

(1989) 10 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 2040 of 1984 and C.W.W.P. No. 4057 of 1984

Amalgamated Electricity Company Limited

APPELLANT

Vs

The Workmen of Amalgamated Electricity Co. Ltd. and Others

RESPONDENT

Date of Decision : 19-10-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 (2) (b)

Karnataka Electricity Supply Undertakings (Acquisition) Act, 1974 — Section 11, 4

Citation : (1995) 3 LLJ 769

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Advocate : R.N. Narasimha Murthy, for Murthy and Kumar, for the Appellant;
M.C. Narasimhan, for R-1 and M. Subba, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Babu, J.—These two petitions are disposed off by this common order since the question of law involved is one and the same.

2. The petitioner in Writ Petition 2040/1984, which is a public limited company, was supplying electricity to the city of Belgaum till 1974 when by virtue of Section 4 of the Karnataka Electricity Supply Undertakings (Acquisition) Act, 1974 (hereinafter referred to as the Acquisition Act) the undertaking of the petitioner company stood transferred to and vested in the Government. As a consequence thereof u/s 11 of the Acquisition Act the employees under the petitioner company, employed before the vesting date became, as from that date, the employees of the Government and thereafter when the undertaking was handed over to the second respondent -Electricity Board those employees continued to be such on the same terms and conditions and with same rights and privileges in the matter of conditions of service. The proviso to that section also provided for an option to the employee to intimate his intention of not becoming an officer or other employee of the Government.

3. The petitioner had employed certain meter readers to whom a memo dated

3.11.1970 was issued to explain as to why they had stopped reading motive power meters since September 1970, but no explanation was offered by any one of the meter readers to the said memo. Thereafter, a charge-sheet was also served upon them to which the workmen (meter readers) furnished their explanation stating that they were doing the work of reading the motive power meters but they stopped reading the same from September 1970 as they had adopted the "work to rule" policy. Consequent on such an explanation, an enquiry was held by the enquiry officer who recorded the statements of the Accountant and the Head Bill Clerk of the petitioner-company. After completion of the Enquiry the Enquiry Officer held that the workmen were guilty of misconduct under the certified standing orders of the company. On receipt of the report of the Enquiry Officer the petitioner terminated the services of the meter readers, but in view of the pendency of the industrial dispute before the National Industrial Tribunal, Dhanbad, it filed applications u/s 33(2)(b) of the Industrial Disputes Act, 1947 for approval of the action taken by the management against them. The dismissed workmen contested those proceedings.

The National Industrial Tribunal thereafter by its order dated 31.12.1971 granted its approval for the action taken by the petitioner. In the course of its order the National Tribunal held that there was no need to hold an enquiry into the matter inasmuch as the workmen in question had admitted the charge made against them in the explanation offered by them on 9.3.1971 and found, on appreciation of the evidence on record, that the petitioner was justified in dismissing them.

4. Thereafter, an industrial dispute was raised by the said workmen which came to be referred to the Additional Industrial Tribunal, Bangalore (Respondent No. 3 in the petition) on the following questions:

"Are the management of Amalgamated Electricity Co., Ltd., Belgaum Branch, Belgaum, justified in dismissing the following 12 meter readers from the dates noted against their names?

Sriyuths- 1. K.Y. Irrannavar 16.4.1971 2. R.M. Biraje 16.4.1971 3. S.G. Majagaonkar 16.4.1971 4. U.S. Kundargi 16.4.1971 5. S.L. Adamani 16.4.1971 6. B.R. Madekar 16.4.1971 7. G.A. Yadav 16.4.1971 8. V.J. Patil 16.4.1971 9. A.P. D'Souza 16.4.1971 10. A.T. Kukkeri 16.4.1971 11. S.M. Bagi 30.4.1971 12. R.H. Gunari 30.4.1971 If not, to what relief are the said workmen entitled?"

5. During the pendency of the proceedings two workmen by name U.S. Kundargi, at Sl. No. 4 and V.J. Patil, at Sl. No. 8 settled their dispute with the petitioner. Thus, the dispute was decided only with reference to the remaining workmen by the industrial Tribunal.

6. The tribunal on the question of the validity of the domestic enquiry held that the same was not valid and therefore permitted the petitioner and the workmen to adduce evidence in support of their respective cases. That order of the tribunal came to be called in question before this Court in Writ Petition No. 3792/74. That writ petition was dismissed at the stage of preliminary hearing

and aggrieved by the dismissal a writ appeal was preferred in Writ Petition No. 660/74. That writ appeal however was allowed by this court by an order dated 5.10.1979 holding that the domestic enquiry conducted was proper and remanded the matter for further enquiry and disposal by the Tribunal.

7. After the remand the tribunal permitted the examination of workmen and Exs.W-1 to W-12 were marked on behalf of the workmen. After hearing the arguments the tribunal made its award on 22nd November, 1982. Aggrieved by that award the petitioner has approached this court under Articles 226 and 227 of the Constitution of India for the relief.

8. It is contended on behalf of the petitioner that:

(i) the tribunal had not given due weight to the findings of this court in Writ Appeal No. 660/14 in regard to the fact that reading of the motive power meter is part of the duties of meter readers and therefore could not have arrived at a contrary finding. According to the petitioner the tribunal failed, to consider the effect of the admission made by the workmen in the statement dated 9.3.1971 admitting that they were reading the motive power meters prior to July 1970 but they stopped to do so only from September 1970 and therefore it was not open to the tribunal to examine the matter once over again particularly in view of the decision of this court in the said writ appeal.

It was also submitted that the tribunal ignored the evidence placed before the Enquiry Officer as also the effect of the judgment of this Court in Writ Appeal No. 660/74;

(ii) the tribunal erred in having placed reliance on the settlement dated 7.12.1970 inasmuch as the same was in relation to the termination of just two workmen and the dispute relating to the workload of all the employees of the petitioner was not at all within the scope of that settlement. The settlement entered into as to maintenance of status quo of workload was with reference to the retention of the same strength of workmen until the main dispute was settled thereby leading to the inference that the existing workmen had to discharge the full workload as was done by them previously;

(iii) the interpretation placed on Standing Order 22(b) of the certified Standing Orders of the company was plainly perverse inasmuch as the tribunal failed to see that stoppage of work contrary to the contract relating to duties and responsibilities of meter readers and would amount to illegal stoppage. The act on the part of the workmen in not responding to the memo issued by the petitioner on 3.11.1970 would amount to stoppage of work without informing the management of the reasons for such stoppage and the charge-sheet had to be understood in that background;

(iv) the tribunal had to answer the question referred to it and should not have travelled beyond the reference in that the tribunal wrongly placed reliance upon the existing practice in the State of Maharashtra or this State, but ought to have

seen that the question as to whether the duty of reading the motive power meters by the meter readers of the petitioner should be continued or not was not the issue but should have considered whether the meter readers of the petitioner-company who were admittedly reading motive power meters were or were not justified in refusing to read the same. The tribunal ought to have held that when the Maharashtra State Electricity Board scales of pay were applied to the employees of the petitioner-company would also bring them on par in respect of duties and responsibilities as well and thus the tribunal erred in holding to the contrary.

It was also submitted that the back wages ordered to be paid to the workmen of the petitioner is absolutely arbitrary and needs to be quashed.

These contentions have been jointly urged by the petitioner and the second respondent, namely the petitioner in the other writ petition, but they joined issue on certain other matters touching the liability of the second respondent as successor-in-interest of the petitioner.

9. The learned counsel for the second respondent submitted, relying upon the decisions of the Supreme Court in *Management of Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi and Another*, and *Mysore State Road Transport Corporation v. A Krishna Rao and Anr.* 1973 L.I.C. 96 that it is not liable to make payments to the workmen. According to him, when the second respondent took over the undertaking in question of which the workmen were the employees and in respect of whom the dispute had been referred to, those workmen were not on the rolls of its establishment and therefore they could not be treated as the workmen of the second respondent. In fact, law on this matter is settled as early as 1958 when in 1958(I) LLJ 36, it was held that if the successor company took over an undertaking and if there is continuity of service insofar as the workmen are concerned without any break and there is identity of business the company taking over the business of the undertaking becomes the successor-in-interest and is liable for the past acts of the company from whom it took over. In an identical situation the Supreme Court in *The Workmen Vs. The Bharat Coking Coal Ltd. and Others*, held that during the pendency of an industrial dispute regarding the dismissal of workmen, the colliery having been nationalised and vested in the Central Government and thereafter in the 1st respondent-company, when Section 17 of the Coking Coal Mines Nationalisation Act provided for continuance of their service notwithstanding the transfer of private ownership to the Central Government or the Government company, the statutory continuity of service cannot be breached by the wrongful dismissal of the prior employer. If the dismissal is set aside and the award expressly stated that the workmen should be reinstated with continuity of service by the management "for the time being" such a finding cannot be challenged at all. What matters is not the physical presence on the rolls but the continuance of service in law because the dismissal is non est. For this proposition the Supreme Court relied on an earlier decision of its own in *Bihar State Road Transport Corporation Vs. State of Bihar*

and Others, Therefore, on the principle set forth above there cannot be any doubt that the second respondent becomes the successor-in-interest and u/s 11 of the Acquisition Act there being a statutory transfer of the services of an employee with due protection as to conditions of service unless the employee himself exercises an option not to become an employee of the successor company, the second respondent is as answerable to the claim as the petitioner-company. The learned counsel for the second respondent however submitted that the method and manner in which transfer of employees could be effected is provided in Rule 6 of the Rules framed under the Acquisition Act that every officer or other employee selected by the committee constituted under the Rules be transferred to the Board's services and on such transfer he shall be absorbed in the corresponding class, category or grade of the Board service. A closer look of the said Rule will reveal that the option to be exercised by the employee, as referred to in Section 11 of the Acquisition Act, was only with reference to the employee and the Rule proceeds as if an employee has to exercise his option to become an employee of the Board. On the other hand, Section 11 is very clear that the option to be exercised by the employee is only when he does not wish to continue to be in the services of the company or the Board. There is no question of selection of employees as contemplated under Sub-rule (3) of Rule 6 inasmuch as Section 11 spells out in unambiguous terms that services of employees who were in the employment of the undertaking shall stand transferred to the Government and thereafter to the Board. Therefore, question of Rule 6 controlling Section 11 does not arise. If at all, Rule 6 will have to yield to Section 11. Even otherwise, case of ten workmen in question had not been considered by the Board as contemplated under Rule 6 which they should have on the ground that they were not in the service of the undertaking on the date of vesting. As explained earlier, in the light of the law laid by the Supreme Court in *The Workmen Vs. The Bharat Coking Coal Ltd. and Others*, it is clear that when there is a statutory transfer of employees pursuant to the undertaking being taken over to the Board and when the statute provided for continuance of service of transferred employees, such statutory service cannot be breached. The decision of the Supreme Court applies even to those employees who are dismissed but are contesting such dismissal and during the pendency of such list their cases had to be considered. In the present case, when the Board had not considered their cases under Rule 6, the application of the same therefore does not arise. Hence, the contention urged on behalf of the second respondent that the liability of the 2nd respondent-Board does not arise in this case is fallacious and has got to be rejected.

10. In so far as the merits of the matter, the contention of the petitioner and the 2nd respondent is that when the enquiry was held to be valid pursuant to the order of this court in Writ Appeal No. 660/74 the tribunal ought to have upheld the dismissal without much ado or further probe into the matter notwithstanding Section 11-A of the I.D. Act. This Court in the writ appeal held that:

".....In the present case, the tribunal was clearly in error in holding that there

was no evidence as to the character and position of the workmen. The workmen had been designated as meter readers. It is not disputed that they had been reading motive power meters also till the year 1970. It was only thereafter that they refused to read motive power meters. Having regard to the designation of the workmen as meter readers, the absence of any essential difference between motive power meters and other kinds of energy meters and the fact that they had been reading motive power meters also for a long time, there was enough material in the domestic enquiry to come to the conclusion as to whether the workmen were guilty of misconduct by reason of their refusal to do the work of reading motive power meters. The tribunal was manifestly in error in holding that the finding in the domestic enquiry on the question of misconduct of the workmen was based on no evidence and that the domestic enquiry was defective. Thus the finding of the tribunal on the second preliminary issue (i.e., whether the domestic enquiry was regular) is clearly unsustainable".

The Court in that appeal took the view that considering the designation of the workmen in question as meter readers and there being no difference between motive power meters and other kinds of energy meters and the fact that they had been reading motive power meters also for a long time there was sufficient material in the domestic enquiry to come to the conclusion as to whether they were guilty of the misconduct by their refusal to do the work of reading motive power meters and therefore the tribunal was in error in holding that the finding in the domestic enquiry on the question of misconduct of the workmen was based on no evidence and the domestic enquiry was defective. It was also made clear by this court that the tribunal can, in view of the provisions of Section 11-A of the I.D. Act, examine the matter to reassess the evidence on record and come to its own conclusion as to whether the charge of misconduct is established. The scope of powers trial could be exercised u/s 11-A of the I.D. Act has been exhaustively considered by the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, An analysis of the provisions and the various other decisions rendered subsequent to the said decision would lead to the following two propositions:

- (i) Section 11-A of the I.D. Act has the effect of abridging the rights of an employer giving power to the tribunal to differ both on the finding of misconduct arrived at by the employer and the punishment imposed by it;
- (ii) Even if the domestic enquiry is held to be fair and proper, still the tribunal can go into the question as to whether the finding given by the enquiry officer is based on the material adduced by the parties.

It is in order to give effect to the latter proposition of law that the Division Bench of this court made it clear that the tribunal is within its domain to reassess the evidence on record and to come to its own conclusion as to whether the charge of misconduct is established. If the matter is examined bearing these aspects in mind it becomes clear that the tribunal has not committed any error in reassessing the evidence and drawing its own inferences in the matter. It was

further submitted by the learned counsel for the second respondent that the tribunal exceeded its jurisdiction in considering materials which are not part of the domestic enquiry while exercising its powers u/s 11-A of the I.D. Act. The proviso to Section 11-A which bars taking of any fresh material except those on record, has been the subject matter of consideration by the Supreme Court in the aforesaid Firestone Tyre & Rubber Company case. The expression "materials on record" has been held not being confined to the material available at the domestic enquiry but it takes in (i) the evidence taken by the management at the enquiry and the proceedings of the enquiry, or (ii) the evidence as mentioned in (i) above and, in addition, any further evidence led before the tribunal, or (iii) evidence placed before the tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen to the contra. If the matter is examined in the light of the test laid down by the Supreme Court it cannot be said that the tribunal was wrong in having taken into consideration certain materials which, according to the petitioner and respondent-2, is objectionable. Having cleared the decks of objections as to the method or manner in which the enquiry was conducted by the tribunal I shall now proceed to consider whether the tribunal examined the material as to the dismissal of the workmen in question, in the right perspective so as to reach correct conclusions.

11. The tribunal examined the matter from several angles: (i) as to whether the conduct on the part of the workmen amounted to illegal stoppage of work under the relevant Standing Order [namely, standing Order 22(b)] ; (ii) whether the workmen could not have been compelled to do that work without increasing their wages; and (iii) whether such work being done by workmen working in comparative undertakings. In substance, the Tribunal considered whether the workmen in question were justified in stopping to do the work of reading motive power meters in addition to reading energy power meters. In order to arrive at a conclusion on this the tribunal referred to the evidence of WW-1 Kallappa who placed before it material to show that meter readers in the Boards of Maharashtra and Karnataka States, so far as motive power meter reading is concerned, were from the cadre of supervisors, etc., who were drawing higher pay. Reliance was also placed on the text-book titled "Mysore State Electricity Board", 1969 Edition, at page 97 wherein it was mentioned that only senior meter supervisors were then doing the work of reading of meters of power installations. The very nature of motive power installation suggested that the bills were bound to be very heavy in amounts compared to the amounts in domestic installation bills either of lighting or of All Electric Home. Therefore; the Board in both the States of Karnataka and Maharashtra entrusted the reading of the same to meter readers of higher cadre such as senior meter supervisors. In the face of this material the tribunal came to the conclusion that the evidence on record showed that the employer was not within its limits and was not justified in law in asking the workmen to read motive power meters without finding out whether they were qualified and eligible to do so and therefore it was not a case

where they could have been compelled to do that work without increasing their wages. On this finding it is very difficult to hold that when the workmen stopped reading the motive power meters they could be said to violate standing Order 22(b) of the Standing Orders. If that is so, then it cannot be said that their dismissal was justified in law.

12. Now the only question that falls for consideration is whether the workmen were entitled to back wages. In the present case the tribunal directed that the workmen be reinstated with continuity of service and full back wages. The direction of the tribunal in so far it relates to reinstatement with continuity of service, the same is quite correct and no exception can be taken. But its direction on payment of full back wages the matter will have to be considered with little more clarity. The services of the workmen had been terminated with effect from the month of April 1971 whereas their reinstatement was ordered in the year 1983. The matter has been further pending for five more years before this court. Neither the workmen in question nor the petitioner nor the second respondent could be held responsible for the pendency of the matter. This is one aspect. The other aspect is, there have been, several revisions of scales of pay in so far as the workmen are concerned so much so that even a computation thereof may be well-nigh impossible. The tribunal having considered the matter held that the petitioner is liable to pay back wages from the date of dismissal of the workmen till the date the undertaking was taken over by the second respondent and until the date of such vesting the liability is fastened on the petitioner while the liability arising subsequently is fastened on the second respondent. In this context the learned counsel for the second respondent relied upon a decision of the Supreme Court in Mathura Electric Supply Co. Ltd. and Another Vs. State of U.P. and Summera, In that case it was contended that the liability of the Board commenced from the date of acquisition of the undertaking and prior to thereof the liability of paying back wages and monetary value of other benefits would be that of the petitioner, as in this case. In that case without much discussion the court found that it would be reasonable, having regard to the circumstances of the case, to direct the parties to pay the back wages in the same proportion in which the tribunal therein had awarded it. Although this decision, cited by learned counsel for respondent-2, does not in detail consider as to apportionment of liability, but the Court found that such a direction was reasonable and in the present case the tribunal having thought the apportionment made by it as reasonable I do not think I should disturb the same. Till the date of vesting payment of back wages by the petitioner-company the same shall be paid in full. After the date of vesting and till the date of reinstatement of workmen the second respondent shall pay half the back wages as had been found to be reasonable in Western India Match Co. Ltd. Vs. The Third Industrial Tribunal, West Bengal and Others, in view of the long pendency before the court for no fault of parties.

13. In the result, Writ Petition No. 2040/1984 fails and is dismissed. Rule discharged. Writ Petition No. 4057/1984 is allowed in part and while maintaining

the direction of the tribunal for reinstatement with continuity of service with the second respondent, its direction in relation to payment of back wages is altered as indicated above. Rule made absolute accordingly.