

India General Navigation and Railway Company, Limited, and Another  
v.

Their Workmen

(Supreme Court Of India)

HON'BLE JUSTICE P. B. GAJENDRAGADKAR (CJI)

HON'BLE JUSTICE K. N. WANCHOO

HON'BLE JUSTICE M. HIDAYATULLAH

HON'BLE JUSTICE V.RAMASWAMI

Civil Appeal No. 514 of 1964 | 28-10-1965

Gajendragadkar, C.J.

1. The termination of services of 56 workers by appellant 1, the India General Navigation and Railway Company, Ltd., led to an industrial dispute which was referred to the presiding officer of the industrial tribunal, Assam, for his adjudication, by the Governor of Assam under S.10(1) of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter called the Act). The two issues which were the subject-matter of the reference were :

(1) whether the management of Rivers Steam Navigation and India General Navigation and Railway Company, Ltd., Kokilamukh Agency, Neamati, are justified in terminating the services of 56 workers of Subansirimukh; and

(2) are they entitled to reinstatement with continuity of service and with full wages for the period of unemployment and/or any other relief ?

Appellant 1 urged before the tribunal that the 56 workers were not its employees, and in the alternative, is alleged that the termination of services of such 56 workmen was the result of closure of appellant 1's business at Subansirimukh Ghat and as such, the workmen concerned were entitled to no relief.

2. The tribunal has found that the 56 workmen in question were the employees of appellant 1. It has held that the closure was bona fide and real. Even so, it has found that each worker was entitled to compensation equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, under Sub-sec. (1) of S.25FFF of the Act. It is against this award that appellant 1 has come to this Court by special leave.

3. The first point which Sri Setalvad has urged before us is that the tribunal was in error in coming to the conclusion that the relationship of master and servant had been established between appellant 1 and the 56 workmen in question. Since we are satisfied that this contention is well-founded, we will dispose of this appeal on that narrow ground alone. It is clear that if the relationship of master and servant is not established between appellant 1 and the workmen in question, the tribunal can give no relief to them. Appellant 1 carried on business of Inland Water Transport in northeast India between various river stations in Bengal and Assam. In connexion with this business it maintains a number of ghats or stations on the river Brahmaputra in Assam. One of such ghats was at Subansirimukh. This ghat was maintained by appellant 1 prior to April 1960, for the purpose of a feeder service operating on the Subansiri river. Appellant 1 did not employ any workmen at any of the ghats for the work of cargo-handling and left all such work to be carried on by different handling contractors.

4. On 3 May, 1954, an argument was entered into between appellant 1 and its allied companies on the one hand, and the Indian National Trade Union Congress on the other. This agreement was that a tripartite conference would be held later to decide the question of permanent direct employment of workmen by appellant 1. The said conference was held on 9 and 10 July, 1954. At the said conference appellant 1 agreed that it would progressively introduce the system of direct employment of labour in all transshipment ghats in Assam. Accordingly, direct labour was employed by appellant 1 in some of the major ghats, but in the smaller ghats the old contract labour continued.

5. On 29 April, 1957, a conciliation meeting was held at Jorhat to consider the demand made by the Sibsagar Transshipment Labour Union for direct employment of workmen at three minor ghats, viz., Dhansirimukh,

Subansirimukh and Badatighat. No decision was, however, reached in the said conciliation proceedings and contract labour continued to work at the said ghats.

6. Another tripartite meeting was held on 10 November, 1959 and it was then agreed that appellant 1 would employ direct labour in all the ghats on or before 1 April, 1960. Meanwhile, a material change in the circumstances of appellant 1's working took place in the Neamati section. Appellant 1 made arrangements to open Shilikhaguri Ghat in May 1960 as an all-the-year-round main-line ghat replacing the current feeder service operating on Subansiri river between Bordutti, Shilikhaguri and Subansirimukh. This step represented a major advance in the improvement of transport facilities for the North Lakhimpur area and it became possible by completion in 1959 of the new bridge over the river Dekrong. This bridge made it possible to have a road connexion between North Lakhimpur and Shilikhaguri for the first time. As a consequence, the ghat became accessible for main-line vessels throughout the year, and that led to the closure of the ghat at Subansirimukh. It is as a result of this closure that 56 workmen with whom we are concerned in the present appeal, came to be discharged.

7. The tribunal realized that the first, preliminary question to decide was whether the workmen in question had been employed by appellant 1 or not; and as we have already indicated, it has found that the evidence adduced before it proved that the relationship master and servant subsisted between appellant 1 and the allied companies on the one hand, and the workmen on the other. Even so, the tribunal has observed that no direct employment had been introduced. The question for our decision is whether this conclusion of the tribunal is right.

8. The tribunal has based its decision mainly on two documents; the first is Ex. W. 1. It is an agreement executed between the parties on 3 May, 1954. This document merely shows that appellant 1 agreed to introduce the system of permanent direct employment in future; and it does not show anything more.

9. Similarly, the other document on which the tribunal has relied is Ex. W. 6 which is a memorandum of settlement arrived at the conciliation meeting held on 29 April, 1957. It shows the same position. The terms of this settlement were that the labourers of the respective ghats would be paid in the manner indicated

in the settlement. In other words, this document provided that the arrangement in regard to the payment of wages to the workmen would be regulated by the rates specified in the document, and this arrangement was to take effect from 1 April, 1957 and to continue till 30 September, 1957. It is true that this document shows that appellant 1 assured the workmen that they would be paid according to the rates agreed, but this does not show that the workmen became the employees of appellant 1. There appears to be no dispute that the contractor employed the workmen and not appellant 1. This position became absolutely clear if we consider the statement of claims made by the union before the tribunal. The union alleged that by virtue of the agreement of 1954, the 56 workmen were to become the direct employees of appellant 1 on and from 1 April, 1960. In other words, it was not the union's case that prior to 1 April, 1960 the workmen had been directly employed by appellant 1. The statement made by appellant 1 also shows the same. According to this statement the workers were directly employed by contractor Abilakh Routh and not by appellant 1, directly. In fact, the documents on which the tribunal has relied themselves show that all that appellant 1 had agreed was to introduce the method of direct employment in future. That is why though the tribunal has made a finding that the relationship of master and servant had been proved between appellant 1 and the 56 workmen in question, it has added that no direct employment was introduced. In India, it is not easy to reconcile the two findings. On the record, it seems clear that appellant 1 had not directly employed the workmen at all and contract labour used to work for appellant 1 at the minor ghat with which we are concerned in the present proceedings. It is true that appellant 1 guaranteed the payment at the prescribed rates to these workmen, and in that sense, it undertook the liability to pay that money at that rate; but the record shows that the money was paid to the contractor and the contractor paid it on the workmen from month to month until the ghat in question was closed on 17 May, 1960 (Ex. E. 2.). Even one month's basis pay which was paid to the workmen for retrenching them was paid to them through the contractor. Therefore, we are satisfied that the tribunal was in error in coming to the conclusion that the retrenched workmen had been employed by appellant 1. That being so, appellant 1 is not the employer of the 56 workmen in question and as such, the tribunal can give them no relief. If they have any claim at all, it would be against the contractor who was their employer.

10. In the result, the appeal succeeds and the award made by the tribunal is set aside. Before we part with this appeal, we ought to add that pending the appeal in this Court the right, title and interests of appellant 1 has been transferred to

appellant 2, Rivers Steam Navigation Company, Ltd., 4, Fairlie Place, Calcutta, on 28 February, 1963, so that when we are dealing with the present appeal, the dispute is between appellant 2 and the workmen. Since the respondent-union has not appeared in this case, there would be no order as to costs.