Management of R. S. Madhoram and Sons Agencies (P) Ltd.

Vs

Its Workmen

Civil Appeal No. 13 of 1963

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

14.11.1963

JUDGMENT

GAJENDRAGADKAR J. –

The short question of law which arises in this appeal by special leave relates to the construction of s. 25 FF of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter called 'the Act') This question arises in this way. Between the appellant, the Management of R.S. Madhoram & Sons (Agencies) (P) Ltd., and the respondents, its workmen an Industrial dispute arose in regard to the transfer of 57 employees from the management of R. S. Madhoram & Sons, which was their original employer, to the appellant. This dispute was referred for adjudication by the Delhi Administration to the Industrial Tribunal, New Delhi.

The case of the respondents was that the impugned transfer is invalid, whereas the appellant contended that the said transfer was fully valid and justified under s. 25FF of the Act. Certain other pleas were raised by the parties before the Tribunal and they have been considered by it, but it is not necessary for the purpose of the present appeal to refer to them, since the only point which has been urged before us by Mr. Setalvad on behalf of the appellant is in relation to the finding of the Tribunal that s. 25FF does not apply to the present case.

R.S. Madhoram & Sons, and R. S. Madhoram & Sons (Agencies) (P) Ltd. are the two concerns involved in this dispute. The first is a firm consisting of the members of a joint Hindu family and the second is a company formed by the said members. The firm has been in existence since April 1, 1946 whereas the company came into existence on August 29, 1961. The head-office of the firm is at Dehra Dun and it runs branches at Delhi, New Delhi, Mussorie and Amritsar. The firm acts as selling representatives of Obeetee (Private) Ltd., Mirzapur : Commonwealth Trust Ltd., Calicut, and United Coffee Supply Co. Ltd., Coimbatore. It also acts as Government contractors as well as stockists of the Elgin Mills Co. Ltd., Kanpur. The 57 employees whose transfer from the firm to the company has given rise to the present dispute were originally employed by the firm. On the muster roll of the firm, 92 employees were entered. Out of these, 57 have been transferred by the firm to the company as a result of the agreement between the two concerns. The company was formed as a separate and different concern, and in accordance with its memorandum and articles of association and in pursuance of the agreement between it and the firm, it has taken over the retail business of the firm together with the staff employed by the firm in the said retail business as from September 15, 1961. The agreement shows that when the staff was taken over by the company from the firm, continuity of service was guaranteed to the staff and the terms and conditions of service enjoyed by them before the taking over also remained unaffected.

The appellant contends that it is the successor-in-interest of the firm in regard to the retail business which was one of the businesses carried on by the firm, and it argues that since the conditions prescribed by the proviso to s. 25FF have been complied with, the grievance made by the respondents that the transfer of the 57 workmen in question is unjustified cannot be sustained. On the other hand, the respondents contend that s. 25FF is inapplicable to their case, because the ownership or management of the undertaking has not been transferred by the firm to the company within the meaning of the said section. If the said section does not apply, then there is no scope for applying the provisions of the proviso. The Tribunal has upheld the plea raised by the respondents, and Mr. Setalvad contends that the finding of the Tribunal is based on a mis-construction of s. 25FF of the Act.

Before dealing with this point, it would be useful to refer to the relevant facts which preceded the transfer of 57 employees. It appears that on September 14, 1961, there was an agreement between the transferor and the transferee as a result of which the employees engaged by the transferor were transferred to the transferee company. This agreement provided that the service of the said workmen shall not be interrupted by reason of the transfer, that the terms and conditions of service applicable to the said workmen shall not be less favourable than those applicable to them immediately before the transfer, and that the transferee concern shall be liable to pay to the workmen in the event of their retrenchment, compensation on the basis that their service had been continuous and had not been interrupted by the transfer.

Another agreement was executed between the firm and the company on September 15, 1961, as a result of which the company took over the entire retail business hitherto run by the firm. Clauses 2 to 5 of the said agreement provide the other terms and conditions subject to which the transfer of the retail business was effected between the firm and the company.

After this transaction was thus completed between the firm and the company, notice was issued to the workmen in question intimating to them that as a result of the transfer their services would be taken over by the transferee company. These workmen were told that in computing the length of their service, the period of their service with the transferor firm would be taken into account. They were also told that if any of them did not want to work with the transferee company, they sould intimate accordingly to the said company within three days from the receipt of the notice whereupon their legal dues would be paid to them.

For reasons which it is not easy to understand or appreciate, the respondent Union representing the appellant's employees does not appear to have responded favourably to this notice and correspondence that passed between the respondent and the appellant shows that the workmen were not prepared to be treated as the employees of the transferee company. It seems that they were willing to do the work of retail business which had been transferred to the company, but they were unwilling to forego the status as the employees of the transferor firm. Attempts at conciliation were made, but the differences between the parties could not be resolved, and so, the matter ultimately went to the Industrial Tribunal for its adjudication. That is how the only question which arises for our decision is whether s. 25FF and its proviso apply to the present case.

Section 25FF of the Act provides, inter alia, that where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who satisfies the test prescribed in that section shall be entitled to notice and compensation in accordance with the provisions of s. 25FF as if the workman had been retrenched. This provision shows that workmen falling under the

category contemplated by it, are entitled to claim retrenchment compensation in case the undertaking which they were serving and by which they were employed is transferred. Such a transfer, in law, is regarded as amounting to retrenchment of the said workmen and on that basis s. 25FF gives the workmen the right to claim compensation.

There is, however, a proviso to this section which excludes its operation in respect of cases falling under the proviso. In substance, the proviso lays down that the provision as to the payment of compensation on transfer will not be applicable where in spite of the transfer, the service of the workmen has not been interrupted. The terms and conditions of service are not less favourable after transfer then they were before such transfer, and the transferee is bound under the terms of the transfer to pay to the workmen in the event of their retrenchment, compensation on the basis that their service had been continuous and had not been interrupted by the transfer. The proviso, therefore, shows that where the transfer does not effect the terms and conditions of the employees, does not interrupt the length of their service and guarantees to them payment of compensation, if retrenchment were made, on the basis of their continuous employment, then s. 25FF of the Act would not apply and the workmen concerned would not be entitled to claim compensation merely by reason of the transfer. It is common ground that the three conditions prescribed by clauses (a) (b) and (c) of the proviso are satisfied in this case and so, if s. 25FF were to apply, there can be little doubt that the appellant would be justified in contending that the transfer was valid and the 57 employees can make no grievance of the said transfer. The question, however, is : does s. 25FF apply at all ?

It would be noticed that the first and foremost condition for the application of s. 25FF is that the ownership or management of an undertaking is transferred from the employer in relation to that undertaking to a new employer. What the section contemplates is that either the ownership or the management of an undertaking should be transferred; normally this would mean that the ownership or the management of the entire undertaking should be transferred before section 25FF comes into operation. If an undertaking conducts one business, it would normally be difficult to imagine that its ownership or management can be partially transferred to invoke the application of s. 25FF. A business conducted by an industrial undertaking would ordinarily be an integrated business and though it may consist of different branches or departments they would generally be inter-related with each other so as to constitute one whole business. In such a case, s. 25FF would not apply if a transfer is made in regard to a department or branch of the business run by the undertaking and the workmen would be entitled to contend that such a partial transfer is outside the scope of s. 25FF of the Act.

It may be that one undertaking may run several industries or business which are distinct and separate. In such a case, the transfer of one distinct and separate business may involve the application of s. 25FF. The fact that one undertaking runs these businesses would not necessarily exclude the application of s. 25FF solely on the ground that all the business or industries run by the said undertaking have not been transferred. It would be clear that in all cases of this character the distinct and separate businesses would normally be run on the basis that they are distinct and separate; employees would be separately employed in respect of all the said businesses and their terms and conditions of service may vary according to the character of the business in question. In such a case, it would not be usual to have one muster roll for all the employees and the organisation of employment would indicate clearly the distinctive and separate character of the different businesses. If that be so, then the transfer by the undertaking of one of its businesses may attract the application of s. 25FF of the Act.

But where the undertaking runs several allied businesses in the same place or places, different considerations would come into play. In the present case, the muster roll showing the list of employees was common in regard to all the departments of business run by the transferor firm. It is not disputed that the terms and conditions of service were the same for all the employees and what is most significant is the fact that the employees could be transferred from one department run by the transferor firm to another department, though the transferor conducted several branches of business which are more or less allied, the services of the employees were not confined to any one business, but were liable to be transferred from one branch to another. In the payment of bonus all the employees were treated as constituting one unit and there was thus both the unity of employment and the identity of the terms and conditions of service. In fact, it is purely a matter of accident that the 57 workmen with whose transfer we are concerned in the present appeal happened to be engaged in retail business which was the subject-matter of the transfer between the firm and the company. These 57 employees had not been appointed solely for the purpose of the retail business but were in charge of the retail business as a mere matter of accident. Under these circumstances, it appears to us to be very difficult to accept Mr. Setalvad's argument that because the retail business has an identity of its own it should be treated as an independent and distinct business run by the firm and as such, the transfer should be deemed to have constituted the company into a successor-in-interest of the transferor firm for the purpose of s. 25FF. As in other industrial matters, so on this question too, it would be difficult to lay down any categorical or general proposition. Whether or not the transfer in question attracts the provisions of s. 25FF must be determined in the light of the circumstances of each case. It is hardly necessary to emphasise that in dealing with the problem, what industrial adjudication should consider is the matter of substance and not of form. As has been observed by this Court in Anakapalla Cooperative Agricultural and Industrial Society v. Workmen and others [[1963] Supp. I S.C.R. 730.] the question as to whether a transfer has been effected so as to attract s. 25FF must ultimately depend upon the eveluation of all the relevant factors and it cannot be answered by treating any one of them as of overriding or conclusive significance. Having regard to the facts which are relevant in the present case, we are satisfied that the appellant cannot claim to be a successor-in-interest of the firm so as to attract the provisions of s. 25FF of the Act. The transfer which has been affected by the firm in favour of the appellant does not, in our opinion, amount to the transfer of the ownership or management of an undertaking and so, the Tribunal was right in holding that s. 25FF and the proviso to it did not apply to the present case.

The result is, the appeal fails and is dismissed with costs.

Appeal dismissed.

</html