

(1964) 10 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 1935 of 1963

Bangalore Woollen, Cotton and Silk Mills Company Ltd.

APPELLANT

Vs

Its Workmen and Another

RESPONDENT

Date of Decision : 23-10-1964

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 10 (2), 17 A (1), 19 (3)

Citation : (1965) 2 LLJ 13

Hon'ble Judges : K.S. Hegde, J; Ahmed Ali Khan, J

Bench : Division Bench

Judgement

Hegde, J.—The Bangalore Woollen, Cotton and Silk Mills Company, Ltd., the petitioner herein, has filed this petition, under Art. 226 of the Constitution, praying for a writ of prohibition or any other appropriate writ or order restraining the industrial tribunal, Bangalore (to be hereinafter referred to as the tribunal), respondent 2 in this case, from proceeding with the adjudication in Industrial Dispute No. 8 of 1963 on its file.

2. The material facts of the case are as follows : The petitioner-company has a textile mill in Bangalore, which manufactures cotton, silk and cotswool piecegoods. The Government of Mysore by its order No. L.S. 4188-L.W. 1-55-8, dated 2 August, 1955, referred to the tribunal for adjudication the industrial dispute raised by certain categories of workmen of the petitioner-company. That reference was registered by the tribunal as I.C. No. 11 of 1955. Eventually an award was made. That award was published in the Mysore Gazette dated 18 October 1956. Paragraphs 50 to 70 of that award deal with the demands of the workman relating to privilege leave, sick leave and causal leave. The said award came into operation on 18 November 1956, as per S. 19(3) read with S. 17A(1) of the Industrial Disputes Act, 1947 (to be hereinafter referred to as the Act). On 19 September, 1958, the petitioner-company and its workmen, represented by the Binny Mills Staff Association entered into settlement under S. 12(3) of the Act with regard to the scales of pay of certain categories of workmen. Under the

said settlement, it was agreed that in return for the revision of the scales of pay, the staff association will withdraw inter alia their demand for liberalizing the privilege leave and causal leave facilities. That settlement was to be in force for a period of three years from 1 January 1958. On 7 December 1960, the petitioner-company and its workmen entered into another settlement under S. 12(3) of the Act. The terms of that settlement are not necessary for our present purpose. On 16 November, 1961, the staff association of the workers on behalf of its members sent to the petitioner-company certain demands claiming inter alia additional privilege leave, sick leave and casual leave facilities. Direct negotiations in that connexion ended in failure. Thereafter conciliation was attempted through the conciliation officer. That also ended in failure. After that, when the workers approached the Government to refer the dispute to the tribunal, the Government, by its order No. PLM 401 LLD 62, dated 10 October, 1962, refused to do so on the ground that the issue relating to leave facilities does not merit reference to adjudication as the leave facilities allowed by the petitioner-company, as compared with the leave facilities provided in similar industrial in Bangalore, cannot be considered inadequate. But, evidently at the instance of the workmen, the Government by its order No. PLM 538 LLD 62, dated 20 March, 1963, referred to the tribunal that very dispute. The reference in question was registered as I.D. No. 8 of, 1963. The petitioner-company resisted the claims of the workers on various grounds. Amongst other contentions, it was urged that the tribunal had no jurisdiction to entertain the dispute. On the basis of the pleadings of the parties, the tribunal framed the following four issues :

"(i) Does party 2 (the petitioner-company) prove that no dispute can be raised since the award in I.C. No. 11 of, 1955 subsists and continues to be binding on all the workmen covered by the reference ?

(ii) Does party 2 prove that the industrial tribunal has no jurisdiction to pass any award which may be inconsistent with the certified standing orders ?

(iii) Does party 2 prove that by reason of the settlement dated 7 December, 1960 party 1 (the workmen) is estopped from raising demands in this case ? and

(iv) Whether the categories of workmen set out in Para. 3 of the statement of demands are entitled to

(a) privilege leave of one month in a year with pay :

(b) causal leave of 12 days in a year with pay :

(c) sick leave of 30 days in a year with full pay less employees state insurance benefit ?

If not, to what relief are they entitled ?"

3. The first three issues were tried preliminary issues. The tribunal by its order dated 26 August, 1963 held against the petitioner-company, on all those three

issues; in particular it came to the conclusion that it had jurisdiction to proceed with the enquiry in Industrial Dispute No. 8 of 1963 on its file.

4. In the course of his arguments the learned Advocate- General, who appeared for the petitioner-company, did not challenge the findings of the tribunal on issue (iii). He confined his attack to the decision of the tribunal on the first two issues.

5. Undoubtedly, issues (i) and (ii) are jurisdiction issues. If the order of the tribunal on those issues is wrong, then the tribunal must be held to have no jurisdiction to proceed with the enquiry. No tribunal can give to itself jurisdiction to try a dispute by wrongly deciding the jurisdiction issues. before a writ of prohibition prayed for can be granted to arrest the tribunals proceedings, the petitioner must establish that the tribunal has no jurisdiction over the dispute referred to it. The petitioner must show that if the proceedings before the tribunal had concluded the same could have been lifted to this court by issuing a writ of certiorari and quashed.

6. Dealing with issue (i), it was urged by the learned Advocate-General that as the award made in I.C. No. 11 of 1955 is still in force as the same had not been terminated as provided in S. 19(6) of the Act, the tribunal had no jurisdiction to entertain the reference made by the Government. Section 19(6) provides that an award made continues 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."

7. It was urged on behalf of the petitioner company that the notice contemplated in S. 19(6) should be a notice in writing and the same should intimate to the opposite party the intention of the giver of the notice to terminate the award and no such notice had been given in this case. On the other hand, Sri Vijaya Shanker, the learned counsel for the workman, while not denying that a termination of an award as contemplated in S. 19(6) is a condition precedent before a fresh reference under S. 10 of the Act can be made, contented that such a notice need not be in writing, it may be given orally; nay it may even be inferred from the conduct of the parties. His further contention was that on the facts of this case, the petitioner company must be deemed to have waived the required notice. The tribunal has accepted the aforementioned contentions of the workmen.

8. The first question that we have to decide is whether the notice contemplated by S. 19(6) of the Act should be a notice in writing. That section reads :

"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 awards to the other party or parties intimating its intention to terminate the award."

9. That section does not say that the notice provided therein should be in writing. We see no justification for adding one more requirement to S. 19(6). In the Act, whenever the legislature intended that the notice to be given should be in writing, it has said so-see S. 19(2). While in S. 19(2) the legislature specifically prescribed that the notice to be given under that section should be in writing, in S. 19(6) all that is said is that a notice terminating the award should be given. Therefore, it is reasonable to infer that in the letter case, the legislature did not intend that the notice to be given under that section should be in writing. It is a well known canon of construction that if the legislature uses different words in the same enactment, and particularly in the same section, it must be deemed to intend to give those words different meanings.

10. In support of the contention that the notice contemplated by S. 19(6) should be in writing, reliance was placed on the decision of the Rajasthan High court in *Maharaja Shri Umaid Mills Ltd., Pali (Marwar) Vs. The Textile Labour Union (Red Flag), Pali and Others*, . This decision undoubtedly supports the petitioner's contention. With great respect to the learned Judges who decided that case, we are unable to agree with them on that question. That decision clearly ignores the plain language of the relevant provision. If the language of a given provision is plain and unambiguous, as in our opinion it is in the present case, no question of interpretation arises. It is a wrong thing to assume that the legislature in forgetfulness has omitted the words "in writing" in S. 19(6). An omission in a statute should not be lightly inferred. As S. 19(6) stands, we see no justification to read into that section the requirement of a notice in writing. Hence we agree with the tribunal that the notice required under S. 19(6) need not be in writing.

11. This takes us to the question whether the requirements of S. 19(6) are otherwise satisfied. The tribunal has elaborately set out the correspondence that passed between the parties and the several steps taken to resolve the dispute between the management and the workmen. Admittedly, there were disputes between the management and the workmen about the leave facilities, ever since 1956. As seen earlier, the award in I.C. No. 11 of 1955 came into force on 18 November, 1956. On 28 October, 1957 the staff association, by means of a letter addressed to the managing director, made certain demands. One of the demands made therein related to leave facilities. They wanted more privilege and casual leave days than provided under the award. There was a settlement between the parties on 19 September, 1958. Under that settlement, some of the demands made by the workmen were met but the remaining demands were withdrawn by the workmen. One of the demands withdrawn was that relating to leave facilities. There was another settlement between the parties on 7 December, 1960. That settlement superseded the terms of the settlement dated 19 September, 1958. It did not deal with leave facilities. On 26 June, 1961, the workmen sent a letter to the management making some demands; one of the demands made thereunder was in respect of leave facilities. The demands made therein clearly indicate that the workmen wanted a revision of the award made in 1956 as regards leave facilities. The management did not say then or at any time before the dispute

was referred to the tribunal that the workmen were precluded from raising an industrial dispute in view of the continuance of the award. The petitioner company merely pleaded its inability to meet the demands made. It is true that the letter written on behalf of the workmen on 26 June, 1961 does not specifically state that the workmen have terminated the award. But it is clear from that letter they wanted a revision of that award in certain respects. The demand for additional leave facilities was reiterated by means of a letter dated 6 October, 1961 and a notice of demands dated 16 November, 1961. As the parties could not come to any settlement, in respect of the demands made by the workmen, conciliation was attempted but that was not successful. Even before the conciliation officer the petitioner company did not challenge the right of the workmen to press for revision of the award in respect of the leave facilities. The tribunal, after examining the correspondence that passed between the workmen and the management, came to the conclusion that the requirement of S. 19(6) has been satisfied. This is essentially a finding of fact. No form is prescribed for a notice under S. 19(6). As mentioned earlier, it need not be in writing. Hence we have only to see whether in substance the notice contemplated in S. 19(6) has been given. The workmen had told the management of the petitioner company that despite the award they want better leave facilities. That is one way of saying that they do not stand by the award which in effect, though not in form, is a notice of termination of the award. The provisions in the act should not be considered in a technical manner and thereby defeat their real purpose. The several letters written on behalf of the workmen make it clear that the workmen were not satisfied with the award and they wanted a revision of the same which in effect means an intimation of their intention to terminate that award.

12. Our view in this regard finds support from the decision of the Supreme Court in *Workmen of Western India Match Company v. Western India Match Company* 1962 I 11j 661 and the decision of the Calcutta High Court in *Workmen of Continental Commercial Company (Private), Ltd. v. Government of West Bengal* 1962 I 85. At any rate we do not think that the finding of the tribunal that the notice required by S. 19(6) has in fact been given suffers from any error apparent on the face of the records. In this view, it is not necessary to consider whether the petitioner-company has waived the requirement of a notice under S. 19(6) of the Act.

13. This takes us to the next question whether in view of the provisions contained in the Industrial Employment (Standing Orders) Act, 1946, to be hereinafter referred to as the Standing Order Act, the workmen were precluded from raising a dispute in respect of leave facilities by having recourse to the provisions of the Act. On this question the argument of the learned Advocate-General proceeded thus : The Standing Orders Act applies to all industrial establishments wherein 100 or more workmen are employed. The petitioner's establishment is one such. Under S. 3 of that Act, every employer, whose establishment comes within the provisions of that Act, has to submit to the certifying officer a draft standing orders proposed by him for adoption in his

industrial establishment, wherein provision will have to be made for all topics specified in the schedule. The orders proposed should be in conformity with the Act. Their reasonableness can be gone into by the certifying officer as well as by the appellate authority and suitable modifications can be made by them. Section 5 provides for the procedure which has to be followed by the certifying officer before certifying the standing orders. The procedure is intended to give an opportunity to both the parties to be heard before the final order is passed. Section 6 provides for appeal. Section 7 lays down that the standing orders certified come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent as required by S. 5(3) or where an appeals is preferred on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under S. 6(2). Section 8 requires the certifying officer to register all standing orders. Under S. 9 the said standing orders have to be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards. Section 10 deals with the duration and modification of standing orders. It provides that except by agreement, standing orders, after they are certified, shall not be liable to modification until the expiry of six months from the date on which the standing orders have come into operation. Section 10(2) empowers both the workmen and an employer to apply to the certifying officer for modification of the said standing orders. It was urged that after the amendment of the Standing Orders Act in 1956, the legislature has imposed on the certifying officer and the appellate authority a duty to adjudicate on the fairness or reasonableness of the provisions in the standing orders. Prior to the amendment it was not open to them to examine the fairness or reasonableness of the standing orders submitted by the employer. In view of this change, it was submitted that any party seeking to get the terms of the standing orders altered must have recourse to S. 10 of the Standing Orders Act and that no industrial dispute can be raised in that regard. The learned Advocate General contended that the Act and the Standing Orders Act are statutes in *pari materia*; they must be read together. His contention was that the scope of S. 10 of the Act in so far as it relates to establishments coming within the scope of the Standing Orders Act, must be deemed to have been cut down in matters where the workmen can get redress, by having recourse to the provisions of the Standing Orders Act. On the other hand, it was contended by Sri Vijaya Shanker that the two statutes, though they relate to the same subject, supplement one another; the provisions contained therein are complementary in character; there is no conflict between them; the remedy provides under S. 10 of the Act and that provided under the Standing Orders Act are alternative remedies; it is open to the workmen to have recourse to one or the other. He urged that the legislature while amending the provisions of the Standing Orders Act did not take away the right of the appropriate Government to refer an industrial dispute for adjudication to the tribunals constituted under the Act. He strenuously contended that there are no grounds to hold that the amendment effected to the Standing Orders Act in 1956 has in any manner limited the scope of S. 10 of the Act; the conclusion that a provision

in a statute has impliedly repealed another provision in a different statute should not be lightly reached; such a conclusion must only be reached as a last resort.

14. There is no doubt that the Act and the Standing Orders Act are statutes in *pari materia*. We may assume that they were enacted in accordance with the same legislative policy. They together constitute a harmonious or uniform system of law and therefore they should not only be construed but also be considered in harmony with each other in order that each may be fully effective. They must be construed together as if they constituted one Act. *vide* statutory Construction of Crawford (pp. 431 to 434).

15. Sri Vijaya Shanker is right in his contention that the law does not favour repeal by implication and it is only in the last resort that Court hold that one enactment is repealed by another, even without express word. If the provisions of a later Act are so inconsistent with or repugnant to those of an earlier Act, that the two Acts cannot stand together, the earlier stand impliedly repealed by the later. If there is no such inconsistency and if both the provisions can be applied, then merely because that two remedies are provided for giving relief in respect of a grievance, it cannot be said that the two remedies are inconsistent with one another. As observed by Maxwell in his Interpretation of statutes (10th Edn., p. 160) :

"The language of every enactment must be construed as far as possible in accordance with the terms of every other statute, which it does not in express terms modify or repeal."

16. The object of the Act, as could be gathered from its preamble, is to make provision for the investigation and settlement of industrial disputes, and for certain other purposes appearing in it, while the preamble to the Standing Orders Act says :

"Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them :"

17. The scope and the effect of the Standing Orders Act was considered by the Supreme Court in *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, . Therein it was laid down that the object of the Act was to require the employers to make the conditions of employment precise and definite and the Act ultimately intended to prescribe these conditions in the form of Standing Orders so that what used to be governed by a contract here to before would now be governed by the statutory standing orders. In the course of the judgment Gajendragadkar, J. (as he then was), observed :

"Prior to the passing of the Act, conditions of employment obtaining in several industrial establishments were governed by contracts between the employer and their employees. Sometimes the said conditions were reduced to writing and in many cases they were not reduced to writing but were governed by oral

agreements. Inevitably in many cases, the conditions of service were not well-defined and there was ambiguity or doubt in regard to their nature and scope. That is why the legislature took the view that in regard to industrial establishments to which the Act applied the conditions of employment subject to which industrial labour was employed should be well defined and should be precisely known to both the parties. With that object, the Act has made relevant provision for making standing orders which after they are certified constitute the statutory terms of employment between the industrial establishments in question and their employees. That is the principal object of the Act

Normally, standing orders have to be drafted by the employer and their certification obtained under the Act wherever the employer employs more than one hundred industrial workmen, S. 1(3) ..."

18. It may be noted that the Central Act 36 of 1956, which amended certain provisions of the Standing Orders Act, also amended some of the provisions of the act yet parliament did not think it necessary to amend S. 10(2) of the Act. Therefore it is reasonable to assume that Parliament did not intend to effect any change as regards the scope of S. 10(2) of the Act.

19. As mentioned earlier, there is no conflict between S. 10(1) of the act and S. 10(2) of the Standing Orders Act. They can operate simultaneously. Therefore, it is not proper to conclude that the latter provision has amended the former. Further, it may be seen that a reference under S. 10(1) of the Act can be made only where the appropriate Government is of the opinion that an industrial dispute exists or is apprehended, whereas a modification of standing orders can be sought by a workmen applying to the certifying officer. In such a case, there need not be any industrial dispute. It is not necessary for us to consider in this case the scope of S. 10(2) of the Standing Orders Act. Suffice it to say that we see no conflict between S. 10(1) of the Act and S. 10(2) of the Standing Orders Act. Hence we hold against the petitioner company on issue (ii) as well.

20. In the result, this petition fails and the same is dismissed with costs. Advocate's fee Rs. 100