The Motor Transport Controller, Maharashtra State, Bombay and Others

Vs

Provincial Rashtriya Motor Kamgar Union, Nagpur and Ors

Civil Appeal No. 742 of 1963

(CJI P. B. Gajendragodkar, K. N. Wonchoo, K. C. Das Gupta JJ)

03.04.1964

JUDGMENT

DAS GUPTA, J. –

A short point arises for consideration in this appeal. But to understand how the point arises it is necessary to embark on a somewhat lengthy statement of facts.

Three Road Transport Corporations established under the Road Transport Corporation Act, 1950 were operating in the States of Bombay, Madhya Pradesh and Hyderabad in 1956 when the States Reorganisation Act, 1956 was enacted. These three corporations were known as the Bombay State Road Transport Corporation, the Provincial Transport Service and the State Transport Marathewada respectively. As a result of the reorganisation of the States under the States Reorganisation Act, 1956 the former State of Bombay lost certain of its territories to the newly formed State of Mysore and some areas to the State of Rajasthan. On the other hand, the State of Bombay gained the Marathewada from the State of Hyderabad and the Vidharbha area from the State of Madhya Pradesh and certain other areas from the then existing State of Saurashtra and the State of Kutch. To meet the situation arising from these territorial changes, Parliament passed the Road Transport Corporation Amendment Act, 1956, thus amending the Road Transport Corporation Act, 1950. Section 47-A which was introduced by the amending Act provides for the reconstitution, reorganisation and dissolution of the Corporations established under s. 3 of the Act. On December 31, 1956 an order was made by the Central Government under the provisions of this section approving a scheme for reorganisation submitted by the Government of Bombay. By this scheme those areas in which the Bombay State Road Transport Corporation had been operating but were transferred under the State Reorganisation Act to the States of Mysore and Rajasthan were excluded from the area of the operation of the Bombay State Road Transport Corporation. This came into force from the 1st January, 1957. Another consequence of the States Reorganisation Act was that the two commercial undertakings which were known as the Provincial Transport Services, and the State Transport, Marathewada, became the commercial undertakings of the State of Bombay. Further, territorial changes occurred in the State of Bombay in the year 1960. By the Bombay Reorganisation Act, No. 1 of 1960, the State of Bombay was again divided; part of what was in the former State, was formed into a new State by the name of the State of Gujarat, while the remaining area was named, the State of Maharashtra. In consequence of this some other areas were excluded by an order under s. 47-A of the Act from the area of operation of the Bombay State Road Transport Corporation. The situation then was the State Transport, Marathewada, was operating in the Maharashtra area, the Provincial Transport Service was operating in the Vidharbha area while in the rest of the Maharashtra State the Bombay State Transport Corporation was operating. It was when things stood like this that the Central Government made an order on the 27th May, 1961 under s. 47-

A of the Amending Act. By this order it approved a scheme for the reorganisation of the Bombay State Road Transport Corporation and amalgamation with it of the two other transport undertakings of the State Government, viz., the Provincial Transport Services, and the State Transport, Marathewada. After the reorganisation the Corporation was to be known as the Maharashtra State Road Transport Corporation. Clause 9(1) of this Order provided for the abolition of all the posts in the two undertakings, the Provincial Transport Services, and the State Transport Marathewada, and for discharge of all persons holding such posts from service. There was a provision, however, giving such people option either of taking terminal benefits such as compensation, pension, or gratuity to which they may be entitled under the rules applicable to them or of continuing as from the 1st July 1961 in the service of the Maharashtra State Road Transport Corporation. Sub-clause 2 of cl. 9 provided that every person who as a result of the exercise of such option is continued in the service of the Maharashtra State Transport Corporation shall be entitled to be employed by that Corporation on the same terms and conditions, including pay as were applicable to him immediately before the appointed day and to count his service under the previous corporations for all purposes. Sub-clause 3 of cl. 9 was in these words :-

> "Nothing in sub-paragraph (2) shall be deemed to affect the right of the Maharashtra State Road Transport Corporation, subject to the provisions of s. 77 of the Bombay Reorganisation Act, 1960 (11 of 1960) to determine or vary after the appointed day, the conditions of service of any person who is continued in the service of the Corporation".
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> "Provided that the conditions of service applicable immediately before the appointed day, to any such person shall not be varied to his disadvantage, except with the previous approval of the Central Government".

Notices terminating the services of the employees employed by the Provincial Transport Services (operating in Vidharbha) were issued. On 12th June 1961 an application was made under Art. 226 and Art. 227 of the Constitution by two former employees of the Provincial Transport Services and the Union of the workmen of that concern challenging the validity of the order of reorganisation made on the 27th May, 1961 and the notices of termination of served on the employees. The following reliefs were prayed for : (a) that the notices of termination be quashed; (b) that the amalgamation of the Provincial Transport Services with the Bombay State Road Transport Corporation as directed under s. 47-A be not carried out, and (c) that "a writ of mandamus be also issued to respondents 1 to 3 directing them to carry out the obligations under s. 25-F and other provisions of retrenchment of the Industrial Disputes Act, 1947, and other provisions of law before taking any action as required by law and also by paragraph 9 of the order even assuming that the amalgamation order is legal and proper."

Three contentions were raised in support of these prayers. It was first urged that the order made on the 27th May violated the provisions of s. 47-A of the Act and was therefore bad in law. The second contention was that the proviso to sub-cl. 3 of cl. 9 of the order contravenes the provisions of s. 77 of the Bombay Reorganisation Act. Lastly, it was contended that the action taken by the Government in abolishing the posts and issuing notices of termination of services of the employees was bad - firstly because it contravened s. 25F(b) and (c) of the Industrial Disputes Act and secondly, because it contravened the provisions of s. 31 of the C.P. and Berar Industrial Disputes Settlement Act, 1947.

The High Court rejected the first contention that the Government Order violated s. 47-A of the Act.

It also rejected the petitioner's contention that the action taken by the Government was bad because of contravention of s. 25F(b) and (c) of the Industrial Disputes Act. The High Court was however of opinion that the proviso to sub-cl. 3 of cl. 9 of the order was bad in law, being in conflict with s. 77 of the Bombay Reorganisation Act, but it held that the proviso was severable and its illegality did not affect the working of the scheme. The High Court also accepted the petitioner's contention that the action taken by the Government in issuing notices of termination of services on abolition of posts did not comply with the provisions of s. 31 of the C.P. and Berar Industrial Disputes Settlement Act and was accordingly invalid. In the result, the High Court quashed the Government resolution for abolition of posts and the notices of termination that were issued in consequence thereof. It also ordered the issue of a direction, directing the Maharashtra State Road Transport Corporation "not to take any action under the proviso to sub-paragraph (3) of paragraph 9 of the Order relating to varying the conditions of services to the disadvantage of any of the employees who were employees of the first respondent immediately before the appointed day, i.e., Ist July 1961". Against these orders of the High Court, the State of Maharashtra, the Maharashtra State Road Transport Corporation and the Moter Transport Controller, Maharashtra, have appealed. At the hearing of the appeal nobody appeared before us on behalf of the petitioners in the High Court. The correctness of the High Court's decision that the order of the 27th May, 1961 did not violate s. 47-A of the Act was not challenged before us. Nor was the High Court's decision that the Government's action in abolishing posts and terminating services of employees was not bad because of contravention of s. 25F(b) and (c) of the Industrial Disputes Act, questioned before us. We have, therefore, not examined the correctness or otherwise of these conclusions and shall dispose of the appeal on the basis that the decision on these points are correct.

The first contention urged in support of the appeal is that the High Court was wrong in thinking that in ordering the abolition of posts and terminating the services of employees in those posts the Government had contravened the provisions of s. 31 of the C.P. and Berar Industrial Disputes Settlement Act. That section is in these words :-

> "31. (1) If an employer intends to effect a change in any standing orders settled under s. 30 or in respect of any industrial matter mentioned in Schedule II, he shall give fourteen day's notice of such intention in the prescribed form to the representative of employees.
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> (2) The employer shall send a copy of the notice to the Labour Commissioner, Labour Officer and to such other person as may be prescribed and shall also affix a copy of the notice at a conspicuous place on the premises where the employees affected by the proposed change are employed and at such other places as may be specially directed by the Labour Commissioner in any case.
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> (3) On receipt of such notice the representative of employees concerned shall negotiate with the employers".

Schedule II of this Act mentions a number of matters, the first of which is "Reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed not due to force majeure". The argument that prevailed in the High Court was that abolition of all posts amounted to permanent reduction within the meaning of this Item in Schedule II. If that be correct it would necessarily follow that the Government had to observe the procedure prescribed in s. 31. Admittedly, that was not done. The short question, therefore, is whether the abolition of all posts of an establishment amount to reduction of posts. In our opinion, the word reduction can only

be used when something is left after reduction. To speak of abolition as a reduction of the whole thing does not sound sensible or reasonable. We are unable to agree with the High Court that the term "reduction in the number of persons employed or to be employed" as mentioned in Item 1 of Schedule II covers abolition of all posts. In our opinion, the Government Order in abolishing the posts and terminating the services of the employees did not amount to a change within the meaning of s. 31 of the C.P. and Berar Industrial Disputes Settlement Act. The Government was, therefore, not required to follow the procedure mentioned in s. 31.

This brings us to the question about the validity of the proviso to sub-cl. 3 of cl. 9 of the Order. As already indicated the workmen's contention was that the proviso contravened the provisions of s. 77 of the Bombay Reorganisation Act. That section contained a provision that on transfer or re-employment of any workman in consequence of reconstitution, reorganisation, amalgamation or dissolution by any body corporate, cooperative society or any commercial undertaking or industrial undertaking the terms and conditions of service applicable to the workman after such transfer or re-employment shall not be less favourable to the workman than those applicable to him immediately before the transfer of reemployment. It was apparently apprehended by the workmen that though sub-cl. 3 of cl. 9 of the Order did state definitely that the right of the Maharashtra State Road Transport Corporation to determine or vary the conditions of service of any person who is continued in the service of the corporation was subject to the provisions of s. 77 of the Bombay Reorganisation Act, advantage might be taken of the proviso to the sub-clause, which seems at least at first sight to suggest that with the approval of the Central Government the conditions of service of a workman might be varied to his disadvantage notwithstanding the provisions of s. 77 of the Bombay Reorganisation Act. We are informed, however, that there has been no such variation. The petition itself did not contain any specific assertion that there had been any variation to the disadvantage of any workman. Only an apprehension that there might be a change in future was expressed. In the counter-affidavit the Government stated that the Order passed in the notices issued clearly gave a guarantee that the conditions of service will not be changed. If there was any reason to think that there had been any change in any conditions of service or that in the immediate future there was any likelihood of any such change being made on the strength of the impugned proviso it would have been necessary for us to examine the question about the validity of this proviso. As however, no change appears to have been made and it does not appear that there was any apprehension of any change being made in the immediate future, we have thought it desirable to leave this question open - particularly in view of the fact that the workmen were not represented before us in this appeal. We have, therefore, not heard full arguments on this question from the learned Counsel for the appellant.

The decision of the High Court that the proviso is bad is therefore, set aside and the question is left open for decision if and when it becomes really necessary to do so. In view of our decision that the High Court erred in thinking that s. 31 of the C.P. and Berar Industrial Disputes Settlement Act had to be applied the High Court's order quashing the abolition of posts and the notices of termination cannot be sustained.

We accordingly allow the appeal, set aside the order of the High Court quashing the Government resolution of the 29th May, 1961 directing the abolition of posts and also its order quashing the notices of termination. As we have set aside the High Court's decision as regards the validity of the proviso to sub-cl. 3 of cl. 9 of the Order and left the matter open, the High Court's direction that no action should be taken under the proviso is also set aside. There will be no order as to costs.

Appeal allowed.

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