

ALLAHABAD HIGH COURT

Electric Workers Union

Vs

The U.P. Electric Supply Co

(Wanchoo, J.)

08.03.1948

JUDGMENT

Wanchoo, J.

1. These are nine connected appeals under Section 6 of Act XX [20] of 1946. Eight of them are by various electric supply companies managed by Messrs Martin & Co., while the nine (no. 16) is by the Electric Workers' Union, Allahabad. These appeals relate to certain changes made in the draft standing orders submitted by Martin & Co., on behalf of the eight electric supply companies which they are managing. The same set of draft standing orders were filed for all the eight companies.

2. The main question raised in these appeals as well as in some others is about the scope at Act XX [20] of 1946, and the extent of the authority of the Certifying Officer to make changes in the draft standing orders submitted to him.

3. The contention on behalf of the electric, supply companies is that the Certifying Officer has merely to see whether provision has been made for all the matters mentioned in the schedule of the Act and that he has not to see that the provision that has actually been made is fair or reasonable. It is further contended that the Certifying Officer has no authority to make any changes in the draft standing orders on the basis of his view that certain provisions in the draft standing orders are not reasonable and fair and should be replaced by other provisions which he considers reasonable and fair. On the other hand, it has been contended on behalf of the various Unions that the Certifying Officer has full power to make any changes which he considers proper in the draft standing orders.

4. In considering the scope and object of this Act, the preamble is of great assistance and reads as follows:

Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them; It is hereby enacted as follows.

5. This preamble shows that the Act was passed with two objects, namely:

(1) that the conditions of employment should be defined with sufficient precision; and (2) that the workmen should know them.

The second object needs no further comment because its meaning is clear. So far as the first object is concerned, the purpose of the Act obviously is that the conditions of employment should be defined with sufficient precision. These words clearly mean that the employers should put down in writing the conditions under which the workers are employed in a particular establishment. But these words do not justify the Certifying Officer in making any amendments in the draft standing orders as to the conditions of employment if the draft submitted to him defines those conditions clearly and sufficiently. The purpose of the Act, therefore, is clearly limited in its nature, namely, that the employer should put down clearly and in writing the conditions on which he is employing his workmen and these conditions should be made known to the workmen. It is not the purpose of this Act that anybody should scrutinize the conditions which the employer puts down in the draft standing order's to see whether they are fair and reasonable or not. This is an enquiry which is obviously beyond the scope of this Act, as is manifest from this preamble.

6. If this preamble stood by itself, there might have been some doubt whether the preamble could be treated as part of the Act and, therefore, considered as governing the provisions of the Act. But what is shown in the preamble as the scope and extent of the Act is also clear from certain provisions of the Act itself. Section 3, Sub-section (1) of the Act provides that the employer will submit the draft standing orders to the Certifying Officer within a certain time. Sub-section (2) of Section 3 is important in this respect and reads as follows: Provision shall be made in such draft for every matter set out in the schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

7. This provision makes it clear that the draft standing orders should contain provisions for every matter set out in the schedule as far as it is applicable to a particular establishment. It is the latter part of this provision, on which stress has been laid on behalf of the Unions. It provides that where model standing orders have been prescribed the draft shall be so far as is practicable, in conformity with such model. It is urged on behalf of the Unions that where the draft is not in conformity with this model and it is possible to make the draft conform to the model, the Certifying Officer should change the draft so that it may contain the same provisions as the model. This argument, however, loses sight of two facts. The first is that the model standing

orders which have been published by the Governor of these provinces are after all only models. The Act does not provide that as soon as the Governor prescribes model standing orders, those standing orders will take the place of the draft submitted by an industrial establishment. Further it is provided that the draft standing orders shall be, as far as practicable, in conformity with the model which means that the draft standing orders need not be an exact copy of the model. In any case, this provision cannot be interpreted to mean that where the draft standing orders differ from the model, the Certifying Officer has the authority to substitute the model standing orders for the draft. It has been urged on behalf of the electric supply companies that this provision is merely calculated to help and guide the employers in framing their draft standing orders and does not necessarily mean that they must incorporate and copy the model standing orders in their drafts. This argument is, in my opinion, correct and this provision is merely to help and guide the employers as to how they should frame their draft standing orders. It has nothing to do with the power of the Certifying Officer to substitute the model for the draft.

8. The next provision that is important in this connection is Section 1 which reads as follows:

(a) provision is made therein for every matter set out in the schedule which is applicable to the industrial establishment; and

(b) the standing orders are otherwise in conformity with the provisions of this Act, and it shall not be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

This section defines the duties of the Certifying Officer while dealing with draft standing orders. The Certifying Officer has to see, in the first place, that provision has been made for every matter set out in the schedule which is applicable to the establishment concerned. In the second place, the Certifying Officer has to see that the standing orders otherwise comply with the provisions of this Act. It has been urged on behalf of the Unions that this further provision would be meaningless if all that the Certifying Officer has to do, is to see that these draft standing orders provide for everything set out in the Schedule. It is further urged that as the Certifying Officer has to see that the standing orders are otherwise in conformity with the provisions of the Act, he has to see that they are, so far as practicable, in conformity with the model standing orders as this is provided in Section 3, subs. (2). I agree that this provision that the standing orders should be otherwise in conformity with the provisions of the Act, is not useless. Under Rule 1(a), the certifying officer sees that provision is made for everything set out in the Schedule. If no provision is made for anything set out in the Schedule, the Certifying Officer can add to the draft standing orders. Thus under Section 4 (a), he has the power to make additions. Under Section 4 (b), he has the power of amendment of provisions in the draft standing orders where, though the employers may have provided for the matters set forth in the Schedule, the language used may not define with sufficient precision the conditions of employment as required by the preamble of the Act. But at the same time, the scope of these amendments is [limited to this extent only and it

is not for the Certifying Officer to make changes in the draft standing orders which go beyond defining with sufficient precision the conditions of employment. This is made quite clear by the further provision in this section that it shall not be the function of Certifying Officer or the appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. I may give a few illustrations to make myself clear as to the extent to which the Certifying Officer can amend the provisions of draft standing orders. Suppose that the draft standing orders provide for fifteen days leave with pay in a year, while the model standing orders which have been published by the Governor of these provinces provide for thirty days. If the Certifying Officer substitutes the provision in the model and puts down thirty days' leave in the draft in place of fifteen days leave, he is making an amendment which is beyond his authority. The provision of fifteen days leave in the draft for example, defines the conditions of employment with sufficient precision as to leave with pay and its substitution by a period of thirty days provided in the model is a matter which raises a question of fairness or reasonableness. On no other ground can the Certifying Officer substitute in place of fifteen days provided in any standing orders, thirty days leave provided in the model.

9. An illustration of the other kind where the Certifying Officer can make an amendment is to be found in one of the amendments made by the Certifying Officer in this very case. For example, Rule 3 of the draft standing orders, in this case, provided for maintenance of service book of each employee and for its being kept by the employee concerned. The Certifying Officer has added the provision that a duplicate service book would be kept by the company also. This amendment comes within the scope of the Act. It is possible, for example, that an employee may lose his service book and thus lose the evidence of employment. But if a duplicate book is maintained in the company, the conditions of employment of that particular workman would still be available. Though, therefore, there was a provision in the draft standing order for this matter, that provision was not sufficient and the Certifying Officer was within his rights in making such an amendment. He could only make that amendment under Section 4 (b) for Section 4 (a) merely authorised him to see that all the matters provided for in the schedule had been included in the draft standing orders.

10. Finally, therefore, I come to the conclusion that the Certifying Officer can make additions to the draft standing orders in cases where they do not provide for everything included in the schedule. He can make amendments in the provisions of the draft in order that the conditions of employment might be defined with precision where the draft is defective and is not clear in its meaning. But he cannot make any changes in the provisions of the draft where those provisions are clear, on the ground that the provisions made in the draft are not reasonable and fair and that other provisions which may have been provided in the model standing orders should be substituted for them.

11. The next question is as to the authority of the appellate Court to interfere in such cases. It was urged that as the Certifying Officer cannot go into the reasonableness of the draft standing orders,

this Court could not interfere with the order of the Certifying Officer, if it had gone into the question of reasonableness and made any change on account of that. I cannot, however, accept this argument. If the Certifying Officer makes any change on the ground of reasonableness or fairness or makes a change which could only be justified on that ground, though he does not say so, the appellate authority certainly has the power to set aside that amendment on the ground that it is beyond the authority of the Certifying Officer. In so doing the appellate authority is not considering the fairness or reasonableness of the amendment. It is only saying that the Certifying Officer made the amendment on the ground of fairness or reasonableness and he had no authority to do so. The appellate authority, when it sets right such amendment expresses no opinion on the fairness or reasonableness either of the provisions of the draft standing orders or of the amendments, made by the Certifying Officer. It merely says that the provision in the draft standing orders should be restored because the Certifying Officer never had the authority to remove it.

12. Now it remains to consider as to which of the modifications made by the Certifying Officer in the draft submitted by the electric supply companies were beyond his power and which were not. Those modifications which are beyond his power would have to be cancelled and the original draft standing orders allowed to stand.

13. No. I draft standing order No. 2, clause (c).-The modification made in this case raises a question of fairness or reasonableness and, therefore, the original clause must stand.

Clause (d),-This modification merely makes the definition of a 'temporary employee' precise and will, therefore, be allowed to stand subject to its being consistent with clause (c).

14. No. II. draft standing order No. 3.- This modification is not covered by the question of reasonableness and fairness and will stand.

15. No. III. draft standing order No. 4.- This modification raises a question of reasonableness and fairness and, therefore, the original draft order will stand.

16. No. IV. draft standing order No. 7.- No provision had been made for late attendance in the draft. The modification made by the Certifying Officer in accordance with the provision of the model standing orders must stand.

17. No. V. draft standing order No. 9.- Clauses (a) and (c). The Certifying Officer has provided that in place of these clauses in the draft standing orders, the terms and conditions regrant of privilege leave and sick leave will be governed in accordance with the adjudication award enforced in C.O. No. 2150 (1) (ii) xvIII-197 (L)/46, dated 26th May 1947. This is again a matter of reasonableness and fairness. So the proper procedure which the Certifying Officer should have adopted was to leave these provisions as to sick and privilege leave as they were in clauses (a)

and (c) and to add, at the end of the draft standing orders, a clause to the effect that so long as the award in question remains in force, the matters about which the award has provided shall be governed by the terms of the award and not by the terms of the standing orders. Therefore, clauses (a) and (c) of the draft standing orders will be restored and I shall make a provision at the end about the award.

Clause (d). - The amendment proposed in this clause merely makes precise the conditions of employment and will, therefore, stand.

18. No. VI. draft standing order No. 10.- This draft standing order has been modified in view of the adjudication award. This draft standing order will, therefore, be restored as already mentioned by me above and will be subject to the last clause about the adjudication award which I propose to add.

19. No. VII. draft standing order No. 11.- This also raises a question of reasonableness and fairness. The draft standing order will, therefore, be allowed to stand as it is, but as this matter is also said to be governed by the adjudication award, it will be subject to the last clause which I propose to add.

20. No. VIII. draft standing order No. 12.-This modification is also meant for the purpose of making the conditions of service precise and will, therefore, stand except for one of the provisos to model standing order No. 14 which reads as follows:

Provided that a workman may, with the previous permission in writing of the head of the department, take samples of yarn and/or cloth for the purposes of bona fide trade dispute.

This will be deleted as it is inapplicable to electric supply companies.

21. No. IX. draft standing order No. 13.- This modification made by the Certifying Officer raises a question of reasonableness and fairness and, therefore, the original draft standing order will stand.

22. No. X. draftstanding order No. 14__ Clauses (c) and (e). These also raise a question of reasonableness and fairness and will stand as they are in the draft standing order.

23. No. XI. draft standing order No. 16.- The modifications made in this draft do not raise a question of reasonableness or fairness, but only make the conditions of service precise and these modifications will stand.

24. No. XII. draft standing order No. 17__ Clauses (a), (b) and (c). The modifications made in these clauses raise a question of reasonableness and fairness. Therefore, the original draft will

stand so far as these clauses are concerned.

Clause (d).-The modification in this clause merely makes the conditions of service precise and provides a right of appeal as required under the Schedule. It will stand.

Clause (e).-The modification made in this raises a question of reasonableness and fairness and, therefore, the original draft will stand.

25. No. XIII. draft standing order No. 18__The modification made in this raises a question of reasonableness and fairness and, therefore, the original draft will stand.

26. No. XIV. draft standing order No. 19.-The modification made in this merely makes the conditions of service precise and will, therefore, stand.

27. No. XV. draft standing order No., 21-Clause (a). The original draft will stand in place of (a).

Clause (b)__The modification made in this makes the conditions of service precise and will stand,

28. I now come to the eleven specific points raised in the appeal of the Electric Workers' Union, Allahabad (No. 16 of 1947) and will consider them one by one in the order in which they have been raised in the grounds of appeal,

29. No. 1.-The recognition of Unions has nothing to do with the standing orders. No change is necessary, in consequence, in the draft standing orders on this score.

30. Nos. 2 to 12__These points all raise a question of reasonableness or fairness. Therefore, no change can be made in the draft standing orders on these points, but if any of these points is governed by the adjudication award, mentioned above, it will be governed by the clause which I am proposing to add to the draft standing orders,

31. There are twenty-four clauses in the draft standing orders. The following twenty-fifth clause will be added to govern the adjudication award.

Clause 25, "So long as the Adjudication Award enforced in G.O. No. 2150 (L) (ii)/XVIII-197 (L)/46 dated 26th May 47 is operative, such provisions of these standing orders which are inconsistent with the Award will not be operative and in their place, the terms of the Award will be operative. When the period for which the Award is operative comes to an end the terms of the standing orders will become operative.

32. The appeals are decided accordingly. Parties will bear their own costs. Copies of the standing

orders, as finally modified by me, shall be prepared by the office and it will take steps to comply with the provisions of Section 6, Sub-section (2) of Act XX [20] of 1946.