The Rashtriya Mill Mazdoor Sangh, Parel, Bombay and Another

Vs

The Apollo Mills Limited and Others

Civil Appeal No. 419 of 1956

(S. K. Das, A. K. Sarkar, M. Hidayatullan JJ)

10.03.1960

JUDGMENT

HIDAYATULLAH, J. -

This is an appeal with the special leave of this Court against a decision dated January 17, 1955, of the Labour Appellate Tribunal (hereinafter called the Appellate Tribunal) by which it reversed a decision of the Industrial Court, Bombay, dated January 20, 1954, in a matter referred to the Industrial Court under s. 73 of the Bombay Industrial Relations Act, 1946, by the Government of Bombay. The appellant is the Rashtriya Mill Mazdoor Sangh, representing the employees of the cotton textile mills in the city of Greater Bombay. The respondents are the Apollo Mills, Ltd., and other companies owing cotton textile mills specified in the annexure to the Special Leave Petition and the Mill Owners' Association, Bombay, representing the cotton textile mill industry. The dispute relates to the compensation which the workers claimed for loss of wages and dearness allowances due to the short working or closure of the Textile Mills on certain days during the period between November 1, 1951, and July 13, 1952.

The facts of the case are as follows : In the year 1951 monsoon failed, and caused scarcity of water in the catchment area of the Tata Hydro-Electric system, from which the Mills obtained their supply of power. It was, therefore, found necessary to reduce the consumption of electricity, and Government, after consulting the various Mills and also the appellant Sangh, decided that the Mills should work, instead of 48 hours, for 40 hours per week during a period of 30 weeks from November 1, 1951. It was also agreed that if the Mills could reduce their consumption of electricity to 5/6th of their normal consumption, then they could work for 48 hours per week as before. Some of the Mills installed their own generators, but many others were compelled to reduce the working time to 40 hours in a week, working at 8 hours per day. As a result, the working of some of the Mills was reduced by one day in the week, and the Mills lost a maximum number of 38 days, some more and some less. One of the Mills (the Raghuvanshi Mills) remained closed only on one day. The order of the Bombay Government was made under s. 6A(1) of the Bombay Electricity (Special Powers) Act, 1946. While this short working continued, the workers claimed their wages and dearness allowances or compensation in lieu thereof. Negotiations followed, but when they did not result in anything to the advantage of the workers, the matter was referred for arbitration to the Industrial Court by the Bombay Government on October 30, 1952, under s. 73 of the Bombay Industrial Relations Act, 1946.

The Mills raised the objection that the matter was covered by Standing Orders 16 and 17, and inasmuch as the partial closure of the Mills was due to force majeure, they were not liable. They contended that the Industrial Court had thus no jurisdiction, as these Standing Orders were

determinative of the relations between the workmen and their employers under s. 40(1) of the Bombay Industrial Relations Act, 1946. They also submitted that the orders of the Government issued under the Bombay Electricity (Special Powers) Act, 1946, had to be obeyed and therefore no compensation was payable. They pointed out that the employees were receiving fair wages, and that the Mills were not in a position to bear an additional burden, in view of the fact that they had lost their profits due to short working. They relied upon the decision of the Bombay High Court in Digambar Ramachandra v. Khandesh Mills ((1949) 52 Bom. L.R. 46), where it was held that though an arbitrator to whom a dispute falling under s. 49A of the Bombay Industrial Disputes Act, 1938, was referred had jurisdiction to decide the disputes within the terms of the Standing Orders framed under s. 26 of that Act, he had no jurisdiction to determine the liability of the employers on grounds outside the Standing Orders.

The Industrial Court, after hearing the parties, made an award on January 20, 1954, and directed all the respondent Mills to pay to the employees compensation, holding that Standing Orders 16 and 17 were not applicable, and were, therefore, no bar. The Industrial Court held that in view of the provisions of ss. 3, 40(2), 42(4), 73 and 78 of the Bombay Industrial Relations Act read with Sch. III, item 7, and having regard to the decision of the Federal Court in Western India Automobile Association v. Industrial Tribunal, Bombay ((1949) F.C.R. 321), it had jurisdiction to grant compensation. The Industrial Court, therefore, held that on principles of social justice the workers were entitled to compensation, which it assessed at the rate of 50 per cent. of the wages and dearness allowances which the workers would have drawn, if the Mills had worked on the days they remained closed.

Against that award, the Mill Owners' Association and two of the Mills appealed to the Appellate Tribunal, Bombay. All the contentions which were raised before the Industrial Court were once again raised before the Appellate Tribunal. Two new contentions were raised, viz., that the claim for compensation was barred under s. 11 of the Bombay Electricity (Special Powers) Act, 1946, and was also barred by the decision of the Supreme Court in the Muir Mills Co., Ltd. v. Suti Mills Mazdoor Union, Kanpur ((1955) 1 S.C.R. 991).

The Appellate Tribunal by its decision now impugned before us, allowed the appeal, and set aside the award of the Industrial Court, and dismissed the claim of the employees. It held that even if Standing Orders 16 and 17 covered the case, the decision in Digambar Ramachandra case ((1949) 52 Bom. L.R. 46) could not now be applied because of the provisions of s. 40(2) and the addition of Sch. III, item 7 in the Bombay Industrial Relations Act, which provisions did not find place in the Bombay Industrial Disputes Act, 1938, under which the decision of the Bombay High Court was given. The Appellate Tribunal referred to the Federal Court decision cited earlier, and observed that there was no doubt that the award of compensation to workmen equal to half of their wages and dearness allowances was fair and just. The Tribunal, however, felt compelled by the decision of this Court in the Muir Mills case ((1955) 1 S.C.R. 991) to reject the claim of the workers, and allowed the appeal. In this view of the matter, the Appellate Tribunal did not decide whether s. 11 of the Bombay Electricity (Special Powers) Act, 1946, barred the grant of compensation.

The appellant in this case first contended that the Muir Mills case ((1955) 1 S.C.R. 991) did not apply, and further that if that case was out of the way, then in view of the other findings of the Appellate Tribunal and s. 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, the appeal ought to have failed, since no question of law survived and the Appellate Tribunal was incompetent to reverse the decision. The Mill Owners' Association, on the other hand, contended that the opinion of the Appellate Tribunal that the Muir Mills case ((1955) 1 S.C.R. 991) applied, was correct, that s.

11 of the Bombay Electricity (Special Powers) Act barred these proceedings, and that, in view of the fact that the closure was due to force majeure for which the Mills were not responsible, Standing Orders 16 and 17 were determinative of the relations between the parties and the claim for compensation was not entertainable. Other objections raised before the Appellate Tribunal were not pressed before us.

We begin first with the question whether s. 11 of the Bombay Electricity (Special Powers) Act, 1946, barred the reference. That section reads as follows :

> "11 (1). No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order, direction or requirement made or deemed to have been made under section 3, 4, 5, 6, 6A, 6B or 6C."

The order which was made in this case by the Government of Bombay was under sub-sec. (1) of s. 6A, which reads :

> "6A(1). Notwithstanding anything contained in any law for the time being in force, or any permission granted under sub-section (3) of section 5 or any instrument having effect by virtue of any law, the Provincial Government may with a view to controlling distribution, supply, consumption or use of electrical energy make an order -
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> (a) for prohibiting or regulating subject to such conditions as it may specify in the order, the distribution or supply of electrical energy by a licensee or use of such energy by a consumer for any purpose specified in such order;
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> (b) for determining the order of priority in which, or the period or periods during which, work shall be done by an undertaking to which the supply of electrical energy is made by a licensee."

It was contended by the respondents that sub-sec. (1) of s. 11 quoted above barred the remedy of arbitration, because the closure of the Mills was in good faith, and was in pursuance of a direction or order made under s. 6A(1). Mr. Kolah referred to the scheme of the Bombay Electricity (Special Powers) Act, and specially to the sections dealing with penalties and offences and contended that the Mills were helpless and were compelled to close down their establishments for part of the time. He claimed that the protection of s. 11(1) was available to them, and argued that it gave immunity from action of any kind.

The present proceedings are for compensation for the period during which the Mills remained closed. This claim is made by the workers against the Mills. The section which confers immunity bars proceedings arising from the interference with the supply of electrical energy and its consumption. It is a protection to the supplier of electrical energy against the consumer and vice versa, and protects also those who act to enforce the order. There is no complaint here about the reduction of electricity or even about the closure of the Mills for part of the time. Neither the Mills nor the workers have raised any such contention. Further, the sub-section is a protection clause which is usually introduced in an Act, where it gives new or unusual powers, and is designed to give immunity to persons acting under or enforcing it. The ambit of the protection is in relation to the supply and consumption of electricity which alone are curtailed by the order issued under s. 6A(1)

of the Act. The protection conferred by the first sub-section of s. 11 does not, therefore, prevent the raising of an industrial dispute resulting in an award for the equitable sharing of loss which had been occasioned to both the employers and the employees by the observance of the order.

The contention that the Industrial Court had no jurisdiction to hear the reference because the State Government could not make it, was not pressed by the respondents, and nothing need, therefore, be said about it. It was raised in another form, as will appear in the sequel. Both the parties, however, criticised the order of the Appellate Tribunal, the respondents challenging the findings adverse to them. It is now necessary to deal with these contentions.

The case of the appellant was that the Appellate Tribunal had no jurisdiction to interfere with the order of the Industrial Court, because the appeal before it did not involve a substantial question of law and did not fall within any of the eight matters mentioned in s. 7(1)(b) of the Industrial Disputes (Appellate Tribunal) Act, 1950, which gave appellate jurisdiction to the Appellate Tribunal. The appellant referred to cases in which it has been held that the Appellate Tribunal could not interfere on facts. It is not necessary to analyse those cases for reasons which we proceed to state.

The Industrial Disputes (Appellate Tribunal) Act conferred appellate powers on the Appellate Tribunal, if there was a substantial question of law arising from the award, or the matter fell within eight enumerated subjects. The respondents attempted to bring the matter within cl. (i) of s. 7(1)(b), that is to say, "wages", which is one of the eight subjects. But there is no question here of wages as such but of compensation. Learned counsel for the respondents also argued that a conclusion drawn without adverting to the evidence involved a question of law and a legal inference from proved facts and an appeal thus lay. He relied upon Anglo-Iranian Oil Co. (India) Ltd. v. Petroleum Workers' Union ((1951) 2 L.L.J. 770) and Crompton Parkinson (Works) v. Its Workmen ((1959) Supp. 2 S.C.R. 936). It may not be necessary to discuss the matter at length, because even if the subject-matter did not fall within any of the eight enumerated topics, there was a substantial question of law involved, inasmuch as it was necessary to decide whether a claim for compensation was not admissible in view of the provisions of the Bombay Industrial Relations Act and the Standing Orders. It has been pointed out already that the failure to continue to employ labour was due to the short supply of electrical energy, and the question is whether in these admitted circumstances, Standing Orders 16 and 17 read with s. 40(1) and item 9 of Sch. I of the Bombay Industrial Relations Act rendered the employers immune from a claim for compensation for loss of wages and dearness allowances. The respondents claimed that they did, while the appellant maintained that they did not, and referred to ss. 40(2), 42(4), 73 and 78(1)(A) and item 7 of Sch. III of the same Act. This is a substantial question of law, and the appeal was thus competent.

The crux of the matter is the provisions of Standing Orders 16 and 17, which are to be read with s. 40(1) of the Bombay Industrial Relations Act. Standing Orders 16 and 17 read as follows :-

> "16. The Company may, at any time or times, in the event of a fire, catastrophe, breakdown of machinery or stoppage of the power supply, epidemic, civil commotion or other cause, beyond the control of the Company, stop any machine or machines or department or departments, wholly or partially for any period or periods, without notice and without compensation in lieu of notice.
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> In the event of a stoppage of any machine or department under this Order during working hours, the operatives affected shall be notified by notices put upon notice boards in the department concerned and at the time-keeper's office, as soon as

practicable, when work will be resumed and whether they are to remain or leave the mill. The period of detention in the mill shall not ordinarily exceed one hour after the commencement of the stoppage. If the period of detention does not exceed one hour, operatives so detained shall not be paid for the period of detention. If the period of detention in the mill exceeds one hour, operatives so detained shall be entitled to receive wages for the whole of the time during which they are detained in the mill as a result of the stoppage. In the case of piece-workers, the average daily earnings for the previous month shall be taken to be the daily wages.

17. Any operative played-off under Order 16 shall not be considered as dismissed from service, but as temporarily unemployed, and shall not be entitled to wages during such unemployment except to the extent mentioned in Order 16. Whenever practicable, a reasonable notice shall be given of resumption of normal work and all operatives played-off under Order 16, who present themselves for work, when the normal working is resumed, shall have prior right of reinstatement."

The argument of the respondents was two-fold : (1) that these two Standing Orders fully covered a closure due to stoppage of power, and (2) that under s. 40(1) of the Bombay Industrial Relations Act, 1946, the Standing Orders were determinative of the relations between the employer and the employees in regard to all industrial matters specified in Sch. I, which contains the following items :-

"4. Closure or reopening of a department or a section of a department or the whole of the undertaking" and

"9. Temporary closures of work including playing off and rights and liabilities of employers and employees.....".

They also invoked the decision in Digambar Ramachandra's case ((1949) 52 Bom. L.R. 46), and added that the position had not been altered even by the addition of the second sub-section to s. 40 in the Bombay Industrial Relations Act.

We may at this stage read s. 40 :

"40. (1) Standing orders in respect of an employer and his employees settled under this Chapter and in operation, or where there are no such standing orders, model standing orders, if any, applicable under the provisions of sub-section (5) of section 35 shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I.

(2) Notwithstanding anything contained in sub-section (1) the State Government may refer, or an employee or a representative union may apply in respect of any dispute of the nature referred to in clause (a) of paragraph A of section 78, to a Labour Court."

The respondents contended that only the first sub-section applied, and that under Standing Orders 16 and 17 quoted above, no compensation was claimable. The appellant pointed out that the second sub-section excluded the first sub-section, because of the non-obstante clause with which it is prefaced and in view of the position of the Industrial Court as the appellate authority from awards of the Labour Court, the former was not also bound by the first sub-section or the Standing Orders. There is some force in the contention of the appellant, but, in our opinion, Standing Orders 16 and

17 do not, in terms, apply to a claim for compensation such as is made here. Standing Order 16 speaks of stoppage "without notice and without compensation in lieu of notice." The compensation which is claimed by the workers in this case is not in lieu of notice, that is to say, for a period equal to that in respect of which notice would have had to be given. That period would be before the date of closure. The Standing Order contemplates those cases in which a notice has to be dispensed with and then no compensation in lieu of notice is payable. There is, however, here a question of quite a different sort, and it is not covered by Standing Order 16, even though the closure was by reason of stoppage of power. Standing Order 17 speaks of "wages", and we are not concerned with wages here but with compensation which is not the same thing as wages. In this view of the matter, Standing Orders 16 and 17 cannot be said to cover the present facts, and they are not, therefore, determinative of the relations between the parties. -

> The present dispute was referred to the Industrial Court under s. 73(2) of the Bombay Industrial Relations Act, 1946. That section reads as follows :-
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> "Notwithstanding anything contained in this Act, the State Government may, at any time, refer an industrial dispute to the arbitration of the Industrial Court, if on a report made by the Labour Officer or otherwise it is satisfied that -
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> (2) the dispute is not likely to be settled by other means;".

The non-obstante clause clearly shows that in spite of the other provisions of the Bombay Industrial Relations Act, an industrial dispute may be referred to the Industrial Court. An industrial dispute as defined in that Act means inter alia any dispute or difference between an employer and employee or between employers and employees, which is connected with an industrial matter, which includes all matters pertaining to non-employment of any person. That these workmen were not employed on certain days goes without saying, and thus, there was an industrial dispute concerning their claim for compensation for the period of non-employment. Item 9 of Sch. I gave the power to frame Standing Orders in relation to temporary closures. The Standing Orders made covered only compensation in lieu of notice and wages for the period of closure, but not compensation for closure. In the view which we have taken of the Standing Orders, it is not necessary to decide whether item 7 of Sch. III relates only to compensation for permanent closure, or whether item 9 of Sch. I gave the power to make a Standing Order relating to compensation for temporary closure. It is enough to say that Standing Orders 16 and 17, as they stand, do not cover a case of compensation for closure.

The powers of the Industrial Court under s. 73 of the Bombay Industrial Relations Act are very wide, inasmuch as the State Government can refer an industrial dispute to it, notwithstanding anything contained in the Act. It was in view of this that the objection to the jurisdiction of the Industrial Court was not pressed. But the argument was advanced in another form to show that Standing Orders 16 and 17 were determinative and did not enable the Industrial Court to decide in any manner except in accordance with those Standing Orders. Reliance was also placed upon Digambar Ramachandra's case ((1949) 52 Bom. L.R. 46), where Chagla, C.J., and Bhagwati, J., decided that the arbitrator was bound by the Standing Orders and could not go outside them. We are of opinion that Standing Orders 16 and 17 do not apply to the present facts for reasons already stated, and we express our dissent from that decision in so far as it held that the Standing Orders covered a case of compensation for closure also. We note further that in the Bombay Industrial Disputes Act, 1938, there was no item similar to the one in Sch. III of the Bombay Industrial

Relations Act. In Textile Labour Association, Ahmedabad v. Ahmedabad Millowners' Association, Ahmedabad (1946-47 Industrial Court Reporter 87), Sir H. V. Divatia, Rajadhyaksha, J., and Mr. D. V. Vyas (later, Vyas, J.) correctly held that the Standing Orders did not cover a case of compensation for loss of earnings. The head note adequately summarises the decision, and may be quoted. It reads :

> "Although the workers are not entitled to demand their wages during the period of stoppage of work as that matter has been (sic) covered by the Standing Orders there is nothing to prevent them from giving any notice of charge demanding compensation for the loss of their earnings. It cannot be said that the jurisdiction of the Court is barred by the provisions of Standing Orders 16 and 17."

No doubt, the reference there was under s. 43 of the Bombay Industrial Disputes Act, 1938; but the provisions of s. 73 of the Bombay Industrial Relations Act are wide enough to cover a reference on the same topic. We are, therefore, of opinion that the claim for compensation was not barred by Standing Orders 16 and 17 read with s. 40(1) of the Bombay Industrial Relations Act.

The respondents further contended that the principle of social justice applied by the Industrial Court and accepted by the Appellate Tribunal could not apply because of the decision of this Court in the Muir Mills case ((1955) 1 S.C.R. 991). They also contended that the case for bonus was decided along with the present case and both bonus and dearness allowances were increased by the Appellate Tribunal in respect of 38 Mills and even the remaining 15 Mills which had suffered loss had given minimum bonus to their workers. They argued that wages were fair and bonus was awarded and dearness allowance was increased, and that the Appellate Tribunal took all this into account in refusing compensation. They submitted that the Mills suffered heavy losses due to short working, and that it was sheer injustice to make them pay wages or compensation for days on which the Mills remained closed and lost their profits through stoppage of normal working.

The Muir Mills case ((1955) 1 S.C.R. 991) was concerned with the award of bonus, which is linked with profits. It was there laid down that inasmuch as the labour employed in an industrial undertaking is ever changing, the award of bonus can only be from the profits to which labour in any particular year contributed and labour cannot claim that profits and reserves of some other years should be used for the purpose of giving them bonus. We are not concerned in this case with the award of bonus as such, and we need not, therefore, make use of the reasons which appealed to this Court in that case. The narrow sphere in which social justice demands that workmen going into forced unemployment should receive compensation is quite different. Social justice is not based on contractual relations and is not to be enforced on the principles of contract of service. It is something outside these principles, and is invoked to do justice without a contract to back it. Mahajan, J. (as he then was), observed in Western India Automobile Association v. Industrial Tribunal, Bombay ((1949) F.C.R. 321) as follows :

> "Adjudication does not, in our opinion, mean adjudication according to the strict law of master and servant. The award of the Tribunal may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by these limitations. In Volume I of 'Labour Disputes and Collective Bargaining' by Ludwig Teller, it is said at p. 536 that industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of a new obligation or modification of old ones, while commercial arbitration generally concerns itself with the

> interpretation of existing obligations and disputes relating to existing agreements. In our opinion, it is a true statement about the functions of an Industrial Tribunal in labour disputes."

Here, what better measure could have been adopted by the Industrial Court (which is approved by the Appellate Tribunal) than to divide the loss into two parts, one to be borne by the industrial concerns and the other by the workmen ? There is no other basis suggested by the one side or the other. It was contended that the loss to labour went into the consideration of the grant of bonus, and that the two cases were heard together. The Appellate Tribunal says so. But bonus is to come out of profits and is the share of labour in the profits it has helped to earn, to bridge the gap between wages as they are and the living wage. Compensation in the present context is for loss of wages and dearness allowance, and the two cannot be considered together on any principle. There is nothing to show that in spite of the formula which the Appellate Tribunal had evolved for itself, it took into account some other factors quite alien to the said formula. It appears to us that what the Appellate Tribunal really meant to say was that inasmuch as the workers were paid bonus they should not make a grievance if they lost wages on some of the days, because if compensation were paid bonus would have had to be refused. If that is the meaning, as it obviously is, then the question of compensation was not decided at all. In our opinion, this reasoning was beside the point. It was wholly immaterial whether profits were made or losses were incurred in the year, if the employers continued to retain the labour force so as to be available for the days on which the Mills worked.

In our opinion, the Appellate Tribunal after giving a finding that a claim for compensation equal to half the wages and dearness allowances was just and proper, erred in holding that it was not admissible because of the decision of this Court in the Muir Mills case ((1955) 1 S.C.R. 991). That case had no application to the facts here. The Appellate Tribunal also erred in declining to grant compensation on the ground that since bonus was granted the claim for compensation could not be entertained. The case of badli workers does not appear to have been separately raised, and we see no reason not to award them compensation; but payment of such compensation will be subject to the same condition, as was imposed by the Industrial Court.

In the result, the appeal will be allowed, the order of the Appellate Tribunal set aside and the order of the Industrial Court restored. The respondents shall bear the costs here and in the Tribunals below.

Appeal allowed.

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