D. Macropollo And Co. (Private) Ltd. vs D. Macropollo And Co. (Private) Ltd. ... on 18 August, 1958

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Bench: P.B. Gajendragadkar, A.K. Sarkar

JUDGMENT

P.B. Gajendragadkar, J.

1. This appeal by special leave arises out of an industrial dispute between the appellant, M/s. D. Macropollo and Co. (Private) Ltd., and Respondent No. 1, its workmen as represented by D. Macropollo and Co. (Private)Ltd., Employees' Union. On 31-5-1957, this dispute was referred to the First Labour Court by the Government of West Bengal under Sub-section 7 and 10 of the Industrial Disputes Act (No. XIV of 1947). The two questions which were referred to the Labour Court were:

> (1) Is the termination of services of the fourteen workmen (whose names were given in the reference) justified? and (2) what relief were the discharged employees entitled to?

Before the Labour Court, the Employees' Union urged that the discharge of the fourteen employees amounted to an act of victimisation and unfair labour practice. On the other hand, the appellant urged that the discharged employees were not workmen within the meaning of the Act and so the reference made by the Government of West Bengal was invalid. It was also contended by the appellant that the impugned discharge of the fourteen employees was not at all an unfair labour practice; it was in fact a bona fide act on the part of the appellant inas much as the said discharge was a part of the scheme of re-organisation of its business adopted by the appellant since 1954. The Labour Court rejected both these contentions. It held that the discharged employees were workmen within the meaning of the Act and so the reference made to it was valid; and it found that the appellant terminated the services of the workmen in question "as a matter of unfair labour practice and thus victimised them for their union activities."

In the result, the court ordered that the twelve workmen should be re-instated together with their back wages. This award was delivered on 11-10-1957, and it was duly published by the Government of West Bengal on 19-10-1957. It is the validity of this award that is challenged before us by the appellant in the present appeal.

2. It would be relevant at this stage to refer to the material facts leading to the present dispute. The appellant is a private limited company with its head office at Bombay and its branches in Delhi and Calcutta. The main business of the appellant is the selling agency of various cigarette manufacturing concerns. The appellant is the sole selling agent of Godfrey Phillips who is one of the said manufacturers. The appellant thus sells cigarettes, cigars, manufactured tobacco and smokers' requisites of other manufacturers. Prior to 1946, in Calcutta the outdoor salesmen who sold cigarettes on behalf of the appellant were in the employ of the appellant's distributor; but in 1946 owing to communal riots this method of distribution and sale had to be terminated. The appellant then took the outdoor salesmen in its direct employment in order to organise them on communal basis in the then prevailing circumstances. These outdoor salesmen had to take a quantity of packets of two brands of cigarettes from the appellant's distributor and sell them to the local Panwalas and petty dealers. At the end of the day's work, the unsold stock had to be returned by the salesmen to the distributor and the prices recovered by them for the sales effected during the course of the day had to be paid to him. In or about 1954 the appellant came to the conclusion that it was not practicable from business point of view to continue any longer its own outdoor sales department and so the appellant decided to close down the said department, to retrench the outdoor salesmen and to operate through the distributors. Pursuant to this decision the system of employing outdoor salesmen under the direct employment of the appellant was terminated in Bombay and Delhi in 1954. The appellant realised that the sales were dropping and that the re-organisation of its business had become necessary as a measure of economy. For convenience, however, the re-organisation was brought into force by stages in different places from time to time. The Calcutta area of the appellant's business comprised of Assam, Bihar, Orissa, a part of the State of Uttar Pradesh and the State of West Bengal. The appellant had been terminating the services of its outdoor salesmen in this area since 1954. Salesmen whose services were discharged under this re-organisation of the appellant's business were being employed by the appellant's distributors in their respective areas. This scheme was implemented by the appellant last of all in Calcutta by writing letters of discharge to its fourteen outdoor salesmen on 7-2-1957. These salesmen were informed that their services were terminated as from 11-2-1957, and that they would receive one month's salary in lieu of notice and half month's salary per year of service by way of compensation. The salesmen were also told that the appellant was recommending to its distributor in Calcutta to give them the first option of employment under him, on terms, and conditions to be settled between them inter se. The distributor was agreeable to take up in his service the fourteen outdoor salesmen thus discharged by the appellant, but only two of them, S.C. Datta and S.C. Ghose (respondents 2 and 3), approached the distributor and obtained appointments from him. Since the other salesmen did not approach the distributor, he waited for some time and ultimately appointed other persons in the course of the next three months. It is under these circumstances that the respondent-union raised an industrial dispute with the appellant in respect of the termination of services of its fourteen outdoor salesmen. The two salesmen who have been employed by the distributor appeared before the Labour Court and informed the Court that they were not interested in the dispute and that the union was not authorised by them to represent their case before the court.

3.The case for respondent No. 1 was that the appellant's plea of re-organisation is not genuine, that there was no economic justification for adopting the said scheme and that the sole object of the appellant in discharging the employees in question was to penalise them for their trade union

activities. It appears that the employees of the appellant formed a trade union in July 1953. Respondent No. 1 urged that the appellant was enraged by the formation of the trade union and it consistently refused to accord recognition to the union. The union presented its "charter of demands" and that provoked the appellant still more. The union tried to approach the appellant with a view to settle its demands but the appellant resisted all such efforts and ultimately issued letters to the employees terminating their services with a view to put an end to the agitation which the union was carrying on against the appellant. The discharge of the employees is thus an unfair labour practice and amounts to victimisation of the employees in question. It is on these contentions that the Labour Court had to consider the two questions, already indicated.

4. Mr. Daphtary for the appellant has argued that the Labour Court erred in holding that the discharged outdoor salesmen were workmen within the meaning of the Act, and he contends that the finding of the Labour Court that the discharge of the salesmen in question amounts to unfair labour practice is perverse. He concedes that in an appeal under Article 136, it would not be open to him to challenge the correctness or the propriety of a finding of fact recorded by a labour court; but his case is that the said finding is not supported by any legal evidence and is wholly inconsistent with the material produced on the record. It is this latter contention which Mr. Daphtary placed before us in the forefront of his arguments Since we have reached the conclusion that the grievance made by Mr. Daphtary against the said finding recorded by the Labour Court is justified, we do not propose to consider the other question as to whether the discharged outdoor salesmen are workmen within the meaning of the Act.

5. The first serious infirmity in the decision' of the Labour Court arises from its complete misconception about the appellant's case in regard to re-organisation of its business. The award specifically states that the new system was adopted only in Calcutta and was nothing but a colourable device to throw off the fourteen workmen. There is no doubt that this assumption is wholly inconsistent with the evidence in the case and it runs counter to what may reasonably be regarded as a matter of common ground between the parties. The appellant's director, Mr. Phillippou who has been associated with the appellant since 1934 had definitely stated on oath that since 1954 the re-organisation has been introduced by the appellant in all the areas where the appellant's business is carried on, by stages and that the said scheme was implemented last of all in Calcutta. Mr. Phillippou has given reasons why the appellant adopted this re-organisation and has produced documents in support of his statement that the new scheme has been introduced by stages in all other places where the appellant has had its branches. This evidence is not at all controverted by respondent No. 1, and so the present dispute and to be considered in the light of the appellant's case that the discharge of its fourteen outdoor salesmen was in pursuance of a scheme of re-organisation adopted by the appellant in all the places of its business. Instead of dealing with the merits of this part of the appellant's case, the Labour Court has assumed that the so-called re-organisation is confined only to Calcutta. It is really surprising that such a patently erroneous assumption should have been made by the Labour Court in view of the evidence adduced before it. Mr. Sen for respondent No. 1 has fairly conceded that this assumption was not at all justified. It is thus clear that the principal reason which weighed with the Labour Court in characterising the scheme as a "colourable device" is entirely unsustainable, and that introduces a very serious infirmity in the conclusion itself. It is indeed unfortunate that though the learned judge apparently

intended to deal with the merits of the re-organisation scheme as adopted by the appellant in respect of all the areas of its business, he forgot about it altogether when recording his final findings and erroneously assumed that the scheme had been introduced only in Calcutta.

6. In this connexion it may be relevant to mention that prior to 1946 the outdoor salesmen in Calcutta were appointed by the appellant's distributor Ramlal Singh and it was because of the violent communal disturbances that overtook Calcutta in 1946 that the appellant had to appoint salesmen directly with a view to distribute their work in several localities of Calcutta according to their communities. In fact even at that time the same set of salesmen who were working under Ramlal Singh were appointed or taken over by the appellant for carrying on its business. The effect of implementing the new scheme so far as Calcutta is concerned is simply to restore the status quo and leave the salesmen under the sole and direct control of the same distributor Ramlal Singh. In considering whether the implementation of the new scheme was a mere device, the learned judge ought to have taken into consideration' this aspect of the matter which is a special feature of the appellant's business in Calcutta.

7. The learned Judge has undoubtedly given some reasons in support of his conclusion that the discharge of the fourteen workmen amounts to an unfair labour practice; but we are satisfied that each one of these reasons is entirely unsustainable on facts which cannot be seriously disputed. The learned judge has commented on the fact that the relationship between the appellant and its employees was not satisfactory since the formation of the employees' union in 1953. The hostility of the appellant to the formation of the union, according to the learned judge, "was demonstrated in the appellant's refusal to attend a conference before the Labour Commissioner to discuss the union's charter of demands dated 19-8-1954,"

> and he has added that "prior to that, the union's attempts to meet across the table to understand each other's viewpoints in July 1954 proved abortive."

We have merely to look at the correspondence which has been produced before the Labour Court to be satisfied that the criticism made by the learned judge against the appellant on this ground is not at all justified. Let us consider some of the relevant correspondence. It appears that on the 15th and 25th of November, 1953, the Vice-president of the union wrote to the appellant setting forth some of union's demands. On 30-11-1953, the director wrote back in reply regretting his inability to meet the Vice-president earlier than the 8th December owing to pressure of work and owing to his indisposition. The Vice-president acknowledged receipt of this letter on the 8th of December and thankfully agreed to meet the director, as suggested by him, that evening. So it would be clear that the director had agreed to meet the union, as desired by it. On 27-7-1954, the appellant received from the Vice-president of Respondent No. 1 a statement about some demands of the appellant's employees. The appellant replied this communication on the 6th August, 1954, made its comments on some of the demands and requested the Vice-president of the union to furnish to the appellant the names of those whom the union claimed to represent and who had joined the union. The letter stated that the appellant regretted that it had not been supplied with these particulars though the appellant had repeatedly called for them. In his letter of 19-8-1954, the Vice-president sincerely thanked the appellant for the sympathetic tone of the letter under reply and requested the appellant

to recognise the union and promised to furnish the appellant with the necessary particulars required by the appellant.

It is clear that these particulars were not supplied to the appellant until the stage for reference of the dispute to the Labour Court was reached. This letter was accompanied by an annexure 'A', which is described as a charter of the minimum demands. Correspondence on similar lines has been carried on between the parties until 9-3-1955, when the appellant gave a detailed reply to the demands made by the Union. According to the appellant, "the demands were frivolous and speculative. The Vice-president of the union is employed in the Imperial Tobacco Co. India Ltd. and the alleged dispute has been put forward for the sole purpose of injuring this company by creating disaffection among its workmen when in fact there is no grievance."

Thereafter a conference appears to have been held in the presence of the Labour Officer on the 9th March and the 23rd April, 1955. On the 12th May, 1955, the appellant wrote to the Labour Officer recording the main points which the appellant had made at the said conference. It is significant that on the "charter of demands" the union was apparently not able to persuade the State Government to make a reference under the Industrial Disputes Act. However that may be, this correspondence clearly shows that the learned judge unfortunately made an over-statement when he observed that the appellant was obstinate in the matter of its dealings with its workmen, that the appellant refused to meet the union representatives and would not even attend a conference arranged for that purpose. It may be that the appellant did not look with favour on the formation of the union but that is very different from saying that the attitude adopted by the appellant in this matter was so obstructive and hostile that an inference of mala fide can be drawn in regard to the implementation of the re-organisation scheme which came much later in February, 1957.

8. The learned Judge has then referred to the matter of Mr. Rahman who was discharged by the appellant and then re-employed, and he has observed that since the re-employment of Mr. Rahman was through the efforts of the union, the appellant was displeased with the activities of the union. This conclusion is entirely inconsistent with the evidence given both by the director of the appellant and Mr. Rahman himself. It is common ground that Mr. Rahman was first discharged and then re-employed in May, 1952 and this was at the intervention of Mr. Rahman's friend, Mr. Banerfee Indeed, the respondent No. 1, the union, had not come into existence until July 1953, and it would therefore be patently wrong to hold that the re-employment of Mr. Rahman was due to the efforts of respondent No. 1.

9. The next circumstance on which the learned Judge has relied is what he describes as "invidious discrimination' in the matter of distribution of bonus" made by the appellant. The learned judge has assumed that for bonus the indoor workmen were paid one full month's wages and the outdoor workmen at a flat rate of Rs. 70 only. There is no evidence whatever on the record to justify the statement of the learned Judge that the outdoor workmen were given bonus at flat rate of Rs. 70 as distinguished from one month's wages paid to the indoor workers in that behalf. We are unable to understand how the learned judge came to make this erroneous statement. For the appellant detailed statements had been filed in respect of each one of its workmen showing the amount of bonus paid to the workmen from 1953 onwards. Indeed, the learned judge himself has observed in

another part of his judgment that the "company granted bonus and that sometimes generously too cannot be much disputed." The statement filed by the appellant as well as the oral evidence given by the witnesses on behalf of respondent No. 1 clearly show that the conclusion of the learned judge that the appellant was guilty of making invidious discrimination between the indoor workmen and outdoor workmen is entirely unjustified. It may be that the appellant took the view that the indoor workmen worked longer than the outdoor salesmen and so the bonus paid to the two sets of workmen may not exactly be the same; but the disparity in the amounts of bonus paid to the two sets of workmen can be treated as "invidious discrimination" only, if it is shown that the disparity is very large and is otherwise not properly explained. On the record as it stands we see no ground to support the very strong finding made by the-learned judge against the appellant in this behalf.

10. Then, the learned Judge has described the implementation of the scheme in Calcutta in some graphic words by observing that "the company all at once fell upon the workmen with the letter of discharge dated 7-2-1957." Apart from the fact that such unbalanced language is generally out of place in judicial adjudications, on the merits the learned judge was gravely in error in ignoring the fact that what happened in February, 1957 at Calcutta represented the last phase of the implementation of the scheme of reorganisation adopted by the appellant as early as 1954. The terms of service of the outdoor salesmen seem to suggest that their services were liable to be terminated after a week's notice. The appellant, however, paid each one of these empolyees one month's salary in lieu of notice and half-month's salary per year of service by way of gratuity; or compensation. If only the learned judge had not completely lost sight of the basic fact that the appellant's case was that the discharge of the fourteen outdoor salesmen was in pursuance of a larger policy of reorganisation he would not have felt justified in passing the very severe strictures that he has passed against the appellant in this case. It is true that it has been brought out in evidence by respondent No. 1 that at Asansol and Jharia two salesmen were working directly under the appellant and that they had not been placed under any distributor. This circumstance incidentally brings out in bold relief the main fact that in all other places salesmen have been put under distributors by the appellant. In regard to the two places where the old system is still continuing, the director Mr. Phillippou has given a reasonable and satisfactory explanation. The salesman at Jharia is the section salesman and the sales at the place are very small and so the distributor was not willing to engage a man under him. The salesman in Asansol was retained by the company and then transferred to Kharagpur section as a section salesman. The job of the section salesman is to travel from one section to another, according to the programme fixed for him by the supervisor. That is why the services of these salesmen have not been terminated by the appellant. We have do doubt that on the record it must be taken as fully proved that the appellant has adopted the re-organisation scheme and the same has been implemented in all the areas where the appellant's business is conducted, between 1954 to 1957. It would be fantastic to suggest that in adopting this scheme of reorganisation over such a wide area the appellant was actuated by malice against its employees in Calcutta or that the scheme is a mere device adopted by the appellant for the purpose of discharging them.

11. There is one more point which needs to be considered. The learned judge has observed in his judgment that the appellant has "got the fundamental right to re-organise their business or close a particular department or section with a view to rationalise or economise their business."

As we have already pointed out, the learned judge has not considered the merits of the re-organisation scheme, though it would appear from the earlier observations in his judgment that he intended so to do. If the re-organised scheme has been adopted by the appellant for reasons of economy and convenience, and it has been introduced in all the areas of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the re-organisation has been adopted by the appellant bora fide or not; and so the learned judge was clearly in error in attaching importance to the consequence of reorganisation, in regard to the fourteen salesmen in the present case. Their discharge and retrenchment would have to be considered as an inevitable, though very unfortunate, consequence of the re-organised scheme which the employer, acting bona fide, was entitled to adopt. But apart from this technical or legal aspect, on the merits the learned judge has obviously been unfair in assuming that the discharged employees would not have been taken up by the distributor Ramlal Singh. Ramlal Singh was ill at the time when the evidence was recorded before the learned judge; but his clerk Mr. Datta has been examined and his evidence clearly shows that the appellant had used its good offices with its distributor, as a result of which Ramlal Singh had agreed to employ all the fourteen workmen discharged by the appellant. Indeed, two of them have already been employed by Mr. Ramlal Singh, and he had to employ several other workmen when he found that the rest of the workmen discharged by the appellant did not offer to work for him. The attitude adopted by the discharged workmen leaves no room for doubt that they wanted to fight for their rights & were not willing to take up the employment under Ramlal Singh, which they thought, may be rightly, was not as secure and safe as their employment under the appellant. The workmen were undoubtedly entitled to fight for what they thought to be their rights, but then it would not be fair to blame the appellant on the ground that no alternative employment was made available by the appellant to its discharged workmen. Thus in our opinion the finding of the learned judge that the failure of the appellant to secure to its discharged workmen alternative employment on the same or similar terms tends to show that the discharge by the appellant of its workmen was intended to victimise them cannot be accepted as sound.

12. We have carefully considered the ' reasons given by the learned judge in support of his findings that the discharge by the appellant of its fourteen outdoor salesmen amounts to an unfair labour practice and that its plea of re-organisation is nothing but a colourable device to throw off these workmen, and we have felt no hesitation in coming to the conclusion that the said findings are not only not supported by any evidence but are clearly inconsistent with it. That is why we accept Mr. Daphtary's argument that these findings are perverse and must be reversed. In the result, we hold that the discharge of the fourteen outdoor salesmen which was the subject-matter of the reference before the Labour Court is justified and so the workmen are not entitled to any relief. In view of these findings it is un necessary to consider the other questions sought to be raised by Mr. Daphtary before us about the status of the discharged workmen. The order passed by the Labour Court is accordingly set aside and the appeal is allowed. In regard to costs, Mr. Daphtary no doubt urged that in view of the result he was entitled to his costs; but ultimately, he fairly left this matter to our discretion. Having regard to the fact that the twelve outdoor salesmen discharged by the appellant who did not choose to take up employment with its distributor were unemployed during the time the appeal was pending in this court, we think, we should not direct them to pay the appellant's costs of this appeal. Parties will accordingly bear their own costs in this court.