The Management of Express Newspapers Ltd.

Vs

Workers & Staff Employed Under it and Others

Civil Appeals Nos. 574 and 575 of 1961

(P. B. Gajendragadkar, J. R. Mudholkar, K. C. Das Gupta JJ)

02.08.1962

JUDGMENT

GAJENDRAGADKAR, J. -

On the 30th of April, 1959, the Madras Government referred to the Industrial Tribunal, Madras, for its adjudication two industrial issues which had arisen between the appellant The Management of Express Ltd. and the respondents, its workmen. These two items of dispute were thus specified in the Order of Reference :-

> 1. Whether the transfer of the publication of Andhra Pradesh and Andhra Prabha Illustrated Weekly to Andhra Prabha Private Ltd. In Vijayawada is justified and to what relief the workers and the working Journalists are entitled ?
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> 2. Whether the strike of the workers and working Journalists from 27th April, 1959, and the consequent lockout by the management of the Express Newspapers Private Ltd. are Justified and to what relief the workers and the working Journalists are entitled ?

This reference was made under section 10(1)(d) of the Industrial Disputes Act, 1947, (XIV of 1947) (hereinafter called the Act).

On the same day, the Government of Madras issued another Order under section 10(3) of the Act prohibiting the continuance of the strike and the lockout in the appellant concern. This Order was issued because the Government was of the opinion that it was expedient and necessary to prohibit the continuance of the said strike and lockout.

Against the latter Order, the appellant filed a writ petition in the Madras High Court (No. 443 of 1959) on 1st of May, 1959, whereas on the 5th of May, 1959, it filed a writ petition No. 450 of 1959 against the Order by which the dispute in question was referred to the Industrial Tribunal for its adjudication. Both the writ petitions were heard together by Bala Krishna Ayyar J. He held that the Government Order issued under s. 10(3) of the Act was an administrative order and it was doubtful whether it would be open to the Court to quash the said Order as it stood. Even so, the learned Judge held that the Government had no Jurisdiction to make the said Order and that the appellant was entitled to ignore it. In the opinion of the learned Judge, the ends of Justice would be met if this clarification was made and so, that is the only order which he passed on writ petition No. 433 of 1959.

In regard to writ petition No. 450 of 1959, the learned Judge held that he had jurisdiction to entertain the said writ petition even at an interlocutory stage and so, he rejected the preliminary objection raised by the respondents. On the merits, he took the view that what the appellant had done did not amount to a lockout but a closure and so, the substantial part of the dispute between the parties did not amount to an industrial dispute at all. That is why he came to the conclusion that is only the latter parts of the first and second questions which could be tired by the Tribunal. In the result, the petition filed by the appellants was partly allowed and the Tribunal was directed to deal with only the second part of the two questions framed by the impugned reference.

This decision was challenged by the respondents by preferring two appeals before a Division Bench of the Madras High Court. The order passed on W.P. No. 443/1959 gave rise to writ appeal No. 85 of 1959, whereas the order passed on writ petition 450/1959 gave rise to writ appeal No. 73 of 1959. The appellate Court has agreed with the trial Judge in holding that the order issued by the Government under s. 10(3) of the Act was ill-advised and without jurisdiction and so, the appellant can with impunity ignore the said order. In regard to the main point of controversy between the parties as to the validity of the reference itself, the Appeal Court took the view that the questions which had to be decided in dealing with the appellant's contention that the reference was invalid, were complex questions of fact and that it would be appropriate that the said questions should be fully investigated and tried in the first instance by the Industrial Tribunal itself. In other words, the Appeal Court held that though the High Court had jurisdiction to entertain an application for a writ of Prohibition even at the initial stage of the proceedings commenced before a Special Tribunal, it would not be proper that a writ of prohibition should be issued unless the disputed questions of fact were tried by the said Special Tribunal in the first instance. On this view, the order passed by the trial Judge has been modified and the disputes referred to the Industrial Tribunal for its adjudication have been remitted to the said Tribunal for its disposed in accordance with law. In making this Order, the Appeal Court has indicated the nature of the dispute and the questions of fact which the Industrial Tribunal may have to try and the limits of its jurisdiction. In the result, the writ apple No. 73/1959 succeeded whereas writ appeal No. 85/1959 failed. It is this decision of the Court of Appeal that is challenged before us by Mr. Viswanatha Sastri on behalf of the appellant.

Before dealing with the appeal on the merits, it is necessary to set out very briefly the material facts which led to the present dispute between the parties. The appellant is a Private Limited Liability Company incorporated under the Indian Companies Act and it carries on the business of printing and publishing newspapers and periodicals, viz., the Indian Express, Sunday Standard (on Sundays), Dinamani, Dinamani Kadir, Andhra Prabha, Andhra Prabha Illustrated Weekly and screen. These papers were being printed and published by the appellant from Madras till the 27th April, 1959. In the 29th April, 1959, the appellant intimated the closure of its business in respect of its various publications at Madras. The announcement made by the appellant in that behalf indicated that its staff and workmen would be paid wages, one month's salary in lieu of notice and compensation as laid down under s. 25(f) and s. 25(fff) of the Act. It was also stated that similar wages and compensation would be paid to journalists under the corresponding provisions of the working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955. It appears, on the same day, the appellant's Board of Directors resolved to sell items of printing machinery and equipment to the Andhra Prabha (Private) Ltd. for Rs. 5,25,000/-. Accordingly in the 'Hindu' of the 30th April, 1959, an advertisement was inserted by the appellant under the "To-Let" column relating to the office accommodation and premises of the Express Newspapers Private Ltd. It is this action of the appellant which as led to the present dispute.

At this stage, it may be relevant to refer very briefly to the background of the present dispute

between the parties. It appears that between the appellant and its employees a dispute arose on certain points including bonus in March, 1957. This dispute was referred for industrial adjudication which ended in an award in November, 1957. This award was challenged by the appellant by an appeal before this Court and we were told that the appellant's appeal has substantially succeeded. That is how the dispute of 1957 ultimately ended.

In March, 1958, the appellant notified its intention to retrench 69 workmen and that led to an industrial dispute which was referred for industrial adjudication. The appellant raised a preliminary objection about the incompetence of the reference and took the dispute to the Madras High Court by its W.P. No. 810 of 1958. This objection was, however, withdrawn on the 5th December, 1958. On the 12th October, 1958, the respondents' Union made certain complaints to the State Government as a result of which the Home Minister attempted to intervene, but his intervention was unsuccessful. Soon thereafter, the appellant intimated its intention to close down its publications at Madras and notified its workmen accordingly. The Home Minister again intervened and this time his intervention was effective. As a result, a settlement was reached between the parties which was mbodied in a memorandum drawn up on the 6th of November, 1958 under s. 12(3) of the Act. This settlement was to operate for 2 1/2 years. The respondents' case is that Mr. R. N. Goenka, the appellant's Chairman, regard in the presence of the Minister, Mr. Bhaktavatsalam, and the Labour Commissioner, Mr. Balasundaram, that the paper 'Andhra Prabha' would not be shifted for publication to Vijayawada during the period of the settlement, and that the workmen would be continued to be employed as before at Madras. The respondents contend that this assurance was given verbally but had not been included in the terms of memorandum. Broadly stated, the respondents' case is that the transfer purported to have been effected by the appellant on the 29th April, 1959, is in contravention of this verbal assurance and it is urged that the verbal assurance given by the appellant's Chairman constituted one of the terms of employment of the respondents and as such, became a condition of their service. The impugned transfer materially affects that condition of service.

In March, 1959, about 60 part-time delivery boys demanded increased emoluments and when the said demand was not conceded, they went on strike. The appellant suspended them, but at the instance of the Conciliation Officer, they were taken back upon their tendering an apology and the delivery boys then resumed duty. In March and April, 1959, the Madras Union of Journalists began to protest to the Government against what it apprehended was the proposed move of the appellant to transfer the publication of the Andhra Prabha to Vijayawada in the contravention of the verbal assurance given to the respondents by the appellant's Chairman. These protests were followed by a joint meeting of the General body of the Express Newspapers (Private) Ltd., Employees' Union and the Madras Union of Journalists, and at the said meeting a resolution was passed condemning the transfer of the proprietory interest in the two periodicals to an alleged 'benami' concern; this resolution characterised the transfer as mala fide and illegal. This resolution was followed by an intimation of strike on the 24th April, 1959, as the appellant had intimated to the respondents by its letter of the 23rd April, 1959, the facts about the impugned transfer. The appellant plainly informed the respondents that the new concern at Vijayawada would take over the required workers and that the decision to transfer could not be altered or revoked. After receiving this communication, the respondents went on strike on the 27th April, 1959. This strike was followed on the 29th April, 1959, by the announcement made by the appellant about the closure of its business. That, in brief, is the background of the present dispute between the parties.

The true legal position in regard to the jurisdiction of the High Court to entertain the appellant's petition even at the initial stage of the proceedings proposed to be taken before the Industrial

Tribunal, is not in dispute. If the action taken by the appellant is not a lockout but is a closure, bona fide and genuine, the dispute which the respondents may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance, it is a lockout, but the said action has adopted the disguise of a closure, and a dispute is raised in respect of such an action, it would be an industrial dispute which industrial adjudication is competent to deal with. The appellant contends that what it has done is a closure and so, the dispute in respect of it cannot be validly referred for adjudication by an Industrial Tribunal. There is no doubt that in law, the appellant is entitled to move the High Court even at the initial stage and seek to satisfy it that the dispute is not an industrial dispute and so, the Industrial Tribunal has no jurisdiction to embark upon the proposed enquiry.

There is also no doubt that the proceedings before the Industrial Tribunal are in the nature of quasi-judicial proceedings and in respect of them a writ of certiorari can issue in a proper case. If the Industrial Tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for an appropriate writ, and the power of the High Court to issue and appropriate writ in that behalf cannot be questioned.

It is also true that even if the dispute is tried by the Industrial Tribunal, at the very commencement the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the appellant is a closure or a lockout. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not. If the finding is that the action of the appellant amounts to a closure, there would be an end to the proceedings before the Tribunal so for as the main dispute is concerned. If, on the other hand, the finding is that the action of the appellant amounts to a lockout which has been disguised as a closure, then the Tribunal will be entitled to deal with the reference, the finding which the Tribunal may make on this preliminary issue is a finding on a jurisdictional fact and it is only when the jurisdictional fact is found against the appellant that the Industrial Tribunal would have jurisdiction to deal with the merits of the dispute. This position is also not in dispute.

The Court of Appeal has held that having regard to the somewhat complex nature of the facts which have to be determined in dealing with the preliminary issue, it would be appropriate that the Industrial Tribunal which is specially appointed to try such issues, should first hold an enquiry in respect of that issue. The Court of Appeal has elaborately set out in its judgment the pros and cons of the dispute and it has indicated some of the facts on which the two rival contentions are based. It, however, thought that having regard to the nature of the enquiry involved in the decision of the preliminary issue, it would be inappropriate for the High Court to take upon itself the task of determining the relevant facts on affidavits. A proper and a more appropriate course to adopt, it thought, would be to let the material facts be determined by the Industrial Tribunal in the first instance. That is why the Appeal Court what not inclined to confirm the decision of the trial Court in W.P. No. 450/1959. The narrow question which we are thus called upon to consider in the present appeal is whether this view is erroneous in law.

It seems to us difficult to accept Mr. Sastri's argument that the Appeal Court was in error in taking this view. As we have just indicated, the legal position with regard to the jurisdiction of the High Court is not in doubt. The only question on which the trial Court and the Appeal Court have differed is in regard to the propriety or the appropriateness of holding an enquiry on a complicated question of fact in writ proceedings. It is well known that Industrial Courts are familiar with the nature of the

problem raised by the preliminary issue between the parties in the present writ proceedings. In fact, Industrial Tribunals have been specially established in order to deal with industrial disputes in different places. That is one consideration which is relevant. The other consideration which is equally material is that a question of this complicated character cannot be satisfactorily dealt with marely on affidavits. The theoretical distinction between a closure and a lockout is well settled. In the case of a closure, the employer does not merely close down the place of business, but he closes the business itself; and so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of business itself. Experience of Industrial Tribunals shows that the Lockout is often used by the employer as a weapon in his armoury to compell the employees to accept his proposals just as a strike is a weapon in the armoury of the employees to compell the employer to accept their demands. Though the distinction between the two concepts is thus clear in theory, in actual practice it is not always easy to decide whether the act of closure really amounts to a closure properly so-called, or whether it is a disguise for a Lockout. In dealing with this question industrial adjudication has to take into account several relevant facts and these facts may be proved before the Industrial Tribunal either by oral evidence, or by documentary evidence and by evidence of conduct and circumstances. Whenever a serious dispute arises between an employer and his employees in regard to a closure which the employees allege is a lockout, the enquiry which follows is likely to be long and elaborate and the ultimate decision has always to depend on careful examination of the whole of the relevant evidence. That being so, it seems to us that the course adopted by the Appeal Court in the present proceedings is both proper and appropriate.

The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not, disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seem to make it necessary to do so ? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue be brought before a High Court in its writ jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary fact should be tried by a High Court in a write petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore, we are not prepared to accept Mr. Sastri's argument that the Appeal Court was wrong in reversing the conclusion of the trial Judge in so for as the Trial Judge proceeded to deal with the question as to whether the action of the appellant was a closure or a lockout.

Before we part with this topic, we wish to make it clear that when the Tribunal proceeds to deal with the dispute between the parties, it need not be influenced by the several observations made either by the trial Court or the Court of Appeal in respect of the transfer affected by the appellant on the 29th April, 1959. In the course of their judgments, both the trial Court and the Court of Appeal

have indicated their preference for one view or the other and for a fair trial of the issue before a Tribunal, it is of utmost importance that we ought to emphasise the fact that these observations either for the appellant or against it should be treated as obiter and the Tribunal should deal with the dispute on the merits independently and uninfluenced by these observations.

Mr. Sastri then contends that on the face of it, the reference is bad. His argument is that issue No. 1 which deals with the transfer of the Andhra Prabha and Andhra Prabha Illustrated Weekly cannot be said to be an issue in respect of an industrial dispute. The appellant is entitled to transfer its business to whomsoever it likes and on whatsoever terms it chooses to accept. Similarly, the appellant is entitled to transfer its business from one place to another and the employees are not entitled to raise an industrial dispute in respect of such a transfer. That being so, it is urged, the first part of issue No. 1 is outside the jurisdiction of the Industrial Court as it does not fall within the definition of an industrial dispute at all; and if the first part is outside the Act, the second part cannot survive.

Thus presented, the argument is prima facie attractive. But in appreciating the scope of the enquiry contemplated by issue No. 1, we cannot ignore the contentions raised by the respondents. It is clear that the case of the respondents is that during the negotiations between the appellant and the Union in the presence of the Acting Labour Minister and the Commissioner of Labour, the appellant sought to insert a clause in the agreement in respect of its proposal to shift the Andhra Prabha to Vijayawada and that the respondents objected to it. Thereupon, the appellant's Chairman gave a verbal assurance that the business of the appellant would be carried on at Madras for 2 1/2 years which was the life of the agreement. Basing themselves on this verbal assurance, the respondents contend that the said assurance was one of the terms of the conditions of the respondents' service and the transfer effected by the appellant contravenes and materially modifies the said condition of service. It is in the light of this contention that the scope of the enquiry contemplated by issue No. 1 has to be judged. In this connection, it may be relevant to refer to the fact that the appellant's Director, Mr. Phumbra, wrote to the respondents on the 20th April, 1959, inter alia, that when arrangements are finalised at Vijayawada, the concerned workman and others would be advised in writing to enable them to join at Vijayawada. Therefore, the nature of the dispute between the parties under issue No. 1 is based on the verbal assurance alleged to have been given by the appellant's Chairman to the respondents. We do not wish to express any opinion on the merits of this controversy at all. Whether or not a verbal assurance was given as pleaded by the respondents and if yes, whether such an assurance would constitute a condition of service, are questions which the Tribunal may have to try. But since the dispute centres round this verbal assurance, it would be idle contend that issue No. 1 relates to the transfer of business which cannot be the subject matter of an industrial dispute. It is in the light of the contentions raised by the respondents that the limits of the issue are, in a sense, determined and it would be within these limitations that the Tribunal would have to try this issue. Therefore, we are not prepared to accept Mr. Sastri's argument that issue No. 1 could not have been validly referred to the Industrial Tribunal for its adjudication.

Then in regard to issue No. 2, the argument is that this issue has, in fact, been determined by the Government and nothing is left to the Tribunal to consider or decide. It may be conceded that the wording of the issue is inartistic and unfortunate. As it is worded, it no doubt, prima facie gives an impression that the enquiry on this issue has to proceed on the assumption that the conduct of the appellant amounts to a lockout, and this argument is somewhat strengthened by the ill-advised and unfortunate order passed by the State Government under s. 10(2). It is hardly necessary to emphasise that since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it under section 10 is limited by s. 10(4) to the points specifically mentioned in the reference and matters incidental there to, the appropriate Government should frame the relevant

orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for embiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. Thus construed, even the inelegent phraseology in framing the issue cannot conceal the fact that in dealing with the issue, the main point which the Tribunal will have to consider is whether the strike of the respondents on the 27th of April, 1959 was justified and whether the action of the appellant which followed the said strike is either a lockout or amounts to a closure. The respondents will contend that it is a lockout which is in the nature of an act of a represal on the part of the appellant, whereas the appellant will contend that it is not a lockout but a closure genuine and bonafide. Thus, having regard to the content of the dispute covered by issue No. 2, it would not be right to suggest that the reference precludes the Tribunal from entertaining the appellant's plea that what it did on the 29th April is in fact not a lockout but a closure. The fact that the relevant action of the appellant is called a lockout does not mean that the Tribunal must hold it to be a lockout. In this connection, it may be recalled that in several cases where industrial disputes are referred for industrial adjudication in respect of certain persons named as workmen, the employers raised the contention that the specified persons are not their workmen and it has never been suggested that merely because the said persons are described as workmen in the reference, the employer is precluded from disputing their status or that the Tribunal has no jurisdiction to try such an incidental dispute. Therefore, we do not think that Mr. Sastri is right in contending that issue No. 2 has been so worded as to exclude the jurisdiction of the Tribunal to deal with the question as to whether the appellant's impugned action amounts to a closure or not.

In the result, we hold that the grievance made by the appellant against the decision of the Appeal Court in writ Appeal No. 73/1959 is not well-founded. In order to avoid any controversy between the parties before the Industrial Tribunal as to the scope of the enquiry which the said Tribunal would be justified in holding on the present reference, we would like to state that in trying issue No. 1, the Tribunal will deal with that issue in the light of the respondents' contention about the verbal assurance given by the appellant's Chairman to them during the course of the previous negotiations. In regard to the enquiry under issue No. 2 the Tribunal will have to consider whether the strike was justified. It will also have to consider whether the transfer effected by the appellant amounts to a closure or a lockout and in dealing with this issue, it will take into account all facts which are relevant and material.

That leaves only one minor point to be mentioned and it relates to the order passed by the State Government under s. 10(3) of the Act. We agree with the trial Court and the Court of Appeal that the State Government was ill-advised to issue the said order. It may be that the State Government was anxious to preserve industrial peace and so, it proceeded to exercise its jurisdiction under s. 10(3). But it is obvious that the full implications of the order were not appreciated by the State Government before it issued the said order. Indeed, the inappropriateness and the impropriety of the said order gave rise to an argument by the appellant that the Government was acting mala fide against it, and the State Government had to offer an explanation in the form of an affidavit and by way of a statement made by the Government Pleader at the Bar to meet this challenge. If only the State Government had considered the matter more carefully before issuing the said order, this complication could have been easily avoided.

The result is, the two appeals fail and are dismissed with costs. There will be one set of hearing fees

in these appeals

Appeals dismissed

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