

Shree Sita Ram Sugar Co. Ltd.

Vs

The Presiding Officer, Labour Court and Others

Civil Appeal No. 1958 of 1968

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

24.04.1973

JUDGMENT

VAIDIALINGAM, J. –

1. The short question that arises for consideration in this appeal, by special leave, is whether the State Government has power under Section 6-G of the U.P. Industrial Disputes Act, 1947 (hereinafter to be referred to as the Act) to withdraw an order already passed referring a dispute for adjudication. The facts leading up to the filing of the writ petition by the appellant are as follows :

The appellant, a public limited company carrying on business of manufacture and sale of sugar from sugarcane, employs about a thousand workmen in its factory at Baitalpur. The appellant retired three workmen, namely, Chhatradhari Lal, Chandrika Prasad Srivastava and Bal Karan. This led to an Industrial dispute. The State Government by Notification No. 735/LC/XVIII/LA-97-(GR)-1959, dated October 28, 1960, referred the said dispute to the about Court, Gorakhpur, for adjudication. This reference (hereinafter to be referred to as Reference No. I) was registered by the Labour Court as Adjudication Case No. 93 of 1960. The parties filed their written statements and proceedings went on resulting in the Labour Court passing an award, dated February, 26, 1961, holding that the retirement of the three workmen was neither legal nor justified. This award was published in the U.P. Gazette, dated May 6, 1961, by the State Government's Notification, dated April 4, 1961, No. 1176(STO)36/4/46/(ST)-59. There were similar disputes regarding the retirement of several other workmen and accordingly that dispute was referred by the State Government to the same Labour Court for adjudication by Notification No. 822 (LC) XVIII-LA-115-GR/1959, dated October, 31, 1960. This reference (hereinafter to be referred to as Reference No. II) was registered by the Labour Court as Adjudication Case No. 98 of 1960. At this stage it must be mentioned that Reference No. II related to several workmen numbering about thirty or forty which included also the three workmen covered by Reference No. I. The three workmen covered by Reference No. I made an application to the Labour Court for deleting their names from Reference No. II on the ground that their grievance is the subject of adjudication in case No. 93 of 1960. Though the appellant opposed this application, the Labour Court by its order, dated February 21, 1961, accepted the prayer of the three workmen and as such they ceased to have anything to do further in Reference No. II. Adjudication Case No. 98 of 1960, arising out of Reference No. II, also resulted in an award, the Labour Court had decided the dispute on merits. But it has specially stated that it is not recording any finding with regard to the three workmen covered by Reference No. I, as their names have been excluded from Adjudication Case No. 98 of 1960, arising out of Reference No. II. This award, dated February 27, 1961, was published in the State Gazette on April 4, 1961.

2. We have earlier mentioned that the award, dated February 26, 1961, in Adjudication Case No. 93

of 1960, arising out of Reference No. I, was published in the State Gazette on May 6, 1961. After the award was made on February 26, 1961, the State Government issued a Notification on February 28, 1961, withdrawing the Notification, dated October 25, 1960, making Reference No. I. The order of withdrawal runs as follows :

"GOVERNMENT OF UTTAR PRADESH LABOUR (A) DEPARTMENT No. 167-(LG)/XVIII-LA-97-(GR)-1959, dated Kanpur, February 28, 1961. Order##

Whereas an industrial dispute between the employers and the workmen of the concern known as Shree Sitaram Sugar Co. Ltd., Baitalpur, District Deoria relating to retirement of the workmen, was referred for adjudication to the Labour Court at Gorakhpur in G.O. No. 785-(LC)/XVIII-LA-97-(GR)-1959, dated October 25, 1960.

And whereas the same dispute is also covered by G.O. No. 822 (LC)/XVIII-LA-115-(GR)-1959, dated October 31, 1960, as amended by G.O. No. 912 (LC)/XVIII-LA-115-(GR)-1959, dated November 21, 1960, referring the same question of retirement of workmen to Labour Court at Gorakhpur;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6-G of the U.P. Industrial Disputes Act, 1947 (U.P. Act No. XXVIII of 1947), the Governor is pleased to order that G.O. No. 785-(LC)/XVIII-LA-97-(GR)-1959, dated October 25, 1960, referring the said dispute for adjudication, shall be and is hereby withdrawn.

(Sd.). PRASAD, Under Secretary.###

3. It will be noted from the above Notification that the State Government had withdrawn its previous order referring the dispute by virtue of powers stated to be conferred under sub-section (1) of Section 6-G of the Act. We have also referred to the fact the award in Reference No. I was published in the State Gazette on May 6, 1961. It will be noted that the material dates to be considered with regard to Reference No. 1 are as follows :

- (a) The dispute was referred for adjudication by Notification, dated October 25, 1960.
- (b) The award was made on February 26, 1961.
- (c) The Notification, dated October 25, 1960, referring the dispute was withdrawn by Notification, dated February 28, 1961.
- (d) The award was published in the State Gazette, dated May 6, 1961.

It will be noted from these dates that the order withdrawing the original reference was made two days after the Tribunal had passed the award. The publication of the award was after the State Government had withdrawn its original order making the reference.

4. The appellant filed the writ petition in the High Court under Article 226 for the issue of a writ of certiorari quashing the award, dated February 26, 1961 and also for a mandamus directing the State Government to withdraw its notification dated May 6, 1961, publishing the award. The proceedings before the High Court related to the matters arising out of Reference No. 1. According to the appellant, the award, dated February 26, 1961, had become ineffectual and useless in view of the

State Government having withdrawn the Notification, dated October 25, 1960, referring the dispute for adjudication. Its further contention was that having withdrawn on February 28, 1961, its previous order referring the dispute, the State Government had no power to publish the award, as it had done on May 6, 1961 and that the said order publishing the award had to be revoked. The union contested the writ petition on the ground that the State Government has no power under Section 6-G to withdraw an order already passed referring a dispute for adjudication and that, in any event, it has no such power after an award has been made by a Labour Court or Tribunal. According to the union, the order of withdrawal, dated February 28, 1961, is of no effect and that the publication of the award on May 6, 1961, was valid and that the State Government cannot be called upon to revoke the same.

5. The learned single Judge posed two questions for consideration -

(a) whether the power to withdraw under Section 6-G of the Act is confined to withdrawal for purposes of transferring the proceedings to another Court or Tribunal; and

(b) whether the power under Section 6-G can be exercised at any stage until the award of the Labour Court or Tribunal has become enforceable under Section 6-A of the Act.

6. The learned single Judge did not consider the first question and proceeded on the assumption that under Section 6-G the State Government has power to withdraw a reference already made. But, after considering the second question, he came to the conclusion that the power of withdrawal can not be exercised after an award had been made by the Tribunal concerned. In this view, the learned single Judge held that the order of withdrawal, dated February 28, 1961, was of no effect and that the publication of the award on May, 6, 1961, was according to law. In this view, the Court declined to grant any relief to the appellant.

7. The appellant challenged the decision of the learned single Judge in Special Appeal No. 960 of 1964. The Division Bench of the Allahabad High Court has held that the State Government has power under Section 6-G to withdraw any proceedings pending before a Labour Court or Tribunal. But, it held that as the award had been made on February 26, 1961, there were no proceedings pending before the Labour Court on February 28, 1961, when the order of withdrawal was passed by the State Government. In this view the Division Bench held that it was not open to the State Government to withdraw the proceedings after the award had been made by the Tribunal and, therefore, the Notification, dated February 28, 1961, is of no effect. By Judgment and Order, dated August 2, 1966, the learned Judges confirmed the order of the single Judge and dismissed the Special Appeal. The management has come to this Court in this appeal.

8. Mr. G. B. Pai learned counsel for the appellant placed considerable stress on the language of Section 6-G of the Act and pointed out that in addition to the power of transferring a proceeding from one Labour Court or Tribunal to another, the said section has conferred an absolute right on the State Government to withdraw an order already passed referring a dispute for adjudication. There is only an obligation on the State Government to make the order in writing and also give reasons for the action taken by it. The counsel very heavily relied on Section 6-D of the Act and urged that this power of withdrawing a reference can be exercised till the date when the award becomes enforceable. Therefore, the mere fact that an award has been made does not take away the power of the State Government of withdraw a reference. In the case before us, the counsel pointed out that the award had been made only on February 26, 1961 and the reference had been withdrawing by the State Government on February 28, 1961, long before the award had become

enforceable. The counsel urged that, in view of the circumstances pointed out above, the view of the High Court that the State Government has no power to withdraw the reference as the award has been made, is erroneous.

9. Mr. Daniel Latifi, learned counsel for the workmen concerned, on the other hand, urged that the view of the High Court that there is a power under Section 6-G in the State Government to withdraw a reference is erroneous. The counsel pointed out that Section 6-G confers on the State Government only a power to transfer a proceedings from one Labour Court or Tribunal to another. The counsel also pointed out that Section 6-D has no bearing in the construction of Section 6-G of the Act. When there is no power in the State Government to withdraw a reference, the counsel pointed out, the question at what stage the proceedings can be withdrawn is purely academic. Even assuming that there is a power under Section 6-G in the State Government to withdraw an order of reference already made, that section, the counsel pointed out, does not give power to order such withdrawal after an award had been passed. According to him, once an award has been made by a Labour Court or Tribunal, proceedings before it come to a close and there is nothing for being withdrawn by the State Government. The counsel supported the reasoning of the High Court that Section 6-G does not confer any power on the State Government to withdraw an order of Reference after an award had been made by the Labour Court or Tribunal concerned.

10. In our opinion, the first and foremost question that should have been considered by the High Court is whether Section 6-G confers a power on the State Government to withdraw an order earlier passed referring a dispute for adjudication. It is only when this point is answered in the affirmative the further question is up to what stage can the power of withdrawal be exercised by the State. The State of Uttar Pradesh was a party before the learned single Judge as well as the High Court and is second respondent in the appeal before us. We have already referred to the fact that the relief that was asked for by the appellant was by way of writ of mandamus directing the State Government to withdraw the publication, made in the Gazette of May 6, 1961 of the award by its order, dated April 4, 1961. This relief was asked for by the appellant on the ground that the order, dated February 28, 1961, of the State Government withdrawing the reference was well within its power. In the writ petition the powers and functions of the State Government under the Act came squarely for consideration. Under those circumstances one would have expected the State Government to appear before this Court and place its point of view regarding the points under consideration. Unfortunately, the State Government has chosen to remain ex parte in this appeal. Hence we have to decide the points in controversy only on the basis of the contentions advanced on behalf of the employer and the workmen.

11. It is now necessary to refer to certain relevant provisions of the Act. According to the preamble, the Act has been enacted to provide for powers to prevent strikes and lock-outs and for the settlement of industrial disputes and other incidental matters. Section 2(c) states :

"award' means an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court or Tribunal and includes an arbitration award made under Section 5-B."

"The above definition takes in both interim and final awards. Section 4-K gives power to the State Government to refer for adjudication and industrial dispute to the Labour Court or an industrial Tribunal under the circumstances mentioned therein. Section 5 gives power to the State Government to include other undertakings in any adjudication. Section 6 dealing with the proceedings before a Tribunal, submission of

the award and its publication runs as follows :

6. Awards and action to be taken thereon. - (1) Where an industrial dispute has been referred to a Labour Court or Tribunal for adjudication, it shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion thereof, submit its award to the State Government.
- (2) The award of a Labour Court or Tribunal shall be in writing and shall be signed by its Presiding Officer.
- (3) Subject to the provisions of sub-section (4) every arbitration award and the award of a Labour Court or Tribunal, shall within a period of thirty days from the date of its receipt by the State Government, be published in such manner as the State Government thinks fit.
- (4) The State Government may before publication of an award of a Labour Court or Tribunal under sub-section (3), remit the award for reconsideration of the adjudicating authority, and that authority shall, after reconsideration submit its award to the State Government, and the State Government shall publish the award in the manner provided in sub-section (3).
- (5) Subject to the provisions of Section 6-A, an award published under sub-section (3) shall be final and shall not be called in question in any Court in any manner whatsoever.
- (6) A Labour Court, Tribunal or Arbitrator may either of its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistake in the award, or errors arising therein from any accidental slip or omission; whenever any correction is made as aforesaid, a copy of the order shall be sent to the State Government and the provision of this Act, relating to the publication of an award shall mutatis mutandis apply thereto."

12. The above section clearly indicates that when once an industrial dispute has been referred for adjudication, the Labour Court or Tribunal has to conduct its proceedings expeditiously and it has to submit its award to the State Government. The award has to be published within thirty days of its receipt by the State Government. Power has no doubt been given to the State Government, before publication of an award, to remit the same for reconsideration. When the same is received after reconsideration, the State Government is bound to publish the same, as provided under sub-section (3). An award published under sub-section (3) is final subject to the provisions of Section 6-A. The Labour Court or Tribunal has power to correct any clerical or arithmetical mistake in the award. But if any such correction is made, a copy of the order making the correction will have to be sent to the State Government. The provisions relating to publication of an award apply to the order making a correction in the award.

13. Section 6-A deals with the commencement of the award. The general rule, as provided under sub-section (1), is that an award becomes enforceable on the expiry of thirty days from the date of its publication under Section 6. Sub-section (3) provides for a slightly different period depending upon the circumstances mentioned therein. Sections 6-D and 6-G are as follows :

"6-D. Commencement and conclusion of proceedings. - Proceedings before a Labour Court or Tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 6-A."

"6-G. Power to transfer certain proceedings. - (1) The State Government may, by

order in writing and for reasons to be stated therein, with draw any proceeding under this Act, pending before a Labour Court or Tribunal or transfer a proceeding from one Labour Court or Tribunal to another Labour Court or Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court or Tribunal to which the proceeding is so transferred may, subject to any special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred :

Provided that where a proceeding under Section 6-E or Section 6-F is pending before a Tribunal, the proceeding may also be transferred to a Labour Court.

(2) Without prejudice to the provisions of sub-section (1) any Tribunal, if so authorised by the State Government, may transfer any proceeding under Section 6-E or Section 6-F pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the State Government by notification in the Official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same."

Sections 6-D and 6-G substantially correspond to sub-section (3) of Section 20 and Section 33-B respectively of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

14. It must be stated that a superficial reading of sub-section (1) of Section 6-G in isolation will gave the impression that the State Government has got two distinct and separate powers, namely -

(a) to withdraw any proceedings under the Act pending before a Labour Court or Tribunal; or

(b) to transfer the proceedings from one Labour Court or Tribunal to another Labour Court or Tribunal for disposal of the same.

It is on the basis of such a reading of the section that Mr. Pai, the learned counsel, urged that there is an absolute power in the State Government to withdraw an order already passed referring a dispute for adjudication. This power, according to the learned counsel, is distinct and separate from the power given under the same section to the State Government of transfer a proceedings from one Labour Court or Tribunal to another. If we do not accept the contention of Mr. Pai that Section 6-G confers two such distinct and separate powers, Section 6-D will not assist the appellant. It is only if we hold that the Government has a power to withdraw simpliciter, the further question regarding the stage up to which the power could be exercised will arise for consideration.

15. We have already pointed out that Section 6 casts a duty on the Tribunal, when a dispute has been referred to it, to deal with it expeditiously and to submit its award to the State Government. The State Government has also an obligation to publish the award within thirty days of its receipt. No doubt, sub-section (4) of Section 6 gives power to the State Government, before publishing the award, to remit the same for reconsideration. But still a duty is cast upon the State Government to publish the award as reconsidered by the Tribunal within thirty days of its receipt. Section 6-A also gives certain powers to the State Government regarding the award, which normally becomes enforceable under sub-section (1) on the expiry of thirty days from the date of its publication.

16. Section 6-G, in our opinion, deals only with the power of the State Government to transfer proceeding from one Labour Court or Tribunal to another and for purposes of such transfer to withdraw the proceedings from the Labour Court or Tribunal from whom it is being transferred. We are free to admit that the wording of sub-section (1) is capable of being construed as conferring in

the State Government a power to withdraw any proceedings or to transfer a proceedings or to transfer a proceeding from one Labour Court or Tribunal to another. But, having regard to the scheme of Section 6-G, read in the light of the other provisions referred to earlier, the section will have to be interpreted as giving to the State Government only a power to transfer a proceeding from one Labour Court to another. When Section 6 makes it obligatory that an award has to be made by the Tribunal concerned and that it has to be published by the State Government within thirty days of its receipt and declare that the award on publication becomes final, it is idle to expect that the legislature intended to nullify the entire proceedings by conferring an absolute power of withdrawal on the State Government under Section 6-G. The proper way of reading Section 6-G is to limit the power of withdrawal, referred to therein, only for the purpose of transferring the proceedings from one Labour Court or Tribunal to another. That the expression 'or' in Section 6-G(1) interposed between 'withdraw any proceedings' or 'transfer a proceedings' will have to be understood as 'and'. So read, the power conferred under Section 6-G on the State Government is that of withdrawing any proceedings from one Labour Court or Tribunal and transferring the same to another.

17. Mr. Pai drew our attention to Section 33-B of the Central Act and emphasised that the said section is worded differently from Section 6-G of the Act. According to him, the wording of Section 33-B clearly shows that the withdrawal of any proceedings is only for transferring the same to another Labour Court or Tribunal. On the other hand, the counsel pointed out that a different phraseology has been used in Section 6-G indicating the conferment of two distinct powers. We have already referred to this aspect and expressed the view that a superficial reading of Section 6-G will support the contention of Mr. Pai. If the expression 'or' as mentioned earlier, is read as 'and' the section does not present any difficulty. That having due regard to the scheme of the statute and the purpose sought to be served the expression 'or' can be read under certain circumstances as 'and' as has been laid down by this Court in *Mazagaon Dock Ltd. v. The Commissioner of Income Tax and Excess Profits Tax.* (1959 SCR 848 : AIR 1958 SC 861 : 1958 SCJ 1261) Adopting the same principle and having due regard to the object of Section 6-G, which essentially is only to confer in the State Government a power to transfer a proceeding from one Labour Court or Tribunal to another, the expression 'or' has to be read in Section 6-G as 'and'. If so read, sub-section (1) of Section 6-G confers on the State Government only a power to withdraw a proceeding from one Labour Court or Tribunal and transfer the same to another. It is needless to state that transfer of a proceeding can only be when it is pending before a Labour Court or Tribunal.

18. Section 6-D, in our opinion, has no relevance in construing Section 6-G, Section 6-D is enabled for a totally different purpose. For instance Section 6-E provides for conditions of service etc. to remain unchanged in certain circumstances during the pendency of proceedings. Similarly under Section 6-F a question may arise whether an employer has contravened the provisions of Section 6-E during the pendency of proceedings before a Labour Court or Tribunal. It may be quite essential to consider whether any proceedings were pending before a Labour Court or Tribunal. For the purpose of considering the question whether any proceedings were pending, the Act has created a fiction under Section 6-D by indicating the starting point of a proceedings before a Labour Court as well as its conclusion. The starting point of the proceedings has been fixed from the date of the reference and its termination has been fixed as the date on which the award becomes enforceable under Section 6-A. During this period broadly it has to be considered that proceedings are pending before a Labour Court or Tribunal. We need not refer to the other provisions of the Act where the duration of the pendency of proceedings may assume importance. Section 6-D can be invoked only in those cases. But it does not come into the picture, as mentioned earlier, in construing Section 6-G.

19. Mr. Pai referred us to the decision of this Court in *Sirsilk Ltd. and Others v. Government of Andhra Pradesh & Another*, ((1964) 2 SCR 448 : AIR 1964 SC 160 : (1963) 2 Lab LJ 647) where the provisions of Sections 17 and 18 of the Central Act were read in harmony and the State Government was directed not to publish the award though its publication was mandatory. We are not faced with such a situation in the case before us. We have already referred to the fact that in Adjudication Case No. 98 of 1960, arising out of Reference No. II, Respondent 4 to 6 herein had requested the Labour Court to exclude them from the said Adjudication on the ground that they are already covered by adjudication Case No. 93 of 1960, arising out of Reference No. I. The Labour Court passed an order on February 21, 1961, excluding the said three workmen from Adjudication Case No. 98 of 1960. That means the said three workmen had no further interest in the said Adjudication Case. If that is so, the award passed on February 26, 1961, in the case arising out of Reference No. 1 was perfectly correct and the publication of the said award on May 6, 1961, was also in pursuance of the mandatory provisions of the Act. There is no question of any conflict between the two awards. Hence the appellant cannot seek any assistance from the decision of this Court in the *Sirsilk Ltd., and Others v. Government of Andhra Pradesh and Another (Supra)* and it cannot ask for a writ of mandamus directing the State Government to cancel the publication of the award.

20. We are in agreement with the view of the High Court that the appellant is not entitled to any relief, though for different reasons. The appeal fails and is dismissed with costs.

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