

Saxby and Farmer (India) Private Limited

Vs

Their Workmen

Civil Appeal No. 1923 of 1968

(C.A. Vaidialingam, A.N. Grover JJ)

29.03.1973

JUDGMENT

GROVER, J. –

1. This is an appeal by special leave from the award of the Seventh Industrial Tribunal, West Bengal.
2. The appellant company is a unit of the engineering industry in West Bengal having three factories in various parts of Calcutta. The company employs about 1,650 workmen in all these factories. According to the appellant, it is solely engaged in the production of brakes and signaling equipment for the railways. Its products, it is claimed, are essential for the smooth working of the railways, which are its sole customers. In order to ensure smooth production and uninterrupted flow of supply, the Government of West Bengal declared the appellant to go a public utility service in exercise of the power conferred by sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, and also as 'essential service' under the Defense of Indian Rules. It is said as a unit of engineering industry, the appellant was a party to certain omnibus major awards made in 1958 and the earlier awards of 1949 and 1950. In these awards, the service conditions, including leave and holidays of the workmen were standardised. The appellant has granted leave and holidays as per those awards and in accordance with the provisions of the Factories Act, the Shops and Establishments Act and the Employees' State Insurance Act. The paid holidays which are being granted are ten in a year. There used to be a system in the appellant company's establishment of granting nine days unpaid festival holidays in addition to the paid festival and other holidays. It is pointed out that in no other major industry in the region this system of unpaid festival holidays is being followed any longer.
3. At the instance of the appellant-company, the Government of West Bengal referred the following, issue by an order, dated June 7, 1966, to the Industrial Tribunal for adjudication :

"Curtailment of unpaid festival holidays".
4. In the written statement, which was filed by the appellant, it was stated in Paragraph 8 that the company allows nine festival unpaid holidays, and the continuance of the said holidays would not only entail loss of wages to the workmen but also loss of production and would prejudicially affect the country's economy. It was also asserted that the system of granting unpaid holidays was no longer being followed in the engineering industry. Moreover, other holidays enjoyed by the workmen along with the workmen of other similar units were far in excess of what prevails in other countries.

5. The union filed a written statement on behalf of the workmen. In reply, the position taken up was that the assertion of the company that the nine unpaid holidays should be discontinued, was in clear disregard of the principle and practice followed so far in the matter of giving benefits in the industrial concerns. It was said that the trend of the decisions of the Industrial Tribunal in respect of major engineering concerns has always been against the curtailment of the existing facilities, and that the management of the appellant-company had made an unfair attempt to curtail those benefits, relating to unpaid festival holidays. The main ground given was that in the interest of industrial peace, production and better relations between the workmen and the management, the workmen should be kept contented. Any attempt to curtail the existing benefits according to time-honoured practice, would provoke discontent and labour unrest.

6. Each side examined one witness. P.W. 1, Govind Dey, who appeared on behalf of the appellant, supported the assertions made in the written statement filed on behalf of the appellant. In other words, he stated that 19 holidays were being given to the workers at present, out of which ten were paid holidays and the rest, without pay. Ten festival holidays were allowed on the basis of the award made by the Tribunals. He admitted in his cross-examination that in Bengal holidays for certain days like Netaji's birthday or for religious festivals, were considered very essential. O.P.W. 1, who appeared on behalf of the workers and who was the working president of the union at the time he gave evidence, merely contended himself by saying that nine unpaid festival holidays had been enjoyed by the workers since he joined the factory and prior to that time. According to him, even on festival holidays, workers attended the factory and worked there and drew wages. Over-time wages were paid at the rate of 150% of the basic wages.

7. The Industrial Tribunal does not appear to have given any substantial reason for coming to the conclusion the unpaid holidays should but be curtailed. According to it, there was no evidence to show what extent the Railways, which were the sole customers of the company, depended on the company to meet their requirements. The Tribunal proceeded to say that the company might be solely engaged in the production of signaling equipment, but that was not sufficient to show the nature and extent of the dependence of the Railways on the supplies of the company. The representative of the company had argued that because the number of holidays was large, the production was suffering and the company was unable to meet the demands of the Railways in time. The Tribunal, however, thought that, in the absence of any evidence to that effect, it could not be held that the production was not adequate or was suffering because of the number of holidays for the workers. This is how the Tribunal reasoned in the matter :

"..... in my humble opinion, without reducing the number of important festival holidays of any community in India, which is the home of different communities and religions, the number of working holidays can be increased as a compensatory measure by converting a good many Sundays to working days. I think this is quite a feasible proposition and can be offered as a suggestion to those who take the view that as festival and religious holidays are quite large in number they should be reduced without reference to the feelings of the affected religious group or community. But then this is too wide and too large a question for my embarkation and perhaps such views will not find favour with the west oriented intellect and so called cosmopolitan outlook. Anyway, what I say is that there is no good ground to cut down the number of festival holidays simply because the number of overall holidays is large."

The Tribunal appears to have been impressed by the contention raised on behalf of the workmen

that they had enjoyed the facilities for a long time.

8. It appears that the Tribunal was wholly oblivious of the present day conditions and the necessity for increased production, particularly, in the matter of utility companies and the companies that are producing goods for essential services like those carried on by the Indian Railways. This Court has observed on more than one occasion that it is generally accepted that there are too many public holidays in our country, and that when the need for industrial production is urgent and paramount, it may be advisable to reduce the number of such holidays in industrial concerns. Indeed, it cannot be disputed that a necessary step in the direction of increasing the country's productivity is the reduction of number of holidays. See Pfizer (P) Ltd. v. Their Workmen, (1963 Supp 2 SCR 627 : AIR 1963 SC 1103 : (1963) 1 LLJ 543) and Associated Cement Staff Union v. Associated Cement Companies Ltd. (AIR 1964 SC 914 : (1964) 1 LLJ 12) In Pfizer's case (supra), the holidays which were being granted were reduced to ten from the number which the workers were enjoying previously in accordance with those sanctioned under the Negotiable Instruments Act, i.e., 16 holidays.

9. On giving the matter careful consideration, we find no reason or justification for unpaid holidays not being curtailed in the present case. All the conditions which are necessary have been satisfied and the appellant is carrying on the kind of work which requires efficiency and increased production. There should be more concentration on increase of production and efficiency than on enjoying the holidays if this country is to march ahead on the road to prosperity. We would, accordingly, allow this appeal and set aside the award. In other words, the system of unpaid holidays will not continue with effect from January 1, 1973. There will be no order as to costs.

</html