

M/s. Hindustan Steel Ltd.

Vs

Their Workmen and Others

Civil Appeal No. 1997 (NL) of 1972]

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

30.04.1973

JUDGMENT

MUKHERJEA, J. –

1. This appeal by special leave is directed against a judgment and award of the Ninth Industrial Tribunal, Durgapur, in connection with a reference made by the Government of West Bengal under of the Industrial Disputes Act. The appeal related in substance, to only one question as to whether the workmen of M/S. Hindustan Steel Limited, Alloy Steel Plant, Durgapur are entitled to have the 10 holidays sanctioned by the Certified Standing Order of the Company increased to 11 by the addition of the May Day as compulsory national holiday. The order of reference made by the Government of West Bengal raised three issues in the following terms :

(1) Whether the workmen had acquired the right through custom, usage etc., to enjoy the May Day, 1970 as a national holiday as defined in the Certified Standing Orders of the Company or as an additional paid holiday in excess of the number of paid holidays prescribed by the said Standing Orders ?

(2) If not, whether a day's salary that has been advanced to those workmen who neither reported for duty on May 1, 1970 nor applied for festival holidays or leave for the day, be recovered by the company ?

(3) If the issue No. (2) is decided in the negative whether the workmen who reported for duty on the day in question are entitled to extra wages ?

2. To understand clearly the dispute between the parties it is essential to realise that the workmen are not satisfied if May Day is included within the 10 paid holidays prescribed by the Standing Orders. Indeed M/s. Hindustan Steel Limited, hereinafter referred to as the Company, are quite prepared to grant May Day as a holiday to their workmen subject to the total of 10 holidays which are provided for under the Certified Standing Order of the Company. This, however, is not acceptable to the workmen who are represented in this dispute by the Hindustan Steel Employees' Union, Alloy Steels {Projects Unit. We shall, hereinafter, refer to this union merely as "the employees' Union". It is obvious from the framing of the three issues that the substantial issue between the parties is the first one. The answer to the other two issues is more or less consequential.

3. The Tribunal holds in favour of the workmen and finds that the workmen have acquired a customary right to enjoy the May Day as a compulsory holidays and also as an additional paid holiday. Strangely enough, after recording this finding the Tribunal goes on to observe that even if

this finding of the Tribunal be incorrect the workmen must get May Day as an additional paid holiday. under the circumstances that are obtaining at present in the plant and in the world at large. The Tribunal considers it unnecessary to answer the two other issues in view of this finding on issue No. 1. The Tribunal further directs : "The salary for May Day if advanced to the workmen for May 1, 1970 cannot be recovered from them. The workmen would get this salary for this day not only in 1970 but for all the years as additional payment."

4. After carefully going through the judgment of the learned Tribunal we cannot but express our dissatisfaction as to the manner in which the Tribunal has approached and discharged its task. The Tribunal embarks upon its adjudication by formulating certain questions which according to the Tribunal fall for its determination with reference to the first issue. These questions are as follows :

(1) What ought the workmen to get ?

(a) what is their present right and whether they should get the right to enjoy May Day as a national holiday within the meaning of the standing orders; or

(b) whether they have acquire the right through custom or usage ?

(2) whether in the facts and circumstances of the case the workmen ought to get the right to enjoy the May Day as an additional paid holiday in excess of the number of paid holidays prescribed by the Standing Orders ?

We fail to see how the Tribunal spells out these ingredients from the first issue referred to it for adjudication. That issue merely relates to the question whether the workmen have acquired the right through custom and usage : (a) to enjoy the May Day as a national holiday or (b) to enjoy the May Day as an additional paid holiday in excess of the number of holidays prescribed by the relevant Standing Order. The question as to whether they ought to get the May Day as a holiday does not arise in any way out of the first issue. The whole question is a question of fact namely whether the workmen have established their right to vet a holidays on May Day on the strength of custom and usage. This right may be of two forms, namely the right to have may Day as a national holiday or the right to have may Day as an additional paid holiday. In either case the right must be one which has been acquired through custom and usage. The learned Tribunal completely misconceives the scope of the reference and misdirects itself in answering the first issue. In fact, the whole judgment of the learned Tribunal reads like a specious plea for introducing May Day as a national holiday in India. To this extent the learned Tribunal went off the rails right from the beginning and it is not surprising that the learned Tribunal has come to completely wrong findings on all the questions referred to it.

5. On a careful scrutiny of the evidence on record it is quite clear that the evidence does not show any custom in the matter of recognising the May Day as a compulsory paid holiday. For the purpose of deciding this point it is not necessary for us to travel beyond 1965. In 1965 the company altogether allowed 8 holidays which fell into two groups : one group consisted of 3 compulsory holidays namely the Republic Day on January 26, the Independence Day on August 15, and Mahatama Gandhi's Birth Day on October 2, and under the second group five optional holidays were allowed out of a number of days enumerated in a list. Neither the first group nor the second group included May Day as a holiday. The holidays for 1966 also followed the same pattern. The holidays for the year 1967 were announced by an office order, dated December 30, 1966. This order sanctioned holiday exactly on the same lines as in 1965 and 1966 and May Day was not included

either as an optional or compulsory holiday. In April 1967, the West Bengal Government for the first time declared May 1, 1967, as a public holiday under the Negotiable instrument Act and also requested all industrial establishments in the State to declare that day as an additional paid holiday. Pursuant to this request, the May 1, 1967, was declared by the company to be a paid public holiday under what was obviously a very special circumstance. In September, 1967 the Management of the company sought to increase the number of paid holiday from 5 to 8 in order to bring their practice into conformity with the other plants of Hindustan Steel Limited. In December, 1967 an office order was published declaring 5 compulsory holidays and 5 optional holidays for 1968. The 5 compulsory holiday included May Day as a holiday. This office order which was in pursuance of a decision of the Works Committee of the company stated that the actual number of compulsory holiday was a matter pending decision of the Labour Commissioner. In 1968 the company gave 10 holiday. In 1969 the list of holiday was announced by an office order, dated February 27, 1969, Under this order three national holidays were included in Group A and 3 optional holiday in Group B. May Day was not included in either of this groups. On the same day another circular was issued allowing two more optional holiday out of the list in Group B. Even this did not, however, include the May Day. Altogether, therefore, the company allowed 10 holiday. On April 21, 1969 the West Bengal Government again sent out a special request to the different industrial establishment asking for declaration of May 1, 1969 as an additional paid holiday. The company complied with this request by issuing an office order on April 28, 1969.

6. In May 1969 the Management of the company sought to have a modification of its standing Order No. 17 and proposed that the Standing Order should provide for 3 national holiday, 5 optional holiday and 2 restricted holidays. Subsequently the company tried to withdraw this application for modification but this application for withdrawal of the request was rejected by the Certifying Officer. The Management appealed against this rejection to the Appellate Authority who, however, found that the provision for 10 holiday was just and proper. One of the union this occasion namely the Alloy Steels' Shramik Union proposed that the holidays should be increased to 11 by including May Day as an additional paid holidays. The Employee's Union who are the respondents in this appeal, however did not support this request. The demand for additional paid holiday was rejected by the Chief Labour Commissioner on the ground that "the existing provision in CSO 17 is already ahead of and more liberal than the relevant provision in the Standing Orders of most of the other industrial establishments in the country". The Chief Labour Commissioner who was the Appellate Authority, specifically mentions in his judgment of January 21, 1970, "on this question the representatives of the Hindustan Steel Employees' Union pleaded for retaining the Standing Order No. 17 (as amended by the Regional Labour Commissioner and Certifying Officer.) without any change". It appears clearly, therefore, that the Employee's Unions was quite satisfied with 10 holidays and did not support the Shramik Union's claim for May Day as a paid holiday in addition to the 10 holidays sanctioned by the Standing Order. The company published its for 1970 on February 20, 1970, and included May Day only as an optional holiday. It is significant that though the works Committee met twice after that on March 26, 1970 and April 17, 1970, the Employees' Union raised no objection against treating May Day as an optional holiday. It is only on April 29, 1970, that the representatives of this Union for the first time started claiming that an additional paid holiday should be declared for May 1, 1970. The company told them that workers would be allowed either to enjoy that day as an optional holiday or to apply for leave which would be granted. The Management also suggested that they would be prepared to recast the whole scheme of holidays by raising the number of compulsory holiday to 4 by the inclusion of May Day within this category and by reducing the number of optional holiday to 4 and by retaining the two restricted holidays as before. The Employees' Union, however, did not agree to any of these suggestions. This ultimate led

to a dispute and the parties agreed to have the matter referred to adjudication and it is this dispute which was referred to the Tribunal constituted by the Government of West Bengal.

7. From the accounted that we have given so far it is abundantly clear that upto now the company have allowed May Day as a compulsory holiday only on two occasions namely in 1967 and 1969 and on both occasions this was done as an ad hoc measure at the special request of the Government of West Bengal. This certainly cannot by any stretch of imagination be treated as adequate for establishing a custom or usage. Two ad hoc orders cannot, in our opinion, constitute a custom or usage. It is significant that what was done in 1967 was not followed even in 1968 though in 1969, after a break, it was repeated under the same kind of special circumstances that had brought it about in 1967. In 1968, the company included May Day within the 10 holidays that they normally allowed to their employees. It is important to realise that the company even now has no objection to include May Day within the holidays provided the company does not have to increase the number of holidays from 10 to 11. The real dispute arises from the fact that the Union is insisting on May Day being treated as a paid holiday in addition to the 10 holidays which are already included within the Standing Order. They claim it as a matter of custom and usage. For this, however, the Employees' Union have failed to give any evidence to establish the alleged custom or usage. Therefore the answer to the first issue must be in the negative.

8. As we were considering the various directions that should be given as consequential to our finding on the first issue both the company and the Employees' Union, happily for every body concerned, agreed to an order being made in this appeal in the following form :

(1) Upon the request of Hindustan Steel Employees' Union representing the workmen of Alloy Steels Plant, the management of Alloy Steels Plant agrees to declare the first day of May every year as a paid Plant holiday in Alloy Steels Plant, Durgapur out of the five optional holidays prescribed in Clause No. 17 of the existing certified Standing Orders.

(2) The management of Hindustan Steel Limited will not recover a day's salary from the workmen of Alloy Steels Plant, Durgapur as referred to in Issue No. 2 mentioned in the Order of Reference No. 6193-IR/IR/IOL - 62D/70, dated August 22, 1970.

We order accordingly. The parties will pay and bear their own costs.

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