

SUPREME COURT OF INDIA

Kays Constructions Co. (Private) Ltd.

Vs.

Its Workmen

C.A.No.362 of 1958

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar and A. K. Sarkar, JJ.)

08.10.1958

JUDGEMENT

P. B. GAJENDRAGADKAR J.:

1. This appeal by special leave arises out of a dispute between the appellant, Kays Construction Co. (Private) Ltd., Allahabad, and Messrs. Kays Construction Co., Allahabad by its sole proprietor Mr. H. M. Khosla, respondent 2, on the one hand, and the Workmen originally employed by respondent 2 through the Secretary, Kays Construction Mazdoor Sabha, Allahabad, respondent 1, on the other. The appellant is a private limited company having its registered office at 14, Stephen House, Calcutta, and carries on the business of constructing railway coaches at Allahabad against the orders received from the railway administration. The appellant was incorporated on June 23, 1956, and after its incorporation it submitted two tenders on February 2 and December 15, 1956, in response to advertisements published by the North-Eastern Railway calling for tenders for construction of railway coaches. These tenders were accepted by the railway authorities and their acceptance was communicated to the appellant at the end of March 1957. It appears that the Chief Mechanical Engineer North-Eastern Railway, Gorakhpur, wrote to respondent 2 on April 1, 1957, that the siding at Allahabad which had been given in the possession of respondent 2 should be handed over to the appellant. On April 10, 1957, the appellant entered into an agreement with Mr. H. M. Khosla for the purchase of machinery and tools, furniture and fittings belonging to respondent 2 for Rs. 55, 125. By the end of April 1957, the appellant advertised that it wanted to employ workmen for the purpose of constructing coaches for the railway administration. In response to the said advertisement several persons applied and were employed by the appellant; among them were some of the workmen of respondent 2. Respondent 2 had been carrying on the work of constructing railway coaches under orders received from the railway administration; but it is alleged that respondent 2 decided to close its business owing to financial difficulties and to terminate the services of its employees. Meanwhile a dispute had arisen between respondent 2 and its workmen, which was referred to the Industrial Tribunal (General) Allahabad for its decision (Case No. 12 of 1957). This dispute ended in a compromise and it was agreed by respondent 2 that bonus would be paid by it to its workmen for the entire period of its existence.

2. Respondent 1 did not accept respondent 2's allegation that it had closed its business and the contention of respondent 1 was that the plea of closure of business had been adopted by respondent 2 as a device to deprive its workmen of their legitimate rights. In fact the workmen claimed that notwithstanding the change of the name of the concern, the appellant was bound to employ, and continue the employment of, all the workmen of respondent 2 on the same terms and conditions of

service. These allegations were not admitted either by the appellant or respondent 2 and that has raised the present dispute.

3. By the notification dated October 5, 1957, the Labour Commissioner, U P, referred this dispute to the Industrial Tribunal (Sugar) Allahabad, for adjudication. The dispute thus referred to adjudication is "whether the management of Messrs. Kays Construction Co. (Private) Ltd., Allahabad, are required to reinstate the old workmen given in the annexure of Messrs. Kays Construction Co., Allahabad; if so what details."

4. Before the tribunal respondent 1 urged that there was no genuine closure of respondent 2, that workmen's services had never been properly or validly terminated, that the appellant was the continuer and successor of respondent 2 and as such was found to continue the workmen in employment, that the refusal of work on February 18, 1957, February 23, 1957 and March 13, 1957 and other dates was a mala fide act of the employers and amounted to an illegal lockout and that the workmen, were entitled to be reinstated by the appellant and to be paid full wages for the period of the lockout.

5. The appellant resisted this claim and its case was that it had not taken over the assets and liabilities of respondent 2 nor was there any transfer of its business. The appellant started its business after its incorporation as a private limited company. According to the appellant "there was complete hiatus between the management of respondent 2 and the appellant" and there was no link to connect the two managements except that the business done by respondent 2 and the business now being carried on by the appellant are similar. The appellant urged that since the persons whose names had been given in the annexure to the reference were not its employees, no industrial dispute arose in the present case.

6. Respondent 2 substantially supported the case of the appellant. It was urged on its behalf that its business had been closed and that it had no connection with the business carried on by the appellant. Before the closure of its business the services of its employees had been duly terminated by respondent 2. in fact according to its case respondent 1 used to engage employees on an ad hoc basis for each individual job, and so the claim made by the workmen for reinstatement against the appellant was not valid in law.

7. Of these contentions the tribunal framed some additional issues for decision. Two of these issues which are relevant for our purpose are-

"whether there was no genuine closure of the concern called Messrs. Kays Construction Co., Ram Baug, Allahabad and, whether the Kays Construction Co. (Private Ltd. is the continuer of, and successor to, the Kays Construction Co., Ram Baug, Allahabad; if so, with what effect ?"

Before the tribunal parties led evidence both oral and documentary. In the end the tribunal accepted the case made out by respondent 1 and held that the appellant was required to reinstate the old workmen given in the annexure of respondent 2. Kays Construction Co., Ram Baug, Allahabad. The award further directed that "these workmen will be restored in their old or equivalent jobs and given continuity of service." The tribunal has further added that in view of the somewhat peculiar features of the case and in the larger interest of the industry the tribunal would order that the workmen be paid only 50 per cent, of their back wages or the period they were forcibly kept out of employment. It is against this award that the present appeal has been filed.

8. Before dealing with the points which have been raised before us by Mr. Viswanatha Sastri, for the appellant, it is necessary to set out clearly the facts found by the tribunal. It cannot be disputed that the findings of fact recorded by the tribunal cannot be successfully challenged before us in an appeal under Art, 136 of the Constitution. In its award, the tribunal has discussed the legal position in regard to the closure and lockout in the light of judicial decisions and then it has observed that

"the crux of the matter lies in whether there was a full and real closure or not whether it was genuine or bona fide or mala fide, whether there was effective retrenchment or the case was otherwise, and lastly whether there was only lockout of the workmen."

These questions have been examined by the tribunal in great detail. .

9. The case for respondent 2 was that Mr. H. M. Khosla its sole proprietor had been doing the work of constructing railway coaches in the past in partnership with other persons. These partnerships were eventually dissolved and Mr. Khosla became the sole proprietor in June 1954. Mr. Khosla stated before the tribunal that though he was carrying out the orders received from the railway administration he found that the work on the whole did not bring much profit and so he decided to close his concern Mr. Khosla also suggested that the employment of his workmen was on an ad hoc basis, job by job. Both these pleas have been rejected by the tribunal after considering the relevant evidence. According to the tribunal, the truth was that Mr. Khosla could not reconcile himself to the formation of the union of his workmen and so he took "an unwarranted decision to continue his business under a changed name." Mr. Khosla had not produced the balance-sheet of the profit and loss account of respondent 2 for the relevant years and there was no reliable material on the record to show that Considerations of financial difficulty really justified the alleged closure of the business of respondent 2. In fact, in the dispute raised by workmen as regards bonus, Mr. Khosla had agreed to pay them bonus to the tune of Rs. 10,000. The conclusion of the tribunal, therefore, was that the financial reason put forward by Mr. Khosla was not the real reason for closing down the business nor were there any other good reasons such as economy, rationalisation or installation of labour-saving devices which could justify the said alleged closure.

10. The tribunal then examined the plea that the appellant was a new and independent company. It held that this plea was also not proved. It referred to the letters written by the appellant while offering its tender for contract to the railway administration (Exs. E. 43 and E. 44) and held that the irresistible impression that these letters create is that the new company is speaking in the language of the, old company. The tribunal also commented on the fact that of the five directors of the appellant Mr. Khosla, his wife and his previous manager Mr. Mall were there and that Mr. Khosla had admitted that he and his wife owned interest to the extent of 30 per cent. in the said concern. The tribunal then referred to the fact that Mr. Khosla, the managing director of the appellant did not consider it necessary to file the articles of association of the new company nor did he produce any documentary evidence to show the extent of interest, if any, of the various directors in the new venture. The tribunal was, therefore, inclined to take the view that though the appellant and respondent 2 have to be taken as two separate legal entities,

'yet, from all accepted canons of social justice the workmen must be deemed to be continuing in the same business which was only given a different name in order to defeat their rights already accrued or in the process of formation."

In this connection, the tribunal examined the conduct and management of the appellant's affairs. The appellant had used the office, the premises, the telephones and the telegraphic address of respondent

2; not only was the goodwill of respondent 2 made use of by the appellant in connection with the submission of its tenders but the name of respondent 2 has also been substantially retained by the appellant. Even the electric connections of the two companies remained the same; and it was not shown that respondent 2 received any rent or other charges from the appellant in that behalf. The sale agreement between the appellant and respondent 2 showed that the consideration of Rs. 55,125 was not paid at the time of the agreement but had to be paid by December 31, 1957. The tribunal felt impressed by the argument of respondent 1 that if the muster rolls had been produced they would have shown the falsity of the plea that respondent 2 had closed its business and that the appellant had started its new business independently of respondent 2. The workmen had worked in the business of respondent 2 for a number of years and the tribunal felt no doubt that there had been no full or real closure of respondent's business and that in fact its old business continued much the same as before under the same style.

11. The tribunal also considered in detail the conduct of Mr. Khosla in regard to the termination of such of his employees as took part in the affairs of their union. It has also referred to the negotiations carried on between the workmen on the one hand and the appellant and respondent 2 on the other and has stated that these negotiations ended in a gentlemen's agreement on June 10, 1957. During these negotiations the appellant was represented by Mr. Khosla and Mr. Malik and they agreed that the workmen who were not then taken up in their employment would be taken up by instalments so spread over that by August 15, 1957, all of them would be absorbed. It was also agreed at this time that "the employment forms which the workers would sign would be applicable to that extent to which it is certified by the appropriate authorities." Thus, having considered the whole of the evidence adduced before it the tribunal observed that

"enough has been said to show that there is neither full nor genuine closure of Messrs. Kays Construction Co., Ram Baug, Allahabad, nor a proper retrenchment but only an uncalled or lockout of the workmen. The workmen continued to be workmen" It is in the light of these findings that the tribunal made its final award.

12. On behalf of the appellant it has been urged before us by Mr. Sastri that the findings made by the tribunal disclose confusion of thought. He contends that the appellant has been incorporated as a private limited company and must be regarded in law and in fact as an entity separate from and independent of respondent 2. According to him, three different points have been mixed up by the tribunal in reaching its final decision. The tribunal seems to have assumed that though the appellant had been formally incorporated, its incorporation was only in name and in form and that in fact the appellant had no independent existence from Mr. Khosla. It also seems to have taken the view that if the appellant was an independent entity it must have acted as a benamidar for Mr. Khosla when it offered its tender to the railway administration and obtained the order for the construction of railway coaches. In some parts of its judgment the tribunal also seems to accept the view that even if the appellant was a successor of respondent 2's running concern and had taken up the work of the construction of coaches on its own, under the principles of industrial adjudication the appellant was bound by the obligations incurred by respondent 2 qua its workmen. Mr. Sastri's contention is that these three different concepts should not be confused and the merits of each of them should be separately and clearly considered. At one stage of his arguments Mr. Sastri suggested that, if necessary, in the interest of justice, appropriate issues should be framed corresponding to these concepts and an opportunity should be given to the parties to lead evidence on them. There may be some force in this contention and if it had become necessary for us to decide the points of law raised by Mr. Sastri we would have sympathetically considered his request for a remand; but we do not think it necessary to examine the merits of the interesting points of law raised by Mr. Sastri because

in our opinion the present appeal is governed by a decision of the Constitution Bench of this Court in workmen of Dahingapara Tea Estate v. Dahingapara Tea Estate, Civil Appeal No. 32 of 1958 decided on May 21, 1958: (AIR1958 SC 1026).

13. In this appeal also the larger question about the liability of the successor qua the workmen in the employment of his predecessor under the principles of industrial adjudication was raised; but the learned Judges thought that it was not necessary to decide the said abstract question of law. Nevertheless they examined the merits of the rival contentions between the parties and held that the decision of the tribunal directing reinstatement of certain workmen was right and the contrary view taken by the Labour Appellate Tribunal was not justified. It appears that the respondent in the said case was the purchaser of the tea estate in question, By Cl. 9 of the agreement of sale the purchaser had been expressly given 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. This agreement was made on November 7, 1953 but had to come into force on January 1, 1954. On December 22, 1953, the respondent gave notice to certain employees. On December 30, 1953, the vendor purported to terminate the services of its employees with effect from December 31, 1953. It appeared that the respondent had employed all labourers and three of the clerks who were in the employment of the vendor. Sixteen clerks were, however, not employed by him. The respondent's employees thereupon raised an industrial dispute in regard to the non-employment of the said sixteen clerks. The tribunal had ordered their reinstatement but the Labour Appellate Tribunal had reversed the award of the tribunal on the ground that the respondent as purchaser of the tea estate was not bound to reinstate them. This Court set aside the order of the Labour Appellate Tribunal and restored the award of the tribunal for the reinstatement of the clerks in question.

14. The decision in this appeal has emphasized that in dealing with industrial disputes the tribunals should not be unduly influenced by academic questions of law and that they should make an attempt to deal with the merits of each case according to its facts and circumstances. As pointed out in *Niemia Textile Finishing Mills Ltd. v. The 2nd Punjab Industrial Tribunal*, 1957 SCR 335: (S) AIR 1957 SC 329) "the functions of industrial tribunals while adjudicating upon disputes referred to them for adjudication are quite different from those of arbitration tribunals that deal in matters of commercial dispute". This Court then held that an industrial dispute did arise between the respondent purchaser and the appellants and that the Labour Appellate Tribunal was in error in reversing the award principally on the consideration of the abstract point of law as to the rights and liabilities of the successor like the respondent.

15. Mr. Sastri fairly conceded that if facts found by the tribunal in the present case are accepted as correct then the present case would be substantially similar to the case of *Dahingapara Tea Estate*, AIR 1958 SC 1026 (supra). He, however, contends that there is one material point on which the present case can be distinguished. In the present case, according to Mr. Sastri, no industrial dispute really arose between the appellant and respondent 1. His argument is that the employees, the claim for whose reinstatement has raised the present dispute are not workmen of the appellant and he suggests that it is not shown that respondent 1 union has on its register any of the appellant's workmen. Mr. Sastri concedes that it is well settled that a dispute which validly gives rise to a reference under the Industrial Disputes Act need not necessarily be a dispute directly between an employer and his workmen. The definition of the expression 'industrial dispute' is wide enough to cover a dispute raised by the employer's workmen in regard to the non-employment of others who may not be his workmen at the material time. He, however, contends that none of the appellants workmen has taken up the present dispute and so an industrial dispute cannot be said to arise between the appellant and respondent 1 and that makes the reference invalid. There is no doubt that

one of the points made by respondent 1 was that the appellant is the continuer of, and successor to, respondent 2 and that respondent 1 had taken up the cause of the employees mentioned in the annexure who had not been employed by the appellant. If the appellants case was that respondent 1 could not raise an industrial dispute in this matter since none of the workmen of the appellant was its member, it should have taken this plea before the tribunal. No doubt it does appear that the appellant desired that persons who wanted employment under it should discontinue their connection with the union and Mr. Sastri wanted to refer to the evidence of Dr. Trivedi, the President of the Union, in support of his argument that such of the workmen whom the appellant has employed can be safely taken to have resigned their connection with the union. We do not think that it is open to Mr. Sastri to take such a plea at this stage. The statements made by Dr. Trivedi to which Mr. Sastri has referred clearly show that Dr. Trivedi was not prepared to issue the requisite certificates to the workmen who wanted employment with the appellant that they had ceased to be the members of the union. All that Dr. Trivedi asked the General Secretary of the Union to do was to issue statements of the outstanding dues of the workmen in question so that they might produce the said certificates to the management of the appellant in their effort to satisfy the management that they were not members of the union because they had not cleared off their dues. The workmen apparently adopted this device to obtain employment from the appellant; but that cannot assist Mr. Sastri's argument because the record shows that most of them, after obtaining employment, wrote back to the union that they continued to be the members of the union; apart from this consideration, however, the plea sought to be raised by Mr. Sastri is a plea of fact which affected the tribunal's jurisdiction and having regard to the case specifically set out by respondent 1. against the appellant it was clearly necessary for the appellant to have made out this plea in clear terms. Evidence could then have been led on the point to enable the tribunal to decide whether respondent 1 was entitled to raise the present dispute with the appellant as an industrial dispute under the Industrial Disputes Act and whether the reference to it was valid. On the record as it stands there would be no justification for assuming that respondent 1 which has raised the present dispute cannot do so because none of the appellant's employees is its member and so it cannot claim to represent them.

16. Thus the only ground on which Mr. Sastri attempted to distinguish the present case from the case of the Workmen of Dahingepara Tea Estate, ((S) AIR 1957 SC 329) (supra) fails and so we must hold that the view taken by this Court in the said case governs the decision of the present appeal. A valid reference was made to the tribunal in regard to an industrial dispute between the appellant and respondent 1 and the tribunal, having considered the relevant facts, has come to the conclusion that the workmen in question have been improperly locked out and are entitled to reinstatement. Having regard to the material findings of fact recorded by the tribunal in the present case, we do not think that the validity of the award can be challenged by the appellant on abstract legal grounds sought to be raised by Mr. Sastri before us.

17. In the result, the appeal fails and must be dismissed with costs.

Appeal dismissed.

</html