

(1961) 09 CAL CK 0023
In the Calcutta High Court

Naihati Jute Mills, Ltd.

APPELLANT

Vs

Fifth Industrial Tribunal

RESPONDENT

Date of Decision : 04-09-1961

Acts Referred:

Citation : (1962) 1 LLJ 81

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The petitioner company, manufacturers of jute fabrics, have their mills at Naihati, in the district of Twenty-four Parganas.

2. Respondents 2 to 76 are workmen employed in the factory of the petitioner. They are weavers and their duty is to weave jute goods of different specifications and of varying length and width, on different kinds of looms.

3. Sometime in the year 1937, the petitioner company installed in their mills broader looms, namely, 90 inches and 100 inches reed space looms, so as to be able to manufacture wide pieces of hessian of continuous length, according to market demand.

4. Respondents 2 to 76 used to be ordinarily employed in the broader looms and used to be paid at piece-rates, their earnings varying with the quantity of fabric woven.

5. The working of the broader looms proved uneconomic to the petitioner company and on 27 October 1957, the company sold the broader looms to Northbrook Jute Mills Co. Ltd. a different incorporated company but under the same managing agency as the petitioner company.

6. After the sale of the broader looms, as aforesaid, the petitioner company transferred respondents 2 to 76 to narrower looms varying from 36 ? inches to 56 ? inches reed space, the only other type of loom installed in the petitioner's factory.

7. Alleging that such transfer to narrower looms would affect their earnings at piece-rates, respondents 2 to 76 demanded that they also be transferred to the service of Northbrook Jute Mills Co. Ltd. which company had purchased the broader looms. The workers contended that the transference was feasible because both the petitioner company and Northbrook Jute Mills Co. Ltd. were under the same managing agency of F.W. Heilgers & Co. (Private), Ltd. The petitioner company turned down the demand of the workmen as will appear from letter, dated 14 January 1958, from the Chief Labour Officer, Bird-Heilgers group of jute mills, which I set out below:

We have carefully reconsidered the matter under reference and regret that we are unable to risk disruption of work in Northbrook Jute Mills by transferring Naihati weavers who work on broad looms to that mill.

8. This raised a labour dispute and the State Government referred the dispute to the fifth industrial tribunal, West Bengal. The issue contained in the schedule to the reference stood as follows:

Are the weavers and the line sardars named in the attached list, transferred from 90 inches and 100 inches reed space looms to ordinary looms, entitled to compensation for loss of earnings arising out of the transfer? If so, at what rates and from which date?

9. Before the tribunal, the workmen filed their written statement. In Paras. 6 and 7 of their written statement, the workmen pleaded as follows:

6. The company for their own working arrangement removed their broad line looms to their other mills. The workmen concerned volunteered to go to those mills where the looms had been transferred but their requests were turned down adamantly by the opposite party.

7. The workmen concerned were forced to work on ordinary looms as a result of which their wages were adversely affected, despite the best endeavour of these workers to the tune of Rs. 10 minimum per week since 21 October 1957.

10. The petitioner company in their written statement took up the attitude that it was not possible for them to transfer the workmen to the purchaser company, which was a different company. The petitioner company also disputed the workers' claim that their earnings were being affected to the "tune of Rs. 10 minimum per week" since 21 October 1957.

11. The tribunal came to the finding that the petitioner company deliberately prevented the going over of the workers concerned to the transferee company, even though the transferee company would have liked to receive those workmen of considerable experience. This was mala fide done and the petitioner company thus became themselves responsible for the loss of earning of the workmen. The tribunal farther relied on a letter, dated 30 October 1957, by the Chief Labour Officer, Bird-Hailgers group of jute mills which was to the following effect:

In the present instance line looms are being transferred solely because of the inability of the weavers of Naihati to give the required production. We, therefore, do not propose to transfer weavers working on these looms to any other mill. It is an accepted fact that weavers, as such, can be put on any kind of loom and that they have no claim on a particular width or type of loom.

12. Relying on the above quoted letter, the tribunal further found that inasmuch as the workers failed to give the required production on the broader looms, the petitioner company was disposed to punish the said workers by forcing them to work on narrower looms and thus causing depreciation in their earnings. The tribunal characterized this as an act of mala fide or an act of victimization, amounting to exploitation of labour, which must not be encouraged.

13. The tribunal also found that the workers had special aptitude to work on broader looms and that the petitioner company had no justification to hold them back from the transferee company, which had purchased such looms from the petitioner company.

14. Lastly, the tribunal found that the inability to transfer pleaded by the petitioner company was not of substance because the petitioner company had never tried for the same. In the view the tribunal took it made the following award of compensation to the workmen:

I award that compensation must be allowed to these line weavers and line sardars with effect from the date of reference, i.e., 11 August 1958, when this matter was mooted before me. They must be given the higher rates allowable for work on broader looms for fabrics produced on narrower looms since 11 August 1958, less any amount already paid for such production. This is made payable in two equal monthly instalments after my award becomes operative. I am alive to the fact here also that the fabrics must have been priced with reference to the wages given to those weavers. But as the company is held responsible for the loss of earning to these weavers, I think it will be a denial of justice if I do not grant any relief at least from the date of reference. This is my award. While granting this marginal difference of rates between the higher rate enjoyed for working on broader looms and the lower rate provided for narrower looms, I make this relief available only to the weavers in question.

15. The propriety of the award is being disputed, by the petitioner company, in this rule.

16. Sri A.C. Mitter, learned Counsel for the petitioner company, contended that the tribunal proceeded on no evidence when it came to the conclusion that the transferee company, namely, the Northbrook Jute Mills Co. Ltd. would have liked to receive the broad loom workers of the petitioner company. He further contended that the award was mostly based on surmises and conjectures, particularly on the point that the petitioner company had prevented transfer of the workers to the purchasing company; with the object of victimizing them. He also contended that the letter, dated 30 October 1957, was never exhibited

before the tribunal and the petitioner company had no opportunity of explaining the same and had not full opportunity of defending themselves. Lastly, he contended that it was not within the power of the petitioner company to transfer the workmen to Northbrook Jute Mills Co. Ltd. and the tribunal should not have expected the petitioner company to do the impossible.

17. So far as the first contention of Sri Mitter is concerned, it appears that nobody from the Northbrook Jute Mills Co. Ltd. deposed before the tribunal and there was no evidence to show that the aforementioned company would have liked to employ the broad loom workers of the petitioner company. In the first branch of his contention, therefore, Sri Mitter appears to be right.

18. In his argument against the finding of victimization, Sri Mitter is again right. The sale of the broader looms was made because the said looms proved to be uneconomic. This was the case, the company made before the tribunal and that is also the case made by the company in their petition before this Court. There is no affidavit-in-opposition to the petition. It is beyond doubt that the petitioner company always has the right to dispose of units of machinery which become uneconomic or unnecessary for the purposes of the business. Having sold the broader looms, the petitioner company gave to the workers employment in the other looms that they had. That was the best that the petitioner company could do under the circumstances. To characterize that as victimization may not be correct. Victimization means one of the two things, namely, punishing innocent workmen because of displeasure incurred otherwise than in course of their employment or punishing workmen in a manner disproportionate to the gravity of their offences. By doing the next best that they could do for the respondents workmen the petitioner company was not certainly victimizing them.

19. The criticism of victimization is based on two letters from the chief labour officer, Bird-Heilgers group of jute mills, dated 30 October 1957 and 14 January 1958, from which I have already quoted two extracts. The letter, dated 30 October 1957, it appears was not exhibited before the tribunal nor referred to in evidence by any of the witnesses. How the tribunal had the text of the letter is difficult to imagine. Possibly the letter was shown to the tribunal during the course of argument and the tribunal took note of it. The petitioner company had no opportunity of explaining the letter. To make too much of that letter, in these circumstances, is improper. Moreover, victimization was not pleaded by the respondent workmen in their written statement. The petitioner company was, therefore, not called upon to meet any charge of victimization. In these circumstances, to spell out a theory of victimization against the petitioner company was not giving a square deal to the company. The tribunal erred in making the theory against the petitioner company on the materials before it.

20. Lastly, the petitioner company and Northbrook Jute Mills Co. Ltd. may have been under the same managing Agency of F.W. Heilgers & Co. (Private), Ltd. Managing agency is, however, a matter of contract and I am not sure if the managing agency company had the power in terms of their agency agreement to

transfer or employ the respondents weavers in the Northbrook Jute Mills Co. Ltd. In any event, the petitioner company, being a separate incorporation had not the power to transfer its workmen to Northbrook Jute Mills Co. Ltd., another separate incorporation. Since the petitioner company had not the power to transfer, the tribunal was not justified in finding fault with the petitioner company for the reason that they did not even try to do the impossible. The grievances made by Sri Mitter against the award are thus of considerable substance.

21. For resolution of an industrial dispute, tribunals have power to direct the employer company to do many things within its power, but it has not the jurisdiction to direct the employer company to do the Impossible. By finding fault with the petitioner company because they did not do the impossible, the tribunal was not justified in awarding compensation against the petitioner company and in favour of the respondent workmen.

22. Moreover, the respondent workmen could not make out a case that they had a right to be attached to the broader looms and to work nowhere else under the petitioner company. Nor could they make out a case that the petitioner company was bound always to manufacture hessian cloth of the broader loom size, for the benefits of the respondent workmen, even though not required to do so for the purpose of their own trade. That being so, the grievance of the respondent workmen that they were not earning as much as when the company was manufacturing broader sized hessian cloth on broader looms was not a justifiable grievance.

23. However, I am not concerned with the justice of the dispute in a high prerogative writ application. Suffice it for my purpose, that the tribunal went wrong in finding fault with the company not only for what they were not required to do under the law but for what was also impossible for them to do. The tribunal relied on no evidence and also proceeded on surmises and conjectures in importing a theory of victimization against the petitioner company and in making them pay compensation therefore. That defect is patent on the face of the records and that makes the award bad.

24. For the reasons aforesaid, I make this order absolute and quash the award. Let a writ of certiorari issue accordingly. There will be no order as to costs in this rule.