GHATGE & PATIL CONCERN'S EMPLOYEES' UNION

v.

GHATGE & PATIL (TRANSPORTS) PRIVATE LTD. & ANR.

August 22, 1967

[M. HIDAYATULLAH AND V. BHARGAVA, JJ.]

Motor Transport Workers Act, 1961—Definition of 'Motor Transport Worker'—'Employed', meaning of—Industrial Dispute—Transport company giving trucks on hire to contractors—Former drivers of trucks becoming contractors after resigning from service of company—Such contractors whether Motor Transport Workers—Contract system whether amounts to unfair labour practice.

The respondent company carried on the business of transport and removal of goods by road. It owned a fleet of trucks and employed drivers and cleaners to run them. In 1963 the company, finding difficulty in observing the provisions of the Motor Transport Workers Act 1961, introduced a scheme whereby the trucks, instead of being run by the company itself were hired out to contractors at a fixed rate per mile. Employees of the company who were engaged in running the trucks resigned their jobs and most of them who had formerly been drivers became contractors under the scheme. The workmens' Union however raised a dispute asking for the reinstatement of the ex-employees who had been given work on contract basis. The Tribunal held that the contract system could not be said to be an unfair labour practice, for the ex-employees were never coerced or forced to resign their jobs, and they got more benefits from the contract system than from their original contract of employment. In appeal to this Court the Union contended that the ex-employees of the company continued to be workmen notwithstanding that they were posed as independent contractors, that the beneficent legislation conceived in the interests of transport workers was being set at naught by the company, and that the setting up of the contract system amounted to unfair labour practice.

Held: (i) Since the drivers had resigned their jobs they could not be said to be employed in the Motor Transport undertaking. The word 'employed' in the definition of Motor Transport. Worker is not used in the sense of *using the services of a person* but rather in the sense of *keeping a person in one's service*. Persons who are independent and hire a vehicle for their own operation paying a fixed hire per mile from their earnings cannot be said to be persons employed in the Motor Transport Undertaking in the sense of persons *kept in service*. The operators were therefore not Motor Transport Workers within the definition. [304F—H]

(ii) There was no bar in law to the introduction of the contract system. A person must be considered free to so arrange his business that he avoids a regulatory law and its penal consequences which he has without the arrangement, no proper means of obeying. This, of course, he can do only so long as he does not break that or any other law. [306 B-C]

(iii) Those who resigned did so voluntarily and they got substantial benefits under the new system. The Tribunal was right in its conclusion that there was no exploitation of the ex-employees. There

A was thus no unfair labour practice. The present case was not analogous to the case of contract labour when employment of labour through a contractor or middleman put the labour at a disadvantage in collective bargaining and thus robbed labour of an important weapon in its armoury. [305E—306A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 437 of 1966.

B

Appeal by special leave from the Award dated March 31, 1964 of the Industrial Tribunal, Maharashtra in Reference (IT) No. 40 of 1963.

H. K. Sowani, K. Rajendra Chaudhuri and *K. R. Chaudhuri*, for the appellant.

H. R. Gokhale and *I. N. Shroff*, for respondent No. 1.

C

The Judgment of the Court was delivered by

Hidayatullah, J. This is an appeal by special leave against the award dated March 31, 1964 of the Industrial Tribunal, Maharashtra in a Reference by Government under s. 10(1)(d) of the Industrial Disputes Act, 1947. The appellant is a Trade Union
D established on January 1, 1962 by the employees of Ghatge & Patil (Transports) Private Ltd. and the respondent is the Company. The Company has its registered office at Kolhapur and is engaged in the transport and removal of goods by road. It operates on a large scale owning at the material time as many as 70 trucks and plies them from Kolhapur (where the registered office of the Company is situate) to far off places such as Bombay, Poona, Bangalore, Goa and Madras.

E

On January 14, 1963, the Union served a notice of demand upon the Company asking for the abolition of a newly introduced contract system for the running of vehicles. This was referred first to the Conciliation Officer, but later the reference was made by Government as stated already. The dispute arose in the following circumstances:

F

For the operation of its trucks the Company was previously employing 70 drivers and an equal number of cleaners. On January 8, 1963, the Company advertised in a local newspaper of Kolhapur that it had trucks in working condition for sale and also trucks in working condition to be given for plying on a contract system. As many as 54 drivers applied for obtaining contracts having resigned their service as drivers. The Company then entered
G into agreements with these drivers between January 9 and 31. Each driver received one motor truck for operation according to the terms of the agreement. A model agreement has been produced in the case in which the parties, after reciting that there were difficulties in operating motor transport vehicles, because of the passing of the Motor Transport Workers Act, stated that the agreement
H was being entered into for the operation of the trucks. It is not necessary either to set out the agreement or to analyse all its terms.

For our purpose it is sufficient to say that the Company let to these former drivers (to whom we may refer as operators) a truck each on condition that they paid the Company Re. 1.00 per mile for its use. The Company on its part undertook to supply fuel, oil, tyres, tubes, etc. for the purpose of running the vehicle. Under this agreement the operator was at liberty to canvass for goods and transport them but he was required to give the utmost priority to the goods entrusted to the Company for transport. In this way the goods booked with the Company were transported by the operators in priority and they paid Re. 1.00 per mile for the use of the truck, all other expenses being borne by the Company. The operators were required to bring all the gross receipts to the Company which deducted its own charges at Re. 1.00 per mile and handed over the balance. The operators were responsible for any damage to the vehicle, save normal wear and tear, and were required to observe the terms and conditions of the permit held by the Company. In this way, the Company continued to function as a transport undertaking while the trucks were not run through paid servants but through independent contractors.

The above move by the Company was necessary (so the Company admits) because of the passing of the Motor Transport Workers Act, 1961, on May 20, 1961. This Act was passed to provide for the welfare of Motor Transport workers and to regulate the conditions of their work. It applies to Motor Transport Undertakings, by which is meant, among other things, undertakings engaged in carrying goods by road for hire or reward. Such undertakings are required to register under the Act and an inspecting staff is brought into existence for the purpose of seeing that the requirements of the Act are carried out. The fourth chapter of the Act (headed "Welfare and Health") requires the Motor Transport Undertakings to provide canteens in every place where 100 Motor Transport workers or more are employed; rest rooms for the use of such workers, uniforms, medical and First-Aid facilities. The fifth chapter prescribes the hours of work for Motor Transport workers and in ordinary circumstances puts a ceiling of 48 hours in a week and a maximum of 8 hours a day and a daily interval for rest after 5 hours of work, with a spreadover of not more than 12 hours in every day. It also provides for a day of weekly rest. The sixth chapter prohibits the employment of children, enjoins the carrying of tokens by employees and provides for their medical examination. The seventh chapter applies the Payment of Wages Act and provides for annual leave with wages and extra wage for over-time. The eighth chapter provides for penalties and procedure and the ninth chapter gives power to the Government to grant exemptions, to make rules and to give directions. Section 37, which is in this last chapter, provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service whether made before or after the commencement of this Act but not so as to take away from a Motor Trans-

A port worker an existing benefit which is more favourable than those under the Act or to prevent him from entering into an agreement for better rights and privileges than those given to him by the Act.

The Company frankly admitted at all stages that it was impossible for it to implement all the conditions of the Act in respect B of the drivers of motor vehicles. It stated that its motor drivers, while working in its employment, were required to go on long journeys and it was practically impossible to enforce the conditions of hours of work or of rest. Since this entailed penal consequences and the possibility of the permits being cancelled, the Company was forced to adopt a system under which it would not be required to observe the Act because under it the truck drivers became C independent contractors and were therefore not within the ambit of the Act. On the other hand, the Union contended that this arrangement was invented to nullify the beneficial legislation intended to improve the conditions of Motor Transport workers in general and truck drivers in particular. Under the system, the Union submitted, the drivers lost the benefit of leave of various kinds, over-time payment, Provident Fund, gratuity and insurance and D there was no control either in respect of hours of work or of rest which were the main objects of the Act to secure.

The matter of dispute referred to the Tribunal was:—

> "The contract system for the running of vehicles which has been newly introduced, must be abolished immediately. Such ex-employees of the Company who have been E given this work on contract basis should be reinstated with back wages".

The Tribunal held that the first part as also the second referred to the 54 drivers who had resigned their jobs and become operators. The Tribunal saw difficulty in acting on the second part because the drivers had resigned. In dealing with this problem the Tribunal considered the evidence and came to the conclusion that the F drivers were not coerced or forced to take this action. The Tribunal then posed the question, how to re-instate persons who had voluntarily resigned their services and could not be said to be dismissed, discharged or retrenched within the Industrial Disputes Act? The Tribunal also held that the agreements were simple agreements for transport of goods and were essentially fair to the operators. Of course, there were advantages as well as disadvantaG ges but the employees not being servants were free agents and could do the work as and when they liked and even accept work from others. They thus got, what they considered, more benefit from the contract system than from their contract of employment. None of the drivers had appeared to complain against the new system. There was also nothing to show that this system took unfair H advantage of the former drivers. The Tribunal, therefore, held that the contract system could not be described as an unfair labour practice. The Tribunal also commented that under the agreements

themselves the contract was capable of being terminated by three days' notice on either side and hence it was hardly necessary for the Union to take recourse to a Tribunal for getting it abolished. Holding that the new system could not be said to be an unfair or anti-labour practice the Tribunal rejected the claim of the Union. The Union now appeals by special leave. A

The argument on behalf of the Union centres round two facts. Firstly, that the resignation of the drivers and cleaners and the setting up of the contract system amounts to an unfair labour practice and exploitation of labour because by this device these and other transport workers are being victimized; and, secondly, the salutary and beneficial legislation conceived in the best interest of the transport workers is being deliberately set at naught. According to the Union the operators continue to be workmen notwithstanding that they are posed as independent contractors hiring the trucks. By this system many of the benefits secured to the Motor Transport workers including drivers and cleaners, have been made inapplicable to a section of Motor Transport workers, namely, the former drivers and cleaners employed by the Company. The argument on the side of the Company is that the hiring out of trucks to the operators is not illegal and does not amount to exploitation of the former drivers or an unfair labour practice. According to the Company the operators are free agents and freely resigned their jobs and the Company points out that even the office-bearers of the Union were among those who resigned as drivers and entered into agreements to become operators. The Company further points out that many of the contracts were entered into after the present reference was made to the Tribunal. B C D E

There is no doubt that the Company is a Motor Transport Undertaking because it is engaged in carrying goods by road for hire or reward. Since the drivers have resigned their jobs they cannot be said to be employed in the Motor Transport Undertaking. The word "employed" in the definition of Motor Transport worker is not used in the sense of *using the servides of a person* but rather in the sense of *keeping a person in one's service*. The definition is, of course, made wide to take in all persons working in a professional capacity in an undertaking for running its affairs in any capacity and not only persons employed on wages. The word "wage" has the meaning given to the word in the Payment of Wages Act and takes in all paid employees and also persons who are employed in a professional capacity although not in receipt of wages. Persons who are independent and hire a vehicle for their own operation paying a fixed hire per mile from their earnings cannot be said to be persons employed in the Motor Transport Undertaking in the sense of persons *kept in service*. The operators, therefore, are not Motor Transport workers within the definition. F G H

The Act is not only intended to confer benefits on Motor Transport workers but is also regulatory with penal consequences.

A The apprehension of the Company is that some of the regulatory provisions of the Act are incapable of being observed properly in the case of drivers and cleaners going on long journeys because there is no means of enforcing them. For example, the provisions about hours of work, hours of rest etc. are not easy to enforce en-route or at far off places. Therefore, rather than run the risk of B losing the permit for want of compliance with the Motor Transport Workers Act, the Company has decided not to run transport trucks itself but to let them be run by independent hirers. There does not appear to be any bar in law to such action. Section 59 of the Motor Vehicles Act contemplates the transfer of permits with the permission of the Transport Authorities and this enables any person to whom a vehicle covered by the permit is transferred to get the right C to use the vehicle in the manner authorised by the permit. Here the vehicle is not *transferred* but is only let out on hire and hence there is *prima facie* no need for permission. The Union made no attempt before us to establish that the inauguration of the contract system offended the Motor Vehicles Act or was prohibited under it. No objection to the system by the Authorities under the Motor Vehicles Act was proved in the case. The operators also seem to be D happy because no operator appeared to complain and the only dissatisfaction has been registered by the Union which apparently lost the allegiance of some of its former members and even office-bearers. In view of the findings of the Tribunal, which we see no reason to dis-approve, it must be held that the drivers voluntarily resigned and entered into the agreements since they apparently considered them to be more favourable than the terms of their E former employment. In this view of the matter it is difficult to hold that the Tribunal was wrong in its conclusion that there was no exploitation of the drivers. It is also equally true that there is no bar in law to the introduction of the system.

The Union, however, contends that on the analogy of some cases of this Court in which contract labour was put down as un-F fair labour practice because it involved exploitation of labour, we should declare this system also to be harmful to the interests of labour. Contract labour was declared in this Court to be an unfair labour practice because the intention was to introduce a middle man to avoid observance of laws and to deny to labour the advantages it had acquired by bargaining or as a result of awards. Such is hardly the case here. The two systems were there for the drivers G to choose. It is reasonable to think that the drivers must have chosen a system which was considered by them to be more beneficial to themselves. There was no compulsion for the drivers to resign their jobs and they did so voluntarily obviously thinking that the new system was more profitable to them. We cannot lose sight of the fact that some of the office-bearers of the Union were H among the first to resign. Many of the drivers resigned the jobs and entered into agreements even after the dispute was taken up by the Union. The present case is, therefore, not analogous to the case of

contract labour where employment of labour through a contractor or middleman put the labour at a disadvantage in collective bargaining and thus robbed labour of an important weapon in its armoury. A

The matter of dispute no doubt referred in the second part to ex-drivers but it referred generally to the new system in the first. The Tribunal was wrong in thinking that the first part also referred to the ex-drivers (now operators). On the whole, however, it is clear that the Company has not done anything illegal. A person must be considered free to so arrange his business that he avoids a regulatory law and its penal consequences which he has, without the arrangement, no proper means of obeying. This, of course, he can do only so long as he does not break that or any other law. The Company has declared before us that it is quite prepared, if it was not already doing so, to apply and observe the provisions of the Motor Transport Workers Act in respect of its employees proper where such provisions can be made applicable. In view of this declaration we see no reason to interfere, because Parliament has not chosen to say that transport trucks will be run only through paid employees and not independent operators. The appeal fails but in the circumstances of the case we make no order as to costs. B C D

G.C. *Appeal dismissed.*