BOMBAY HIGH COURT

Bombay Gas Company, Ltd

Vs

Kulkarni

(D Palekar C.J. S Kotval, J.)

24.06.1964

JUDGMENT

Kotval, J.

1. The judgment and order in Special Civil Application No. 1404 of 1962 will also govern the disposal of Special Civil Application No. 1460 of 1963. In both these applications, the petitioner, the Bombay Gas Company, Ltd., is an employer within the meaning of the Industrial Disputes Act. Respondents 2 in both the application are the two employees who originated the proceeding before the first labour court, Bombay, out of which these petitions arise. Respondent 1 in both these petitions is the first labour court itself presided over by Sri R. N. Kulkarni.

2. Sometimes in the year 1953, disputes arose between the employer and his workmen, and the disputes were referred to the arbitration of Sri S. H. Naik. Sri Naik made an award on 28 December 1953, and in the present petitions we are concerned with one part of that award which deals with the benefit given to the workmen of privilege leave. The benefit granted by the award was, as appears from Paras. 25 and 26 of that award, in the following terms :-

"25. At present the company grants 15 days' privilege leave with pay per year to workmen (other than clerical staff). The union has based this demand on two grounds namely, that (1) the company grants longer leave to the members of its senior clerical staff than that allowed to junior members of such staff, and (2) that need for rest and recuperation is greater in the case of senior workmen than in the case of junior workmen.In his award on the dispute between this company and its staff association made in September 1948, Sri P. S. Bakhale pointed out that the older a man grows the greater is his need for rest and therefore some differentiation in the period of leave based on the length of service is necessary. He based his conclusion on the award in Remington Rand Inc. *Bombay v. The workmen employed[1] under it* He therefore allowed different period of privilege leave to the employees with service below 12 years and above 12 years [1948 I.C.R. 781 at 801]. I would, therefore, like to keep in this case the differentiation in the periods of

leave based upon length of service."

"26. In fixing the quantum of privilege leave regard must be had in this case to the fact that the company is a public utility concern manufacturing gas and therefore long leave granted to its workers is likely to have an adverse effect on its production. Besides, it must be remembered that the company grants to the workmen concerned in this reference sick leave on half pay and half dearness allowance for fifteen days every year with option to the worker to convert such leave to half its available period on full pay and allowance. The company does not insist that the worker must exhaust the privilege leave to his credit before being entitled to sick leave. The worker also gets 10 (ten) paid holidays in a year. There is need for greater production in India. In consideration of all these facts. I direct the company to allow to its employees (other than clerical) privilege leave at the rate of 21 days in a year to those who have put in service of more than 12 years. The amount of leave to be granted to employees who have put in a service of 12 years or less will remain the same as at present."

3. Since the making of that award, it appears that its terms were implemented without dispute till the year 1958. As to how they were implemented is today in dispute. On 18 July, 1958, respondent 2 in Special Civil Application No. 1404 of 1962 made an application purporting to be under S. 33C(2) of the Industrial Disputes Act, 1947, claiming that the benefit of 21 days' privilege leave be given to him. A similar application was subsequently preferred by respondent 2 in Special Civil Application No. 1460 of 1963 on 25 July 1963. Both the workers claimed that the amount at which the said benefit of privilege leave is given to them by Naik award should be computed and the amount determined by the labour court. It was the case of the employee in Special Civil Application No. 1404 of 1962 that the employer had not granted him the full 21 days' privilege leave each year in 1954, 1955, 1956 and 1957 in spite of the fact that he had been in his employment during those years. In the other Special Civil Application No. 1460 of 1963, the same right has been claimed except that it is for six years.

4. In answer to the applications then employer not only denied the fact that he had not granted the full 21 days' privilege leave per year but also raised other questions, particularly that the labour court had no jurisdiction to decide the question which was raised by the employees' applications. It was contended on behalf of the employer that the benefit regarding which the employees had presented their applications was not one which was capable of being computed in terms of money and therefore the principal conditions to the application of Sub-section (2) of S. 33C of the Act has not been fulfilled and the labour court had no jurisdiction to grant the applications. Secondly it was also contended that the very terms of the award indicated that 21 days' leave should be granted in a year and the employer had actually granted the leaves as ordered by the award, but upon the interpretation which the employees wanted to put upon that

clause, the question raised would not be a question which would fall within the jurisdiction of the labour court under S. 33C, and that the employees should follow other remedies under the Act. The labour court, which is respondent 1 before us in both the petitions has overruled all the contention of the employer and has assessed the benefit of the privilege leave in terms of money and granted that amount plus costs of the proceedings to both the employees. It is against that order that the employer has now come up in these petitions.

5. Sri Mehta on behalf of the petitioner in both the petitions has urged that the entire order passed by the first labour court was beyond its jurisdiction and competence for the reason that the benefit, which is conferred upon the employees by Paras. 25 and 26 of Naik award, is not a benefit which is capable of being computed in terms of money within the meaning of Sub-section (2) of S. 33C of the Act, and, therefore, the labour court exceeded its jurisdiction in computing the money value of that benefit and awarding it to the employees. In fact, the preliminary condition for the exercise of its jurisdiction was that there must be a benefit which is "capable of being computed in terms of money," and that was not the case here having regard to the nature of the benefit granted and the terms upon which it was granted under the award. The other contention of Sari Mehta is that the award as such has not anywhere indicated that the benefit of privilege leave could be evaluated and money granted in lieu thereof, and that, therefore, the labour court in giving money compensation to the respondents-employees was virtually enlarging the award and so acting beyond the jurisdiction conferred on it by S. 33C. There was also a minor ancillary point argued based upon the findings of the labour court that in computing the year for the purposes of fixing the period of privilege leave, Sundays and paid holidays should be excluded. Sri Mehta urged that that was directly contrary to the standing orders of the company.

6. Now, before we come to the question of jurisdiction, which is the fundamental question involved in these petitions, it is necessary to turn to the provisions of Sub-section (2) of S. 33C which are as follows :

> "(2) Where any workmen is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such labour court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-section (1)."

7. The sub-section and the jurisdiction which it confers upon the labour court have frequently come up for interpretation, and the question has now received the imprimatur of the highest Court. Several decisions of Supreme Court were relied upon, and they are :

(1) *Victor Oil Company. Ltd. v. Amarnath Das*[2] (2) *Punjab National Bank, Ltd. v. Kharbanda*[3] *(3) Central Bank of India v. Rajagopalan* [4]*and (4) Bombay Gas Company v. Gopal Bhiva*[5]

8. Since these are the pronouncements of the Highest Court, it is necessary to discuss them but it will be convenient at this stage to summarize the principles which they lay down. On the question of jurisdiction of the labour court under S. 33C, it has been held that the function of the labour court under S. 33C(2) is that of a Court executing an order or decree, and, accordingly, it has been ruled that the normal principle that "an executing Court cannot go behind the decree, nor can it add to or subtract from its provisions, but must implement it as it is,"

9. applies. In discharging its function of executing orders or awards, it must accept the decree as it stands. In one of the recent cases, viz., Central Bank of India v. Rajagopalan [1963 - II L.L.J. 89 (S.C.)] (vide supra) the question raised was whether it is within the province of the labour court acting under S. 33C(2) to interpret the decree, and their lordships have said that it would be the function of the labour court to so interpret a decree for the purpose of execution. *In Central Bank of India v. Rajagopalan*[6] the case referred to above, Gajendragadkar, J. (now the Chief Justice), in delivering the judgment on behalf of the Bench, remarked (p. 96) :

> "Besides, there can be no doubt that when the labour court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provisions of the decree. These limitations apply also to the labour court; but like the executing court, the labour court would also be competent to interpret the award or settlement on which a workman bases his claim under s. 33C(2) . . ."

10. In an earlier passage of the same judgment, the learned Judge also pointed out the difference that exists between Ss. 33C(2) and 36A(1) - a distinction which serves to explain by contrast the submit of S. 33C(2). Section 36A(1) of the Act says that, if in the opinion of appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such labour court, tribunal or national tribunal as it may think fit. The learned Judge explained the difference as follows (p. 96) :

> ". . . Section 36A merely provides for the interpretation of any provision of an award or settlement where any difficulty or doubt arises as to the said interpretation. Generally, this power is invoked when the employer and his employees are not agreed as to the interpretation of any award or settlement, and the appropriate Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement.

> Sometimes, cases may arise present difficulty in construction. It is in such cases that S. 36A can be invoked by the parties by moving the appropriate Government to make the necessary reference under it . . . But the scope of S. 36A is different from the scope of S. 33C(2), because S. 36A is not concerned with the implementation or execution of the award at all whereas that is the sole purpose of S. 33C(2). Where as S. 33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, S. 36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under S. 36A."

11. Bearing these principles in mind we proceed to consider the points raised on behalf of the petitioners. Now, the cardinal point made on behalf of the petitioner is that the benefit of privilege leave, which has been granted by Paras. 25 and 26 of the award of Sri Naik, is not a benefit which is capable of being computed in terms of money with in the meaning of those words in S. 33C(2). On this point the cases to which reference has been made earlier, do indicate in particular instances whether it is a benefit which is capable of being computed in terms of money or not, but none of the cases has in terms interpreted the governing words. We shall presently advert to those cases, but it seems to us that so far as the expression "benefit which is capable of being computed in terms of money" is concerned, in the absence of any definition of the word "benefit" or of the words "capable of being computed," we can only give those words the normal connotation that they carry in the English language. By the word "capable" according to the Oxford Dictionary is meant "susceptible" and by the word "compute" is meant "to estimate or determine by arithmetical or mathematical reckoning." The question then is, whether the benefit with which we are concerned, viz. privilege leave, is susceptible of being estimated or determined in terms of money by any arithmetical or mathematical reckoning. That is a question which in our opinion, would fall to be determined upon a consideration of the nature of the benefit and the purpose for which it was granted to the workmen.

12. We have already quoted Paras 25 and 26 of Naik award, and it is quite clear from those paragraphs that the privilege leave was considered as a benefit necessary for the worker, because he needs rest and recuperation, and in fact, in this respect, Sri Naik followed the previous recommendations of Sri P. S. Bakhale when he made his award in 1948 in regard to the other members of the staff of this company. In fixing also the extent of that benefit, viz., 21 days in a year as he has fixed, the vital consideration which prevailed with Sri Naik was that senior workmen's they grow older require more rest and recuperation than the junior members of the staff. Quite apart from these expressed grounds for the conferment of that benefit, it is well-known that privilege leave is a sort of benefit granted to an employee so that he may recoup health after a long period of work and return to work refreshed. In short, it is a benefit which

would have little meaning if it were not to be actually enjoyed by the worker and instead the worker were to be given a monetary privilege. It seems to us that this is the fundamental basis for grant of this benefit of privilege leave, and if so, it is implicit in the nature of that benefit and the purpose for which it is granted that it ought not to be allowed to be converted into money, except, perhaps, when ultimately the worker retires with privilege leave to his credit, which is not the case here so far as either of the two respondent-employees is concerned. We need not say anything about such a special case, but normally privilege leave is, by its very nature and purpose, a benefit meant to be enjoyed, and not to the encashed. The labour court adverted to the subject in Paras 8 and 23 of its order, but beyond pronouncing an ipse dixit that "the underlying principle of any paid leave or privilege leave is that an employee should be able to get wages for the leave period and should not be compelled to do the usual work of the employer."

13. there is hardly any reason given why he held that it was a benefit which could be computed in terms of money. We are also fortified in the view which we have taken by the decision of the Supreme Court already referred to above, in *Victor Oil Company v. Amarnath Das*[7] Though the question with which we are concerned was not directly in issue between the parties in that case, the workmen there who had been ordered to be reinstated and were not so reinstated by their employer, had claimed among other things leave-pay for the period during which the employer had failed to reinstate them. The Supreme Court held that when the full salary for the period during which they worked was paid to the workers and there was no specific provision for encashment of leave, the claim for leave pay for the said period could not be granted. Justice Sri Wanchoo, who delivered the judgment on behalf of the Court, observed (p. 155) :

> ". . . It is not disputed that there is no provision of encashment of leave in the appellant-company and, therefore, when full salary was taken into account in the seven applications, there was no question of any leave-pay being paid as encashed amount over and above the full salary . . ."

14. It is not in dispute here that even in this company there is no provision for the encashment of the privilege leave, nor is there any such provision made in the award. Indeed, all that the award says is that the worker would be entitled to 21 days' privilege leave each year. It must therefore, be concluded that the view which the labour court took as to the nature of the benefit of privilege leave, which was in dispute before him, was not correct, and that, having regard to the nature and purpose of the benefit, it was not one which was capable of being computed in terms of money.

15. It was then pointed out on behalf of the respondent-employees that the word "benefit" has been construed in a very wide sense as meaning "any advantage or profit," and reference was made to the decision in Punjab National Bank v. Kharbanda [1962 - I L.L.J. 234, S.C.] (vide supra). In that case, the argument was advanced that the word "benefit" should be limited only to

monetary benefits and not to benefits which are not expressed in terms of money or monetary benefits. That contention was negatived, and in negativing that contention, the Supreme Court remarked that the word "benefit" in S. 33C(2) is of wide import, and the accepted dictionary meaning thereof is "advantage or profit." This decision was subsequently commented upon and affirmed in Central Bank of India v. Rajagopalan [1963 - II L.L.J. 89 (S.C.)] (vide supra) where also it was accepted that the word "benefit" is of wide important includes within it both monetary and non-monetary benefits. The question directly involved in these petitions, however, is not whether the benefit of privilege leave is a monetary or non-monetary benefit, nor is it disputed that the word "benefit" is of wide import and would include both categories. But what has been argued on behalf of the petitioner is that however wide the meaning of the word "benefit," it is qualified by the subsequent words of the section itself, viz., "capable of being computed in terms of money" and that therefore it is not a benefit, which having regard to its nature and purpose could ever be computed in terms of money.

16. In the decision to which we have just referred, viz., Punjab National Bank v. Kharbanda [1962 - I L.L.J. 234 (S.C.)] (vide supra), Justice Sri Wanchoo, who delivered the judgment on behalf of the Court commented upon the subsequent clause "which is capable of being computed in terms of money," and though as we have shown, he held that the word "benefit" is of wide import, still he pointed out that the word used in the qualifying clause is "computed" and not "converted" He then remarked (p. 238) :

". . . If the word had been 'converted' and the clause had read 'which is capable of being converted in terms of money,' there would have been a clear indication that the benefit which was to be converted in terms of money was other than monetary benefit. The dictionary meaning of the word 'convert' is 'to change by substituting an equivalent' and if the word 'convert' had been used in the qualifying words, the argument that the word 'benefit' only means non-monetary benefit might be incontrovertible. But the word in the qualifying clause is computed and the dictionary meaning of the word 'compute' is to merely 'calculate.' Therefore where the benefit to which a workman may be entitled has not already been calculated, for example, in an award which confers on him the benefit, it stands to reason that Sub-section (2) would apply for computation of such benefit is there is dispute about it . . ."

17. It seems to us that the relief which the labour court has, in this case, given to the employees virtually amounts to converting one benefit into another, and not merely computing the benefit of privilege leave.

18. The paragraphs of the award by which this benefit was conferred upon the workers do not at all refer to any money equivalent or computation of any money equivalent in the event that privilege leave is not granted to any worker. Now no doubt in the discharge of its function as

executing Court, the labour court can interpret the award, but howsoever, it may interpret the award, it cannot read into that award any term that monetary compensation equivalent to the benefit of privilege leave was to be granted. Such a question was not even considered by Sri Naik when making the award. Therefore, it seems to us that when, for the first time, about five years after the award was made, the workers are asking for computation of the money equivalent of that benefit, there is no question here involved of interpreting any term of the award. What in effect is being asked for is that the workers be given and additional benefit, which was not the subject-matter of the award and was not within the consideration of the tribunal which made the award. To that extent, it seems to us that the labour court went beyond its jurisdiction.

19. In Para. 8 the labour court put the argument thus :

> "By refusing to given the privilege leave the employer deprives an employee of the benefit to stay away from work by getting the wages. By refusing the privilege leave the employer puts the Employee to two losses, viz., (1) loss of wages, and (2) loss of leave or absence from work or rest.What the applicant has claimed in this case is wages for the leave period or days of privilege leave to which the applicant was entitled to and which the opponent refused to give."

20. Now, it seems to us that in this passage the labour court has made an assumption which is not warranted upon the facts, viz., that the workers in these two petitions asked for privilege leave and were refused privilege leave by the employer. That is completely contrary to the facts. In fact, in Para 6 of the petition, it was the complaint of the employer that, at no time prior to the filling of the said application, did respondent 2 complain that they had not been given privilege leave to which they were entitled. Thus, it was the employer who was making a grievance of the fact that the workers had never asked for privilege leave before and that their application under S. 33C(2) was not maintainable. Therefore, it is clear that there could have been no possible refusal to grant privilege leave. Indeed the statement, to which we have referred above, made in the petition, was never controverted on behalf of the workers in this Court. They have not filed any return whatsoever, and, therefore, the statement in Para. 6 must be accepted as correct. If so, the one principal assumption which the labour court made that privilege leave was asked for and refused by the employer, is contrary to the facts.

21. But, then, even assuming that a refusal of privilege leave has taken place, we are unable to understand the further reasoning of the labour court. It seems to have taken the view that when privilege leave is refused by the employer, he is automatically entitled to compensation or the money equivalent, that is to say, to have the benefit computed. The other remark which the labour court made that it involved the employee in two losses, viz. The loss of wages and loss of leave or absence from work or rest, is also not correct, actually paid for it. Therefore, there is no

loss of wages involved. All that is involved is the loss of the privilege leave itself. If no privilege leave is granted, the employee continues to work and receives his pay. The labour court, moreover, did not at all advert to the grounds upon which and the purpose for which this benefit was given by the award itself. We are unable to sustain the decision of the labour court that the privilege leave was a benefit which was capable of being computed in terms of money. In our opinion, the privilege leave by its very nature cannot be computed in terms of money.

22. Then we turn to the other point which was argued before us which, upon the view we have taken, is really not necessary to decide, but since it has been argued in full, we merely state the point here. Paragraph 26 of the award granted privilege leave to the workmen at the rate of 21 days in a year. Now it must have struck the labour court that when the award says a year, it could not possibly mean a calendar year or 365 days, because the employee, having regard to the other benefits which he receive of non-working days, such as Sunday, said holidays, unpaid holidays, etc., could not possibly work for the whole of the calendar year. Then arose the question as to what was involved in the direction of the award that the privilege leave shall be at the rate of 21 days in a year. The labour court has, it seems, after a considerable amount of hesitation come to its own conclusion that the year must be 291 days, and the manner in which it arrived at 291 days is by calculating various benefits which the workers had to non-working days including 7 days of causal leave, 15 days of sick leave, 10 paid holidays and 10 unpaid festival days and other benefits. The employer has in his petition computed the year as being of 300 days, a calculation which the labour court did not accept. Before us, several other interpretations have been advanced. The extreme one is that so long as a worker works for a single day in a year, he would be entitled to the whole of the privilege leave so long as his name continues on the muster-roll of the company. Then it was variously argued that sick leave and casual leave cannot be computed for the purpose of arriving at the year for calculation of privilege leave. As we have said, it is incisor for us to go into these rival contentions, because we have shown, that, in the first place, the privilege leave was not a benefit which was capable of being computed in terms of money. But we may say it here that the very fact that the expression used in the award of Sri Naik is capable of such varied interpretations shows that initially the use of the word "year" in the award not having been defined, we would be, undoubtedly, adding to the award, were we today to hold that though a year is mentioned, it is something less than a year. That again, as has been clearly hold upon the authorities, would be beyond the jurisdiction of the labour court to do. In the view we have taken it is also not necessary to decide whether Sunday and paid holidays should be included or excluded in the computation of year. In our opinion, the question which was before the labour court clearly did not fall within the ambit of S. 33C(2). The labour court thus had no jurisdiction to adjudicate upon the question, nor to award monetary compensation in lieu of the privilege leave.

23. Both the petitions will, therefore, be allowed, the order of the labour court set aside, and the applications of the workers dismissed. In the circumstances of the case, there shall be no order as to costs.

Cases Referred.

1(Bombay Government Gazette Extraordinary, dated 18 December 1947, p. 4723)
2[1961 - II L.L.J. 113 (S.C.)]
3[1962 - I L.L.J. 234 (S.C.)]
4[1963 - II L.L.J. 89 (S.C.)]
5[1963 - II L.L.J. 608 (S.C.)]
6[1963 - II L.L.J. 89 (S.C.)]
7[1961 - II L.L.J. 133 (S.C.)]