M/S. Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd.

Vs

Bharat Barrel Employees Union

Civil Appeal No. 1463 Of 1986

(E. S. Venkataramiah, Sabyasachi Mukharji JJ)

09.04.1987

JUDGMENT

VENKATARAMIAH, J. -

1. This appeal by special leave is filed against the judgment of the High Court of Bombay in Appeal No. 264 of 1985 dated March 26, 1985 affirming the decision of the learned Single Judge of that court in Writ Petition No. 867 of 1980 dated January 18, 1984.

2. The appellant is a company engaged in the business of manufacturing barrels and drums at its factory in Bombay. In the year 1971 it had engaged about 1100 workmen - about 600 permanent workmen and 500 temporary workmen. It is alleged that since 1968 the factory was working intermittently and that the situation had worsened on account of non-availability of raw materials and other compelling circumstances. By 1971 the company could see no other alternative but to close down its factory and accordingly it issued a 'closure notice' dated September 30, 1971 which was duly displayed on the notice board and that it also intimated all its workmen that their services would stand terminated due to the closure of the factory with effect from November 1, 1971. The workmen also were informed that they would be paid compensation under Section 25-FFF of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). The appellant alleged that soon after the display of the 'closure notice' dated September 30, 1971 the workmen indulged in go-slow tactics and various acts of sabotage rendering the running of the factory and office virtually impossible. The whole work was paralysed. It is alleged that during the month of October there were meetings of workmen and an atmosphere of terror, intimidation and vilification prevailed. On October 30, 1971 with the commencement of the first shift i.e. practically on the eve of the effective date of the closure on November 1, 1971 in terms of the 'closure notice', a very grave and tense atmosphere prevailed on the premises of the factory of the appellant and by the afternoon all the workers and members of the staff became more and more aggressive and after threatening the managerial staff resorted to act of rioting, hooliganism and destroyed considerable part of the appellant's properties. The situation further aggravated by the workmen of the second shift joining the said workmen of the first shift. The workmen of the first shift continued to remain in the precincts of the factory and squatted in the passage leading to the office of the appellant where the directors and senior officers were present and thus blocked the passage. The union leaders addressed the workers using inflammatory and defamatory language against the directors and officers. At that stage the management requested the assistance of the police. The police force arrived accordingly. The Assistant Commissioner of Police S. N. Minocher Homji appealed to the workers not to prevent the directors and senior officers from leaving the factory. Ignoring the said appeal, the union leaders "gheraoed" the directors and senior officers and when the police tried to assist the directors and senior officers to leave, the workers pounced upon the police party and tried to attack them. When

the police tried to resist the workers became more violent and threw missiles like nuts, grinding wheels, soda water bottles, stones, brick bats etc. at the police and the directors and officers including their cars and the police van. One sharp missile struck the eye of the Assistant Commissioner of Police and he lost his eye. About 26 police officer and constables were injured. A grinding wheel thrown at the car of the director would have caused fatal injury but only the car was badly damaged. Machinery to the tune of Rs. 6,50,000 was damaged. The Police then arrested 183 workers while the rest of them fled away.

3. In view of the grave law and order situation, the company decided to terminate the service of the workmen with immediate effect by its notice dated October 30, 1971 issued under the Standing Orders applicable to the employees of the appellant. The said notice was duly published on the Notice Board as well as in the daily newspaper 'Navshakti' and 'Free Press Journal' both dated November 1, 1971.

4. Thereafter the workmen raised an industrial dispute and the Government of Maharashtra by its order of reference dated November 9, 1971 referred the dispute for adjudication by the Industrial Tribunal of Shri G. K. Patankar. The terms of reference were :

i. Whether the nature of closure declared by the company by its notice dated September 30, 1971 is for temporary period and to defeat the pending claims of the workmen before the various authorities.
ii. (ii) Whether the said closure is legal and bona fide, if not what further relief be given to workmen in addition to wages for the period of enforced unemployment ?
iii. In case the closure is legal and bona fide whether the workmen are entitled to compensation in accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 or under the provisions of Section 25-FFF.

5. The above reference was numbered as I.T. No. 325 of 1971. It is alleged by the management that the factory was completely closed down from November 1, 1971 and there was no production till May, 1972. During this period there used to be meetings of the workmen and skirmishes near the factory. In May, 1972 the High Court of Delhi by its order dated May 19, 1972 in a writ petition filed by the appellant directed M/s. Hindustan Steel Ltd. to resume forthwith supply of steel sheets to the appellant. In view of this order the appellant put up a notice dated June 7, 1972 both on the notice board in the office as well as at the main gate of the factory advising the ex-workers who desired to offer themselves for employment to intimate the same to the appellant. It also stated that preference would be given to such of the ex-employees who may abide to work peacefully. This notice was followed by two more such notices dated August 10, 1972 and October 13, 1972. May workmen rejoined the factory.

6. Now, we shall revert to the reference made to the Tribunal in I.T. No. 325 of 1971. In that case although various pleas were taken by the parties in their pleadings at the hearing it was the case of the union that the services of the workers were terminated due to closure whereas the company contended that they were discharged before the alleged closure became operative (p. 147 of the paper book). On behalf of the workmen it was contended "that the services of the workers stand terminated due to closure and although the Tribunal cannot go into the question of legality or illegality of the closure, yet when the services of the workers are terminated due to closure they would be entitled to compensation under Section 25-FFF of the ID Act" (p. 150 of the paper book). The management reiterated before the Tribunal that it was not liable to pay compensation under Section 25-FFF of the Act as the workmen had been discharged on October 30, 1971 under

Standing Order 21. In the above situation the Tribunal was required to decide whether the workmen continued to be in employment till the closure took effect on November 1, 1971 or whether they ceased to be the employees of the management on October 30, 1971 or October 31, 1971 by virtue of the notice of discharge issued under Standing Order 21. On the above question the Tribunal recorded its findings. We shall state them in its own words. The Tribunal observed : "It would then follow that the workers were discharged before their services could be terminated due to closure. The workers, therefore, cannot be said to have been retrenched due to closure in the existing circumstances" (page 155 of the paper book). "The said ruling is applicable and the workers' services, therefore, stand to have been terminated at least from 10.30 a.m. on October 31, 1971 due to the order of discharge." (p. 155 of the paper book). "The discharge order, therefore, in any case became effective from 10.30 a.m. on October 31, 1971. The workers, therefore, (were) not in service of the company thereafter and also were not in service at the time of the alleged closure" (p. 159 of the paper book). "The fact remains that the services of the workers were terminated because they were validly discharged and hence as mentioned above, they would not be entitled for any relief due to closure even if it is assumed that there was closure as alleged" (p. 159 of the paper book). "The point as to whether the workers would have been entitled to compensation under Section 25-FFF ..... The same was argued for the union by Shri Kamerkar and I agree with the fact that if the services of the workers had been terminated due to closure, then they would have been entitled for compensation under Section 25-FFF of the ID Act, 1947. It has however already been found that the services of the workers were not terminated due to closure and hence question of compensation would not arise" (p. 162 of the paper book). "It would then be evident that all the workers of the company were discharged by the company on the October 30, 1971 before the closure could become effective" (p. 164 of the paper book). "Since the termination of services of the workers is not connected with the closure the workers would not be entitled to any compensation due to closure" (p. 165 of the paper book). With these findings the reference was rejected by the Industrial Tribunal by its order dated October 30, 1974. The above award made in I.T. No. 325 of 1971 remained unchallenged and became final. Thereafter at the instance of 440 workers only another reference was made by the Government of Maharashtra on July 10, 1975 to the same Industrial Tribunal Shri G. K. Patankar under Section 10(1)(d) of the Act, which was numbered as Reference (I.T.) 245 of 1975 and this time the points of dispute referred were as follows :

> (1) All employees whose names are mentioned at Annexure 'A' be reinstated with full back wages and continuity of the service, restoring their status, rights and privileges as if there was no break in service.
>
> (2) These employees should be paid one year's wages as an interim relief till the final disposal of the case."

7. In the Schedule to the reference the names of 440 workmen, who were employees prior to their discharge on October 30, 1971/October 31, 1971 were included. They were workmen on whom the earlier award passed in I.T. No. 325 of 1971 was binding. By the time the second reference, Reference (I.T.) 245 of 1975, was disposed of the membership of the Tribunal had changed and Shri M. A. Deshpande had been appointed in the place of Shri G. K. Patankar. Shri M. A. Deshpande passed his award on March 20, 1980. He held that the workmen included in the Scheduled to the reference should be deemed to have been retrenched on March 20, 1980 i.e. the date of the award, that they were entitled to the retrenchment compensation as laid down in Section 25-F of the Act and that they were entitled to recover 75 per cent of their back wages from October 31, 1971 till March 20, 1980. The above award was passed by the Tribunal rejecting the contention that the present case was barred by the principle of res judicata and holding that the termination of the

services of workers under the notice of discharge dated October 30, 1971 was invalid. It is not necessary to refer to all other findings at this stage since the only point which requires to be examined in this case is whether the decision on the question of res judicata is correct or not.

8. Aggrieved by the latter award dated March 20, 1980 the management filed a writ petition before the High Court in Writ Petition No. 867 of 1980. The learned Single Judge who heard the said petition dismissed it on January 18, 1984 and an appeal filed against his decision in Appeal No. 264 of 1985 was dismissed by the Division Bench of the High Court on March 26, 1980. This appeal by special leave is filed by the management against the said decision of the High Court.

9. The principal question which is urged before us by the management is that the latter Industrial Tribunal (Shri M. A. Deshpande) was in error in treating the workmen in question as being in the employment of the management until it made the award even though the first Tribunal (Shri G. K. Patankar) had held that the workmen had been validly discharged by the notice dated October 30, 1971 issued under Standing Order 21 and the enquiry into the very same question between the same parties was barred by the principle of res judicata.

10. That the rule of res judicata applies to proceedings before the Industrial Tribunals is beyond question. In Burn & Co. v. Employees ((1956) SCR 781 : AIR 1957 SC 38, 43 : 11 FJR 217 : (1975) 1 LLJ 226) at page 789-90 this Court has observed thus :

> Are we to hold that an award given on a matter in controversy between the parties after full hearing ceases to have any force if either of them repudiates it under Section 19(6), and that the Tribunal has no option, when the matter is again referred to it for adjudication, but to proceed to try it de novo, traverse the entire ground once again, and come to a fresh decision. That would be contrary to the well recognised principle that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. It is on this principles that the rule of res judicata enacted in Section 11 of the Civil Procedure Code is based. That section is, no doubt, in terms inapplicable to the present matter, but the principle underlying it, expressed in the maxim "interest rei publicae ut sit finis litium", is founded on sound public policy and is of universal application. (Vide Broom's Legal Maxims, 10th edn, page 218). "The rule of res judicata is dictated" observed Sir Lawrence Jenkins, C.J. in Sheoparsan Singh v. Ramnandan Prasad Singh (1961 LR 43 IA 91 : AIR 1916 PC 78 : ILR 43 Cal 694) "by a wisdom which is for all time".

And there are good reasons why this principle should be applicable to decisions of Industrial Tribunals also. Legislation regulating the relation between Capital and Labour has two objects in view. It seeks to ensure to the workmen who have not the capacity to treat with capital on equal terms, fair returns for their labour. It also seeks to prevent disputes between employer and employees, so that production might not be adversely affected and the larger interests of the society might not suffer. Now, if we are to hold that an adjudication loses its force when it is repudiated under Section 19(6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it, either party will treat it as a mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour.

On the other hand, if we are to regard them as intended to have long term operation and at the same time hold that they are liable to be modified by change in the circumstances on which they were based, both the purposes of the legislature would be served. That is the view taken by the Tribunals themselves in the Army & Navy Stores Ltd., Bombay v. Workmen ((1951) 2 LLJ 31) and Ford Motor Co. of India Ltd. v. Workmen ((1951) 2 LLJ 231) and we are of opinion that they lay down the correct principle, and that there were no grounds for the Appellate Tribunal for not following them.

11. Same view is expressed in Workmen v. M/s. Straw Board Manufacturing Co. Ltd. ((1974) 3 SCR 703 : (1974) 4 SCC 681 : 1974 SCC (L&S) 406 : (1974) 1 LLJ 499). This Court has observed thus at page 717 : (SCC pp. 692-93, para 27)

It is now well established that, although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the Code of Civil Procedure, however, are applicable, wherever possible, for very good reasons. This is so since multiplicity of litigation and agitation and re-agitation of the same dispute at issue between the same employer and his employees will not be conducive to industrial peace which is the principal object of all labour legislation bearing on industrial adjudication. But whether a matter in dispute in a subsequent case had earlier been directly and substantially in issue between the same parties and the same had been heard and finally decided by the Tribunal will be pertinent consideration and will have to be determined before holding in a particular case that principles of res judicata are attracted.

12. We would hasten to add that the above observations do not mean that a question which is once decided can never be re-agitated. There are certain classes of cases like disputes regarding wage structure, service conditions etc. which arise as circumstances change and new situations arise which may not be barred by the rule of re judicata. The disputes which arose for consideration in Workmen v. Balmer Lawrie and Co. ((1964) 5 SCR 344 : AIR 1964 SC 728 : (1946) 1 LLJ 380 : (1964-65) 27 FJR 450) and in Associated Cement Staff Union v. Associated Cement Co. ((1964) 1 LLJ 12 : AIR 1964 SC 914 : (1963-64) 25 FJR 305) belong to this category of cases.

13. In the instant case we are concerned with the question whether the workmen concerned were entitled to retrenchment compensation under Section 25-F of the Act as on the date of the award and payment of back wages from October 31, 1971 to March 20, 1980. This question depends upon their right to be in service from the date on which they ceased to work in the factory up to the date of the award. In the first reference I.T. No. 325 of 1971 the workmen specifically prayed for payment of compensation under Section 25-FFF of the Act on the ground that the factory had been closed with effect from November 1, 1971 as per notice of closure thereby accepting the position that they had at any rate ceased to be the employees of the management on November 1, 1971. That claim was resisted by the management on the footing that the workmen had been discharged pursuant to the notice of discharge dated October 30, 1971. Even though in the course of its award the fist Tribunal had observed that it had considered the question of discharge as an "incidental question in view of the defence taken by the company" the case was decided only on the basis if its findings that the workmen had been validly discharged by the notice dated October 30, 1971. It is true that the said Tribunal had observed "that there is nothing on the record to show at this stage that the discharge order is not proper". But it did not mean that the validity of the discharge order could be re-agitated later on because in the very next sentence the first Tribunal observed : "It would then be evident that all the workers of the company were discharged by the company on October 30, 1971 before the closure could become effective." The one and the only ground on which the claim of the workmen for compensation under Section 25-FFF of the Act was rejected was that the

workmen had ceased to be employees of the appellant by reason of the notice of discharge dated October 30, 1971. The validity of that notice of discharge was directly and substantially in issue in the first reference. The above observations of the first Tribunal on which the learned Single Judge has relied, therefore, do not carry the case of the workmen any further. Before the first Tribunal it was open to the workmen to urge that the discharge invalid and, therefore, the workmen continued to be in the service till November 1, 1971 and hence were entitled to compensation under Section 25-FFF of the Act. Their case that they were entitled to compensation under Section 25-FFF of the Act was negatived by the first Tribunal on its firm conclusion that the workmen had been validly discharged by the notice dated October 30, 1971. It may be that the decision of the first Tribunal was erroneous and could have been set right if its award had been challenged before higher courts. But it was allowed to become final. The decision of the first Tribunal was not one rendered without jurisdiction. Nor can it be characterised as a nullity on any ground known to law. The question whether a person was or was not an employee under a management after a particular date is one which cannot be re-agitated in a subsequent case in the circumstances which are referred to above if it has already been decided finally by an Industrial Tribunal of competent jurisdiction in an earlier case where the said question necessarily arose for decision. This case falls within the scope of the decisions in Burn & Co. case ((1956) SCR 781 : AIR 1957 SC 38, 43 : 11 FGR 217 : (1957) 1 LLJ 226) and in the case of Straw Board Manufacturing Co. Ltd. ((1974) 3 SCR 703 : (1974) 4 SCC 681 : 1974 SCC (L&S) 406 : (1974) 1 LLJ 499) We have extracted above the several passages from the award of the first Tribunal which leave no scope for re-agitating the issue relating to the validity of the notice of discharge dated October 30, 1971. It is significant that the workmen did not claim before the first Tribunal the relief of reinstatement or compensation under Section 25-F of the Act even though the factory had been reopened in 1972 before the first award was passed but only confined their relief to compensation under Section 25-FFF of the Act. The workmen could not have, therefore, been permitted to re-agitate the said matter before the second Tribunal which decided the second reference and to contend that they had continued to be employees of the management on the ground that the notice of discharge and the notice of closure were both invalid. The second Tribunal should have rejected the said contentions by holding that the validity of notice of discharge dated October 30, 1971 was not open to question before it. The second Tribunal was in error in re-examining the issue relating to the validity of the notice of discharge and in expressing a contrary view. The award dated March 20, 1980 passed by the second Tribunal Shri M. A. Deshpande is therefore liable to be quashed and it is accordingly quashed.

14. Before concluding we should refer to a concession made by the management before us. When the writ petition filed against the award dated March 20, 1980 was pending before the High Court, the workmen proceeded to enforce it under Section 33-C(i) of the Act before the Assistant Commissioner of Labour. He issued a certificate for recovery of Rs. 96,98,492.48 against the management. When the Collector took steps to recover the above amount, the appellant filed a writ petition before the High Court in Writ Petition No. 2081 of 1983 against the order passed under Section 33-C(1) of the Act. That petition was dismissed in limine. An appeal filed against that order before the Division Bench in Appeal No. 394 of 1984 was dismissed on June 27, 1984. Against that order the management filed a special leave petition before this Court in Special Leave Petition (Civil) No. 9337 of 1984. When that petition came up for hearing, this Court issued notice on the petition and also issued on order of stay of recovery of the amount for which a certificate had been issued on August 27, 1984 subject to the appellant depositing Rs. 48,00,000 (Rupees Forty-eight lakhs) in instalments on the dates specified in that order. The management deposited the entire sum of Rs. 48,00,000 though not on the dates specified above and the said sum ultimately came into the possession of the Commissioner of Labour, Commerce Centre, Tardeo, Bombay. Out of the said

sum, some amount has already been distributed amongst some of the workmen (or their legal representatives, wherever the workmen was dated) at whose instance the second reference was made as per interim order passed by this Court. The learned counsel for the appellant-management has submitted before us that it would give up its right to claim the refund of the said amount of Rs. 48,00,000 even though the award is set aside and that the said amount of Rs. 48,00,000 (less expenses, if any,) may be distributed ex gratia amongst the 440 workmen involved in the second reference equally. He also prayed that the sum of Rs. 1,63,000 recovered separately by the Collector may be refunded to the appellant. We very much appreciate the submission made on behalf of the management. This brings substantial relief to the workman concerned since the sum of Rs. 48,00,000 now offered is equivalent to a little more than three times the amount the workmen would have got under Section 25-FFF of the Act, if they had succeeded in the first reference. It is stated that under Section 25-FFF of the Act they would have been entitled to get in 1971 about Rs. 14,00,000 and even if interest calculated at a reasonable rate till today on that sum is added, the total amount payable would be less than Rs. 48,00,000. The amount of Rs. 48,00,000 now offered is, therefore, on the liberal side. We, therefore, direct that the sum of Rs. 48,00,000 which is with the Commissioner of Labour shall be distributed equally amongst the 440 workmen. If any of the workmen or their legal representatives have already received any amount out of it, that amount shall be adjusted against the amount due to them. If any workman has received the whole of the amount due to him under this order than nothing more need be paid to him. There appears to be some dispute about the identity of the workman. The Commissioner of Labour shall publish the names of all the 440 workmen in a local newspaper informing that they would be entitled to the amounts to be distributed under this order and he shall disburse the amount after fully satisfying himself about the identity of the workmen as ordered by this Court on March 13, 1986 in C.M.P. No. 7068 of 1986. He shall meet the cost of publication in the newspaper from the amount available with him and only the balance shall be equally distributed as directed above. If the entire amount is not distributed as per this order on account of the non-availability of the concerned workman, the amount shall not be refunded to the management. The Commissioner of Labour shall seek direction of this Court as to how the balance of the amount should be appropriated. In any event the management shall not get back any part of it. This order is passed in full settlement of all the claims of all the workers who were employed before October 30, 1971. Nobody else shall be permitted to raise any dispute of this kind. The amount of Rs. 1,63,000 realised by the Collector shall, however, be refunded to the appellant.

15. The appeal is accordingly allowed and the award dated March 20, 1980 in Reference (I.T.) 245 of 1975, the judgment of the Single Judge and of the Division Bench of the High Court are set aside subject to the above directions. No costs.

16. Special Leave Petition (Civil) No. 9337 of 1984 referred to above is also disposed of by this judgment. It is, however, evident that the recovery proceedings pursuant to the certificates issued by the Assistant Commissioner of Labour cannot be proceeded with since the award itself has been quashed by this judgment.

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