

Workmen of Brahmaputra Tea Estate, represented by Assam Chah Karamchari Sangha, Dibrugarh

Vs

The Incoming Management of Brahmaputra Tea Estate & Ors.

Civil Appeal No. 752 of 1966

(M. Hidayatullah, V. Bhargava, C. A. Vadialingam JJ)

25.09.1967

JUDGMENT

VAIDIALINGAM, J. -

This appeal, by special leave, by the workmen of Brahmaputra Tea Estate, is directed against the award, dated February 18, 1965, of the Labour Court, Assam, in Reference No. 38 of 1962, holding that the Reference has become in fructuous.

The circumstances, under which the Reference was made, by the Government of Assam, may be stated. The Brahmaputra Tea Estate (hereinafter called the Tea Company), comprised of three gardens, viz., Negheritting, Rangamati and Missamara Tea Estates, with their outer-gardens, were owned and managed by Brahmaputra Tea Co. (India) Ltd. The Tea Company had incurred very heavy liabilities; and hence, on November 6, 1956, it created an equitable mortgage, by deposit of title deeds, in favour of the Eastern Bank Ltd., (hereinafter called the Bank). The gardens, mentioned above, formed part of the security covered by the equitable mortgage. This memorandum of equitable mortgage was registered on November 26, 1956. As the Tea Company failed to make payment of the money due to the bank, the latter filed Suit No. 21 of 1957, in the Court of the Subordinate Judge, Upper Assam, District Jorhat, for enforcing its right, under the equitable mortgage. A preliminary decree was passed, on February 21, 1958; this was followed, by a final decree, on September 19, 1960.

In the meantime, on September 16, 1958, the Calcutta High Court had ordered the winding-up of the Tea Company, because of certain defaults made by it. Mr. D. A. Weatherson, of the Bank, who had been appointed, by the Jorhat, as Receiver of the Tea Gardens, by his letter, dated December 30, 1958, intimated the Superintendent of the Tea Gardens about the winding-up order, passed by the Calcutta High Court on September 16, 1958, and stated that the winding-up order operated as a statutory notice of discharge, of all officers and employees of the Tea Company; nevertheless, the Receiver stated that he desired to offer employment to all the members of the staff who were employed in the Tea Gardens on November 18, 1958, with the exception of fifteen employees, mentioned by him. The Superintendent was requested to obtain the consent of the members of the staff, regarding the offer made by the Receiver.

It may be stated, at this stage, that the fifteen employees, who were excluded in the letter of the Receiver, were the persons, whose claims were referred, by the Government of Assam, to the Labour Court, in Reference No. 38 of 1962. The Superintendent, in his turn, sent communication, dated January 19, 1959, to the various workmen, offering employment, on behalf of the Receiver, and requesting them to intimate their acceptance; but, so far as the fifteen workmen, referred to

above, were concerned, the Superintendent sent communication to each of them on August 21, 1961, terminating their services with one month's notice. The workmen concerned were also promised to be paid the Provident Fund amounts that might stand to their credit. It was specifically stated, by the Superintendent that the communication was being sent, by him, on behalf of the Receiver of the Tea Company and that the termination of the services of the workmen was because of their age.

The Assam Chah Karmachari Sangha (hereinafter called the Karmachari Sangha) complained to the Conciliation Officer, Assam, stating that the termination of the services of the fifteen workmen, concerned, was illegal and arbitrary. Though the Conciliation Officer appears to have taken some steps to effect conciliate, he could not proceed further, because the Superintendent of the Tea Gardens regretted his inability to participate in the conciliation proceedings, as he had been authorized to do so, by the Receiver of the Tea gardens. Nevertheless, the Conciliation Officer, on September 18, 1961 wrote to the Receiver, direct, suggesting payment of compensation to the workmen concerned; but that suggestion was not accepted, by the Receiver.

On February 18, 1961, the Bank assigned all its rights, under the mortgage dated November 6, 1956 and the decree in Suit No. 21 of 1957, in favour of M/s. Shaw Wallace & Co. Ltd. The Registrar of Companies, West Bengal, Calcutta in or about 1960, had filed a petition in the Calcutta High Court for the winding-up of the Tea Company, as it had failed to comply with certain statutory. By order dated June 16, 1961, the Calcutta High Court ordered the winding-up of the Tea Company and appointed Shri H. K. Ganguli the Official Liquidator of the High Court, as the Official Liquidator of the Tea Company. On September 19, 1961, the Calcutta High Court passed an order, withdrawing to its file, suit No. 21 of 1957, from the Jorhat Court, and the said suit was numbered as Transfer Company suit no. 7 of 1962. On October 5, 1961, the Calcutta High Court directed the substitution of the name of M/s. Shaw Wallace & Co. Ltd., in the place of the Eastern Bank Ltd., in the suit; and it also appointed Shri K. C. Ganguli as Receiver of the Tea Gardens in the place of the Receiver appointed by the Jorhat Court. The New Receiver, Shri K. C. Ganguli, was also put in possession and management of the said properties. Therefore, the position was that the Tea Company, whose winding-up had been ordered, was with the Official Liquidator, and the Tea Gardens of the company, were in the possession and management of the Receiver, appointed in the mortgage suit.

On July 27, 1962, the Government of Assam referred to the Labour Court, Assam, an industrial dispute between the management of Brahmaputra Tea Estate (Receiver in Possession) and their workmen, represented by the Karamchhari Sangh. The dispute that was referred, related to the justification, of the action of the management of the Tea Estate, in terminating the services of the fifteen employees, and as to whether those fifteen workmen were entitled to reinstatement or any other relief, in lieu thereof. The fifteen workmen, referred to in this reference, are the identical workers whose services had been terminated, by the issue of the notice on August 21, 1961, by the Superintendent of the Tea Gardens, on behalf of the Receiver. This is the reference, which had been numbered as Reference No. 38 of 1962. We shall advert, later, to the claims made by the workmen, as well as the contest made, by the first respondent, before us. The Labour Court on, receipt of this reference, issued the necessary notices, on August 26, 1962.

In the liquidation proceedings, the Calcutta High Court, on August 17, 1962, permitted the Official Liquidator to sell the Tea Gardens, which were the subject of mortgage, and also certain other items of movables. The Official Liquidator, on the basis of this order, conveyed, by registered sale deed, dated August 11, 1962, in favour of Shri Ram Gopal Sahariya, the first respondent herein, the equity of redemption in the three Tea Gardens, and also certain tractors, lorries and other items of

machinery, for a total consideration of Rs. 5,20,000. This total consideration was made up of Rs. 2,20,000, being the price of the moveables, and Rs. 3,00,000 stated to be the value of the equity of redemption. The sale, in favour of the first respondent, was specifically by the Official Liquidator, acting on behalf of the Tea Company, and what was conveyed in the Tea Gardens, was the equity of redemption, owned by the Tea Company, and the sale was subject to the mortgage decree and the liabilities payable to M/s. Shaw Wallace & Co. Ltd.

On September 18, 1962, the first respondent's name was ordered by the Calcutta High Court, to be included in Transfer Company Suit No. 7 of 1962. The Court further discharged Shri K. C. Ganguli from his Receivership in the suit, and he was also directed to deliver possession of the three Tea Gardens belonging to the Tea Company, to the first respondent. The first respondent, on his own claim, by virtue of the purchase from the Official Liquidator, has become the sole proprietor of the Tea Gardens; he also got actual possession of the Tea Gardens, on September 21, 1962.

To resume the narrative, regarding the proceeding in Reference No. 38 of 1962 the Labour Court, as we have stated earlier had issued notices to the parties concerned, on August 26, 1962. The workmen filed a written statement, on February 23, 1963. In that statement, they had stated that the fifteen workmen, concerned had completed service, ranging from 8 to 47 years, in the Tea Estates, and that the termination of their services, by the Superintendent of the Tea Gardens, on behalf of the Receiver, was absolutely illegal and arbitrary. They also referred to various other matters, which it is not necessary to advert, in this appeal. It is enough to note that the workmen required relief, by way of reinstatement.

On June 27, 1963, one K. A. Muddu as Superintendent of the Tea Estates, filed a written statement, on behalf of the management. He has stated therein, that the services of the fifteen employee were terminated on account of their age, and also because some of them were too ill to be continued in service. He has adverted to the fact that two of the workmen had expressed a desire to retire voluntarily, from service. It is further stated therein, that, as the employees concerned were 60 years or more, of age, it was not possible to continue them in service. Again, the action of the Receiver, who was in management of the Tea Gardens in terminating the service of the workmen, was also be justified.

The workmen filed an additional written statement, on September 2, 1963, controverting the allegation that they were either too ill or they had completed 60 years of age. They again reiterated that the stand, taken by the management was absolutely illegal and the Receiver had no right to authorize the termination of their services.

On July 18, 1964/September 10, 1964, Shri R. G. Sahariya, as sole proprietor of the Tea Estates, filed an additional written statement, before the Labour Court, on behalf of the incoming management. He has referred therein to the fact that the Tea Estate was no longer in the hands of a Receiver, and its management had vested in him as sole proprietor. He has further referred to the fact that there is no continuity between the present management of the Tea Company, represented by him, and that of the past, when the Tea Gardens were owned by the Tea Company and were managed by the Receiver, appointed by the Court. He then refers to the purchase made by him, on August 18, 1962, from the Official Liquidator of the Tea Company, of the equity of redemption in the Tea Gardens. He has further stated that the services of the workmen concerned, had been terminated by the Superintendent of the Tea Gardens, acting on behalf of the Court Receiver, as early as August 21, 1961, long before the Tea Estates were purchased by him.

Shri Sahariya has further stated that, on July 27, 1962, when the Government of Assam made the present Reference, the incoming management was nowhere in the picture and it was not, in any manner concerned with the claim of the workmen, inasmuch as it had no liability, whatsoever, towards them. He averred that he had not purchased the Tea Estates with the goodwill of the Tea Company, or, as a running concern. Therefore, on all those grounds, he urged, that he was, in no manner, bound to reinstate or to compensate for the loss of employment of the workmen, concerned. In fact, he has specifically prayed that an order may be passed, by the Labour Court, that the dispute, referred to it, by the Government of Assam, has lapsed.

The Labour Court, in its order under attack, has taken the view that the services of the workmen concerned, have been terminated, under instructions of the Receiver of the Tea Gardens, appointed in the suit, long before the first respondent became owner of the Tea Gardens. It is also of the view that "the Brahmaputra Tea Estate (Receiver in possession)" is the only party impleaded, and the new management, viz., the first respondent, has not been brought on record, nor was it a party to the reference, made by the State Government. The purchase of the Tea Gardens, by the first respondent, does not show that the latter has taken over any liabilities of the previous management, with regard to the claims of the workmen, and that there has been no purchase of the goodwill of the Tea Company. On these grounds, the Labour Court held that no relief could be granted, as against the first respondent, and that the reference itself has become infructuous.

Mr. Gokhale, learned counsel for the workmen-appellants, raised two contentions before us : (i) that the view of the Labour Court, that the first respondent is not liable for the claims of the workmen is erroneous; and (ii) that even if it is held that the first respondent is not liable, the Labour Court, which had ample jurisdiction, in this regard, should have issued notice, either to the Receiver, appointed in the suit, or the Official Liquidator, or to both of them, and proceeded to investigate and adjudicate upon the claims of the workmen. In this connection, Mr. Gokhale pointed out that the document of purchase, by the first respondent, would clearly show that the Official Liquidator had realised a sum of Rs. 5,20,000, as sale consideration, and there might also be other assets of the Company; if a proper adjudication, in the presence of the those parties, had been made, and relief granted to the workmen, they would have been in a position to enforce their claims, as against these amounts and assets of the company.

The learned Solicitor General, appearing on behalf of the first respondent, urged that his client was not, in any manner, answerable to the claims made, by the workmen. The first respondent was not the successor-in-interest of the Tea Company; nor did he claim through the Receiver, who was one of the parties to the Reference, before the Labour Court. Even if the Tea Company could be considered to be a party to the Reference, his client could not be considered to be a successor-in-interest of the Tea Company, because he had purchased only some of the assets belonging the said company, by virtue of the sale. The document of purchase, by the first respondent, would clearly show that he has not taken over any other liabilities of the Tea Company, in that regard. The learned Solicitor General further pointed out that the remedy, if any, of the appellant, if so advised, was only to proceed against the Receiver, or the Official Liquidator; even if it be held that the ownership or management of the undertaking had been transferred in favour of the first respondent, the rights of the workmen would have to be worked out, as against the Receiver, or the Official Liquidator, under s. 25FF, of the Industrial Disputes Act, 1947 (Act XIV of 1947) (hereinafter called the Act), inasmuch as there was nothing to show that the transfer, in this case, came within the proviso to that section.

We were in agreement with the contentions of the learned Solicitor General that the view of the

Labour Court, that the first respondent is not liable to answer any of the claims of the workmen concerned, is perfectly justified. From the various facts, give above, it will clearly be seen that the order terminating the services of the Workmen, was made on August 21, 1961, by the Superintendent of the Tea Gardens, under instructions from the Receiver, appointed by the Jorhat Court, in the mortgage suit. On October 5, 1961, the High Court had appointed a Receiver, for the Tea Gardens, as separate from the Tea Company, in this suit, Transfer Company Suit No. 7 of 1962. The order, referring the dispute to the Labour Court was made, by the Government, on July 27, 1962. The 1st respondent, admittedly, was not in the picture, on these various dates. It cannot also be stated, having due regard to the various recitals, contained in the sale deed, dated August 11, 1962, and considered, in the light of the Principles, laid down by this Court, in Anakapalla Cooperative Agricultural & Industrial Society Ltd., v. Workmen ([1963] Supp. 1 S.C.R. 730) that the first respondent is the successor-in-interest of the Tea Company. What was purchased, by the first respondent, was only the equity of redemption in a part of the assets of the Tea Company, in respect of which the Official Liquidator was still functioning. Therefore, the learned Solicitor General is perfectly justified in his contention that the first respondent cannot be considered to be a successor-in-interest of the Tea, nor can he consider to claim through the Receiver, or Liquidator. Even on the basis that the first respondent is considered to be a person, to whom the ownership of the undertaking has been transfer will be seen that the claims of the workmen will have to be considered, as against the Tea Company, in accordance with s. 25FF of the Act, when its proviso cannot be invoked.

Learned counsel, for the appellant, has not been able to satisfy us that the transfer, in this case, in favour of the respondent, comes within the proviso to s. 25FF. The appellants, as laid down by this Court, under the circumstances, in the decision referred to above, will not be entitled to claim reinstatement, as against the first respondent. Section 25FF was first introduced in the Act, by the Industrial Disputes (Amendment) Act, 1956 (LXI of 1956); and, in its present form, it has been substituted, by the Industrial Disputes (Amendment) Act, 1957 (Act XVIII of 1957). Section 25FF was in force, on August 21, 1961, when the services of the workmen were terminated, and s. 25FF had come into effect long before the purchase, by the first respondent of the Tea Gardens; and, we have already shown, that there is no liability, so far as the first respondent is concerned. Therefore, the first contention of Mr. Gokhale, will have to be rejected.

But we are impressed by the second contention of Mr. Gokhale, that the Labour Court should have issued notices to the Receiver, or Official Liquidator, or to both, as it was entitled to, and proceeded to consider, as to whether any reliefs could be granted to the appellants. In this connection, counsel pointed out that s. 18 of the Act clearly visualizes parties being summoned, to appear, by the Labour Court, in proceedings, as parties to the disputes, in which case, the award made, will be binding on them also. In this appeal, before us, the Tea Company, in Liquidation, and the Official Liquidator of the Tea Company, figure as respondent Nos. 2 and 3, respectively, and are represented by same counsel. Learned counsel, appearing for those parties, pointed out that the Official Liquidator may have various defences, available to him, if any claim is sought to be enforced against the company, in liquidation, or the Official Liquidator. Those matters do not arise for consideration, at this stage, in this appeal, because the claim of the appellants, as against those persons, remains yet to be considered by the Labour Court.

We are satisfied that, even after negating the claims, of the workmen, as against the first respondent, the Labour Court should not have merely closed the proceedings, by holding that the reference has lapsed. On the other hand, Labour Court should have issued notices to the Receiver, or the Liquidator, or to both, and in their presence, should have considered the question as to whether

the workmen were entitled to claim any relief. In fact, the order of reference also clearly shows that the Labour Court will have full jurisdiction to consider as to whether the termination, of the services of the workmen concerned, is justified and, whether they are entitled to either reinstatement, or any other relief, in lieu thereof. When the proceedings are being dealt with, afresh, as against the parties indicated above, the Tribunal will bear in mind the observations made above, and consider the nature of the relief, if any, that may be granted to the workmen concerned. We make it clear, that if and when either the Receiver, or the Tea Company, in liquidation, or the Official Liquidator, or all of them, are brought before the Labour Court, they will be entitled to raise any plea in defence of the claim of the workmen, that may be available to them, in law. In that adjudication, the first respondent herein, will be completely out of the picture, as no relief can be claimed by the workmen, against him. Further, if the claim of the workmen, is that their services have been dispensed with, by way of retrenchment, that claim will have to be adjudicated in accordance with s. 25F, of the Act. If, on the other hand, their claim is based, on the event of a transfer having been effected, that claim will have to be adjudicated, under s. 25FF of the Act. All these aspects will have to be properly considered, and adjudicated upon, by the Labour Court.

In the result, while confirming the findings of the Labour Court, that the first respondent is not answerable for any of the claims of the workmen, the award, dated February 18, 1965, is set aside and the Labour Court is directed to take up the Reference, over again, for being dealt with, afresh, in the light of the directions contained above. The appeal is allowed, to the extent, indicated above, and in other respects, will stand dismissed as against 1st respondent. Parties will bear their own costs, in this appeal.

Y.P.

Appeal allowed in part.

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