

SUPREME COURT OF INDIA

Workmen of Dahingepar Tea Estate

Vs.

Dahingepar Tea Estate

C.A.No.32 of 1957

(S. R. Das, C.J.I., N. H. Bhagwati, S. K. Das, K. Subba Rao and Vivian Bose JJ.)

21.05.1958

JUDGEMENT

S. K. DAS, J.:

1. This appeal by special leave may be disposed of on a narrow ground. The material facts are shortly these. Dahingepar Tea Company Ltd., a company incorporated under the English Companies Act and having its registered office in the city of London owned an extensive tea garden called Dahingepar Tea Estate comprising an area of about 522 acres under plantation, situate in the sub-division of Jorhat in Assam. That company employed over 800 manual labourers and about 19 or 20 members of the clerical staff. By a memorandum of agreement made on 7-11-1953, between Dahingepar Tea Co. Ltd., (hereinafter referred to as the vendor) of the one part and Nikhli Jute Baling Co. Ltd., a company incorporated under the Indian Companies Act and having its registered office in the town of Calcutta (hereinafter called the purchaser) of the other part, it was agreed that the vendor would sell absolutely and the purchaser would purchase as and from 1-1-1954, all that Dahingepar Tea Estate comprising the lands described in the Schedule thereto together with all the tea gardens, tea bushes, tea seedlings, tea plants, tea crops etc., and all appurtenances, machinery, electric installations, fittings and appliances for water supply, hospitals equipments, carts, tools utensils and also the export quota rights and internal rights relating to the sale or production of tea, and benefits of insurance and contracts for the sale of tea produced at the said tea estate as on and from January 1, 1954 or in connection with the manufacture of tea or the cultivation and maintenance of the tea estate which the purchaser may like to take over free from all encumbrances and liabilities whatsoever and at or for the price of Rs. 9,50,000, subject to the terms and conditions thereinafter mentioned. Clause 8 of the said agreement provided that subject to the payment of the purchase price in the manner therein mentioned and to the payment of the price of the estate, stores and stocks, possession of the Dahingepar tea Estate would be given to the purchaser and that in the meantime through its manager and agents the vendor would work and maintain the planted area in as full and effectual manner as the same had theretofore been worked and cultivated and would not remove from Dahingepar Tea Estate or cause wilful damage to any furniture, fixtures, fittings, machinery or hospital equipment on the Dahingepar Tea Estate at the date of the agreement. Cl. 9 of the agreement, strongly relied on by the respondent, was as follows:

"The Purchaser shall have the option of taking such members of the staff of the Tea Estate as it shall in its absolute discretion consider useful and efficient for running the Tea Estate. Such members of the staff shall be given fresh appointment by the purchaser as on and from the First January one thousand nine hundred and fiftyfour. Any liability whatsoever for their past services including

bonuses, gratuity, leave pay, dearness allowances, etc., shall be on the Vendor's account. The Vendor shall also, be liable for all the claims whatsoever of the members of the staff not retained by the purchaser including claims for discharges of service, salary, bonuses, gratuity, leave pay, dearness allowance etc."

Clause 20 of the said agreement stipulated for the delivery to the purchaser on completion of the conveyance of the title deeds and papers in the vendor's possession relating to the Tea Estate and by Cl. 21 it was agreed that all garden books of account and other books and documents relating to the garden necessary to the purchaser for the purpose of carrying on the said Tea Estate and the garden and not required by the vendor would be handed over by the vendor to the purchaser on completion.

2. It appears that the fact of this agreement for sale came to the knowledge of the Jorhat Jila Chah Mazdoor Sangha affiliated to the Indian National Trade Union Congress, Assam Branch. The Indian National Trade Union Congress apparently made some representation to the Conciliation Officer and on 21-12-1953, the Conciliation Officer issued a notice fixing 30-12-1953, as the date for holding conciliation proceedings and asked the parties to maintain the status quo under S. 33 of the Industrial Disputes Act.

3. On 22-12-1953, the purchaser issued a notice addressed "to whom it may concern." The notice referred to the agreement for sale and stated that it had been specifically agreed between the vendor and the purchaser that the latter would have absolute discretion to give fresh appointments to any member of the staff it considered fit and proper and that the vendor had undertaken all liabilities in respect of all claims whatsoever of the members of the staff including claims for the discharge of service, salary, bonus, gratuity, leave pay, dearness allowance, etc., to the members of the staff in respect of their past services. By this notice the purchaser invited applications for different posts and intimated that if any member of the present staff wished to apply, he might do so for fresh appointment under the purchaser. It was made clear that the purchaser would give no preference to any body of the staff and would not undertake, or give any understanding, to appoint any member of the staff and that the latter must rank with other outside candidates who might be applying for the posts and that the purchaser would appoint person if, at its absolute discretion, considered fit, and that it retained its right to abolish certain posts or keep any vacancy unfilled.

4. On 23-12-1953 the Sangha, through its Secretary, sent a communication to the Manager of the purchaser requesting him to retain all the workmen in service and not to deny them the benefit that they were reasonably entitled to and to allow them the continuity of service. The letter requested the manager to give his most sympathetic consideration to the prayer and not to alter the present wages and conditions of service of the members of the staff. In conclusion the letter referred to other sales in the area where the purchasers had "inherited all liabilities for past services and retained all staff on their then existing wages and amenities."

5. On 26-12-1953, a fresh notice was issued by the Conciliation Officer intimating that conciliation proceedings would be held on 30-12-1953, as previously notified. The Conciliation Officer held conciliation proceedings on 30-12-1953, and further proceedings were adjourned till 4-1-1954.

6. In the evening of the same day, to wit 30-12-1953, the vendor gave the workmen notice of termination of service with effect from 31-12-1953. It was stated in that notice that the workmen would "receive all pay and allowances due up to the end of December, 1953 together with one month's pay in lieu of notice, and any leave salary due and all provident fund dues."

7. It will be noted that this notice was given while the conciliation proceedings were actually pending and accordingly under Sec. 33 of the Industrial Disputes Act, 1947, it was ineffective and the workmen, in the eye of the law continued to be in employment. In point of fact also, as has been found by the Tribunal, the services of all workmen Continued up to 4-1-1954, on which date the adjourned conciliation proceedings held at Jorhat by the Labour Commissioner himself proved abortive as no agreement could be arrived at as a result of the conciliation proceedings. There is no dispute that eventually the purchaser employed all the manual labourers with continuity of service and also employed three out of the 19 or 20 members of the clerical staff. The rest of the members of the clerical staff did not apply for re-employment but insisted that they must not only be employed by the purchaser as a matter of course but must be so employed with continuity of service. Apparently their cause was taken up by the Sangha representing the workmen who had actually been taken over by the purchaser.

8. It was in these circumstances that on 13-1-1954, the Government, in exercise of its power under Sec. 10 of the Industrial Disputes Act, 1947, as amended, issued notification No. G. L. R. 8/54 dated 13-1-1954, referring the industrial disputes that had arisen on the matter specified in the schedule to the notification between (1) the workmen of Dahingepar Tea Estate represented by the Assam Chah Karmachari Sangha, I.N.T.U.C., Dibrugarh, and (2) the outgoing management of Dahingepar Tea Estate, the Dahingepar Tea Co. Ltd., and (3) the incoming management of Dahingepar Tea Estate, the Nikhli Jute Baling Co. Ltd. The disputes which were referred to Shri Uma Kanta Gohain, retired Additional District and Sessions Judge, as the Tribunal constituted under Sec. 7 of the said Act, were formulated in the schedule to the said notification in the following terms:

1. Whether the transfer of management of Dahingepar Tea Estate consequent upon the sale of the said Tea Estate by the vendor, Dahingepar Tea Co., Ltd., to the purchaser, Nikhli Jute Baling Co. Ltd., can put an end to the services of the members of the staff of Dahingepar Tea Estate, and whether any agreement between the buyer and the seller of Dahingepar Tea Estate can deprive the members of the staff of their rights of service under the original contracts of service and of continuity of their services ?

2. If not - (a) is the outgoing management, the Dahingepar Tea Co. Ltd., justified in proposing to terminate the services of the members of the staff from the time when the management of the garden had changed hands?

(b) Is the incoming management, Nikhli Jute Baling Co. Ltd., justified in refusing to maintain the continuity of service and original terms and conditions of service of the members of the staff of Dahingepar Tea Estate?"

9. While the reference was pending, a formal indenture was made on 29-1-1954, whereby the vendor granted, conveyed and transferred unto the purchaser free from all encumbrances and liabilities whatsoever (1) all lands and hereditaments described in the first schedule thereunder written and known as Dahingepar Tea Estate; (2) all buildings, factory godown, offices, bungalows and labour quarters, (3) all plant, machinery, electric installations, fittings and appliances for water supply, hospital equipments, carts, tools, utensils, implements, live and dead stock, furniture : (4) all tea plants, tea bushes, the seedlings, tea crop; (5) all export quota rights and internal rights relating to the sale or production of tea and also the benefits and advantages of contracts for the sale of tea produced at the said Tea Estate on and from 1-1-1954, and lastly (6) all that the Dahingepar Tea Estate and the business carried on in connection therewith as from 1-1-1954, to have and to hold all

and singular the several properties and premises therein comprised and thereby granted and transferred unto the purchaser on and from 1-1-1954. By that covenant the vendor covenanted, inter alia, that the purchaser would as on and from 1-1-1954, peaceably and quietly hold, possess and enjoy the said several properties free from all encumbrances and that the vendor would duly pay off its debts and liabilities and would well and sufficiently indemnify and keep indemnified the purchaser from and against all claims and demands on account or in respect thereof.

10. On 29-6-1954, the Tribunal made its award. The Tribunal held (1) that the garden was sold as a going concern, (2) that the services of the staff continued up to 4-1-1954, (3) that retrenchment had not been necessitated by or on account of reasons of trade, for the strength of the staff had actually been increased from 19 or 20 to 23 or 24, (4) and that the transfer could not effect a change in the service conditions of the staff and the agreement between the vendor and purchaser was not binding on the staff. The result of the aforesaid findings was that the purchaser was held to be not justified in refusing to maintain the continuity of service of the members of the staff of the Dahingepar Tea Estate. The award directed that those of the members of the former staff who had been kept out of service in the garden in question from the time the new management had taken over charge but who would be willing to be re-instated in their former posts on the previous terms and conditions of their service with continuity of their service be re-instated in their former posts. The award further ordered that those of the members of the old staff who had been kept out of service in the garden and have not since taken any employment elsewhere be paid their salaries for the period of their forced unemployment which was caused at the instance of the purchaser.

11. On 15-7-1954, a notification under Sec. 17 of the Industrial Disputes Act was issued by the Government directing that the award be published and become enforceable under Sec. 17 (a) on the expiry of 30 days from the date of such publication. The purchaser appealed to the Labour Appellate Tribunal. By their judgment, pronounced on 21-9-1955, the Labour Appellate Tribunal, consisting of two members, allowed the appeal and set aside the award made by the Tribunal, although on somewhat different grounds. Against that decision of the Labour Appellate Tribunal the workmen have filed this appeal with special leave granted by this Court on 6-4-1956.

12. On behalf of the appellant workmen it has been contended that on the sale of the Tea Estate as a going concern, the purchaser could not effect a change in the service conditions of the members of the staff and the agreement between the vendor and purchaser as embodied in clause 9 did not bind the workmen. On the other side, it has been strongly contended on behalf of the respondent that there was no contractual relationship of employer and employee between the discharged members of the staff and the purchaser; and the former if they have any claim as to retrenchment etc., must press that claim against the vendor, but they cannot claim to be workmen of the respondent.

13. We do not think that it is necessary for the purpose of deciding this appeal to determine the larger question as to whether on the transfer of a business as a going concern, the incoming management must always accept the services of the existing workmen under their original contracts of service and with continuity of service. That is a question which must be left to be decided in a more appropriate case.

14. Now, the first question that arises for consideration in this appeal is this: Was the Government of Assam competent to refer the dispute which arose between the workmen of the Dahingepar Tea Estate, represented by the Assam Chah Karmachari Sangha and the incoming management of the Dahingepar Tea Estate, represented by the Nikhli Jute Baling Company Ltd., as an industrial dispute within the meaning of S. 2 (k) of the Act? On this question the Industrial Tribunal found in

favour of the workmen and the President of the Appellate Tribunal affirmed that finding, but the other member Shri P. R. Mukherji expressed a contrary view. The President said:

"The dispute which gives rise to this reference is actually between workmen employed in the Tea Estate on the one hand and their employers, both the outgoing and incoming managements of the estate on the other.... .. In my view, the definition of industrial dispute, as also the meaning of employer are wide enough to cover the point under consideration in this appeal, not only between the workers and the outgoing management, but also the workers and the incoming management, and between two managements themselves. Accordingly, the reference cannot be said to be invalid, or ultra vires of the Industrial Disputes Act."

On the majority decision of this Court in the *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate*, 1958-1 Lab LJ 500: (AIR 1958 SC 353) (A) the present dispute is undoubtedly an industrial dispute within the meaning of the Act. That decision lays down that where the workmen raise a dispute as against their employer, the person or persons regarding whose employment or non-employment the dispute is raised need not be, strictly speaking 'workmen' within the meaning of the Act but must be persons in whose employment or non-employment the 'workmen' as a class have a direct or substantial interest. In the case before us as between the vendor and the discharged workmen, the latter came within the definition of 'workmen' as they were discharged during the pendency of conciliation proceedings. This fact did not, however, make them workmen of the purchaser. Even then they were persons in whose employment or non-employment the actual workmen of the Dahingepar Tea Estate were directly interested. Therefore, the ratio of the *Western India, Automobile Association v. Industrial Tribunal, Bombay*, 1949 FCR 321: (AIR 1949 FC 111) (B), as also of the later decision in *workmen of the Dimakuchi Tea Estate* (supra) applied, and the dispute was clearly an industrial dispute within the meaning of the Act.

15. That being the position, when a competent reference was made by the Government of Assam for adjudication of the Industrial dispute to a Tribunal constituted under Sec. 7 of the Act, the Tribunal had all the powers given to it under the Act. Under Sec. 10 (1) (c), an industrial dispute is referred to a Tribunal for adjudication. Section 10 (4) of the Act, as it stood at the relevant time, said:

"10 (4). Where in an order referring an industrial dispute to a Tribunal under this section or in any subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points and matters incidental thereto."

16. We pointed out in *Niemia Textile Finishing Mills Ltd. v. The 2nd Punjab Industrial Tribunal*, 1957 SCR 335: (S) AIR 1957 SC 329) (C), that the functions of Industrial Tribunals while adjudicating upon disputes referred to them for adjudication are quite different from those of arbitration tribunals in commercial matters and on a general survey of the scheme of the Act and with reference to the various provisions thereof, we explained the nature of those functions.

17. The principal question before us is whether the Industrial Tribunal has exercised its functions in accordance with the provisions of the Industrial Disputes Act, 1947. One of the difficulties in the present case arose out of the somewhat wide and general terms in which question No. 1 was framed. That question consisted of two parts : (i) whether the transfer of management of the Dahingepar Tea Estate consequent on its sale as a going concern to the respondent put an end to the services of the members of the staff; and (ii) whether any agreement between the buyer and the seller can deprive the members of the staff of their rights of service under the original contracts and disturb their continuity of service. In our opinion, the Industrial Tribunal could not deal with those

questions as mere abstract questions of law; and we doubt if they could answer them as such. Much of the controversy in this case, and perhaps a good part of the difference of opinion between the Industrial Tribunal and the Labour Appellate Tribunal and also between the two members of the latter body inter se have arisen by reason of the different standpoints from which question No. 1 has been approached. We do not think that it was necessary, and we go further and say that we doubt if it was the function of the Industrial Tribunal, to decide the abstract question of law whether on a transfer of management consequent on a sale, the services of workmen - be they members of the staff or labourers - are automatically put an end to. The answer to such an abstract question must depend on diverse circumstances relating to and arising out of the contractual relation between the parties. It may even be doubted if in a contract between two employers - vendor and purchaser - with regard to a going concern, the future services of employees, apart altogether from such rights and obligations as have already accrued with regard to gratuity, bonus etc., can be legally transferred and such a transfer made binding on the employees. Similarly, with regard to the second part of the question also, no answer in the abstract can be given unless the rights and obligations under the original contracts of service and also under the agreement of sale or sale deed are known.

18. What the Industrial Tribunal did in the present case was to link up the two questions on the basis of the facts admitted or proved in order to answer the main question of the adjudication, which was whether the respondent (Nikhli Jute Baling Co. Ltd.) was justified in refusing to maintain the continuity of service and original terms and conditions of service of some of the members of the staff of Dahingepar Tea Estate. The Industrial Tribunal answered this question in favour of the workmen and made necessary directions as to re-instatement and payment of salary for the period of forced unemployment. On what findings did the Industrial Tribunal so answer the main question? It found that (a) the tea estate was sold as a running or going concern, with a reservation as to employment of members of the staff; (b) that all the manual labourers as distinguished from members of the staff were continued in employment to their previous terms with continuity of service; (c) three members of the staff also were continued in employment but as new recruits, without continuity of service; and (d) there were no trade reason or reasons of efficiency etc. for which the remaining 18 or 19 members of the staff were not taken. The Tribunal said : -

"It was nobody's case that those members of the staff were guilty of any breach of the services conditions or rules or of any misconduct for which their services were liable to be terminated forthwith or for which they could be deprived of their right of service and of the continuity of their service in the estate concerned in which they were so long serving without any fault." During the conciliation proceedings the respondents made its position quite clear that it was willing to take 12 members of the staff out of the then existing 16 members on their old scales of pay, but only as new comers on formal petitions for appointment. In other words, the respondent insisted on two conditions; (a) the old members of the staff must make fresh applications and (b) they must come in as new entrants, thereby losing their continuity of service and such other rights as they might have acquired as to gratuity, bonus etc. The Tribunal held that these were unreasonable conditions and further observed :

"In the instant case, the incoming management proposed to disturb the staff members only and not the labour force of the garden. Nothing else would tend to create unrest more than such discrimination would."

19. On the aforesaid findings arrived at by the Industrial Tribunal it had jurisdiction to make the order it did, irrespective of any purely legal question as to whether there was any contractual relation of employer and workmen between the respondent and the discharged members of the staff.

The Appellants Tribunal did not displace any of the findings arrived at by the Industrial Tribunal, but approached the two questions for adjudication as abstract questions of law - which, in our view, was a fundamentally wrong approach, though the President said in one part of his judgment that an Industrial Tribunal has nothing to do with the decision of an abstract question of law. The President proceeded mainly on this basis: the services of the workmen were terminated by the old management by proper notice, and as they did not, except a few, apply for fresh appointment on the new terms and conditions, there was no contract of service, enforceable in law, between the workmen and the two managements in question. This line of reasoning overlooked two essential circumstances; one was that the notice of discharge was given by the outgoing management during the dispute and pendency of conciliation proceedings and was hit by S. 33 of the Act, and the other was that in spite of the notice all the members of the staff were allowed to continue in service till 4-1-1954. The third circumstance was that the Industrial Tribunal found that the conditions which the incoming management sought to impose were intended to discriminate between 'workmen' and most likely to create industrial unrest. The clause in the memorandum of agreement or the sale deed which gave the respondent a discretion to employ or not employ members of the staff or to give them fresh employment was indeed found by the Appellate Tribunal to be a bona fide clause as between the vendor and purchaser; but the question before the Industrial Tribunal was as to how it would operate against the workmen in the context of the industrial dispute referred to it for adjudication. In the circumstances of the present case the Industrial Tribunal found that it operated to their prejudice, and we are not satisfied that the Appellate Tribunal has given cogent reasons for going behind that finding.

20. There was a difference between the two members of the Appellate Tribunal as to whether the discharged members of the staff were entitled to retrenchment compensation or not from the outgoing management. In the view which we have taken, that question is no longer relevant.

21. A number of points were discussed and a number of decisions of High Courts and Labour Courts were cited at the bar on the question whether on a transfer of business as a going concern, the incoming management becomes a successor to the outgoing management; and in so, to what extent the incoming management must recognise the rights of labour already accrued as to gratuity, bonus etc., and continuity of service of such labour of such labour as was employed by the outgoing management. In the view we have taken on the facts of this case it is not necessary for us, on this occasion, to express any opinion on those questions or pronounce any opinion on the correctness of any of those decisions.

22. We prefer to base our decision in this case on this short ground; there was an industrial dispute which was referred to the Industrial Tribunal for adjudication; the reference being competent, the Industrial Tribunal had jurisdiction to make an adjudication and in doing so it could exercise all its functions under the Act, and in the exercise of those functions it came to certain findings on the facts of the present case on which it had jurisdiction to make the order it did; it Appellate Tribunal did not displace those findings of the Industrial Tribunal.

23. We, accordingly, allow this appeal, set aside the decision of the Labour Appellate Tribunal, and restore the award of the Industrial Tribunal. The appellants will get the costs of this appeal.

Appeal allowed.

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