BOMBAY HIGH COURT

Moon Mills Ltd

Vs

Rashtriya Mill Mazdoor Sangh

(M Meher, J.)

24.10.1959

ORDER

(M Meher, C.J.)

1. This is an appeal against an order of the Judge, First Labour Court, Bombay, directing the appellant mill company to withdraw an illegal change.

2. The facts of this case are that the Rashtriya Mill Mazdoor Sangh, Bombay, which is a representative union made an application to the Labour Court under S. 78(1)A(c) read with S. 79(1) of the Bombay Industrial Relations Act, against the appellant company in which its case was as follows : On 1 March 1956, the sangh entered into a five year bonus agreement with the Millowners' Association, Bombay, representing its member mills. On 13 March 1956, the industrial court made an award in terms of the agreement. The appellant mill company was not a party to this agreement. Thereafter, the award was made applicable to and binding on this company by a notification by the Government of Bombay issued on 31 July, 1956 under S. 114(2) of the Bombay Industrial Relations Act. Clause (10) of the abovementioned agreement provided a scheme to determine the quantum of bonus to be paid by each member mill. The sangh and the Millowners' Association, Bombay, representing the appellant company could not determine the bonus payable to the employees of the appellant mill company for the years 1955 and 1956. So the dispute was referred to Sri M. D. Bhat as arbitrator under the agreement. On 25 April, 1958, Sri M. D. Bhat gave an award deciding the quantum of bonus payable to the employees of the appellant mill company for the years 1955 and 1956 and directing the company to pay bonus equal to 19 per cent of the basic wages for the year 1955 less the amount of bonus already paid for that year and bonus equal to 25 per cent of the basic wages for the year 1956. The sangh submitted that the company was bound to pay this bonus in pursuance of Clause (10) of the bonus award and the award of Sri M. D. Bhat, but the company did not pay this amount and thereby it made an illegal change.

3. The company by its written statement replied that the application filed by the sangh was bad in

law and that there was no valid agreement or submission to Sri M. D. Bhat. The company was not a party to the bonus agreement dated 1 March, 1956 between the Millowners' Association and the sangh and so the award of the industrial court dated 13 March, 1956 in terms of the agreement was not binding on the appellant company. The notification issued by the Government of Bombay making the award applicable to this company was void and inoperative as the appellant mill company was not a textile mill but only a power-loom factory. Without prejudice to the contention that there was no valid reference to Sri M. D. Bhat, the company submitted that the reference to the arbitrator, having not been registered as a submission under the Bombay Industrial Relations Act, was not valid. The company's attorney wrote to Sri M. D. Bhat and inquired if the had taken necessary steps to file the award. Sri M. D. Bhat replied that the award has been sent to Little & Company, Solicitors. The award was subsequently published in the Bombay Government Gazette by the Registrar under the Bombay Industrial Relations Act.

4. The learned labour judge rejected all the contentions of the company and held that the company's failure to pay the bonus as per the decision of Sri M. D. Bhat amounted to an illegal change and he directed the appellant mill company to withdraw the illegal change by complying with the directions of Sri M. D. Bhat.

5. Sri Kolah, who has appeared for the appellant company, has urged that the notification applying the award of the industrial court to the appellant company is illegal and void as it contravenes Art. 14 of the Constitution. This point was not raised in the written statement, wherein it was urged that the notification was invalid because the appellant company was a power-loom factory and not a textile mill. But the point was raised in the arguments before the labour court and as it is a question of law it can be taken. The argument is put by Sri Kolah in this way : Government, by exercising its powers under S. 114(2) of the Bombay Industrial Relations Act, forces on a party an agreement or award in regard to other companies and thereby deprives the company concerned of the opportunity of having its case fought out before the judicial tribunal. Section 114(2) is as under :-

> "In cases in which a representative union is a party to a registered agreement, or a settlement, submission or award, the (State) Government may, after giving the parties affected an opportunity of being heard, by notification in the official gazette, direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification;
>
> Provided that before giving a direction under this section the (State) Government may, in such cases as it deems fit, make a reference to the industrial court for its opinion."

Now this section applies only when a representative union has entered into a registered agreement, settlement, submission or award. The representative union is given a special status under the Act and represents workmen employed in the industry in the local area. A union cannot be a representative union unless it has the largest membership of employees in the local area. When such a union is a party to a registered agreement, settlement, submission or award, the State Government is empowered to make such agreement, settlement, submission or award, the State Government is empowered to make such agreement, settlement, submission or award binding on other employers and employees in the industry. Far from infringing the principle of equality the section promotes equality by enabling the State Government to secure uniformity in wages and other conditions of employment. It is a beneficial piece of legislation. To the employers also it is fair as it enables Government to secure equality of competitive conditions for all concerns in the industry so that no employer has an undue advantage at the expense of labour. In other countries also where a union in an industry enters into an agreement with regard to wages, etc., it secures that all employers adopt what is known as "the common rule" in the industry. In this country trade unionism has not made such progress as to secure such an end by its own influence and legislation has come in to enable the trade union, by invoking the powers of the State Government, to secure uniformity in wages, etc. It is to be observed that the section contains safeguards. The employer concerned has to be heard what he has to say before the agreement, etc., is made binding on him. In this case it is not disputed that the appellant company was heard by Government. The bonus agreement was between the representative union and all the mills represented by the Bombay Millowners' Association in Reference (IC) No. 114 of 1953, which was pending before the industrial court. Government by notification made it applicable to four other mills of whom the appellant mill company was one. In my opinion, the notification is perfectly valid and neither the notification nor S. 114(2) offends Art. 14 or any other article of the Constitution.

6. Next, it was urged that as the appellant company is a power-loom factory the notification is not valid. The appellant company has been all along a member of the Bombay Millowners' Association. It is not disputed that it is registered under the Bombay Industrial Relations Act, as an undertaking in the cotton textile industry. Therefore, the State Government could make the award which applied to the large majority of cotton textile mills in Bombay, represented before the Industrial Court by the Bombay Millowners' Association binding on this mill also. The lower Court was right in holding that the objection on this score was without substance.

7. I now come to the other objections to the award of Sri M. D. Bhat. They are such as could have been taken in a proceeding to set aside the award. Section 68 of the Bombay Industrial Relations Act lays down :-

> "The proceedings in arbitration under this chapter shall be in accordance with the

provisions of the Arbitration Act, 1940, in so far as they are applicable and the powers which are exercisable by a civil court under the said provisions, shall be exercisable by a labour court and the Industrial Court."

In the case of the Textile *Labour Association, Ahmedabad v. Labour Appellate Tribunal and others*[1] it was observed by the Bombay High Court at p. 438 :

> "Under the Arbitration Act an award has to be filed as provided by S. 14 and then an application to set aside an award has to be made to a Court having jurisdiction under S. 31. Under the Bombay Industrial Relations Act, the award has to be filed as provided by S. 74, but once the award has been filed there seems to be no principle which could justify the contention that the labour court or the industrial court, which are Courts upon which jurisdiction has been conferred by S. 68, cannot deal with an application to set aside the award."

The award or Sri Bhat was made on 25 April, 1958. It bears the signature of the representatives of the parties. It was sent to the Commissioner of Labour and published by the Registrar, Bombay Industrial Relations Act, in the Bombay Government Gazette, dated 17 June, 1958. So far no proceeding to set aside the award has been taken by the company but in this proceeding by the sangh for having it declared that the company has made an illegal change and for withdrawal of the change the company has taken certain objections to the award. Section 46(5) of the Bombay Industrial Relations Act is as under :-

> "Failure to carry out the terms of any settlement, award, registered agreement of effective order or decision of a wage board, a labour court or the industrial court affecting industrial matters shall be deemed to be an illegal change."

It seems to me that in a proceeding before a labour court complaining of an illegal change by not carrying out the terms of an award, objections which could have been taken in a proceeding to set aside the award cannot be taken though an objection that on the face of it the award is invalid could be taken. There is nothing in the award of Sri M. D. Bhat to suggest that it is, on the face of it, invalid. However, I proceed to deal with all the objections taken to the award of Sri M. D. Bhat so that if this matter is taken to a higher Court and that Court takes a different view, it would not be necessary to remand the case.

7. A. It has been urged that Sri Bhat has no jurisdiction as he was not a person "mutually agreed to between the parties" within the meaning of Clause (10) of the five-year bonus agreement. In order to deal with the objection, it is necessary to state certain facts. Clause 10 of the bonus agreement is as follows :-

"That the Millowners' Association, Bombay, and the Rashtriya Mill Mazdoor Sangh, Bombay, will jointly determine in case of each individual member mill the available surplus of profit and fix the quantum of bonus to be distributed in terms of the agreement on basis of the balance sheet of the year after obtaining the necessary information regarding bonus provision, statutory depreciation, etc., from the mills after the publication of balance sheets. Such necessary data shall be supplied by the mills to both the association and the sangh within a period of two months of the publication of the balance sheet or before the end of the month of September of the next year whichever is later. If there will be any difference of opinion between the parties regarding determination of the available surplus of profit or the quantum of bonus to be paid by the mill, the matter will immediately be referred to Mr. Justice D. V. Vyas, Judge of the Bombay High Court and in case is not available or is unable to function, to a person mutually agreed to between the parties and his decision shall be accepted by both the parties."

8. The Millowners' Association and the sangh addressed a joint letter to the Government of Bombay [Ex. 21/1] in which it was stated that the services of Mr. Justice Vyas were not available and that the parties agreed that the service of Sri M. D. Bhat, retired Chief Secretary to the Government of Bombay, might be secured. As Sri Bhat had ceased to be in the service of the Government of Bombay, the matter was subsequently referred to the Government of India and Ex. 23/3 shows that the Government of India agreed to allow Sri Bhat to act as arbitrator under the agreement. On behalf of the company, objection was taken in the labour court to the admission of these exhibits, but in my opinion they were very properly admitted. They show that the services of Sri Justice Vyas was not available and that the Millowners' Association and the sangh agreed to Sri Bhat being the arbitrator under Clause 10 of the agreement. It may be noted that Sri Bhat was selected as the arbitrator before the award was made applicable and binding on the appellant company by notification of the State Government under S. 114(2) of the Bombay Industrial Relations Act. It has been urged that since the award was made applicable to the appellant company, the arbitrator has to be acceptable to the appellant company and Sri Bhat was not a person "mutually agreed to by both the parties" within the meaning of the Clause 10 of the agreement. This objection was rightly rejected by the labour court. In the first place the objection that Sri Bhat was not a person "mutually agreed to by both the parties" was not urged before the arbitrator. If such an objection was urged, I do not think that Sri Bhat, who is a retired officer of the Indian Civil Service and a former Chief Secretary to the Government of Bombay, would have chosen to proceed further with the arbitration. The written statement filed before the arbitrator shows that certain objections to jurisdiction were taken but not on the ground that he was not a person "mutually agreed to by both the parties." The written objections urged before arbitrator were that the company was not a party to the bonus agreement, that the award of the industrial court in terms of the bonus agreement was not binding on the company and that the notification

of Government making the award binding on the company was ultra vires as the company was not a textile mill but a powerloom factory. I allowed the parties to file in this appeal, affidavits, on the question whether the contention that Sri Bhat was not a person mutually agreed between the parties was raised before Sri Bhat. Sri N. S. Deshpande, Secretary of the Rashtriya Mill Mazdoor Sangh, has stated in the affidavit that such a contention was not raised but the other objections to jurisdiction were raised before the arbitrator and Sri Vimadalal for the company did not press these. Sri Bhakta, an advocate, has filed an affidavit in reply in which the statement in Sri Deshpande's affidavit that the company did not urge the point that Sri Bhat was not a person mutually agreed to between the parties is not specifically denied. In the reply to the affidavit it is stated that Sri Vimadalal did not concede the points of jurisdiction. At a chamber hearing when the stay application against the order in appeal came before me, Sri Bhakta stated before me that Sri Vimadalal did not press the points about jurisdiction before the arbitrator, but he went on to say that Sri Vimadalal did not concede the points of jurisdiction. In the reply to the affidavit of Sri Deshpande the statement in Sri Deshpande's affidavit that the counsel Sri Vimadalal did not press the point of jurisdiction before the arbitrator is not specifically denied but what is stated is that Sri Vimadalal did not concede the point of jurisdiction. I have no doubt that the company did not raise the contention before the arbitrator that Sri Bhat was not a person "mutually agreed to between the parties" and that the other contentions about jurisdiction were also not pressed before the arbitrator.

9. Sri Kolah has, however, argued that even consent would not give jurisdiction if the arbitrator had no jurisdiction and there was no valid submission to arbitration. But I hold that there was a valid submission to the arbitration of Sri M. D. Bhat, as is evident from the facts stated above. Under Clause 10 of the bonus agreement, if the services of Sri Justice Vyas were not available, the dispute had to be referred to a person mutually agreed to by the parties. The clause shows that the parties who were to select the person were the Millowners' Association, representing its member mills and the Rashtriya Mill Mazdoor Sangh. The arbitrator was not to be chosen by individual member mills. The appellant company was a member of the Millowners' Association and was not entitled to select a separate arbitrator from that chosen by the Millowners' Association and the sangh.

10. Next, it is urged that the arbitrator did not decide the matter referred to him and so the award is bad. Reliance is placed on the letter of the Rashtriya Mill Mazdoor Sangh to Sri Bhat, dated 29 January 1958 (which is among the proceedings of the arbitrator and collectively exhibited by the labour court at Ex. 16), in which it is stated :

> "We are forwarding herewith two copies of our statement of claim together with all annexures in respect of the dispute between the sangh and the Moon Mills, Ltd., on the quantum of bonus payable to the employees of the Moon Mills, Ltd., for the years 1955

> and 1956 under the five years bonus agreement under which you have been appointed an arbitrator.The employees have been paid only fifteen day's basic wages as bonus for the year 1955. The employees have refused to accept bonus for the year 1956.The point of difference between the sangh and the mill is a small one and pertains to the deduction to be allowed under the head 'reserves for rehabilitation' under the bonus formula."

It is, therefore, urged that the arbitrator could only decide on the issue of rehabilitation which he did not and instead he passed an order directing the company to pay certain amount by way of bonus to the employees of the company. Now the letter of the sangh has to be read in conjunction with the statement of claim filed with the letter and also with Clause 10 of the bonus agreement under which the reference was made to Sri Bhat. Under that clause calculations of the available surplus and bonus were to be made jointly by the Millowners' Association and the sangh. The reference to arbitration was to be made if there was a difference of opinion between the Millowners' Association and the sangh as regards the determination of the available surplus or the amount of bonus to be paid by the mill company. There was such a difference in respect of the appellant company and it was referred to Sri Bhat. The determination of the available surplus and the amount of bonus to be paid by the company turned on the amount claimed by the company in respect of rehabilitation. In the statement of claim filed with the letter, the sangh submitted what it had to say on the question of rehabilitation and asked for an award of bonus in respect of both the years 1955 and 1956 at the rate of three months' basic wages. The proceedings before the arbitrator show that both the appellant company and the sangh made submissions to the arbitrator in regard to rehabilitation and the amount of bonus payable. The proceedings before the arbitrator, dated 13 April, 1958, shows that he considered the respective contentions and calculations filed by the parties on the issue of rehabilitation and went on to observe :

> "Applying the usual formula the surplus amount available to the Moon Mills, Ltd, would be Rs. 60,200. From this a minimum allowance of Rs. 10,000 will have to be deducted. This surplus fro purpose of bonus would be Rs. 50,200. Out of this amount the bonus paid for the years 1953-54, viz., Rs. 9,451 when there was a loss to the mills has to be deducted. The balance left is Rs. 40,749 and bonus equal to three months' wages for 1954 amounts to Rs. 40,010 so that the bonus for 1955 could be worked out according to the formula after deducting the amount of bonus in 1953 and 1954 which comes to 19 per cent of the basic wages for 1955. As regards 1956 even according to the calculations made by Sri Vimadalal on the alternative basis the surplus available is Rs. 44,750 so that bonus equal to 25 per cent of the basic wages of the employees for 1956 could be paid from this amount."

In accordance with this calculation, Sri Bhat made an award on 25 April, 1958, directing the

company to pay to its employees 19 per cent of the basic wages for 1955 minus the bonus already paid and 25 per cent of the basic wages for 1956. I hold that the arbitrator did not travel beyond his jurisdiction, that he did decide the matter referred to him and that the award is not bad on the alleged ground that he did not decide the matter referred to him.

11. Next it is urged that the award is bad as the arbitrator did not file his ward in the High Court. It was held by the Labour Appellant Tribunal in the case of the City of Ahmedabad Spinning and Weaving Company, *Ahmedabad v. Textile Labour Association, Ahmedabad, and others*[2] that S. 14 of the Arbitration Act requiring the award to be filed in Court was repugnant to the Bombay Industrial Relations Act, and the filing of the award was not a necessary step for giving legal force to it. Relying on this decision the learned Labour Judge rightly held that it was not necessary to file the award in the High Court. As stated above, the award was published by the Registrar, Bombay Industrial Relations Act, in Bombay Government Gazette, dated 17 July, 1958.

12. It remains to deal with two other points argued by Sri Kolah for the appellant company. It has been urged that the reference to the arbitrator had to be registered as a submission under S. 66 of the Bombay Industrial Relations Act. In my opinion this was not necessary. The reference was in pursuance of the terms of an award of the Industrial Court which was in terms of an agreement between the Rashtriya Mill Mazdoor Sangh and the Millowners' Association. The terms of it required a reference to an arbitrator and it was not necessary, therefore, to register a fresh submission under S. 66. The last point urged is that the representative union could not apply for withdrawal of the illegal change but only for a declaration of an illegal change. Reliance is placed on a decision of the Madhya Pradesh High Court*, Pyarelal and others v. Indore Mill Mazdoor Sangh*[3] That decision has no application to the facts of this case and I do not, therefore, think it necessary to refer to that case in detail. It is only necessary to refer to certain sections of the Bombay Industrial Relations Act to show that the application to the labour court by the representative union was maintainable. Section 78(1)A(c) gives jurisdiction to the labour court to decide disputes regarding a question whether a change is illegal. Section 78(1)C gives jurisdiction to the labour court to require an employer withdraw and illegal change. Section 79(1) lays down that proceedings in respect of a matter falling under S. 78(1)A(c) can be made by an employer or employee directly affected or by the labour officer or a representative union. The representative union has, therefore, a right to approach the Court to decide a dispute whether a change is illegal, and if the change is illegal, it can ask the labour court for the consequential relief, viz., for a direction to the company to withdraw the illegal change.

13. All the points taken in the appeal fail. The appeal is dismissed.

Cases Referred.

1[1957 - II L.L.J. 435]
2[1955 - II L.L.J. 131]
3[1958 - I L.L.J. 580]