

(1965) 11 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2764 of 1961

A.M. Mazdoor Biri Co.

APPELLANT

Vs

Industrial Tribunal III and Others

RESPONDENT

Date of Decision : 29-11-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1967 All 568 : (1969) 2 LLJ 598

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Advocate : S.C. Khare and K.N. Singh, for the Appellant; K.P. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Seth, J.—By this petition under Article 226 of the Constitution the petitioner company (hereinafter called the company" prays for the quashing of the award dated 26th April 1961 of the Industrial Tribunal III. U P Allahabad.

2. The facts of the case in brief as contained in the petition, are that the company carries on the business of manufacture of biris. The company suffered some losses in the years 1958-59 and 1959-60 The company did not, therefore, distribute any bonus to the workmen for these two years. The workmen raised a dispute and claimed that bonus be paid to them

3. The State Government by an order dated 25th October 1960 referred the following dispute to the Industrial Tribunal III. U. P. Allahabad (hereinafter called the Tribunal):

"Matter of Dispute. Should the employers be required to pay any bonus to their workmen for the years 1958-59 and 1959-60? If so at what rate and with what other details"?"

4. The dispute was registered and the parties filed their written statements and

also led oral evidence before the Tribunal The Tribunal gave its award on 26th April 1961 and held that the biri makers concerned with the present dispute are "workmen" within the meaning of the U. P. Industrial Disputes Act (hereinafter called the Act) and rejected the accounts of the company as inaccurate and calculated the available surplus in a tabular form for the two years in dispute. The Tribunal, therefore, allowed bonus to the workmen for each of the two years. i.e. 1968-59 and 1959-60 at the rate of their one month's average earning during those years. The Tribunal further ordered that the workmen who had put in less than three months in either year will not be entitled to any bonus in that year and that the workmen who worked for more than three months but less than 12 months in any year will get proportionate bonus in that year. It was further ordered that the workmen who were dismissed for misconduct in any of these two years will not get any bonus for the year in which they were dismissed. This award was published in the U. P Gazette dated 17th June 1961

5. Feeling aggrieved by the award the company has come to this Court under Article 226 of the Constitution and prays that the award be quashed.

6. Two counter-affidavits have been filed, one by Sukhbir Singh Rawal, Additional Regional Conciliation Officer and the second by Mohd. Shafiq Secretary of the Biri Mazdoor Parishad Rai Bareilly. The company has filed its rejoinder-affidavit.

7. I have heard Sri S. C. Khare the learned counsel appearing for the company and Sri K. P Agarwal the learned counsel appearing for the workmen.

8. Sri Khare contended that the persons who manufacture biris for the company are not workmen within the meaning of the Act but are independent contractors over whom the company has no control and they were not entitled to any bonus. The learned counsel also submitted that the Tribunal erred in rejecting the company's accounts and in calculating available surplus on purely speculative basis without deducting necessary prior charges such as depreciation, rehabilitation charges, profit on capital investment etc Sri Khare therefore, urged that the award suffers from an error apparent on the face of the record and is without jurisdiction and is liable to be quashed.

9. Sri K. P. Agarwal on the other hand, contended that the persons who manufacture biris for the company are workmen and are, therefore, entitled to get bonus and further that the Tribunal rightly rejected the company's accounts and that the Tribunal was also correct in calculating available surplus and had deducted necessary prior charges

10. Workman is defined in Section 2(z) of (the Act as follows:

"Workman means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed discharged or retrenched in

connection with, or as a consequence of that dispute, or whose dismissal discharge or retrenchment has led to that dispute, but does not include any such person:

(i)

(ii)

(iii)

(iv) ...

11. This definition is exhaustive and lays down who is included as a workman in the definition and who is excluded. The definition quoted above does not say that only a work man on monthly basis will be a workman and that piece raters such as the workmen connected with the manufacture of bidis as in the instant case, will not be workmen.

12. Sri Khare relied upon Chintaman Rao and Another Vs. The State of Madhya Pradesh, In this case there was an agreement between the management of a bidi factory and an independent contractor that the contractor should receive tobacco from the management and supply them rolled in bidis for consideration. He was not under the control of the factory management and he could manufacture bidis wherever he pleased. The management could not regulate the manner of discharge of his work His liability was discharged by his supplying bidis and delivering them in the factory. The terms of the contract between the management and the contractor did not enjoin on the latter to work in the factory. On these facts it was held:

"That the contractor in this case was not employed by the management as worker but was only Independent contractor who performed his part of the contract by making bidis and delivering them at the factory".

13. The following facts were established from the evidence on record in Shankar Balaji Waje Vs. State of Maharashtra,

1. There was no agreement or contract of service between the owner of the factory and the concerned person.

2. The concerned person was not bound to attend the factory for the work of rolling bidis for any fixed Hours of work or for any fixed period. He was free to go to the factory at any time he liked and was equally free to leave the factory whenever he liked.

3. He could be absent from work on any day he liked.

4. There was no actual supervision of the work done by the said person in the factory.

5. He was paid at fixed rates on the quantity of bidis turned out.

6. Leaves used to be supplied to the said person for being taken home and cut there. He was not hound to roll the bidis at the factory.

7 At the close of the day, the bidis used to be delivered to the owner and bidis not upto the standard, used to be rejected.

14. On the above facts their Lordships of the Supreme Court came to the conclusion that there was no relationship of master and servant between the owner of the factory and the concerned person who used to roll bidis in the factory

15. It may be noted that both the cases relied upon by Sri Khare were under the Factories Act.

16. Sri Khare contended that the definition of worker in the Factories Act. 1948 is similar to the definition of a workman in the Act. The learned counsel, therefore, submitted that the above two cases of the Supreme Court cannot be distinguished on the ground that they were under the Factories Act.

17. A worker is defined in Section 2(1) in the Factories Act as follows:

" "worker" means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process."

18. Sri Khare urged that the crucial words in the two definitions are "person employed" and, therefore, the two definitions am similar. I cannot agree to this argument. The two definitions quoted above are not similar and, therefore, the two cases on which reliance was placed by Sri Khare can be of no help to the petitioner.

19. In Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, it was held at page 268 that:

"The principle which emerges from these authorities is that the prima facie test for the: determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work or to borrow the words of Lord Uthwatt at page 23 in Mersey Docks and Harbour Board v. Coggins and Griffith (Liverpool) Ltd.. 1947-1 AC 1, a! p. 23. The proper test is whether or not the hirer had authority to control the manner of execution of the act in question."

20. The above case arose out of the Central Industrial Disputes Act. The definition of a workman in Section 2(s) of the Central Industrial Disputes Act is exactly similar to the definition of workman in Section 2(z) of the Act. Sri Khare, therefore, contended that the principle of Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, has been applied to cases under the Factories Act also

For this reliance was placed by Sri Khare on Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others, . In this case it was observed by their Lordships of the Supreme Court thus:

"The matter came up again for consideration in Chintaman Rao and Another Vs. The State of Madhya Pradesh, , which also happened to relate to bidi workers, and Section 2(1) of the Factories Act had to be considered in it. It was held that the test laid down in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, with respect to Section 2(s) of the Industrial Disputes Act would also apply in Section 2(1) of the Factories Act"

21. Sri Khare. therefore, contended that a workman can be said to be in the employment of a employer under the two definitions of "worker" and "workman" in the Factories Act and in the Act only if the employer exercises control over him. The learned counsel urged that each case has to be decided on its own facts and there can be no general law that bidi workers can be or cannot be workers within the definition of a workman in the Act. Sri Khare contended that there is no evidence, on record in the instant case to show that the employers exercised any kind of control over the workmen" according to the test laid down by the Supreme Court in the above decisions. Mohd. Shafiq, Secretary, Bidi Mazdoor Parishad. Rae Bareilly appeared before the Tribunal and stated that.

"The mazdoors of this factory work on piece rates and are the permanent employees of the factory. The proprietors exercise full control over the mazdoors even in details".

22. Sri Khare urged that this was no evidence and it was only the opinion of Mohd. Shafiq. The statement, according to the learned counsel, was not a statement of fact and was only an inference drawn by Mohd. Shafiq. He, therefore, contended that there was no evidence on record that the workmen in the instant case were the kind of workmen on whom the employers exercised any control- This is not correct

23. It is admitted that a charge-sheet Ex. W-4 was issued by the employers to four workers under the signature of the proprietor himself. The charge-sheet was followed by a notice of termination of their services by Ex. W-5. These facts clearly show that control was exercised by the company over the bidi makers concerned with the present dispute. It cannot, therefore, be said that there was no evidence on record to prove that the company exercises any control over its workers. It follows, therefore, that the workmen in the instant case were workmen within the definition contained in Section 2(z) of the Act and were entitled to receive bonus if there was profit in the concern. I am supported in my view by a decision reported in D.C. Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal, Madras, . Moreover the finding whether the employees, in the instant case were workmen within the definition contained in Section 2(z) of the Act is a finding of fact and when the Tribunal has given a finding that the employees In the instant case are workmen that finding would normally be

conclusive and the High Court would be loath to interfere under Article 226 of the Constitution except in cases where there is a clear error on the face of the record. See *Andhra Scientific Co. Ltd., Masulipatam by the General Manager Vs. A. Seshagiri Rao and Another*, and *South India Estate Labour Relations Organisation Vs. The State of Madras and Others*, .

24. There is no substance in the argument of Sri Khare that the Tribunal was not justified in rejecting the accounts of the company and in arriving at an available surplus for distribution of bonus. Two sets of accounts were filed by the company before the Tribunal, one in vernacular and the other English profit and loss account. The Tribunal found that in the vernacular profit and loss account for 1958-59 the loss was shown as Rs. 11,036.39 nP. as against Rs. 3,013.96 shown in the English profit and loss account while in the vernacular profit and loss account for 1959-60 the loss was shown as Rs. 20,092.50 nP. against Rs. 21,809.50 nP. shown in the English profit and loss account. There were other discrepancies also in the two sets of accounts. Under these circumstances the Tribunal was perfectly justified in rejecting the accounts of the company as being unreliable. The Tribunal had, therefore, no other choice but to come to its own conclusions regarding profits.

25. Regarding the argument that the Tribunal had calculated available surplus without deducting necessary prior charges such as depreciation, rehabilitation charges, profit on capital investment etc. Sri Khare placed reliance on *The Indian Hume Pipe Co., Ltd. Vs. Their Workmen*, . It was observed in this case that:

"The formula evolved by the Full Bench of the Labour Appellate Tribunal in 1950 Lab LJ 1247 (LATI-Bom) (FB) is based on this idea that "as both labour and capital contribute to the earnings of the industrial concern. it is fair that labour should derive some benefit if there is a surplus after meeting "prior or necessary charges". The following were prescribed as the first charges on gross profits, viz. (1) provision for depreciation; (2) reserves for rehabilitation; (3) a return at 6 per cent on the paid up capital; (4) a return on the working capital at a lesser rate than the return on paid up capital and (5) an estimated amount in respect of the payment of Income Tax. The surplus that remained after making the aforesaid deductions would be available for distribution among the three shares, viz., the share-holders, the industry and the workmen".

26. To the same effect is the decision of the Supreme Court in *The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another*,

27. In both these cases the concerns were limited concerns and their accounts were duly maintained and duly audited. Such is not the case before me and so the principles laid down in these two cases cannot apply to the facts of the instant case. The award of the Tribunal shows that the Tribunal did make deductions of Income Tax. Regarding other prior charges it was for the company

to make a claim for those charges As no machinery is used in the manufacture of bidis it was not necessary of allow any amount for depreciation Rehabilitation charges are also allowed in respect of machineries because other machineries have to be purchased The Tribunal has taken into account the formula discussed by the Supreme Court. It was held in The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another,

"In dealing with the employer's claim for rehabilitation, tribunals have always placed the onus of proof on the employer He has to prove the price of the plant and machinery its age. the period during which it requires replacement the cost of replacement the amount standing in the depreciation and reserve fund, and to what extent the funds at his disposal Would meet the cost of replacement. If the employer fails to lead satisfactory evidence on these" points, tribunals have on occasions totally rejected his claim For rehabilitation".

28. In the instant case the company did not lead any evidence regarding prior charges and further did not make any claim in respect of them. The award of the Tribunal, therefore, does not suffer from any infirmity or any error apparent on the face of the record.

29. No other point was raised by the learned counsel for the petitioner.

30. The result, therefore, is that this petition is dismissed with costs.