

(1991) 04 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5833 of 1991

Allwyn Employees Union

APPELLANT

Vs

Hyderabad Allwyn Ltd.

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Andhra Pradesh Factories and Establishments (National, Festival and other Holidays) Act, 1974 — Section 3(1)

Citation : (1991) 2 ALT 278 : (1994) 3 LLJ 602

Hon'ble Judges : Sivaraman Nair, J

Bench : Single Bench

Advocate : K.G. Kannabiran, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Allowed

Judgement

Sivaraman Nair, J.—Petitioner is one of the trade unions representing the employees of the 1st respondent Company. They seek the issue of a writ of mandamus restraining the 1st respondent from enforcing Circular No. PERS/GM(P) 2722 dated 26.2.1991 as illegal and invalid, The purport of the circular is to substitute 1st March, 1991 as paid holiday on account of "Holi" in the place of 1st May, 1991. That substitution was made on the request of the Joint Secretary of the Hyderabad Allwyn Mazdoor Sangh. Petitioner submits that the company had declared four national holidays and four festival holidays as per its circular dt. 22.12.1990 and that the respondent company had no jurisdiction to make any alterations in the national holidays which statutorily prescribed u/s 3(1) of the A.P. Factories & Establishments (National, Festival and Other Holidays) Act, 1974, for short "the Act". On 28.2.1991 the petitioner Union requested that 1st of May may be retained as before as a paid holiday. That request was reiterated in letter dt. 10.4.1991. Because there was no response from the Management, the petitioner Union has filed this Writ Petition.

2. The controversy is in a very narrow compass. Section 3 of the Act as it

originally stood, read as follows:

"3. Grant of National, festival and other holidays:

(1) Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January; the 15th August and the 2nd October and five other holidays each of one whole day for such festivals as may be notified by the Government or by such other authority as may be prescribed: Provided that if the majority of the employees in any factory or establishment so desire, the 1st May shall be one of the five festival holidays aforesaid in that factory or establishment".

It is clear from the above provision that there were three unalterable national holidays and five other holidays and 1st of May could have been declared as one of the five festival holidays, if the majority of the employees in any of the factory or establishment so desire. Section 2 of Act 21 of 1980 amended the above provision with effect from 30.4.1980. The amended provision is as follows:

"Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the 1st May, the 15th August and the 2nd October and four other holidays each of one whole day for such festivals as may be notified by the Government or by such other authority as may be prescribed:

Provided that it shall be open for any employer to declare, with the consent of the employees in any factory or establishment and under intimation to the Government or prescribed authority, a substituted holiday in lieu of any of the festival holidays aforesaid.

The effect of the amendment was to introduce the 1st of May, as an unalterable holiday, along with the 26th January, the 15th August and the 2nd October. Consequent on the introduction of these four national holidays in the category of unalterable holidays, the number of other holidays was reduced from five to four. The pre-existing proviso which enables 1st of May to be declared as one of the Festival holidays, if the majority of the employees so desire, was consequently altered by providing that the employer may substitute a holiday in lieu of any festival holiday with the consent of the employees and under intimation to the Government or prescribed authority.

3. Sri Kannabiran, appearing for the Union submits that there is a clear cut distinction between the four named holidays falling in the first group and "four other holidays" of the other group. In the case of the latter, the employer can substitute a holiday falling in that group and not the first group. He submits that this position is clear from the provision as at present. He lays great emphasis on the introduction of the "1st of May" into the group of specified holidays and submits that there is no question of any option for the management to declare the 1st May as a substituted holiday in lieu of any festival holiday.

4. Sri Srinivasa Murthy, Counsel appearing for the respondent submits that "National Holiday" is not defined in the Act and therefore the categorization of

the eight holidays the former into rather specified National holidays and the latter into festival holidays is not sustainable. He submits further that the alteration was as a result of a request by a majority Union and is in consonance with the proviso as it stands at present. He submits further that this Court shall be loath to interfere with industrial agreements which the management had entered into at the instance of the trade union representing majority of the workmen. He also submits that the employees whom the petitioner Union represents, having enjoyed 1st of March as a holiday, shall not be heard to insist that 1st of May also shall be the holiday.

5. It appears to me that the introduction of 1 st of May as one among the specified holidays, the reduction of other holidays, as four instead of five and the alteration of the proviso confining substitution only to festival holidays are all significant factors. I have no doubt that the 3 holidays which were mentioned in Section 3(1) prior to its amendment were specified and they were unalterable. The effect of introductions of a 4th holiday into that group must also be the same, More significant is the reduction of other, holidays which were five, prior to the amendment to four, as a consequence of introduction of the 1st of May as one of the specified holidays. Equally important is the consequent amendment of the proviso. I am of the opinion that there is a clear cut distinction between the specified holidays and the other non-specified holidays.

6. It is true that there is no definition of "national holiday" in the Act. It may also be true that 1st of May may not be a national holiday in the sense of the 26th January, the 15th August and the 2nd October. Even then the clear-cut categorisation of the four specified holidays and the four unspecified holidays cannot be lost sight of.

7. There seems to be some significance which distinguishes the 1st category from the other. I am of the opinion that the specification of four holidays by the statute has got the significance of unalterability whereas the State Government or other authority may substitute the four other festival holidays. It also appears to me that the amended proviso applies only to those non-specified holidays which may be prescribed in respect of festivals.

8. It is axiomatic that in case where the statutory provision is not specific, assistance can be sought from the heading of the section. In the present case in addition to the two-fold classification by the wording of Section 3 of the Act, what those categorised holidays are, is indicated by the heading which makes a distinction between national holidays on the one hand and festival and other holidays on the other. In the absence of a definition of "national holiday" and in view of the obligation of the Court to give effect to every enacted part of the statute, I am of the opinion that the 4 specified holidays shall be "national holidays" and the other four shall be "festival and other holidays. It naturally follows that the option of an employer to declare, with the consent of employees under intimation to the Government a substituted holiday in lieu of any of the festival holidays was confined only to the latter category and not the former.

9. Counsel on both sides have referred me to three decisions of the Supreme Court, having a bearing on this aspect. I should note that all the three decisions were prior to the amendment. Earliest of them is *Tata Oil Mills Co. v. K.V. Gopalan*, : 1965 (2) LLJ 124 which dealt with Kerala Industrial Establishment (National and Festival Holidays) Act (47 of 1958). Section 3 of that Act dealt with grant of "National and Festival Holidays". There were only three specified holidays viz., the 26th January, the 15th August and the 1st May. The unspecified holidays were 4 which the competent authority could specify in respect of any shop or establishment in consultation with the employer and the employees. Section 11 of the Act dealt with the rights and privileges and reads as follows:

"Nothing contained in this Act shall adversely affect any rights or privileges which are employee is entitled to with respect to national and festival holidays on the date on which this Act comes into force under any other law, contract, custom or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act".

In dealing with the effect of these two provisions the Supreme Court held that-

"In exercising this choice, it must, however, be borne in mind by the employees that the 26th January, the 15th August and the 1st May have to be taken as three holidays. That is the direction of Section 3. In regard to the remaining 4, the Inspector decides which days should be paid holidays".

Shri Srinivasa Murthy relies heavily on *Bijili Cotton Mills v. Presiding Officer* : 1972 (2) LLJ 320 in which reference was made in paragraph 20, to the report of the National Commission on labour, prepared in August, 1969 which stated the view of its Study group on Labour Legislation which recommended three paid National Holidays viz., 26th January, 15th August and 2nd October and five paid festival holidays as may be fixed by the appropriate Government in consultation with the representatives of employers and employees. Sri Srinivasa Murthy submits that the same indicates that May day cannot be treated as a "National Holiday" . He also referred me to the decision in *Hindustan Steel Ltd. v. Their Workmen*, 1973 (2) L.L.J. 250, to the effect that May day was not treated as a compulsory paid holiday.

10. I have noticed that all these decisions were rendered without reference to any statutory provision which corresponds to Section 3 of the Act with which we are concerned. They dealt with industrial adjudications on the question as to whether May day could be a compulsory paid holiday. These decisions cannot offset the effect of a statute, which in its amended form, includes May day in the group of the admitted national holidays viz., the 26th January, the 15th August and the 2nd October. On the other hand the decision in *Tata Oil Mills case* (supra) was rendered with reference to corresponding statute in Kerala which provided that May day shall be a specified holiday. The observations of the Supreme Court that specification could not be altered and additional holidays may be specified either u/s 3 of the Kerala Act or more holidays might be claimed by virtue of the

non-obstante provision in Section 11, fully supports the submission made by the counsel for the petitioner. .

11. Sri Srinivasa Murthy emphatically urges that the State Government by a statute, is not entitled to declare a National Holiday and it can be done, if at all, only by a Central Statute. The argument is attractive, but in the absence of any challenge to that provision I can hardly consider the same. The employer had obviously acted in substituting the May day holiday for "Holi" in exercise of the powers it claimed under the proviso to Section 3. I should note that the very Act deals with "national" "festival and other holidays" and the statutory declaration u/s 3 is of "National Holiday" and Festival and other holidays" falling into two different categories.

12. It is true that ordinarily this court will not exercise jurisdiction to interfere with industrial agreement, but in a case where industrial agreement this in the face of a statutory provision, interference is called for. The effect of the proviso as amended seems to me to confine the option of the employer to declare a substituted holiday only in lieu of any of the festival holidays and not any of the national holidays.

13. In view of the above, I allow this writ petition. The respondent employer is restrained from enforcing the Circular No. PERS:GM(P) 2722 dt. 26.2.1991 since the same is illegal and invalid. The result is that 1st May shall be a holiday for the establishment of the respondent. Since the petitioners have enjoyed 1st of March as a substituted holiday, it will be open to the respondent to require them to work on any one of the five festival holidays. No costs.