

Indian Oxygen Ltd.

Vs

State of Bihar

Civil Appeal No. 1130 of 1990

(K. Jagannatha Shetty, Kuldip Singh JJ)

16.02.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. Special leave granted.

2. Whether International Labour Day (May 1) should be paid holiday in addition to the existing holidays for the employees of the appellant company is the sole question for determination in this appeal. The appellant is a public limited company having manufacturing units and selling outlets in different parts of the country. In the State of Bihar the company has an establishment at Mona Road, Burma Mines, Jamshedpur manufacturing Industrial and Medical Gases and there is another establishment located at Ranchi manufacturing liquid Oxygen Explosives.

3. The holidays available to the employees of the company's establishment are provided by the settlement dated March 14, 1971. The settlement provides for a total number of 18 holidays for office staff and 14 holidays for the factory staff. The relevant portion of the settlement reads :

"Provision of Settlement dated March 14, 1971

Article : Leave and Holidays

(c) The number of National/Festival Holidays to which the factory staff and factory general staff are entitled will be enhanced from the present number of 10 to 14 days including 3 National Holidays viz. Republic Day, Independence Day, Mahatma Gandhi's birthday and Viswakarma Puja.

(d) The number of National/Festival holidays for office and office general staff will be enhanced from 17 to 18 days per calendar year including 3 National Holidays viz. Republic Day, Independence Day and Mahatma Gandhi's birthday."

4. In 1977, the State of Bihar enacted the Bihar Industrial Establishments (National and Festival Holidays and Casual Leave) Act, 1977 (Act 17 of 1977) (called shortly as the 'Act') making provisions for National/Festival holidays and casual leave for workers. We are concerned with Sections 3 and 13 of the Act which must be set out in full :

"3. National and Festival Holidays. - (1) Every employee shall be granted following in each calendar year in such manner and on such terms and conditions as may be prescribed :

- (a) Three National Holidays on January 26, August 15 and October 2.
 - (b) Four other holidays on any festival out of the festivals mentioned in the schedule.
 - (c) International Labour Day on May 1.
- (2) The government may add to or exclude a festival from the Schedule by a notification in the official Gazette and on publication of such notification, the Schedule shall be deemed to be amended accordingly."

"13. Rights and Privileges under any other law not to be affected. - Where any employee of an industrial establishment is entitled to such rights and privileges under any other law for the time being in force or under any contract or custom or usage applying to the said establishment, which are more favourable to him, than any right and privileges conferred by this Act, nothing contained in this Act shall affect such rights or privileges."

5. It will be convenient if at this stage, we also read Rule 3(2) of the Bihar Rules framed under Section 14 of the Act :

"3. National Festival Holidays. - ... (2) Each employer of an industrial establishment shall at the beginning of each calendar year or within 60 days from the date of commencement of work in the case of new industrial establishments, display a notice asking his employees to indicate their choice in respect of 4 festival holidays out of the list of festivals holidays mentioned in the schedule under sub-section (1)(b) of Section 3 of the Act."

6. Section 3 makes it mandatory to declare holidays on January 26, August 15, may 1 and October 2, besides 4 other holidays on festivals out of the festivals mentioned in the schedule. Sub-rule (2) of Rule 3 provides procedure for fixing the 4 festival holidays at the beginning of each calendar year. The employer shall display a notice asking his employees to indicate their choice in respect of 4 festival holidays out of employees to indicate their choice in respect of 4 festival holidays out of employees to indicate their choice in the schedule to Section 3(1)(b).

7. Section 13 provides that the rights and privileges of the workmen under any other law or under any contract or custom or usage applicable to the establishment which are more favourable to the workmen than that conferred by the Act shall not be affected. Since the employees of the company's establishment at Jamshedpur were allowed more favourable holidays every year i.e. 18 (for office staff) and 14 (for factory staff) against the total of 8 holidays provided for in the Act, the company wanted to declare May 1 as holiday by adjusting the holidays allowed in the settlement. The workmen, however, took the stand that may 1 should not be adjusted within the total number of holidays provided in the settlement but should be given as an additional holiday.

8. Negotiations followed but neither side as willing to give up its claim. The conciliation officer could not bring about settlement. Upon failure of conciliation, the statutory authorities directed the company to declare May 1 as holiday in addition to the holidays provided for in the settlement. The company moved the High Court under Article 226 of the Constitution challenging the direction of the authorities. The High Court dismissed the writ petition observing thus :

"Under the existing arrangement, the employees are having 14/18 paid holidays in an

year and that cannot be defeated by Section 3 of the Act. But Section 13 expressly provides that if the rights and privileges in respect of paid holidays enjoyed by the employees are more favourable than are prescribed by Section 3, their existing rights and privileges as to the total number of holidays will not be prejudiced by Section 3, It is clear that Section 3 is not intended to prescribe a minimum number of paid holidays in addition to the existing ones. The holiday on May 1 prescribed under the Act being compulsory in nature, therefore, must be in addition to the privileges already granted to the workmen under the agreement."

9. We are afraid we cannot agree with this line of reasoning adopted by the High Court. In fact, the conclusion and the reasoning seem to be inconsistent with each other. Section 3 provides for three. National holidays, one International Labour Day and 4 festival holidays. It thus statutorily fixes 8 paid holidays, 4 out of them are left to the choice of the management and employees for festival occasions. These 8 holidays however, are not in addition to the holidays that are mutually agreed upon in the settlement. They are the minimum holidays which the employees are entitled to. If there is existing settlement by which the employees are entitled to more than 8 holidays the management could not take away those rights and privileges. To protect the employees in such cases the statute intervenes by Section 13. If the employees are entitled to more than 8 holidays under the contract or usage applicable to the said establishment, or under any other law for the time being in force those rights and privileges are saved by Section 13. This seems to be the requirement of the statute.

10. The case with not a dissimilar problem was in *Tata Oil Mills Co. Ltd. v. K. V. Gopalan* ((1965) 3 SCR 760 : AIR 1966 SC 1859 : (1965) 2 LLJ 124). There this Court considered the scheme and scope of Sections 3 and 11 of the Kerala Industrial Establishment (National and Festival Holidays) Act, 1958 which are similar in terms with Sections 3 and 13 of the Act with which we are concerned.

11. Section 3 of the Kerala Act Provides :

"3. Grant of National and Festival holidays. - Every employee shall be allowed in each calendar year a holiday of one full day on January 26, August 15 and May 1 and 4 other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees specify in respect of any industrial establishment".

12. Section 11 of the Kerala Act reads :

"11. Rights and privileges under other laws, etc. are not affected. - Nothing contained in this Act shall adversely affect any rights or privileges which any employee is entitled to with respect to national and festival holidays on the date on which this Act comes into force under any other law, contract, custom or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act."

13. Considering the rights of workmen under those provisions Gajendragadkar, C.J. speaking for this Court observed : (SCR p. 764)

"If under the existing arrangement the employees are entitled to have more than 7 paid holidays, that right will not be defeated by Section 3, because Section 11

expressly provides that if the rights or privileges in respect of paid holidays enjoyed by the employees are more favourable than are prescribed by Section 3, their existing rights and privileges as to the total number of holidays will not be prejudiced by section 3. The scheme of Section 11 thus clearly shows that Section 3 is not intended to prescribe a minimum number of paid holidays in addition to the existing ones, so that the respondents should be entitled to claim the 7 holidays prescribed by Section 3 plus the 6 holidays to which they are entitled under the existing arrangement."

14. In the present case it may be relevant to note that the festival holidays have not been identified or specified in the settlement. They have to be selected and declared as holidays with notice to employees every year. It is only three National holidays that have been specified therein in addition to Vishwakarma Puja day for the factory staff and factory general staff. Now, the statute prescribes the same three National holidays, besides International Labour Day and four festival holidays. But these 8 holidays are not to the exclusion of or in addition to the total number of holidays agreed upon under the settlement. Indeed, it could not be so, since three National holidays are common both in the settlement and statute. The total number of 14 holidays under the settlement as against 8 holidays under the statute remains undisturbed by Section 13 of the Act since it is more favourable to the employees than the rights and privileges conferred by the Act. When thus being the position, the management would be entitled to adjust the International Labour Day as a paid holiday within the 14 days allowed under the settlement. The demand of the employees that it should be in addition to 14 days has no support either under the settlement or by the terminology of the statute.

15. In the result the appeal is allowed. The judgment of the High Court is set aside. There will be, however, no order as to costs.

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