M/S. Tata Iron and Steel Co. Ltd.

Vs

The Workman and Others

Civil Appeal Nos. 991 to 996 of 1968

(C. A. Vaidialingaam, I. D. Dua JJ)

05.05.1972

JUDGMENT

DUA, J. -

1. These six appeals on certificate granted by the Patna High Court in two separate judgments disposing of six civil writ petitions raise common questions of fact and law and will, therefore, be disposed of by a common judgment.

2. The appellant owns six collieries, but we are concerned in the present controversy only with two collieries, namely, Sijua and Bhelatand. Due to shortage of power, the appellant decide to stagger the weekly rest days in all the collieries. By a notice, dated September 10, 1963 a new schedule of rest days was introduced in accordance with which Sijua colliery was to have every Wednesday as a rest day and Bhelatand colliery every Friday as rest day. With respect to Bhelatand colliery Friday was later changed to Thursday. It is common ground that previously Sunday was the weekly rest day in all the six collieries. The change in the weekly days of rest was to take effect from September 15, 1963 which was a Sunday. The workers of the collieries did not turn up for work on Sunday September 15, as a result whereof, negotiations were held between the appellant and some of the workmen represented by the Colliery Mazdoor Sangh and it was agreed that the new schedule would take effect from September 22, 1963. It may here be pointed out that the respondents in these appeals, who were also respondents in the High Court in the six writ petitions, are members of another union called the Congress Mazdoor Sangh which was not a party to that agreement. The said agreement was not given full effect, with the result that on September 22, 1963, again, the workers did not turn up for work in the collieries. The appellant thereupon filed two applications under sub-para (1) of Para 8 of the Coal Mines Bonus Scheme (hereinafter referred to as the Scheme) before the Regional Labour Commissioner for a declaration that there was an illegal strike on September 22, 1963. Even after September 22, 1963, the controversy between the appellant and the workmen continued and on Wednesday, September 25, 1963, the workman went to Sijua Colliery for work. The appellant refused to give them any work on the plea that Wednesday was a weekly day of rest in that colliery. Similarly, when the workmen went on Thursday, September 26, 1963, to Bhelatand Colliery they were told that Thursday was a weekly rest day and on this ground they were not given any work. Shri B. N. Sharma, President of the Congress Mazdoor Sangh, Bihar, Jorapokhar, Dhanbad, on behalf of the workman of Sijua and Bhelatand Collieries, filed two applications before the Regional Labour Commissioner (C), Dhanbad, stating that there was illegal lock-out of the workers of Sijua Colliery on September 25, 1963, and of the workers of Bhelatand Colliery on September 26, 1963, and that the said lock-outs should be declared illegal for the purposes of the Scheme.

3. The Regional Labour Commissioner decided the two applications filed by Shri B. N. Sharma in respect of the alleged lock-out of workers of Sijua and Bhelatand Collieries by an order, dated November 22, 1963, and held that the non-working of Sijua and Bhelatand Collieries on September 25 and 26, 1963 respectively was due to a lock-out, which was illegal for purposes of the Scheme. It may be pointed out that the appellant had also filed four more applications relating to the failure of the workman to work on September 15 and 29 in the two collieries which means that there were six applications before the Regional Labour Commissioner (Central), Dhanbad filed by the appellant seeking declaration that the workers of Sijua and Bhelatand Collieries had resorted to strike on September 15, 22 and 29, 1963, which should be declared as illegal for purposes of the Scheme. The applications relating to the strike on September 15, 1963, both at Sijua and Bhelatand Collieries being declared as illegal were later withdrawn in view of the agreement, dated September 18, 1963, with the result that only four application by the appellant were ultimately adjudicated upon by the Regional Labour Commissioner who, by an order, dated November 14, 1964, gave a declaration that there was no strike, much less an illegal strike, by the workers on September 22 and 29, 1963. This conclusion was arrived at on the basis of the finding that change in the weekly days of rest was not in accordance with law.

4. The appellant appealed to the Central Industrial Tribunal, Dhanbad in all the six matters, but without success. Aggrieved by these decisions, the appellant approached the Patna High Court by means of six writ petitions which were disposed of by two separate orders both, dated November 16, 1966. In one judgment, the High Court dealt with the four writ petitions complaining of illegal strike and in the other with the two writ petitions complaining of illegal lock-out. The High Court upheld the decision of the Regional Labour Commissioner as also of the Central Industrial Tribunal on appeal, and dismissed all the six writ petitions. It is in these circumstances that the present six appeals have been presented to this Court by the appellant - Messrs Tata Iron & Steel Company Limited.

5. The principal question which requires consideration though of considerable importance lies within a narrow compass. Its importance, as pointed out by both sides, lies in the fact that the bonus provided under the Scheme depends on attendance and if it is held that the workers had reported to illegal strike, then they would be deprived of bonus for a quarter of the year. The main argument raised on behalf of the appellant centres round the construction to be placed on Section 9-A of the Industrial Disputes Act, No. XIV of 1947 (hereinafter called the Act), which deals with the notice of change in the conditions of service applicable to a workman in respect of matters specified in the Fourth Schedule to the Act. If notice contemplated by this section was necessary, which admittedly was not given, then the change in the new schedule of rest days was not according to law and the workers were justified in ignoring the change. Sections 9-A and 9-B alone constitute Chapter II-A which was introduced in the Act by means of Act No. 36 of 1956 which came into effect on March 10, 1957. These two sections read as under :

> "9-A Notice of change. - No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change -
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> (a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
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> (b) within twenty-one days of giving such notice :

Provided that no notice shall be required for effecting any such change -

(a) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950; or

(b) where the workman likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classifications, Control and Appeal) Rules or the Indian Railway Establishment Code or any others rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

9-B Power of Government to exempt. - Where the appropriate Government is of opinion that the application of the provision of Section 9-A to any class of industrial establishments or to any class of workman employed in any industrial establishments affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workman employed in any industrial establishment."

According to the appellant, there was no change in the conditions of service applicable to the workman in respect of any item falling in the Fourth Schedule. Here, we may reproduce only three items out of eleven contained in the Fourth Schedule, because according to the arguments addressed at the bar, these were the only three entries considered to be relevant. These entries are Nos. 4, 5 and 8 and they read as under :

"X X X X X##

4. Hours of work and rest intervals;

5. Leave with wages and holidays; and

X X X X X##

8. Withdrawal of any customary concession or privilege or change in usage."

6. The arguments forcibly pressed by Shri Pai in this Court broadly speaking, proceeded thus :

The change in the schedule of rest days did not effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule. It was due to an emergency created by unforeseen circumstances beyond the appellant's control resulting in power shortage that the appellant was compelled to stagger the weekly days of rest in the six collieries, including the two collieries concerned in these appeals. The basic cause as disclosed in 'Annexure A' to the writ petition was that on account of heavy percolation of water, power off-take to the collieries had reached its peak and the power-house was no more able to cope with the additional requirements. Further running of the power-house in the overloaded condition was also likely to

result in break-down at the power station, thereby totally cutting off the power supply. For this reason it became absolutely necessary to stagger the weekly days of rest in the six collieries and also in the Coal Washery at Jamadoba. By staggering the weekly days of rest, according to the argument, the daily load of power was intended to be reduced on the power station. There was no financial loss to the workers because it was only a change of weekly rest day from Sunday to Wednesday in one colliery and from Sunday to Thursday in the other. This change in the weekly rest days remained subject to the same conditions of service. The workers were under the changed schedule entitled to one and half times the wages, where applicable, only if called to work on the newly fixed days of rest. As it was an emergency measure which was to be short-lived, it was physically impossible to give notice of 21 days as contemplated by clause (b) of Section 9-A. In this connection emphasis was laid on the fact that on September 27, 1963 a "General Notice" was issued by the appellant's Chief Mining Inspector, Shri R. N. Sharma, notifying that the defects at the Power House had been successfully attended to with the result that old schedule of working was restored. In any event, the staggering of weekly days of rest, contended Shri Pai, did not fall under any item of the Fourth Schedule to the Act. The counsel explained that it could not fall under Item 4 because the expression "rest intervals" contemplates intervals during the working hours in the course of a single day and not the weekly rest days : it could also not fall under Item 5 because the change in question has nothing to do with either holidays or leave with wages : Item 8 would also be inapplicable because it did not amount to withdrawal of any customary concession or privilege or to change in usage.

7. The appellant, as a subsidiary point, also challenged the vires of Para 8 of the Scheme contending that this para creates a quasi-judicial Tribunal and such a Tribunal can only be created by the Legislature and not by an executive fiat and that Section 5 of the Coal Mines Provident Fund and Bonus Schemes Act (No. 46 of 1948), which authorises the Central Government to frame the Scheme, does not empower the Central Government, either expressly or by necessary implication, to create such a Tribunal. This challenge was pressed with some force and was also elaborated though it is interesting to note that it was the appellant-company itself which approached the Regional Labour Commissioner under this very paragraph for relief by means of four applications and on feeling aggrieved by the adverse orders of the Commissioner in these four matters and in the two matters in which the appellant had unsuccessfully contested the workman's applications seeking declaration of illegal lock-outs on September 25 and 26, 1963, took these matters on appeal to the Central Industrial Tribunal. Instead of ignoring these Tribunals or questioning the legality of the appointment of the Regional Labour Commissioner and of the Central Industrial Tribunal, the appellant, it is noteworthy, preferred to take the chance of obtaining favourable orders from them.

8. All these arguments were countered on behalf of the respondents and it was contended that the appellant had from the very inception visualized the difficulties created by the heavy percolation of water to last for a period of six weeks as would be clear from the appellant's notice. If that be so, then, it is futile to contend that the emergency being short-lived, 21 days' notice could not be given by the appellant. But assuming that the emergency was shortlived and there was a difficulty in giving the requisite notice, the appellant, which is a prosperous concern, could have paid wages to the workers and laid them off for one day in a week in order to avoid over-loading of the power station. This would have in any event served to promote the goodwill and harmonious co-operation between the management and the labour, ultimately leading to more helpful understanding of the common difficulties facing the industry, in the prosperity of which both of them as co-sharers should feel equally interested. This would accord with the industrial jurisprudence as it has developed in our country since 1950 under inspiration from the broad guidelines afforded by the industrial relations policy as envisaged in our Constitution. Insofar as the items of the Fourth Schedule to the Act are concerned, according to the respondents, Sunday as a weekly rest day, was

being granted to the workers of these two collieries as indeed it was being granted to the workers of all the collieries owned by the appellant, on the basis of old usage within the contemplation of item No. 8. This matter also falls within the expression "rest intervals" used in item No. 4, proceeded the contention, because the subject of "hours of work and rest intervals" contemplated by this entry can reasonably be construed to include both "daily hours of work and rest intervals" and "weekly hours of work and rest intervals". Besides, the question of weekly rest days can also fall within item No. 5 because it is inextricably connected with the question of holidays and leave with wages, the weekly rest day being a holiday with wages. Paragraph 8 of the Scheme, according to the respondents, is also intra vires because item No. 7 of the Third Schedule read with Section 5 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, contemplates that the Scheme can also provide for any matter which may be necessary or proper for the purpose of implementing the Scheme. Now if any dispute arises about the payment of bonus depending on the attendance of an employee in accordance with the terms of the Scheme, then, according to item No. 7 of the Third Schedule, settlement of such a dispute may legitimately be considered to be necessary or proper for the purpose of implementing the Scheme. Constitution of a Tribunal and laying down procedure for the proceedings before such a tribunal for adjudicating upon such a dispute would, according to the respondents' contention, fall within item No. 7 and would, therefore, be intra vires.

9. Dealing with the last point first, the Coal Mines Provident Fund and Bonus Scheme Act, 46 of 1948, was originally enacted for making provision for the framing of a Provident Fund Scheme and Bonus Scheme for persons employed in coal mines. In 1971 the purpose of this Act was extended to the framing of a family bonus Scheme but that amendment does not concern us. Section 5 of this Act empowers the Central Government to frame the Coal Mines Bonus Scheme which may provide for all or any of the matters specified in the Third Schedule. (Prior to the amendment of 1971 this Schedule was numbered as Second Schedule.) This Schedule reads :

> # "THE THIRD SCHEDULE (See Section 5) Matters to be provided for in the Coal Mines Bonus Scheme##
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> 1. The payment of bonus dependent on the attendance of an employee during any period.
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> 2. The employees or class of employees who shall be eligible for the bonus and the conditions of eligibility.
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> 3. The rate at which the bonus shall be payable to an employee and the manner in which the bonus shall be calculated.
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> 4. The conditions under which an employee may be debarred from getting the bonus in whole or in part.
>
> 5. The rate at which sums shall be set apart by the employer for payment of bonus, and the time and manner of such payment.
>
> 6. The registers and records to be maintained by the employer or contractor and the returns to be furnished by him.
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> 6-A. The transfer, by an employer to the Fund or any other fund specified by the Central Government, of the amount of bonus remaining unpaid or unclaimed for a period of six months from the end of the quarter to which the bonus relates and the

extinguishment of the employer's liability to his employee to the extent of the amount so transferred.

7. Any other matter which is to be provided for in the Coal Mines Bonus Scheme or which may be necessary or proper for the purpose of emplementing that Scheme."

Item No. 7, it may be noticed, extends to matters which may be necessary or proper for the purpose of implementing the Scheme.

10. Now, the increasing complexity of modern administration and the need for flexibility capable of rapid readjustment to meet changing circumstances which cannot always be foreseen, in implementing our socio-economic policy pursuant to the establishment of a welfare State as contemplated by our Constitution, have rendered it convenient and practical, may, necessary, for the Legislatures to have frequent resort to the practice of delegating subsidiary or ancillary powers to delegates of their choice. The parliamentary procedure and discussion in getting through a legislative measure in the Legislatures is usually time-consuming. Again such measures cannot provide for all possible contingencies because one cannot visualize various permutations and combinations of human conduct and behaviour. This explains the necessity for delegated or conditional legislation. Due to the challenge of the complex socio-economic problems requiring speedy solution the power of delegation has by now, as per necessity, become a constituent element of legislative power as a whole. The legal position as regards the limitations' on this power is, however, no longer in doubt. The delegation of legislative power is permissible only when the legislative policy and principle is adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the Legislature. The Legislature, it must be borne in mind, cannot abdicate its authority and cannot pass on to some other body the obligation and the responsibility imposed on it by the Constitution. It can only utilise other bodies or authorities for the purpose of working out the details within the essential principles laid down by it. In each case, therefore, it has to be seen if there is delegation of the essential legislative function or if it is merely a case in which some authority or body other than the Legislature is empowered to work out the subsidiary and ancillary details within the essential guidelines, policy and principles, laid down by the legislative wing of the Government. In the present case the relevant schedule read with Section 5 of Act No. 46 of 1948 clearly lays down the policy and the principle for framing the Scheme. Para 8 of the Coal Mines Bonus Scheme provides for the effect of participation in illegal strike and in case a dispute arises as to whether a strike is legal or illegal for the purposes of the Scheme, which authority, and according to what procedure, is to decide that dispute. This, in our view, is a matter of detail which is subsidiary or ancillary to the main purpose of the legislative measure for implementing the Scheme. It partakes of the character of subordinate legislation on ancillary matters falling within the conditions laid down in the aforesaid Act by Section 5 read with the relevant Schedule. Para 8 of the Scheme is accordingly valid and it cannot be considered to amount to excessive delegation of legislative power. The challenge on this score is, therefore, devoid of merit.

11. We now come to the main contention. Section 9-A which has already been reproduced, lays down that change in the conditions of service in respect of any matter specified in the Fourth Schedule shall not have effect unless a notice is given to the workmen likely to be affected by such change. The relevant entries of the Fourth Schedule have already been reproduced. It appears to us that entries dealing with "hours of work and rest intervals" and "leave with wages and holidays" are wide enough to cover the case of illegal strikes and rest days. Indeed, entry No. 8 dealing with "withdrawal of customary concession or privilege or change in usage" is also wide enough to take

within its fold the change of weekly holidays from Sunday to some other day of the week, because it seems to us to be a plausible argument to urge that fixation of Sundays as weekly rest days is founded on usage and/or is treated as a customary privilege and any change in such weekly holidays would fall within the expressions "change in usage" or "customary privilege".

12. We are not unmindful of the force of the argument pressed on behalf of the appellant that if a holiday is changed from Sunday to some other week day it would not affect the material gain or financial benefit available to the workmen because the workmen would nonetheless get one day off with pay in a week. Whether the paid day of rest is a Sunday or some other week day would no doubt cause no financial loss to the workmen. But the financial benefit cannot be the sole criterion in considering this question. In this connection it must not be ignored that due to long usage and other factors Sunday as a holiday may for conceivable reasons have assumed importance for workmen. For certain classes of workmen Sunday as a weekly rest day may also have special significance. Workmen may, for example, also generally like to have weekly rest day on a Sunday when their school-going children have a holiday so that the entire family may be able to take part in recreational or other social activities. This consideration has its own importance. If that be so then, notice for effecting such a change would be within the contemplation of Section 9-A. The real object and purpose of enacting Section 9-A seems to be to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-shares and to break away from the tradition of labour's subservience to capital.

13. Shri Pai referred us to the Factories Act, 63 of 1948 and submitted that Section 52 read with Section 2(f) of that Act indicates that adult workers are not required to work on Sundays except under certain conditions. It was argued that when Sundays as rest days are considered of importance, the law in terms so provides. In the present case, according to the submission, no importance is intended to be attached to Sundays as weekly days of rest. A change from Sundays to some other week days as days of rest should be considered as a matter of little or no importance for the workmen. We are unable to agree with this submission. In our opinion, the Factories Act fortifies our view by suggesting that it is not immaterial or unimportant whether workmen are given a Sunday or some other week day as a weekly rest day. Though reference was also made by Shri Pai to the Mines Act, 35 of 1952, in our opinion, each statutory provision has to be construed on its own languages though the general scheme of legislation on a given subject may, if necessary, be kept in view, if it throws helpful light on the construction to be placed on an ambiguous provision. No such consideration arises in the present case.

14. In our opinion, in order to effectively achieve the object underlying Section 9-A, it would be more appropriate to place on the Fourth Schedule read with Section 9-A a construction liberal enough to include change of weekly rest days from Sunday to some other week day. The appellant having thus effected a change in the weekly days of rest without complying with Section 9-A read with the Fourth Schedule this change must be held to be ineffective and the previous schedule of weekly days of rest must be held to be still operative. Reference was made at the bar to certain decisions but they are of little assistance in construing the statutory provisions with which we are concerned and which, as already observed, as already observed, have to be construed on their own language and scheme. We, therefore, do not consider it necessary to refer to those decisions.

15. The result then is that the appellant's contention that the workmen concerned had restored to illegal strike on September 22 and 29, 1963 must be rejected. On this view the respondents' contention that the appellant had illegally declined to give work to the respondents on September 25 and 26, 1963 and that the appellant had declared lock-out on those two days which was illegal has also to be upheld. No doubt, mere refusal to give work does not by itself amount to lock-out but in the present case it cannot be disputed that when the employers closed the Sijua and Bhelatand collieries respectively on September 25 and 26, 1963, they knew that this change in the weekly days of rest was not acceptable to a considerable section of the workmen who had not come to work on Sunday, September 22, 1963. The closure of the place of work in the two aforesaid collieries on the two days in question was thus deliberate. Coal having been declared a public utility service, as observed by the Regional Labour Commissioner in his order, notice as contemplated by Section 22 of the Act was necessary. Such a notice having not been given, the lock-out was clearly illegal under Section 24 of the Act. The High Court was in our opinion right in the orders made by it in the writ petitions.

16. All the six appeals thus fail and are dismissed with costs. Only one set of costs.

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