

KESATUAN KEBANGSAAN WARTAWAN MALAYSIA & ANOR *a*

v.

SYARIKAT PEMANDANGAN SINAR SDN BHD & ANOR

FEDERAL COURT, KUALA LUMPUR *b*
STEVE SHIM CJ (SABAH & SARAWAK)

MOHAMED DZAIDDIN FCJ

ABU MANSOR ALI FCJ

[CIVIL APPEAL NO: 02-14-200(W)]

27 JUNE 2001 *c*

LABOUR LAW: *Trade Union - Collective agreement - Cognisance given by Industrial Court - Company placed under receivership - Whether respondents were successors, assignees or transferees of party to collective agreement - Industrial Relations Act 1967, s. 17(1)(a) - Whether respondents bound by collective agreement* *d*

STATUTORY INTERPRETATION: *Construction of statutes - Purposive approach - Whether a better mode in preserving Parliament's intention - Industrial Relations Act 1967, s. 17(1)(a)*

WORDS AND PHRASES: *"their successors, assignees or transferees" - Section 17(1)(a) Industrial Relations Act 1967 - Whether to mean parties to an agreement - Whether concerns members of the trade union of employers to whom the collective agreement relates* *e*

The 1st appellant had entered into a collective agreement, which was given cognisance by the Industrial Court, with Sin Poh Amalgamated ('the company'), a newspaper publisher. The company was later placed under receivership and its publishing rights were subsequently taken over by the 1st respondent, Syarikat Pemandangan Sinar which was a subsidiary of the 2nd respondent. *f*

In a complaint for non-compliance forwarded to the Industrial Court by the 1st appellant against the company, the former had sought to include the 1st and 2nd respondents under s. 17(1)(a) of the Industrial Relations Act 1967 ('the Act') as the company's successors, assignees or transferees. *Vide* Award No. 190 of 1993, the Industrial Court found for the appellants. The respondents' appeal to the High Court was dismissed but upon further appeal the Court of Appeal reversed the High Court and quashed the award. *g*

This was an appeal against the decision of the Court of Appeal in construing the words "their successors, assignees or transferees" appearing in s. 17(1)(a) of the Act which in effect rendered the respondents unbound by the collective agreement. *h*

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a **Held:**

Per Steve Shim CJ (Sabah & Sarawak)

[1] In construing a statute, Parliament's intention must not only be deduced from the language used but also from the social and economic conditions which gave rise to it and the mischief it was meant to remedy.

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[2] As the primary aim of the Industrial Relations Act 1967 is to promote social justice, industrial peace and harmony, the purposive approach is more suited in interpreting the Act in order to achieve the object desired by Parliament.

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[3] Under s. 17(1)(b) of the Act, all employees are bound whether or not they are members of the union which negotiated the collective agreement or whether they join as employees subsequent to the date of the collective agreement. Cutting across the law of contract, it is meant for general application of the collective agreement on all employees of the company.

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[3a] Accordingly, s. 17(1)(a) of the Act which involves employers, must apply the same approach taken in construing s. 17(1)(b).

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[3b] The rationale here involves the continuity of the collective agreement from the original parties and members of the union to their successors, assignees or transferees, and is a means of ensuring that the rights and obligations be preserved by those taking over from the original parties.

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[4] The Court of Appeal had erred in construing the words "their successors, assignees or transferees" contained in s. 17(1)(a) of the Act. Those words must be taken to mean the successors, assignees or transferees of both parties to the collective agreement and the members of the trade union of the employers to whom the collective agreement related.

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[5] In light of this ruling, Industrial Court Award No. 190 of 1993 and the High Court's decision were affirmed. The respondents were therefore bound by the collective agreement (Cognisance No. 71/87).

[Appeal allowed with costs.]

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[Bahasa Malaysia Translation Of Headnotes]

Perayu pertama telah memasuki suatu perjanjian bersama, yang telah diberi pengiktirafan oleh Mahkamah Perusahaan, dengan Sin Poh ('syarikat tersebut'), sebuah penerbit akhbar. Syarikat tersebut kemudiannya diletakkan di bawah kuasa penerima dan hak penerbitan akhbarnya telah sejurus itu diambil alih oleh responden pertama, Syarikat Pemandangan Sinar yang merupakan subsidiari responden kedua.

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Dalam suatu aduan ketidakpatuhan yang dihadapi ke Mahkamah Perusahaan oleh perayu pertama terhadap syarikat tersebut, perayu mencuba untuk memasukkan responden pertama dan kedua di bawah s. 17(1)(a) Akta Perhubungan Perusahaan 1967 ('Akta tersebut') sebagai pengganti, pemegang hak atau penerima pindahan syarikat tersebut. Melalui Award No. 190 tahun 1993, Mahkamah Perusahaan telah menurunkan award yang berpihak kepada pihak perayu. Pihak responden telah membuat rayuan kepada Mahkamah Tinggi yang telah menolak permohonan mereka pada 21 April 1995. Hal ini kemudiannya dihadapi ke Mahkamah Rayuan yang mengakaskan keputusan Mahkamah Tinggi dan membatalkan award tersebut.

Ini adalah suatu rayuan terhadap keputusan Mahkamah Rayuan dalam menafsirkan perkataan- perkataan "their successors, assignees or transferees" yang tertera dalam s. 17(1)(a) Akta tersebut yang mana kesannya menyebabkan pihak responden tidak terikat dengan perjanjian bersama tersebut.

Diputuskan:
Oleh Steve Shim HB (Sabah & Sarawak)

- [1] Dalam menafsirkan sesuatu statut, niat Parlimen semestinya bukan sahaja patut disimpulkan dari bahasa yang digunakan, malah dari keadaan sosial dan ekonomi yang menyebabkannya dan juga elak mudarat yang ia sepatutnya memulihkan.
- [2] Oleh kerana matlamat utama Akta Perhubungan Perusahaan 1967 adalah untuk menggalakkan keadilan sosial, perhubungan perusahaan yang aman dan damai, pendekatan secara purposif didapati lebih sesuai untuk menafsirkan Akta berkenaan demi mencapai matlamat Parlimen.
- [3] Di bawah s. 17(1)(b), semua pekerja terikat samada mereka merupakan ahli kesatuan sekerja yang telah membuat rundingan mengenai perjanjian bersama tersebut atau samada mereka telah masuk sebagai pekerja sebelum tarikh perjanjian bersama tersebut. Dalam melangkaui undang-undang kontrak, ia bermaksud untuk penggunaan am berjanjian bersama ke atas kesemua pekerja syarikat.
- [3a] Oleh itu, s. 17(1)(a) yang melibatkan majikan, seharusnya menggunakan pendekatan yang sama terpakai dalam menafsirkan s. 17(1)(b).
- [3b] Rasional di sini membabitkan kesinambungan perjanjian bersama daripada pihak asal dan ahli-ahli kesatuan kepada pengganti, pemegang hak atau penerima pindahan mereka dan merupakan suatu cara untuk memastikan yang hak dan kewajipan dikekalkan oleh mereka yang mengambil alih dari pihak asal.

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- a* [4] Mahkamah Rayuan tersilap dalam menafsirkan perkataan-perkataan “their successors, assignees or transferees” yang tertera dalam s. 17(1)(a) Akta tersebut. Perkataan-perkataan tersebut semestinya bermakna pengganti, pemegang hak atau penerima pindahan kedua belah pihak kepada perjanjian bersama termasuk ahli-ahli kesatuan kepada majikan yang disebut dalam perjanjian bersama.

- b* [5] Mengikut keputusan ini, Award No. 190/93 Mahkamah Perusahaan dan perintah Mahkamah Tinggi bertarikh 21 April 1995 disahkan. Dengan itu, pihak responden adalah terikat dengan perjanjian bersama bertarikh 27 April 1987 (Bil. Pengiktirafan 71/87)

c [Rayuan dibenarkan dengan kos.]

Case(s) referred to:

- Dunlop Estate Bhd v. All Malayan Estates Staff Union* [1980] 1 MLJ 243 (*fol*)
Nathan v. Barnet London Borough Council [1978] 1 WLR 220 (*refd*)
d *Re Application By Dunlop Estates Bhd* [1980] 1 MLJ 243 (*refd*)
Seafood Court Estates v. Asher [1949] 2 All ER 155 (*refd*)
Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh) Malaysia v. National Union Of Newspaper Workers; National Union Of Journalists Malaysia [1988] 1 ILR 431 (*refd*)
e *Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh) Malaysia v. National Union Of Newspaper Workers; National Union Of Journalists Malaysia* [1988] 2 ILR 263 (*refd*)
Sin Poh (Star News) Amalgamated (M) Sdn Bhd (Sin Chew Jit Poh) Malaysia & Ors v. National Union Of Newspaper Workers; National Union Of Journalists Malaysia [1993] 2 ILR 23 (*refd*)
f *Syarikat Pemandangan Sinar Sdn Bhd & Anor v. Kesatuan Kebangsaan Wartawan Malaysia & Anor* [1998] 2 CLJ 127 (*refd*)
Syarikat Pemandangan Sinar Sdn Bhd & Anor v. National Union of Journalist Malaysia & Anor [1991] 2 CLJ 1208 (*refd*)

Legislation referred to:

- g* Industrial Relations Act 1967, ss. 17(1)(a), (b), 33
 Rules of the Federal Court 1995, r. 108(1)(c)
For the appellants - Ramdas Tikamdas; M/s Siva, Ram & Assoc
For the respondents - Ambiga Sreenevasan (Siva Kumar Kanagasabai with her); M/s Skrine & Co

h Reported by M Maheswaran

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JUDGMENT

Steve Shim CJ (Sabah & Sarawak):

This appeal concerns the interpretation or construction of s. 17(1)(a) of the Industrial Relations Act 1967 (IRA) and in particular the meaning of the words “their successors, assignees or transferees” appearing therein.

The Background Facts

In this case Sin Poh (Star News) Amalgamated Malaysia Sdn. Bhd. (hereinafter referred to as “Sin Poh”) had a permit to publish the newspaper called “Sin Chew Jit Poh Malaysia”. On 27 April 1987 Sin Poh and the National Union of Journalists Malaysia (NUJ) (the 1st appellant) entered into a collective agreement which was duly given cognisance by the Industrial Court on 2 May 1987 *vide* cognisance No. 71/87. Sin Poh suffered losses amounting to over RM12 million. On 3 September 1987 Sin Poh was placed under receivership and receivers and managers from Price Waterhouse were appointed. On 28 October 1987 Sin Poh’s publishing permit for “Sin Chew Jit Poh Malaysia” was cancelled by the Minister of Home Affairs. However, on 23 March 1988, the said Minister issued the permit for publishing the same newspaper to Syarikat Pemandangan Sinar Sdn. Bhd. (the 1st respondent), a company with a paid up capital of only RM2 which then re-employed 85% of Sin Poh’s employees. On 6 April 1988, the receivers and managers of Sin Poh entered into a sale and purchase agreement with Syarikat Rimbunan Hijau Estate Sdn. Bhd. (the 2nd respondent) whereby all the physical assets of Sin Poh including land, buildings, plants, machineries, vehicles and stock-in-trade as well as the product name of “Sin Chew Jit Poh” were sold by the receivers and managers to Syarikat Rimbunan Hijau (the 2nd respondent). It is to be noted that the 1st respondent was, at all material times, the subsidiary of the 2nd respondent.

In the meantime, on 5 April 1988, the 1st appellant (NUJ) had referred a complaint of non-compliance of the collective agreement to the Industrial Court. Pursuant to this complaint, the Industrial Court handed down Award No. 126/88 (see Appeal Record, vol. 2 on pp. 265-271). On 9 May 1988, the 1st appellant (NUJ) also applied for interpretation of cl. 1 of the collective agreement under s. 33(1) IRA in an attempt to include the 1st and 2nd respondents as Sin Poh’s successors, assignees or transferees. The Industrial Court handed down its Award No. 244/88 (see Appeal Record, vol. 2 at pp. 273-279). The 1st and 2nd respondents thereafter moved a motion in the High Court to have the award quashed. The motion was granted. In quashing the award, the High Court ordered the question whether the 1st respondent or the 2nd respondent or both was/were the successors, assignees or transferees of Sin Poh be reheard by the Industrial Court but in doing so, it upheld the

a interpretation of s. 17(1)(a) IRA adopted by the Industrial Court. Against that decision, the respondents appealed to the Supreme Court. The appeal was allowed and the Industrial Court was directed to rehear all the issues afresh.

b Pursuant to the said order of the Supreme Court, the Industrial Court reheard the matter and handed down Award No. 190/93 (see Appeal Record, vol. 2 at pp. 513-521). In the said award, it was held *inter alia* that upon an interpretation of s. 17(1)(a) IRA, the respondents being successors, assignees or transferees of a party to the collective agreement, were bound by it. Unhappy with that decision, the respondents' thereafter filed a notice of motion dated 19 October 1993 to the High Court to quash the said award. On 21 April 1995, the High Court dismissed the respondents application with cost. *c* The respondents then lodged an appeal to the Court of Appeal. On 4 September 1997, the Court of Appeal allowed the appeal and quashed the said Award. NUJ and the Industrial Court (the appellants) being dissatisfied with the decision then applied for and were granted leave by the Federal Court on 10 May 2000 to appeal on the following question of law: *d*

Whether the words 'their successors, assignees or transferees' appearing in section 17(1)(a) of the Act mean the successors, assignees or transferees of:

- e* (i) parties to the agreement, or
- (ii) members of the trade union of employers to whom the collective agreement relates; or
- (iii) to both (i) and (ii) above.

f **The Issues**

It seems clear that the preliminary issue if not the sole issue on which leave to appeal has been granted relates essentially to the construction of s. 17(1)(a) IRA which deal with the effect or effects of a collective agreement which has been taken cognisance of by the Industrial Court. Now, the Court of Appeal, in reversing the decision of the High Court dated 21 April 1995 and quashing the Industrial Court Award No. 190/93 has construed s. 17(1)(a) quite narrowly. *g* This is reflected in that part of the judgment of the Court of Appeal which reads:

h Going back to section 17(1) of the Act, what it really says is that a collective agreement which has been taken cognisance of by the court, as in this case, shall be deemed to be an award and shall be binding on 'the parties to the agreement'. It is in paragraph (a) specifically that the interpretation thereof appears to have raised a problem.

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In our considered view, the words ‘successors, assignees or transferees’ therein cannot relate to the words ‘the parties to the agreement’ but only to ‘party’ and ‘members’ which appear after the word ‘including’. Otherwise, there ought to be commas after the word ‘agreement’ in the first line and ‘relates’ in the fourth line. Consequently, only where ‘the parties to the agreement’ include a party which ‘is a trade union of employers’ then, and only then, it will be binding on ‘all members of the trade union to whom the agreement relates and their successors, assignees or transferees’, the word ‘their’ there referring specifically to the members of the trade union of employers which the appellants are not as they are individual employers. Further, if the first respondent is correct and the liberal rule is to apply, the words ‘and their successors, assignees or transferees’ should actually appear after the word ‘agreement’ in the first line and not at the end. As such, it is our finding that the collective agreement in this case cannot apply to the appellants as it can apply to the parties to the agreement which they are not, but where it involves a trade union of employers, and it is not disputed that the appellants and Sin Poh are not, it will also apply to its members and their successors, assignees or transferees.

It is contended by counsel for the appellants that the Court of Appeal had construed s. 17(1)(a) IRA erroneously in that it was overly preoccupied with punctuation marks in the construction of the said section and had completely overlooked the purposive approach and the general legislative purpose in construction. However, counsel for the respondents takes the view that the construction adopted by the Court of Appeal is correct.

The Law

In construing a statute, the intention of Parliament must not only be deduced from the language used but also from the social and economic conditions which gave rise to it and the mischief it was meant to remedy (see *Re Application By Dunlop Estates Bhd* [1980] 1 MLJ 243; *Seafood Court Estates v. Asher* [1949] 2 All ER 155, 164). It is well settled in the area of law governing statutory interpretation and construction that each legislation must be construed in its own light. In enacting legislation, Parliament is invariably prompted by considerations and demands peculiar to the circumstances for which the enactment is made. To determine the legislative intent, each statute must be examined on its own against the background in which it was passed. We would adopt the observations of Mohd. Azmi J (as he then was) in *Dunlop Estate Bhd v. All Malayan Estates Staff Union* [1980] 1 MLJ 243 who said *inter alia*:

In my view, having regard to the principles enunciated in the cases cited, the Industrial Relations Act, being a social legislation enacted with the prime object of attaining social justice and industrial peace, demands practical and realistic interpretation whenever necessary for the purpose of maintaining good

- a* relationship and fair dealings between employers and workers and their trade union and the settlement of any differences or disputes arising from their relationship.

- b* Quite clearly, the Industrial Relations Act is a piece of social legislation whose primary aim is to promote social justice, industrial peace and harmony in the country. As such, the approach to interpretation must be liberal in order to achieve the object aimed at by Parliament. This had been described by Lord Diplock as the “purposive approach”, an approach followed by Lord Denning in *Nathan v. Barnet London Borough Council* [1978] 1 WLR 220 who reiterated that in all cases involving the interpretation of statutes, we should
- c* adopt a construction that would promote the general legislative purpose underlying the provision. We accept that to be the correct approach.

Construction of Section 17(1)(a) Industrial Relations Act

Now, s. 17(1)(a) IRA reads as follows:

- d* (1) A collective agreement which has been taken cognisance of by the Court shall be deemed to be an award and shall be binding on –
- e* (a) the parties to the agreement including any case where a party is a trade union of employers, all members of the trade union to whom the agreement relates and their successors, assignees or transferees; and
- (b) all workmen who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates.

- f* It is accepted that a collective agreement is one entered into between the employer and its employees or union of workmen normally for a period of three years. Under s. 17(1)(b), all employees are bound whether or not they are members of the union which negotiated the collective agreement or whether they join as employees subsequent to the date of the collective agreement. This provision in the Act cuts across the law of contract and is meant for the
- g* general application of the collective agreement on all the employees of a company. In our view, the same approach must apply to s. 17(1)(a) involving employers. The rationale is one of continuity of the collective agreement from the original parties and members of the union to their successors, assignees or transferees. It is meant to ensure that the rights and obligations of the parties
- h* to the collective agreement be preserved by those taking over from the original parties so as to maintain what Mohd. Azmi J in *Dunlop Estate Bhd (supra)* has aptly described as “good relationship and fair dealings between the employers and workers and their trade union and the settlement of any differences or disputes arising from their relationship.” And we may add that
- i* this is essential in promoting social justice, industrial peace and harmony in Malaysia.

Clearly therefore, given the intention of the legislature, s. 17(1)(a) must be construed to embrace the successors, assignees or transferees of both parties to the collective agreement and the members of the trade union of employers to whom the collective agreement relates. Such a construction has the effect of promoting the general legislative purpose underlying the provision stated above.

Conclusion

In the circumstances, we are, with respect, unable to agree with the view expressed by the Court of Appeal that the words “successors, assignees or transferees” in s. 17(1)(a) IRA cannot relate to the words “the parties to the agreement” but only to “party” and “members” which appear after the word “including”. We are of the unanimous view that the words “their successors, assignees or transferees” therein must mean the successors, assignees or transferees of the parties to the collective agreement as well as the members of the trade union of employers to whom the collective agreement relates. For the reasons given, we hold that the Court of Appeal has misconstrued s. 17(1)(a) accordingly.

Given the conclusions aforesaid, counsel for the appellants has urged us to affirm Industrial Court Award No. 190/93 and the judgment of the High Court dated 21 April 1995 which have held, on the established facts before them, that the respondents are the successors, assignees or transferees of Sin Poh and therefore bound by the collective agreement dated 27 April 1987 (Cognisance No. 71/87). In rebuttal, counsel for the respondents has contended that the appellants must confine themselves to the issue or question for which leave to appeal was granted by the Federal Court under r. 108(1)(c) Rules of the Federal Court 1995 and drawing particular attention to the fact that the Court of Appeal had made a finding of fact that the respondents were not the successors, assignees or transferees of Sin Poh. According to counsel, any challenge to that finding of fact would clearly militate against the scope of the issue which has been referred to the Federal Court for determination.

Although leave was granted on a question of law relating to the proper construction of s. 17(1)(a) IRA, it is, in effect, a determination as to whether or not the Court of Appeal had construed the section correctly. We have held, for the reasons given, that the Court of Appeal had not done so. And having construed the said section in the manner it did, the Court of Appeal came to the following conclusion:

Having interpreted section 17(1) of the Act in this manner and after deliberating dutifully on the arguments and authorities, we came to the unanimous conclusion that the appellants are not the successors, assignees or transferees of Sin Poh and are not bound by the collective agreement of which Sin Poh was a party.

a It seems clear that the above conclusion was arrived at principally upon the construction which the Court of Appeal had placed on s. 17(1)(a) IRA. It is our view that the Court of Appeal would not have come to such a conclusion if it had not misconstrued the said section.

b In the circumstances and for the reasons stated, we will allow the appeal with costs here and below.

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