

(1961) 04 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No's. 176 and 209 of 1960

Michael Villavarayar and Another

APPELLANT

Vs

The workmen and Another

RESPONDENT

Date of Decision : 18-04-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 2(K), 2(S)

Tamil Nadu Shops and Establishments Act, 1947 — Section 4(1)

Citation : AIR 1962 Mad 205 : (1962) 4 FLR 48 : (1961) 2 LLJ 761

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Judgement

(1) These two petitions are filed under Art. 226 of the constitution for the issue of a writ of certiorari directed against the presiding officer of the

Labour court Madurai. As the points in dispute are identical they were heard together with the consent of parties.

(2) The petitioner, Michael Villavarayar, in W.P. No 176 of 1960, and the petitioner, correra and Bors, in W.P. No. 209 of 1960 are boat

owners in Tuticorin, On certain charges after issuing the necessary "show cause notice" they dismissed form employment Michael Fernando, &

Santhacrus Fernando, tindals in their service, engaged for the running of piratical boats. In Tuticoring there is a labour Union called the Boatmens's

Union Tuticorin. They took up the cause of the dismissed tindals, Thereafter, the Government of Madras in two G., Os. Referred the issue of the

valid termination of the services of these tindals as an industrial dispute to the labor court at Madurai for adjudication under the Industrial Disputes

Act (Central Act XIV of 1947). Before the labour court, the management urged as a preliminary ground that the court did not have jurisdiction but

their objections were overruled and the court decided to proceed with the inquiry. Thereupon, the petitioners have come to this court with the present petitions for the issue of a writ to quash the finding of the labour court.

(3) The petitioners urged the following grounds;

1. The term "tindal" does not satisfy the definition of "workman" in Sec. 2(S) of the Industrial Disputes Act. He has got the sole control over a boat

once it is taken to sea, over its crew and over its freight. In this manner his position is similar to that of a captain or Manager of a sea going vessel.

Though he may discharge duties of a supervisory nature still he falls within the exception to Sec. 2(S) of the Industrial Disputes Act.

(2) In substance this is only a private dispute between the management and a worker in its employ. It has not the backing of a substantial majority

of the labour union. Therefore, the dispute cannot be described as an industrial dispute.

(3) On a prior occasion, when the dispute between the Boat Workers' Union and their management came up before the Industrial Tribunal at

Madurai at the time of the pendency of an appeal from its order, a compromise was entered into. Under the terms of the compromise even if it is

assumed that a tindal is a workman a dispute of the present kind has to be referred for decision to a board of arbitrators, specially provided for, in

that agreement. Consequently, the reference to the labour court in the present case is illegal.

(4) These allegations are traversed in the counter affidavit filed by the respondent workmen represented by the secretary of the Boatmen's union,

Tuticorin.

(5) I heard the learned counsel appearing for the petitioners and the respondents.

Point 1 above--The word "tindal" is a term of Indian origin. The following account of it is found in the Shorter Oxford dictionary:

Tindal (tindal) India. 1968 (ad. Malayalam Tandal Telugu Tandeluy also Hindustani. Tandel, chief or headman of a body of men). 1. A native petty

officer of lascars, on board, ship, or in the ordnance department; also, the foreman of a gang of labourers on public works (yule) ; a boatswain; a

foreman. 2. A personal attendant, 1859." The above definition gives a general idea that he is connected with navigation of a boat and is generally

identified with the foreman of the group of lascars who manage the boat with the

passage of time, and according to practice, certain additional duties have come to be imposed upon him.

(6) There are conflicting version of these additional duties. An account of such duties is found in the judgment of Sri S. Krishnamurthi, the Industrial Tribunal, who heard the dispute in 1953 between the Boatmen's union of Tuticorin and the boat owners. The owners of boats apparently contend that tindal was a contractor who hire labour and mans the boats for cargo duties. In this way the owners of boats tried during the hearing f the dispute to shift responsibility for the various service conditions of the lascars to the tindals. Buy the Industrial Tribunal Sri Krishnamurthi, repelled this contention. While doing so, he has given an account of the Tindal's duties; There is no force in the argument on behalf of the boatowners that the tindal is only an independent contractor who recruits, dismisses, and pays the crew. On the other hand it is perfectly clear that the relationship between the boat owners, on the one had, and of the lascars on the other is that of employer and employee. The final is only an agent and servant of the employer i.e., the boat owner. No doubt he is the master of the ship (boat) and he has to attend to the duties of navigation. But to all intents and purposes, he is the agent and representative of the boat owner and he acts as his authorised agent. He has a hand in the matter of fixing, and collection of freight and payment of the same to the boat owner.....

considering all the circumstances I am of opinion that the relationship of employer and employee exists between the boat owner and a member of the crew, and that the position of tindal is only that of an agent of the boat owner, the employer, " in addition to his being entrusted with navigational duties"."" (Underlining (here in single"")) is mine).

Put briefly the tindal is primarily responsible to his employer, namely, the boat owner, for the successful navigation of the boat, He takes charge of the duties of navigation and supervises the work of the ascars who work under him but in regard to lascars the boat owner also has responsibilities, in the matter of payment of wages and other conditions of service. The tindal also negotiates with the owners of cargo, fixes the freight rates, collects freight, pays the boat owners share and then divides the rest between himself and the crew, according to a fixe proportion. This would show that the tindal has got duties which combine supervisory duties in regard to

the lascars who work under him, and besides navigation of the boat he has also got certain additional duties of his own, like collection of freight and so on no behalf of the boat owners who employ him.

(7) Sec. 2(S) of the Industrial Disputes Act gives the definition of "workman" thus;

workman" means any person (including and apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or

clerical work of hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in

relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a

consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950 or the AIR Force Act, 1950 or the Navy (Discipline) Act 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercise either by the nature of

the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Tindal is employed in the industry of carriage of cargo in boats and hence falls within the main body of the definition. The question is whether, as

contended by the learned Counsel for the petitioner, he comes under exception (iii) or exception (iv) to the section. Exception (iii) refers to a

person who is employed mainly in a managerial or administrative capacity. Exception (iv) refers to one who though employed in a supervisory

capacity draws wages exceeding Rs. 500 per mensem or the nature of whose duties attached to the office or by reason of the powers vested in

him discharges functions mainly of a managerial nature. It is common found that a tindal does not get a pay exceeding Rs. 500. Therefore, the first

part of Sec. 2(S)(iv) is excluded. This leaves the second part of Sec. 2(S)(iv) and Sec. 2(S)(iii) Both these have this in common namely, that the

duties on which the workmen is mainly engaged should be of a managerial

nature. Sec. 2(S)(iii) has also another limb ""administrative capacity"" But that does not appear to be very relevant in the case of a tindal. It is nobody's case that he has got administrative duties.

One relevant question is whether a tindal's duties in supervising the work of lascars under him, are such that he should be considered to be exercising duties mainly of a managerial nature. In this case, the labour court Madurai, was content to dispose of this point with the short observation.

In my opinion tindal is none but a lascar paid a larger wages than the latter. If, on the other hand he did not travel in the boat, but only controlled the affairs of the boat by remaining on the shore, it would be possible to hold that his duties were of a managerial or administrative nature. That not being so it must be held that he is a workman not coming under the two exceptions 2(s)(iii) and 2(s)(iv) of the Act referred to above.""

(8) But the matter is not free from difficulty. Balakrishna Aiyar, J. In *Standard Vacuum Oil Co., Madras Vs. The Commissioner of Labour, Madras and Another*, after summing up a number of instances came to the conclusion,

"If an individual has officers subordinate to him whose work he is required to overlook, if he has to take decisions and also the responsibility for ensuring that the matters entrusted to his charge are efficiently conducted and an ascertainable area of section of work is assigned to him on would ordinarily be justified in saying that he is in a position of management"".

Balakrishna Aiyar J. Was dealing with the interpretation of the term ""a person employed in the position of management"" found in Sec. 4(1)(a) of the Madras Shops and Establishments Act. At page 776 of the report, (Lab LJ) : (at P. 291 of AIR) Balakrishna Aiyar J. has drawn a distinction

between a manager and a person employed in the position of management"". In the same page, he has equated ""position of management"" with

managerial position."" Note that the term ""managerial capacity"" is used in Sec. 2(S) of the Industrial Disputes Act and this appears to be analogous

to ""a position of management"" in the Madras shops and Establishments Act. Note that one of the instances referred to by Balakrishna Aiyar J. At

page 777 of the above report (Lab LJ); (at p. 291 of AIR), is that of a person in the position of Captain of a ship who holds a position of

management.

It was urged in the present case that a tindal often takes a boat on the coastal traffic, making sometimes. Long voyages from Tuticorin to ports in

the west coast. While in those voyages, he is in complete management of the boat and is responsible for the cargo, for the discipline of the lascars

and for the success of the voyage. It was urged that these duties are much more complicated than the duties of a workman, and should fit tindal

more appropriately in a position where the duties are mainly managerial, thereby attracting Sec. 2(S)(iii) and the second part of Sec. 2(s)(iv).

(9) In the Supreme Court decision in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, the view is held that

a person who agrees himself to work and does so work and is therefore, a workman does not cease to be such by reason merely of the fact that

he gets other persons to work along with, him and that these persons are controlled and paid by him. What determines whether a person is a

workman or an independent contractor is whether he has agreed to work personally or not. If he has then he is a workman, and the fact that he takes

assistance from other persons would not affect his status.

The supreme Court dealt with the case of persons engaged by a salt company for manufacturing salt. They were held to be workmen within the

meaning of Sec. 2(S) of the Industrial Disputes Act. Even though they were paid by piece-rate basis they could employ others and pay them, and it

was held that these facts could not be considered to be decisive in holding them as independent contractors.

(10) In my view the definition of tindal in the dictionary extracted above shows that, essentially it dealt with a job analogous to that of a foreman of

lascars and this job brought him into a position of direct employment under the boat owner as a workman with the additional job of supervising a

specified number of lascars under him. He is a petty officer of lascars, who is also expected to do personal work himself. He has not merely to give

directions to lascars as to how to do the work but should, when occasion arises do the work of lascars. But with the passage of time more and

more duties happened to be entrusted to him but they involved besides the duties of navigation, additional duties of fixing up cargo, settlement of

freight charges, receiving those freights, disbursements to the workmen and

payment of the share to the boat owner. If a decision is essential on the point I would still say that the duties of the tindal continued to be principally those of a foreman of lascars, and in a subsidiary degree certain supervisory duties. The data before the labour court were therefore sufficient for the conclusion formed by it viz, that a tindal is a workman, and it is not appropriate to disturb that conclusion in these petitions for a writ.

(11) The respondents learned counsel also referred to another point, derived from the definition of workman in Sec. 2(S) of the Act, This may not be quite relevant while dealing with the matter in a writ petition. However, since the point was raised, I will deal with it briefly. In Sec. 2(K) of the industrial Disputes Act. Term "industrial dispute" is defined as a dispute which is connected with the employment or non-employment of term of employment or the conditions of labour of "any person". (The word "person" does not mean necessarily a workman as defined in S. 2(S) of the Act.) There is significance in making this reference to a person instead of workman in Sec 2(k). The significance of the word "person" has been brought out in a decision of the Supreme Court reported in Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, .

After an elaborate discussion of conflicting views, their Lordships of the Supreme Court came to the conclusion,

The Act avowedly gives a restricted meaning to the word "workman" and almost all the revisions of the Act are intended to confer benefits on that class of persons who generally answer to the description of workmen. The expression any person in the definition clause means in our opinion, a person in whose employment, or non-employment, or terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest--with whom they have, under the scheme of the Act, a community of interest.

(12) In their judgment by a majority, their Lordships of the Supreme Court repelled the view pressed on them that the medical officer of a tea plantation was a "person" as defined above; and for that purpose they laid down the test mentioned above. That test can, with advantage, be applied to find out whether a tindal in the present case will be a "person" for purposes of Sec. 2(K) of the Act.

(13) The discussion in the foregoing paragraphs of the nature of the duties of a

tindal shows that he is substantially a foreman of lascars closely in touch with them and in times of difficulty taking over their work of navigation. He collects the freights of charges, pays certain share to the owner and then out of the balance the share as between him and the lascars is taken in a fixed proportion. The lesser the share of the boat owner, the greater will be the wages shared between the tindal and the worker. The tindal exercises disciplinary control over them. The boat owners consult the lascars through the tindal in many matters. These circumstances show that the tindal is a person in whose employment of non-employment or terms of employment of conditions of labour, lascars as a class have a direct or substantial interest and with whom they have a community of interest. This is sufficient to invoke Sec. 2(K) to the present case.

(14) Point (2): The petitioners urge that the Boatmen's union by a majority did not decide to sponsor the cause of the tindals. In view of that it is not an industrial dispute within the meaning of Sec. 2(K). It was also urged by Sri M. S. Venkatarama Aiyar, learned counsel for the petitioners, that there should be evidence that not merely isolated groups selected at random from the boat workers should have given support but a majority of tindals as a class should have given support. There is no warrant for any of these contentions which also appear to be somewhat vague. The question of support of the majority of the workers is not relevant; it was held in *Working Journalists of Madras Vs. Management of the "Hindu"*

Vs. Management of the "Hindu", Madras and Another, .

The fact that majority of the workers who had collectively sponsored the cause of workmen and raised an industrial dispute in regard to the property of the termination of his services, had subsequently and pending adjudication of their dispute, retracted and withdrawn their support would not make the labour court cease to have jurisdiction to proceed to deal with the dispute." At p. 159 (of Mad LW) : (at p. 374 of AIR) it is observed,

All that is necessary is that the dispute in order to become an industrial dispute should have the support of a substantial section of workmen concerned in this establishment. What "a substantial section of workmen" may mean would depend upon the particular facts of each case".

(15) In *The Associated Cement Companies Ltd. Vs. Their Workmen*, it is stated,

We have already noticed that an industrial dispute can be raised by a group of workmen or by union even though neither of them represent the majority of the workmen concerned; in other words the majority rule on which the appellant's construction of Sec. 19(6) is based is inapplicable in the matter of the reference under S. 10 of the Act. Even a majority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred for adjudication under Sec. 10.

Consequently, I am of opinion that this part of the petitioner's contention is not entitled to weight.

(16) Point (3) The petitioners finally contended that under an agreement between the boatmen's union and the management entered into in 1953 before the labour Tribunal of India a dispute of the present kind should have been referred to a Board of three arbitrators as provided in the agreement. Consequently the labour court would have no jurisdiction.

(17) This agreement has got seven clauses. It was entered into between the Country Crafts Owners Association, Tuticorin, representing the 31 boatowners on the one side and the Boatmen's Union, Tuticorin, representing the workmen employed by them on the other. This is in the preamble.

Clause 1 gives recognition to the Union Clause 2 provided for batta at different rates for different types of boats. Clause II (b) says that the boat owners agreed to pay each worker including tindal 5 annas per day form out to the boat owners share. Note that in this clause tindal was specifically referred to in order to give him a benefit in addition to the benefit to the worker and that the parties were not content to leave the term worker"" by itself, as they would have done if their intention was to benefit the tindal also.

In clause III it is provided that for fixing up the freight rates a joint board shall be set up. It is necessary to point out that the labour court at

Madurai was content with reliance on clause III alone for holding that the jurisdiction of the joint board would not include a dispute about dismissal

of an employee. It was rightly pointed out that later on in the agreement there is a clause V(b) dealing with the subject of dismissal. To that clause I

shall presently advert. Clause IV (a) states that the boat owners accept responsibility for moneys due to boat workers.

In clause IV (b) it is said that if the tindal does not disburse the wages to the

workmen on the stipulated dates, the boat owners shall pay them within two days thereof. This would show evidently that tindals and workmen are treated as distinct persons in this agreement, Again, in clause IV

(c) it is said that if the tindals fail to disburse the wages on the due dates, the boat owners shall pay the same within five days thereafter, again

stressing the distinction between tindal and worker. It is therefore that we find clause V(b) which says that if the workman discharged, and a

dispute arises in respect of that discharged it shall be left to the arbitration of the joint board.

It was urged by the learned counsel appearing for the petitioner that under clause V(b) the present dispute has to be settled by the joint board and

not by the labour court on the assumption that tindal is a worker. He also pointed out that if the decision of the Tribunal on the first point above,

that a tindal is a workman is accepted it would follow that under clause V(b) the dispute is take out of the labour court. Even assuming that parties

can by agreement contract themselves out of the jurisdiction of the Industrial Disputes Act in certain circumstances, such an agreement has to be

construed strictly. It we bear in mind the manner in which the words "tindal" and "worker" are distinguished in the agreement, it would appear that

clause V(b) was intended to apply to workers and did not cover the case of a tindal..

(18) For the above reasons I hold that this objection is also not tenable.

(19) Consequently, the grounds urged in these petitions for the issue of a writ are not substantiated. The petitions are dismissed with costs. The rule

nisi is discharged; Advocate's fee Rs. 100/- one set.

(4) Petitions dismissed.