BOMBAY HIGH COURT

Digambar Ramchandra

Vs.

Khandesh Spinning and Weaving Mills Co. Ltd

O.C.J. Appeal No. 26 of 1949

(Chagla, C.J. and Bhagwati, J.)

10.03.1949. 07.09.1949

JUDGMENT

Chagla, C.J.

1. There was a breakdown in the machinery of the Khandesh Spinning and Weaving Mills Company who are the plaintiffs in the suit from which this appeal arises and the mills bad to be temporarily closed from 7th July 1946, up to 1st September 1946. The employees of the company claimed that they were entitled to be paid compensation during the period of the stoppage of the mills. On 28th December 1946, the Provincial Government referred the industrial dispute between the employees of the company and the company to arbitration under 8. 49A, Bombay Industrial Disputes Act, 1938, and the arbitrator Divan Bahadur Kamerkar gave his award on 24th March 1948. By this award he awarded that the employees should be paid compensation for 45 days at the rate of 76 per cent. for the first 15 days and 50 per cent. for the remaining 30 days. It is this award which has been challenged by the mills as being illegal and ultra vires. The learned Judge who heard the suit came to the conclusion that the arbitrator had acted in excess of his jurisdiction and gave relief to the plaintiffs. It is from that decree and judgment of the learned Judge that the appellants have come in appeal before us.

2. In order to understand the contentions raised by Mr. Jhavery before us, it is necessary to look at some of the provisions of the Bombay Industrial Disputes Act, 1938. That Act provides for Standing Orders being framed in accordance with the procedure laid down in Section 26(1), and that sub-section provides that :

> "Every employer in respect of any industry or occupation to which this section has been made applicable shall within two months from the date of such application submit to the Commissioner of Labor for approval in such manner as may be prescribed standing orders regulating the relations between him and his employees with regard to all industrial matters mentioned in Schedule I."

Therefore an obligation is cast upon the employer to frame standing orders with regard to all

industrial matters-mentioned in Schedule I. Then the section provides for the settling of these standing orders and after the standing orders are settled their effect is laid down in Sub-Section (8), and the effect is that these standing orders, shall be determinative of the relations between the employer and his employees in the industry or occupation concerned in regard to all industrial matters mentioned in Schedule I and shall not be liable to be altered for a period of six months from the date on which they come into operation except on a review by the Industrial Court under Section 27. Section 30 also provides for an agreement regarding change in the standing orders, and such an agreement has got to be registered with the Registrar, and when it is so registered, under Section 32 the agreement comes into operation from the date stated in the agreement, or if no date is stated therein, from the date on which it is recorded by the Registrar, Turning to Schedule I, the item we are concerned with is item 7 which provides for temporary stoppages of work and rights and liabilities of employers and employees arising there from. Therefore, under Section 26(1) standing orders have to be framed determining the rights and liabilities of employers and employees arising from temporary stoppages o work, and once the standing orders have been framed, these standing orders under Sub-Section (s) of Section 26 are determinative of the relations between the employer and the employees. Therefore, it is clear that the only liability which an employer baa with regard to any payment that he may be called upon to make to his employee in respect of temporary stoppage of work is the liability which is determined by the standing orders framed under Section 26(1). When we turn to the standing orders which have been framed under item 7 of Schedule I, they are standing orders 16 and 17, and standing order 16 provides that the company may, at any time or times, in the event of a fire, catastrophe, breakdown of machinery or stoppage of the power supply, epidemic, civil commotion or other cause, whether of a like nature or not, beyond the control of the company, stop any machine or machines or department or departments, wholly or partially, for any period or periods, without notice and without compensation in lieu of notice. Therefore, the power is given under this standing order to the company to stop for any period or periods, wholly or partially, any department or departments, without being under any liability to give notice to the employees or without the liability of paying compensation in lieu of notice. Then the second part of standing order 19 deals with the situation with which we are not concerned. That deals with a case where there is a stoppage during working hours, and it provides for certain rights of the employees depending upon for what period they were detained while there was a stoppage. Then we come to standing O. 17 which provides that :

> "Any operative played off under Order 16 will not be considered as dismissed from service, bat as temporarily unemployed, and will not be entitled to wages during such unemployment except to the extent mentioned in p. 16. All operatives played off will be given prior rights to reinstatement on the resumption of normal work, provided they present themselves for work when normal working is resumed."

Therefore under this standing order an employee who ceases to do work by reason of a temporary breakdown does not cease to be in service of the company, but during the period of unemployment he is not entitled to any wages. The contention put forward by Mr. Jhavery is that standing O. 17 deals only with wages to which a worker is entitled. It does not deal with any compensation or any other relief to which the worker may be entitled. In my opinion, no liability can be imposed upon the employer other than the liability expressly mentioned under standing Ors. 16 and 17. Therefore if the employee contends that he is entitled to any relief or any

compensation, he must satisfy the Industrial Court that each relief or such compensation arises from the standing orders which have been framed under Section 26 and which are determinative of the liability of the employer. There can be no liability upon the employer outside the ambit of the standing orders.

3. Now, what the learned arbitrator did was, he accepted the position that under standing Ors. 16 and 17 the employees were not entitled to any payment from the company. But he took the view that as the industrial dispute was referred to him by Government under Section 49A, he had jurisdiction to consider not only the standing orders but what was fair and right as between the employer and the employee and to give relief on moral and humanitarian considerations. Now, the learned arbitrator came to that conclusion in view of the definition of "Industrial matter" appearing in Section 3(14), Bombay Industrial Disputes Act, 1938. In the first place, we look at the definition of "Industrial disputes" which means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter. An industrial matter is defined as any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or non-employment; and then the definition goes on to mention four instances which according to the statute are included in the definition of industrial matter, and the fourth is

> "all questions of what is fair and right in relation to any industrial matter having regard to the interest of the parson immediately concerned and of the community as a whole";

and the view that the learned arbitrator took was that as he was arbitrating upon an industrial dispute it was open to him to consider all questions of what was fair and right in relation to any industrial matter, and the industrial matter which he thought was before him was the unemployment of the employees of the Mills. Now, perhaps, it would have been open to the arbitrator to have considered the claims of the employees from this wider angle if the Industrial Disputes Act did not control his jurisdiction effectively by laying down what the liability of the employers was as far as temporary stoppage of work was concerned. If there had been no standing order, if the relationship of the employer and employee had not been determined with regard to temporary stoppages of work, the arbitrator would have been within his jurisdiction in taking into consideration all questions of what was fair and right in awarding any sum as payable by the employer to the employee. But, as I have pointed out earlier, once the standing orders have been framed and settled, and they were framed and settled with regard to temporary stoppages of work, then the only liability which the arbitrator had jurisdiction to determine was the liability flowing from and arising out of the standing orders which had been settle. He had no jurisdiction to determine any liability outside the standing orders.

4. Mr. Jhavery has relied on certain recommendations made by the Government of Bombay and which were agreed to at a tripartite conference between the Government, employers and employees and which according to Mr. Jhavery constituted an agreement of a binding nature. Now, these recommendations were made on 13th December 1944, by a letter written from the Commissioner of Labor to the agents of the Khandesh Spinning and Weaving Mills Co., Ltd. It is pointed out that there was a general agreement at a second tripartite conference that workers who had been temporarily thrown out of employment owing to shortage of coal and similar reasons

should be given relief, and the letter goes on to say that the Government of India bad accordingly forwarded the accompanying proposals and the Government of Bombay hoped that employers would give effect to these proposals. The Government of Bombay further considered that where such stoppage bad occurred, and relief was not given, a demand for relief would be a fit subject for adjudication; and then the proposals are set out and it is clearly stated that the proposals relate only to short term unemployment during the period of war, due to shortage of coal or raw materials or changes in line of production of which adequate notice could not be given, and then the proposals set out what is the relief that should be given. In the first place, these proposals do not directly relate to the temporary in this case which was due to the breakdown of the machinery. It is not the case contemplated by these particular proposals. But assuming that the proposals did really relate to this type of stoppage also, it is difficult to under, stand bow it could be contended that these proposals constituted an agreement which is binding as between the mills and their employees. Apart from the fact that this letter merely embodies certain proposals and merely contains a hope on the part of Bombay Government, even assuming that they have constituted an agreement in law, this, in my opinion, cannot 'alter, or change, or override the standing orders 'settled according to Section 26 of the Act. As I have pointed out, the Act lays down the machinery according to which the standing orders can be altered, and till that machinery is resorted to and the procedure followed as laid down in the Act, the standing orders cannot be altered. It is not suggested by Mr. Jhavery that any agreement was registered as required by Section 30 and, therefore Section 32 never came into operation. In my opinion, therefore, this particular letter written by the Government of Bombay cannot in any way assist the employees. The learned arbitrator took into consideration this letter and by analogy applied it to the particular case he was considering and really gave effect to the proposals of Government in wider terms than Government itself intended, because, in his opinion, the peculiar circumstances prevailing at Jalgaon required a wider relief than contemplated by Government in their letter of 13th December 1944. In my opinion if the arbitrator had jurisdiction at nil to give relief beyond the relief contemplated by the standing orders, then certainly he had the right to look at this letter as indicative of the measure of relief that should be given to the workers of the Khandesh Mills. But, as in my opinion, the arbitrator had no jurisdiction at all to give any relief which was outside the ambit of the standing orders, the question is irrelevant as to whether be had the right to look at the Government proposals and to act in accordance with those proposals.

5. The only other point that has been agitated at the Bar is whether we can sit is judgment on the decision of the learned arbitrator and whether the award can be challenged in any litigation is this Court For that purpose, our attention is drawn to R. 60 of the Act which provides that no order passed by the Industrial Court shall be called in question in any civil or criminal Court. It is perfectly clear that the order contemplated by this section is an order with jurisdiction. Any order passed by the Industrial Court which is without jurisdiction or which is in excess of the jurisdiction conferred upon it by statute can always be questioned in a civil Court. It must be remembered that Section 60 excludes jurisdiction of civil Courts and it must be strictly construed. It also sets up a special Court of limited jurisdiction, and Courts of limited jurisdiction must be confined to the functions and powers which are conferred upon them by the statute which creates the Courts. Therefore, if the Industrial Court acts contrary to the provisions of law which creates it or if it acts in excess of its statutory powers, a civil Court can always correct the decision of the Industrial Court. The proposition which I have just stated has the support of so high an authority as the Privy Council. In *Secretary of State v. Mask and Co*[1]*.,* their Lordships expressed, the opinion that it was well settled law that even if jurisdiction of the civil Court was

excluded, the civil Courts have jurisdiction to examine into oases where the provisions of the Act have not been complied with and again in *Province of Bombay v. Hormasji Manekji*[2], Lord Thankecton delivering the judgment of the Board referred to a concession made by Sir Cyril Radcliffe for the appellant there and considered that that concession was a proper concession, viz., that the Civil Courts have jurisdiction to determine a question as to excess of the statutory powers conferred by the Code. In my opinion, the learned arbitrator in making the award and in imposing the liability upon the employers has acted contrary to the clear provisions of the law and has also acted, in excess of his jurisdiction because he has imposed a liability upon the employers which the law did not permit him to impose. Therefore, in my opinion, the learned Judge was right in coming to the conclusion that the award was illegal and decreeing the plaintiffs' suit.

6. The appeal, therefore, fails and must be dismissed.

7. Before we part with this matter, I should like to say that although technically the appellants have failed and the Khandesh Mills have succeeded, we sincerely hope that the Khandesh Mills will take a humane and sympathetic view of the situation. The arbitrator has pointed out the serious conditions that existed at Jalgaon at the time when there was stoppage of work. He has drawn attention to the index figure and the high cost of living and it was much higher than in Bombay, It is indeed hard for the workers of the Khandesh Mills to be put out of work without any fault of theirs, the so long a time as 55 days. It is not for us to say what Khandesh Spinning and Weaving Mills Company should do, but we confidently hope that in the interest of their employees they will make a payment to the workers ex gratia, which would be worthy of the mills and such as to relieve the hardship of the workers.

8. Bhagwati, J.- I agree. I would only like to add a few words of my own. The standing orders having been framed providing for the temporary stoppages of work and rights and liabilities of employers and employees arising there from, the provisions therein contained were determinative of the rights and liabilities of the parties. Even though the arbitrator had jurisdiction to go into the industrial dispute which was referred to him, he could only do what was fair and right in relation to the industrial matter, and in no event could it be said that in deciding the question of what was fair and right he could go beyond the provisions of the standing orders which had been framed in this behalf in accordance with the proper procedure. Under the circumstances of the case as they obtained, there was no change in the standing orders and there was do justification for the arbitrator to go beyond the terms of the standing orders. Having held that under the terms of the standing orders, the employees were not entitled to any relief by way of compensation they had asked for, he had clearly no jurisdiction to go beyond the terms thereof and award what according to his own opinion was fair and right having regard to

[1]42 Bom LR 767 at p. 775 : (AIR 1940 PC 105)

[2]50 Bom LR 524 at p. 528 : AIR 1917 PC 200

the Government recommendations which have been already referred to in the judgment of my Lord the Chief Justice.

9. I need add nothing more and agree with the order which has been made in the judgment just delivered.

Appeal dismissed.