The Workmen

Vs

The Bharat Coking Coal Ltd. and Others

Civil Appeal No. 2775 of 1977

(V. R. Krishna Iyer, Jaswant Singh JJ)

10.03.1978

JUDGMENT

KRISHNA IYER, J. -

1. The correct interpretation of Section 9 of Coking Coal Mines Nationalisation Act, 1972 (for short, the Act), read along with Section 17 settles the fate of this appeal by special leave. We may start off by narrating a few admitted facts sufficient to bring out the legal controversy which demands resolution.

2. The subject-matter of the appeal is an industrial dispute. The management of the New Dharmaband Colliery dismissed 40 workmen in October, 1969, and an industrial dispute sprang up and reference followed in October, 1970. The Industrial Tribunal held an elaborate enquiry into the dispute and made an award on July 1, 1972.

3. In the meanwhile, the Colliery was nationalised with effect from May 1, 1972, as provided for in the Act. The New Dharmaband Colliery vested in the Central Government and thereafter in the Bharat Coking Coal company Ltd. Apparently by order of the Tribunal dated March 24, 1972, the successor company namely, the Bharat Coking Coal Ltd. (the respondent) was impleaded as a party. Thus, with the previous owner of the colliery and the nationalised industry, namely, the Bharat Coking Coal Ltd. on record, the Tribunal made the following award;

The action of the management of New Dharmaband Colliery in dismissing the forty workmen mentioned in the Schedule with effect from October 18, 1969 is not justified. The said workmen are to be reinstated with continuity of service by the management for the time being, namely, the Bharat Coking Coal Co. Ltd., and the said company shall be liable to pay their wages and other emoluments with effect from the 1st of May, 1972 .... the management of the New Dharmaband Colliery and Bharat Coking Coal Ltd. are jointly and severally liable to pay the same to the workmen concerned.

The first respondent was made liable for back wages with effect from the date of nationalisation when the right, title and interest in the Colliery vested in it. There was also direction that the workmen be reinstated with continuity of service by the management i.e. the first respondent for the time being. Aggrieved by both these directions, the Bharat Coking Coal Company successfully invoked the writ jurisdiction of the High Court, which quashed the award. Thereupon the workmen came up to this Court challenging the soundness of the legal position which appealed to the High Court.

4. Section 9 of the Act deserves to be reproduced at this stage :

> 9. Central Government not to be liable for prior liabilities. - (1) Every liability of the owner, agent, manager, or managing contractor of a coking coal mine or coke oven plant, in relation to any period prior to the appointed day, shall be the liability of such owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government company.
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> (2) For the removal of doubts, it is hereby declared that -
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> (a) save as otherwise provided elsewhere in this Act, no claim for wages, bonus, royalty, rate, rent, taxes, provident fund, pension, gratuity or any other dues in relation to a coking coal mine or coke oven plant in respect of any period prior to the appointed day, shall be enforceable against the Central or the Government company.
>
> #(b) ....(c) ....##

Side by side we may also read Section 17(1) :

> 17. (1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been immediately before the appointed day, in the employment of a coking coal mine or coke oven plant, shall become on and from the appointed day, an employee of the Central Government, or, as the case may be, of the Government company in which the right, title and interest of such mine or plant have vested under this Act, and shall hold office or service in the coking coal mine or coke oven plant, as the case, may be, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such coking coal mine or coke oven plant had not been transferred to and vested in the Central Government or Government company, as the case may be, and continue to do so unless and until his employment in such coking coal mine or coke oven plant is duly terminated or until his remuneration, terms and conditions of employment are duly altered, by the Central Government or the Government company.
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> Section 17 is a special provision relating to workmen and their continuance in service notwithstanding the transfer from private ownership to the Central Government or Government company. This is a statutory protection for the workmen and is express, explicit and mandatory. Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been, immediately before the appointed day, in the employment of a mine, shall become an employee of the Government or the Government company and continue to do so as laid down in Section 17. A 'workman' is defined in the Industrial Disputes Act to mean 'any person employed in any industry (we omit the unnecessary words) and includes, any such person who has been dismissed and whose dismissal has led to a dispute. It is perfectly plain that the 40 workmen who were dismissed and whose dismissal led to the industrial dispute are 'workmen' within the meaning of Section 17(1) of the Act. Irrefutably follows the inference that they are workmen entitled to continuance in service as provided for in Section 17. It is not open to any one to contend that because they had been

wrongfully dismissed and, therefore, are not physically on the rolls on the date of the takeover, they are not legally workmen under the new owner. The subtle eye of the law transcends existence on the gross level. The statutory continuity of service cannot be breached by the wrongful dismissal of the prior employer. It is important that dismissal has been set aside and the award expressly directs reinstatement "with continuity of service by the management for the time being namely, the Bharat Coking Coal Company Ltd." The finding that the dismissal was wrongful has not been challenged and, therefore, must stand. The Court in Bihar State Road Transport Corporation v. State of Bihar ((1970) 3 SCR 708, 714 : (1970) 1 SCC 490, 495 : AIR 1970 SC 1217) had to deal with a wrongful dismissal, a direction for reinstatement by an award and a transfer of ownership from a private operator to a State Transport Corporation. Shelat J, observed : (SCC p. 495 para 9)

The argument, however, was that the true meaning of the said averment was that only those of the employees of the Rajya Transport Authority who were actually on its rolls were taken over and not those who were deemed to be on its rolls. It is difficult to understand the distinction sought to be made between those whose names were actually on the rolls and those whose names, though not physically on the rolls, were deemed in law to be on the rolls. If respondent 3 continued in law to be in the service, it makes little difference whether his name actually figured in the rolls or not. The expression "on the rolls" must mean those who were on May 1, 1959 in the service of the Rajya Transport Authority. By reason of the order discharging him from service being illegal, respondent 3 was and must be regarded to be in the service of the said Authority, and therefore, he would be one of those whose services were taken over by the appellant corporation.

5. The present one is a fortiori case. We have not the slightest doubt that what matters is not the physical presence on the rolls but the continuance in service in law because the dismissal is non est.

6. Sri Sarjoo Prasad pressed into service Section 9(2) of the Act to repel the contention of the workmen set out above. It is true that Section 9 (2)(b) declares that no Award .... of any .... Tribunal .... passed after the appointed day, but in relation to any .... dispute which arose before that day, shall be enforceable against the Central Government or the Government company". Superficially read and torn out of context, there may be some resemblance of substance in the submission. A closer look at Section 9 as a whole, contradicts this conclusion.

7. Section 9 deals with the topic of prior liabilities of the previous owner. Section 9(1) speaks of "every liability of the owner .... prior to the appointed day, shall be the liability of such owner ..... and shall be enforceable against him and not against the Central Government or the Government company". The inference is irresistible that Section 9(1) has nothing to do with wrongful dismissals and awards for reinstatement. Employees are not a liability (as yet in our country). Section 9(1) deals with pecuniary and other liabilities and has nothing to do with workmen. If at all it has anything to do with workmen it is regarding arrears of wages or other contractual, statutory or tortious liabilities. Section 9(2) operates only in the area of Section 9(1) and that is why it starts off by saying "for the removal of doubts it is hereby declared ....".

So, Section 9(2) seeks only to remove doubts in the area covered by Section 9(1) and does not deal with any other topic or subject matter. Section 9(2)(b) when it refers to 'awards' goes along with the words 'decree', or 'order'. By the canon of construction of noscitur a sociis the expression 'award' must have a restricted meaning. Moreover, its scope is delimited by Section 9(1). If back wages before the appointed day have

> been awarded or other sums, accrued prior to nationalisation, have been directed to be paid to any workman by the new owner, Section 9(2)(b) makes such claims non-enforceable. We do not see any reason to hold that Section 9(2)(b) nullifies Section 17(1) or has a larger operation than Section 9(1). We are clear that the whole provision confers immunity against liability, not a right to jettison workmen under the employ of the previous owner in the eye of law.

8. We hold that the High Court fell into an error in following a different line of reasoning. The appeal deserves to be and is hereby allowed and the award of the Industrial Tribunal restored. The appellants shall receive costs from the first respondent, which we quantify at Rs. 2000.

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