Kanji Jadhavji and Co., Bombay Vs. Transport and Dock Workers

Overruled by : K. Ramanathan v. State of Tamil Nadu

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Court : Mumbai

Decided On : Dec-10-1968

Reported in : (1969)IILLJ123Bom

Judge : D.P. Madon and ;N.L. Abhyankar, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 2, 10, 10(1), 10(5), 17A and 19

Appeal No. : Special Civil Application No. 500 of 1965

Appellant : Kanji Jadhavji and Co., Bombay

Respondent : Transport and Dock Workers

Judgement :

Madon, J.

1. This is a petition under Arts. 226 and 227 of the Constitution to set aside an award dated 29 December 1964 made by Sri Salim M. Merchant, presiding officer of the Central Industrial Tribunal at Bombay, respondent 2, in an industrial dispute between Kanji Jadhavji & Co. and their workmen.

2. This petition was originally filed by one Velbai Kanji as the sole proprietress of the said Kanji Jadhavji & Co. During the pendency of the petition, the said Velbai died and her legal representative, one Mathuradas Gokuldas, has been brought on the record. The said Kanji Jadhavji & Co. (hereinafter referred to as the petitioner-concerned) has been carrying on business for the last over fifty years as stevedores, clearing, forwarding and travel agents and also as contractors of the Central Government and State Governments other public bodies. Transport and Dock Workers' Union, respondent 1, which is a trade union registered under the Trade Unions Act, 1926, is a union representing the workmen of the petitioner-concern. Amongst the departments of the petitioner-concern is a department known as 'cement-handling department,' the work of which consists of loading cement on board the ships at the Bombay port.

3. In 1958, certain disputes between the petitioner-concern and its workmen were referred for adjudication under the Industrial Disputes Act to Sri A. Das Gupta as the Central Government Industrial Tribunal at Calcutta, being Reference No. 3 of 1958. In the said reference, certain terms of settlement were arrived at between the petitioner-concern and its workmen, and in terms of the said settlements an award was made by the said tribunal. The first demand in the said reference was :

'The cement workers now employed through middlemen should be directly employed by the company and they should be paid piece-rate at the rate of Rs. 5 for 100 bags. The workers should also be given benefits of minimum daily wage guarantee and idle allowance.'

4. The settlement with respect to the said demand as embodied in the said award was :

'The existing system of employing present cement workers through mukadam shall continue. However, the company will require the mukadam to pay to the cement workers a rate of 45 nP. per ton effective 1 November 1958.'

5. On 8 March 1963, respondent 1 union on behalf of the workmen of the petitioner-concern gave notice intimating its intention to terminate the award. Thereupon the said award ceased to be binding on the parties on and from 8 May 1963. Thereafter, on 30 July 1963, respondent 1 union raised several demands on behalf of the workmen of the petitioner-concern as also on behalf of the workmen of two other concerns engaged in similar activities, namely, Navalchand A. Mehata & Bros. and Krishna Commercial Company. The disputes between all the three concerns and their workmen were admitted to conciliation, and on the conciliation proceedings proving infructuous, the Central Government by an order dated 1 January 1964, in exercise of the powers conferred by Clause (d) of Sub-section (1) of S. 10 of the Industrial Disputes Act, 1947, referred the said disputes for adjudication to the industrial tribunal, Bombay. The disputes so referred were stated in the schedule to the said order and were as follows :

'(1) Whether the demands of the workmen employed in loading of cement by Kanji Jadhavji & Co. Navalchand A. Mehta & Bros. of Bombay, for the -

(i) enhancement of wages to Rs. 6 per 100 bags or to Rs. 2 per ton.

(ii) payment of attendance allowance of Rs. 1.50 per shift to a workman who is called for work when no work is made available to him,

(iii) payment of minimum wages of Rs. 4 when employed throughout the shift, and

(iv) payment of bonus for the years 1960-61, 1962-63.'

6. After pleadings on behalf of all the parties were filed and evidence led respondent 2 gave his award on 29 December 1964. The said award was published in the Government Gazette dated 6 January 1965. By the said award all the demands raised by the workmen of the petitioner-concern were rejected, except the demand for enhancement of wages, and respondent 2 awarded an enhancement of 5 paise per ton in the existing rate of 45 paise per 20 bags of cement, that is, per ton, with effect from 1 February 1964. It is to set aside this award that the present petition has been filed.

7. The main defence taken by the petitioner-concern in the written statement filed before the tribunal were that :

(1) a joint reference was not permissible under the Industrial Disputes Act except in a case falling under S. 10(5) of the said Act;

(2) the workmen who were cement-handlers of the petitioner-concern were employed through mukadams under the said award made in Reference No. 3 of 1958 and the same system of employing cement workers through mukadams still continued; and

(3) there was no justification on the merits for granting any of the demands of the cement workers of petitioner-concern.

8. The tribunal very carefully and in detail considered the evidence, both oral and documentary, led on behalf of the workmen as also the petitioner-concern and came to the conclusion that the cement-handlers were the employees of the petitioner-concern since 1961; that prior to 1961, the said workers were being employed through mukadams; and that the said mukadams left in 1961. The tribunal disbelieved the oral evidence of the witness on behalf of the petitioner-concern. It considered the oral evidence in great detail and has elaborately set out the reasons why the evidence of the witness on behalf of the petitioner-concern could not be accepted. It has referred to the documentary evidence, namely, the master-roll maintained by the petitioner-concern, the receipts for salary taken by the petitioner-concern and the compensation paid by it under the Workmen's Compensation Act to some of the workmen. The final conclusion to which the tribunal arrived at on this aspect of the case was :

'I, therefore, reject the contention of the company that these cement-handling workers were employees of the mukadams and there was no relationship of master and servant between the company and them. I also reject the company's story that these workers were not its full-time workers or that they worked for others at the same time. I am of the opinion that they are clearly the workmen of Kanji Jadhavji & Co. in any case since after July 1963 and that the documentary and oral evidence establishes the tests laid down by the Supreme Court in the case of the Dharangadhra Chemical Works referred to supra to establish the union's plea that they are workmen of the company.'

9. Before us, it has been urged by Sri Sawant, learned counsel for the petitioners, that the tribunal wholly overlooked the binding effect of the award in the said Reference No. 3 of 1958. In this connexion, Sri Sawant has referred us to S. 19 of the Industrial Disputes Act under which an award is in the first instance to remain in operation for a period of one year from the date on which it becomes enforceable under S. 17A, that is, on the expiry of thirty days from the date of its publication in the Government Gazette, and thereafter is to continue to be binding until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention of terminating the award. In Sri Sawant's submission, in view of the binding effect of this award until 8 May 1963 the tribunal could not in law have come to the decision that the petitioner-concern ceased to engaged his employees through mukadams as from 1961; that from 1961 the petitioner-concern was engaging the cement-handling workmen directly; and that a direct relationship of employer and employee existed as from the said date between the petitioner-concern and the cement-handling workmen. This argument of Sri Sawant really amounts to saying that when S. 19 provides that an award is to continue to be binding after the expiry of the initial period of one year till the expiry of two months from the date of the notice of termination, what is meant is that not only the award continues to be in operation but it must be assumed for all purposes that the facts and circumstances, on the basis of which the award was given, also continue to exist irrespective of the true facts. Normally, even if a notice of

termination of an award is given and fresh demands raised, on the principle of res judicata, the tribunal would not grant any of those demands unless there was a change of circumstances. Such change of circumstances may take place either before the termination of the award or after the termination of the award. In many cases a notice of termination is given because of change of circumstances and the workmen desire that, in view of the changed circumstances, increased benefits should be allowed to them. It is illogical to say that in spite of a notice of termination being given on account of change of circumstances, the Court must nonetheless hold that the circumstances did not change earlier but changed only when the binding effect of the award came to an end. What the tribunal has really considered is that since 1961 there was a change of circumstances; that these circumstances led to the termination of the award given in the said Reference No. 3 of 1958; and that the demands made by the workmen so far as concerns enhancement of wages were justified. This contention of Sri Sawant must, therefore, fail.

10. The other made in the petition on this aspect of the case relates to the appreciation of evidence led before the tribunal. The High Court, exercising it extraordinary jurisdiction under Arts. 226 and 227 of there Constitution, is not acting as a Court of first appeal and is not required to reappreciate and reweigh the evidence before the trial Court. There is no error of law in the mode in which the tribunal appreciated the evidence led before it. It has given elaborate and cogent reasons for the conclusions reached by it and has not left any aspect of the evidence unconsidered.

11. The next ground urged before us by Sri Sawant, learned counsel for the petitioners, was that joint reference in respect of three concerns was against the provisions of the Industrial Disputes Act inasmuch as such a joint reference could only be made under Sub-section (5) of S. 10 of the such Act and that admittedly this reference was not made under the said sub-section. Sub-section (5) of S. 10 of the said Act provides as follows :

'Where a dispute concerning any establishment or establishments has been or is to be, referred to a labour court, tribunal or national tribunal under this section and the appropriate Government is of opinion whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in the reference such establishment, group or class of establishments whether or not at the time of such inclusion any dispute exits or is apprehended in that establishment, group or class of establishments.'

12. This sub-section contemplates the case of adding of parties to a reference which has already been made when the dispute involved is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, of affected by, such dispute. In such a case, the appropriate Government making the reference may, either at the time of making the reference or at any time thereafter but before the submission of the award by the tribunal, include in that reference such establishment, group or class of establishments. This power can be exercised by the Government even when such dispute did not exist or was not apprehended in that establishment, group or class of establishments at the time of such inclusion. This sub-section, therefore, applies to establishments other than the

one or ones who are parties to the industrial dispute in respect of which a reference is made under Sub-section 10(1)(d). This sub-section obviously has no application to the present case. There is, however, no provision in the Industrial Disputes Act profiting a joint reference in case of several establishments. The opening words of Sub-section (5) themselves show that a reference in an industrial dispute can be made in respect of an establishment or establishments. This itself would imply that there is power under the other provisions of S. 10 to make a reference to the industrial tribunal in respect of a dispute relating to several establishments. This is further borne out by the definition of 'industrial dispute' in Clause (k) of S. 2 of the said Act. Under that clause, 'industrial dispute' means

'any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with conditions of labour, or any person.'

13. There is no requirement of the statute under which a reference under S. 10(1)(d) is to be made only in respect of one establishment. On the contrary, the scheme of the Act would show that where disputes which are common to several establishments engaged in similar activities are raised, a joint reference should be made, so that there may not be conflicting awards leading to industrial unrest. In the present case, admittedly the petitioner-concern as also the said Navalchand A. Mehta & Bros. and Krishna Commercial Company were engaged in similar activities. The demands raised against them were jointly raised by respondents 1 union and it was only desirable and proper that a joint reference should have been made, as in fact has been made. This contention of the petitioners, therefore, too must fail.

14. The last ground urged by Sri Sawant, learned counsel for the petitioners, is that the tribunal erred in awarding increased wages to the workmen of the petitioner-concerned, while it rejected the same demand in respect of the said other two concerns. In allowing this demand of the workers of the petitioner-concern the tribunal took into consideration the principle of region-cum-industry basis, the fact that the rate of these wages was fixed as for back as 1958 and that there was indisputably a substantial rise in the cost of living since 1958 and the average earning of other piece-rated workers in the Bombay docks which were higher than those received by the cement-handling workmen of the petitioner-concern. It also took into account the fact that the said Krishna Commercial Company were paying 20 paise more per ton than what the petitioner-concern was paying. Before the tribunal, it was contended on behalf of the petitioner-concern that it could not afford to grant any increase in the existing wages. In support of this allegation the petitioner-concern filed a statement purporting to show that the margin of profit left to it was only one paise per ton. Now, it was admitted by the petitioner-concern that it was paid by its principals, the Cement Marketing Company of India, Ltd., a rate of 75 paise 45 paise per ton. The said statement showed an average cargo clearance of only 13,000 tons per month. The allegations in the said statement were disputed by respondent 1 union. In spite of this, the petitioner-concern led no evidence and did not produce its books of account or any audited statements of accounts to show that what was alleged in the said statement was correct. The tribunal, therefore, rightly refused to place any reliance upon the said statement. Unless admitted by the other side, such a statement, unless proved, could not have formed the basis of an award, much less in this case when the other evidence led by the petitioner concern was found to be unsatisfactory and untrustworthy. It is not the case of the petitioner-

concern, as it in fact cannot be, that it was not maintaining books of account. The only conclusion, therefore, which any tribunal or Court can arrive at from the fact that the books of account were not produced is that had these books been produced, they would have been unfavorable to the petitioner-concern. The said statement purported to dispel se a state of affairs hardly credible. According to it, all that the petitioner-concern earned from its cement-handling department was a meagre sum of Rs. 120 per month. The tribunal which had before it the master-roll and the attendance sheets rightly rejected the allegation that the average clearance of cement done by the petitioner-concern was only 13,000 tons per month or that its profit could be only Rs. 120 per month. Taking into consideration all these factors, the tribunal allowed an increase of 5 paise per ton, which was really an increase of only 11 per cent. In the wages of the workmen. The demand in the case of Navalchand A. Mehta & Bros. was rejected in view of the agreement date 4 February 1963 between the union and the management, which agreement continued to be in force and was not terminated. The fact that under that agreement the wages were somewhat lower could not be so relevant, for, as the award shows, this concern was a small establishment making only small profits. In the case of Krishna Commercial Company, it was accepted by all parties that it was paying the highest rate to its workmen and the tribunal accordingly did not award any further increase. In our opinion, the tribunal, therefore, did not commit any error of law in rejecting this demand in the case of the workers of the other two concerns and granting it to the workers of the petitioner-concern.

15. In the result the petition fails and is dismissed. The petitioners will pay to respondent 1 the costs of the petition. Rule discharged.