BOMBAY HIGH COURT

Shree Yamuna Mills Co. Ltd

Vs.

Majoor Mahajan Mandal

Special Civil Applns. Nos. 30, and 31 of 1957

(Tendolkar and Kotwal, JJ.)

13.03.1957

JUDGMENT

Tendolkar, J.

1. These two applications which are both by the Shri. Yamuna Mills Co. Ltd., Baroda raise a somewhat important question of law regulating the relations between an employer and his employees. The question, shortly stated, is what precisely is the effect on these relations by the termination of a registered agreement or a settlement or an award by a requisite notice under the provisions of Section 116 of the Bombay Industrial Relations Act, 1946.

2. A few facts which are material may be stated. The relations between tne petitioner-mills and its employees were governed by an award made by C. N. Patel, J. of Baroda on 30th July 1949. The award was to remain in force for a period of six months. On 13th April 1950 the representative union of the employees gave a notice of change under Section 42 (2) of the Bombay Industrial Relations Act and on 6th July 1950 the matter was referred to the Industrial Court, the dispute relating inter alia to wage scales and gratuity, which are the matters with which we are concerned on these petitions. On 30th August 1951 a consent award was published. An application for modification of this award under Section 116-A of the Bombay Industrial Relations Act was made by the Union as well as by the Mills and the award was in some respects modified on 13th December, 1954. Thereafter on 24th February 1955 the Mills gave notice under Section 116 (1) to terminate the award; and by virtue of the provisions of that section on the expiry of the period of two months from the date of the notice "the award shall cease to have effect". On 14th March 1955 the Registrar called upon the union to lodge objections, if any, and after hearing both the parties, on 1st October 1955 he registered the termination of the award. Now, under the award which had been so terminated the employees concerned were entitled to an increment in their wages from the month of December 1955 which would have become payable in January 1956. One of the employees, who is concerned in one of these two petitions,

was also entitled to a gratuity upon retirement. The Mills, after termination of the award, paid to the employees concerned "the wages that they were actually drawing at the time of such termination and they refused to pay the increase in wages that would nave been due under the award for December 1955 and in respect of the clerk Chunilal Hirachand who was discharged on 31st December 1955, they refused to pay him gratuity the First Labor Court, Ahmedabad, directed the Mills-company to withdraw the illegal change and pay arrears of salary to clerks who were not given increments in December 1955-the award related to the clerical staff only-and gratuity to Shri. Chunilal Hirachand. Against this order of the First Labour Court there were two appeals which were heard together by a Full Bench of the Industrial Court which dismissed the appeals and directed the company to pay gratuity to Shri. Chunilal Hirachand and arrears of salary to clerks who were not given increments in December 1955. It is against this decision of the Industrial Court that these two petitions have been presented and it is urged by Mr. Patel on behalf of the petitioners that the Industrial Court has erred in law in coming to the conclusion which it did. Mr. Patel's contention on these petitions, shortly stated, is that when the award was terminated and the termination became effective, the award ceased to have effect for all purposes and the clerical staff was not entitled to the wage scale under which they would have got an increment in December 1955 under the Award, nor was the employee Chunilal entitled to a gratuity upon retirement which he would have been entitled to if the award was in operation and effective.

3. Now, in order to determine this question which is of very great importance to industrial relations, it is necessary to consider the scheme of the Bombay Industrial Relations Act, 1946, and to visualise what is the position brought about when an award becomes effective and what is the position when the award lapses or is terminated. Now, of course it is a matter of common knowledge - and it need not even be stated - that the object of the Act is to regulate the relations between the employers and the employees and naturally therefore, in the main, the Act deals with what are called "Industrial matters". "Industrial Matter" is defined in Section 3 (18) in very wide terms as including in its scope - and this I say without reproducing the definition - every conceivable matter that would affect the relations between the employers and employees. Then industrial matters are specified in three Schedules to the Act being Schs. I, II and III and they are dealt with, as I will presently point out, by the provisions of the Act somewhat separately and differently.

4. Taking first the matters specified in Schedule I, Chap. VII of the Act deals with such matters and provides that the industrial matters mentioned in Schedule I shall be governed by standing orders to be settled in accordance with the provisions set out in that Chapter, and until such standing orders are settled and come into operation, they are to be governed by model standing orders, if any, notified by the State Government in respect of the particular industry or undertaking. Then Section 38 provides that no alteration shall be made in standing orders for a period of one year from the date of their coming into operation. Subsection (2) of that section provides that after the expiry of one year any employer or employee may apply to the

commissioner of Labour for a change in any standing orders and Section 39 (1) confers power upon the Commissioner of Labour, after following the procedure prescribed, to alter the standing orders if he thinks proper. Section 40 provides that the standing orders shall be determinative of the relations between the employer and the employees in respect of matters specified in Schedule I. So that we have in Chap. VII a compact set of provisions dealing with industrial matters arising out of matters set out in Schedule I.

5. We next come to Chap. VIII which deals with what are termed in the Act as "Changes". Now. "change" is defined in Section 3 (8) as meaning an alteration in an industrial matter. Either an employer or an employee may desire to bring about a change. Where an employer desires to bring about a change, Section 42 (1) provides that if the change is in respect of an industrial matter specified in Schedule II, he shall give notice of change in the manner prescribed. It may be noticed at once that if he desires to bring about a change in respect of an industrial matter specified in Schedule III, there is no corresponding obligation on the employer to give notice of change. Coming next to the employee, if he desires a change, then Section 42 (2) provides that if the change is in respect of an industrial matter not specified in Schedule I or III, he shall give notice of change in the matter prescribed. The difference between the two sub-sections must be noticed in that although the matters covered by the employee's notice of change necessarily include the matters specified in Schedule II, they are also capable of including any other industrial matters which are not specified in any one of the three Schedules. It would appear that if there are any such matters about which the employer wishes to bring about a change, he is under no obligation to give a notice of change, because he is bound to do so only in respect of matters specified in Schedule II and not others. Then Sub-Section (4) of Section 42 further empowers the employees desiring a change in respect of matters specified therein to make an application to. the Labour Court and in this case no notice of change is required. The matters referred to in this subsection are three, the first two of which arise in respect of matters arising out of standing orders under Schedule I and the third in respect of any industrial matter specified in Schedule III. Then Section 44 (1) provides that an agreement may be arrived at within seven days of notice of change under Section 42 and if it is so arrived at, Sub-Section (2) makes provision for registration of the agreement. Then Section 44-B provides that if a settlement is arrived at within two months from the date of the completion of any conciliation proceedings and, of course, this has reference to conciliation proceedings which follow as a matter of course upon a notice of change being given, such settlement is deemed to be an agreement for the purpose of Section 44 and can similarly be registered; and Section 45 provides that a registered agreement which includes a registered settlement shall come into operation on the date specified therein or if no date is so specified on its being recorded by the Registrar. So that in respect of matters which relate to a change and which are initiated by notice of change there may be a registered agreement or a registered settlement; but if none of these things happens, there is yet provision in the Act in Chapter XI for determining the relations between the employer and the employees in respect of the proposed change by arbitration. The arbitration results in an award and Section 75 provides that the award shall come into operation on the date specified in the

award or where no such date is specified therein on the date on, which it is published. Therefore, in respect of an industrial matter where a notice of change has been given, the matter is determined either by a registered agreement or a registered settlement or an award which is published, and in respect of the award or rather the effect of the award the position is precisely the same as the position in respect of a registered agreement or a settlement, for Section 114 (1) in terms provides that a registered agreement, or a settlement or an award shall be binding upon all persons who are parties thereto. Now, when this situation is brought about, there is another consequence flowing from the fact that there is a registered agreement or a settlement or an award which is binding on the parties and the provision in that regard is to be found in Section 64 (a) (iii) and that provision is :

> "No conciliation proceeding in respect of an industrial dispute shall be commenced if
> (iii) by reason of a direction issued under Sub-Section (2) of Section 114 or by reason of any of the other provisions of this Act the employers and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award."

By virtue of Section 114 (1), which is a provision of the Act, the parties are bound by a registered agreement, settlement or award and, therefore, no conciliation proceeding in respect of any matter determined by such agreement, settlement or award shall be commenced so long as the agreement, settlement or award remains effective. Now, going back to Section 46 which deals with "illegal change", Sub-Section (1) provides that any change in any standing orders made without following the procedure prescribed in Chapter VII, to which I have already referred, is illegal. As I have already pointed out, that procedure and the standing orders relate only to subjects specified in Schedule I to the Act. Then Sub-Section (2) provides that no employer shall make any change in any industrial matter mentioned in Schedule II without following the steps that are set out in that sub-section and the very first step which is to be found in Clause (a) (i) is the giving of a notice of change as required by the provisions of Sub-Section (1) of Section 42. Therefore, no change can be effected by an employer in respect of any of the matters specified in Schedule II without initiating proceedings by giving a notice of change. Then Sub-Section (3) enacts as follows:

> "No employer shall make any such change in contravention of the terms of a settlement, effective award, registered agreement or effective order or decision of a wage Board." Now, in so far as this sub-section relates to a registered agreement, settlement or award, what it provides is that it debars an employer altogether from making any change in respect of a matter which is covered by a registered agreement, settlement or award. Thus it places an impediment in the exercise of the power of an employer to try to bring about a change by giving a notice of change under the provisions of the Act. In other words, if there is a registered agreement, settlement or award - and in this regard it does not appear to me that the word "effective" adds anything to the force of the word "award" - then the employer cannot so long as the award is in force, give a notice of change in respect of any matter covered by the award. The result is that Sub-Section (3) constitutes an impediment

to the exercise of the power conferred upon the employer under Section 46 (2) and the real impediment arises out of the fact that there is a registered agreement, settlement or award which relates to the industrial matter in question. Sub-section (4) provides that any change made in contravention of the provisions of this section constitutes an illegal change; and, therefore, if an employer makes a change without being entitled to do so under the provisions just discussed, then there would be an illegal change. This appears to be the broad picture relating to the effect of there being in force a registered agreement, a settlement or an award.

6. We must next proceed to consider what happens when this agreement, settlement or award is terminated in the manner provided by the Act. Now Section 116 (1) provides :

> "A registered agreement, or a settlement or award shall cease to have effect on the date specified therein or if no such date is specified therein, on the expiry of the period of two months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given in the prescribed manner by any of the parties thereto to the other party."

What this sub-section in effect provides is that if a notice of termination is given by either party to the award, then on the expiry of two months from the date of such notice the registered agreement, settlement or award shall cease to have effect. The immediate consequence of its ceasing to have effect, so far as the specific provisions of the Act are concerned, at once becomes apparent. In the first instance, the bar to conciliation proceedings which existed by reason of a registered agreement, settlement or award being in force is removed. Similarly, the impediment placed by section 46 (3) on the power of the employer to effect a change is also equally removed. So that so far as the employer is concerned, he may proceed to effect a change and if the change falls within any of the industrial matters enumerated in Schedule III, he is free to make a change without more, because the law does not require him to do any other act in order to enable him to effect a change in respect of these matters. If he wishes to effect a change in respect of any matter covered by Schedule II, he must proceed to follow the provisions of Section 46(2) and give, in the first instance and as a preliminary step, a notice of change. Moreover, the ban placed on conciliation proceedings under Section 64(a) (iii) having been removed, it is open both to the employers and to the employees to initiate conciliation proceedings by giving a notice of change under Section 42. That clearly is the effect of the specific provisions of the statute. But the question that we have been called upon to determine goes a little further than that and the question is by what is the relationship between the employers and the employees regulated after an award is terminated? Does termination of the award create a vacuum and leave the employees to the tender mercy of the employer? Does it. by providing that the award shall cease to have effect, get rid of the award so as to bring about the result that any agreement that governed the relations of the parties prior to the date of the award is thereby revived; or does it preserve such rights as the employees have, prior to the date of termination, already enjoyed under the award; or does it preserve the whole of the award until it is changed by the procedure prescribed by the

Bombay Industrial Relations Act for a change? Now, quite obviously it would not be possible for any court to take the view that the termination of the award creates a vacuum in which the employees are at the tender mercy of the - employers; nor does it appear to us to be possible to hold that by the termination of the award the contract or agreement that governed the relations of the employer and the employees prior to the award is in some manner revived. Initially that contract or agreement had binding effect; but it ceased to have such effect on the award taking effect and the moment the award became binding on the parties, the antecedent contract or agreement was superseded by the award. It is not a case of an antecedent contract or agreement being suspended, because there is no provision for suspension which can even be spelt out from any of the sections of the Bombay Industrial Relations Act. The award, or as the case may be a registered agreement or a settlement under the Bombay Industrial Relations Act has obviously the effect of superseding the contract or agreement that existed and that regulated the relations between the employer and the employees prior to the registered agreement, settlement or award taking effect under the provisions of the Act. Then we come to the next possibility: Is only so much of the award preserved as relates to the rights already enjoyed by the employees before the termination of the award? We find it difficult so to hold. There is no principle or logic in dealing with an award in this piecemeal manner and preserving rights that have already been actually enjoyed and destroying those which, although they may have accrued, have to be enjoyed in future in terms of the award. Mr. Patel for the petitioners has argued that on the termination of the award the effect or rather the result that is brought about is that the rights of parties are frozen as of that date.

Assuming such a concept of freezing the rights was adopted, even the freezing would be in respect of rights that have already accrued and it is not quite easy to conceive of rights which would not accrue to an employee under an industrial award and which can only be contingent. In any event, if the original contract or agreement has been superseded by the award, holding that the award is no longer what governs the relations between the employer and the employees, would necessarily create a vacuum. Trying to save the creation of a vacuum by splitting up the award into two parts, the award under which benefits have already been enjoyed and that part of the award under which benefits have not been enjoyed, is dissecting the award in a manner not justified in law or logic. There appears to be on the scene after the termination of the award only one thing that can govern the relations between the employer and the employees and that undoubtedly can be nothing else than the award itself. The result of the award ceasing to have effect is not that the award ceases to exist; the result of the award ceasing to have effect is, as I have already pointed out, that it is open to either party to give a notice of change and to attempt to bring about a change. Further, it is open to the employer in cases in which he can bring about a change without a notice of change such as the matters enumerated in Schedule III to proceed to bring about the change, because the impediment placed in his way by Section 46 (3) is removed. But until a change is brought about by the act either of the employer or the employee, after following the relevant provisions in the Bombay Industrial Relations Act, 1946, the award that exists shall continue to regulate the relations between the employer and the employees.

7. Now, Mr. Patel for the petitioners has pointed out that under the Industrial Disputes Act, 1947, which is a Central Act, there are provisions which in terms continue the operation of the award after it has ceased to be in operation; and if such a result was intended by the Bombay Legislature, they would have made similar provisions in the Bombay Industrial Relations Act, 1946. Now, the provisions on which Mr. Patel relies are to be found in Section 19 of the Industrial Disputes Act, 1947. That section deals with the period of operation of settlements and awards. Sub-section (3) provides the period for which an award shall remain in operation and then Sub-Section (6) provides: "Notwithstanding the expiry of the period of operation under Sub-Section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award." Now, both Sub-Section (3) and Sub-Section (6) have to be read together; and when so read what the statute provides is that although the award may be one which is to remain in operation for the period prescribed in Sub-Section (3), yet it shall remain in operation until two months after notice of termination has been given by any of the parties. To that extent the provision in the Bombay Act is somewhat different, because under Section 116 (1) of the Act a registered agreement, settlement or award ceases to have effect on the date specified therein. But. when Mr. Patel relies on the provisions of Section 19 (6) of the Central Act for the proposition that if the Legislature intended that the award should remain in operation after it has ceased to be in operation they should have so provided, then clearly that is not the effect of Section 19 (6), because it must be read and interpreted along with Section 19 (3) and not disjunctively in the sense that an award ceases to have effect after the period prescribed under Sub-Section (3) but its effect is extended under Sub-Section (6). Indeed, Section 19 (6) does not deal with the situation with which we are concerned in these petitions viz. what happens after the award ceases to have effect two months after the date of notice to terminate the award. The Parliament has not dealt with that situation under the Central Act; and, therefore, the language employed in Section 19 (6) has no bearing on the question that we have to determine. The position, however, that would arise after the award ceases to have effect under the provisions of Section 19 would undoubtedly be analogous to the position that would arise after the award ceases to have effect under Section 116 (1) and having regard to this fact, a decision of a Division Bench of this Court *Mangaldas Narandas v. Payment of Wages Authority Ahmedabad in*[1] becomes relevant for the purpose of decision of the question that has arisen before us. In that application what had happened was that there was an award under which the workers were entitled to wages at the rate of Rs. 3-6-0 per 1000 bidis manufactured by them. The employer terminated the award and had given notice that he would thereafter pay only Rs. 3-2-0 per 1000 bidis. There were no provisions at the relevant time in the Central Act for giving notice of a change and the contention that was raised before their Lordships was that the award having been terminated the employer was left free to alter the wages that were payable under the award to the bidi workers viz. Rs. 3-6-9 per 1000 bidis. This contention was negatived by their Lordships; and Mr. Justice Shah, who delivered the judgment of the Bench clearly and unequivocally holds that the termination of an award does not have the effect of terminating the obligations flowing from the award. With that position we are in

respectful agreement and the decision applies in terms to what we have to decide in this case. We are, therefore, clearly of the opinion that the effect of termination of an award is not that the rights which flow from that award cease to be available to the employees, but the effect of termination is that the award continues to govern the relations between the employer and the employees until such time as a change is effected in accordance with the provisions of the Bombay Industrial Relations Act, 1946.

8. This leaves for determination a subsidiary argument and that is that in this case the award relates to a wage scale and a wage scale is not one of the matters enumerated in Schedule II. Now, in the first instance, as we have pointed out earlier, the employer after termination of an award is entitled to make a change without more only in respect of matters specified in Schedule III and a wage scale is certainly not a matter specified in Schedule III. The employer is entitled to make a change or rather take proceedings to bring about a change by giving a notice of change in respect of matters specified in Schedule II and item 9 of Schedule II is: "Wages including the period and mode of payment". Now, the expression "wages" has been defined in section 3 (39) of the Act as follows :-

> "'Wages' means remuneration of all kind capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment".

[1] Spl. C. A. No. 176 of 1956

It appears to us that a wage scale is obviously within this definition of "wages", because a wage scale prescribes the remuneration that is payable to an employee in respect of his employment or work done in such employment. In our opinion, a wage scale is included in item 9 of the Second Schedule and if the employer wished to effect a change in that wage scale after termination of the award, it was incumbent upon him to give a notice of change and follow the procedure prescribed by the Bombay Industrial Relations Act consequent upon such notice of change.

9. With regard to the second petition in which we are concerned with a gratuity and not a wage scale, any gratuity payable on discharge is specifically included in the definition of "wages" under Section 3 (39) (vi) and it is not disputed before us that gratuity falls within item 9 of the Second Schedule to the Bombay Industrial Relations Act.

10. In our opinion, therefore, the Industrial Court was right in the conclusion which it arrived at and the petitions, therefore, will be dismissed and the rule discharged with costs.

11. We might state that one of the points urged on behalf of the employees before the relevant tribunals was that the notice of termination itself was bad; but the Industrial Court did not consider it necessary to go into that question and although that plea has not been abandoned, we ourselves found it unnecessary to decide or determine it.

Petitions dismissed.