Bengal Bus Syndicate Vs M.K. Roy and Others

Civil Revision Case No. 110 of 1965

Court: Calcutta High Court

Date of Decision: June 29, 1966

Acts Referred:
Industrial Disputes Act, 1947 â€" Section 33C(2), 36A

Citation: AIR 1967 Cal 126 : (1967) 14 FLR 64 : (1967) 2 LLJ 314

Hon'ble Judges: Bijayesh Mukherji, J

Bench: Single Bench

Advocate: Arun Kumar Dutta and Amarnath Dhole, for the Appellant; Kashi Kanta Maitra and Madan Mohan Saha for Nos. 2 and 4 and Bankim Chandra Dutt, Addl. Govt. Pleader for Nos. 1 and 3, for the Respondent

Judgement

Bijayesh Mukherji, J.
By this rule obtained under Article 227 of the Constitution, Messrs. Bengal Bus Syndicate seeks reversal of the

decision dated September 30, 1964, of a labour Court here, computing under S, 33-C, Sub-section 2 of the Industrial Disputes Act, 14 of 1947,

the monetary benefits payable by the Syndicate to its quondam employee, (a starter), Chandra Kant Misra, opposite party No. 2, as under:

1. Back wages for 18Ã¯Â¿Â½ months from February 1, 1961 to mid-August Rs. 1,850.00

1962 at Rs. 100 a month

2. Bonus for 1961 Rs. 100.00

3. Compensation for 10 years with bonus of Rs. 100 a year Rs. 13,000.00

Total : Rs. 14,950.00

2. The preliminary facts leading to such computation are not in the realm of dispute. On April 30, 1962, an industrial tribunal here recorded an

award directing the Syndicate (i) to reinstate Chandra Kant to his former job, with continuity of service, and (ii) to pay him all back dues for the

period of his forced unemployment within one month from the publication of the award. The award was published in the Calcutta Gazette dated

July 19, 1962. See Part 1 thereof at pp. 2084-2090. The Syndicate defied the award. The State Government, therefore, specified, u/s 33-C, Sub-

section 2, again, this particular labour Court as the Court for computing in terms of money, the benefit receivable by Chandra Kant, in pursuance

of the award: vide the relevant Government order dated February 29. 1964, with an assortment of various figures and alphabets as its number.

This is how the labour Court came to be seized of the matter.

3. Mr. Arun Kumar Dutt, appearing in support of the rule, addresses me on three points. First: Chandra Kant did not press into service the

statutory form Q/2 in making the application he did u/s 33-C, Sub-section 2. By not having done what he should have done, he has placed himself

outside the statute. Second: computation of the benefit, in terms of money, as made, is outside the scope of Section 33-C. Sub-section 2. Third:

failure to invoke Section 36-A means failure of the opposite party workman"s case. I have been addressed on no other point.

4. The first point has only to be stated in order to be rejected. Comparing a paradigm of the form Q/2 with the application Chandra Kant made

before the labour Court, I find, all material particulars prescribed in the form are in the application. And still it will go down as an ineffective one! In

a judicial tribunal form yields in favour of substance, and not vice versa.

5. Mr. Dutt however, will not allow me to leave the matter here. He has been good enough to cite two cases, the first of which is that well-known

decision of a Full Bench of this Court: Jatindra Nath De v. Jetu Mahato 50 CWN 502: (AIR 1946 Cal 339) laying down that a co-sharer landlord

could avail himself of his right of pre-emption under the old Section 26-F of the Bengal Tenancy Act, even after the new Section 26-F had come

into force, by virtue of the 1938 Amendment, conferring such right to co-sharer tenants only, if the transfer was before the amendment. What that

has got to do with form Q/2 defeats me. This statutory form, for all I see, does not confer any right on the workman. Section 33-C, Sub-section 2,

does. The form is there merely as an example, it is a mere form given for convenience" sake offering a little guidance to the workman as to what his

application under Rule 74, Sub-rule 3, of the Industrial Disputes Rules should contain, if he is minded to apply for relief on specification of a labour

Court by the State Government u/s 33-C, Sub-section 2. That being so, not using the form simpliciter cannot deprive the workman of his right he

has under the main enactment: Section 33-C, Sub-section 2, and also under the statutory instrument which is here Rule 74, Sub-rule 3; the more

so, when all the material particulars mentioned in the form are to be found in Chandra Kant"s application under Rule 74, Sub-rule 3, on plain

paper, before the labour Court. To hold the opposite will be to turn upside down all the recognized principles upon which Courts of law construe

Acts of Parliament.

6. Equally irrelevant is Abbot v. Minister for Lands 1895 AC 425 cited in the Full Bench decision just referred to--a case Mr. Dutt will not pass

by. There. Section 22 of the Crown Lands Alienation Act 1861 gave a right to a holder of grant in fee simple to apply for further purchase. With

the Crown Lands Act 1884 coming into force and repealing the 1861 Act such right was no more. Certain of the provisions of the 1861 Act were

re-enacted in the 1884 VI, but not Section 22. Still provision there was preserving the right accrued. So what? The mere light, if it can he called a

right at all, to take advantage of an enactment is not a right accrued. The enactment being no more, the right to take advantage thereunder can be

no more too. Here, Chandra Kant"s right is nothing like it. It is a right which flows from his refractory employer infracting the award of a

competent tribunal. It is a right u/s 33-C, Sub-section 2, which is a live law.

7. The second case Mr. Dutt relies upon is Management of Technological Institute of Textile v. Workmen, reported in (1985) 11 FLR 11 where

the Supreme Court holds that a certain settlement arrived at cannot be regarded as binding upon the parties in the absence of evidence to show

that Rule 58 of the Industrial Disputes (Punjab) Rules was complied with and in the absence of necessary formalities. A settlement is a serious thing

where every formality has an importance all its own. See the definition of settlement in Section 2(p) of the Industrial Disputes Act. That can hardly

be equated with the non-use of form Q/2 when all thai is required to be stated in that form has been stated in the application on plain paper.

8. The first point, therefore, fails.

9. The second point has no substance either. The very decisions of the Supreme Court Mr. Dutt cites: S.S. Shetty Vs. Bharat Nidhi, Ltd., and the

The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., go against him. True it is that the monetary value of the benefit of reinstatement is to be

computed not on the basis of a breach of the contract of employment nor on the basis of tort for non-implementation of the award.--as held by the

Supreme Court in S.S. Shetty Vs. Bharat Nidhi, Ltd., And Mr. Dutt emphasizes it. But the Supreme Court has held a little more too in the same

case, as Mr. Bankim Dutt. appearing for the Judge, Labour Court, and the State. submits: the computation has to be made by taking into account

various matters, such as the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the

instance of either party, of retrenchment by the employer, of resignation or retirement by the employee. of the employer himself ceasing to exist of

the workman reaping the benefits of future awards etc. etc. Once this is remembered, the yardstick of 10 years applied bv the Labour Court does

not appear o be open to the criticism that has been made. It is futile to expect a mathematical precision in cases of this type. What is required is a

rough-and-ready justice to both--the employer and the employee. And that is what I see here.

10. The decision S.S. Shetty Vs. Bharat Nidhi, Ltd., no doubt turns on Section 20, Sub-section 2, of the Industrial Disputes (Appellate Tribunal)

Act 1950 But that matters little. Because, as pointed out by Gajendra gadkar, J. (as his Lordship then was) in The Central Bank of India Ltd. Vs.

P.S. Rajagopalan etc., , the provisions of Section 20, Sub-section 2, roughly correspond to those of Section 33-C. Sub-section 2, of the Industrial

Disputes Act 1947 under which the Labour Court has made the computation complained of. The two points of distinction his Lordship refers to

between Section 20,Sub-section 2, and Section 33-C, Sub-section 2, do not prevent the principle of interpretation laid down in S.S. Shetty Vs.

Bharat Nidhi, Ltd., from being applied here. And the principle was in fact applied by the Supreme Court in Victor Oil Co. Ltd. v. Amaranth Das

(1961) 2 Lab LJ 113 (SC) a case u/s 33-C too.

11. Mr. Dutt contends that the monetary value went down in Victor Oil Co."s case (1961) 2 Lab LJ 113 (SC) because the workmen were nol

permanent hands. It did. But it is nobody"s case before me that Chandra Kant was a non-permanent workman under the Syndicate.

12. I am not impressed either by Mr. Dutt"s attempt to flee Section 33-C. Sub-section 2, on the ground that the award of the Industrial Tribunal

awards no benefit which is capable of being computed in terms of money. The award directs the Syndicate to reinstate Chandra Kant with

continuity of service and to pay him back all his dues for the period of his forced un-employment. What is it, if not benefit? The Syndicate does

neither reinstate him nor give him his back dues. Therefore, this twofold benefit has to be and is capable of being computed in terms of money.

That is exactly what has been done.

13. And then what is at the back of such contention by which, if successful, the Syndicate will fall out of the frying pan of Sub-section 2 into the fire

of Sub-section 1 (of Section 33-C), facing a much harsher measure of the workman"s dues being realized by certificate procedure? But it cannot

be successful. Section 33-C. Sub-section 2, in terms, applies.

14. The third point remains. Of the three, each a weak one, it appears to be the weakest Section 36-A at first sight looks like what was once

called in England ""Henry VIII clause"" named after that monarch in disrespectful commemoration of his tendency to absolutism, giving the executive

or a minister a power of dispensation to remove by order any difficulty or doubt which may arise in the working of the Act with a view to bringing

the Act into full operation. See C. K. Alien Law and Orders. 2nd edition, p. 198, and also Sm. Prativa Pal alias Sm. Prativa Rani Pal Vs. Janhabi

Charan Chatterjee alias J.C. Chatterjee, . Looking, however, a little below the surface, it is apparent that Section 36-A falls far short of that But

where is the doubt or difficulty in the case in hand about the plainest of a plain award by the industrial tribunal? Then, the doubt or the difficulty has

to be of the State Government, not of Chandra Kant, nor of the Syndicate. And the State Government has no manner of doubt or difficulty.

Indeed, there cannot b"" any; the award is To say, therefore, that Chandra Kant''s case fails, because of the failure to call in aid Section 36-A, is to

say the unpayable. Indeed, it is difficult to conceive of a weaker argument in support of a hopeless plea.

15. Last, but by no means least. I do not find any error apparent on the face of the record, nor anything which violates the principles of natural

justice I have not been addressed on any, save on what goes before, which falls under neither.

16. In the result, the rule fails and do stand discharged with costs.

17. The opposite party No. 2, Chandra Kant Misra, is at liberty to withdraw the sum of Rs. 6,500 lying in deposit in Court in terms of P. B.

Mukharji, J.''s order dated January 11 and March 29, 1965.

18. On behalf of the petitioner, I have been asked to stay the operation of this order for eight weeks from this day. I find before me a workman out

of employment all these years. So, I shall not stay the operation of the whole of the order. I direct instead that the opposite party No. 2, Chandra

Kanta Misra, be entitled to withdraw Rs. 2,000 (Rupees two thousand only) out of the amount lying in deposit in this Court. So I direct in

modification of what goes before. And the remaining sum, which is lying in this Court, he shall he able to withdraw only on the expiry of eight

weeks from this day. The verbal prayer of stay is granted to that extent.