The Associated Cement Companies Ltd.

Vs

Their Workmen

Civil Appeal No. 404 of 1958

(P. B. Gajendragadkar, K. Subha Rao. K. C. Das Gupta JJ)

03.03.1960

JUDGMENT

GAJENDRAGADKAR, J. -

Can a registered trade union representing a minority of workmen governed by an award give notice to the other party intimating its intention to terminate the award under s. 19(6) of the Industrial Disputes Act XIV of 1947 (hereinafter called the Act) ? That is the short question which arises for decision in the present appeal. In answering the said question it would be necessary to examine the scheme of the Act and to ascertain the true meaning and effect of s. 19(6) on its fair and reasonable construction. The controversy thus raised undoubtedly lies within a narrow compass; but before addressing ourselves to the merits of the disputes, it is necessary to state the material facts which led to the present proceedings.

The present appeal has been brought before this Court by the Associated Cement Companies Limited (hereinafter called the appellant) against their workmen (hereinafter called the respondents), and it arises from an industrial dispute between them which was referred for adjudication to the Industrial Tribunal for the State of Saurashtra by the Saurashtra Government under s. 10(1) of the Act. Several items of demand presented by the respondents constituted the subject-matter of the reference. When the tribunal began its proceedings the appellant raise four preliminary objections against the competence of the reference itself. The tribunal heard parties on these preliminary objections, and by its interlocutory judgment delivered on March 10, 1958, it has found against the appellant on all the points. In the result it set down the reference for further hearing on the merits. It is against this interlocutory judgment and order that the appellant has come to this Court by special leave. Out of the four points urged by the appellant as preliminary objections we are concerned with only one in the present appeal, and that relates to the incompetence of the reference on the ground that the award in question by which the parties were bound has not been duly terminated under s. 19(6) of the Act inasmuch as the union which purported to terminate the said award represents only a minority of workmen bound by it.

The circumstances under which this contention was raised must now be stated in some detail. The appellant is a limited company and owns and runs a number of cement factories spread out in different States in India as well as in Pakistan. It has a factory at Porbandar in Saurashtra. The factory is known as the Porbandar Cement Works. An industrial dispute arose between the appellant and the respondents in 1949 and it was referred for adjudication to the industrial tribunal on March 22, 1949. This reference ended in an award made on September 13, 1949. Thereafter the said award

was terminated by the appellant; and on disputes arising between it and the respondents another reference was made to the same tribunal for adjudication of the said disputes. A second award was made on July 24, 1951, by which the earlier award with slight modifications was ordered to continue in operation. In the proceedings in respect of both the references the appellant's workmen were represented by their Union called Kamdar Mandal, Cement Works, Porbandar. It appears that the registration of the said union was cancelled on July 2, 1954, and that led to the formation of two unions of the appellant's workmen, the Cement Kamdar Mandal which was registered on July 7, 1954, and the Cement Employees' Union which was registered on September 18, 1954.

The Cement Kamdar Mandal gave notice to the appellant's manger on September 23, 1954, purporting to terminate the first award pronounced on September 13, 1949, at the expiration of two months' notice from the date of the said communication. By another letter written on December 20, 1954, the same union purported to terminate the second award pronounced on July 24, 1951, in a similar manner. On November 22, 1954, the said Mandal presented fresh demands most of which were covered by the two previous awards. The said demands were referred to the Conciliation Officer for conciliation but the efforts at conciliation failed, and on receiving a failure report from the officer the Saurashtra Government made the present reference purporting to exercise its jurisdiction under s. 10(1)(c) of the Act. The appellant's case is that the Cement Kamdar Mandal was not authorised to terminate either of the two awards under s. 19(6) of the Act, that the second award is thus still in operation, and so the reference is invalid.

Meanwhile it appear that the Cement Employees' Union, which represents the majority of the appellant's workmen at Porbandar, instead of giving notice of termination under s. 19(6), raised disputes with the appellant and the same referred to the Conciliation Officer. Efforts at conciliation having failed the conciliation officer made a failure report to the Government of Saurashtra; the Saurashtra Government, however, did not refer the said dispute for adjudication. In the present proceedings this Union has been impleaded and it has supported the demands made by the Cement Kamdar Mandal; in other words, notwithstanding the rivalry between the two Unions, the demands made by the minority union were supported by the majority union, and in fact, in the appeal before us, it is the latter union that has appeared to contest the appeal. The tribunal has dealt with the point of law raised by the appellant under s. 19(6) on the assumption that the Cement Kamdar Mandal which purported to terminate the awards under the said section represents the minority of the workmen employed at Porbandar, and we purpose to deal with the point raised in the appeal on the same assumption.

The main sections which fall to be considered in dealing with the dispute are ss. 18 and 19 as they stood in 1954. Section 18 provides, inter alia, that an award which has become enforceable shall be binding on (a) all parties to the industrial dispute, (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board or tribunal, as the case may be, records the opinion that they were so summoned without proper cause, (c) where a party referred to in cl. (a) or cl. (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates, and (d) where a party referred to in cl. (a) or cl. (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently became employed in that establishment or part. It is thus clear that though an industrial dispute may be raised by a group of workmen who may not represent all or even the majority of workmen, still, if the said dispute is referred to the industrial tribunal for adjudication and an award is made, it binds not only the parties to the dispute or other parties summoned to appear but all persons who were employed in the establishment or who would be employed in further are also governed by the

award; in other words, the effect of s. 18 is that an award properly made by an industrial tribunal governs the employer and all those who represent him under s. 18(c) and the employees who are parties to the dispute and all those who are included in s. 18(b) and (d).

Section 19 prescribes the period of operation of settlements and awards. Section 19(3) provides that an award shall, subject to the provisions of this section, remain in operation for a period of one year. This is subject to the provisos to sub-s. (3) as well as to sub-s. (4) but we are not concerned with the said provisions. Section 19(6) provides that notwithstanding the expiry of the period of operation under sub-s. (3) the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which the notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award. The effect of this sub-section is that unless the award is duly terminated as provided by it it shall continue to be binding notwithstanding the expiration of the period prescribed by sub-s. (3). This position is not in dispute. The dispute between the parties centres round the question as to who can issue the notice terminating the award on behalf of workmen who are bound by the award as a result of s. 18 of the Act. What the sub-section requires is that a notice shall be given by any party bound by the award to the other party or parties. To whom the notice should be given may not present much difficulty. Where the award is sought to be terminated on behalf of the employees the notice has to be given to the employer and that is the party entitled to receive notice. Then, as to "the parties" to whom also notices are required to be given, it may perhaps be that the parties intended are those joined under s. 10, sub-s. (5) or under s. 18, sub-s. (2) or are otherwise parties to the disputes; but with that aspect of the question we are not concerned in the present appeal, because notice has been given to the appellant and all the workmen concerned in the dispute have appeared before the tribunal through the two respective unions. The question with which we are concerned are which is not easy to determine is the true interpretation of the word "any party bound by the award". We have already noticed the effect of s. 18, and we have seen how wide is the circle of persons who are bound by the award as a result of the said section. Literally construed, any party bound by the award may mean even a single employee who is bound by the award, and on this literal construction even one dissatisfied employee may be entitled to give notice terminating the award. On the other hand, it may be possible to contend that any party in the context must mean a party that represents the majority of the persons bound by the award. Terminating the award is a serious step and such step can be taken by a party only if it can claim to represent the will of the majority on that point. It is for this construction that the appellant contends before us.

In construing this provision it would be relevant to remember that an industrial dispute as defined by s. 2(k) of the Act means any dispute or difference between the employers and employers, or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment, or the terms of employment, or with the conditions of labour of any person. This definition emphatically brings out the essential characteristics of the dispute with which the Act purports to deal. The disputes must relate to the terms of employment or with the conditions of labour and they must arise, inter alia, between workmen and their employer. Ordinarily, an individual dispute which is not sponsored by the union or is otherwise not supported by any group of workmen is not regarded as an industrial dispute for the purposes of the Act. A provision like that contained in s. 33A is of course an exception to this rule. The basis of industrial adjudication recognised by the provisions of the Act clearly appears to be that disputes between employers and their employees would be governed by the Act where such disputes have assumed the character of an industrial dispute. An element of collective bargaining which is the essential feature of modern trade union movement is necessarily involved in industrial adjudication. That is why industrial courts deal with disputes in relation to individual cases only where such disputes

assume the character of an industrial dispute by reason of the fact that they are sponsored by the union or have otherwise been taken by a group of body of employees. In The Central Provinces Transport Services Limited v. Raghunath Gopal Patwardhan ((1956) S.C.R. 956) this Court has observed that "the preponderance of judicial opinion is clearly in favour of the view that an individual dispute cannot per se be an industrial dispute but may become one if taken up by a trade union or a number of persons". These observations have been cited with approval by this Court in the case of the Newspapers Limited v. The State Industrial Tribunal, U.P. ((1957) S.C.R. 754). Having regard to this aspect of the matter it would be difficult to hold that "any party bound by the award" can include an individual workman, though speaking literally he is a party bound by the award. In our opinion, therefore, the said expression cannot include an individual workman. We ought to add that this position is fairly conceded by Mr. Sharma for the respondents.

That takes us to the question as to whether the expression "any party bound by the award" must mean a union representing the majority of the workmen bound by it or a group of workmen constituting such majority acting otherwise than through the union. The expression "any party bound by the award" obviously refers to, and includes, all persons bound by the award under s. 18. The learned Attorney-General has urged before us that we should construe s. 19(6) so as to preclude a minority of workmen bound by the award from distributing the smooth working of the award and thereby creating an industrial dispute. When an award is made it binds the parties for the statutory period under s. 19(3); and even after the expiration of the said period it continues to be binding on the parties under s. 19(6) unless it is duly terminated. The policy of the Act, therefore, appears to be that the smooth working of the award even after the prescribed statutory period should not be disturbed unless the majority of the workmen bound by it feel that it should be terminated and fresh demands should be made. If a minority of workmen or a minority union is allowed to terminate the award it would lead to the anomalous result that despite the willingness of the majority of workmen to abide by the award the minority can create disturbance and raise an industrial dispute and that cannot be within the contemplation of the Legislature when it enacted s. 19(6) of the Act. That in substance is the argument urged before us; thus presented the argument no doubt appears prima facie attractive; but in our opinion, it would be unreasonable to accept this construction and impose the limitation of the majority vote in the matter of the termination of the award.

The effect of imposing such a limitation would, in our opinion, seriously prejudice the interests of the employees. It is well-known that the trade union movement in this country cannot yet claim to cover all employees engaged in several branches of industry. Membership of the important trade unions no doubt shows an appreciable increase and progress, but the stage when trade unions can claim to have covered all employees or even a majority of them has still not been reached. If the majority rule for which the appellant contends is accepted and s. 19(6) is accordingly construed, termination of the award would, we apprehend, become very difficult, if not impossible, in a very large number of cases. It is in this context that the effect of s. 18 has to be borne in mind. As we have already indicated the class of employees bound by the award under s. 18 is very much wider than the parties to the industrial dispute in which the award is made; the said class includes not only all the persons employed in the establishment at the date of the award but it covers even the subsequent employees in the said establishment. It is, therefore, obvious that if the majority rule is adopted very few awards, if any, could be terminated because very few unions would be able to claim a majority of members on their rolls, and in their present stage of organisation in very few cases would a majority of workmen be able to meet, decide and act together otherwise than through their union. That is why the majority rule would very seriously prejudice the rights of employees to terminate awards when they feel that they need to be modified or changed. That is one aspect of the matter which cannot be ignored in construing the material words in s. 19(6).

There is another aspect of the question which is also relevant and which, in our opinion, is against the construction suggested by the appellant. We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of s. 19(6) is based is inapplicable in the matter of the reference of an industrial dispute under s. 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred for adjudication under s. 10. It is true that an award pronounced on such reference would bind all the employees under s. 18; but logically, if an industrial dispute can be raised by a minority of workmen or by a minority union why should it not be open to a minority of workmen or a minority union to terminate the award which is passed on reference at their instance ? The anomaly to which the learned Attorney-General refers has no practical significance. If the majority of workmen bound by the award desire that the award should continue and needs no modification, they may come to an agreement in that behalf with their employer, and adopt such course as may be permissible under the Act to make such agreement effective. However that may be, we are satisfied that both logic and fairplay would justify the conclusion that it is open to a minority of workmen or a minority union to terminate the award by which they, along with other employees, are bound just as much as it is open to them to raise an industrial dispute under the Act. That is the view taken by the industrial tribunal in the present case and we see no reason to differ from it.

It appears that when this question was argued before the tribunal the appellant strongly relied on rule 83 framed by the Government of Bombay under s. 38 of the Act; and it was urged that the said rule is consistent with the construction sought to be placed by the appellant on s. 19(6). It is conceded that at the relevant time this rule was not in force; and so it is strictly not applicable to the present proceedings. That being so, we do not propose to consider the argument based on the said rule and to examine the question as to whether the rule really supports the appellant's construction, and, if yes, whether it would be valid. The question raised before us must obviously be decided on a fair and reasonable construction of s. 19(6) itself, and the rule in question, even if applicable would not be material in that behalf. We accordingly hold that, on a fair and reasonable construction of s. 19(6), the true position is that, though the expression "any party bound by the award" refers to all workmen bound by the award, notice to terminate the said award can be given not by an individual workman but by a group of workmen acting collectively either through their union or otherwise, and it is not necessary that such a group or the union through which it acts should represent the majority of workmen bound by the award.

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

Appeal dismissed.

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