The Kirloskar Oil Engines Ltd., Kirkee, Poona

Vs

The Workmen and Others

Civil Appeal No. 587 of 1960

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ)

17.11.1961

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal by special leave arises out of the proceedings taken at the instance of the appellant, the Kirloskar Oil Engines Ltd., Kirkee, Poona under s. 36A of the Industrial Disputes Act, 1947 (14 of 1947) (hereafter called the Act). It appears that certain disputes pending between the appellant and the respondents, its workmen, were referred to the industrial tribunal for its adjudication by the Government of Maharashtra. The disputes in question related to seven demands made by the respondents : two of these were in regard to privilege leave and allowances. The tribunal which tried the dispute made its award in two parts. Part I of the award which dealt the demand of privilege leave and different kinds of allowances was made on June 30, 1958, and published on July 7, 1958. On August 2, 1958, the appellant applied to the State Government for reference of certain points to the tribunal for its clarification under s. 36A. Accordingly an order of reference was made in respect of the two items privilege leave and allowances. The tribunal has made the necessary clarification in regard to its direction as to privilege leave. It has, however, held that the direction made by it for the payment to the workmen under paragraph 14 of its award needed no clarification. It held that in substance the appellant was seeking for a modification of the said direction and that could not be done in the clarification proceedings contemplated by s. 36A. The clarification award has thus made by the tribunal and submitted to the Government. It is against this award that the appellant has come to this Court by special leave.

It would be convenient at this stage to indicate briefly the nature of the clarification claimed by the appellant before the tribunal. In regard the claim for privilege leave the original award by paragraph 10 had directed as follows :

> "All the workmen, both daily and monthly rated, get privilege leave according to the provisions of the Factories Act. The leave usually comes to 14 or 15 days in a year I consider a privilege leave of 15 days a year to both the sections of the workmen in the Kirloskar Oil Engines as quite adequate. At present this leave is allowed to be accumulated for two years. Here I am of the opinion that the accumulation should be up to 45 days. I therefore direct that all the workmen of the Kirloskar Oil Engines Ltd., Poona, shall be granted 15 days privilege leave (including privilege leave under the Factories Act) which will be allowed to be accumulated up to 45 days."

The appellant apprehended that the direction of the award may justify a claim by every worker whose name is on the muster roll to 15 days privilege leave irrespective of his actual attendance

during the year. In other words, the appellant argued before the tribunal in the present proceedings that the words used by the original award were wide enough to justify a claim for 15 days privilege leave even where the workman was absent from work, for say 360 days in a year, provided his name appeared on the muster roll of the appellant. The tribunal appreciated the force of this argument. It is common ground that under s. 79 of the Factories Act, 1948, it is only where a worker has worked for a period of 240 days or more in a factory during a calendar year that he becomes entitled during the subsequent calendar year to leave with wages for a number of days calculated at the rate of one day for every twenty days of work performed by an adult worker in the previous calendar year, or at the rate of one day for every fifteen days work performed by a child. The tribunal observed that it was not the intention of the award to depart from the basic principle prescribed by s. 79; and so it made the necessary clarification by adding that in order to entitle him to the privilege as directed by the award every workman must put in 240 days or more of actual working during the previous calendar year. Thus, in regard to the provision made by award as to privilege leave the clarification claimed by the appellant was made.

It regard to the second point on which clarification was sought the relevant direction in the award reads thus :

> "At present if a workman works on a weekly off or on a holiday, he gets a substituted holiday under the Factories Act but no additional payment. In my opinion a workman makes plans well in advance about spending his holidays. He spends his time in the company of his colleagues and refreshes himself. If he gets a substituted holiday, he is deprived of his enjoyment. He should therefore be compensated in money as well as by a day off. I therefore direct that if a workman has to work on a weekly off or on a holiday (paid or unpaid) he should be paid 1 1/2 times his wages and dearness allowance over and above substituted holiday."

The appellant urged before the tribunal that this direction needed to be clarified because as it stood it was likely to impose on the appellant very heavy financial burden. The tribunal held that the direction itself was very clear and that under the guise of clarification the appellant was seeking its modification. So the tribunal rejected the appellant's claim for any clarification in that behalf.

In the present appeal the learned Attorney-General attempted to argue that the accumulation of privilege leave up to 45 days allowed by the award was not justified. In our opinion, this argument cannot be entertained in the present appeal for two reasons. First, no such plea appears to have been made before the tribunal in the present clarification proceedings and so the appellant cannot be allowed to raise a new plea now. Besides, it is necessary to bear in mind the limitations of the enquiry permitted under the proceedings contemplated by s. 36A of the Act. The said section empowers the appropriate Government to refer any question to the tribunal if the said Government is satisfied that any difficulty or doubt arises as to the interpretation of any provision of an award made by the said tribunal. It further provides that when such a question is referred to it the tribunal shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties. It is thus clear that the scope of the enquiry under s. 36A is limited to the decision of the difficulties or doubts arising as to the interpretation of any provision in the award. If the words used in any provision of an award are ambiguous or obscure and it is not reasonably possible to interpret them the difficulty arising from the use of such ambiguous or obscure words may be resolved by moving the appropriate Government to make a reference under s. 36A. It is obvious that any question about the propriety, correctness or validity of any provision of the award would be outside the purview of the enquiry contemplated by the

section. If a party to the award is aggrieved by any of its provisions on the merits the only remedy available to it is by making an appeal, say for instance under Art. 136 of the Constitution, to this Court. A grievance felt by a party against any provision of the award can be ventilated only in that way and not by adopting the procedure prescribed by s. 36A. Thus, the enquiry permissible under s. 36A is limited to the question of the interpretation of the provision of the award in question and no more. That is why, we think, that even if the appellant had sought to raise the question about the propriety of allowing the accumulation of privilege leave up to 45 days before the tribunal, and even if such a question had been referred by the State Government to the tribunal under s. 36A, the tribunal would have been justified if in refusing to consider it because the point raised had nothing to do with the interpretation of the provision but is concerned with its merits and its propriety. Therefore, in our opinion, the appellant is not entitled to raise this point before us in the present appeal.

The next contention raised by the appellant is against the refusal of the tribunal to entertain its application for clarification in regard to the provision for the payment to the worker 1 1/2 times his wages and dearness allowance over and above a substituted holiday if he has to work on a weekly off or on a holiday (paid or unpaid). The grievance of the appellant in substance is that in 1956 and 1957, on account of shortage of electrical energy for industrial purposes the State Government compelled the factories to change their weekly holidays from Sunday to some other week day, each factory or group of factories observing one week day as weekly off. According to the appellant, if a handful of workmen are to work on a weekly of or on a holiday when the whole factory is closed then there would be some justification for making the payment to the workmen required to work on such a day; but there would be no justification for making such payment where the whole factory works on a weekly off or on a holiday. In support of this contention the appellant relies on the observation made in the original award that the basis for directing the additional payment for working on a weekly off or on a holiday is that the workman is deprived of an opportunity to spend his time in the company of his colleagues and refresh himself. It is urged that when all his colleagues are working there is no point in saying that anyone is deprived of an opportunity to spend his time in the company of his colleagues. The tribunal was not impressed by this argument and so it has refused to make any clarification-cum-modification in its award. It is significant that the argument based on the orders issued by the State Government requiring the factories to change their weekly holidays owing to shortage of electric energy was not raised before the tribunal at the time when it originally heard the dispute between the parties. It has stated in the present order that it looked at its notes of arguments and noticed that no such plea was raised before it at that time. Besides, the tribunal has observed that having regard to the definition of the word "week" under s. 2(f) of the Factories Act as well as the provisions of s. 52 of the said Act it would have been open to the appellant to have another day of the week declared as the first day of the week for its purposes. If the appellant had adopted such a course the difficulty on which it relied would not have arisen.

The appellant contends that the reasons given by the tribunal in rejecting its claim for clarification are not sound. We are not impressed by this argument. As we have already pointed out, the present argument ignores the limitations of the scope of the enquiry under s. 36A. It is clear that in substance the argument is that the direction issued by the award in regard to the payment in question should be modified, and in support of the claim for modification reliance is placed on the relevant orders issued by the State Government for changing the weekly holidays. Such a claim cannot obviously be entertained in clarification proceedings under s. 36A. A proceeding contemplated by s. 36A is not a proceeding intended to enable the tribunal to review or modify its own order; it is intended to enable the tribunal only to clarify the provisions of its award where a difficulty or doubt arises about the interpretation of the provisions. Quite clearly the impugned provisions contained in

paragraph 14 of the award in relation to this demand are clear and unambiguous. Whatever may be the appellant's grievance in respect of the validity or the propriety of the said directions there is no difficulty or doubt about their meaning; and so we are satisfied that the tribunal was right in refusing to alter the said direction in the present proceedings.

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

Appeal dismissed.

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