

(1969) 08 SC CK 0056

In the Supreme Court Of India

Case No : Civil Appeal No's. 688-693 of 1966

Budge Budge Jute Mills Co. Ltd.

APPELLANT

Vs

The Workmen and Others

RESPONDENT

Date of Decision : 29-08-1969

Acts Referred:

Citation : (1969) 19 FLR 345 : (1970) 1 LLJ 222 : (1969) 2 UJ 591

Hon'ble Judges : M. Hidayatullah, C.J.; J. M. Sehlat, J; C. A. Vaidyalingam, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

J.M. Shelat, J.—These three appeals by special leave are by three companies, at one time under a common management, and are directed against the order of the special industrial tribunal, West Bengal, dated 20 February 1965, by which the tribunal directed the companies to pay to their permanent workmen half the wages for the respective periods during which the jute mills conducted by them were kept closed. The periods for which the companies declined to pay wages to their permanent workmen were from 6 August to 24 September 1961 in respect of the Budge Budge Jute Mills Company, Ltd., from 31 July to 24 September 1961 in respect of the Chevlet Jute Mills Company, Ltd., and from 1 August to 24 September 1961 in respect of the Caledonian Jute Mills Company, Ltd. The trouble which led to the reference to the tribunal commenced immediately after the block closures of all jute mills, presumably owing to inadequate stock of raw materials, first from 25 June to 1 July 1961 and then from 23 to 29 July 1961. On 30 July 1961 all the three mills opened.

2. The mills were working in three shifts. Shift A was from 6 to 11 a.m. and 2 to 5 p.m. shift B was from 11 a.m. to 2 p.m. and 5 to 10 p.m. ; and shift C was after 10 p.m. We are concerned with shifts A and B only in those appeals. The workmen in all the three mills were divided into two categories, permanent and non permanent, the latter including badli workmen.

3. According to the standing orders of the Indian Jute Mills Association, which were applicable to all the jute mills in West Bengal, a permanent workman is one who has been engaged on a permanent basis and includes a person who has satisfactorily completed a probationary period of eight months in the same or any other occupation in an industrial establishment. A badli or a special badli is a workman who is appointed in a vacant post or in the post of a permanent workman or a probationer who is temporarily absent. Under the rules of service, which are part of the standing orders, the badlis were of two categories, registered and special, the former working as substitutes for permanent workmen and the latter in the posts kept vacant. Both, however, were required to be registered, and their names were liable to be removed from the register in case of misconduct, inefficiency, continued non-attendance or repeated absence, it appears that owing to a scheme of rationalization which was about to be introduced in the jute mills and the resultant possibility of retrenchment the mills were keeping a certain number of permanent posts vacant for which special badlis would be recruited. They had also to have a certain number of registered badlis to work as substitutes in place of permanent workman when they were absent. Though there thus prevailed a system of having badli workmen, there were differences between the managements and the workmen as to their extent and number. To end this dispute the Central Wage Board for Jute Industry had recommended in their report in 1963 that in each mill at least 80 per cent of the total workmen should be permanent workmen and that the mills should increase that percentage to 85 per cent in the course of the next two years. The remaining 15 per cent could be non-permanent workmen so that in the event of rationalization and changes in the line of production being made, there need be no retrenchment of permanent workmen. The report also allowed a further 10 per cent badlis to be called registered badlis or leave vacancy badlis to serve in place of workmen who were absent on a particular day or days.

4 Notwithstanding the ratio between the permanent and badli workmen having been so fixed, there still subsisted disputes between the managements and the badli workmen, the latter pressing for their absorption in the category of permanent workmen. The trouble erupted on 31 July 1961 when the mills reopened after the said block closures, in shift A the badli workmen had worked on that day till 11 a.m. when the badli workmen of shift B arrived for work in that shift, they not only refused to accept work but also induced those of shift A not to resume work.

5. If badlis did not accept work, there was clearly a possibility of the production going down, particularly in the spinning department, and if that resulted in deficiency of production of yarn, such deficiency in its turn was bound to affect the weaving and other subsequent manufacturing processes. It was said that jute yarn cannot be kept in large stocks as it soon gets dry, and therefore, the mills almost depended on day-to-day production of yarn. In spite of the reduction in yarn production, it was said that the mills could continue working for a few days but they had ultimately to be closed after a notice had been given to the

workmen of such an eventuality. The Budge Budge Mills, for instance, worked till 5 August 1961 and were closed the next day. It was said that owing to the intervention to the State Government, the management was willing to reopen the mills on 3 September 1961, but the workmen did not resume work until 25 September 1961. The management claimed that as they found it Impossible to work the mills after their stock of yarn was consumed they were entitled to close the mills, that the badli workmen, in the circumstances above mentioned, had gone on an Illegal strike and as even the permanent workmen failed to resume work when the managements were prepared to reopen the mills on 2 September 1961, they were justified in their refusal to pay the wages for the period the mills had to be closed and the workmen remained absent.

6. It is common ground that the permanent workmen, at whose instance the present reference was made, were not concerned in the dispute between the badli workmen and the managements. They continued to work as usual until the mills were closed and remained absent only when they were closed so that it is impossible to place any responsibility on the permanent workmen for their closure or lookout, as the case may be. As regards the period from 2 to 26 September 1961 the workmen did not live either on the premises or in the vicinity of the mills. Some of them, indeed, lived even ten or more miles away, and therefore in the absence of a notice to the unions or the accredited leaders of the workmen, notices put up on the mills' premises and the blowing of the sirens would not draw the Attention of the workmen to the decision of the managements to reopen the mills on 3 September 1961. Clearly, therefore, it was impossible to blame the workmen for remaining absent from 3 September 1961 and onwards. They could and did resume work on 25 September 1961 as a settlement had been arrived at between the managements and the unions under which it was agreed that the workmen should start work and the unions could notify to their members that they should at once resume work.

7. The heart of the problem in those circumstances, therefore, before the tribunal as also before us, was whether the managements were justified in refusing to pay the wages of the permanent workmen who, as aforesaid, were in no way concerned or responsible for the mills having to stop working on account of the refusal by the badli workmen to accept work on 5 July 1961 and the subsequent days. In other words, were the circumstances so Intractable that the managements were justified in stopping the working of the mills thereby refusing work even to their permanent workmen and depriving them of their wages for the period the mills remained closed. Before the tribunal, the companies strenuously urged that the action of their managements amounted not to a lookout but a closure, which was necessitated on account of the badli workmen having illegally struck work and thereby making impossible the working of the mills. The tribunal was of the view that since there could not be a relationship of an employer and an employee before a badli actually accepted work, there could in law be no strike by the badlis. There was, therefore no strike, much less an illegal one, which could be said to be the cause for the closure of the mills. The

tribunal, therefore, hold that the stopping of the mills amounted to a lookout, that in the circumstances though not Illegal it was not fully justified and in that view awarded 50 per cent of the wages to the permanent workmen for the period during which the mills had storied wording.

8. We are no longer concerned with the controversy as to whether the managements' action amounted to a closure or a lookout as counsel for the mills agreed that we should proceed on the footing that it was a lookout. His contention, however, was that the refusal by the badli workmen to work, especially in the spinning department, and the consequent reduction in the production of yarn made it Impossible for the mills to continue their working and hence discontinuance of their working became inevitable. The argument was that the working of the mills is an Integrated process, that if any one of the several departments of the mills failed and did not produce an Intermediate product to feed the other at a later stage in the manufacture, the rest of them would not be able to carry out their respective processes with the result that there would ensue a total collapse of the entire working. This, he pointed out, would particularly be so, were the spinning department to fail as the mills could not store yarn for long and had to depend on day-to-day stock of yarn. That being so, he argued, once the badlis declined to accept work and the spinning department failed, weaving and other departments could not go on after the existing stock of yarn was exhausted. He pointed out that though the badlis declined to attend to the work on 30 July 1961 and the following days, the Budge Budge Mills, for instance, continued to work till 6 August 1961 and then were stopped as the existing stock of yarn was consumed and there was no stock worth the name to go on with. The resulting position, according to him, became so Intractable that the managements had no alternative except to stop the working of the mills.

9. Was the position on the days when the managements stopped those mills, such as drawn by counsel, therefore, the question.

10. It is an undisputed fact that the permanent workmen did not join hands with the badlis and continued to attend the mills until they were stopped by the managements. They were not, therefore, responsible for the mills' alleged inability to continue to work. As already stated, the jute mills were expected to have 85 percent of their total labour to consist of permanent workmen and to have only 15 per cent badli workmen.

11. If the mills were to abide by the recommendation of the Central Wage Board referred to earlier and did in fact do so, their working would be affected to ice extent of 16 per cent only were the badli workmen to refuse to accept work. Since all the 15 per cent badli workmen would not be concentrated in the spinning department, their refusal to accept work would affect the production of yarn in that department proportionately to the number of those 15 per cent engaged in that department. At the same time, the refusal of badlis to work would also affect the weaving department to the extent of their number there

and to that extent a reduced number of looms would be worked requiring to that extent reduced quantity of yarn, The same would be the position in other subsequent processes. Unless, therefore, all the 15 per cent of the badli workmen were concentrated in the spinning department only, it is difficult to appreciate the argument that the refusal by the badli workmen must necessarily result in the collapse of the working of the mills.

12. Luckily, it is possible to get from the record before the tribunal at least the approximate strength of badli workmen in each of these mills and ascertain the situation which their absence would result in. Regarding Caledonian Jute Mills, the letter dated 14 February 1961 by the Assistant Secretary to the State Government to the West Bengal Chatkal Mazdoor Union shows that out of a total number of 1,472 permanent posts, 1,392 were filled up by permanent workmen and only 80 posts remained for badli and temporary workmen. The evidence of the labour officer of these mills also shows that there were in July 1961, 1,600 permanent posts, out of which 1,250 were filled up by permanent workmen. Therefore, only 250 posts were filled up by badli and other non permanent workmen. Exhibit A. 13 is a statement produced before the tribunal prepared by the mill-manager of Caledonian Jute Mills. That shows that their spinning department required only 35, 36, 34 and 16 badlis for shifts A, B, C, and the general shift, Exhibit A. 6 is a statement produced by the Cheviet Mills showing that the total number of badlis employed by the mills on 22 July 1961, a normal working day, were 903 as against which 590 attended on 30 July 1961, Out of these, 133 workmen in the weaving department, however, left 6 minutes after joining. That works out to about 45 per cent absentees. The statement shows that out of the normal number of 278 badlis in the spinning department, 173 had attended, Exhibit (sic), 2 (12) is a similar statement for the Budge Budge Mills showing that on 22 July 1961, a normal working day, 620 badlis attended, whereas only 165 badlis worked on 30 July 1961 and only 7 on 31 July 1961. '?? Out of 620, 226 were in the spinning department and only 84 of them worked on 30 July 1991 in that department.

13. Exhibit A. 11 is the statement prepared by the mill-manager of the Caledonian Jute Mills showing the figures of production and consumption of yarn.

14. According to that statement, the daily requirement of the weaving department of the mill was 31 tons of yarn but yarn produced on 31 July 1961 came to only 11 tons, and on 1 August 1961 it was only 5 tons. We, however, find considerable difficulty in relying on these figures, firstly, because the permanent workmen of the mills had not gone on strike and were attending and working in the mills and therefore those in the spinning department must have worked, and secondly, according to the evidence of the labour officer of those mills, out of 1,800(sic) total permanent posts, 1,250 were permanent workmen, and therefore, the mills (sic) needed only 250 badli workmen only all of who (sic) would not have been working in the spinning department so that their absence would result in failure of production of yarn Further the statement Ex. A. 13 shows that

on a normal working day the spinning department employed only 35, 36, 34 and 16 badlis in shifts A, B, C and the general shift if the Caledonian Jute Mills required only 250 badlis throughout all the departments, it is difficult to appreciate how there could be a total collapse in the spinning department so as to make the working of the weaving and other departments impossible.

15. The position in the Budge Budge Mills as on 5 August 1961, as shearing from the mill-manager's statement, Ex. A. 2 (10), was that on a normal day they had 882 looms working, that on 5 August; 1961 the mills worked 478 looms and that with 882 looms working, i.e., their entire complement, they would require 49,430 lb. of yarn. The mills, however, had 28,350 lb. of yarn only in stock, there being thus a deficiency of 21,080 lb. The position in Cheviot Mills was that their normal requirement was 35,957 lb. of yarn but the production on 30 July 1961 came to 80,400 lb only with the result that there was a deficit of 15,557 lb., i.e., approximately 30 per cent.

16. Even if the figures given by the three mills is to be correct, though in the case of Caledonian Mills it is difficult, as aforesaid, to reconcile them in the light of the evidence showing the requirement of only 250 non-permanent workmen out of the total of 1,500 workmen, the question still is whether these mills could have continued to work despite the absence of badli workmen. Except giving a few figures in respect of certain days picked out by the mill-managers, the mills did not place full and detailed particulars which could satisfy the tribunal that they were reduced to such a position that their working became Inevitably Impossible. As already stated, it was not the case of any one of these three mills that their permanent workmen stopped work. Indeed, the position was time they continued to attend the mills till their stoppage by the managements forced on them compulsory absence. The question necessarily arising in one's mind is whether with a large percentage of permanent workmen amongst the total personnel required by the mills, could not the mills have worked on a reduced number of looms so as to carry on with such quantity of yarn which could be produced by the permanent workman in the spinning department. And, instead of closing the mills, as the management of Budge Budge Mills did on 6 August 1961 and the managements of the other two mills on other days, why could not the mills have continued the work on a scale reduced to the extent necessitated by the refusal of the badli workmen to work? In this connection it must be noted that it could not be as if all the badli workmen were engaged in the spinning department so that their absence would bring about a total collapse of that and the other departments doing subsequent series of manufacturing processes. As the statement of Caledonian Mills illustrates, the mills required only 250 badlis spread over all their departments. It is impossible to believe that the badlis in spinning department by remaining absent could have brought about a total halt of the mills so that even the permanent workmen could not be allowed to work. With the small percentage of badli workmen as compared to the number of the permanent workmen it is difficult to appreciate why even with reduced production of yarn the mills could not have worked on a reduced scale, working a

lesser number of looms.

17. None of the eight mills attempted to demonstrate before the tribunal that such a course) was not feasible. The position, it seems, was that on the badli workmen refusing to attend to the work, the managements asked the permanent workmen to persuade the badlis to join work, and on the former showing indifference to their request, the managements in a huff closed the mills. In those circumstances it is difficult to say that the mills were able to justify their action or to convince the tribunal that their closure was so inevitable that the permanent workmen could be refused the relief they claimed.

18. Counsel for the mills then argued that even if that was the true position, the tribunal in any event could not have awarded payment to the workmen for the period from 3 September 1931 when the managements were prepared to reopen the mills till 25 September 1961 when the workmen actually resumed work. As already stated, neither the sirens nor the notices put up in the mills' premises inviting the workmen to resume work on 3 September 1961 could be said to be adequate or satisfactory notice to the workmen to resume work on that day. It is not the case of the mills that they have served notices either on the workmen individually or on the unions or the accredited representatives of the workmen. The tribunal, on these facts, could not have blamed the workmen for not resuming work on 3 September 1961 or for their continued absence till 25 September 1961.

19. In these circumstances we find it impossible to hold that the tribunal committed any error in coming to its conclusion, which alone would justify our interference. The appeals fail and are, therefore, dismissed with costs. There will be only one hearing fee.