

(1985) 07 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 2567/85

Association of Engineering Workers

APPELLANT

Vs

Indian Hume Pipe Company Ltd. and others

RESPONDENT

Date of Decision : 19-07-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(2A), 15, 17(1), 2

Citation : (1985) 2 BomCR 699 : (1985) 51 FLR 237 : (1986) 1 LLJ 450 :
(1986) MhLj 34

Hon'ble Judges : H.N. Kantharia, J;C.S. Dharmadhikari, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—Respondent No. 1, the Indian Hume Pipe Company Limited, filed an application under S. 25N of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") on 30th October, 1984 soliciting permission to retrench 100 workmen out of the 287 daily-rated workmen. The Minister for State, Law and Judiciary, Finance and Labour partially allowed the application by granting permission to the Company to retrench 9 workmen who had tendered voluntary resignations. The respondent Company being aggrieved by the said order, presented a review application under S. 25N(6) of the Act. Government, instead of reviewing its own order, was pleased to refer the matter for adjudication to the Industrial Tribunal, Maharashtra at Bombay, consisting of Shri R. N. Gawande, vide order dated 11th February, 1985. It appears that the said reference was received by the Tribunal on 12th February, 1985. On 13th February, 1985, notice was issued to the Company to file the Statement of Claim. On the same day, notices were issued to the Unions to file their Written Statements and the hearing was fixed on 18th February, 1985. On 18th February, 1985 the Company filed the Statement of Claim with documents, copies of which were furnished to the other parties. Thereafter the matter was adjourned to 28th February, 1985 for filing of the Written Statements by the Unions. On 28th February, 1985 the Company filed additional documents along with an application. Respondent No. 2, the Engineering Staff Union, filed its Written Statement and also filed an

application raising a preliminary objection to the maintainability of the reference itself. It appears that the parties also stated that they wanted to move the High Court in that behalf. Therefore, the matter was adjourned to 13th March, 1985 for filing of a Written Statement by the petitioner-union viz., the Association of Engineering Workers. Again on 13th March, 1985 the employees prayed for the rejection of the reference. The petitioner-union did not file its Written Statement on that day and, therefore, the matter was required to be adjourned to the next day i.e., 14th March, 1985. On 14th March, 1985, written Statement was filed by the petitioner-union and the matter was adjourned for filing reply to the application for interim relief. On 15th March, 1985 the application for interim relief was disposed of as not pressed and the matter was adjourned for hearing on the preliminary issue. Thus, even before any effective steps could be taken in the process of hearing, the period of thirty days was over. Therefore, the petitioner-union contended before the Tribunal that in view of the mandatory provisions of S. 25N(6) (proviso), the reference has lapsed and the Tribunal has become functus officio and the reference could not be heard any further. It is pertinent to note that for the expiry of this period of thirty days the Tribunal was not at fault. Hence no remisness or negligence could be attributed to the Tribunal, nor it is the case of any of the parties. The Tribunal did not agree with this contention and vide order dated 24th April, 1985 held that the provisions of S. 25N(6) (proviso) of the Act requiring the Tribunal to pass award within a period of thirty days from the date of the reference are directory and not mandatory and, therefore, the Tribunal has not become functus officio as contended by the Union of Workers. It is this order of the Tribunal which is challenged in the present Writ Petition.

2. Shri Deshmukh, the learned Counsel appearing for the petitioner-union, contended before us that if the various sub-sections of S. 25N are read together and harmoniously, then conclusion is inevitable that the provisions of Sub-s. (6) are mandatory. Section 25N lays down conditions precedent of retrenchment of workmen. It lays down that no workman employed in any industrial establishment to which Chapter VB of the Act applies and who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the procedure prescribed by that section is followed. The section provides for an application for permission. Then comes sub-s. (4) which lays down that if the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. Then comes sub-s. (6) which provides for a review or a reference. Therefore according to the learned Counsel, the intention of the legislature seems to be that the award in the reference should also be made by the Tribunal within a period of thirty days from the date of reference. This clearly shows that after the expiry of thirty days the Tribunal has no jurisdiction to proceed with the reference. Hence, if the

various sub-clauses of S. 25N are read together, it is quite clear that the period prescribed by the proviso to sub-s. (6) is mandatory. Therefore, the Industrial Tribunal committed an error apparent on the face of the record in holding that the said provision is directory and not mandatory.

3. On the other hand, it is contended by Shri Ramaswami that the view taken by the Industrial Tribunal is the only possible view in the matter; otherwise the very intention of the legislature will be frustrated.

4. With the assistance of the learned Counsel appearing for both the sides, who have gone through the relevant provisions of the Act as well as the various cases cited before us viz., *Excel Wear and Others Vs. Union of India (UOI) and Others*, *The Remington Rand of India Ltd. Vs. The Workmen*, *Andheri Marol Kurla Bus Service and Another Vs. The State of Bombay*, *State of Bihar Vs. Kripa Shankar Jaiswal*, *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, and *Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta*,

5. Section 25N was substituted by Act No. 49 of 1984. Section 25O which deals with the procedure for closing down an undertaking was substituted by Act No. 46 of 1982. The proviso to sub-s. (5) of S. 25O is *pari materia* to with proviso to sub-s. (6) of S. 25N. Sub-section (3) of S. 25O is *Pari materia* to Sub-s. (4) of S. 25N. In this context it is pertinent to note that Ss. 15 and 10(2-A) were also enacted by the same Act i.e. Act No. 46 of 1982. The Statement of Objects and Reasons for Act No. 46 of 1982, clearly shows that the amendments in the Act were being made to ensure speedier resolution of industrial disputes by removing procedural delays and to make certain other amendments in the light of some of the recommendations of the National Commission on Labour. Sub-clause (iv) of the said Statement of Objects and Reasons reads as under :

"(iv) there has been dissatisfaction with delays involved in the adjudication of industrial disputes. It is proposed to fix a time limit for the adjudication of industrial and collective disputes, as also for the disposal of claims, applications and other references by the Labour Court, the Industrial Tribunal or the National Industrial Tribunal with a view to securing speedier justice to workmen. It has also been provided that no case will lapse merely on account of the fact that the time limit specified had expired."

By this Act, by amending S. 25 procedure for closing down of an undertakings was laid down. Ss. 15 and 10(2-A) read as under :

"15. Duties of Labour Courts, Tribunals and National Tribunals : Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-s. (2-A) of S. 10 submit its award to the appropriate Government. 10(2-A). An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this

section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award, on such dispute to the appropriate Government :

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months :

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National for extension of such period or for any other reason, and the Presiding Officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such period as he may think fit :

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of Civil Court shall be excluded :

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed."

Then comes S. 25N(6) with which are concerned in the present Writ Petition. It reads as under :

"25-N (6). The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-s. (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub-section it shall pass an award within a period of thirty days from the date of such reference."

Therefore, in our view, the said provision cannot be read in isolation, but will have to be read in harmoniously together with the other provisions of the Act, and particularly Ss. 10(2A) and 15, which throw light upon the intention of the legislature. The study of numerous cases does not lead to formulation of any universal rule to decide as to whether the provision is mandatory. For deciding such a question regard must be had to the context, subject-matter and the object of the statutory provision in question.

6. In this context, we cannot do better than to make a reference to the following paragraph in "Principles of Statutory Interpretation" by G. P. Singh (3rd Edition) wherein it is observed :

"In an oft-quoted passage Lord Campbell said; "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or

obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered. As approved by the Supreme Court. "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing the real intention of the legislature, points out Subbarao, J., "the Court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it one way or the other the impact of either provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislature will be defeated or furthered."

7. It is true that when consequence of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. However, where a statute imposes a public duty and lays down the manner in which and the time within which the duty shall be performed, injustice or inconvenience resulting from a rigid adherence to the statutory prescriptions may be a relevant factor in holding such prescriptions only directory. This aspect of the matter is summarised by Shri G. P. Singh in his book at page 286 in the following terms :

"In considering whether a statute is imperative, Denman, J., stated : "a balance may be struck between the inconvenience of sometimes rigidly adhering to and the convenience of sometimes departing from its terms. It was held in that case that where a public officer is directed by a statute to perform a duty within a specified time the cases establish that provisions as to time are only directory. Similarly it has been held while construing S. 17(1) of the Industrial Disputes Act, 1947, that it is obligatory on the Government to publish an award, but the provision, that it should be published within thirty days, is not mandatory and an award published beyond thirty days is not invalid. A provision fixing a time, within which a public officer or authority has to act in performance of a duty, generally means that the statute considers it reasonable for officer or authority to act within the said period. The expiry of the period without more confers no right unless the statute by a legal fiction or otherwise confers a right. Thus a provision in a Municipal Act that an application for lay out should be disposed of within a particular time does not mean that the application must be deemed to have been granted after expiry of the said period unless there is a provision to that effect made in the Act.

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When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those who are entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only."

The provisions of S. 25N(6) will have to be construed in the background of these well established principles.

8. Sub-section (4) of S. 25N lays down that if the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such, application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. No such consequence has been provided for or laid down by the proviso to sub-s. (6) and, therefore, it will not be fair to read the mandate of sub-s. (4) in sub-s. (6) even by implication when in terms the legislature did not think it fit to do so. As already observed, there is a similar provision in sub-s. (5) of S. 25O which was enacted by Act No. 46 of 1982. By the same Act, S. (2-A) to S. 10 was introduced in the statute book, which in terms lays down that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section and expired without such proceedings being completed. In our view, this provision clearly shows the intention of the legislature. This position is also clear from the Statement of Objects and Reasons referred to herein above. The intention of the legislature is, therefore, clear that no case will lapse merely on account of the fact that the time limit prescribed had expired. Hence, in our view, the Industrial Tribunal was right in holding that S. 25N(6) of the Act, which requires the Tribunal to pass an award within a period of thirty days from the date of the reference, is directory and not mandatory and, therefore, on the expiry of the said time limit the reference will not lapse but will survive for adjudication.

9. This question can also be considered from another angle. Under sub-s. (4), a legal fiction is provided about the grant of permission on the expiry of the period of sixty days. By sub-s. (6) a review is provided by the appropriate Government or the specified authority, either on its own motion or on the application made by the employer or any workman. Then the sub-section provides that an appropriate Government or specified authority may review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication. The words "refer the matter" and "for adjudication" are important. What is sought to be referred is the matter and not the question of legality of the order. In the context, the expression "refer the matter" will mean refer the application for permission made by the employer for adjudication. The Tribunal is expected to pass an award. The

term "award" is defined by S. 2(b) to mean an interim or final determination of any industrial dispute or of any question relating thereto. The provision providing for a period of thirty days for adjudication indicates that a long-drawn process is not contemplated, though the nature and extent of inquiry must depend on the facts of each case. This has been done so as to avoid delay in adjudication with a view to ensure speedier justice in the matter. It means that the period of thirty days was considered by the legislature as reasonable for the adjudication of the matter-referred. But that does not mean that after the expiry of the said period, ipso facto the reference lapse or the Tribunal becomes functus officio.

10. It will not be fair to assume that, it is held that the provision is directory and not mandatory, the Industrial Tribunal will not act with expedition. The Tribunal is expected to perform its duty within the said period. It is only in exceptional cases where it is found that it is impossible to complete the adjudication proceedings within the prescribed period that the Tribunal can complete the proceedings beyond the said period. Exception cannot be permitted to become a rule. The Tribunal is expected to adhere to the time schedule unless it becomes impossible to adjudicate the matter within the prescribed period. The Tribunal is also expected to record reasons in writing as to why the proceedings could not be completed within the time prescribed by the legislature. However, only because time is prescribed by the legislature, it cannot be held that after the expiration of the said period, the Tribunal has no jurisdiction to adjudicate the matter referred to it. If the contention raised by the petitioner is accepted that the Tribunal becomes functus officio after the expiration of thirty days, it will result in injustice and general inconvenience. To say the least, it will defeat the very object to sub-s. (6) of S. 25N which contemplates a reference of the matter to the Tribunal for adjudication. To hold that after the expiry of the period of thirty days, the reference lapse and the Tribunal becomes functus officio, will amount to a premium on negligence or injustice to the persons who have no control over the Tribunal which is entrusted with a public duty. In our view, it would not promote the main object of the legislature viz, adjudication of the matter by the Tribunal. Therefore, the Tribunal was wholly right in coming to the conclusion that the said provision is directory and the Tribunal does not become functus officio, nor will be reference lapse, only because the period of thirty days is over. In the view which we have taken, it is not necessary to make a detailed reference to the various decisions cited before us as the Bar.

11. In the result, we find no substance in the Writ Petition and it stands rejected.