The Standard-Vacuum Refining Co. of India Ltd.

Vs

Its Workmen and Others

Civil Appeal No. 130 of 1959

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

06.04.1960

JUDGMENT

WANCHOO, J. -

This is an appeal by special leave in an industrial matter. The appellant is The Standard Vacuum Refining Company of India Limited (hereinafter called the company). A dispute was raised by the workmen of the company (hereinafter called the respondents) with respect to contract labour employed by the company for cleaning maintenance of the refinery, (plant and premises) belonging to the company. The system in force in the company is that this work is given to contractors for a period of one year from October 1 to September 30. At the time when the reference was made the contract was with Ramji Gordhan and Company for the period from October 1, 1957, to September 30, 1958. On April 27, 1957, the respondents made a demand for abolition of the contract system that prevailed in the company and for absorbing the workmen employed through the contractors into the regular service of the company with retrospective effect from the date of their employment in the company through the contractors. The case of the respondents was that the contractor used to change sometimes from year to year with the result that the workmen employed by the previous contractor were thrown out of employment. As an instance, it was said that previous to October 1, 1957, the contract was with Gowri Construction Company. That company employed 67 workmen to do the work. But when the contract was given to Ramji Gordhan and Company, all these 67 workmen were thrown out of employment, though 40 of them were subsequently re-employed as fresh employees by Ramji Gordhan and Company. The result of the system therefore was that there was no security of service to the workmen who were in effect doing the work of the company. Besides the contractors were paying much less to the workmen that the amount paid by the company to its unskilled regular workmen. Further, the workmen of the contractors were not entitled to other benefits and amenities such as provident fund, gratuity, bonus, privilege leave, medical facilities and subsidised food and housing to which the regular workmen of the company were entitled. The work was of a permanent nature, but the contract system was introduced to deny the workmen the rights and benefits which the company gave to its own workmen.

The dispute was taken to the conciliation officer. When conciliation failed, the Government of Bombay made the following reference on May 13, 1958.

> "The contract system for cleaning the premises and plant should be abolished and workers working in the refinery through the Ramji Gordhan and Company should be treated as workers of the Standard Vacuum Refining Company of India Limited, Bombay, and wage-scales, conditions of service, etc., that are applicable to the workers of the refinery be made applicable to them. Past service of these workers

should be counted and they should be treated as continuously in the service of the Stanvac refinery from the date of their entertainment."

The company resisted the claim and raised two main contentions. In the first place it was contended that the reference under s. 10 of the Industrial Disputes Act, No. 14 of 1947 (hereinafter called the Act), was incompetent. In the second place it was contended that the work done by the contractor's workmen was not germane to the manufacturing process and was therefore entrusted to the contractor. If the workmen of the contractor were not satisfied with the conditions of service, they could take up the matter with the contractor and the company had nothing to do with it. As to the difference between the wages and benefits and amenities of the regular workmen of the company and the contractor's workmen, it was said that the work of the two sets of workmen was very different and that in any case this was a matter between the contractor and its workmen. The contractor was an independent employer and it was incorrect to say that the real employer was the company. It was for the company to decide what was the best method of carrying on its business and the industrial tribunal should not interfere with that function of the management.

The tribunal held that the reference was competent. On the merits it was of opinion that the work which was being done through the contractor was necessary for the company and had to be done daily, though it was not a part of the manufacturing process. It further held that doing of this work through annual contracts resulted in the deprivation of security of service and other benefits, privileges, leave, etc., for the workmen of the contractor. Therefore considering the nature of the case it was of opinion that this was a proper case where a direction should be given to the company to abolish the contract system with respect to this work. In the result the company was directed with effect from November 1, 1958, to discontinue the practice of getting this work done through contractors and to have it done through workmen engaged by itself. The other part of the demand, namely, that all the workmen of the contractor should be taken over by the company and their past services should be counted and that they should be given the same wage-scale and conditions of service, etc., which were applicable to the regular workmen of the company was rejected. The company was further directed to engage regular workmen for this work and in so doing it was to give preference to the workmen employed by Ramji Gordhan and Company. Wage-scale and other benefits to be given to these workmen were left to the company to be determined by it.

Learned Solicitor-General appearing for the company raised two contentions before us, namely, (i) is this dispute an industrial dispute and therefore the reference was competent ? and (ii) is the tribunal justified in interfering with the management function as to how it should get its work done ?

Re. (i) :

The contention under this head is that there is no dispute between the company and the respondents and that it was not open to the respondents to raise a dispute with respect to the workmen of some other employer (in this case, Ramji Gordhan and Company). Reliance in this connection was placed on the definition of "industrial dispute" in s. 2(k) of the Act and the judgment of this Court in Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate ((1958) S.C.R. 1156). The definition of "industrial dispute" in s. 2(k) requires three things -

(i) There should be a dispute or difference;

(ii) The dispute or difference should be between employers and employers, or

between employers and workmen or between workmen and workmen;

(iii) 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 thus refers to the factum of a real and substantial dispute, the second part to the parties to the dispute and the third to the subject-matter of the dispute. The contention of the learned Solicitor-General is two-fold in this connection, namely, (i) that there is no real or substantial dispute between the company and the respondents, and (ii) that the subject-matter of the dispute is such that it cannot come within the terms of the definition in s. 2(k).

The first submission can be disposed of shortly. There is undoubtedly a real and substantial dispute between the company and the respondents on the question of the employment of contract-labour for the work of the company. The fact that the respondents who have raised this dispute are not employed on contract basis will not make the dispute any the less a real or substantial dispute between them and the company as to the manner in which the work of the company should be carried on. The dispute in this case is that the company should employ workmen directly and not through contractors in carrying on its work and this dispute is undoubtedly real and substantial even though the regular workmen (i.e., the respondents) who have raised it are not employed on contract labour. In Dimakuchi case ((1958) S.C.R. 1156) to which reference has been made, the dispute was relating to an employee of the tea estate who was not a workman. It was nevertheless held that this was a real and substantial dispute between the workmen and the company. How the work should be carried on is certainly a matter of some importance to the workmen and in the circumstances it cannot be said that this is not a real and substantial dispute between the company and its workmen. Thus out of the three ingredients of s. 2(k) the first is satisfied; the second also is satisfied because the dispute is between the company and the respondents; it is the third ingredient which really calls for determination in the light of the decision in Dimakuchi case ((1958) S.C.R. 1156).

Section 2(k), as it is worded, would allow workmen of a particular employer to raise a dispute connected with the employment or non-employment, or the terms of employment or with the conditions of labour of any person. It was this aspect of the matter which was considered in Dimakuchi case ((1958) S.C.R. 1156) and it was held that the words "any person" used in s. 2(k) would not justify the workmen of a particular employer to raise a dispute about any one in the world, though the words "any person" in that provision may not be equated with the words "any workman". The test therefore to be applied in determining the scope of the words "any person" in s. 2(k) was stated in the following words at pp. 1174-75 :-

"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 belongs 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 a dispute is composed of aggrieved workmen themselves and the subject-matter of the 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."

We have therefore to see whether the respondents who have raised this dispute have a direct interest in the subject-matter of the dispute or a substantial interest therein in the sense that the class to which the respondents belong is substantially affected thereby and whether there is community of interest between the respondents and those whose cause they have espoused. There can be no doubt that there is community of interest in this case between the respondents and the workmen of Ramji Gordhan and Company. They belong to the same class and they do the work of the same employer and it is possible for the company to give the relief which the respondents are claiming. The respondents have in our opinion also a substantial interest in the subject-matter of the dispute, namely, the abolition of the contract system in doing work of this kind. The learned Solicitor-General particularly emphasised that there was no question of the interest of the respondents being prejudicially affected by the employment or non-employment or the terms of service or conditions of labour of the workmen of Ramji Gordhan and Company and placed reliance on the words "may prejudicially affect their interest" appearing in the observations quoted above. We may, however, mention that the test laid down is that the workmen espousing the cause should have a substantial interest in the subject-matter of the dispute, and it was only when illustration the practical application of the test that this Court used the words "may prejudicially affect their interest". Besides it is contended by Mr. Gokhale for the respondents that even if prejudicial effect on the interest of the workmen espousing the cause is necessary, this is a case where the respondents' interest may be prejudicially affected in future in case the contract system of work is allowed to prevail in this branch of the work of the company. He submits that if the company can carry on this part of the work by contract system it may introduce the same system in other branches of its work which are now being done by its regular workmen. We do not think it necessary to go into this aspect of the matter as we have already indicated that prejudicial effect is only one of the illustrations of the practical application of the test laid down in Dimakuchi case ((1958) S.C.R. 1156), viz., substantial interest in the sense that the class to which the aggrieved party belongs is substantially affected thereby. It seems to us therefore that the respondents have a community of interest with the workmen of Ramji Gordhan and Company who are in effect working for the same employer. They have also a substantial interest in the subject-matter of the dispute in the sense that the class to which they belong (namely, workmen) is substantially affected thereby. Finally the company can give relief in the matter. We are therefore of opinion that all the ingredients of s. 2(k) as interpreted in Dimakuchi case ((1958) S.C.R. 1156) are present in this case and the dispute between the parties is an industrial dispute and the reference was competent.

Re. (ii) :

We now come to the question whether the tribunal was justified in giving the direction for the abolition of the contract system in the manner in which it has done so. In dealing with this question it may be relevant to bear in mind that industrial adjudication generally does not encourage the employment of contract labour in modern times. As has been observed by the Royal Commission on Labour "whatever the merits of the system in primitive times, it is now desirable, if the management is to discharge completely the complex responsibility laid upon it by law and by equity, that the manager should have full control over the selection, hours of work and payment of the workers". The same opinion has been expressed by several Labour Enquiry Committees appointed in different States. We agree that whenever a dispute is raised by workmen in regard to the employment of contract labour by any employer it would be necessary for the tribunal to examine the merits of the dispute apart from the general consideration that contract labour should not be encouraged, and that

in a given case the decision should rest not merely on theoretical or abstract objections to contract labour but also on the terms and conditions on which contract labour is employed and the grievance made by the employees in respect thereof. As in other matters of industrial adjudication so in the case of contract labour theoretical or academic considerations may be relevant but their importance should not be overestimated. Let us then consider the contract labour system in the present case.

The contract in this case related to four matters. But the reference is confined to one only, viz., cleaning maintenance work at the refinery including premises and plant and we shall deal with that only. So far as this work is concerned, it is incidental to the manufacturing process and is necessary for it and of a perennial nature which must be done every day. Such work is generally done by workmen in the regular employ of the employer and there should be no difficulty in having regular workmen for this kind of work. The matter would be different if the work was of intermittent or temporary nature or was so little that it would not be possible to employ full-time workmen for the purpose. Under the circumstances the order of the tribunal appears to be just and there are no good reasons for interfering with it.

Our attention in this connection was drawn to D. Macropollo And Co. (P) Ltd. v. D. Macropollo And Co. (P) Ltd., Employee's Union (A.I.R. 1958 S.C. 1012) and it was urged that the tribunal should not have interfered with the management's manner of having its work done in the most economical and convenient way that it thought proper. It was pointed out that this was not a case where the contract system was a camouflage and the workmen of the contractor were really the workmen of the company. It may be accepted that the contractor in the present case is an independent person and the system is genuine and there is no question of the company carrying on this work itself and camouflaging it as if it was done through contractors in order to pay less to the workmen. But the fact that the contract in this case is a bona fide contract would not necessarily mean that it should not be touched by the industrial tribunals. If the contract had been mala fide and a cloak for suppressing the fact that the workmen were really the workmen of the company, the tribunal would have been justified in ordering the company to take over the entire body of workmen and treat it as its own workmen. But because the contract in this case was bona fide the tribunal has not ordered the company to take over the entire body of workmen. It has left to it to decide for itself how many workmen it should employ and on what terms and has merely directed that when selection is being made preference should be given to the workmen employed by the present contractor. In Macropollo case (A.I.R. 1958 S.C. 1012), this Court held that the reorganisation had been adopted by the employer for reasons of economy and convenience and was bona fide. In that case the main business of the concern was the selling agency of various cigarette manufacturing concerns. Before 1946 the concern used to employ distributors for the purpose and these distributors used to employ salesmen. In 1946 there were communal riots in Calcutta and therefore the concern took over the salesmen in its direct employment in order to reorganise them on communal basis in the then prevailing circumstances. In 1954 the concern decided to close down its own outdoor sales department and revert to the distributor system. It was in that context that certain workmen had to be retrenched, and this Court held that the reorganisation scheme adopted in 1954 for reasons of economy and convenience was bona fide and if it resulted in retrenchment that was inevitable. These facts would show that in that case there was reorganisation of the business resulting in retrenchment. In the present case no such thing arises and the only question for decision is whether the work which is perennial and must go on from day to day and which is incidental and necessary for the work of the refinery and which is sufficient to employ a considerable number of whole-time workmen and which is being done in most concerns through regular workmen should be allowed to be done by contractors. Considering the nature of the work and the conditions of service in the present case we are of opinion that the tribunal's decision is right and no interference is called for,

except that the date should now be changed, for such a direction cannot be put into force with retrospective effect from November 1, 1958. It appears that a few months remain before the present contract will come to an end. We think that for these few months the present system may continue. We therefore dismiss the appeal with this modification that the order of the tribunal will be carried into effect from such date on which the present contract in force in the company comes to an end. The respondents will get their costs from the company.

Appeal dismissed subject to modification.

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