

(1967) 12 MAD CK 0013
In the Madras High Court

K. Venkatachalam and Others

APPELLANT

Vs

The Management of Ashok Leyland Ltd. and Others

RESPONDENT

Date of Decision : 22-12-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s)

Citation : (1968) 2 MLJ 186

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—Writ Petition No. 2G96 of 1956 is preferred by three convoy drivers working in the Ashok Leyland Limited, Ennore,

and W.P. No. 2531 of 1966 by the Ashok Leyland Workers" and Staff Union, praying for the issue of a writ of certiorari calling for the records of

the Industrial Tribunal, Madras, in I.D. No. 39 of 1965 and quash the award made by it on 2nd March, 1966, and published in the Fort St.

George Gazette, dated 30th March, 1966.

2. The case of the petitioners is that the three petitioners in W.P. No. 2096 of 1966 joined the first respondent company as convoy drivers and

subsequently appointed as convoy leaders. The first respondent company used to entrust the convoy leaders, passenger and lorry chassis for being

delivered to dealers throughout India, and the petitioners had effected delivery in places like Jammu and Kashmir, Allahabad, etc. They were paid

a daily batta of Rs. 7. The respondent-company had sixty-two convoy leaders working under them. The petitioners and the other convoy leaders

approached the management for confirming them as permanent workmen and for regularising their scale of pay, etc. The first respondent promised

to consider the request; but subsequently entrusted the work of delivery of chassis to certain contractors. The petitioners felt aggrieved, as they

apprehended that the introduction of the contract system would throw them out of employment. They raised an industrial dispute, and the dispute

was referred by the Government by G.O.Rt. No. 1906 dated 17th September, 1965 to the Industrial Tribunal, Madras. The terms of reference

were as follows:

Whether the demand for abolition of contract system in the sphere of chassis delivery work and absorption of the 62 convoy leaders as regular

workers is justified, if so to what relief they would be entitled.

The reference was taken up by the Industrial Tribunal in I.D. No. 39 of 1965. The Tribunal framed the following three issues:

1. Has the Tribunal jurisdiction to decide the reference ?

2. Is the Union competent to raise the present dispute ? and

3. Is the demand for abolition of the contract system in the sphere of chassis delivery work and absorption of the convoy leaders drivers as regular

workers justified and if so, to that reliefs they would be entitled ?

3. The Tribunal held that though the convoy leaders were not regular workmen they could be classified as temporary workmen and the Tribunal

therefore had jurisdiction to decide the dispute. It also held that the convoy leaders, fifty-two in number, by themselves could raise the dispute

which would be an industrial dispute. So far as these two issues are concerned, there is no dispute, as the learned Counsel for the respondent

conceded that the Tribunal had jurisdiction and the Union was competent to raise the dispute. In the circumstances, it is unnecessary to discuss the

two issues any further. Regarding the third issue, the Tribunal found that the convoy leaders were not justified in demanding the abolition of the

contract system in the sphere of chassis delivery work. It also found that the demand of the convoy leaders to be absorbed as regular workers is

not justified.

4. The third issue may be considered. The terms of reference are set out already The question is whether the demand for the abolition of the

contract system in. the sphere of chassis delivery work and for absorbing all the convoy leaders as regular workmen is justified. Certain documents

were filed to show as to how the convoy system of delivery of chassis was working. Exhibits M-4, M-5, and M-6 are convoy duty registers relating to short distance and long distance drivers. The convoy leaders are not sent every day in a month; but only on some days in a month. On an analysis of the registers for the months of September, October, November and December, 1963 and January and February, 1964, it will be seen that there were no convoys for 16 days in September, 1963, for 20 days in October, 1963, for 20 days in November, 1963, for 18 days in December, 1963, for 19 days in January, 1964 and for 18 days in February, 1964. It has also been found that a convey leader who goes to Delhi takes about twenty days for his return and during the twenty days of this absence other people have to be engaged for going to other places. In the circumstances, it will not be possible for the management to employ only a limited number of persons, as the movement of the chassis will be unduly delayed, if they had. to wait for the convoy to return before another convoy is sent. It is stated that delivery will have to be made as and when it becomes necessary expeditiously. It is also clear from the records that a short distance convoy leader will have to wait for three weeks for his next chance and a long distance convoy driver will have to wait for six weeks. For the period of this three weeks for a short distance convoy leader and six weeks for a long distance convoy leader, no work is provided by the company and they are not paid by the management. It is also clear that the management cannot be expected to engage all the sixty-two persons as convoy loaders and keep them idle for three or six weeks by paying them for the period for which they are not given any work. While the company cannot engage all the convoy leaders, it cannot also employ a lesser number of men and put them on permanent basis. As already pointed out, the company cannot wait for the convoy leaders to return before another convoy is sent. The records also show that the work of the convoy leaders was not without blemish. Several complaints, some of a serious nature, were received and were dealt with by the management. In the circumstances, the company thought that as the work is of an intermittent and temporary nature and as it would not be possible to employ full-time workmen and as the convoy leaders were not reliable and trustworthy, the management took a decision to entrust the work to independent contractors.

5. The question under what circumstances a company would be justified in resorting to contract system has been considered by the Supreme

Court in two decisions, namely, *The Standard-vacuum Refining Co. of India Ltd. Vs. Its Workmen and Others*, , and *National Iron and Steel Co.*

Ltd. and Others Vs. The State of West Bengal and Another, . In the former decision, the Supreme Court has held that industrial adjudication does

not encourage the employment of contract labour in modern times and observed:

...Whenever a dispute, was raised by workmen in regard to the employment of contract labour by any employer it would be necessary for the

tribunal to examine the merits of the dispute apart from the general consideration that contract labour should not be encouraged, and in a given

case the decision should rest not merely on theoretical or abstract objections to contract labour but also on the terms and conditions on which

contract labour was employed and the grievance made by the employees in respect thereof.

The dispute in question before the Supreme Court related to claiming maintenance work at the refinery of the Standard Vacuum Oil Company

including the premises and the plants. The Supreme Court found that so far as the work is concerned it is incidental to the manufacturing process,

and is necessary for it, and of a perennial nature which must be done everyday, and this work is done by workmen in the regular employ of the

employer and there should be no difficulty in having regular workmen for this kind of work. The Court proceeded to observe that the matter would

be different if the work was of intermittent or temporary nature or was so little that it would not be possible to employ full time workmen for the

purpose. The nature of the work in the case decided by the Supreme Court is entirely different. The work was incidental to the manufacturing

process and of a perennial nature and was done every day, and the work was done by workmen in the regular employ of the employer. In this

case, it is found that the work is intermittent and that the convoy leaders have to wait for three or six weeks for work depending upon the distance

of the route, and during that period they are not paid. The work was confined only to about ten to twelve days in a month, and was not perennial in

nature. The delivery of the chassis at the destination of the buyer cannot be said to be incidental to the manufacturing process. It would not also be

feasible to engage some convoy lead on permanent basis or absorb some of them permanently, as the convoys will have to be moved without any delay. Applying the test laid down by the Supreme Court, as the work is intermittent, as it is not possible to employ the convoy leaders as full time workmen, the decision of the management to resort to contract system cannot be assailed. In *National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another*, , the Supreme Court reiterated the principles laid down in *The Standard-vacuum Refining Co. of India Ltd. Vs. Its Workmen and Others*, , holding that the Industrial Tribunal can direct the abolition of the contract system, if the facts justified. It may be noted that in the case cited, the Tribunal directed abolition of the system of contract labour excepting for the purpose of loading, unloading and for removing slags, ashes, burnt sand, etc. and waste products. It will be seen that contract labour for certain purposes was accepted by the Industrial Tribunal. Applying the test laid down by the Supreme Court in the *The Standard-vacuum Refining Co. of India Ltd. Vs. Its Workmen and Others*, referred to I agree with the Industrial Tribunal that the decision of the management to resort to contract system cannot be assailed. According to the terms of the reference of the Government, the first part of the reference, viz., whether the demand of the workmen for the abolition of the contract system in the sphere of chassis delivery work, is justified, will have to be answered against the workmen.

6. The second part of the reference is whether the demand of the workmen for the absorption of the convoy leaders as regular workers is justified, and if so, to what relief they would be entitled to. As the contract system is held to be valid, the sixty-two convoy leaders drivers cannot be absorbed as regular workers, and this question will also have to be answered against the workmen. The question of relief is consequential. As the second part of the reference is answered in the negative, the workers will not be entitled to any relief.

7. Mr. Dholia on behalf of the petitioners submitted that the convoy leaders should be treated as workmen under Sections 2 (s) of the Industrial Disputes Act, 1947, and even on its finding that to resort to contract system is valid, the Tribunal should have given other reliefs such as retrenchment compensation, etc. As no proper retrenchment notice has been given, the learned Counsel submitted that the workmen should be

deemed to continue in service. u/s 10 (4) of the Act, it is the duty of the Tribunal to confine its adjudication to the points referred to it for

adjudication and matters incidental thereto. The terms of reference did not include the determination by the Tribunal as to whether there was any

retrenchment and if there was any retrenchment, whether proper retrenchment notice was given. These questions cannot be said to be incidental to

the points of dispute referred for adjudication. The questions raised by Mr. Dholia can only be gone into in a separate reference. It is open to the

workmen to ask for a separate reference on these matters and the management would be entitled to raise all defences that are open to them. In the

result, the Writ Petitions are dismissed. There will be no order as to costs.