The Swadeshi Industries Ltd. vs Its Workmen on 13 January, 1960

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Bench: P.B. Gajendragadkar, K. Subba Rao, K.C. Das Gupta

JUDGMENT

K.C. Das Gupta, J.

1. In this appeal the appellant, a public limited Company engaged in the manufacture of cotton textile, art-silk products and certain other goods challenges the correctness of an order made by the Labour Appellate Tribunal of India, Calcutta, by which in reversal of the order made by the Industrial Tribunal in a reference, of an industrial dispute between the Company and its workmen the Appellate Tribunal reinstated 230 workmen. These 230 workmen along with other workmen were represented at that time by a Trade Union registered under the name of Swadeshi Industries Mazdoor Union struck work on April 27, 1951. On May 24, 1951, the Company terminated the services of all the workmen. On June 8, 1951, however the Company issued a general notice asking the workmen to come back on June 9, 1951. Not a single workman responded to this; but after a similar notice was issued on June 17, 1951, intimating that the factory would re-open on June 18, 1951, and asking the workmen to come to their work, a large number of workmen but not including these 230 workmen joined and were employed. On July 25, 1951, the Government of West Bengal made the reference out of which this appeal has arisen stating that an industrial dispute existed between this company and their workmen represented by the Swadeshi Industries Mazdoor Union . in the several matters mentioned in the Schedule. Item 6 in the Schedule of the reference was as regards "dismissal of the workers and the relief they are entitled to". It appears that the registration of the "Swadeshi Industries Mazdoor Union, Panihati, Addy Bagan, 24-Parganas" was cancelled later and thereafter on January 14, 1952, the Government directed the substitution of the words "Swadeshi Industries Sramik Union, P.O., Panihati, 24-Parganas" in place of the words "Swadeshi Industries Mazdoor Union, Panihati, Addy Bagan, 24-Parganas" in the order making the reference. The reference in so far as it was between all their workmen excluding these 230 was disposed of by the Tribunal in accordance with the terms of a compromise which was entered into between the Company and the workmen represented by the new Union. These 230 workmen were not however represented by the Union and the reference in so far as it was between these 230 workmen and the Company was disposed of on contest. The Industrial Tribunal (hereinafter referred to as the "first

Tribunal") held that the strike was illegal inasmuch as these workmen struck work when, employed in a public utility service, that apart from that also the strike was unjustified, that the strikers were guilty of unfair labour practice and that the management had not terminated their services vindictively or capriciously. The first Tribunal was of opinion that the order of termination even though no charge-sheet had been framed and no enquiry had been held was justified. Accordingly it refused to order reinstatement or to award them any compensation and also made no order on the other matters mentioned in the Schedule.

2. The Appellate Tribunal held on the contrary that there was no evidence to show that the workmen had been employed in a public utility service and consequently held that the strike was not illegal. It was also of opinion on a consideration of all the circumstances of the case that the strike was justified. It was further of opinion that the termination of service of these 230 workmen without framing any charge-sheet or holding any enquiry was unjustified. It held that the Management acted vindictively and capriciously in making the order of termination and not in good faith, its purpose being to break the strike and weaken the position of the Mazdoor Union. It was of opinion that these 230 workmen were entitled to reinstatement.

3. The Appellate Tribunal rightly thought that the principal point for consideration was whether the strike was illegal. The decision of this depends on the answer to the question whether these 230 workmen were employed in the cotton textile section of the Company. Admittedly the cotton textile industry had before the date of the strike been declared to be a public utility service. It is also admitted that no notice of strike as provided in Section 22, Sub-section 1 of the Industrial Disputes Act had been given. It has to be remembered that if the appellant Company was engaged solely in cotton textile manufacture, it would have necessarily followed that as employees of the Company, all their workmen were employed in a public utility service. In fact, however the company had other units than the cotton textile section. In its own statement made before the first Tribunal the Company described itself as "mainly a silk and art-silk textile manufacturing concern". The Company's case appears to be however that the cotton weaving mill and the silk weaving mill formed really one unit and not two distinct units and that every person who is employed in this composite unit must be held to be an employee of the cotton textile industry and thus a public utility service. None of the three witnesses which the company examined has however said anything in support of the case that persons who are employed in the silk weaving unit are also employees of the cotton weaving mill. Opposite party's witness No. 3 Mul Chand Sharma said that in the loom shed of the textile section they had 151 looms, that no loom is exclusively used for manufacturing silk or cotton, that the workers could produce either silk or cotton textiles by the same loom, and they did that according to requirements. He has not said however that any of these 230 workmen were either at or about the time of the strike or at any time before that employed in the cotton weaving mill. Nor has it been stated that by the terms of their employment these 230 workmen were employed to work in the cotton mills or the silk mills as required. There is nothing to show that any work in the cotton textile section was ever assigned to any of these 230 workmen. The first Tribunal has stressed the fact that it has not been shown that it was the condition of their service that they would work in the cotton section alone or that they would work exclusively in the silk section. Quite clearly it was for the Company to show by clear and cogent evidence that the condition of service required all the persons employed in the silk section or for the matter of that these 230 workmen to work whenever

required in the cotton section; and that at or about the material time they were so working. No such evidence was produced. No fault therefore can be found with the conclusion of the Appellate Tribunal that there is no evidence to show that these 230 workmen or any of them were actually employed in the cotton section or ever worked in the cotton looms before the strike commenced and that consequently none of these workmen was a person employed in a public utility service and so the strike was not illegal.

4. In holding that the strike was justified the Appellate Tribunal laid stress on the fact that two of the terms of the agreement entered into by the workmen represented by the Mazdoor Union and the Company had not been implemented. One of these terms was that "the Company shall introduce provident fund system within a year." The provident fund system was introduced in September 1950 but not within a year from the date of the agreement. The appellant's counsel has complained that the Appellate Tribunal ignored the fact that though the implementation of this term was not exactly within a year from the date of the agreement it was long before the date of the strike. There is some substance in this complaint; but that does not take away from the validity of the finding that the strike was justified. Whether the strike was justified or not is a question of fact and when on a consideration of all the facts and circumstances the Appellate Tribunal has come to the conclusion that the strike was justified, that finding is not vitiated merely because it placed undue weight on one or more circumstances. If there was evidence before the Appellate Tribunal on which it could reasonably come to the conclusion that the strike was justified we shall not be justified in interfering with that decision. It cannot be seriously suggested that in this case there was no such evidence before the Appellate Tribunal. Though the Charter of Demands submitted on the 26th is not on the record a fair idea of what was demanded therein can be obtained from the items mentioned in the Schedule. Items 1 to 5 of the Schedule are : 1. Basic Pay. 2. Dearness Allowance. 3. Bonus. 4. Provident Fund and Gratuity and 5. Leave and Holidays. It may be said that the provident fund had already been started by the Company in terms of the earlier agreement. It is not however clear that anything had been done as regards any gratuity scheme. Collective bargaining for securing improvement on matters like these viz., Basic Pay, dear- ness allowance, bonus, provident fund and gratuity, leave and holidays is the primary object of a trade union and when demands like these are put forward and thereafter a strike is resorted to in an attempt to induce the Company to agree to the demands or at least to open negotiations the strike must prima facie be considered justified. There is nothing to indicate that these demands were being put up frivolously or for any ulterior purpose. It is in this connection that Company's conduct as regards the implementation of the tenth term in the earlier agreement was of importance. This term provided that the case of the clerks will be taken up in the month of June next, when the matter will be settled amicably by Shri Nabjyoti Burman, Shri S. R. Poddar and Shri S.R. Biswas, Labour Officer in a conference. Admittedly meetings did take place between these three persons but no settlement was arrived at. The first Tribunal appears to have assumed that the opinion of the mediators was unfavourable to the workmen. This assumption was made merely from the fact that no report was made by the mediators. As the appellant's Counsel fairly conceded there is no justification for such an assumption. All that we know is that these three persons, one from the Union, one from the Company and one from the Government Labour Department did meet. It is curious that the Company made no attempt to prove that it was the workers' representatives who stood in the way of the settlement.

5. In any case, the position in February 1951 was that since June 1949 when the case of the clerks was according to the agreement to be taken up, no settlement had been arrived at and the matter remained outstanding. In respect of the clerks therefore at least the demands for basic pay and dearness allowance etc., was an issue in respect of which the Union should reasonably be considered to have felt the need for negotiation.

6. All these matters have been fully considered by the Appellate Tribunal and on such consideration it has arrived at the conclusion that the strike was justified. There is in our opinion not the slightest basis for thinking that this conclusion is perverse.

7. The position therefore is that the conclusion of the Appellate Tribunal that the strike was not illegal and that it was justified remained unassailable. It was within a few days after the strike was launched that a general order terminating the services of all the workmen was made. The Appellate Tribunal thought that this order was made vindictively and mala fide, the purpose being to break the strike and weaken the position of the Mazdoor Union. Before us the Company's counsel has tried to suggest that these 230 members were guilty of violent activities. If that was the reason for which their services were sought to be terminated, if was necessary that it should be decided as a matter of fact by proper enquiry after giving reasonable opportunity to each workmen to show the contrary that he was so guilty of violence. But no enquiry was held, no charge-sheet was framed and none of these 230 workmen had an opportunity to show that he was not guilty of any violence. Indeed the very manner in which a general order terminating the services of all workmen was made shows that the termination was intended to be the punishment not for any violent conduct or any other misconduct but for the mere fact of taking part in the strike. Besides no attempt has been made to prove by satisfactory evidence before the Tribunal the charge that any of their workmen were guilty of violence. In these circumstances the order of reinstatement made by the Appellate Tribunal is fully justified.

8. The Company's Counsel drew our attention to the fact that while the order terminating the service of the workmen was made on May 24, 1951, the order of reinstatement was made in April, 1955. It is urged that in order to keep the factory going the Company had necessarily to appoint new men in place of those who had not joined though an opportunity was given to them. When however, as in this case, the order of termination is itself bad reinstatement cannot ordinarily be refused merely because a long time has elapsed. It has further to be noticed that the Appellate Tribunal points out that no material was placed before it to show that new hands had been taken in by the Company. No such material was shown before us.

9. In our opinion, the order of reinstatement made by the Appellate Tribunal was fully justified. The appeal is accordingly dismissed with costs.