Karnal Leather Karamchari Sanghatan (Regd.)

Vs

Liberty Footwear Company (Regd.) and Others

Civil Appeal No. 1765 of 1989

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

31.08.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. This appeal by leave from a decision of the Single Judge of Punjab & Haryana High Court raises a very short but important question of law relating to the validity of an arbitral award made before publishing the arbitration agreement under the Industrial Disputes Act. 1947 (the`Act').

2. The facts which give raise to this appeal may briefly be stated thus :

The respondent 1 is a registered partnership firm carrying on its trading activities in leather footwears at Karnal and some other places under the name and style of 'Liberty Footware Company'. It has its head office at Karnal in the State of Haryana. It had a serious dispute with the workers. The workers' union complained that the management has illegally terminated more than 200 workers. The respondent 1 denied that claim and asserted that the persons whose service were alleged to have been terminated were not its employees at the material time. This dispute however, remained unsettled and the workers went on strike which took a violent turn. The management had to lay off certain workers and that added fuel to the fire. The agitation of the workers before the factory premises created law and order problem attracting the police to intervene. The Labour Commissioner and other top officials of the District arrived and they initiated conciliation proceedings. The then Labour Minister and the public Health Minister of the State Government were also alerted. They also came and extended their good offices to bring about a settlement. They succeeded in their efforts. On March 31, 1988 the parties entered into an agreement containing the terms of settlement of their dispute. On behalf of the management, the agreement was signed by respondents 1, 7 and 8. On behalf of the workers, it was signed by the President and Secretary of the workers union. It was mutually agreed that a committee consisting of five persons, two from the management and two from the union with the Deputy Commissioner, Karnal as the President should be constitute. They would be the arbitrators to determine the said dispute

3. The committee of arbitrators was accordingly constituted. The Committee gave its award on April 29, 1988 and May 11, 1988 directing the management to reinstate in all 159 workmen. This was the beginning of another dispute which led to frustrated litigation. The management did not reinstate the workers. It challenge the validity of the award by way of writ petition In the High Court. The award was challenge in the first place on procedural irregularity committed by the Committee of arbitrator. It was, inter alia, contended that the Deputy Commissioner did not participate in the enter proceedings and during his absence, the administrator Municipal Committee Karnal held the enquiry. It was also alleged that the Committee did not afford opportunity to the

management to produce evidence. Secondly, it was claimed that the arbitration agreement was not published in the official gazette as required under sub-sec (3) of Section 10-A of the Act and the award made without such publication would be invalid. The learned Single Judge of the High court who considered the matter did not examine all the contentions urged by the management. He, however, accepted the writ petition only on the effect of non-publication of the agreement in the gazette.He expressed the view that the requirement of the sub-section (3) is mandatory and its non-compliance would vitiate the award. With this conclusion he quashed the award and directed the State Government to publish the agreement in the gazette. He also directed the committee to determine the dispute afresh and pass an award after publication of the agreement.

4. The employees union without preferring Letters Patent Appeal before the High Court against the judgment of learned Single Judge has directly appealed to this Court by obtaining special leave. Ordinarily, we would have revoked the leave since the party has not exhausted the remedy available by way of appeal. But in view of the importance of the question raised and the need to decide it promptly in the interest of industrial adjudication, we proceed to consider the appeal on merits.

5. The principal question that arises for consideration is whether non-publication of the arbitration agreement as required under sub-section (3) of Section 10-(A), renders the arbitral award invalid and unenforceable ?

6. Before outlining the statutory provisions having bearing on the question, we may call attention to the relevant terms of the arbitration agreement.

> "3. Out of alleged more than 200 terminated workers, the workers doing the work of cutting and skiing are taken back with immediate effect and about the reinstatement of the remaining workers a committee constituted. In the Committee two members namely S/Shri Ishwar and Ram Badan will represent the workers and S/Shri Sunil Bansal and Mohan Lal Wadhwa will be the representatives of the Management. The Deputy Commissioner, Karnal would be the President of the Committee. This committee will decide this matter that out of those alleged more than 200 workers whose service have been terminated how many and who are workers of Liberty Group. The workers found to be of the Liberty Group would resume work with immediate effect. The committee will take decision in this behalf up to 25th April, 1988. In order to ascertain as to which of the workers worked in which factory of the Liberty Group, the President shall have the right to adopt any procedure or method and the decision given by him shall be binding on both the parties'.

7. The parties entered into the above agreement and referred the dispute for arbitration under Section 10-A of the Act. Section 10-A is, therefore, important and must be set out in full :

> "10-A. Voluntary reference of disputes to arbitration -
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> (1) Where any industrial dispute exist or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall; be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(1-A) Where an arbitration agreement provides for a reference to the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official gazette.

(3-A) Where an industrial dispute has been referred to arbitration and the appropriate government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concern in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4-A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3)(a), the appropriate Government may, by order, prohibit the continuance of any strike or lock out in connection with such dispute which may be in existence on the date of the reference."

8. It may be noted that Section 10-A excluding sub-sections (1-A), (3-A) and (4-A) was added to the parent Act by Act 36 of 1956. After about eight years, sub-sections (1-A), (3-A) and (4-A) came to be added by the amending Act 36 of 1964.

9. Consequent upon the additions of these provisions, several corresponding changes were also made in the other provisions of the Act. Section 2(b) which defines an award was amended by the addition of the words "it includes an arbitration award made under Section 10-A". As a result of this amendment of the definition an arbitration award has now become an award for all purposes of the Act attracting the application of Sections 17, 17-A, 18(2), 19(3) 21, 29, 30, 33-C and 36-A of the Act.

10. It may be noted that Sections 23 and 24 as originally stood provided power to appropriate Government to prohibit strikes and lock-outs, but they could not invoked in relation to proceedings before the arbitrator. So these sections were also amended to bring them in harmony with sub-sections (3-A) and (4-A) of Section 10-A. The Government could now by order prohibit continuance of any strike or lock-out in connection with a dispute referred to arbitration and in respect of which a notification has been issued under sub-section (3-A).

11. Sub-section (4) of Section 10-A empowers the arbitrator to investigate and adjudicate upon the

industrial dispute referred to him under the arbitration agreement. He shall submit an award signed by him. If there are more than one arbitrator, all of them must sign the award. The award shall be submitted to the appropriate Government. It is also to be published like any other award under the Act in accordance with the provisions of sub-section (1) of Section 17. Section 17-A provides that an award (including an arbitration award) shall become enforceable on the expiry of 30 days from the date of its publication. Sub-section (2) of Section 18 makes an arbitration award which has become enforceable, binding on the parties to the agreement. Sub-section (3) of Section 18 goes a step further. In a case where notification has been issued under sub-section (3-A) of Section 10-A, the arbitration award would be binding on all parties to the dispute as well as on all other persons summoned to appear in the proceeding as parties to the dispute. Such an award will also bind the successors or assigns of the employer and all present and future workmen employed in the establishment.

12. For completeness of the picture we may refer to the rules framed by the Central Government under Section 30(2)(aa). These rules make provision for the form of arbitration agreement, the place and time of hearing and the powers of the arbitrator to take evidence. Rule 7 of the Industrial Disputes (Central) Rules, 1957 which is relevant for our purpose.

> "7 Arbitration Agreement - An arbitration agreement for the reference of an industrial dispute to a arbitrator or arbitrators shall be made in Form C and shall be delivered personally or forwarded by registered post to the Secretary to the Government of India in the Ministry of Labour (in Triplicate), the Chief Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) concerned. The agreement shall be accompanied by the consent, in writing, of the arbitrator or arbitrators".

13. In the light of these statutory provisions, it is now necessary to consider whether publication of the arbitration agreement is obligatory and if so, when it should be published ? To put the question more precisely : whether it is necessary to publish the agreement within the time prescribed under sub-section (3) of Section 10-A ? And what would be the consequences of delayed publication ?

14. Arguments before us ranged a good deal wider than they appear to have done in the High Court. The counsel for the appellant claimed that the publication in the Gazette is only for general information and not a condition precedent for making the award. When parties have voluntarily agreed and referred their problem to arbitration and also participated in the award proceedings, mere non-publication of the agreement cannot render the award invalid. Such a view, counsel asserted, would defeat the very purpose of industrial adjudication by consent of parties. He also urged that penal consequence for non-publication of the agreement since not prescribed, the requirement of publication is only directory and not mandatory. He finally rounded off his sumbimission by stating that publication of the agreement is necessary, but the period specified under sub-section (3) is only directory

15. Before examining these contentions, it will be useful to have a brief survey of the authorities referred to us at the bar. In Remington Rand of India Ltd. v.Workmen ((1968) 1 SCR 164 : AIR 1968 SC 224 : (1967) 2 LLJ 866), the question arose whether the award published after the lapse of 30 days as specified in Section 17(1) would become invalid for non-publication within the prescribed time. Mitter, J., speaking for a bench of this Court held that though Section 17(1) Makes it obligatory on the Government to publish the award, the time limit of 30 days prescribed therein, however, is merely directory and not mandatory. The learned judge observed : (SCR pp. 1667-67)

> "The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possible. For instance, there may be a strike in the press or there may be any other good and sufficient cause by reason of which the publication could not be made within thirty days. If we were to hold that the award would, therefore be rendered invalid, it would be attaching undue importance to a provision not in the mind of the legislature. It is well known that it very often takes a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless harassment to the parties. The non-publication of the award within the period of thirty days does not entail any penalty and this is another consideration which has to be kept in mind."

16. A Division Bench of Madhya Pradesh High Court in Modem Stores (Cigarettes) v. Krishnadas Shah (AIR 1970 MP 16), took the view that the publication of arbitration agreement in the gazette is obligatory, that is, a sine qua non, but the requirement of time "within one month" is only directory and not imperative. There the management entered into an arbitration agreement with respect to a dispute with the Union on January 22, 1968. It was referred to the Presiding Officer of the Labour Court, Jabalpur for arbitration. An award was made on March 8, 1968. But it was not pronounced until April 15, 1968, for want of publication of the agreement under sub-section (3) of Section 10-A. The agreement was published in the Gazette on March 29, 1968. The Court however, quashed the award with a direction to the Presiding Officer Labour Court to readjudicate the dispute referred under Section 10-A of the Act.

17. A similar view was expressed by the Punjab & Haryana High Court in Landara Engineering and Foundry Works, Phillaur v. Punjab State (1969 Lab IC 52 (P & H).

18. The Delhi High Court in Mineral Industry Association v. Union of India (AIR 1971 Delhi 160 : 1971 Lab IC 837 : 39 FJR 13), has also accepted the same principle but by simply following the decision of the M.P. High court in Modern Stores case (AIR 1970 MP 16).

19. The Orissa High Court in Rasbehary Mohanty v. Presiding Officer, Labour Court ((1974) 2 Lab LJ 222, 226 (Ori)), has held that if the arbitration agreement is not published as required under sub-section (3), it would be an infraction of the statutory provision in the matter of reference to the arbitrator and in the making of an award.

20. The Mysore High Court since called the Karnataka High Court In Workmen of Woodlands Hotel v. K. Srinivasa Rao ((1972) 42 FJR 223, 226 (Mys)), has observed that an award of the arbitrator under sub-section (4) cannot be regarded as valid if the agreement for arbitration is not published as prescribed under sub-section (3).

21. The Kerala High Court in Kathayee Cotton Mills Ltd. v. District Labour Officer ((1981) 1 Lab LJ 417, 419 (Ker)(sic)), has expressed the view that the requirements of sub-section (3) are mandatory and a failure to comply with the provisions would vitiate the award.

22. The foregoing authorities of the High Courts do not indicate the reasons in support of the view expressed. But the reasons, in our opinion, are not far to seek, and are immanent in the importance

of provision of sub-section (3) and the object underlying thereunder. We may read sub-section (3) along with Rule 7. Rule 7 states that the arbitration agreement shall be made in form C and delivered personally or forwarded by registered post to the Secretary to the Ministry of Labour and Chief Labour Commissioner etc. It shall be accompanied by the consent, in writing, of the arbitrator or arbitrators. Sub-section (3) also requires that a copy of the agreement shall be forwarded to the appropriate government and the appropriate government shall, within one month from the date of receipt of such copy publish it in the Official Gazette. At both the places it may be noted that the legislature has used the word "shall". In the context in which this word has been used, there is, in our opinion, little doubt about obligation to publish the agreement in the Official Gazette. Counsel for the appellant also did not dispute this proposition.

23. The next question for consideration is whether it should be imperative to publish the agreement within the period of one month as prescribed under sub-section (3). This is indeed not an easy question for solution.

24. Maxwell tells us :

> "That it is impossible to lay down any general rule for determining whether a provision is imperative or directory." (Maxwell, Interpretation of Statutes, 12 the edn., p. 314).

25. Craies, however, gives us some guidelines :

> "When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential, and may be disregarded without invalidating the thing to be done, are called directory" (Craies, Statute Law 6th edn., p. 63).

26. It is now well established that the wordings of any provision are not determinative as to weather it is absolute or directory. Even the absence of penal provision for non-compliance does not lead to an inference that it is only directory. The court, therefore, must carefully get into the underlying idea and ascertain the purpose to be achieved notwithstanding the text of the provision.

27. Now look at the provisions of sub-section (3). It is with respect to time for publication of the agreement. But publication appears to be not necessary for validity of the agreement. The agreement becomes binding and enforceable as soon as it is entered into by the parties. Publication is also not an indispensable foundation of jurisdiction of the arbitrator. The jurisdiction of the arbitrator stems from the agreement and not by its publication in the Official Gazette. Why then publication is necessary ? Is it an idle formality ? Far from it. It would be wrong to construe sub-section (3) in the manner suggested by counsel for the appellant. The Act seeks to achieve social justice on the basis of collective bargaining. Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion. The dispute is settled peacefully and voluntarily although reluctantly between labour and management. The voluntary arbitration is a part of infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus falls within the rainbow of statutory tribunals. When a dispute is referred to arbitration, it is therefore, necessary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately would bind them. They must know what is referred to

arbitration, who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each other and if necessary to place the same before the arbitrator. This is the need for collective bargaining and there cannot be collective bargaining without involving the workers. The union only helps the workers in resolving their disputes with management but ultimately it would be for the workers to take decision and suggest remedies. It seems to us, therefore, that the arbitration agreement must be published before the arbitrator considers the merits of the dispute. Non-compliance of this requirement would be fatal to the arbitral award.

28. This takes us to the nature of the relief to be granted in this appeal. The High Court has directed the State to Publish the arbitration agreement in the Government Gazette. It has further directed the Committee of arbitrators to determine the dispute only after its publication. But there are certain problems in this case to pursue the course. The Deputy Commissioner who was the Chairman of the Committee of Arbitrators has since resigned. It appears that he wants to run away from his responsibility. The State Government has created a fresh problem. Under Section 10(1) of the Act, the State Government has referred the dispute to the Industrial Tribunal, Ambala, for adjudication. That dispute relates to termination of 150 employees whose reinstatement was the subject-matter of the arbitration agreement. There is yet another problem from the side of management. Against the judgment of the learned single judge giving certain directions, the management has preferred Letters Patent Appeal No. 511 of 1988 before a Division Bench of the High Court and obtained stay of the directions. Not merely that, the management has also challenged the reference made by the State Government under Section 10(1) of the Act. It has moved the High Court under Article 226 of the Constitution with CWP No. 9455 of 1988 and obtained stay of further proceedings before the Tribunal.

29. It must be recognised that in the modern welfare state, healthy industrial relations are a matter of paramount importance. In attempting to solve industrial disputes, industrial adjudication, therefore, should not be delayed. Voluntary arbitration appears to be the best method for settlement of industrial disputes. The disputes can be resolved speedily and in less than a year, typically in a few months. The Tribunal adjudication of reference under Section 10(1) often drags on for several years, thus defeating the very purpose of the industrial adjudication. Arbitration is also cheaper than litigation with less legal work and no motion practice. It has limited document discovery with quicker hearing and less formal than trials. The greater advantage of arbitration is that there is no right of appeal, review or writ petition. Besides, it may, as well reduce company's litigation costs and its potential exposure to ruinous liability apart from redeeming the workmen from frustration

30. This is with regard to advantages of voluntary arbitration. There is another aspect which was perhaps not realised by the State Government when it referred the dispute under Section 10(1). Sections 10 and 10-A of the Act are the alternative remedies to settle an industrial dispute. An industrial dispute can either be referred to an Industrial Tribunal for adjudication under Section 10, or the parties can enter into an arbitration agreement and refer it to an arbitrator under Section 10-A. But once the parties have chosen their remedy under Section 10-A the Government cannot refer that dispute for adjudication under Section 10. The said reference made by the Government under Section 10(1) cannot, therefore, be sustained.

31. With these prefatory observations we make the following directions :

> (i) The State Government shall publish condition No.3 in the arbitration agreement in the Government Gazette within four weeks from today; (ii) The agreement containing condition No.3 stands referred to the Industrial Tribunal, Haryana at

Ambala for passing arbitration award in accordance with law; (iii) The reference made under Section 10(1) of the Act to the Industrial Tribunal is quashed; and (iv) The management shall withdraw the aforesaid Letters Patent Appeal and the Writ Petition pending in the High Court within three weeks from today filing which the High Court shall dispose them of as having become infructuous.

32. A copy of this judgment shall be transmitted forthwith to the Industrial Tribunal, Haryana at Ambala. The Tribunal after affording opportunity to parties to produce evidence of their choice and also opportunity to cross-examine each other shall dispose of the matter expeditiously, and at any rate not later than six months from the date of first appearance of parties. The parties shall appear before the Tribunal on 15th September, 1989 to receive further direction.

33. The appeal is accordingly disposed of with no order as to costs.

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