
(2002) 03 BOM CK 0073
In the Bombay High Court
Case No : C.A.J.W.P. No. 892 of 1994

Bajaj Tempo Ltd.	Vs	APPELLANT
Bhartiya Kamgar Sena and Another		RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (2002) 94 FLR 96 : (2002) 2 LLJ 1134

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : S.K. Talsania, instructed by Pardiwala and Co, for the Appellant;

Judgement

R.J. Kochar, J.—The petitioner company is aggrieved by the impugned order dated February 15, 1994 passed by the Industrial Court, Pune in Complaint ULP No. 45/1994 filed by the respondent union for a declaration that the petitioner company had engaged in unfair labour practice within the meaning of Item 9 of Schedule IV of the MRTU and PULP Act, 1971 (for short the Act), by shifting the weekly off which fell on January 27, 1994 i.e. Thursday to January 26, 1994 i.e. Wednesday (Republic Day) by its notice dated January 5, 1994. According to the respondent union, the petitioner company had engaged in unfair labour practice under the Item 9 of Schedule IV of the Act by changing the service conditions unilaterally by changing the weekly off from January 27 to January 26, 1994 without complying with the provisions of Section 9-A of the Industrial Disputes Act, 1947. The respondent union, therefore, defied the notice dated January 5, 1994 requiring the employees to report for work on January 27, 1994 failing which they were warned of reduction of one day's wage from their salary for any absence on that particular date. The union approached the Industrial Court and sought interim orders restraining the petitioner company from deducting from their salary one day's wage as threatened by the petitioner company.

2. The petitioner company appeared before the Industrial Court and contested the complaint by filing its written statement. According to the petitioner company

it had not engaged in any unfair labour practice as it had only shifted the weekly off from Thursday to Wednesday which was also a holiday. According to the petitioner company, it was not proper and desirable to keep the factory closed for two consecutive days and, therefore, it had declared Wednesday as a weekly off instead of Thursday. According to the petitioner company, the employees were entitled to get in all six paid holidays in a year under the subsisting settlement. The petitioner company had not changed or had not reduced the number of paid holidays from 6 to 5. It had only shifted the weekly off from Thursday to Wednesday and the employees would have got another day as a holiday in lieu of January 26, 1994. According to the petitioner company, therefore, it was not required to give any notice of change as contemplated u/s 9-A of the I.D. Act as its act was not to effect any change in the service conditions of the workmen as contemplated by the said provision. It was only one isolated adjustment in the paid holidays of the employees, so that the production did not suffer. According to the petitioner company, no prejudice of any nature was caused to the employees as they did not suffer materially or adversely as no wages would have been deducted and no holidays would have been reduced. What the petitioner company had done was a change in the weekly off from Thursday to Wednesday and in lieu of Wednesday, January 26, 1994 which was a paid holiday, another paid holiday would have been given to the employees, thereby keeping intact the number of paid holidays and also the weekly off available to the employees throughout the year. It is an admitted position that the petitioner company had displayed a notice on January 5, 1994 to communicate the said change to the employees. By the said notice, the employees were required to report for duty on Thursday January 27, 1994. It further appears that the respondent union had written a letter to the petitioner company on January 9, 1994 opposing the said change, proposed by the petitioner company.

3. I may mention here itself that as a result of the opposition by the respondent union the employees did not report for work on Thursday and had enjoyed that day as a weekly off instead of a proposed working day as declared by the petitioner company. I may further mention here itself that the petitioner had paid wages to all the employees which were deducted earlier. As far as the employees are concerned they have received their full wages and they are not put to any monetary loss.

4. Both the parties contested the complaint on the basis of the pleadings as the facts were admitted and no oral evidence was required by any of them. The learned Member of the Industrial Court heard both the learned advocates and by his judgment dated February 15, 1994 allowed the complaint partly and declared that the petitioner company had engaged in unfair labour practice by changing weekly off from January 27, 1994 to January 26, 1994. The learned Member further directed the company to refund one day's salary deducted from the wages of the employees. He also directed the company not to take disciplinary action against the employees for their remaining away from work on January 27, 1994.

5. Unfortunately, I do not have assistance from the respondent union as nobody appears for the union though it has been served and though the names of two advocates engaged by the union appear on the weekly board. Since the matter was of 1994, I have proceeded in the absence of the union. It is possible that the union might not be interested as the employees have been paid their wages back which were deducted from their salary. Shri Talsania, the learned counsel for the petitioner has narrated the facts on record which I have already stated hereinabove. According to the learned counsel, the petitioner company had not effected any change in the service conditions as is commonly understood to be a change of permanent nature materially and adversely affecting the workmen as contemplated u/s 9-A of the I.D. Act. According to the learned counsel it was only a change in the weekly off from Thursday to Wednesday to coincide the Republic Day holiday so that the factory did not remain closed for two consecutive days and the production did not suffer. Shri Talsania also pointed out that there was no reduction in the number of weekly offs. According to him, even the union has not complained that the company had reduced number of holidays i.e. from six paid holidays in a year. It was only a case of adjustment in the interest of production. The workers got their six paid holidays and they did not suffer any prejudice by a small adjustment of a weekly off day. Shri Talsania further submitted that the union had taken unreasonable and adamant stand in opposing the said adjustment for no justifiable reason. Shri Talsania further made a grievance against the judgment of the Industrial Court that it has not followed the ratio of judgment of learned single Judge of this Court (S.K. DESAI, J.) reported in 1978 Mh.L.J. 480 in the case of Mistry Lalluboy and Co. v. Engineering and Metal Workers Union. He submitted that the facts in that case and the facts in the present case are more or less the same. In that case also there was shifting of holiday. The learned member of the Industrial Court has merely referred to the said judgment of the single Judge and has not followed its ratio.

6. Shri Talsania is justified in making the said grievance against the Industrial Court. My learned brother has discussed the entire Case Law on the point. He found some difficulty in reconciling the conflicting views of the Supreme Court. He has, however, held that an isolated change in holiday does not amount to a change in the service condition. He has also observed that by shifting a holiday or a weekly off, in an extraordinary situation which was present in the case before the learned Judge, did not amount to a change in the service conditions. In the said case, the employer had shifted a weekly off to a Maharashtra Bandh day so that the production did not suffer. In that case also the workers were paid their wages for the shifted weekly off day. There was no material or adverse change in the service conditions in that situation. The learned Judge had formulated as a short question "If the weekly off day is altered from one day to another day, does it adversely and materially affect any right of the workmen." The learned Judge had taken a very practical and prudent approach and had observed "looked at from any reasonable manner and considered as an isolated

change as an exception for one occasion only and not a permanent one, the proposed change cannot be considered to be such a change as would materially or adversely affect the workmen, which is one of the tests indicated in the Indian Oil Corporation's case.

7. Even in the present case I do not see any unfair labour practice as is understood on the part of the petitioner company. It was the intention of the petitioner company that production wheels of the factory should not remain closed for continuous two days. In my opinion, if the petitioner company had adjusted a weekly off from Thursday to Wednesday and had given another weekly off or paid holiday, I do not see what kind of unfair labour practice, the petitioner had engaged in. The employees have not been adversely and materially affected and there is no prejudice shown or caused to the employees by the said simple adjustment of weekly off for one day. According to me, wheels of every industry must run continuously and incessantly so that the production never suffers. It is the need of the national economy that the production never suffers. At the same time the employees could get their wages without any reduction. In the long run if production suffers the employees also suffer as the bonus which they get would also suffer. If the employer gets higher profits by increased production, the employees would get higher quantum of bonus. By adopting such an adamant and unreasonable approach of not adjusting weekly off with the need of the hour, the union has done harm to our national economy. As is rightly observed by Justice S.K. DESAI that an adjustment of one holiday does not amount to a change in the service condition. In the same manner, according to me, it does not amount to unfair labour practice. In my opinion, the simple adjustment of weekly off does not affect any change in the service condition for the whole year. What is contemplated by Section 9-A of the Act is that the employer should not effect any change in the service conditions which would materially and adversely affect the employees in the long run. In the present case as also in the case cited (*supra*), it was an adjustment of only one day and the employees were not to suffer any reduction in their wage. In these circumstances, according to me, the judgment and order of the Industrial Court cannot be sustained and the same is hereby quashed and set aside.

8. Section 9-A of the I.D. Act mandates that the employer should not effect any change in the service conditions of the workman in the matters specified in Schedule IV of the Act which enumerates the industrial matters affecting the workmen en masse employed in the establishment. The legislative intention is clear that there should be no unilateral change in the service conditions of the workmen likely to be affected without giving to them 21 days notice in advance. Such change has been now held to be a change affecting the workmen materially and adversely in their service conditions. There should be a real prejudice caused to the workmen by the proposed change. It is obvious that for a change which is beneficial to the workmen, Section 9-A will not be attracted. Moreover, the basic concept appears to be that as the service conditions stipulated in the agreement, settlement, award and the Standing Orders determine and govern the employer-

employee relationship in the long run and for long tenure or period and they must subsist and continue to prevail without any unilateral change proposed by the employer. There should be no disturbance in the industrial peace to the prejudice of the workmen and thereby to the industry. There should be no clog in the smooth running of the industrial wheels is the objective of this provision.

9. However any small change or adjustment of the nature like the one in our case or in the case before S.K. DESAI, J. is certainly not contemplated by this provision. The employer is not totally tied down and is certainly free to organize his daily routine affairs in the best interest of the industry. He is free to manage and organize his industrial and business activities within the framework of the governing service conditions without altering them to the prejudice of the workmen in the long run. The unions or the workmen cannot terrorise or tyrannies the employer under the shelter of Section 9-A even for a small, innocuous, harmless change or adjustment either in the working hours or holidays under emergent and extra ordinary situations, if there is no material and adverse effect on them in respect of their earnings and other service conditions. So long as the employer organises his business and acts bona fide he cannot be obstructed at every step or stage to thwart the industrial progress. The unions or the workmen cannot always smell mala fides in every act or decision of the employer. Industrial relations must be built on the mutual faith and trust and cooperation between the two wheels of the industry i.e. the capital and the labour. In the present case the petitioners have acted bona fide without adversely affecting the workmen in any manner so that the industry did not remain closed continuously for two days. No paid holidays were reduced and therefore there was no necessity of giving a notice of change u/s 9-A of the I.D. Act and therefore there was no unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act. The whole complaint was misconceived and deserved to be dismissed.

10. It is now placed beyond the pale of doubt that the employment, deployment, transfer of employees from one place to another and all such incidental matters fall within the exclusive domain of the employer, so long as his decisions are bona fide and they do not suffer from any mala fides, malice, victimization or any extensors reasons and ulterior motives. A straight forward and honest decision taken out of the exigency of the situation cannot be challenged successfully.

11. In the case of D. Macropollo and Co. (Private) Ltd. Vs. D. Macropollo and Co. (Private) Ltd. Employees" Union and Others, , the Supreme Court had held that if a scheme of reorganising was adopted by an employer for reasons of economy or inconvenience and it was introduced in all the areas of its business, the fact that it would lead to the discharge of some of the employees, would be of no consequence. This ratio was followed by the subsequent judgment in the case of Parry and Co. Ltd. Vs. P.C. Pal and Others, . The Supreme Court has observed "it is well established that it is within the managerial discretion of an employer to organize and arrange his business in the manner he considers best. So long as

that is done bona fide it is not competent for a Tribunal to question its propriety." The Supreme Court further observed that "it is for the management". to decide the strength of its labour force to carry out efficiently the working of its undertaking."

12. In another decision of the Supreme Court in the case of Ghatge and Patil Concern"s Employees" Union Vs. Ghatge and Patil (Transports) Private Ltd. and Another, , the Supreme Court upheld the right of the employer to reorganise his business from conducting a transport business himself through employees engaged by him to conduct it through a contract system whereunder he let out his motor trucks to persons who, before this change were his employees. The Supreme Court did not question the motive of the employer which was avowedly to avoid implementation of some of the provisions of the Motor Transport Workers Act, 1961. It appears that in that case to avoid to implement the provisions of the said Act, the employer had introduced a contract system by engaging his own employees voluntarily as contractors of motor trucks. The Supreme Court has observed that a person must be considered free to so arrange his business that he avoids a regulatory law and its penal consequences which he has without the arrangement no proper means of obeying.

13. It is therefore, crystal clear that the employer is given a free hand within the four corners of law and the bona fides to enable him to arrange, manage and organize his business in his best interest, so long as his policy was not actuated by any motive of victimization or unfair labour practice and that there was bona fide considerations and that it was reasonable and proper. It is for the employer to decide whether a particular policy in running his business will be profitable, economic or inconvenient, so long as it is not actuated by any consideration for victimisation or any such unfair labour practice. In the light of the aforesaid well established position, I am not able to agree with the view of the Industrial Court that by changing a weekly off from Thursday to Wednesday without reducing the number of paid holidays, the petitioner employer has by itself engaged in an unfair labour practice. It was not the case of the union that by doing so, any other service conditions were adversely affected. Admittedly, it was an isolated incident in the given circumstances. It, therefore, cannot be said to be a change in the service conditions warranting a notice of change u/s 9-A of the I.D. Act, 1947.

14. Shri Talsania, the learned counsel for the petitioner has made a statement after obtaining instructions that even if the company has succeeded in the present petition, it will not recover the wages which the company had already paid to the workers as per the order impugned.

15. In these circumstances, according to me, the judgment and order of the Industrial Court cannot be sustained and the same is hereby quashed and set aside.

16. In the aforesaid circumstances, the Rule is made absolute with no orders as

to costs.