

(1957) 07 MAD CK 0013
In the Madras High Court

India Tyre and Rubber Co. (India) (Private) Ltd.	APPELLANT
Vs	
Their Workmen	RESPONDENT

Date of Decision : 29-07-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 17A, 2, 23, 25A

Citation : (1957) 2 LLJ 506 : (1958) 71 LW 417 : (1958) 1 MLJ 360

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—The petitioner company manufactures and "Bella tyres, among other rubber goods, in India. It has its head office at

Bombay. One of its branch offices is at Madras with jurisdiction over the territorial area known as Madras district. The district extends over areas

which lie outside the State, in Kerala, Mysore and Andhra Pradesh. The sub-depots at Ernakulam, Bangalore and Vijayawada are within the district of Madras.

2. On the recommendation of the Tariff Commission in 1953 the Government of India ordered a reduction in the sale price of tyres by 10 per cent.

The Tariff Commission pointed out in its report that the proportion of administration, selling and distribution expenses of the petitioner company

was high, when compared with such charges incurred by other companies manufacturing and selling tyres in India. The petitioner company

reorganized its methods of business, which resulted in a reduction in the amount of office work to be done in the Madras office. The petitioner

found that to deal with the work on the reorganized basis twelve out of the 33 employees in the Madras office were in surplus of its requirements.

On 22 February 1966 the petitioner company ordered a retrenchment of twelve of its employees and served each of the retrenched employees

with a notice, paying each of them a month's wages in lieu of notice:

3. The workers' union challenged the right of the management to terminate the services of these twelve employees. On 31 March 1956, the

dispute between the management and the workers was referred by the Government of Madras, u/s 10(1)(c) of the Industrial Disputes Act, for

adjudication by the industrial tribunal, Madras. What was referred as an industrial dispute was:

Whether the retrenchment of the following twelve workers is justified and to what relief they are entitled?

The names of the twelve workers were then listed.

4. The tribunal gave its award on 17 December 1956, and it was duly published by the Government in the gazette. In Para. 9 of its award the

tribunal recorded:

But the contention of the workers is that this retrenchment and reorganization itself is not bona fide. Though the claim statement contains allegations

of victimization and unfair labour practice, Mr. Viswanathan at the time of his arguments definitely gave up those contentions. His main argument 1b

that this reorganization and retrenchment is an attempt to retain or restore the excessive profits which the company had been deriving prior to the

fixation of reduced prices for the tyres and tubes by the Government of India.

Dealing with this contention the tribunal observed in Para. 14 of its award:

I am inclined to agree with the view of Mr. Viswanathan. If the retrenchment had been effected to avoid losses or to secure reasonable profits,

then something can be said in favour of the company. But in this case, it is otherwise and the retrenchment is clearly prompted by a desire to secure

profits lost by the price fixation. It is only an attempt to set at naught the object of the Government, namely, that the company should get lesser

profits.

After referring to a decision of the Labour Appellate Tribunal, that 6 per cent on paid-up capital and 4 per cent on the working capital constituted

reasonable returns to a company, the tribunal recorded in Para. 15 of its award:

Under such circumstances on considerations of social justice it must be held that

the retrenchment of these twelve workers was not justified.

Dealing next with the contention of the union that, even if the retrenchment had been justified, the retrenchment of the twelve employees in question

was not effected in accordance with law, and that it offended the statutory principle of last to come and first to go, the tribunal recorded in Para.

26 of its award:

The evidence of M. W. 1 is in my opinion sufficient to prove the case of the workers that all these sub-depots which are controlled by the Madras

office are really parts of the Madras branch and that all of them should be treated as one unit along with the Madras office. It therefore follows that

the principle of pooled seniority should have been followed by the management in picking out the workers for retrenchment even if there was

justification for retrenching men. As this principle was not adopted, the retrenchment of these men cannot be upheld.

The tribunal however held that, even with reference to the Madras office alone, the retention of Thirumalai in preference to three of his seniors in

the "category of clerks vitiated the retrenchment of these three workers.

5. The tribunal ordered the reinstatement of the twelve employees whom the petitioner had purported to retrench.

6. The petitioner applied under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the award of the tribunal dated 17

December 1956.

7. Before dealing with the Question whether the award of the industrial tribunal based on. the finding, that the retrenchment was unjustified, is liable

to be set aside by the issue of a writ of certiorari, I shall, dispose tiff the contention of the petitioner, that considerations of pooled seniority vitiated

the finding of the tribunal that the retrenchment ordered by the management was contrary to law, That question has to be considered on the basis

that what was ordered by the management was in fact a retrenchment and that it was otherwise lawful.

8. Mr. Nambiar, the learned Counsel for the petitioner, was right when he pointed out, that even in the adjudication of an industrial dispute, the

rights and liabilities of the employer and the employees (workmen) in so far as they relate to retrenchments, are governed by the statutory

provisions in Chap. VA of the Industrial Disputes Act, Section 25J(2) which

makes it clear runs:

For the removal of doubts, it is hereby declared the nothing contained in this chapter shall be deemed to affect the provisions of any other law for

the time being in force in any. State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers

and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this chapter.

Section 25G is the statutory provision, which embodies the principle of last to come and first to go as applicable to the employees to be

retrenched. Section 25G runs:

Procedure for retrenchment.½Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to

a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the

employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the

employer retrenches any other workman.

Section 25G makes it specific that the unit of the industry to which that statutory principle governing retrenchment applies is the Industrial

establishment. The definition of an industrial establishment in the explanation to Section 25A(2) is limited in its scope and cannot apply to the

interpretation of "industrial establishment" as it has been used in Section 25G. For the purposes of applying Section 25G the position is that the

term "industrial establishment" has not been defined by the Act itself.

9. Though not in relation to Section 25G, I had occasion in *Sri Rama Vilas Service, Ltd. v. State Of Madras* 1956 I L.L.J. 498 to consider what

constituted an "industrial establishment" within the scope of the Act, for purposes other than those specified in the explanation to Section 25A(2).

The expression "industrial establishment" or "establishment" has been used in several other sections as well and, to the extent possible, the same

meaning: will have to be given to that expression in the absence of any statutory definition. Section 2(kk) refers to branches or other establishments

of an insurance company in more than one State. Section 2(n)(ii) includes any section of an industrial establishment within the definition of public

utility service. Section 3(1) provides for the constitution of works committees for

industrial establishments. Section 9B empowers the appropriate

Government to exempt any class of industrial establishments from the provisions of the Act. Section 10(1A) empowers the Central Government to

refer for adjudication by a National Tribunal, if the industrial dispute is of such a nature that industrial establishments situated in more than one State

are likely to be interested in or affected by such a dispute. Section 10(5) also refers to a dispute concerning any establishment or establishments.

The prohibition imposed by Section 23 is on the workman who is employed in any industrial establishment. The explanation to Section 33(3),

which like Section 10(1A) was enacted by the amending Act 36 of 1956, defines the expression ""protected workman"" In relation to an

establishment. Of course it is not my endeavour to define what the expression ""industrial establishment"" means in each of these sections. I am

concerned only with the scope of the expression ""industrial establishment"" as it occurs in Section 25G. I have enumerated the other sections only to

understand the scheme of the Act. From the scheme of the Act it should be clear that it envisages, each as a distinct concept.

(1) an industry,

(2) an industrial concern/within an industry,

(3) an industrial establishment, which may itself be the whole of the industrial concern, or which may be part of a larger industrial concern,

(4) a section of an industrial establishment, and

(5) categories of workmen in an industrial establishment or in a section thereof.

It should be noted that while Section 25F refers to a workman employed in an industry Section 25G refers to workmen in an industrial

establishment and further to workmen in any specified category in that industrial establishment.

10. Before deciding whether the retrenchment ordered by the petitioner violated the terms of Section 25G, what the tribunal had to consider was

whether the Madras office, in which the retrenchment was effected, was an industrial establishment within the meaning of Section 25G. The learned

Counsel for the petitioner was, I think, well founded in his contention that virtually the tribunal did not address itself to that question at all. It is true

that the tribunal specifically referred to the terms of Section 25G in Para. 17 of its award. But that was only to determine whether the retention of

Thirumalai and the retrenchment of three others were in contravention of Section 25G. No where in Paras. 24 to 26 of its award, where the

tribunal dealt with the question at issue, whether the retrenchment of the twelve employees offended the statutory principle of last come and first to

go, did the tribunal refer to Section 25G. Nor even does it appear to have kept in view what Section 25G emphasizes, that it governs retrenchment

in an industrial establishment.

11. It should be obvious that independent of Section 25G there can be no scope for consideration of seniority or "pooled seniority," as the tribunal

called it, in deciding whether the retrenchment ordered by the petitioner was illegal.

12. For purposes of convenience I shall set out again what the tribunal recorded in Para. 26 of its award:

The evidence of M. W. 1 is, in my opinion, sufficient to prove the case of the workers that all these three sub-depots which are controlled by the

Madras office are really parts of the Madras branch and that all of them should be treated as one unit along with the Madras office.

Even if the tribunal is to be deemed to have meant by the expression "one unit" an industrial establishment within the meaning of Section 25G and to

have decided that the Madras office with its three sub-depots at Ernakulam, Bangalore and Vijayawada constituted a single industrial

establishment, such a decision would have been vitiated by the wrong application of Section 25G and would have constituted an error apparent on

the face of the award itself.

In *Pravat Kumar Kar v. W.T.C. Parker* (1949) 1 F.J.R. 245, Harries, C. J., observed:

It seems to me quite clear that...the words "industrial establishment" mean the place at which the workmen are employed and the words as used in

Section 2(n)(ii) must have the same meaning as when they are used in Section 23. That being so, it is quite clear that Section 23 could not cover a

case of workmen in Bombay striking against an employer with whom employees in Calcutta have a dispute.

I respectfully agree with these observations. I had no occasion to refer to that decision when I decided *Sri Ram a Vilas Service, Ltd. v. State of*

Madras 1956 I .L.J. 498. After pointing out in effect in that case that the *Sri Rama Vilas Service, Ltd.*, was an industrial concern with its head

office at Madras, and that the branch at Kumbakonam was an industrial establishment by itself, I stated at pp. 506-507 of the report:

The industrial establishment as such has not been defined by the Act. But there should be little difficulty in determining the scope of that expression.

I need refer only to Section 3 of the Act to negative the contention of the learned Counsel for the Madras union, that S.R. V.S., Ltd., with all its

branches should be taken as one industrial establishment. The S.R.V.S., Ltd., is not a concern whose operations are limited to the Madras State

alone. It has a branch at Bangalore.... One of the allied concerns, Amalgamations, Ltd., had its branch in Vijayawada in the Andhra State. If the

contention of the learned Counsel for the Madras union has to be accepted, the works committee contemplated by Section 3(1) of the Act should

be a works committee for the industrial concern of S.R.V.S., Ltd., as a whole, wherever its branches may be situated, either within this State or

without the State, Such a construction I am unable to place on Section 3(1) of the Act. It certainly provides for a separate works committee for

each industrial establishment, though that establishment might only be a branch of the industrial concern which has branches not only within this

State but outside the State as well. Besides, there is another difficulty in accepting the contention of the learned Counsel for the Madras union. As I

said, it is certainly clear that the S.R.V.S., Ltd., with its head office at Madras, had its operations extending outside the Madras State. If the whole

of the S.R.V.S., Ltd., is to be treated as one industrial establishment, and the dispute between the workers of the industrial concern as a whole and

the management of that concern has to be treated as an industrial dispute within the meaning of Section 2(k), the Madras Government 5 would not

be the appropriate Government to refer such a dispute u/s 10(1)(c) of the Act.

13. Similar considerations would apply if the sub-depots of the petitioner's industrial concern at Ernakulam, Bangalore and Vijayawada should be

treated as part of the industrial establishment at Madras. It may be of interest to notice the provision made by the amending Act of 1956, Act 36 of

1956, in Section 10(1A) to which I have already adverted, for the adjudication of disputes, if an industrial concern consists of industrial

establishments lying in more than one State.

14. The petitioner company is an industrial concern, and the office at Madras is

an industrial establishment of that industrial concern. Each of the sub-depots in the different States is a separate industrial establishment of that same industrial concern for purposes of Section 25G.

15. I have so far proceeded on the basis that it was a retrenchment in fact that the petitioner company ordered. If that was so, the tribunal was clearly in error when it held that the retrenchment was illegal. I have pointed out that the retrenchment did not contravene Section 25G and was not illegal.

16. I shall next deal with the question, whether what was ordered by the petitioner company was in fact a retrenchment and was a lawful retrenchment. The industrial dispute that was referred for adjudication was ""whether the retrenchment of the twelve workmen was justified"" What the tribunal had to decide in the first instance was whether it was in fact a retrenchment, or whether it was a case of a colourable exercise of the power, based on the right of an employer to effect retrenchment, in which case it would not have been a retrenchment at all. If, for instance, under the guise of ordering retrenchment the employer in fact victimized selected employees, or, if what the employer did amounted to an unfair labour practice, it would not have been really a case of retrenchment. It should be remembered that such allegations were made by the union but they were abandoned. Similarly, if what was ordered by the petitioner was mala fide, it would again be a case of colourable exercise of power, and it would be no retrenchment at all.

17. The tribunal did not negative the claim of the petitioner that after the reorganization that had been effected resulting in a reduced workload in the Madras office, there was enough work only for 21 out of 33 that had hitherto been employed. That was certainly a very relevant factor in deciding whether the retrenchment was ordered in good faith. The tribunal was right when it recorded in Para. 13 of its award:

...the Important question that arises for consideration is whether this retrenchment was done in good faith.

The tribunal did not, however, in express terms find that the retrenchment was not ordered in good faith. But apparently the tribunal was of that view. The only ground on which the tribunal rested its decision, that the retrenchment was unjustified, was its concept of social justice, by which it

apparently meant, In this case, that if an employer wanted to get a return of more than 6 per cent on his paid-up capital or more than 4 per cent on his working capital, a retrenchment justified, for example on the quantum of work available, would be one vitiated by bad faith. I have no hesitation in accepting the contention of Mr. Nambiar, that such a concept of social justice is an entirely irrelevant factor in deciding whether a retrenchment was ordered in good faith, or whether it only amounted to a colourable exercise of the power to retrench. Any retrenchment ordered would, of course, be Subject to the statutory provisions in Chap. VA of the Act.

18. Mr. Nambiar urged that any consideration of social justice would be irrelevant in deciding whether a given act amounted to a retrenchment or not as defined by Section 2(oo) of the Act. The portion of Section 2(oo) which is relevant for the present purpose runs:

Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as punishment inflicted by way of disciplinary action.

Apparently, wide though the ambit is made by the use of the expression "any reason", that certainly does not rule out the investigation of an allegation that the retrenchment in question was mala fide. What constitutes good faith or the absence thereof is, of course, a different problem.

In J.K. Iron and Steel Co. v. Iron and Steel Mazdoor Union 1956 I.L.J. 227 Bose, J., observed at p. 233:

The only question referred was, was the retrenchment justified, and we find it impossible to see how that can be determined without considering the question of good faith which in turn would largely depend on the finances of the company, on the adverse effect that retention would have on the business and on whether retention would mean the deadweight of an uneconomic surplus and so forth.

That observation, in my opinion, does not justify the contention that good faith attendant on a retrenchment could be established only if the employer was losing or was making no profits, or even a contention, that retrenchment would be at least prima facie mala fide, if it was ordered when the employer was already getting a return of more than 6 per cent on his paid-up capital or of more than 4 per cent on his working capital.

The deadweight of an uneconomic surplus, to which Bose, J., referred, can

operate at any level of profits. There is, nothing unlawful in an employer desiring to make even more profits by getting rid of the deadweight of an uneconomic surplusage.

19. The learned Counsel for the respondent referred to *Thakur v. Ruston and Hornsby, Ltd.* 1966 I.L.J. 14. But the test posed there can have no application to the facts of this case.

20. Mr. Nambiar relied on the observations of Bhagwati, J., in *Muir Mills Company v. Suti Mills Mazdoor Union* 1955 I.L. J. 1 :

The considerations of social justice imported by the Labour Appellate Tribunal in arriving at the decision in favour of the respondent were not only

irrelevant but untenable. Social justice is a very vague and indeterminate expression and not clear½no definition can be laid down which will

cover all the situations. Mr. I. Isaacs, the learned Counsel for the respondent, attempted to give a definition in the following terms: "social justice

connotes the balance of adjustments of the various interests concerned in the social and economic structure of the State, in order to promote

harmony upon an ethical and economic basis," and he stated that there were three parties concerned here, viz., the employers, the labour and the

State itself, and the conception of social justice had to be worked out in this context. Without embarking upon a discussion as to the exact

connotations of the expression "social justice" we may only observe that the concept of social justice does not emanate from the fanciful notions of

any particular adjudicator but must be founded on more solid foundation.

21. The question at issue there was, whether the workmen were entitled to any bonus when the company had no trading profits that year.

22. I am not called upon to decide whether Considerations of social justice will be wholly irrelevant in the adjudication of an industrial dispute. It

may be of interest to note that in Section 17A(b) of the Act the appropriate Government is given the right to rest its decision, not to make an

award enforceable on grounds of national economy or social justice. That, of course does not apply to the adjudication of an industrial dispute by

an industrial tribunal. The question before me is not whether considerations of social justice would be irrelevant even for deciding whether a

retrenchment was ordered mala fide or in good faith. The limited question before me, which alone I need decide in this case, is whether the

concept of social justice expounded by the industrial tribunal in its award was a relevant factor in deciding whether the petitioner acted mala fide in

ordering the retrenchment of the twelve employees in the office at Madras. That question, as I have already pointed out, I have no hesitation in

answering in the negative.

23. In my opinion, the tribunal was in error when it imported an irrelevant consideration in deciding whether retrenchment was justified. It was in

error again when it failed to keep the requirements of Section 25G in view in deciding whether the retrenchment ordered by the petitioner company

was lawful. These should suffice to set aside the award of the tribunal, subject to what I have to record about the retention of Thirumalai.

24. The question that remains for consideration is whether the decision of the tribunal, that the retention of Thirumalai contravened the provisions of

Section 25G, is vitiated by any error apparent on the face of the record. Whether Thirumalai was included in the category of clerks in the Madras

office was a question of fact, which the tribunal had jurisdiction to decide, and unable to hold that there was no material on which the ""tribunal could

find that, though Thirumalai was designated a store assistant on the date of the retrenchment, he was really in the category of clerks. The quantum

of evidence or its sufficiency on which that finding was rested may not be a matter for investigation at this stage. I see no justification for interfering

with that part of the award of the tribunal.

25. Subject to what I have stated above, the petition will stand allowed and the rule will be made absolute. No order as to costs.