

(1963) 01 MAD CK 0017

In the Madras High Court

Case No : Writ Appeal No's. 127 and 128 of 1961

Michael Villavarayar and Another

APPELLANT

Vs

Workmen, represented by Secy. Boatmen's Union and
Another

RESPONDENT

Date of Decision : 10-01-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 2S

Citation : AIR 1963 Mad 351 : (1963) 2 LLJ 203 : (1963) 76 LW 674

Hon'ble Judges : S. Ramachandra Iyer, C.J.;Anantanarayanan, J

Bench : Division Bench

Advocate : M.S. Venkataraman and V. Krishnan, for the Appellant; B. Lakshminarayana Reddi, for the Respondent

Final Decision : Allowed

Judgement

Ahantanarayanan, J.

W. A. 127/61

1. This appeal raises a question of some degree of interest with reference to the tests to be applied in determining whether a paid employee is a

workman"" within the scope of Section 2(s) of the Industrial Disputes Act, where a contention arises that, by reason of the duties performed by

that employee and the powers vested in him, he constitutes an exception u/s 2(s) (iv). The facts are that a certain Michael Villavarayar, a boat-

owner of Tuticorin, dismissed from his employment one Michael Fernando, a person designated as a ""Tindal"" with supervisory powers over the

plying of particular boats. The Boatman's union at Tuticorin took up the cause of this dismissed employee; and in G. O. Ms. No. 3375 (Lab)

dated 5-10-1959 the Government referred this matter as an industrial dispute to

the Labour Court at Madurai, u/s 10 of the Industrial Disputes

Act (Act XIV of 1947). The Management (Michael Villavarayar, the writ petitioner and the appellant herein) urged as a preliminary ground that

the Court did not have jurisdiction, but this objection was overruled and the enquiry was taken up for being proceeded with. There is a preliminary

award of the Labour Court at Madurai dated 6-1-1960.

A petition for the issue of a writ of certiorari in this regard was filed, and it came up for consideration before Ramakrishnan J. in W. P. No. 176 of

1960, which was heard with a similar and connected petition W. P. No. 209 of 1960 (subject matter of W.A. No. 128 of 1961). The learned

Judge held, in effect, that a Tindal was a "workman" within the definition of Section 2(s) of the Act, and that further his office did not fall within

exception (iii) or (iv) to that section. The two other objections were, firstly, that the matter was only a private dispute between the management and

one of its workers, and that it did not have the support of a substantial majority of the Labour Union; and secondly, that there was a previous

compromise in a dispute between the Management and the Boatman's union, under which a dispute of that kind had first to be referred for

decision to a Board of Arbitrators, specially provided for in that agreement. These objections were also overruled by the learned Judge, who

consequently dismissed the writ petition, and discharged the rule nisi.

2. We propose to confine ourselves, for the most part, to the question whether the category of office known as "Tindal" does or does not fall

within the definition of "workman" in Section 2(s), and whether it should really be brought within exception (iv) to that section, in view of the duties

of the office and the powers vested in the Tindal. In this context, we might also note that a point was actually raised and urged before the learned

Judge, with regard to the definition of "industrial dispute" occurring in Section 2(k) of the Act that an industrial dispute is so defined as to include

any matter connected with the dismissal even "of any person".

This aspect has been discussed by the Supreme court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, . If

we are unable to agree with the learned Judge that, as a preliminary question of jurisdiction, and without any evidence concerning the duties and

powers of a "Tindal, it is really not possible to hold that he is a "workman" as

defined in Section 2(s), and that he does not fall within the scope of exception (iv) to Section 2(s), then necessarily "" the writ appeal will have to be allowed, in the sense that the writ must issue quashing the proceedings. It will be for the Labour Court to take up the matter further, by recording evidence on this aspect, and on one or two related aspects that we shall refer to for, in our view, such evidence is essential to decide the real point involved, and without it the conclusion of the learned Judge cannot be really supported. The learned Judge has himself observed in one context, that the tests to be applied are not easy and capable of precise definition; every thing would depend upon the light thrown on the nature and duties of the office in question, for he himself has stated that ""the matter is not free from difficulty"".

We shall immediately proceed to give our reasons why, in our view, on the record as it stands, and without further evidence, it is really not possible to hold that the dismissed official is a ""workman"" within Section 2(s) of the Act, whose case does not constitute an exception, under exception (iv) to that section.

3. We shall first set forth Section 2(s), including the exceptions, in entirety, as this is essential for an appreciation of the tests to be applied to any given set of facts, where this issue is involved:

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

or clerical work for 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, include 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 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934. (34 of 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 exercises, 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.

We might here usefully extract the definition of "industrial dispute" in Section 2(k), which is to the following effect: "Industrial dispute" means, any

dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is

connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

4. The word "tindal" is an expression found in certain Indian languages, and appears to have been in use from 1698 onwards, The learned Judge

has quoted the definition which, is to be "found in the Shorter Oxford English Dictionary, and it is not necessary to repeat it here. But the following

extract from Willson's Glossary, conveys the same significance, and throws light on the etymology of the expression:

Tandelu, vulgarly, Tindal, Telugu (Thandelu), the head or commander of a body of men ; in ordinary use, a petty native officer employed on board

ship the head of a gang of labourers.

The question is, what are the available facts to show that a person engaged in employment as a tindal falls within the category of workmen (Section

2(s)) and does not fall within exception (iv)? As far as exception (iv) is concerned, it will be noticed that if the tindal exercises supervisory

functions, which he undoubtedly does, and draws wages exceeding Rs. 500 per mensem, his case will be out of the jurisdiction of the Labour

Court. Alternatively, if he exercises "functions mainly of a managerial nature", either by the nature of the duties attached to his office or by reason of

his powers, he will again be protected by the exception. It is because of the great difficulty experienced by us in holding that a "tindal" is not so

protected, at least without further light being thrown upon the nature of the office in the concerned region", Tuticorin, and the organisations of boat-

owners in that locality, by specific recorded evidence, that we are constrained to hold that we have no option to quash the preliminary award,

differing from the learned Judge, and thus to release the entire proceedings for the recording of further evidence, and the determination of the actual

issue in that light. We might add that even with regard to the simple question whether the wages or remuneration of "tindals" in, any form, do not

exceed Rs. 500 per mensem, there is paucity of evidence, though the learned Judge assumed that they were less.

5. In certain prior proceedings in I.D. No. 15 of 1952, the then Industrial Tribunal (Sri E. Krishnamurthi) had occasion to consider this particular

question, and the learned Judge (Ramakrishnan J.) has extracted and set forth the relevant passage at some length. We might stress the following

observations of the Tribunal, which were probably the outcome of some recorded evidence-

The tindal is only an agent and servant of the employer, i.e., the boat owner. No doubt he is the master of the ship 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. No authority has been cited before me for

the position that the Tindal of a boat is in the position of an independent contractor.

6. During the course of hearing of the appeals, we were able to trace and to study a work on this subject. "The sailing vessel traffic. On the West

Coast of India and its future" by Sri K. B. Vaidya, 1945, which is clearly the outcome of considerable research and which contains valuable

information about the powers and duties of Tindals in general. In view of the course that we are pursuing in this writ appeal, we refrain from setting

forth these relevant reference's at great length. But the following observations will tend to show that it is not easy to decide off hand, and without

further record of evidence that the Tindal possesses only supervisory functions like that of a Maistry, and has no managerial function or capacity, or

even that his supervisory functions predominate, and that his managerial functions or capacities are subordinate. At page 42 the author states:

The captain of a steamship, for instance, has full powers in connection with the business carried on by the ship to act as he likes best according to

his discretion only when he is in a port where the owners have no agents. Although the captain of a steamship is the owner's agent, in such places

and is free to act as best as he can, he nevertheless has to communicate with the owners by telegrams for instructions in several matters. But the

tindal of a sailing ship although illiterate usually acts as he thinks best even without consulting his owners. Besides, he is also the owner's

representative or agent for the disposal of the owner's cargo abroad or for the purchase of cargo from foreign countries on owner's account.

Again (page 44):

The tindal of a sailing ship therefore in the first place effectively displaces the owner and weilds almost absolute powers in port as he does at sea,

except in the matter of securing cargo for his ship which the brokers often do. He is the father of his crew, and the architect of his ship, and acts

also as the buying and selling agent for his owner. In fact, there is no function connected with the ship and its business which he does not perform

except the routine of the owner's office the tindal of a sailing ship is as important a functionary as the owner himself, or perhaps even more

important than the latter.

In Standard Vacuum Oil Co., Madras Vs. The Commissioner of Labour, Madras and Another, Balakrishna Aiyar J. had occasion to consider

certain of the aspects with regard to the criterion of the possession of managerial capacities or powers, though in the context of a different

definition. After discussing several of the difficulties inherent in applying this test to the functions and powers of any particular office, and pointing

out that such an individual, in order to possess managerial functions, need not be at the top of the heirarchy or have absolute power in any respect,

or Jurisdiction over definite territory, or the power of making appointments, the learned Judge observed as follows:

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 or section of work is assigned to him, one

would ordinarily be justified in saying that he is in a position of management.

7. In view of what we have been able to gather from the sources available to us, about the very high degree or discretion and power vested in a

Tindal, at least while at sea and in charge of his sailing vessel, it would be difficult to hold that he does not exercise functions of a managerial nature

as well as of a supervisory character; at any rate, that is the view which seems to be prima facie Justified, in the absence of further light afforded by

reliable evidence. Whether the supervisory functions predominate, or his functions are mainly of a managerial nature, is very difficult to assess, and

almost impossible to determine, without clear and adequate evidence. It is for this reason that we are "unable" to hold, on the record, that a Tindal

is a "workman" within the meaning of Section 2(s) of the Act, not protected by exception (iv).

8. That would be adequate to dispose of the appeal, but we might make one or two further observations. Even with regard, to the word "person

occurring in Section 2(k) that we have extracted earlier, and the decision of the Supreme Court in Workmen of Dimakuchi Tea Estate Vs. The

Management of Dimakuchi Tea Estate, , the evidence is not adequate to show whether the work man as a class had any direct or substantial

interest in the Tindal or his office, or a community of interest, and whether the workmen sponsored this particular dispute, at the meeting of the

Labour Union, or the sponsoring, which undoubtedly occurred, was the result of the initiative of the Tindals in the Union, or the majority of such

Tindals, or of the workmen as well. Again, the question whether Clause V(b) of the private agreement required this dispute to be referred to a

Board of Arbitrators in the first instance, even assuming, as the learned judge observed, "that parties can by agreement contract themselves out of

the jurisdiction of the Industrial Disputes Act in certain circumstances" would also depend upon recorded evidence to show whether a Tindal is

really a workman or otherwise.

9. For all these reasons, we allow the writ appeal, quash the preliminary award and thereby release the proceedings of the dispute for further

action to be taken in the matter by the Labour Court in the light of our observations.

10. W. A. No. 128 of 1961 : This appeal arises under identical circumstances as in W. A. No. 127 of 1961, and the only distinction is that it

relates to another Tindal, Santhacrus Fernando, who was dismissed from employment by the organisation of employer (Messrs. C. R. Correra and

Bros.). The facts and grounds of reasoning being identical, there will be the same judgment in this appeal and no separate observations are

required.

11. No orders as to costs.