Mahesh Transport Company vs The Transport And Dock Workers Union on 11 March, 1974

Equivalent citations: AIR1974SC868, [1974(28)FLR280], 1974LABLC595, (1974)4SCC355, 1974(6)UJ226(SC), AIR 1974 SUPREME COURT 868, 1974 4 SCC 355, 1974 LAB. I. C. 595, 28 FACLR 280

Bench: D.G. Palekar, P.N. Bhagwati, V.R. Krishna Iyer

JUDGMENT

Palekar, J

1. This appeal under Article 136 of the Constitution is from an Award dated June 29, 1968 made by the Central Government Industrial Tribunal, Bombay in Reference No. CGIT-73 of 1965. The reference of the Industrial dispute was as follows :

> Whether the management of M/s. Krishna Commercial Co., Bombay and M/s. Mahesh Transport Co. Bombay are justified in not implementing the interim recommendations of the wage Board for Port & Dock Workers as published with the Government of India, in the Ministry of Labour and Employment resolution No. W.B. 21(13)65 dated April 27, 1965 in respect of their Cement/Clinker handling workers at Bombay Port? If not, to what relief are the workmen entitled to and from what date?

2. The Tribunal, after taking evidence, came to the conclusion that the conclusion that the two Employers referred to in the reference were not justified in not implementing the interim recommendations of the wage Board & accordingly, passed an award in favour of the workers giving interim relief in accordance with the recommendations of the Wage Board.

3. Out of the two employers mentioned in the reference, only M/s. Mahesh Transport Co. has come in appeal. The other employer namely M/s. Krishna Commercial Co. has not.

4. The respondent in the present appeal is the Transport & Dock workers Union representing about 29 Dock workers who were alleged to be the employees of the two firms referred to above.

5. The Government of India had constituted a wage Board for the Port & Dock workers of major Ports and this Wage Board, by its report, dated April 9, 1965 recommended interim relief. The Government accepted these recommendations and directed that the Port & Dock workers should be paid additional interim relief as recommended by the Board. The respondent workers were not paid the additional relief and hence a dispute was raised on their behalf with their employers. The employers did not cooperate in the Conciliation proceedings with the Labour Commissioner, whereafter, the Government of India referred the dispute to the Industrial Tribunal.

6. A number of questions were raised before the Tribunal. But we are not concerned with all of them. Mr. Hardy, who appeared on behalf of the appellants, contested the jurisdiction of the Tribunal to entertain and determine the dispute and argued that the concept of common employment was foreign to Industrial Law and, in particular, the Industrial Disputes Act, 1947 and, therefore, the very reference was incompetent under Section 10(1)(d) of the Industrial disputes Act.

7. In order to appreciate the point raised, a few facts which are no longer in dispute, are necessary to be stated.

8. M/s. Krishna Commercial Co. was and is a partnership firm, & for many years was engaged in the business of loading and transporting of Cement ane Clinker at the Bombay Port on behalf of Digvijay Cement Co. Ltd. It appears that Cement and/or Clinker was brought by coastal vessels to the Bombay Port and after the same was unloaded on the wharf it was loaded into trucks and transported to the godowns of the Cement Company. This work had been entrusted by the Cement Company to M/s. Krishna Commercial, and M/s. Krishna Commercial got the work of unloading and loading done by a gang of about 29 Dock workers who are now represented by the Respondents. The workers worked in two shifts. Some worked in the first shift from 8.00 A.M. to 5.00 P.M. and the others worked in the second shift from 5.30 P.M. to midnight. The workers were paid on piece rate basis. For loading and unloading Cement, they were paid at the rate of 45 p. per ton and for loading and unloading Clinker, they were paid at the rate of 65 p. per ton. This gang of about 29 workers thus worked as employees of M/s. Krishna Commercial Co. for many years.

9. On 1-8-1965, however, i.e. after the Wage Board's recommendations were accepted by the Government of India, there came into existence the partnership firm of the appellants. We do not know if the formation of the new firm was inspired by the wage Board recommendations. The Tribunal has come to the conclusion that the two firms namely M/s. Krishna Commercial Co. and the appellants are two different entities and we shall proceed in the present case on that basis. The workers were working as the employees of M/s. Krishna Commercial Co. and did not know the, internal relationship between these two firms. They continued to work, as they were accustomed to do, for M/s. Krishna Commercial Co, After the creation of the new firm of the appellants, however, there was a division of functions between M/s. Krishna Commercial Co., on the one hand, and the appellants, on the other. The loading and unloading of Cement was allotted to M/s. Krishna Commercial Co. and the loading and unloading of Clinker was allotted to the appellants. In other words, this division of functions between the two firms, however, did not make any difference to the work done by the employees because they continued to receive the payments in accordance with the rates already prevailing. The workers came to know about this division sometime later. They promptly protested that they were working for only M/s. Krishna Commercial Co. and not for anybody else. Thereupon they were assured by M/s. Krishna Commercial Co. that they may continue to work as before and that they will not be barred by the Port authorities since, officially, steps had been taken to show them as workers of the appellants for the purpose of loading and unloading Clinker. In other words, as the Tribunal has observed :

> The workers continued to do the work for Mahesh Transport Co. (appellant) also on the same terms and conditions as agreed with Krishna Commercial and the evidence

> leaves no doubt that Mahesh Transport has taken over the work of cement clinkers of Krishna Commercial Co. along with the workmen without any break of service and there is the same relationship of master and servant between them and Mahesh Transport Co. which existed between the Krishna Commercial and these workmen.
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> That is the finding of the Tribunal after taking evidence. At the time the dispute was raised on behalf of the workers, however, the workers had no clear idea as to how the two employer firms were related to each other and adjusting the payment liability between themselves. They thought that the appellant firm was brought into existence merely to deprive the workers of their rights. Therefore, when the Wage Board's recommendations were not implemented, the workers made their complaint against both the firms. Since the employers did not cooperate with the Labour Commissioner in the Conciliation proceedings the Central Government made the reference describing both M/s. Krishna Commercial and the appellants as the employers.

10. It is contended by Mr. Hardy that on the very finding of the Tribunal that the workers are the employees of two masters the reference was incompetent, because, in his submission, the concept of common employment of more than one employer is foreign to the Industrial Law, and in particular, the Industrial Disputes Act, 1947. As a corollary to that proposition he further contended that the reference it self under Section 10(1)(d) was incompetent.

11. We do not think that there is any substance in either of these submissions. It must be noted that the principal case put forward by the two firms before the Tribunal was that these Dock workers were not their employees at all. Their case was that they were employees of a labour contractor with whom the firms had their contract and, therefore, the workers were not the direct employees of the firms. This contention was rejected by the Tribunal as false because the evidence clearly disclosed that the workers had come under the employ of both the firms and both the firms had paid these workers bonus for the year 1966 and 1967. A common employee of the firms namely Ram Niwas Pannalal used to make the payment to the workers on behalf of both the firms in respect of the work done for both the firms. In these circumstances, it is very difficult to see how the reference between the workers, on the one hand, and the two firms, on the other, is incompetent, The workers were not interested as to whether the one firm or the other bore the total responsibility for paying for the work which they were doing. In fact, they had thought that they were the employees of only M/s. Krishna Commercial Co. But the latter shared its liability to pay the workers with a new firm of the appellants after 1-8-1965; and if the two firms agree that they have so shared the liability both would be regarded as the employers of the workmen. The workers continued to do the same work and receive the same payment without any change in their employment. The change was merely in the Constitution of the employers, In fact the workers had not even agreed by a separate contract to work for the appellants. Therefore, there is no substance in the contention that on the finding of the Tribunal it should be held that this was a case of common employment. If what the two firms had done created a situation of common employment that was not of the seeking of the workers. The doctrine of common employment may, perhaps apply where the workers contract separately to serve two employers, without the latter's mutual agreement. That is not the case here. As to whether the doctrine of common employment is unknown to Industrial law it is not necessary for us to decide in

this case.

12. Mr. Hardy invited our attention to the judgment of a single Judge of the Andhra Pradesh High Court in G. Rangamannar Chetty v. The Industrial Tribunal where the learned Judge seems to have been of the view that a part-time employee is not covered by the Industrial Disputes Act. For that proposition he referred to the fact that several decisions of Industrial Tribunals had taken that view. The decisions of the Industrial Tribunals, however, have not been specifically referred to or discussed in the judgment, nor has the learned Judge discussed the matter independently. We do not wish to say in the absence of a detailed argument on the point, as to whether the workers appointed part-time by an employer may never get the benefits of the Industrial Disputes Act. So far as we are concerned in the present case, there is no question of part-time employment. All these workers are working in two shifts. There are definite hours when the two shifts are working. Ships may come with only Cement or Clinker or both. The workers in the relevant shift will have to unload the same on the wharf and then load the same in the trucks. If it is Cement it will be loaded in the trucks brought by M/s. Krishna Commercial Co. If it is Clinker it will be loaded in the trucks brought by the appellants. The tally clerk who is in the common employment of the firms will make the necessary note as to how much cement or Clinker was loaded and unloaded. The workers will then be paid accordingly, M/s. Krishna Commercial Co. taking the responsibility to pay for the Cement and the appellants for the Clinker. The two firms, as already stated, have merely split between themselves the responsibility for paying for loading and unloading Cement and Clinker in which business the respondent workers are employed. In these circumstances, we have no hesitation in saying that the reference was quite competent and so was the award.

13. Mr. Hardy then invited our attention to the actual order of interim relief passed by the Tribunal and sought to submit that it might be very difficult for the two firms to apportion among themselves the liability imposed by the award. We do not think there is any difficulty whatsoever. The two firms have employed common clerks to supervise the actual work done by the gang, how much for one firm, how much for the other. The interim relief is not only given on a monthly basis but also, alternatively, on shift basis. As the workers are working in shifts and the work done in each shift for each of the employers is duly noted, there is no difficulty at all as to how this additional relief given by the award should be shared between the two firms. Again, if the employers do not want to share the liability on shift basis they know how much interim relief they have to pay to each worker every month, having regard to the total work done by each worker individually for them.

14. In the result the appeal fails and is dismissed with costs.