

(1933) 08 BOM CK 0020

In the Bombay High Court

Case No : Civil Reference No. 10 of 1933

Bakaralli Makhdoombaksha

APPELLANT

Vs

The Sassoon and Alliance Silk Mills Co. Ltd.

RESPONDENT

Date of Decision : 30-08-1933

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 69

Citation : AIR 1934 Bom 126 : (1934) 36 BOMLR 190 : (1934) ILR (Bom) 262

Hon'ble Judges : John Beaumont, J;Blackwell, J

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—This is a reference made u/s 69 of the Presidency Small Cause Courts Act,—there having been a difference of opinion between the learned Chief Judge and the 3rd Judge of that Court sitting at a full Court.

2. The facts are that the plaintiff, who is a workman employed in the mill of the defendants, sued the defendants for Rs. 130, made up in part of wages for the month of August 1932 at the rate of Rs. 60 per month, wages at the same rate for the first five days of September 1932, and Rs. 60 as compensation for wrongful dismissal.

3. The plaintiff was employed on the terms of certain standing orders, which apply, 1 apprehend, to the various mills in Bombay. The 24th clause of those standing orders provides that:

A copy of these orders will be read to each operative when engaged, and he shall accept work at the mill on the understanding that he agrees to abide by them.

4. So that, those standing orders represent the contract of employment.

5. Clause 12 provides:

Before the beginning of each month a notice will be posted outside the Timekeeper's office and in the mill stating (a) the days on which the mill will be closed during the following month, and (b) the date or dates on which wages will

be paid.

6. Clause 14 provides:

The company may at any time or times and

(d) for any period or periods at their discretion in the event of a strike, fire, catastrophe, epidemic or other emergency rendering it necessary or advisable to do so, and

(b) for a period not exceeding two days in the event of the state of the trade rendering it necessary to do so,

stop any machine or machines, department or departments. The operatives employed on those machines or in those departments will be "played off", i.e., temporarily stopped without notice and without compensation in lieu of notice, provided that an employee "played off" for a period longer than seven days may leave the company's service on intimation of his intention to do so, without any further notice.

7. That, I think, is all that is material in that clause.

8. Then Clause 16 provides that-

The service of any operative may be terminated by fourteen days' notice or by payment of thirteen days' wages in lieu of notice. If he draws wages on a piece-rate basis, the thirteen days' wages shall be computed on the average daily earnings on such operative for the previous calendar month.

9. The suit was tried before the learned Chief Judge, who held that the plaintiff was a piece-worker, and gave him Rs. 32, pay during August, Rs. 5 for the period during which he worked in September, which was only for two days, and Rs. 30 for wrongful dismissal. The finding that the plaintiff was a piece-worker and the rate of pay allowed, are not challenged.

10. The matter was then referred to a full Court, and the learned Judges differed. The learned Chief Judge still considered the plaintiff entitled to judgment, and the learned 3rd Judge considered that the suit was misconceived and should be dismissed. The principal point of difference arose on the construction of Clause 14 of the standing orders. But before coming to that, I should state a few more facts.

11. On August 31, 1932, the directors resolved to close the mill during fifteen days in September-those fifteen days including five holidays, but for not more than two consecutive days, and acting under Clause 12 of the standing orders, they put up a notice stating on what days the mill would be closed. The plaintiff went to work on September 1 and 2 when the mill was open. The 3rd was not a holiday, and the mill was closed on that day. The 4th was a holiday. Then on the 5th, the mill was open, and on the 6th and 7th, it was again closed. On September 1, 1932, the operatives in the winding and dyeing departments,-but

not in the department to which the plaintiff belonged, namely, the weaving department,-objected to the notice which had been put up closing the mill for fifteen days, and refused to work unless that notice was withdrawn. Accordingly, the employers on September 2, 1932, put up a fresh notice saying that:

Unless the winding and dyeing departments return to work immediately, this mill will have to be indefinitely closed down from the 5th instant, onwards.

12. Now the difference between the learned Judges in the Court below arose, as I have said, mainly on the construction of Clause 14 of the standing orders. The learned Chief Judge was of opinion that under Sub-clause (b) of that clause, the mill could only be closed for two days in any one month, the month being the normal period of service,-although in point of fact, the plaintiff, being a piece-worker, was not employed by the month. And the learned Chief Judge was further of opinion that the notice put up on August 31, 1932, being an illegal notice on the part of the employers, that is to say, a notice which they were not entitled to give under the contract, the workmen were entitled to treat the contract as repudiated and as at an end; and therefore no question of a strike under Clause 14(a) arose, because the employees no longer continued in service. On the other hand, the learned 3rd Judge was of opinion that under Clause 14(b), the employers could stop the work on the ground of state of trade for a period not exceeding two consecutive days, that they could then re-open for a day, and then again close for two consecutive days, and so forth,-that being the view of the rule which the employers had themselves adopted in giving their notice of August 31, 1932.

13. We have to consider what is the right construction of Clause 14, and I am not prepared to agree with the view of either of the learned Judges of the Small Causes Court. The view of the learned Chief Judge is, I think, vitiated by the fact that he has endeavoured to construe these standing orders in the light of what he refers to as the spirit of the Fawcett Commission Report. I gather from his judgment that a Commission known as the Fawcett Commission had sat in Bombay to consider the conditions of employment in the mill industry, and that these standing orders were framed after that Commission had reported. But all that we have to do is to construe the contract between the parties, which is embodied in these standing orders; and in construing those standing orders, we are not entitled to consider in any way either the letter or the spirit of the Fawcett Commission or any other Commission. What we have to do is to give to the language which the parties have used its fair and natural meaning. It is obvious that whatever a Commission inquiring into these matters may have reported, the standing orders ultimately framed may have been intended either to follow or to depart from the proposal in that report. That report can give no sort of guide to us as to what the standing orders actually mean. It is obvious also that it would be most unfair to a workman employed under the standing orders, which were read out to him and on the basis of which he accepted employment, to construe these orders in the light of some report, which was not

read over to him, and of which he had probably never heard. Therefore, I proceed to construe the language of Clause 14 without any reference to the Fawcett Commission Report.

14. Clause 14 is certainly not easy to construe. Under Sub-clause (a) the company, that is to say, the employers, may at any time or times and for any period or periods, at their discretion, in the event of, amongst other things, a strike, stop the works. So that, under that clause, they can stop the works for any period or periods at their discretion. Under Sub-clause (b), they may, at any time or times, and for a period not exceeding two days, in the event of the state of the trade rendering it necessary, stop the works. State of trade only justifies a stoppage for a period not exceeding two days. There is nothing in terms to show that the period is not to exceed two days in the month. Still less is there anything to show that the period is not to exceed two days out of every three days, as the learned 3rd Judge construed the clause. If the company are entitled to close the mill for two days, and then re-open it for a day, and then to close for another two days, I fail to see why the period for which they open should not be an hour instead of a day, and in that case the mill could practically be closed altogether under this power to close for a period not exceeding two days. But whatever the exact meaning and effect of Clause 14(b) may be, it seems to me perfectly clear that the directors cannot on any given occasion on account of the state of trade resolve to close the mills for more than two days. Whether, when those two days are over, the directors can meet after some period, and again decide that the mill be closed for another two days is a point on which we are not called upon to express our opinion; because the directors in this case did at the beginning of the month decide that they would close the mill, not merely for two days, but for various periods of two days separated in each case by an interval of one day; and, in my opinion, that was clearly not a resolution to which they were entitled to come under Clause 14(b). It was a resolution, not to stop the mill for a period not exceeding two days, but to stop the mill for successive periods each of which was to amount to two days, but the total of which exceeded two days, and I can see no justification whatever for that. The discretion which the directors had to exercise, based on the state of the trade, was, in my opinion, to stop the works for a period not exceeding two days, and they could not resolve for a stoppage of work for more than two days; and, in my opinion, the notice they put up on August 31 was clearly beyond their powers.

15. Now, it may be that the plaintiff could have treated that notice of August 31 as a repudiation by the employers of the conditions of his service, and it may be that he could have refused to continue to work and could have claimed damages for breach of contract. But in fact he did not do that. He went to work on September 1 and 2, and thereby recognised that the contract was continuing. If nothing had supervened, I think that if he had presented himself on the first day, which was September 6 on which the mill was wrongly closed, and had been refused work, the plaintiff would have had a good cause of action for damages for breach of contract. But before September 6 arrived the directors of the mill

had closed the mill on account of a strike ; and if there was a strike, it seems to me clear under Clause 14(a) of the standing orders, the directors were within their rights in closing the mill and thereby stopping the course of the plaintiff's employment.

16. The trial, the learned Chief Judge found as a fact that there was a strike on September 1, that strike being caused by the objection of the workmen in the winding and dyeing departments to the terms of the - notice of August 31, and there has been no appeal from that finding.

17. Mr. Joshi, on behalf of the plaintiff, has contended that in fact there was not a strike. The way he puts the case is this. He says that the notice of August 31 was an announcement by the employers of their intention to commit a breach of the contract of employment. So far I agree with him. Then he says that the workmen in the winding and dyeing departments were entitled u/s 39 of the Indian Contract Act to accept that announcement of the employers as an anticipatory breach of the contract, and they themselves could then refuse to carry out the contract any further. He says that in fact that is all they did, and that their conduct was legal, and did not amount to a strike. My own view is, that the fallacy in that argument lies in this. I will assume for the present purpose, that putting up the notice of August 31 was an anticipatory breach of the contract by the employers and that the workmen were entitled to say that they would decline to continue to work. But even if they did that, in my opinion, their conduct amounted to a strike. I think that the conduct of the workmen amounted to a concerted refusal to work for the employers as the result of a trade dispute, and that is a strike. A strike is not the less a strike because it does not involve any breach of contract. It seems to me that as between the employers and the plaintiff, the employers were entitled to say on September 1 that there was in fact a strike which brought into operation Clause 14(a) of the standing orders. If, therefore, it is open to us to consider on this reference the question whether there was a strike on September 1, 1932, I shall for my part arrive at the conclusion that there was such a strike.

18. So that, the position is this. The plaintiff is entitled to his wages for August and for September 1 and 2. As to that, there is no real dispute. But in my view, the employers were entitled to close the mills on September 1 on the ground of a strike,-hat case coming under Clause 14(a) and the plaintiff is not, therefore, entitled to any damages for dismissal without notice or for breach of contract.

Blackwell, J.

19. I also am of opinion that the notice of August 31, 1932, was not justified by the provisions of Clause 14(b) of the standing orders. Whatever that clause may mean,-and I do not think it necessary to express any opinion as to that,-it clearly did not, in my judgment, entitle the employers in advance to determine to close the mill for a period exceeding two days. That is what they purported to do, and that notice was in my view accordingly bad. There was, therefore, a breach of

contract on the part of the employers. The plaintiff might have accepted that breach as a repudiation of the contract. He did not, however, do so. He presented himself for work and continued to work.

20. There is a finding in the lower Court, which has not been challenged, that there was a strike in the winding and dyeing departments on September 1. If there was a strike, then under Clause 14(a) the employers were entitled to stop the works. This they did. Accordingly, I agree with the learned Chief Justice that the plaintiff, who was continuing in employment on the terms of these standing orders, is precluded by that strike and the consequent stoppage of the works from claiming any damages on the footing that work was no longer offered to him. The employers were within their rights, in the circumstances which happened, in not providing him with work.

21. Mr. Joshi has raised an argument on the supposition that there was no strike. On that footing he has contended that all that the workmen in the winding and dyeing departments did was to treat the notice of August 31, 1932, as a repudiation by the employers of their contract, to accept that repudiation, and to treat that employment as at an end, so that no question of any strike arose, the employers having themselves terminated the employment. His argument is that if that be the proper inference to be drawn from the facts, then the employers could not as between themselves and the plaintiff say that there was a strike, in the winding and dyeing departments, or invoke the operation of Clause 14(b). I am by no means clear that that would not be the right view to take of this matter, if those were the facts, as it seems to me difficult to hold that there was a strike if the employment had come to an end before any question of a strike arose. The learned Chief Justice takes a different view. If I understand him right, he is of opinion that even in that state of affairs, as between the plaintiff and the employers, there would be a strike. I desire not to be taken to assent to that view of the matter. I prefer to express no decided opinion about it, but to leave that question open for consideration, if and when it arises.