

(1990) 09 KAR CK 0028

In the Karnataka High Court

Case No : W.P. No. 7195/1988 c/w W.P. No. 11846/1988

M/s. Hinduja Casuals

APPELLANT

Vs

A. Vittal Rao and Others

RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(C)

Citation : (1990) 4 KarLJ 244

Hon'ble Judges : R. Ramakrishna, J

Judgement

1. The Government of Karnataka by exercising the power under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), made a reference to the Additional Labour Court, Bangalore for adjudication on the following points of dispute:

"1) Is the management justified in terminating the services of the following workmen with effect from 20-4-1979?

1. A. Vittal Rao
2. S. Fazalulla
3. K. Suryanarayana
4. K. Mahaboob Khan
5. H.M. Ananda Rao
6. B.S. Shankar
7. H.A. Khuddus and
8. B.K. Natha Rao

2) If not, to what relief the workmen are entitled?"

2. On receipt of the above reference, the Additional Labour Court has registered the same in reference No. 7/1981 and issued notices to both the parties. In

obedience to the notices, the parties have appeared and filed their respective claim statements.

3. A preliminary objection was taken by the petitioner M/s. Hinduja Casuals as to the maintainability of the reference on the ground that the workmen mentioned in the order of the reference were not its workmen and therefore, there was no relationship of employer and employee between the parties.

4. This contention of the petitioner was accepted and the Labour Court has rejected the reference without going to the merits of the disputes raised by the workmen. This preliminary order was challenged by the respondents-workmen in Writ Petition No. 5291 of 1984. This Court vide its order dated 2-11-1984 allowed the Writ Petition and remitted the matter to the Additional Labour Court with a direction for a fresh consideration of the preliminary and other issues that may arise for consideration on the pleadings of the parties and to make an award in the light of the decision of the Hon'ble Supreme Court in P.P. Maheswari v Delhi Administration & Others.

5. After receipt of the reference, the Additional Labour Court recorded the evidence afresh of the parties with reference to the preliminary issue and the matter involving in the dispute and thereafter passed an award holding that the termination of the services of the respondents is illegal and respondents 1 to 6 and 8 were to be reinstated with continuity of service and also entitled for 50% towards back-wages from the date of termination till their reinstatement. It is further ordered that due to the death of workman No.7 his wife will be entitled to back-wages at 50% with effect from 24-4-1979 till 9-10-1980 the date of death of 7th workman.

6. In Writ Petition No. 7195/1988, the petitioner has prayed for quashing the award of Labour Court.

7. In Writ Petition No. 11848/1988 the respondents-workmen have challenged a portion of the award in respect of payment of back-wages of 50% after passing an order of reinstatement. They have claimed that back-wages should be fixed at 100%, when the Court came to the conclusion that they have been illegally terminated.

8. This Court has to consider initially the Writ Petition No. 7195/1988 and on the conclusion of this writ petition there will not be any difficulty in disposing Writ Petition No. 11848/1988 filed by the workmen.

9. For the purpose of better understanding the writ petitioner is described as Party No. II and the respondents 1 to 8 are described as Party No. I in the position they stood before the Labour Court. Consequent to the reference the First Party-workmen have filed their claim statement, inter alia, contending therein that the Second Party-Management was Tunning nine concerns, where all the family members were partners. The Second Party dissolved the existing partnership and formed new partnership concents having direct and lineal

descent. But suppressing the above facts, management of President Garments and Allied Textiles Units represented that all units are closed over a decade, but in law, it was only reorganisation of the firms. The conduct of the Second Party virtually amounts to fraud played against the workmen.

10. On 23-4-1979 the President of the Union addressed a letter to the Assistant Labour Commissioner regarding the illegal closure. The Assistant Labour Commissioner immediately came to the concern and contacted Sri Dinesh, J. Hinduja and submitted a report to the effect that the change of management is purely of technical nature among the partners and there is no closure.

11. A settlement also took place on 26-4-1979 and with regard to the closure in clause 6, it is shown that "the Management assures hereby that they will absorb the employees in the new units as and when they commence the production." It is further contended that the services of the first party workmen was terminated on 24-4-1979 in the name of retrenchment without following the procedure and therefore, the said retrenchment is arbitrary and illegal. Due to this wrong retrenchment the First Party-workmen were not allowed to enter the First Party-Firms from 24-4-1979 and they have been further informed that their services are retrenched in utter violation of Section 25(f) of the Industrial Disputes Act. The Second Party, before retrenchment, started four concerns and the partners of the said firms are Jhamandas M. Hinduja, Madanlal J. Hinduja, Rajendra J. Hinduja and Dinesh J. Hinduja. Thus, the partners of these four concerns are father and sons. Three more firms are registered i.e., (a) Hinduja Casuals, (b) Hinduja Trading Co. and (c) Hinduja Clothing Co., on 31-3-1979. The partners of the said three firms are (1) Dyavantri J. Hinduja, (2) Janaki M. Hinduja, (3) Veena R. Hinduja and (4) Naini D. Hinduja, who are the wives of the four partners, whose names are as given earlier. Thus, there was no closure but illegal and unjustified termination made by the second party to defraud the workmen. Subsequent to the termination also the Second Party has started another thirteen concerns within a span of 3 to 6 months from 24-4-1979. They are:

1. Hinduja Sportswear;
2. Hinduja Knitwear;
3. Gokuldas Fashion;
4. Gokuldas Shirt Works Unit I;
5. Gokuldas Shirt Works Unit II;
6. Needle Craft Garment;
7. Patterns;
8. G.L. Apparels 1980;
9. Creation Unit II;

10. Gokuldas Images (P) Ltd.;

11. Country Clothing Co.;

12. Needle Point; and

13. Gokuldas Images.

12. The Second Party expanded the business by starting almost twenty concerns and in this background termination of the workmen is not justified and they are entitled to reinstatement to their former posts with back-wages and continuity of service except the workman Khuddus, who died on 9-10-1980 and his wife is entitled for the compensation.

13. Second Party in their counter statement initially questioned the validity of reference on the ground there was no employer and employee relationship. This submission was found favour with the learned Labour Court, which was ultimately set aside by the Hon"ble High Court in W.P. No. 5291/1984 and the matter was remanded to decide the dispute afresh by deciding all the points involved.

14. It is contended by the Second Party that the First Party-workmen were employees of one M/s. President Garments situated at No. 38/39, Chinnappa Gardens, Lalgag Cross Road, Bangalore-27, which was closed permanently from 30-4-1979. The service of the workmen of the First Party were terminated on the closure of the said firm and they were paid all their legal dues on 27-4-1979. Since the Second Party has not re-opened, there is no cause of action for the reference. It is further contended that the Second Party is situated at No. 70, Mission Road, Bangalore-27, whereas M/s. President Garments was situated at 38/39, Chinnappa Gardens, Lalgag Cross Road, Bangalore-27. Hence the Second Party would not be the employer of the First Party.

15. It is further contended that the premises where M/s. President Garments was operated has now been occupied by M/s. Gokuldas Shirts Works. The First Party-workmen were gainfully employed in M/s. Gokuldas Shirts Works in the same premises after the closure of M/s. President Garments. It is further contended that the partners formed different partnership business and duly registered. The finding of the Assistant Labour Commissioner that the closure was only technical is in no way binding on the Second Party. They have further contended that since M/s. President Garments was closed, there is no question of contravening the provisions of Section 25-F(a) and (b) of the Industrial Disputes Act as there was no retrenchment at all. It is further contended that the Second Party has nothing to do with the settlement dated 26-4-1979 and clause 6 of the same. However, it appears that five of the First Party-workmen were employed in M/s. Gokuldas Shirts Works, and other three have not approached any of the earlier partners of M/s. President Garments. Hence, the workmen are not entitled for any reliefs and the reference is liable to be rejected.

16. On the basis of the above pleadings and the points of reference, the learned

Presiding Officer, Labour Court has framed necessary issues and allowed the reference holding that the First Party-workmen were the employees of the Second Party-Management and their retrenchment is illegal, thereby they are entitled for reinstatement and back-wages at 50% of the dues.

17. Learned counsel for M/s. Hinduja Casuals, Sri Somashekar has submitted that the Labour Court has committed an illegality in allowing the reference taking into consideration that even after the dissolution of the partnership and the closure of the concern, there was functional integrality and non-providing of the job amounts to illegal retrenchment. The learned counsel further submitted that the Labour Court failed to note that the workmen concerned in these writ petitions are originally employed in M/s. President Garments and due to the closure of the said firm on 24-4-1979, a settlement was made by the Managing Partner Mr. Dinesh Hinduja as per Ex. W. 3. Under clause 6 of Ex. W. 3 the scope for absorbing the workmen in future was also stated and accordingly these workmen were provided jobs in Gokuldas Shirts Works and therefore, the workmen had no jurisdiction to make Hinduja Casuals as their employer and therefore the very reference is bad in law.

18. Against this submission, learned counsel for the workmen Sri S. Krishnaiah has taken through this Court to the nature of the business that was being carried on by the Hinduja family prior to the alleged closure of their firm and the subsequent conduct of opening several firms by executing the partnership deeds inter se only to defeat the legitimate claim of the workmen and to circumvent the law to their own advantage and thereby they have practiced unfair labour practice and hence the Labour Court was justified in accepting the reference and passing the impugned order, except the order is bad in law when it allowed only 50% of the back-wages to the workmen.

19. The records and the evidence disclose that this family was originally running President Garments, Gokuldas Harbhagwandas, Hinduja Apparels, Hinduja Enterprises and some more concerns. They were manufacturing ready-made garments and exporting them to the Middle-East and other places. Their concerns though ran by different partners, they had a functional integrality as each concern was linked with other concerns in manufacturing the readymade garments as there used to be cutting section, stitching section, etc. etc. It is also in evidence that there were about 457 employees working in these firms and the work used to be allotted by dividing them into cutting section, measuring section, design section, stitching section, etc. It is also in evidence that they have shown their intention to close down this firm on 24-4-1979 on the ground that the joint family members consisted of three heads have expressed their desire to dissolve the firms and thereafter opening of new firm with a fresh partnership deed and consequently more than 21 firms were established in different names and styles managed by the family members.

20. The points of dispute show that these workmen raised a dispute before the Government of Karnataka that they have been terminated from their services

w.e.f 24-4-1979 by the Management. Consequent to this reference, the Second Party was described as M/s. Hinduja Casuals, No. 70, Mission Road, Bangalore-27. The records further disclose that one Mr. Dinesh Hinduja represented the Second Party and filed counter statement questioning the very validity of the reference on the ground that the Hinduja Casuals was not in existence on 24-4-1979, the date of alleged termination, hence the reference is bad in law. He has also contended that the workmen have been provided jobs after the closure of the President Garments where the above workmen were working in M/s. Gokuldas Shirts/Works in accordance with clause 6 of the Settlement Ex.W. 3 and hence they cannot make any grievance of the matter that they have been terminated from service which is apparently false.

21. On perusing the pleadings, evidence, both oral and documentary, the dispute raises peculiar question of law and facts which require a minute scrutiny. The Second Party proceeded with an assumption that the burden of proof is on the first party workmen to prove that they have been illegally terminated and they have failed to prove the said burden to the satisfaction of the Tribunal. It is not disputed that the Respondents-workmen were regularly appointed in M/s. President Garments which according to the Second Party was closed down along with some other firms running from the joint family partners and due to agitation made by the workmen, a settlement was entered under Ex.W. 3 before the Assistant Labour Commissioner, providing inter alia an opportunity for taking the workmen in any one of the new firm and that settlement was signed by Sri Dinesh Hinduja on behalf of the other eight partners who subsequently opened new firms in different names and styles. It is contended by the Second Party that since the other partners were not made parties, the reference is bad against the Hinduja Casuals and especially against Mr. Dinesh Hinduja. Admittedly, the counter statement was filed by Dinesh J. Hinduja as partner of M/s. Hinduja Casuals against which firm, the First Party-workmen are seeking redress for their illegal termination.

22. In this respect without adding further confusion to the confusion already created by this partnership firm, by abruptly closing several concerns and opening new firms by entering into new partnerships bringing the length of service of the workmen to a standstill and again re-employing them in the allied new firms by executing partnership deeds and thereby creating unrest to the workmen which also amounts to unfair labour practice as defined under the Act.

23. Learned counsel for the Second Party has drawn reference of this Court to the evidence adduced by the witnesses for the Second Party to show that the reference is bad in law and the workmen are not entitled to any relief. On going through the evidence of these witnesses, there is a negative approach made by them and they have not produced any document worth noting to show that they had bona fides to close down the earlier firms to open new firms due to some changes in their family set up.

24. Chapter V-A and B deals with the principle that has to be followed in case of

termination, retrenchment and also the procedure to be adopted to make effective of the action taken by the Management in taking action under this provision. The Second Party have taken a defence that due to closure of the President Garments and other allied firms, they have entered into a settlement with the workmen and subsequently they have performed their obligation in providing jobs to the previous workmen including the First Party-workmen in this dispute. There is absolutely no dispute that the above workmen were in continuous service varying several years from each other at the time of their termination. The second party have taken shelter to justify their action is that they decided to close the undertaking w.e.f. 24-4-1979 and consequently they have terminated the services of all the workmen by complying with the various provisions contained in Chapter V-A and B of the Industrial Disputes Act.

25. Retrenchment, transfer and closure involve a change or stoppage of service of the workers. Retrenchment is termination of services by the employer otherwise than by way of punishment. In retrenchment, business continues to be run by the same employer. In the case of the closure, the business stops and there is termination of service thereby.

26. The imperative condition for retrenchment, is that the employer should fulfill the requirement of clauses (a) and (b) of Section 25-F according to which the workman should be given one month's notice in writing indicating the reasons for retrenchment or he should be paid wages for the period of notice in lieu thereof. He should also be paid retrenchment compensation which shall be equivalent to 15 days average pay and notice in the prescribed manner to be served on the appropriate Government.

27. Section 25-FFF provides the payment of compensation in accordance with the provisions of Section 25-F and notice indicating the intention of closure. Section 25-F is not applicable in case of an undertaking is closed down for the reasons of financial difficulties, accumulation of undisposed of stock due to expiry of lease or licence period, etc.

28. Under Section 25-H re-employment shall be provided to the retrenched workmen in the event the employer proposes to take into his employment any person afresh.

29. The operation of Section 25(o) of the Act was struck down by this Court in *Stumpp Schuele & Somappa Ltd. v State of Karnataka* reported in ILR 1985 Karnataka, page 3428, after placing reliance on *Excel Wear v Union of India*, AIR 1979 SC 25. A Division Bench of this Court has set aside the order of the learned Single Judge, reported in 1989(1) Kar. L.J. 233, *Union of India v Stumpp Schuele & Somappa Ltd. & Others* and restored the amended provision of Section 25(o) as not violative of Article 19(1)(g) of the Constitution of India.

30. Certain safeguards were provided to the workmen under Section 25(o) of the Act. Even excluding Section 25(o) as not in force at the time of terminating the services of the above workmen along with several others, what the Court to note

is the bona fides of the employer in closing down the concern when it is not falling on any exception provided under Section 25-FFF of the Act.

31. The second party have produced the copy of the partnership deed of M/s. Hinduja Casuals at Annexure-A. According to this document, Sri Dinesh J. Hinduja one of the partners, alleged to have entered on 23rd February, 1979. Annexure-B is an agreement entered into by all the nine partners on 30-9-1979 to dissolve the partnership firm of M/s. Gokuldas Harbhagwandas President Garment Factory at 37/38, C.K. Chinnappa Garden, Bangalore-27. In the penultimate para, it is also narrated that the partners have decided to close down the activities of the business as on 30-4-1979 and to realise the amounts and pay off to the creditors. In this document, all the nine partners are the signatories. If we take this fact into consideration it obviously means that due to financial stringency the Second Party partners intended to close down their firms to pay off to the creditors. But unfortunately that is not the case. They have formed many partnership firms on the guise of the other partners intending to start separate business and further they have totally started operating near by 20 business establishments at Bangalore in various names. These facts belied the admission that to release the amounts for purpose of paying to the creditors.

32. It is contended by the learned counsel for the Second Party-Management that there is no law which can prevent the Management to close down its business establishment for entering into a new venture according to their convenience. There is absolutely no quarrel with the proposition except to the extent that the Management should show bona fides in entering into such venture when admittedly the workmen were to suffer due to such an act of the Management. To restrict them to take such recourse, necessary safeguards are provided under the Industrial Disputes Act.

33. The contention urged by the Second Party that the reference is not maintainable as there is no relationship of employer and employee and this fact should be decided as preliminary issue is legally not sustainable in view of the law being well settled in *Delhi Cloth & General Mills Co. Ltd. v Their Workmen*, *The Indian Factories Journal*, Volume XXX, Part-III (1966-67), page 533.

"While it is open to the appropriate Government to refer an industrial dispute or any matter appearing to be connected therewith for adjudication under Section 10(1)(d) of the Act, under Section 10(4) of the Industrial Disputes Act, 1947, the Industrial Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. The Tribunal is not free to enlarge the scope of the dispute referred to it. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental cannot cut at the root of the main thing to which it is incidental. It is, however, open to the parties to show that the dispute referred for adjudication was not an industrial dispute at all and it would be open to them to bring out before the Tribunal the ramifications of the dispute but they cannot go further and contend that the foundation of the dispute mentioned in the order of reference was non-existent

and that the true dispute was something else; Express News Papers Private Ltd. v Their Workmen, (1962)23 FJR 1, distinguished."

34. If we appreciate the pleadings of the parties without focusing our attention to the evidence placed by the party, the so called closure was done by the partners of these firms only to change the name, though their subsequent business is not changed at all. It also shows that the Management of the Second Party have decided themselves to close down M/s. President Garments and other allied firms long before the date of closure without disclosing the same to the workmen or to the Labour Department. Obviously this circumstance made the workmen to agitate the matter before the Assistant Labour Commissioner just three days before the alleged closure and the matter ended in a memorandum of settlement wherein the workmen have acceded to the Management's desire to close the concern. Under clause 6 the workmen genuinely thought that they will be provided employment by the new units immediately they commence production which fact made them to accept this settlement.

35. Sri Dinesh Hinduja one of the Managing Partners, President Garments, has not disputed the fact that they decided to open a new firm Hinduja Casuals on 23-2-1979 and that deed was registered subsequently and according to the evidence of this witness, it started production from 1-5-1979. This tendency of the partners to change the names of the firms from one to another though their manufacture process have not changed, the Labour Commissioner has remarked that the closure of the Management is purely technical and there is no closure.

36. In the counter statement filed by the Management of M/s. Hinduja Casuals, Sri Dinesh J. Hinduja as one of the partners has shown his ignorance of various facts that took place from the date of starting of M/s. President Garments and the subsequent changes made in the partnership by opening several firms and changing now and then the names of the firms from one to another though there is no change of the nature of business. The Partners being inter-changing from one firm to another.

37. The Second Party have also not placed any material as to how they offered employment to the 1st party workmen whether it is oral or by written order and how many days they worked and what records they maintained to prove the same. The tendency of the Second Party is more objectionable and as it tends to treat the workmen as mere chattels, which has been came to light when they offered employment to some of those workmen after an interim order by this Court to work with less remuneration and further the correspondence reveal that they have made a show of offering jobs to these workmen.

38. The above matters clearly show that the Management lack bona fides to close the concern and it is also opposed to law and hence the Government after satisfying itself that there is bona fide a dispute in existence, has referred the matter to the Labour Court for further adjudication.

39. Though the Second Party contends that Hinduja Casuals came into existence

long after the closure of M/s. President Garments, since the termination of workmen from M/s. President Garments in the guise of closure is illegal, the workmen are deemed to have continued in their work as the termination was illegal and there was no closure, even if it is so, it is only technical.

40. Sri Dinesh Hinduja being the Managing Partner of M/s. President Garments is continued to be operating his business in several firms by giving different names, he cannot escape the liability to offer jobs in his new firm in accordance with clause 6 of Ex. W. 3. He also cannot escape the liability of payment of back-wages as he is responsible for taking initiative in closing down the concerns abruptly against law, he should individually or collectively with other partners is responsible to compensate the workmen for the act committed by them. Hence the writ petition filed by the Second Party viz., W.P. No. 7195 of 1988 is without any merit and the same is hereby dismissed awarding costs of Rs. 1,000/- to be payable to the workmen.

41. W.P. No. 11846 of 1988 is filed by respondents No. 1 and 3 to 8 for the issue of a writ of mandamus directing M/s. Hinduja Casuals to make payment of full back-wages to the petitioners instead of 50% of the back-wages as ordered by the learned Presiding Officer, Additional Labour Court, Bangalore.

42. It is submitted that when the Labour Court answered the issues in favour of the workmen and directed the Management to reinstate the petitioners into service with continuity of service, has not given any proper reason for awarding back-wages at 50% instead of 100% as it is the rule of law held in number of cases by the Hon'ble Supreme Court of India. He further submitted that extraordinary circumstances should be shown for disallowing 50% of back-wages which generally will be made in favour of the workmen where that will cause loss or damage to the Company or that very misconduct is of such a grave nature involving moral turpitude. When all these extraordinary circumstances are absent, the Labour Court has erred in granting 50% of the back-wages.

43. It is further submitted that denial of 50% back-wages without assigning any reasons amounts to penalty and punishment for no fault of the workmen.

44. We have discussed at length how the Award of the Labour Court is legally sustainable when we discussed the method in which these workmen were terminated from service under the guise of closure. The said reasoning does not require repetition. On a perusal of the Award passed by the learned Presiding Officer, II Additional Labour Court, there is absolutely no reason assigned for granting 50% as back-wages to the workmen from the date of termination upto the date of reinstatement. Since the Labour Court has not assigned any reason when Law provides 100% of back-wages, when the termination or retrenchment found to be illegal, the order of the Labour Court to this extent is erroneous. Hence W.P. No. 11846 of 1988 is hereby allowed and the order regarding payment of back-wages is modified:

M/s. Hinduja Casuals by its Partner Sri Dinesh Hinduja should make payment of

full back-wages to the workmen shown in this writ petition, viz., Petitioners 1 to 5 and 7. With regard to the 6th writ petitioner, it is directed that M/s. Hinduja Casuals should make payment of the back-wages to his wife Smt. Shahazabibi from 24-4-1979 till 9-10-1980 the date of death of the 6th petitioner at the rate of 100% within one month from the date of this order. If the payment to the Legal Representative of the 6th petitioner is not made within the period stipulated above, the back-wages found due will carry interest at 7% per annum from 24-4-1979 till this date. The second respondent in W.P. No. 7195 of 1988 S. Faziulla son of Sheriff is not one of the petitioners in W.P. No. 11846 of 1988. Hence enhancement in the payment of back-wages now made is not applicable to the above workman.

The parties shall bear their own costs.