute can only arise concerning a workman. In my view, therefore s. 36 is of no assistance in finding out the meaning of the words "any person".

I come now to the last of the reasons advanced for restricting the natural meaning of the words "any person". It is said that the word dispute in the definition shows that the person raising it must have an interest in it and therefore since the dispute must concern the employment, non-employment, terms of employment or conditions of labour of a person that person must be a workman. I confess I do not follow the reasoning. It is said that this is the view expressed by a Bench of the Bombay High Court consisting of Chagla C. J. and Shah J. in *Narendra Kumar Sen* v. *The All India Industrial Disputes (Labour Appellate) Tribunal*(1). I have some difficulty in seeing that this is the view expressed in that case. What happened there was that certain workmen raised a dispute against their employer which included a demand for fixing scales of pay and for bonus not only for themselves but also for the foremen and divisional heads under the same employers who were not workmen and this dispute had been referred by the Government for adjudication by the Industrial Tribunal. The Tribunal refused to adjudicate the dispute in so far as it concerned the pay and bonus of persons who were not workmen as, according to it, to this extent it was not an industrial dispute. The workmen then applied to the High Court for a writ directing the Tribunal to decide the dispute relating to the claims made for the pay and bonus of the persons who were not workmen. The High Court held that the dispute was not an industrial dispute and refused the writ. Chagla C. J. expressed himself in these words (p. 130):

"A controversy which is connected with the employment or non-employment or the terms of employment or with the conditions of labour is an industrial controversy. But it is not enough that it should be an industrial contro-

(1) (1953) 55 Bom. L.R. 125.

versy; it must be a dispute; and in my opinion it is not every controversy or every difference of opinion between workmen and employers which is constituted a dispute or difference within the meaning of s. 2(k). A workman may have ideological differences with his employer; a workman may feel sympathetic consideration for an employee in his own industry or in other industry; a workman may feel seriously agitated about the conditions of labour outside our own country; but it is absurd to suggest that any of these factors would entitle a workman to raise an industrial dispute within the meaning of s. 2(k). The dispute contemplated by s. 2(k) is a controversy in which the workman is directly and substantially interested. It must also be a grievance felt by the workman which the employer is in a position to remedy. Both the conditions must be present; it must be a grievance of the workman himself; it must be a grievance which the employer as an employer is in a position to remedy or set right."

Then he said (p. 131):

"It is only primarily in their own employment, in their own terms of employment, in their own conditions of labour that workmen are interested and it is with regard these that they are entitled to agitate by means of raising an industrial dispute and getting it referred to a Tribunal by the Government under s. 10."

I find some difficulty in accepting all that the learned Chief Justice said. But assume he is right. How does it follow that because an industrial dispute is one in which workmen must be interested it must be concerning themselves? I do not see that it does. Neither do I find Chagla C. J. saying so. In the case before him the dispute concerned persons who were not workmen and he found on the facts before him that the workmen were not interested in that dispute and thereupon held that the dispute was not an industrial dispute. But that is not saying that an industrial dispute can only be a dispute concerning workmen. Even the observations that I have read from p. 131 of the report would not support this view. It is not difficult to conceive

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

of a dispute concerning the employment of a person who is not a workman which at the same time is one which affects the conditions of labour or terms of employment of the workmen themselves. I shall give examples of such disputes later. What I wish now to point out is that even if an industrial dispute has to be one in which workmen are interested, that would be no reason for saying that it can only be a dispute concerning workmen and that therefore the words "any person" in s. 2(k) must mean only workmen. I also think it right to say now that this argument is not really open to the respondent, for the contention of the learned counsel for the respondent is, as I have earlier stated, that the words "any person" do not mean a workman only but mean all persons of the workman class, or past, present and future workmen. Now I find nothing in the judgment of Chagla C. J. to show that workmen can be interested in the workman class or in past or future workmen. On the contrary he says that workmen are interested primarily—and by the word "primarily" I think he means, directly and substantially —only in their own employment, terms of employment or conditions of labour. Reliance on the judgment of the Bombay High Court will therefore land the respondent in contradiction.

I find great difficulty in saying that it is a condition of the existence of an industrial dispute that workmen must be interested in it. The Act does not say so. But it is said that the word dispute in the definition implies it. No doubt. one does not raise a dispute unless he is interested in it, and as the Act must be taken to have in contemplation normal men it must have assumed that workmen will not raise a dispute unless they are interested in it. But that is not to my mind saying that it is a condition of an industrial dispute as contemplated by the Act that workmen must be interested in it. So to hold would, in my opinion, lead to grave difficulties and might even result in defeating the object of the Act. This I will endeavour to show presently. What I have to say will also show that even assuming that an industrial dispute

is one in which workmen have to be interested, the dispute that we have in this case concerning Dr. Banerjee's dismissal is an industrial dispute for the appellant workmen are directly and substantially interested in it.

The question that first strikes me, is what is the interest which workmen must have? I find it impossible to define that interest. If it cannot be defined, it cannot of course be made a condition of the existence of an industrial dispute, for we would then never know what an industrial dispute is. Now, "interest", as we understand that word in courts of law, means the well-known concepts of proprietary interest or interest in other recognised civil rights. Outside these the matter becomes completely at large and well nigh impossible of definition. To say that the interest that the workmen must have is one of the well-known kinds of interest mentioned above is, to my mind, to make the Act largely infructuous. We cannot lose sight of the fact that the Act is not dealing with interest as ordinarily understood. It cannot be kept in mind too well that the Act is dealing with a new concept, namely, that of the relation between employer and employed or to put it more significantly, between capital and labour, a concept which is undergoing a fast and elemental change from day to day. The numerous and radical amendments made in the Act since it came on the Statute book not so long ago, testify to the fast changing nature of the concept. Bearing all these things in mind, I find it almost impossible to define adequately or with any usefulness an interest which will serve the purposes of the Act. I feel that an attempt to do so will introduce a rigidity which will work harm and no good. Nor does it, to my mind, in any manner help to define such interest by calling it direct and substantial.

I will illustrate the difficulty that I feel by an example or two. Suppose a workman was dismissed by the employer and the other workmen raised a dispute about it. Such a dispute comes completely within the definition even assuming that the words "any person" only refer to persons of the

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

workman class, as the respondent contends. There is therefore no doubt that such a dispute is an industrial dispute. The question then is what interest have the disputing workmen in the reinstatement of the dismissed workman if they must have an interest? The reinstatement would not in any way improve their financial condition or otherwise enhance any interest of theirs in any sense of the term, in common use. The only interest that I can think of the workmen having for themselves in such a dispute is the solidarity of labour. It is only this that if the same thing happens to any one of them, the others would rally round and by taking up his cause prevent the dismissal. Apart from the Act how would the workmen have prevented the dismissal from taking effect? They would have, if they wanted to prevent the dismissal, gone on strike and thereby tried to force the employer's hands not to give effect to the dismissal. That would have destroyed the industrial peace which the object of the Act is to preserve. It is in order to achieve this object that the Act recognises this dispute as an industrial dispute and provides for its settlement by the methods of conciliation or adjudication contained in it and preserves the industrial peace by preventing the parties being left to their own devices. If what I have described as solidarity of labour is to be considered as direct and substantial interest for the purposes of an industrial dispute, as I conceive is not disputed by any one, then it will appear that we have embarked on a new concept of interest. I will now take another case which in regard to interest is the same as the previous one. Suppose the employer engages some workmen at a low rate of wages and the other workmen raise a dispute demanding that the wages of these low paid workmen be increased. This case would be completely within the definition of an industrial dispute even according to the most restricted meaning that may be put upon the words "any person", namely that they refer only to workmen as defined in the Act, because the dispute concerns the terms of employment of such a workman. So this has admittedly to be

held to be an industrial dispute. What then is the interest of the workmen in this dispute? The increase in the wages claimed would not in any manner improve the financial condition of the disputing workmen, nor serve any of their interest as ordinarily understood. It would however help the workmen in seeing that their own wages were not reduced by preventing the employer from being able to engage any low paid workman at all. Apart from this I can think of no other interest that the disputing workmen may have in the dispute. If therefore it is essential that the disputing workmen must have an interest in the dispute, this must be that interest, for, as already stated, the dispute is undoubtedly an industrial dispute.

If this is sufficient interest to constitute an industrial dispute I fail to see why the workmen have no sufficient interest in a dispute in which they claim that a foreman who is particularly rude and brutal in his behaviour should be removed and they should have a more human foreman. This is surely a matter in which the workmen raising the dispute have a personal and immediate interest and not, as in the last case, an interest in the prevention of something happening in future, which conceivably may never happen at all. Such an interest is plainly nearer to the ordinary kinds of interest than the interest in solidarity of labour or in the prevention of future harm which in the preceding paragraphs have been found to be sufficient to sustain an industrial dispute. The dispute last imagined would undoubtedly be an industrial dispute if the foreman was a workman for then it would be entirely within the definition of an industrial dispute. Now suppose the foreman was not a workman. Can it be said that then the dispute would not be an industrial dispute? Would the interest of the workmen in the dispute be any the less or in any way different because the foreman whose dismissal was demanded was not a workman? I conceive it impossible to say so. Therefore if interest is the test, the dispute that I have imagined would have to be

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

held to be an industrial dispute whether or not the foreman concerned was a workman.

Now assume that the dispute did not arise out of a demand for the dismissal of a foreman but against his dismissal on the ground that he was a particularly kind and sympathetic man and the workmen were happy to work under him. In such a case the interest of the workmen in the dispute would be the same as their interest in the dispute demanding the foreman's dismissal. They would be demanding his reinstatement in their own interest; they would be demanding it to make sure that their work would be easy and smooth and that they would be happy in the discharge of it. Such a dispute therefore also has to be held to be an industrial dispute and as in the last case, it would make no difference for this purpose that the foreman concerned was not a workman.

If this is right, as I think it is, then similarly the dispute concerning the dismissal of Dr. Banerjee would be an industrial dispute for the workmen have sufficient personal and immediate interest in seeing that they have a doctor of their liking to look after them. It is indeed the case of the workmen that by his devotion to duty and good behaviour Dr. Banerjee became very popular with the workmen. Whether the contention of the workmen is justified or not and whether it would be upheld by the Tribunal or not, are wholly different matters and do not affect the question whether in an industrial dispute the workmen must be interested. It is enough to say that I find no reason to think that the appellant had no interest in the dispute concerning the dismissal of Dr. Banerjee. Therefore, I would hold that even if it is necessary to constitute an industrial dispute that workmen must have an interest in it, the dispute before us is one in which the appellants' have a direct and substantial interest and it is an industrial dispute.

For myself however I would not make the interest of the workmen in the dispute a condition of the existence of an industrial dispute. The Act does not do so. I repeat that

it would be impossible to define such interest. In my view, such a condition would defeat the object of the Act. It is said that otherwise the workmen would be able to raise disputes in which they were not interested. Supposing they did, the Government is not bound to refer such disputes for adjudication. Take a concrete case. Suppose the workmen raise a dispute that the manager of the concern should have a higher pay. It would be for the Government to decide whether the dispute should be referred for adjudication or not. The Government is not bound to refer. Now, how is the Government to decide? That must depend on the Government's evaluation of the situation. That this is the intention is clear from the object that the Act has in view. I will here read from the judgment of the Federal Court in *Western India Automobile Association case*(1) what the object of the Act is. It was said at pp. 331-332.

"We shall next examine the Act to determine its scope. The Act is stated in the preamble to be one providing for the investigation and settlement of industrial disputes. Any industrial dispute as defined by the Act may be reported to Government who may take such steps as seem to it expedient for promoting conciliation or settlement. It may refer it to an Industrial Court for advice or it may refer it to an Industrial Tribunal for adjudication. The legislation substitutes for free bargaining between the parties a binding award by an impartial tribunal. Now, in many cases an industrial dispute starts with the making of number of demands by workmen. If the demands are not acceptable to the employer—and that is what often happens—it results in a dismissal of the leaders and eventually in a strike. No machinery for reconciliation and settlement of such disputes can be considered effective unless it provides within its scope a solution for cases of employees who are dismissed in such conditions and who are usually the first victims in an industrial dispute. If reinstatement of such persons cannot be

(1) [1949] F.C.R. 321.

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

brought about by conciliation or adjudication, it is difficult, if not impossible, in many cases to restore industrial peace which is the object of the legislation".

This is the view of the object of the Act that is accepted by all including the decisions in *Narendra Kumar Sen's case*(1) and *United Commercial Bank case*(2). In *Narendra Kumar Sen's case*(1) Chagla C. J. said at p. 130:

"The Industrial Disputes Act was enacted, as Mr. Desai rightly says, to bring about industrial peace in the country, to avoid conflicts between employers and labourers, to prevent strikes and lock-outs, to see that the production in our country does not suffer by reason of constant and continuous labour troubles".

Therefore in deciding whether to refer or not, the Government is to be guided by the question whether the dispute is such as to disturb the industrial peace and hamper production. I find no difficulty in thinking that the Government would realise that there was no risk of the peace being disturbed or production being hampered by the dispute raised by the workmen demanding a higher salary for the manager, for being normal men the workmen were not likely to suffer the privations of a strike to enforce their demand for a cause of this nature. The Government must be left to decide this primary question for itself, and therefore the Government must be left to decide in each case whether the workmen had sufficient interest in the dispute. If Government thought that the workmen had no such interest as would lead them to disturb industrial peace by strike or otherwise if the dispute was not ended, the Government might not in its discretion refer the dispute for adjudication by a tribunal. It must be left free to decide as it thinks best in the interest of the country. It is not for the Court to lay down rigid principles of interest which interfere with the Government's discretion, for that might defeat the object of the Act. If the Government feels that the dispute is such that it might lead to the disruption of industrial peace, it is the policy of the Act that it should exercise its powers under it to prevent

(1) (1953) 55 Bom. L.R. 125. (2) [1962] 1 L.L.J. 782.

that. Assume a case in which the workmen raised a dispute without having what the court considers sufficient interest to make it an industrial dispute and therefore, on the matter coming to the court the dispute was held not to be an industrial dispute. Upon that the Government's hands would be tied and it would not be able to have that dispute resolved by the processes contemplated in the Act. Suppose now that, the workmen then go on strike and industrial peace is disturbed and production hampered. The object of the Act would then have been defeated. And why? Because it was said that it was not a dispute in which the workmen were interested and therefore not a dispute which was capable of being adjusted under the provisions of the Act. It would be no answer to say that the workmen would not go on strike in such a case. If they would not, neither would the Government refer the dispute for adjudication under the Act and it would not be necessary for the court to decide whether the workmen were interested in the dispute or not or whether the dispute was an industrial dispute or not. Therefore, I think that it is not necessary to say that a dispute is an industrial dispute within the meaning of the Act only when workmen are interested in it. Such a test of an industrial dispute would make it justiciable by courts and also introduce a rigidity in the application of the Act which is incompatible with the fast changing concepts it has in view and so defeat the object of the Act. It is enough to assume that as normal men, workmen would not raise a dispute or threaten industrial peace on account of it unless they are interested in it.

I wish however to make it clear, should any doubt exist as to this, that I do not intend to be understood as saying that the question whether a dispute is an industrial dispute or not is never justiciable by courts of law and that a dispute is an industrial dispute only if the Government says so. Such a larger question does not arise in this case. All that I say is that it is not a condition of an industrial dispute that workmen must be interested in it and no question of interest

1958

Workmen of Dimakuchi Tea Estate
v.
The Management of Dimakuchi Tea Estate

Sarkar J.

falls for decision by a court if it can be called upon to decide whether a dispute is an industrial dispute or not. The question of interest can only be of practical value in that it helps the Government to decide whether a dispute should be referred for adjudication or not.

Then it is said that if workmen were allowed to raise a dispute concerning a person who was not a workman, then it would be possible for such a person to have his dispute with the employer adjudicated through the workmen. This case was put. Suppose the manager wanted his salary to be increased but could not make the employer agree to his demand, he could then instigate the workmen and make them raise a dispute that his salary should be increased and if such a dispute is an industrial dispute and the award goes in favour of the workmen then the result would be that the Act could be used for settling disputes between the manager and his employer, a dispute which the Act did not intend to concern itself with. So it is said that the words "any person" in s. 2(k) cannot include an employee who is not a workman. I am unable to agree. First, in interpreting an Act, the Court is not entitled to assume that persons would use its provisions dishonestly. The words in the Act cannot have a different meaning than their natural meaning because otherwise there would be a possibility of the Act being used for a purpose for which it was not meant. The remedy against this possibility is provided in the Act, in that it has given complete freedom to the Government not to refer such a dispute. It is not necessary to meet a somewhat remote apprehension that the Act may be used for purposes other than those for which it was meant, to construe its language in a manner different from that which it plainly bears. Lastly, in doing this many cases like those earlier mentioned including the present, which are clearly cases of industrial disputes would have to be excluded in the attempt to prevent by interpretation a remote apprehension of a misuse of the Act. This would do more harm than good.

I have therefore come to the conclusion that a dispute concerning a person who is not a workman may be an industrial dispute within s. 2(k). As it has not been said that the dispute with which we are concerned is for any other reason not an industrial dispute, I hold that the Industrial Tribunal had full jurisdiction to adjudicate that dispute and should have done so.

I would therefore allow the appeal and send the case back to the Industrial Tribunal for adjudication in accordance with law.

ORDER OF THE COURT

In view of the opinion of the majority, the appeal is dismissed. But there will be no order as to costs.

Appeal dismissed.

SANTOSH KUMAR

v.

BHAI MOOL SINGH

(S. R. DAS C. J., VENKATARAMA AIYAR, A. K. SARKAR and VIVIAN BOSE JJ.)

Negotiable Instruments—Summary Suit on dishonoured cheque—Application for leave to defend—Triable issue—Failure to produce documentary evidence—If renders defence vague and not bona fide—Grant of conditional leave—Discretion of Court, Interference with—Code of Civil Procedure, O. XXXVII, rr. 2 and 3.

The respondent filed a suit against the appellant under O. XXXVII of the Code of Civil Procedure on the basis of a cheque for Rs. 60,000 drawn by the appellant in favour of the respondent which, on presentation to the Bank, had been dishonoured. The appellant applied under r. 3 of O. XXXVII for leave to appear and defend the suit on the ground that the cheque had been given only as a collateral security for the price of goods supplied, that the goods had been paid for by cash payments and by other cheques and that therefore the cheque in question had served its end and was without consi-