
(1959) 12 KL CK 0012
In the High Court Of Kerala

Bhaskara Menon	Vs	APPELLANT
Assistant Labour Commissioner and Others		RESPONDENT

Date of Decision : 16-12-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) 4 KLJ 188 : (1960) 1 LLJ 777

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Judgement

T.K. Joseph, J.—This is a petition under Article 226 of the Constitution for a writ of certiorari or other appropriate writ, direction or order quashing an order, Ex. P. 5, passed by the respondent 1, the Inspector, u/s 3 and Rule 7 of the Kerala Industrial Establishments (National and Festival Holidays) Act XLVII of 1958. The petitioner is the general secretary of the Tomco Employees' Union, Ernakulam, and four respondents are:

- (1) The assistant labour officer,
- (2) The manager, Tata Oil Mills Company, Ltd.,
- (3) The secretary, Tata Oil Mills, Workers' Union, Ernakulam, and
- (4) The secretary, Tata Oil Mills Company, Ltd., Staff Association, Ernakulam.

2. The facts may be briefly stated: The petitioner is the general secretary of the Tomco Employees' Union, a trade union registered under the Indian Trade Unions Act, A section of the workers in the Tata Oil Mills Company, Ltd., at Ernakulam are members of this union. Under the standing orders of the company, copy of which has been filed as Ex. P. 1, the employees were entitled to get holidays with pay on five days, namely, New Year's Day, Founder's Day, Good Friday, Onam and Christmas Day. It was also provided in standing orders that In the event of the company being compelled to observe a holiday or holidays for reasons of State, such day or days would also be counted as company holiday or holidays.

There was a later agreement Ex. Rule 2 between the management and the workers by which one more day, namely, the Union Day, i.e., the last Monday in the month of March, was also made a holiday with pay. According to the petitioner, the standing orders stand modified by this agreement. The Kerala Industrial Establishments (National and Festival Holidays) Act XLVII of 1958 became law in the State on 29 December 1958. u/s 3 of the said Act, every employee is to be allowed in each calendar year a holiday of one whole day on 26 January, 15 August, 1st May and four other holidays. The three compulsory holidays are national holidays. Under rules framed under the Act, the assistant labour officer Ernakulam, has been appointed Inspector under the Act. The respondent 2 addressed a communication to the respondent 1 stating that seven holidays Inclusive of the three national holidays would be given to the workers. The respondent 1 invited objections ?" and Ex. P. 2 is the notice received by the petitioner in that behalf. Exhibit P. 3 Is copy of the objections filed by the petitioner. The respondent 1 called a conference to decide this question and the petitioner and the respondents attended the same. Exhibit p. 4 is copy of the proceedings of the conference. On 9 March 1959, the petitioner received an order Ex. P. 5 from the respondent 1 fixing four holidays in addition to the three national holidays. These four days are Founder's Day, Good Friday, Onam Day and Christmas Day. The Union Day la not a holiday under Ex. P. 5. According to the petitioner, Ex. P. 5 has to be quashed on the following grounds:

(1) The standing orders under which six holidays are provided cannot he amended except in the manner provided in the Industrial Employment (Standing Orders) Act. 1946, and the rules framed there under. No such amendment having been made, the order reducing the number of festival holidays is illegal.

(2) The respondent 1 has no jurisdiction to amend the standing orders.

(3) The respondent 1 should have found that the workers were entitled to get the six holidays Which they were formerly enjoying in addition to the three national holidays.

3. The members of the Tomco Employees" Union did not attend work on 30 March 1959 which was one of the holidays provided by the agreement referred to earlier. On 6 April 1959 an interlocutory application was filed praying for an injunction directing the respondent 2 from proceeding with the enquiry against the workmen for absence on 30 March 1959. This application does not appear to have been moved for orders.

4. Respondents 1 and 2 have filed counter affidavits. The respondent 1 states that on receipt of the communication from the company and objections filed by the three trade unions, he convened & conference of the Interested parties and passed the order in question. It la further stated that u/s 3 of the Act, he has only to specify the four festival holidays and that he has done. Exhibit P. 1 was not produced before him and he has not amended the same. What he has done is with jurisdiction, and the Impugned order is not liable to be quashed. The

respondent 2 contends that the agreement allowing a holiday on Union Day has not become part of the standing orders which allowed only five holidays, that the respondent 1's order is correct having been passed in exercise of the power vested in him under the Act, that the workers are entitled only to seven holidays and the same have been specified by the respondent 1, and that on receipt of the respondent 1's order, the seven holidays were duly notified. Copies of the correspondence following this have been filed as Exs. Rule 4 and Rule 5. It is further contended that the standing orders not having been amended so as to include Union Day also, no question of amendment of the standing orders arises in the circumstances. The jurisdiction of the Court to interfere is also questioned.

5. The question for decision is whether interference is called for under Article 226 of the Constitution. It is conceded by the petitioner that the respondent 1 has acted with jurisdiction in passing the impugned order but it is contended that he has acted illegally in overlooking the provisions of Section 11 of the Kerala Industrial Establishments (National and Festival Holidays) Act. Sections 3 and 11 of the Act may be extracted:

3. Every employee shall be allowed in each calendar year a holiday of one whole day on 26 January, the 15 August and the 1 May and four other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment.

* * * 11. Nothing contained in this Act shall adversely affect any rights or privileges which any 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.

According to Section 3 of the Act, all that the respondent 1 had to do was to fix four holidays other than the three compulsory holidays on 26 January, 1 May and 15 August, and he has done that. The contention of the petitioner is that when the Act came into force, the workers were getting six holidays, five on the strength of the standing orders and the sixth as a result of the agreement (Ex. Rule 2) entered into between the management and the workers on 21 December 1951, and that the workers were entitled to get three more holidays in addition to the six, as a result of the Act. In other words, the case is that in the case of an industrial establishment where the workers were getting more than four festival holidays but not the national holidays, the jurisdiction of the Inspector is merely to provide that the national holidays would also be holidays thereafter. The choosing of four out of the five existing holidays is alleged to be an infringement of Section 11 of the Act. It is urged that the order of the respondent 1 naming four festival holidays adversely affects the rights or privileges which the workers had on the date this Act came into force and that such rights or privileges cannot be affected by an order u/s 3 of the Act.

6. I am unable to accept this argument. Section 11, in my opinion, means that if

the workers were formerly getting more than seven holidays in a year, the total number of holidays could not be reduced to seven by an order passed u/s 3 of the Act. The employees of the respondent 2 were having only six holidays previously and that has now been raised to seven, although while gaining three new holidays they lose two of the former holidays, namely, New Year's Day and the Union Day. The scheme of the Act appears to be to ensure that all employees in industrial establishments should get a minimum of seven holidays of which three should be the national holidays specified in the Act, namely, 26 January, 1 May and 15 August, which are made compulsory holidays under the Act. Violation of Section 11 may occur only in those cases where the workers were formerly getting more than seven holidays in a year when the total number is reduced to seven u/s 3 of the Act but not in a case like this where the total number of holidays is increased to seven. The respondent 1 has acted in accordance with the provisions of Section 3 in specifying the national holidays as well as four other days as holidays. This is all that he is entitled to do under the Act, and in passing the impugned order there is no infringement of Section 11 of the Act.

7. There is no merit in the contention that the standing orders have been unauthorisedly amended by respondent 2 while purporting to act u/s 3 of the Act. The standing orders provided for five holidays. There was, no doubt, a later agreement, Ex. E. 2 by which Union Day was also made a holiday but Ex. Rule 2 by itself cannot be deemed to have effected an amendment of the standing orders since such amendment can be made only in the manner provided by the Industrial Employment (Standing Orders) Act. The present controversy arose because the management initiated disciplinary action against those workers who did not attend work on "Union Day" which was a holiday under Ex. Rule 2 but not under Ex. P. 5. Union Day not being one of the holidays provided by the standing orders, it cannot be said that in omitting the same the respondent 1 amended or purported to amend the standing orders. The only holiday in the standing orders which is not included in Ex. P. 5 is New Year's Day. The order, Ex. P. 5, was made only in March 1959, i.e., more than two months after New Year's Day in 1959 and the omission of that day is therefore only of academic interest, as a fresh list of holidays will have to be drawn up for the calendar year 1960. It may also be mentioned that learned Counsel for the petitioner stated that in case the respondent 1 is found to have acted in accordance with the Act the question whether all the holidays provided for by the standing orders would continue to be available to the workers may be left open. I do not therefore express any opinion on the same.

8. In view of my conclusion that the respondent 1 acted legally in exercise of his jurisdiction u/s 3 of the Act, the order Ex. P. 5 does not call for interference under Article 226, The original petition is therefore dismissed but in the circumstances without costs.