

**(1960) 03 MAD CK 0009**  
**In the Madras High Court**  
**Case No : Writ Appeal No. 102 of 1956**

M.K. Krishnamurthy, Ex-proprietor, Photo Litho Press, Madras 1 APPELLANT

Vs

Industrial Tribunal, Madras and Another RESPONDENT

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**Date of Decision :** 04-03-1960

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1961 Mad 285 : (1961) 2 FLR 94 : (1960) 2 LLJ 430

**Hon'ble Judges :** P.V. Rajamannar, C.J; Ganapatia Pillai, J

**Bench :** Division Bench

**Advocate :** R.M. Seshadri, P.S. Bhashyam and P.S. Raman, for the Appellant;  
Addl. Govt. Pleader and K.V. Sankaran, for the Respondent

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## Judgement

Ganapatia Pillai, J.—This appeal is directed against the order of Rajagopalan, J. in W.P. No. 602 of 1954, by which he refused to issue a

writ of certiorari to quash the award of the Industrial Tribunal, Madras, in I. D. No. 19 of 1953, The appellant was the sole proprietor of a

business carried on under the name of Photo Litho Press. On 20-2-1953, the workers employed in this press through their Union made certain

demands which the appellant did not comply with.

Thereupon conciliation proceedings were commenced on 26-3-1953. When these proceedings for conciliation were pending, on 11-4-1953, the

appellant issued a notice informing his employees that since he was unable to run the press owing to domestic and other circumstances their

services would not be required from that day and he offered to pay them one month's wages in lieu of notice.

The conciliation officer reported about his failure to bring about conciliation.

Thereupon the Government of Madras in exercise of their powers u/s 10(1)(c) of the Industrial Disputes Act, XIV of 1947, referred the dispute on 7-7-1953 to the Industrial Tribunal, Madras, for adjudication. In the order of reference the dispute was described thus :

Whether the closure of the Photo Litho Press on and from 11th April, 1953, was justified or not and if not to what compensation is each of the workers affected by the closure entitled".

The Tribunal by its award rejected the plea of the appellant that the closure of the press was a discontinuance of the business of the owner and therefore could not constitute an industrial dispute at all. The point which the appellant sought to make before the Tribunal was that he had sold away his business to a limited liability company which was incorporated under the name of Photo Litho Press Ltd.

The Tribunal held that the appellant failed to prove this and found that the notice issued by him on 11-4-1953 constituted a declaration of lock out and that such a lock out was illegal. On this basis the Tribunal granted the relief of reinstatement or the workers besides other incidental reliefs. It is common ground that if the closure had been a case of discontinuance of business by the owner that would not amount to an industrial dispute as defined in the Industrial Disputes Act.

This is made clear by the decision of a Bench of this court in the Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and

Another, to which one of us was a party. The decision has been reaffirmed in *Jaya Bharat Tiles Works, Samalkot v. State of Madras* 1954 1 Lab

L.J. 286. The difference between a lock out and discontinuance of business has been explained in the *Jaya Bharat Tiles Works* case, 1954 1 Lab

L.J. 1286. The statement of the law on this point is worth recapitulation both because it is binding on us and because it expresses succinctly and

lucidly, if we may say so, the distinction thus :

A lock out is different from the discontinuance of business. Occasionally some confusion is caused by the use of the word "closing". Lock out

does not mean closing down of a business. It only means the closing down of the place of business. It means suspension of work, not

discontinuance of the carrying on of the business. It means the refusal by an employer to continue to employ the persons employed by him and not

the refusal by an employer to carry on any longer his business"".

We would like to add a word of caution here so that it should not be understood that if the sale of the business to the company shall be properly

proved we would hold that the closure of the business would amount to discontinuance. That question must depend upon other factors also.

Our attention was invited to a decision of Rajagopala Aiyangar J. in *Artisan Press Ltd. v. Labour Appellate Tribunal of India*, 1954 II L.L.J. 424,

wherein a limited company took over the business previously run by a partnership concern as a running business and the question was whether the

limited company was liable to pay bonus even for the period before it took over the business.

The learned Judge, it was argued, held that so long as the management continued and there was identity so far as the business was concerned,

mere change of management would not affect the rights of the workers. We are unable to accept this as a correct statement of the law irrespective

of the other facts found by the learned Judge. The learned Judge himself expressed his opinion in one place that if the concern had been closed and

the employer and employee relationship had been determined, other relevant factors would have been introduced which might lead to different

results.

Clearly the learned Judge was conscious that mere identity of the business carried on by separate managements would not be the sole criterion to

hold that there was no discontinuance of the business. We are not expressing any final opinion on this point except to state that the proposition of

law pressed upon us as flowing from the decision of Rajagopala Aiyangar J. should not be taken to have been accepted by us. In 1954 1 Lab J

286, to which one of us was a party the importance of temporary closure was stressed in the following words:

In other words, closing down of a business is different from the closing down of a place of business. The extreme position taken up by Mr.

Bhashyam in that case was that even if an employer bona fide decides to close down the business that is cease to carry on the business because he

does not want to continue it he cannot be permitted to do so. We refused to accept that contention and speaking for myself I still adhere to that

opinion. As I pointed out therein just as a person cannot be compelled to

commence a new business to provide employment for several unemployed persons so too a person can not be compelled to continue a business though he decides for reasons of his own to stop it. "If, however, the employer does not wish to discontinue the business but only to close down the place of business temporarily then the Tribunal can go into the question whether such closure is bona fide and for proper reasons, or whether it was with the object of victimising the workmen and coercing them to accept his own terms" (Italics (here in "" "" ) ours).

We are in respectful agreement with this statement of the law. It will be seen that the question whether the closure of business was temporary discontinuance or whether it was a genuine closure would ultimately depend upon a number of factors which would have to be taken into account by the Tribunal. We repeat again that we express no opinion on this question of fact which will have to be decided by the Tribunal.

2. The crucial point which the Industrial Tribunal was called upon to decide was whether the act of the appellant in giving notice to his employees informing them that their services would not be required was the result of any sale of his business to a private limited company as contended by him or a lock out as contended by the Union of workers.

3. On the materials placed before the Tribunal it expressed the opinion that it was impossible for it to find that there was any sale of the Photo

Litho Press to any limited company. The Tribunal mainly relied upon the lack of evidence for this purpose because among other things the

certificate of incorporation of the company was not produced before it, Ex. M. 12 a printed copy of the memorandum of the Articles of

Association of the new company, viz., Photo Litho Press Co. Ltd., was produced before the Tribunal,

This, the Tribunal rightly held was not sufficient to establish the incorporation of the company. Ex. M. 1 is another document placed before the

Tribunal but it did not accept this as sufficient to show the sale of the machinery installed in the Litho Press, to the company incorporated. Ex. M.

10 was another document produced before the Tribunal by the appellant for the purpose of showing the purported sale of business to the limited company.

In view of the fact that we propose to remit the matter for further inquiry before

the Industrial Tribunal it may not be proper for us to express any opinion on the probative value of the various pieces of evidence placed before the Tribunal except in regard to Ex. M. 1, This document which purports to be executed by the appellant as proprietor of the Photo Litho Press is addressed to Messrs. Photo Litho Press, Ltd., Madras in these terms :

746 Triplicane High Road,

Madras-5. 2nd June 1953

Messrs. Photo Litho Press Ltd.,

Madras.

Dear Sirs,

I hereby confirm of having sold the following machines motor car and motor cycle and sundry furniture for a sum of Rs. eighty five thousand only.

1. One quad Crown offset by Geo, Mann with motor
2. One ruby offset do
3. One gullotin cutting machine 48 do
4. One demy folio offset by Geo. Mann do
5. Two quad crown direct rotary
6. One Hat bed machine quad crown size
7. One quad crown offset by Roland
8. One Broadway press
9. One quad crown transfer press
10. One Austin car
11. One B.S.A, motor cycle and sundry furniture.

Yours faithfully

(Sd.) M. K. Krishnamurthy.

The following comment was made upon this document by the Tribunal: ""The document does not specify by whom, when and for what amount they were sold and the purpose for which the sale was effected. If the sale be true, there should have been a sale deed ..... No such deed has been filed"".

The first comment which we would like to make upon this statement by the Tribunal is that it is not correct in saying that the document does not specify by whom it was executed. The letter is signed by the appellant and the heading of the letter shows that he was acting in his capacity as proprietor of the Photo Litho Press, The further criticism of the Tribunal that this document does not indicate when, the sale took place is equally not well founded.

The date of the letter is 2nd June, 1953. The letter states that the sale of the several articles mentioned therein including machines was confirmed.

This might mean either that the sale had already taken place or that the sale was taking place on the date of the letter. Again the comment of the

Tribunal that the document does not show for what amount the machines and other articles were sold is not justified. The letter mentions that the price of the articles sold is Rs. 85,000.

It is no doubt true that the purpose of the sale is not mentioned in that letter but that is really not material. The comment of the Tribunal that if the

sale were true there should have been a sale deed is unsupportable, because sale of moveables can take place by delivery alone without any formal

sale deed. We are thus satisfied that the grounds upon which the Tribunal refused to act upon this letter are without any substance.

4. In refusing to interfere with this conclusion of the Tribunal, Rajagopalan J. took the view that the state of evidence before the Tribunal or the

absence of evidence justified the finding or fact recorded by the Tribunal. Before advertng to the circumstances under which the certificate of

incorporation of the company was not produced before the Tribunal, we would like to point out that the rejection of Ex. M. 1 by the Tribunal is not

justified.

It is common ground that the company was incorporated on 2-6-1953 and the certificate of incorporation is now available. The appellant did not

produce this certificate of incorporation before the Tribunal either because he was not assisted by counsel or because he took an erroneous view

that Ex. M. 1 was sufficient to show that he had sold the press including the machinery to a limited company. Rajagopalan, J. took the view that in

proceedings under Article 226 of the Constitution it was not permissible to adduce fresh material by way of evidence for the purpose of deciding

whether the conclusion of the Tribunal was right.

We respectfully agree with Rajagopalan J. that the scope of enquiry under Article 226 of the Constitution for the purpose of issuing a writ of

certiorari is limited to the question whether the findings of fact arrived at by the Tribunal are warranted by the material placed before it. On this

basis even excluding the certificate of incorporation of the company which is now available, we are not so sure as Rajagopalan J. was that the

finding of fact recorded by the Tribunal was right.

Again we should not be taken as expressing any opinion on the merits of the question whether the closure of the business amounted to a lock out

or discontinuance of business. We are only holding that the reasons given by the Tribunal for rejecting Ex. M. 1 are unacceptable. It seems to us,

therefore, that this is a fit case where the appellant should be given another opportunity to prove his case that the closure was really discontinuance

of the business.

We would like to make it clear that we would not have given this opportunity to the appellant if the material already on record before the Tribunal

did not in some measure indicate prima facie his case of closure of business. Holding as we do, that the import of Ex. M. 1 was not correctly

appreciated by the Industrial Tribunal we feel that in the interests of justice an opportunity should be given to the appellant to prove his case

especially when he has clinching evidence on one point in the shape of the certificate of incorporation of the company on 2nd June, 1953.

5. We therefore allow the appeal, set aside the order of Rajagopalan J. and the award of the Tribunal and remit the proceedings before the

Industrial Tribunal for reconsideration. In the circumstances there will be no order as to costs both in this appeal and in the proceedings before

Rajagopalan J.