The Board of Directors of the South Arcot Electricity Distribution Co., Ltd

Vs

N. K. Mohammed Khan Etc..

Civil Appeal Nos. 2455 and 2540 of 1966

(J. M. Shelat, V. Bhargava JJ)

25.11.1968

JUDGMENT

BHARGAVA, J.–

1. The appellant, the South Arcot Electricity Distribution Company Ltd. (hereinafter referred to as "the company"), was carrying on the business of distribution of electricity as a licensee under the Government in South Arcot District in the State of Madras. The Government of Madras, in exercise of the powers conferred on it by the Madras Electricity Supply Undertakings (Acquisition) Act No. 29 of 1954 (hereinafter referred to as "the Madras Act"), took over the appellant's undertaking with effect from 1st of June, 1957. The company chose to be paid compensation on Basis A, laid down in Section 5(1) of the Madras Act, with the result that all the property belonging to the company, including the fixed assets, cash, security investments, and the like and all rights, liabilities and obligations as on the date of vesting, vested or must be deemed to have vested in the Madras Government. Under Rule 17 of the Madras Electricity Undertakings (Acquisition) Rules, 1954 (hereinafter referred to as "the Rules"), framed by the Governor of Madras under the provisions of the Madras Act, all the staff of the company employed immediately before the vesting date were retained by the Government and were continued provisionally for a period of 12 months from the date of vesting on the same terms and conditions of service as were applicable to them under the company immediately before the date of vesting. In respect of future employment of the workmen by the Madras Government, their conditions of service came to be regulated by Section 15 of the Madras Act and the various conditions laid down in Rule 17 of the rules. Subsequently, the employees of the company numbering 352 claimed that they had become entitled to retrenchment compensation under Section 25-F, read with Section 25-FF of the Industrial Disputes Act No. 14 of 1947 (hereinafter referred to as "the Act") and filed applications for computation of the compensation payable to the under Section 33-C(2) of the Act before the Labour Court. All these 352 applications were based on an identical claim and were heard by the Labour Court together. Initially, the company was the sole opposite party in these applications, but, later on, the State of Madras was impleaded as another opposite party. In addition, the Electricity Board of Madras, to which the State of Madras had transferred the undertaking, was also impleaded as an opposite party. The company contested these applications on various grounds, inter alia pleading that there had been no break in the service of the employees or any change in the conditions of their service to their detriment, so that the employees were not entitled to claim any compensation. Another plea taken was that the applications were not maintainable under Section 33-C(2) of the Act, because the Labour Court was not competent to decide the question whether the workmen were entitled to retrenchment compensation when this claim of theirs was not accepted by the company. It was, in addition, pleaded that, even if the workmen were entitled to any compensation, the liability to pay that compensation was not that of the company, but of the State of Madras or the Electricity Board

in view of the provisions of the Madras Act, under which all the liabilities of the company had vested first in the State of Madras and subsequently in the Electricity Board. The Electricity Board also contended that no liability for payment of retrenchment compensation had arisen and that, in any case, there was no obligation on the part of the Board to pay retrenchment compensation. The Board supported the company in the plea that the services of the employees had not been interrupted and that the terms and conditions of service were in no way less favourable after the vesting of the undertaking in the State of Madras or the Electricity Board. It was further pleaded that a dispute had arisen between the company and the Government under Section 13(1)(b) of the Madras Act as to which of the two was liable to pay retrenchment compensation if at all, and no relief could be given to the employees by the Labour Court until the said dispute was decided in accordance with the provisions of the Madras Act by arbitration. On these pleadings, three preliminary objections were raised, viz. : (1) that the notice, wages and retrenchment compensation claimed in the applications were not benefits due to the employees within the meaning of Section 33-C(2) of the Act; (2) that, as retrenchment came under Chapter V-A of the Act, it could only be decided by an Industrial Tribunal and not by the Labour Court; and (3) that, having regard to the fact that complicated questions of law and fact as to the liability of the company or the Government or the Board had to be decided, it was not competent for the Labour Court to decide the matter summarily in proceedings under Section 33-C(2) of the Act and that the dispute must be decided by a Civil Court. The Labour Court, by an order, dated 3rd October, 1958, overruled these preliminary objections and directed that the applications be listed for being tried on merits. The company, thereupon, filed writ petitions under Article 226 of the Constitution in the High Court of Madras, numbered as 820 and 842 to 847 of 1958 seeking directions of the court restraining the Labour Court from enquiring into these applications on merits on the ground that the Labour Court had no jurisdiction to entertain the applications from the employees. A learned single Judge of the court dismissed the writ petitions holding that the Labour Court had jurisdiction to decide the applications and that the controversy between the company on the one side, and the Government of Madras and the Electricity Board on the other side, as to the party which had to bear the liability will have to be disposed of in proceedings taken separately from these proceedings under the Act. Aggrieved by this decision, the company preferred Writ Appeal No. 113 of 1959 in the Appellate side of the High Court.

2. In the meantime, the Labour Court, took up the applications for decision on merits and, since common questions were involved in all the applications, one of these applications C.P. No. 81 of 1957 was taken up as a test case for disposal by the Labour Court by consent of all parties concerned. The Labour Court, by its order, dated 4th February, 1960, held that the workmen concerned were entitled to retrenchment compensation in accordance with Section 25-FF of the Act, computed the amount due, and passed an order directing the company to pay the amount.

3. The company, thereupon, filed Writ Petition No. 254 of 1960 in the High Court of Madras for quashing this order of the Labour Court. Writ Appeal No. 113 of 1959 and this Writ Petition No. 254 of 1960 were heard together by a Division Bench of the High Court which decided them by a common judgment and dismissed the writ appeal as well as the writ petition. The company then sought leave to appeal to this court under Article 133 of the Constitution. The High Court granted a certificate in respect of its judgment in Writ Petition No. 254 of 1960, while rejecting the application for grant of certificate in respect of the same judgment in so far as it had disposed of Writ Appeal No. 113/1959. Civil Appeal No. 2540 of 1966 now before us has been filed by the company in pursuance of that certificate granted by the High Court. The company further obtained from this court special leave to appeal against the same judgment in so far as it governed Writ Appeal No. 113 of 1959 and in pursuance of that special leave granted by this court, Civil Appeal No. 2455 of 1966 has been filed. These appeals have been heard by us together and are now to be

disposed of by this common judgment.

4. Mr. S. V. Gupte, learned counsel appearing for the company raised the following three points in his arguments in these two appeals :

> (1) That the Labour Court as well as the High Court were not right in holding that the conditions laid down in the proviso to Section 25-FF of the Act were not satisfied and in thus accepting the claim of the workmen to compensation under the principal clause of that section.
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> (2) That the applications under Section 33-C(2) of the Act were not maintainable, because the question whether the workmen were entitled to retrenchment compensation was outside the jurisdiction of the Labour Court which was not competent to decide such a disputed question.
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> (3) That the High Court was wrong in holding that the question whether the liability to pay the retrenchment compensation fell on the company or the State of Madras or the Electricity Board could not be decided by the Labour Court under Section 33-C(2) of the Act and had to be determined in other appropriate proceedings.

Section 25-FF of the Act is as follows :

> "Where the ownership or management of an undertaking is transferred, where by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workmen had been retrenched :
>
> Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if -
>
> (a) the service of the workman has not been interrupted by such transfer;
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> (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
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> (c) the new employer is under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment compensation on the basis that his service has been continuous and has not been interrupted by the transfer."

5. The principal clause of this section clearly confers a right on every workman, who has been employed continuously for not less than one year in any undertaking, to receive retrenchment compensation in accordance with the provisions of Section 25-F of the Act as if the workman had been retrenched whenever the ownership or management of the undertaking is transferred, whether by agreement or by operation of law. Consequently, in the present case, the employees, who presented the applications under Section 33-C(2) of the Act, clearly became entitled to receive retrenchment compensation in accordance with Section 25-F of the Act when, under the Madras Act, this undertaking stood transferred to the State Government from the company. This would be

the legal right vesting in the workman if the proviso does not apply to their cases, and it accrues irrespective of the fact that the workmen had not actually been retrenched. The right under this principal clause is conferred on the basis of the legal fiction that the workmen are to be deemed to have been retrenched unless their services are continued in accordance with the conditions laid down in the proviso. The only question that falls for determination in respect of the first point raised by Mr. Gupte thus is whether the right which accused to the workmen under the principal clause was defeated because of the compliance of the conditions laid down in the proviso. The proviso lays down three conditions in clauses (a), (b) and (c), each one of which has to be satisfied before it can be held that the right conferred by the principal clause does not accrue to the workman. In the present case, there is no doubt that the services of the workmen had not been interrupted by the transfer, so that condition (a) was clearly satisfied. It has, however, been found by the High Court that conditions (b) and (c) of the proviso had not been satisfied. In our opinion, it is unnecessary to go into the question whether condition (c) has or has not been satisfied, because it is very clear that condition (b) of the proviso is certainly not satisfied. Under clause (b), the requirement, is that the terms and conditions of service applicable to the workman after the transfer must not in any way be less favourable than those applicable to him immediately before the transfer. On examination of the Madras Act and the rules, it is manifest that the terms and conditions of service of the workmen have not remained as favourable under the State Government or the Electricity Board as they were when the workmen were employed by the company. Under clause (1) of Section 15 of the Madras Act, the State Government is given the power to terminate the services of any workman after giving him three calendar months' notice in writing or paying him three months' pay in lieu of such notice. It has not been shown to us on behalf of the company that there was any such liability to termination of services of these workmen while they were employed by the company. In the absence of any special conditions of service, the rights of the workmen were to be governed by the provisions of the Act under which the only right of the company to terminate the services of these workmen was by retrenchment after complying with the requirements of Section 25-F of the Act. On such termination, each workman was entitled not only to one month's notice or wages for one month in lieu of notice, but was also entitled to receive, at the time of retrenchment, compensation which was to be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. It does not appear that, if the Government were to terminate the service of the same workman under Section 15(1) of the Madras Act, the workman would be entitled to the same compensation which he would have received from the company if he had been retrenched in accordance with the provisions of Section 25-F of the Act. Thus, clause (1) of Section 15 of the Madras Act, itself introduces a condition of service which was less favourable to the workmen than the conditions applicable when they were employed by the company. Similarly, clause (2) of Section 15 of the Madras Act lays down that the workmen, whose services are retained by the Government, shall be governed by such rules as the Government may, from time to time, make in regard to them. It is clear that, in exercise of this power, the Government can make rules altering the terms and conditions of service of the workmen retained by the Government, and this power can be exercised from time to time. There was no such liability of change of conditions of service of the workmen while they were employed under the company. If the company had desired to alter their conditions of service, the company would have been required to comply with the provisions of either Section 9-A of the Act, or Section 10 of the Industrial Employment (Standing Orders) Act No. 20 of 1946. Obviously, the right of the Government of Madras as the new employer under Section 15(2) of the Madras Act to change the conditions of service of the workmen from time to time, in its very nature, alters the conditions of service of the workmen to their disadvantages. Rule 17 of the rules further shows that, immediately on the vesting of the undertaking in the State Government, the services of the workmen retained by the Government

become provisional and the subsequent permanent employment of those workmen in the undertaking is dependent on the conditions laid down in that rule. This liability imposed on the workmen is clearly disadvantageous to those workmen who were in the permanent employ of the company. The same rule also shows that the employees would not be entitled to bonus or other concessions not allowed to the servants of the Government, even if the workmen were entitled to bonus and the concessions from the company. The workmen also became liable to transfer to any other place or post in the Government Electricity Department depending on exigencies of service. These are instances of a number of conditions of service which became less favourable to the workmen on their becoming employees of the State Government when the undertaking vested in that Government by transfer from the company. In these circumstances, the requirements of the proviso to Section 25-FF of the Act are obviously not satisfied and that proviso cannot be invoked by the company for the purpose of defeating the claim made by the workmen under the principal clause of that section. Under that principal clause, the workmen became entitled to receive retrenchment compensation in accordance with the provisions of Section 25-F of the Act on the basis of the legal fiction envisaged that those rights would accrue to them as if the workmen had been retrenched. The Labour Court and the High Court were, therefore, right in holding that the workmen were entitled to claim retrenchment compensation in accordance with the provisions of Section 25-F of the Act because of the right accruing to them under Section 25-FF of the Act.

In this connection, an additional point urged by Mr. Gupte was that the principal clause of Section 25-FF of the Act does not lay down which of the two employers mentioned therein is liable to pay the retrenchment compensation and, consequently, where there is a dispute between the two employers, an application for computation of the benefit under Section 25-FF of the Act cannot be competently entertained and decided by a Labour Court. It appears to us that the language of that principal clause makes it perfectly clear that, if the right to retrenchment compensation accrues under it, it must be a right to receive that compensation from the previous employer who was the owner up to the date of transfer. It is implicit in the language of that clause. The clause lays down that every workman mentioned therein shall be entitled to notice and compensation in accordance with the provisions of Section 25-F as if the workman had been retrenched. Obviously, in such a case, the date of the deemed retrenchment would be the date when the ownership or management of the undertaking stands transferred to the new employer. In the present case, that date would be the 1st of June, 1957, when the undertaking of the company was taken over by the Government of Madras under the Madras Act. If the workmen's services are to be deemed to be retrenched on that very date, it is clear that, for purposes of determining who has retrenched the workmen and who is liable to pay the retrenchment compensation, the workmen could not become the employees of the new employer. The employment under the new employer could only commence from the time when the ownership or the management of the undertaking vested in the State Government; but, simultaneously with this vesting, the workmen had to be deemed to be retrenched from service. That retrenchment could, therefore, be deemed to have been made only by the previous employer. Further, it would be that previous employer who would be competent to give the notice in accordance with the provisions of Section 25-F of the Act. The notice of retrenchment, which has to be deemed to have become effective on the date of vesting of the undertaking in the State Government, could not possibly be given by the State Government. In these circumstances, the conclusion is irresistible that the claim under Section 25-FF of the Act to compensation accrues to the workmen against the previous employer under whom he was employed until the date of transfer. In the present case, therefore, the right to receive compensation clearly accrued under Section 25-FF of the Act against the company and there, was, therefore, no difficulty in the Labour Court exercising jurisdiction on that basis.

6. So far as the second point is concerned, it is fully answered by our decision in Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar and Others, ((1968) 1 SCR 140) where it was held :

> "It is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer."

The view was further clarified and affirmed by this court in State of Bikaner and Jaipur v. R. L. Khandelwal ((1968) 1 LLJ 589), where the court took notice of the decisions of this court in the case cited above and in Punjab National Bank Ltd. v. K. L. Kharbanda ((1962) Supp. 2 SCR 977); Central Bank of India v. P. S. Rajagopalan and Others ((1964) 3 SCR 140); and Bombay Gas Company Ltd. v. Gopal Bhiva and Others ((1964) 3 SCR 709) and held :

> "These decisions make it clear that a workman cannot put forward a claim in an application under Section 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute only requiring reference under Section 10 of the Act."

In the present case, we have already indicated, when dealing with the first point, that the right, which has been claimed by the various workmen in their applications under Section 33-C(2) of the Act, is a right which accrued to them under Section 25-FF of the Act and was an existing right at the time when these applications were made. The Labour Court clearly had jurisdiction to decide whether such a right did or did not exist when dealing with the application under that provision. The mere denial of that right by the company could not take away its jurisdiction, so that the order made by the Labour Court was competent.

7. The third and the last point raised by Mr. Gupte fails and could not be pressed in view of our decision that the right of the workmen, which has been adjudicated upon by the Labour Court in the applications under Section 33-C(2) of the Act, was a right accruing to them against the company under Section 25-FF of the Act. The right having initially accrued under this provision of law against the company, the Labour Court was clearly justified in computing the benefit under that right and laying it down that the liability was enforceable against the company. The Labour Court was concerned with the right claimed under the Act. Whether, by virtue of the provisions or the terms of transfer of the undertaking from the company to the Government, or by virtue of the provisions of the Madras Act, the company is entitled to claim that this liability should be ultimately met by the State Government was a point which did not affect the right of the workmen to claim their compensation from the company and the Labour Court was, therefore, not required to go into this question when dealing with applications under Section 33-C(2) of the Act.

8. The appeals, consequently, fail and are dismissed with costs payable to workmen only. One hearing fee. The amount of interest which has accrued on the amount deposited in the bank, will be proportionately payable with the principal to the employees concerned.

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