Bombay Gas Co. Ltd.

Vs

Gopal Bhiva & Ors

Civil Appeals Nos. 333-334 of 1962

(B. N. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

09.05.1963

JUDGMENT

GAJENDRAGADKAR, J. –

These 16 appeals arise out of petitions filed by the 16 respondents who are the employees of the appellant, the Bombay Gas Co. Ltd., under section 33C(2) of the Industrial Disputes Act (No. 14 of 1947) (hereinafter called the Act). These respondents are the District Syphon Pumpers and Heat Appliances Repairers Inspectors, and in their applications made before the Second Labour Court, Bombay, they alleged that as a result of the award made by the Industrial Tribunal in reference (I. T.) No. 54 of 1949 published in the Bombay Government Gazette on May 11, 1950, they were entitled to a certain benefit and they moved the Labour Court to compute that benefit in terms of money and to direct the appellant to pay the same to them. The direction in the earlier award on which this claim was based was made in these terms :-

> "The demand in respect of the workers of the Mains, Services and District Fittings Departments and Lamp Repairers and others who were till 1948 required to work on Sundays and in respect of whom a weekly day off was enforced thereafter without any corresponding increase in wages is granted. In respect of the rest, the demand is rejected."

This demand was resisted by the appellant on several preliminary grounds which formed the subject-matter of several preliminary issues framed by the Labour Court. The principal contentions raised by the appellant by way of preliminary objections were that the applications made by the respondents were not maintainable under s. 33C(2) of the Act and that the said applications were barred by res judicata by reason of awards made in other proceedings between the same parties. It was also urged by the appellant that if the claim made by the respondents was held to be justified by the direction of the award on which the respondents relied, then the said direction was given by the earlier Tribunal without jurisdiction and as such, was incapable of enforcement. On the construction, the appellant urged that the said direction did not cover the cases of the respondents, and it was argued that even if the said direction was held to be valid and it was also held that it gave the respondents the right to make the present claim, the conditions precedent prescribed by the said direction had not been satisfied by any of the respondents, and so, on the merits, their claim could not be sustained.

The Labour Court took up for trial 10 preliminary issues in the first instance and by its judgment delivered on June 3, 1961, it rejected all the preliminary pleas raised by the appellant. In other words, the preliminary issues framed by Labour Court were found in favour of the respondents.

Thereafter, the applications were set down for hearing on the merits and evidence was led by both the parties in support of their respective claims. On considering the evidence, the Labour Court came to the conclusion that the respondents had established their claims, and so, it has directed the appellant to pay to the respondents the respective amounts specified against their names in the award. The plea raised by the appellant that the whole of the claim made by the respondents should not be allowed on the ground of belatedness and laches, was, according to the Labour Court, not sustainable under s. 33C(2). That is why the Labour Court computed the benefits claimed by the respondents in terms of money from the date when the earlier award became enforceable until the date of the present applications filed before it. The appellant has come to this Court by special leave against the preliminary decision and the final order passed by the Labour Court in favour of the respondents.

Before dealing with the points raised in the present appeals by the appellant, it is necessary to set out briefly the terms of the earlier award on which the respondents' claims are based. In the previous industrial dispute, the employees of the appellant had made several demands. In the present case, we are concerned with demand No. 11. This demand was made in these terms :-

> "(a) Workers should get a paid weekly off.
>
> (b) Workers of Mains, Services and District Fittings Departments and Lamp Repairers, who have been adversely affected in the matter of their earnings on account of closing down of the overtime and Sunday Work, should be compensated for the loss suffered by them; compensation being the amount lost by them since the scheme was introduced."

The Tribunal which dealt with this demand observed that demand No. 11(a) had been badly worded. There was, however, no doubt that what the employees claimed against the appellant was, in substance, a demand for paid weekly off only for those workers who were actually getting a weekly off, though without pay. In dealing with this demand, the Tribunal noticed the fact that all the monthly paid staff employed by the appellant got a paid weekly off, and so, it thought that there was no reason to discriminate between the said staff and the daily rated workers. In regard to the daily rated workers usually, their monthly income would be determined on the basis of a month consisting of 26 working days. From the statement of claim filed by the Union before the Tribunal, it appeared that prior to 1946, most of the workers used to work for all the seven days of the week. By about August, 1946, however, weekly offs were enforced upon the major section of the workmen. In June 1946, the appellant and the Union had entered into an agreement as regards wage scales of various categories of workers, and the Tribunal assumed that in respect of most of the daily rated workers, the wages must have been fixed on the basis of what their monthly income would be for 26 working days. It is in the light of this background that the Tribunal proceeded to examine demand No. 11(a).

The Tribunal noticed that in the case of the four categories of workers specified in demand No. 11(b), difference had to be made because it could not be said in their case that their daily rates of wages were fixed with reference to a month of 26 working days. The result was that with the introduction of the weekly off, the wages of those workers were reduced. Naturally, the Tribunal observed that in such a case, the concession of a weekly off would be a very doubtful benefit if as a result, the monthly income of the workers was to go down. That is why the Tribunal gave the direction on which the respondents' present claim is based. This direction we have already quoted at the beginning of the judgment.

Having thus dealt with demand No. 11(a), the Tribunal proceeded to examine demand No. 11(b), and it ordered that the workers of Mains, Services and District Fittings Departments and Lamp Repairers who had been adversely affected in the matter of their earnings on account of closing down of Sunday work, should be compensated for the loss suffered by them, by payment of their wages and dearness allowance for the weekly offs given to them from June 1, 1949 onwards till the date of the publication of the award.

The question about the scope and effect of the provisions of s. 33C(2) of the Act and the extent of the jurisdiction conferred on the Labour Court by it have been recently considered by us in the case of The Central Bank of India Ltd. v. P. S. Rajagopalan [[1964] 3 S.C.R. 140]. That decision shows that the applications made by the respondents were competent and the Labour Court had jurisdiction to deal with the question as to the computation of the benefit conferred on the respondents in terms of money. Mr. Kolah for the appellant contends that though the applications made by the respondents may be competent and the claim made by them may be examined under s. 33C(2), it would, nevertheless, be open to the appellant to contend that the award on which the said claim is based is without jurisdiction and if he succeeds in establishing his plea, the Labour Court would be justified in refusing to give effect to the said Award. In our opinion, this contention is well-founded. The proceedings contemplated by s. 33C(2) are, in many cases, analogous to execution proceedings, and the labour Court which is called upon to compute in terms of money the benefit claimed by an industrial employee is, in such cases, in the position of an executing court; like the executing court in execution proceedings governed by the Code of Civil Procedure the Labour Court under s. 33C(2) would be competent to interpret the award on which the claim is based, and it would also be open to it to consider the plea that the award sought to be enforced is a nullity. There is no doubt that if a decree put in execution is shown to be a nullity, the executing court can refuse to execute it. The same principle would apply to proceedings taken under s. 33C(2) and the jurisdiction of the labour court before which the said proceedings are commenced. Industrial Tribunals which deal with industrial disputes referred to them under s. 10(1)(d) of the Act are, in a sense, Tribunals with limited jurisdiction. They are entitled to deal with the disputes referred to them, but they cannot travel outside the terms of reference and deal with matters not included in the reference, subject, of course, to incidental matters which fall within their jurisdiction. Therefore, on principle, Mr. Kolah is right when he contends that the Labour Court would have been justified in refusing to implement the award, if it was satisfied that the direction in the award on which the respondents' claim is based is without jurisdiction.

That takes us to the question about the merits of the plea raised by Mr. Kolah. Mr. Kolah contends that the direction in question on which the respondents' claim is based, is invalid for the reason that the Tribunal travelled outside the terms of reference when it added the words "and others" in the said direction. His argument is that the said direction has really been issued under demand No. 11(b) and since the said demand was confined to the four categories of workmen specified in it, the Tribunal had no jurisdiction to extend the relief to any workers outside the said four categories by adding the words "and other". Thus presented, the argument is no doubt attractive, but on a careful examination of the scheme of the award in so far as it relates to demand No. 11, it would be clear that the impugned direction has relation not to demand No. 11(b), but to demand No. 11(a), and it is obvious that that demand referred to all workers and was not confined to any specified categories of workers. It is true that in dealing with the said demand, the Tribunal prominently referred to the four categories of employees specified in demand No. 11(b), but that is not to say that it was confining the said demand to the said four categories. The said four categories were mentioned specifically because they clearly brought out the cases of workmen to whom relief was due under demand No. 11(a). Having thus dealt with the said four categories by name, the Tribunal thought it necessary,

and we think, rightly, to add the words "and others", because if there were other workmen who were till 1948 required to work on Sundays and in respect of whom a weekly day off was introduced thereafter without any corresponding increase in their wages, there was no reason why they should not have been given the benefit which was given to the workmen of the four categories specifically discussed. It is significant that having thus comprehensively described the workmen who were entitled to the said benefit, the Tribunal has added that in respect of the remaining workmen, demand No. 11(a) was rejected. Therefore, we are satisfied that the relief granted by the Tribunal in paragraph 115 of its award has reference to demand No. 11(a) and the use of the words "and others" is not only not outside the terms of reference, but is quite appropriate and justified. That being so, it is difficult to sustain the plea that the impugned direction was without jurisdiction.

Mr. Kolah no doubt relied on the fact that the present respondents never thought that they were entitled to the benefit conferred by the impugned direction and in support of this plea, he referred us to the fact that in 1952, a demand was made on their behalf for a similar benefit. If the respondents had felt that the benefit conferred by the impugned direction was available to them, it is very unlikely says Mr. Kolah, that they would have made the same demand in 1952 on the basis that it had not been granted to them by the earlier award. It does appear that this demand was made on behalf of the respondents and the Government of Bombay took the view that the said demand had already been considered by the Tribunal and that it was too late to reopen it in regard to other categories of employees; that is why the Government refused to make a reference. In our opinion, this fact cannot materially assist Mr. Kolah, because on a fair and reasonable construction of the material direction in the award, we are satisfied that the said clause applies to all workers of the appellant who satisfy the test prescribed by it. If the respondents did not understand the true scope and effect of the said clause, that cannot affect the construction of the clause. Therefore, we do not think that the failure of the respondents to take advantage of the said clause soon after the earlier award was pronounced can have any bearing on the construction of the clause.

Then, Mr. Kolah has suggested that on the merits the respondents are not entitled to make the claim, because it is not shown by them that they were required to work on all Sundays in the relevant years. He argues that the test prescribed by the direction is that the benefit should be available to workmen who were, till 1948, required to work on Sundays and that, it is suggested, must mean "who mean required to work on all Sundays in the year". This argument has been examined by the Labour Court and it has found that the respondents were required to work on Sundays before 1948, though they might not have attended on all Sundays. In support of this finding, the Labour Court has referred to Ext. 32 and has drawn the inference from the said document that the workers in the Syphon Department were required to work on all Sundays before September, 1948, and it has added that the fact that they did not work on some Sundays may be attributed to some casual circumstances, such as the workers having voluntarily remained absent, or there not being sufficient work for all, some might have been sent home. Mr. Kolah has invited our attention to the chart (Ext. 32) and has shown that in some cases, the employees were not required to work even half the number of Sundays during that year. In our opinion, this argument proceeds on a misconstruction of the relevant clause in the award. The said clause does not provide that before getting the benefit in question, the workers must show that they actually worked on all Sundays in the year. The test which has to be satisfied by the workers is that they could have been required to work on Sundays in that year. In other words, what the Tribunal decided was that if there were workers employed by the appellant whom the appellant could require to work on Sundays during the relevant year, they would be entitled to the benefit. In other words, the test is : did the terms and conditions of service impose an obligation on the workers to attend duties on Sundays if called upon to do so ? That is very different from saying that the benefit would be available only if the workers in question

worked on all Sundays. Therefore, we do not think there is any substance in the argument that since the respondents had not been actually required to work on all Sundays in the relevant year, they were not entitled to the benefit of the relevant clause in the award.

That leaves one more question to be considered. Mr. Kolah has strenuously argued that the Labour Court should not have allowed the claim of the respondents for such a long period when they made the present applications nearly 8 years after the award was pronounced. It is true that the earlier award was pronounced on May 11, 1950 and the present applications were made in 1958. In support of his argument that the delay made by the respondents should be taken into account, Mr. Kolah has referred to the fact that under the Payment of Wages Act (No. 4 of 1936) a claim for wages has to be made within six months from the date on which the cause of action accrues to the employees. In the State of Maharashtra, by local modification, this period is prescribed as one year. The argument is that the present claim made by the respondents under s. 33C(2) is a claim for wages within the meaning of the Payment of Wages Act. If the respondents had made such a claim before the authority under the said Act, they could not have got relief for more than a year. It would be anomalous, says Mr. Kolah, that by merely changing the forum, the respondents should be permitted to make a claim for as many as 8 years under s. 33C(2). In this connection, Mr. Kolah also contends that by virtue of s. 22 of the Payment of wages Act, a claim for wages cannot be made by an industrial employees in a civil court after a lapse of one year, because though the period for such a suit may be 3 years under Art. 102, a civil suit is barred by s. 22. The jurisdiction conferred on the payment authority is exclusive and so far as the said Act goes, all claims must be made within one year.

Prima facie, there is some force in this argument. It does appear to be somewhat anomalous that a claim which would be rejected as barred by time if made under the Payment of Wages Act, should be entertained under s. 33C(2) of the Act; but does this apparent anomaly justify the introduction of considerations of limitation in proceedings under s. 33C(2) ? Mr. Kolah suggests that it would be open to this Court to treat laches on the part of the employees as a relevant factor even in dealing with cases under s. 33C(2) and he has relied on the fact that this Court has on several occasions discouraged belated claims in the matter of bonus. In appreciating the validity of this argument, we do not propose to consider whether the jurisdiction conferred on the authority under the Payment of Wages Act is exclusive in the sense that a claim for wages cannot be made by an industrial employee in a civil court within 3 years as permitted by art. 102; that is a question which may have to be decided on the merits when it directly arises. For the purpose of the present appeal, the only point which we have to consider is : does the fact that for recovery of wages limitation has been prescribed by the payment of Wages Act, justify the introduction of considerations of limitation in regard to proceedings taken under s. 33C(2) of the Act ?

In dealing with this question, it is necessary to bear in mind that though the legislature knew how the problem of recovery of wages had been tackled by the Payment of Wages Act and how limitation had been prescribed in that behalf, it has omitted to make any provision for limitation in enacting s. 33C(2). The failure of the legislature to make any provision for limitation cannot, in our opinion, be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that legislature deliberately did not provide for any limitation under s. 33C(2). It may have been thought that the employees who are entitled to take the benefit of s. 33C(2) may not always be conscious of their rights and it would not be right to put the restriction of limitation in respect of claims which they may have to make under the said provision. Besides, even if the analogy of execution proceedings is treated as relevant, it is well known that a decree passed under the Code of Civil Procedure is capable of execution within 12 years, provided of course, it is kept alive by

taking steps in aid of execution from time to time as required by art. 182 of the Limitation Act, so that the test of one year or six months' limitation prescribed by the Payment of Wages Act cannot be treated as a uniform and universal test in respect of all kinds of execution claims. It seems to us that where the legislature has made no provision for limitation, it would not be open to the courts to introduce any such limitation on grounds of fairness or justice. The words of s. 33C(2) are plain and unambiguous and it would be the duty of the Labour Court to give effect to the said provision without any considerations of limitation. Mr. Kolah no doubt emphasised the fact that such belated claims made on a large scale may cause considerable inconvenience to the employer, but that is a consideration which the legislature may take into account, and if the legislature feels that fair play and justice require that some limitation should be prescribed, it may proceed to do so. In the absence of any provision, however, the Labour Court cannot import any such consideration in dealing with the applications made under s. 33C(2).

Mr. Kolah then attempted to suggest that art. 181 in the First Schedule of the Limitation Act may apply to the present applications, and a period of 3 years' limitation should, therefore, be held to govern them. Article 181 provides 3 years' limitation for applications for which no period of limitation is provided elsewhere in Schedule I, or by s. 48 of the Code of Civil Procedure, and the said period starts when the right to apply accrues. In our opinion, this argument is one of desperation. It is well-settled that art. 181 applies only to applications which are made under the Code of Civil Procedure, and so, its extension to applications made under s. 33C(2) of the Act would not be justified. As early as 1880, the Bombay High Court had held in Rai Manekbai v. Manekji Kavasji [[1880] I.L.R. 7 Bom. 213], that art. 181 only relates to applications under the Code of Civil Procedure in which case no period of limitation has been prescribed for the application, and the consensus of judicial opinion on this point had been noticed by the Privy Council in Hansraj Gupta v. Official Liquidators, Dehra Dun, Mussoorie Electric Tramway Company Ltd. [[1932] L.R. 60 I.A. 13, 20.]. An attempt was no doubt made in the case of Sha Mulchand & Co. Ltd. v. Jawahar Mills Ltd. [[1953] S.C.R. 351, 371], to suggest that the amendment of articles 158 and 178 ipso facto altered the meaning which had been attached to the words in art. 181 by judicial decisions, but this attempt failed, because this Court, held "that the long catena of decisions under art. 181 may well be said to have, as it were, added the words "under the Code" in first column of that Article." Therefore it is not possible to acceed to the argument that the limitation prescribed by art. 181 can be invoked in dealing with applications under s. 33C(2) of the Act.

It is true that in dealing with claims like bonus, industrial adjudication has generally discouraged laches and delay, but claims like bonus must be distinguished from claims made under s. 33C(2). A claim for bonus, for instance, is entertained on grounds of social justice and is not based on any statutory provision. In such a case, it would, no doubt, be open to industrial adjudication to have regard to all the relevant considerations before awarding the claim and in doing so, if it appears that a claim for bonus was made after long lapse of time, industrial adjudication may refuse to entertain the claim, or Government may refuse to make reference in that behalf. But these considerations would be irrelevant when claims are made under s. 33C(2), where these claims are, as in the present case, based on an award and are intended merely to execute the award. In such a case, limitation cannot be introduced by industrial adjudication on academic ground of social justice. It can be introduced, if at all, by the legislature. Therefore, we think that the Labour Court was right in rejecting the appellant's contention that since the present claim was belated, it should not be awarded.

In the result, the appeals fails and are dismissed with costs.

Appeals dismissed.

</html