Assam Match Company Limited

Vs

Bijoy Lal Sen and Others

Civil Appeal No. 2433 of 1968

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

27.04.1973

JUDGMENT

VAIDIALINGAM J. –

1. In this appeal, by special leave, the question that arises for consideration is whether the appellant has contravened Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), when at the request of the majority of the workers the holiday for Diwali was changed from November 11, 1966 to the next day. According to the usual practice, at the commencement of the year 1966, the appellant had published a list of holidays for the year. According to this list, the holiday for Kali Puja was stated to be on Friday, November 11 1966. On November 5, 1966, the appellant notified that the factory will remain close for Kali Puja on Friday, November 11, 1966. This notification was only on the basis of the list of holidays referred to earlier. The workmen in this company were represented by two unions : (1) Amco Employees' Association (hereinafter referred to as the Association) and (2) Amco Shramik Sangha (hereinafter referred to as the Sangha). There is no controversy that the Sangha represented the majority of the workmen of this company.

2. On November 10, 1966, the General Secretary of the Sangha wrote a letter to the Factory Manager of the appellant requesting him to close the factory on Saturday, November 12, 1966, on account of Kali Puja instead of the 11th instant as already notified by the company of November 5, 1966. A further request was made in this letter that the factory may be kept working on Friday, November 11 in accordance with the timings mentioned therein. The General Secretary further stated in this letter that if the request of change in the holiday is not accepted, a large of workmen will not be attending on Saturday, November 12, which will result in heavy loss of production. On receipt of this letter, the appellant put up a notice the same day that in response to the request of the Sangha, the Factory will remain closed for Kali Puja on Saturday, November 12, instead of Friday, November 11, as previously notified. This notice further stated that the factory will remain open on Friday, November 11, during the hours mentioned therein. Quite naturally, this notice cancelled the previous notice, dated November 5, 1966.

3. After the company's notice regarding the change of holiday for Diwali was put up on the notice-board, the Association, on the same day (November 10, 1966), addressed a letter to the management that the change of holiday for Diwali was not justified and that the date originally declared as a holiday, namely, November 11, should be allowed to stand. The company obviously did not accede to this request of the Association with the result that most of the workmen attached to the Association did not attend to work on November 11, 1966. The wages for that day were not paid by the appellant to those workmen on the ground that they were absent from duty.

4. Nearly a year later on December 30, 1967, the respondents in this appeal, 83 in number, field an application before the Labour court, Gauhati, under Section 33-A of the Act. The grievance of these workmen appears to be that there was an industrial dispute pending at the relevant time and that without complying with the provisions of Section 33, and without conforming to the provisions of Section 9-A, the employer had altered the condition of service by changing the date of the holiday for Diwali. According to them, one day holiday for Kali Puja was being allowed for a number of years and that it has become a condition of service. The notice issued on November 5, 1966, declaring November 11, 1966 as holiday for Diwali was in conformity with the right of the workmen under the conditions of their service. The Standing Orders of the company did not give any power to the appellant to change the holiday for Diwali and, therefore, Section 33(2)(a) of the Act does not give power to the appellant to alter the said date. Any change of date can only be effected in accordance with Section 9-A. As that has no been done, the action of the employer in declaring November 12, 1966, as a holiday and refusing to pay wages for November 11, 1966, were both illegal. Accordingly they prayed for directing the appellant to pay them wages for November 11, 1966, which have been denied to them, as their absence of that day was perfectly legal.

5. The management contested the application on the ground that there has been no change effected in the conditions of service of workmen by altering the holiday of Diwali from November 11, to the next day. As the holiday is for Diwali and as the majority of the workmen specifically desired the holiday on November 12, the change was made to suit the convenience of the workmen. Even if the fixation of a holiday is a condition of service, the change has been made for the benefit of the workmen. The management further pleaded that under the Standing Orders they were entitled to fix the holidays and also to effect any changes therein and, therefore, Section 33(2)(a) of the Act gives power to them to effect such a change although an industrial dispute was then pending. The management also cited certain previous instances when the holiday for Holi or for Diwali once fixed had been altered at the request of the workmen.

6. The Labour Court has accepted the plea of the management that the Sangha represented the majority of the workmen of the appellant. It has further found that the appellant altered the date from November 11 to 12, at the specific request of the Sangha. But the Labour Court held that, as the holiday has been originally fixed for November 11, by the notice, dated November 5, 1966, on the basis of the list of holidays announced by the company, the alteration of the holiday from November 11 to 12, though at the request of the majority of the workmen, amounted to change in the condition of service and as such, the procedure under Section 9-A should have been followed. As the said procedure had not been followed by the appellant, the Labour Court held that there has been a violation of Section 33, read with Section 9-A of the Act. In this view, it granted that reliefs asked by the 83 workmen.

7. Mr. B. Sen, on behalf of the appellant-company, supported stand taken by it before the Labour Court. He urged that there is no question of any cancellations of holiday that the workmen were entitled to, in which case it may be stated that the condition of services is effected. On the other hand, the workmen did have a holiday for Diwali on November 12. The counsel also referred us to the evidence on record to show that on previous occasions such changes had been effected in holidays when a request was made by the workmen concerned. Mr. Sen Gupta, learned counsel for the respondents, has adopted the reasons given by the Labour Court for holding that a change in the condition of service has been effected by the appellant. In particular, Mr. Sen Gupta pointed out that if the employer wanted to effect a change in the date of the holiday, it should have been done by the appellant entering into a settlement with the workmen, as contemplated by clause (a) of the provision to Section 9-A. The sum and substance of the arguments of Mr. Sen Gupta was the

appellant have fixed the holiday for Diwali as per its previous circular, had no power to change the same even though a majority of the workmen had desired the appellant to do so.

8. Section 9-A no doubt provides that the conditions of service of any workmen in respect of any matter specified in the Fourth Schedule cannot be changed without following the procedure indicated therein. If the alteration of the date of a holiday amounts to change in the conditions of service, it is needless to state that the appellant is bound to follow the procedure laid down in Section 9-A. Item 5 of the Fourth Schedule deals with "leave with wages and holiday". Therefore, prima facie, if a holiday has been fixed, the management may not have power to totally cancel the same or deprive the workmen of such a holiday without conforming to provisions of Section 9-A. In the notice published at the beginning of the year 1966 regarding the holidays for the said year, the appellant has no doubt stated that Friday, November 11, will be a holiday for Kali Puja. But there is a statement in this notice to the effect that "this list is subject to modification, if thought necessary". Under Paragraph 6 of the company's certified Standing Orders, it is provided that "Notice specifying : (a) the days observed by the factory as holidays and (b) pay days, shall be posted as required by the Factory Act and the payment of Wages Act respectively". There is no controversy that the list of holidays published at the beginning of the year 1966 as well as the circular, dated November 5, 1966, are in conformity with this provision. Similarly the notice, dated November 10, 1966, by the management regarding November 12, being a holiday for Diwali, acceding to the request of the workmen, must also be considered to satisfy the provision of this clause in the Standing Orders

9. In our opinion, the alteration of the date regarding the holiday for Diwali, from 11th to the next day, cannot be considered to be an alteration in the conditions of service. The workmen may be entitled to have a holiday for Diwali. But on what particular day Diwali falls or it is being observed a holiday is to be declared, is a matter to be decided by the management in consultation with the workmen. If a large body of the workmen require a change in the date of the holiday on ground that the festival is not being observed on the day originally fixed and the management changes the date, it cannot be stated that there is an alteration in the conditions of service. The workmen are not being deprived of a holiday at all for Diwali. In fact they have got it on the November 12, 1966.

10. In The Workmen of M/s. Sur Iron & Steel Co. (P) Ltd. v. M/s. Sur Iron & Steel Co. (P) Ltd., and Another ((1970) 3 SCC 618 : (1971) I LLJ 570) the workmen contended that the change in the weekly off-day, from Sunday to Saturday, without complying with the provisions of Section 9-A, was illegal. This Court rejected that contention on two grounds that-(1) there was no specific entry in the Fourth Schedule covering a condition of service relating to a weekly off-day and (2) even assuming that the grant of weekly off-day falls under item 4 of the Fourth Schedule, the Statement Government had issued a notification on April 10, 1962 under Section 9-B laying down that no notice under Section 9-A was required to be served in respect of the matters covered by items 4, 6 and 11 of the said Schedule for a period of three months. Therefore, it will be seen that this decision did not express any opinion on the question whether the alteration of the weekly off-day from Sunday to Saturday, amounts to a change in the conditions of service coming within Section 9-A. In fact the indications in the judgment are that such an alterations will not attract Section 9-A.

11. The decision in M/s. Tata Iron and Steel Co. v. The Workmen and Others ((1972) 2 SCC 383 : (1972) 2 LLJ 259) does not advance the case of the respondents. From the facts of the case it is seen that Sunday had been a holiday in the factory concerned for a long numbers of years. The company, for the reasons stated in the judgment, cancelled this holiday in turn gave a holiday in the mid-week without following the procedure under Section 9-A. It was held in the particular circumstances of that case that the alteration amounts to a change in the conditions of service. It must be noted that

the workmen have been having for a long number of years Sunday as a holiday and that may have become a condition of their service. A holiday on Sunday can only be on that day and no other day of the week can be Sunday. On this basis the decision has been rendered holding that cancelling the holiday enjoyed on Sunday amounts, in the circumstances, to a change in the conditions of service.

12. The position in the case before us is entirely different. The fact is that the workmen have not been deprived of a holiday for Diwali. Even assuming that the workmen have got a right to get a holiday for Diwali and that it has become a condition of service, in this case the workmen did not have a holiday for Diwali. The holiday for the said festival is to be given on the date when the majority of the workmen claim that they are celebrating Diwali. It has been emphasised in M/s. Tata Iron and Steel Co. Ltd. v. The Workmen and Others (supra) that the real object and purpose of Section 9-A is to afford an opportunity to workmen to consider the effect of a proposed change and, if necessary, to represent their view on the proposal. Even assuming that the alteration of the date of the holiday for Diwali will amount to a condition of service, there is no question, in this case, of a contravention of Section 9-A, when the majority of the workmen themselves requested the employer to make the alteration. The employer was within its rights under Section 33(2)(a). The evidence on the side of the respondents show that the workmen actually celebrated Diwali on Number 12, which was declared to be a holiday.

13. For the reason stated above, we are of the opinion that the application filed by the workmen before the Labour Court under Section 33-A was misconceived. In the result, the order of the Labour Court is set aside and this appeal is allowed. There will be no order as to costs.

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