
(1969) 12 CAL CK 0014
In the Calcutta High Court
Case No : Matter No. 430 of 1965

James Finlay and Co. Ltd.

APPELLANT

Vs

Central Labour Court at Calcutta

RESPONDENT

Date of Decision : 09-12-1969

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 62
Industrial Disputes Act, 1947 — Section 10(1), 25F, 25FF, 33C(2)
West Bengal Industrial Disputes Rules, 1958 — Rule 74

Citation : (1971) 1 ILR (Cal) 480

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : Sadhan Gupta, for the Appellant; S.K. Acharyya, for Workers, for the Respondent

Final Decision : Allowed

Judgement

T.K. Basu, J.—The Petitioner James Finlay & Company carries on business, inter alia, as Steamer Agents. It is the case of the Petitioner that prior to 1956 the Petitioner used to employ tally clerks who were a body of floating persons free to accept employment under different employers from time to time. The Respondents Nos. 2 to 28 are such tally clerks who were employed by the Petitioner from time to time as required by them. It is the Petitioner's case that, while employed, these clerks used to get wages on a daily rate basis on the total number of days on completion of a ship's discharging or loading as the case may be. They were not entitled to any other benefits or payments. The said tally clerks were also, as I have said before, free to accept employment under other employers.

2. After the coming into force of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 (hereinafter referred to as the Scheme), which was framed under the Dock Workers (Regulation of Employment) Act, 1948 tally clerks were included in the Scheme as a category of workers. Under the

provisions of the Scheme of 1956 a Reserve Pool Register had to be maintained of workmen belonging to different categories. Only those workers who were registered as members of this pool under the Scheme could be employed by a registered employer under the provisions of the Scheme.

3. It is not disputed that the Petitioner Company is not a registered employer under the Scheme of 1956. As such, it was not permitted to employ any tally clerk who are now part of the reserve pool in terms of the Scheme. These clerks have now to be employed by the Petitioner as and when required through the Stevedores who are registered employers under the Scheme.

4. According to the Petitioner, the Respondents Nos. 2 to 28 on their own application got themselves registered under the Scheme after the promulgation thereof in or about 1958. Only as late as in 1960, these workmen made certain demands from the Petitioner Company for payment of benefits alleged to be due to them. The Company, however, contended that no benefits were payable to them as they were casually employed clerks and, as such, refused to accede to their demands. Thereafter, conciliation proceedings were held between the Respondents Nos. 2 to 28 represented by the Calcutta Port & Dock Workers Union and the Petitioner Company.

5. On March 18, 1961, H. M. Shaw, Conciliation Officer (Central), Calcutta-1, addressed a letter to the Joint Secretary, Calcutta Port & Dock Workers Union stating that no case had been made out by the tally clerks to justify the claim for benefits for past services as employer-employee relationship could not be established. As such, no further action in the matter was proposed by the Government. A similar letter was addressed to the Joint Secretary of the Union once again by Mr. Shaw on May 5, 1961.

6. Thereafter, it appears that another conciliation Officer J. N. Das addressed a letter to the Joint Secretary of the Union stating that the Union should approach the Labour Court for determining the correct amount of retrenchment compensation to the workmen concerned.

7. Pursuant to the advice contained in the aforesaid letter, the Calcutta Port & Dock Workers Union filed an application on behalf of the Respondents Nos. 2 to 28 before the Central Labour Court at Dhanbad u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), for the computation of their retrenchment compensation and/or benefits for their alleged past services with the Petitioner. The applications were subsequently transferred to the Central Labour Court at Calcutta and numbered 60 to 73 and 75 to 96 of 1963.

8. The Petitioner Company raised a preliminary objection before the Central Labour Court, Calcutta, challenging the jurisdiction of the Court to hear the application inasmuch as the said Court was not specified by the Central Government for hearing applications as required u/s 33C(2) of the Act.

9. By an order dated September 8, 1964, the Central Government Labour Court

at Calcutta dismissed the preliminary objection of the Petitioner Company and held that the Court had jurisdiction to entertain and deal with the applications. Thereafter, the applications were heard on merits. By its order dated August 31, 1965, the Central Government Labour Court purported to compute the compensation payable to the Respondents Nos. 2 to 28 u/s 33C(2) of the Act.

10. These two orders of the Central Government Labour Court dated September 8, 1964 and August 31, 1965, respectively are challenged before me in this application.

11. Mr. Sadhan Gupta, appearing on behalf of the Petitioner, in his challenge to the latter order dated August 31, 1965, on the merits of the case, contends before me that the Tribunal proceeded on the basis that Section 25FF of the Act was applicable in the present case. In support of this contention, Mr. Gupta drew my attention to a portion of the order which is in the following terms:

But in the instant cases in hand there is no such termination proper. The services of the 27 applicants before me were not terminated in the proper sense of the term. What had happened is simply this that their services had been transferred elsewhere their services had been replaced with Calcutta Dock Labour Board. It is only when this latter contingency happens that Section 25FF comes into play, the underlying principle being that unless after such transfer the continuity of the service of the workers is recognised by the new employer, there would be no security and safety in service conditions of the workers concerned.

12. At another place of the impugned order, the Tribunal observes as follows:

Now to revert back to Section 25FF which as I have already stated is the foundation upon which the claim of the 27 applicants is based. That section states in substance that "where a worker has served a particular company for not less than a year and whose service thereafter is replaced with a different company, the latter company shall be duty bound to pay him one month's notice pay plus compensation in the way as if the service of that worker has been retrenched. In the given 27 cases the applicants admittedly all worked under the opposite party No. 1 for more than a year. In fact, some of them worked even for about 20 years. Admittedly, as the scheme of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956, shows the services of all the tally clerks were replaced with the Calcutta Dock Labour Board O.P. No. 2 by operation of law. Undisputedly, the management of works of tally clerks now vests in O.P. No. 2 in place of O.P. No. 1. There is, therefore, no good reason why in the aforesaid circumstances the O.P. No. 1 should deny to compensate the workers in the way as pointed out in Section 25FF of the Act.

13. Mr. Gupta next draws my attention to the provisions of Section 25FF of the Act which, insofar as is material for our purpose provides as follows:

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that

undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched.

It is contended by Mr. Gupta that the condition precedent for the applicability of Section 25FF of the Act is that the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer. It is pointed out that there has been no such transfer of the Respondents Nos. 2 to 28 from the Petitioner-Company to the Calcutta Dock Labour Board either by agreement of parties or by operation of law so as to attract the applicability of Section 25FF of the Act. Now, the position is that irrespective of whether the services of the Respondents Nos. 2 to 28 under the Petitioner were casual or permanent, what has happened is that, by virtue of operation of the Scheme of 1956, these persons can no longer be employed directly by the Petitioner-Company as it is not a registered employer within the meaning of that Scheme. These workmen now form a part of the reserve pool of workers maintained under the provisions of the Scheme and can only be employed by a registered employer. The Petitioner not being a registered employer, as I have said, cannot now employ these tally clerks directly. Hence, it is contended that there has been no transfer of the ownership or management of any undertaking within the meaning of Section 25FF of the Act.

14. My attention was drawn in this connection to a decision of the Supreme Court in the case of *Management of R.S. Madharam and Sons Agencies (P) Ltd. Vs. Its Workmen*, . That case is an authority for the proposition that where an undertaking conducts one business, it would normally be difficult to imagine that its ownership or management can be partially transferred so as to invoke the application of Section 25FF of the Act. A business conducted by an industrial undertaking would ordinarily be an integrated business and, though it may consist of different branches or departments, they would generally be inter-related with each other so as to constitute one whole business. In such a case, Section 25F would not apply if there is a transfer with regard to a department or branch of the business run by the undertaking.

15. It was further held in that case that one undertaking may run several industries or businesses which are distinct and separate. In such a case, the transfer of one distinct and separate business may involve the application of Section 25FF.

16. In my view, this contention of Mr. Gupta should be accepted. I do not see how it can be said, whatever view one takes of the matter, that employment of tally clerks is an undertaking of the Petitioner Company. Admittedly, the Petitioner Company carries on several types of businesses and industries. It may be contended that these businesses are separate and distinct from one another. In that view of the matter, one of such distinct and separate businesses of the

Petitioner Company is the business of shipping agents with which we are concerned in the present case. Although this business may be distinct and separate from the other business of James Finlay & Co. Ltd., the employment of tally clerks is, in my view, a mere cog in the wheel of that business which comes into the picture only in connection with loading and unloading of ships. Such an employment of tally clerks, can by no stretch of imagination, be called an undertaking of the Petitioner Company within the meaning of Section 25FF of the Act.

17. This contention of Mr. Gupta, therefore, succeeds and it must be held that the Tribunal was in error in holding that Section 25FF of the Act applied to the facts and circumstances of the present case. The order of the Tribunal purporting to compute retrenchment, benefits on the basis of the applicability of Section 25FF of the Act must, therefore, be struck down.

18. Mr. Gupta next contended that the present application made by the workmen for computation of their benefits were not maintainable. It was pointed out that in the instant case there was no application before the State Government by the Respondents Nos. 2 to 28 for reference to any Labour Court on the question of computation of alleged benefits u/s 33C(2) of the Act. In the absence of any such reference by the appropriate Government, to the Central Labour Court at Calcutta, the Respondent No. 1 had no jurisdiction to take season over the matter and pass the impugned orders.

19. In support of this contention Mr. Gupta referred to a decision of a Division Bench of this Court in the case of *The Indian Iron and Steel Co. Ltd. and Another Vs. Treogi Nath and Others*, . Mitter J, observed as follows:

The mere constitution of Labour Courts and Industrial Tribunals however leads to nowhere. Before a Labour Court or an Industrial Tribunal can take season of any dispute or any matter appearing to be connected with or relevant to the dispute there must be a reference to one or the other of them by the appropriate Government u/s 10(1). Under Clause (c) of Section 10(1) such a dispute or matter, if it relates to any matter specified in the Second Schedule is to be referred to a Labour Court for adjudication, but it is competent to the Government to refer such dispute or matter to a Tribunal for adjudication irrespective of the question as to whether the same relates to any matter specified in the Second Schedule or the Third Schedule.... This goes to show that even where the parties to the dispute or matter are agreed that a Court or a Tribunal should adjudicate thereupon, they have to apply in the prescribed manner to the appropriate Government for the purpose and the reference to the Court or the Tribunal is to be by the Government.

20. Interpreting the provisions of Section 33C(2) of the Act their Lordships held as follows:

Where the money due to the workman is already quantified in the award no further computation is necessary but the Government must nevertheless satisfy

itself after giving a hearing to the employer that the money is due. I can see no reason why the workman should be allowed to by-pass that step and approach the Labour Court directly for computation under Sub-section (2).

It is possible that Government may, after giving a hearing to the employer concerned, be satisfied that the claim of the workman is unjustified and no computation is necessary. Labour Court or an industrial Tribunal is not like an ordinary Court of the land to which aggrieved parties may resort whenever they think fit to do so. Under the Industrial Disputes Act, Government seems to have a say in the matter whenever it thinks that industrial harmony is about to be broken or has been disturbed necessitating a reference to a Board, Court or a Tribunal.

21. Relying on the above observations, Mr. Gupta submitted that even if it is a case of computation of benefits u/s 33C(2) of the Act, it is necessary for the party to approach the Government in the first instance and the Government is to specify a particular Labour Court which is to compute the benefits in terms of that section. In the instant case, as there is no such specification of the Central Labour Court, the Respondent No. 1 had no jurisdiction to entertain the application or to pass any order thereon.

22. Mr. S.K. Acharyya appearing on behalf of the Respondents workmen drew my attention to that part of the impugned order where the Respondent No. 1 seeks to distinguish the above decision of this Court which I have set out hereinbefore on the basis that Rule 62 of the Central Rules is not analogous to Rule 74 of the West Bengal Rules with which the above decision was concerned.

23. In my view, the approach of the Tribunal is entirely erroneous. In the first place, the above decision was not based on Rule 74 of the West Bengal Rules which in any event have to be read as subservient to the provisions of the Act. Their Lordships in the above decision came to their conclusion, in my view, on an interpretation of Section 10(1) and Section 33C(2) of the Act.

24. Coming to Rule 62 of the Central Rules, I find that it enables the workmen, where any workman is entitled to receive from the employer any benefits which are capable of being computed in terms of money to apply before a specified Labour Court in Form No. K-2 for the determination of the amount at which such benefits should be computed.

25. Even assuming that Rule 62 of the Central Rules is applicable to the present case, Mr. Acharyya was entirely unable to refer me to any order either general or in this particular case whereby the Central Labour Court, Calcutta, the Respondent No. 1 has been specified as the one which is to entertain this application and to compute the benefits u/s 33C(2) of the Act in the present case.

26. In that view of the matter this contention of Mr. Gupta should be accepted. It must be held that, in the absence of any specification by the appropriate Government u/s 33C(2) of the Act of the Central Labour Court, Calcutta, as the

appropriate Labour Court to compute the benefits in the present case; the Respondent No. 1 had no jurisdiction to entertain this application or to pass the impugned orders.

27. Both the contentions urged in support of this application therefore succeed.

28. In the result, this application succeeds and the Rule is made absolute. There will be a writ in the nature of certiorari quashing and setting aside the orders of the Respondent No. 1 dated September 8, 1964, and August 31, 1965, respectively and a writ in the nature of mandamus directing the Respondent to forbear from giving effect to the orders in any manner whatsoever. The Respondents would, however, be at liberty to proceed according to law.

29. The Petitioner would be at liberty to withdraw the amount deposited in this Court at the time of issue of the Rule nisi and interim order.

30. There will be no order as to costs.