

(1967) 12 MAD CK 0026
In the Madras High Court

Venkatachalam (K.) and Others

APPELLANT

Vs

Ashok Leyland Ltd. and Others

RESPONDENT

Date of Decision : 22-12-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1968) 2 LLJ 807

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.—Writ Petition No. 2096 of 1966 id preferred by three convoy drivers working in the Ashok Leyland, Ltd., Encore, and Writ petition No. 2531 of 1966 by the Ashok Leyland Workers" and Staff Union, praying for the issue of a writ of certiorari allying for the records of the industrial tribunal, Madras, in industrial Dispute No. 39 of 1965 March 1966, and published in the Fort St. George Gazette, dated 30 March 1966.

2. The case of the petitioners is that the three petitioners on Writ Petition No. 2096 of 1966 joined respondent 1 company as convoy slivers and subsequently appointed as convoy leaders. Respondent 1 company used to entrust the convoy leader, Passenger and lorry chassis for being delivered to dealers throughout India, and the petitioners had effected delivery in places like Jammu and Kashmir, Allahabad, etc. They were paid a daily batta of Rs. 7, the respondent-company had 62 convoy leaders working under them. The petitioner and the other convoy leaders approached the management for confirming them as permanent workmen and for regularizing their scale of pay, etc Respondent 1 promised to consider the request; has subsequently entrusted the work of delivery of chassis to certain contractors. The petitioners felt aggrieved. as they apprehended that the introduction of the contrary system would throw them out of employment. They raised an industrial dispute, and the dispute was referred by the Government by G.O. Rt. No. 1906, dated 17 September 1965, to the industrial tribunal, Madras. The terms of reference were as fellows:

Whether the demand for abolition of contrail system in the sphere of chassis delivery work and absorption of the 62 convoy leaders as regular workers is justified?

The reference was taken up by the industrial tribunal in Industrial Dispute No. 39 of 1965. The tribunal framed the following three issues:

(1) Has the tribunal jurisdiction to decide the reference?

(2) Is the union competent to raise the present dispute?

(3) Is the demand for abolition of the contract system in the sphere of chassis delivery work and absorption of the convoy leaders drivers as regular workers justified, and if so, to what reliefs they would be entitled?

3. The tribunal held that though the convoy leaders were not regular workmen and the tribunal therefore had justification to decide the dispute. It also held that the convoy leaders 62 in number, by themselves could raise the dispute which would be an industrial dispute. So far as these two issues are concerned, there is no dispute as the learned Counsel for the respondent conceded that the tribunal had jurisdiction and the union was competent to raise the dispute. In the circumstance, it is unnecessary to discuss the two issues any further. Regarding the third issue, the tribunal found that the convoy leaders were not justified in demanding the abolition of the contract system in the sphere of chassis delivery work. It also found that the demand of the convoy leaders to be absorbed as regular workers is not justified.

4. The third issue may be considered. The terms of reference are set out already. The question is whether the demand fit the abolition of the contract system in the sphere of chassis delivery work and for absorbing all the convoy leaders as regular workman is justified. Certain documents were filed to show as to how the convoy system of delivery of chassis was working. Exhibit M. 4, M. 5 and M. 6 are convoy duty registers relating to short distance and long distance drivers. The convoy leaders are not sent every day in a month; but only on some days in a month. On an analysis of the registers for the months of September, October, November and December 1963 and January and February 1964, it will be seen that there were no convoys for 18 days in September 1963, for 20 days in October 1963, for 20 days in November 1963, for 18 days in December 1963, for 19 days in January 1964 and for 18 days in February 1964. It has also been found that a convey leader who goes to Delhi takes about twenty days for his return and during the twenty days of this absence other people have to be engaged for going to other places. In the circumstances, it will not be possible for the management to employ only a limited number of persons, as the movement of the chassis will be unduly delayed, if they had to wait for the convoy to return before another convoy is sent. It is stated that delivery will have to be made as and when it becomes necessary expeditiously. It is also clear from the records that a short distance convoy leader will have to wait for six weeks for his next chance and a long distance convoy driver will have to wait for six weeks.

For the period of this three weeks for a short distance convey leader and six weeks for a long distance convey leader, no work is provided by the management. It is also clear that the management cannot be expected to engage all the 62 persons as convey leaders and keep them idle for three of six weeks by paying them for the period for the which they are not given any work. While the company cannot engage all the convey leader, it cannot also employ a lesser number of men and put them on permanent basis. As already painted out, the company cannot wait for the convey leaders to returns before another convey is sent. The records also show that the work of the convey leaders was not without blemish. Several complaints, some of a serious suture, were received and were dealt with by the management. In the circumstances, the company thought that as the work is of an intermittent and temporary nature and as it would not be possible to employ full-time workmen and as the convey leaders were not reliable and trustworthy the management took a decision to entrust the work to independent contractors.

5. The question under what circumstances a company would be justified in resorting to control system has been considered by the Supreme Court in two decisions, namely, *Standard Vacuum Refining Co. v. their workmen* 1960 II L.L.J. 233 and *National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another*, . In the former decision, the Supreme Court has held that industrial adjudication does not encourage the employment of contract labour in modern times and observed at p.239:

...whenever a dispute was raised by workmen is regard to the employment of contract labour by any employer it would be necessary for the tribunal to examine the merits of the depute apart from the general consideration that contract Labour should not be encouraged, and that is a given case the decision should rest not merely on theoretical nr abstract objections to contract labour but also on the termed and conditions on which contract labour is employed nod the grievance made by the employees in respect thereof.

The dispute in question before the Supreme Court related to claiming maintenance work at the refinery of the standard Vacuum Oil Company including the premises and the plants. The Supreme Court found that so for as the work is concerned it is incidental to the manufacturing process, and is necessary for it, and of a perennial nature which must be done every day, and this work is done by workmen in the regular employ of the employer and there should be no difficulty in having regular workmen for this kind of work. The Court proceeded to observe that the matter would be different if the word was of intermittent or temporary nature or was se little that it would not be possible to employ full-time workmen for the purpose. The nature of the work in the case decided by the Supreme Court is entirely different. The work was incidental to the manufacturing process and of a personal nature and was done every day, and the work was done by workmen in the regular employ of the employer. In this case, it is found that the work is intermittent and that the convey leaders have to

wait for three or six weeks for work depending upon the distance of the route, and during that period they are not paid. The work was confined only to about ten to twelve days in a month, and was not perennial in nature. The delivery of the chassis at the destination of the buyer cannot be said to be incidental to the manufacturing process. It would not also be feasible to engage some conveyer leaders on permanent basis or absorb some of them permanently, as the conveyers will have to be moved without any delay. Applying the test laid down by the Supreme Court, as the work is intermittent, as it is not possible to employ the conveyer leaders as full-time workmen, the decision of the management to resort to contract system cannot be assailed. In *National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another*, the Supreme Court reiterated the principles laid down in *Standard Vacuum Refining Company v. their workmen* 1960 II L.L.J. 233 (vide supra) holding that the industrial tribunal can direct the abolition of the contract system, if the facts justified. It may be noted that in the case cited, the tribunal directed abolition of the system of contract labour excepting for the purpose of loading, unloading and for premises alleys, ashes, burst sand, etc., and waste products. It will be seen that contract labour for certain purposes was accepted by the industrial tribunal. Applying the test laid down by the Supreme Court in *Standard Vacuum Refining Company* case referred to I agree with the industrial tribunal that decision of the management to resort to contract system cannot be assailed. According to the terms of the reference of the Government, the first part of the reference, viz., whether the demand of the workmen for the abolition of the contract system in the sphere of sphere of chassis delivery work, is justified, will have to be answered against the workmen.

6. The second part of the reference is whether the demand of the workmen for the absorption of the conveyer leaders as regular workers is justified, and if so, to what relief they would be entitled to. As the contract system is held to be valid, the sixty-two conveyer leaders/drivers cannot be absorbed as regular workers, and this question will also have to be answered against the workmen. The question of relief is consequential. As the second part of the reference is answered in the negative, the workers will not be entitled to any relief.

7. Sri Dolia on behalf of the petitioners submitted that the conveyer leaders should be treated as workmen u/s 2(8) of the Industrial Disputes Act, 1947, and even on its finding that to resort to contract system is valid, the tribunal should have given other reliefs such as retrenchment compensation, etc. As no proper retrenchment notice has been given, the learned Counsel submitted that the workmen should be deemed to continue in service. u/s 10(4) of the Act, it is the duty of the tribunal to confine its adjudication to the points referred to it for adjudication and matters incidental thereto. The terms of reference did not include the determination by the tribunal as to whether there was any retrenchment, whether proper retrenchment notice was given. These questions cannot be said to be incidental to the points of dispute referred for adjudication. The questions raised by Sri Dolia can only be gone into in a separate reference. It is open to the workmen to ask for a separate reference on these matters and

the management would be entailed to raise all defenses that are open to them. In the recluse, the writ petitions are dismissed. There will be no order as to costs.