The Central Inland Water Transport Corporation Ltd.

Vs

Their Workmen

Civil Appeals Nos. 179-180 of 1973

(P. N. Bhagwati, P. K. GoswamiJJ)

02.05.1975

JUDGMENT

BHAGWATI, J. –

1. These two appeals, by special leave, arise out of an industrial dispute between the Central Inland Water Transport Corporation Ltd. (hereinafter referred to as the Corporation) and its workmen in regard to payment of bonus for the years 1967-68 and 1968-69 under the Payment of Bonus Act, 1965. The industrial dispute was referred to the Industrial Tribunal for adjudication under Section 10 of the Industrial Disputes Act, 1947. The Corporation raised three preliminary objections, one of which was - and that is the only preliminary objection with which we are concerned in the present appeals - that the establishment of the Corporation in which the workmen were employed was newly set up since June 5, 1967 and the workmen were, therefore, by reason of Section 16 of the Payment of Bonus Act, 1964, not entitled to payment of bonus for the years 1967-68 and 1968-69. The Industrial Tribunal by an award dated March 2, 1971 rejected these preliminary objections and held inter alia that the Corporation was not entitled to claim immunity from payment of bonus under Section 16 and directed that the hearing of the reference should proceed on merits. The reference was then heard on the question of quantification of the amount of bonus and by an award dated July 28, 1972, the Industrial Tribunal held that each workman was entitled to bonus at the rate of 4 per cent of the age earned by him during each year or Rs. 40 whichever is higher. This second and final award is challenged in Appeal No. 179 of 1973, while the first preliminary award is challenged in Appeal No. 180 of 1973. It is not disputed on behalf of the Corporation that if its liability to pay bonus is established and its claim to immunity is negatived, the quantum of bonus payable to the workmen would be what has been awarded by the Industrial Tribunal. The only question which, therefore, arises for consideration in these two appeals is as to the liability of the Corporation to pay bonus under the Payment of Bonus Act, 1965. The Corporation claims to be free from liability to pay bonus by virtue of the provisions of Section 16. Is this claim well founded ? To answer this question it is necessary to set out a few facts.

2. The River Steam Navigation Co. Ltd. (hereinafter, referred to as the Company) was a limited liability company incorporated in England in 1914. It owned a fleet of vessels which it plied in inland waters for carrying passengers and cargo from Calcutta to different places in Assam and vice versa along rivers flowing through what was then East Pakistan. It also owned a dock called Rajabagan Dockyard at 42, Garden Reach, Calcutta where it carried out repairs to its own vessels. A majority of shares of the Company were purchased by the Government of India and consideration financial assistance was given by the Government of India from time to time in view of the great strategic importance of keeping the river routes to Assam open, but even so, the Company incurred losses in carrying on its operations. The climax came with the armed conflict between India and

Pakistan towards the end of 1965 when river transport service had to be closed because the river routes passed through what was then East Pakistan and in fact, forty vessels belonging to the Company were seized by the Pakistan Government. This brought about total cessation of the principal business activity of the Company and in consequence, its financial position became so precarious that on June 21, 1966 an application for winding up of the Company was made by one of its creditors in the High Court of Calcutta. It was realised by the Government of India that it was impossible to save the Company as its total liabilities amounted to over Rs. 8 crores, the main creditors being the Government of India in the sum of about Rs. 6.19 crores the State Bank of India in the sum of Rs. 1.50 crores and the Chartered Bank in the sum of Rs. 1.60 crores. The Government of India, therefore, put forward a Scheme of Arrangement and Compromise under Sections 391 and 394 of the Companies Act, 1956 and made an application to the High Court in the winding up petition for sanction of such scheme. In anticipation of sanction, the Government of India incorporated, on February 22, 1967, the Corporation - a company wholly owned by it - for eflectuating the Scheme of Arrangement and Compromise (hereinafter referred to as the Scheme).

3. The Scheme was sanctioned with some modifications by a Single Judge of the High Court by an order dated May 3, 1967. It may be pointed out that when the Scheme was before the learned Single Judge, the Inland Steam Navigation Workers Union appeared and made its submissions with a view to safeguarding the interests of the workers and it was after hearing the Union, that the learned Single Judge made the order sanctioning the scheme with certain modifications. The Union was aggrieved by the order sanctioning the Scheme and it preferred an appeal before a Division Bench of the High Court. The Division Bench, however, by an order dated July 14, 1967, confirmed the order of the learned Single Judge sanctioning the Scheme.

4. It is not necessary for the purpose of the present appeals to reproduce the provisions of the Scheme in extenso. Suffice it to state that the Scheme provided inter alia that all the properties and assets of the Company shall stand transferred to and vest in the Corporation, but so far as the liabilities were concerned, only some of them shall be transferred to and become the liabilities of the Corporation and the rest shall be discharged by the Company in the manner set out in the Scheme out of funds provided by the Government of India. It was also provided in the Scheme that the Corporation shall take as many of the existing employees as possible and as can be reasonably taken over, but as to exactly how many can be employed was left entirely to the discretion of the Corporation. The Scheme also contained a provision that those employees who cannot be taken over by the Corporation shall be paid "all legitimate and legal compensations" by the Company and monies for the same shall be provided by the Government of India. Lastly, it was stipulated that upon the approval of the Scheme, the Company shall be closed and on payment of all creditors, it shall stand dissolved without winding up.

5. The Scheme, as already pointed out, was sanctioned by the order dated May 3, 1967 and pursuant to the Scheme, the Company issued a notice on the same day stating that the entire undertaking of the Company will be closed with immediate effect. There were at that time about 8,000 employees in the various establishments of the Company and out of them, about 5, 173 were given fresh appointments by the Corporation on new terms and conditions from and after June 5, 1967. The Corporation did not carry on any business activity though it took over the assets of the Company from May 3, 1967 and it was only on June 5, 1967 that it opened the Rajabagan Dockyard and started operating it with workers who were formerly employees of the Company but given fresh employment by the Corporation as aforesaid.

6. When the Rajabagan Dockyard was owned by the Company, the main purpose for which it was

used was maintenance and repairs of the large fleet of vessels belonging to the Company. It did very little work for outside parties. The result was that when hostilities broke out between India and Pakistan and it became impossible to run river transport service and in fact a part of the fleet was seized by Pakistan Government, the Rajabagan Dockyard was paralysed and it became an establishment without any work and in consequence a large number of workers working in the Rajabagan Dockyard had to be laid off. The operational result of the working of the Rajabagan Dockyard from and after the commencement of the hostilities showed considerable loss, as the work was completely at standstill. On taking over the Rajabagan Dockyard, the Corporation as pointed out above, started operating it again from June 5, 1967, but the nature and volume of the activities were changed. The Corporation embarked on shipbuilding and ship repairs, general engineering works and deep sea ship repairs and more than 80 per cent of these activities were carried out by the Corporation for outside parties. It was found that the machinery taken over from the Company was largely obsolete and antiquated and much of it was not usable and the Corporation could put to use only a part of the machinery worth about Rs. 13 lacs. The nature of the work having changed and its volume increased, the Corporation found it difficult to cope with the work with the existing plant and machinery and soon felt the need of purchasing new plant and machinery both by way of replacement and addition. In the meantime, a Development Committee was appointed by the Government of India to examine various questions relating to development of Rajabagan Dockyard and this committee submitted its report in June, 1968, making various recommendations which involved an outlay of about Rs. 3 crores in constructing new sheds and purchasing and installing new plant and machinery. It seems that the recommendations of the Development Committee were accepted by the Government of India and the necessary funds were made available according to a phased programme. The Corporation accordingly started construction of six industrial sheds in the premises of Rajabagan Dockyard and also purchased and installed new plant and machinery worth about Rs. 50 lacs. The Rajabagan Dockyard, however, continued to work at a loss and during the years 1967-68 and 1968-69, these being the years with which we are concerned in the present appeals, the losses of the Corporation from the operation of the Rajabagan Dockyard continued to mount. Vide the First and Second Annual Reports of the Corporation for the years 1967-68 and 1968-69.

7. We are concerned in the present appeals with the workers in the Rajabagan Dockyard. They are represented by two unions, namely, Central Inland Water Transport Corporation Ltd., Mazdoor Sabha and Egra and Rajabagan Dockyard Workers Union. These two unions made a demand for payment of bonus for the years 1967-68 and 1968-69 under the Payment of Bonus Act, 1965. The Corporation rejected the demand mainly on the ground that the establishment of Rajabagan Dockyard, as operated by it, was newly set up since June 5, 1967 and no profit was derived by the Corporation from this establishment during the years 1967-68 and 1968-69, and therefore, the workers were not entitled to payment of bonus by reason of Section 16 of the Act. This led to the making of a reference by the Government of West Bengal under Section 10 of the Industrial Disputes Act, 1947. The Industrial Tribunal, as already pointed out above, tried the issue as to the claim of the Corporation to exemption from payment of bonus under Section 16 of the Act, as a preliminary issue. The Corporation examined three witnesses on its behalf, namely, Krishnaswami Srinivasan, Joydev Basak and Girdharilal Makhija, while the workers examined only the Joint Secretary of one of the two unions, namely, Ashgar Hussain. Some documentary evidence was also produced on behalf of the parties. The Industrial Tribunal, on a consideration of the oral as well as documentary evidence, came to the conclusion that the Corporation was the successor-in-interest of the Company in regard to the business of Rajabagan Dockyard which was taken over by it as a going concern and the establishment of Rajabagan Dockyard could not, therefore, be said to be

newly set up so as to attract the applicability of Section 16 of the Act. The Industrial Tribunal, on this view, rejected the contention of the Corporation and by its preliminary award dated March 2, 1971 held that the Corporation was liable to pay bonus to the workers. This was followed by the final award dated July 28, 1972 quantifying the amount of bonus. The Corporation challenges the correctness of the view taken by the Industrial Tribunal and contends that, on the facts and circumstances of the case, as appearing from the evidence, the establishment of Rajabagan Dockyard, as operated by it, is newly set up and it is accordingly not liable to pay bonus to the workers.

8. It would be convenient at this stage to refer to the provisions of Section 16 of the Act in order to appreciate the true nature and scope of the inquiry before us. Sub-section (1) of Section 16 which is the only material sub-section provides :

> 16. (1) Where an establishment is newly set up whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act only -
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> (a) from the accounting year in which the employer derives profit from such establishments; or
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> (b) from the sixth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be from such establishments, whichever is earlier.
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> Now it is obvious that if the establishment of Rajabagan Dockyard could be said to be newly set up from June 5, 1967, the workers would not be entitled to payment of bonus for the years 1967-68 and 1968-69, because corporation admittedly did not derive any profit from such establishment till then. The question which, therefore, arises for determination is whether the Rajabagan Dockyard in the hands of the Corporation could be said to be an establishment newly set up since June 5, 1967. On looking at the award of the Industrial Tribunal, however, we find that the Industrial Tribunal addresses itself to a wholly different question, namely, whether the Corporation took over the business of Rajabagan Dockyard as a going concern from the Company and was a successor-in-interest of the Company in respect of such business. That was not a relevant question for the purpose of determining the applicability of Section 16. An establishment may not be newly set up; it may be an existing establishment of which merely the ownership has changed. But the new owner may not necessarily be the successor-in-interest of the old in respect of the business carried on in the establishment. The two concepts are entirely different. One may acquire the ownership of an establishment without taking over the business as a going concern and becoming a successor-in-interest in respect of it. The word 'establishment' is also found used in Section 3 and that section clearly indicates that an establishment may consist of different departments or undertakings and it is, therefore, not synonymous with 'undertaking' which has been defined, though in a different context, by this Court in Gymkhana Club Employees' Union v. Management ((1968) 1 SCR 742 : AIR 1968 SC 554 : (1967) 2 Lab LJ 720) to mean "any business or any work or any project which one engages in or attempts as an enterprise analogous to business or trade". The dictionary meaning of 'establishment' as given in Webster's International Dictionary includes inter alia "an institution or place of

> business, with its fixture and organised staff; as, large establishment, a manufacturing establishment".'Establishment' therefore means the whole trading, business or manufacturing apparatus with a separate identifiable existence. This apparatus which is used for the purpose of carrying on trade, business or undertaking may change hands and pass from one owner to another. The workers operating this apparatus and working in it may change; new workers may take the place of old or come as additional workers. When the ownership of the establishment, which is nothing but another name for this apparatus, is transferred from one person to another, the establishment remains the same : merely its ownership is change and it cannot be said to be a new establishment in the hand of the transferee. Now, though the transferee may become the owner of the establishment, he would not necessarily be a successor-in-interest of the transferor in respect of the business carried on in the establishment. The question as to whether he can be held to be a successor-in-interest of the transferor would depend on consideration of several relevant facts. What should be the relevant facts to be taken into account in determining this question was explained by Gajendragadkar, J. in the following words :
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> Did the purchaser purchase the whole of the business ? Was the business purchased a going concern at the time of the sale transaction ? Is the business purchased carried on at the same place as before ? Is the business carried on without a substantial break in time ? Is the business carried on by the purchaser the same or similar to the business in the hands of the vendor ? If there has been break in the continuity of the business, what is the nature of the break and what were the reasons responsible for it ? What is the length of the break ? Has goodwill been purchased ? Is the purchase only of some parts and the purchaser having purchased the said parts purchased some other new parts and started a business of his own which is not the same as the old business but is similar to it ? These and all other relevant factors have to be borne in mined in deciding the question as to whether the purchaser can be said to be successor-in-interest of the vendor for the purpose of industrial adjudication. It is hardly necessary to emphasise in this connection that though illustrations are relevant, it would be unreasonable to exaggerate the importance of any one of these facts or to adopt the inflexible rule that the presence or absence of any of them is decisive of the matter one way or the other ..... The decision of the question must ultimately depend upon the evaluation of all the relevant factors and it cannot be reached by treating any one of them as of overriding or conclusive significance. Vide Anakapalla Co-operative Agricultural and Industrial Society Ltd. v. Workmen (1963 Supp 1 SCR 730 : AIR 1963 SC 1489 : (1962) 2 Lab LJ 621).

9. Now in the present case the Industrial Tribunal concentrated only on the question as to whether the Corporation had become the successor-in-interest of the Company in respect of the business carried on in the establishment of Rajabagan Dockyard and answered this question in the affirmative. We do not think that this was a correct line of enquiry pursued by the Industrial Tribunal. The only limited question before the Industrial Tribunal was whether the establishment or Dockyard in the hands of the Corporation was a new establishment or it was the same old establishment which was owned by the company prior to its taking over by the Corporation. We shall presently turn to consider this question, but before we do so, we may point out that prima facie even in the view taken by it as regards the question whether the Corporation was the successor-in-interest of the Company, the Industrial Tribunal appears to have missed some material aspects. The Industrial Tribunal seems to have overlooked the following important and relevant considerations.

The entire undertaking of the Company including the business carried on in the Rajabagan Dockyard had to be closed down owing to heavy losses. The Rajabagan Dockyard in fact became idle on the commencement of the hostilities between India and Pakistan and the workers employed in the Rajabagan Dockyard has to be laid off. The notice of closure was put up by the Company on May 3, 1967 pursuant to the order made by the High Court of Calcutta sanctioning the Scheme. There was, therefore, no business which was being carried on in the Rajabagan Dockyard as a going concern when the Rajabagan Dockyard was taken over by the Corporation in terms of the Scheme. So far as the workers in the Rajabagan Dockyard were concerned, it was specifically provided in the Scheme after hearing the Union that the Corporation shall take as many of the existing employees as possible and as can be reasonably taken over but as to exactly how many can be employed was left entirely to the discretion of the Corporation. There was thus no obligation on the Corporation to take over or absorb all the workers who were previously working in the Rajabagan Dockyard under the Company. Though the Corporation took over the Rajabagan Dockyard on May 3, 1967 under the Scheme, the Corporation did not start operating it until June 5, 1967. There was thus a fairly long break from the commencement of the hostilities between India and Pakistan upto June 5, 1967 before the Rajabagan Dockyard started functioning again. Then again the business which was started by the Corporation in the Rajabagan Dockyard was to a large extent different in character from that carried on by the Company. The principle activity which the Company carried on in the Rajabagan Dockyard was maintenance and repairs of its own fleet of vessels but the Corporation commenced not only shipbuilding and ship repairing work but also general engineering work such as structural fabrication work, forging, casting and machining and also deep sea ship repairing and general engineering work comprised more than 80 per cent of the total work as against only a negligible fraction in the time of the Company and moreover a very substantial part of the work was done for outside parties. It was also provided in the Scheme that the workers who were not taken over by the Corporation would be paid "all legitimate and legal compensation". The workers who were taken over by the Corporation were given fresh appointments from the and after June 5, 1967 with different scales of pay and different conditions of service and there was a break in their continuity of service. The Industrial Tribunal observed that fresh letters of appointment were accepted by the workers under compulsion and duress arising on account of economic necessity but that is not the kind of compulsion or duress arising on account of economic necessity but that is not the kind of compulsion or duress which deprives an action of its voluntary character and introduces an infirmity in it. It is indeed unfortunate that in our country there is so much poverty and there are so few job opportunities that the spectre of unemployment and economic want haunts our underprivileged segments of society and corrodes their freedom and choice of action and reduces them to a position where they can be easily dominated and exploited. But the remedy for this state of affairs is not in the hands of the Court, unless an industrial dispute is raised and the Court gets an opportunity of bringing about social justice through the machinery of industrial adjudication. Here, as the matter stands, there can be no doubt that the workers who were taken over by the Corporation were given fresh employment on different scales of pay and different terms and conditions than those enjoyed by them under the Company and they suffered a break of more than a month in their continuity of service. One observation, however, we cannot fail to make and it is that, though the entire undertaking of the Company was closed on May 3, 1967, it is strange that no provision was made in the Scheme for payment of closure compensation to those workers who might subsequently be taken over by the Corporation. If continuity of service was to be denied to these workers, then surely they should be entitled to closure compensation under Section 25FFF or at any rate compensation under Section 25FF of the Industrial Disputes Act, 1947. We hope and trust that, though no such provision is made in the Scheme the Government of India will consider this aspect of payment of compensation under Section 25FF or Section 25FFF vis-a-vis those workers who

were fortunate enough to be taken over by the Corporation but whose continuity of service was interrupted. That apart, these were some of the important and relevant considerations which ought to have been taken into account by the Industrial Tribunal but which the Industrial Tribunal apparently failed to do. How far this would vitiate the finding of the Industrial Tribunal on this question is a matter on which we do not wish to express any final opinion as it is a matter on which we do not wish to express any final opinion as it is not necessary to do so for the purpose of the present appeals. We leave the question open for adjudication as and when occasion may arise in future.

10. One thing is however clear that the establishment of Rajabagan Dockyard in the hands of the Corporation was not a new establishment. It was the same establishment - the same manufacturing apparatus - which was operated by the Company prior to its taking over by the Corporation. It is true that the Corporation purchased and installed new plant and machinery in substitution as also in addition and also added six new industrial sheds within the premises of the Rajabagan Dockyard but that does not mean that it became a newly set up establishment. The establishment went by the same name of Rajabagan Dockyard; its address remained the same and some of the old plant and machinery also continued to be used by the Corporation. The registration number of the establishment under the Factories Act also remained the same. It is however not necessary to discuss this aspect of the case any further, as it was almost conceded by Mr. Jagdish Swaroop, learned Counsel appearing on behalf of the appellant, that Rajabagan Dockyard could not be said to be an establishment newly set up by the Corporation within the meaning of Section 16. His real grievance was against the finding of the Industrial Tribunal that the Corporation was the successor-in-interest of the Company in respect of the business carried on in the Rajabagan Dockyard. That finding however cannot stand because as already pointed out by us, it was wholly unnecessary for the decision of the present question and moreover it failed to take into account diverse important and relevant considerations. So far as concerns the question which is directly before us for consideration, we take the view that the Rajabagan Dockyard was not an establishment newly set up by the Corporation from June 5, 1967 as claimed by it, but was the same establishment as was owned by the Company prior to May 3, 1967. Section 16, sub-section (1) was, therefore, not attracted and the Corporation was not entitled to claim immunity from payment of bonus under that provision.

11. We, therefore, uphold the claim of the workers for payment of bonus for the years 1967-68 and 1968-69 as awarded by the Industrial Tribunal and dismiss the appeal with costs.

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