

(1997) 11 KAR CK 0052
In the Karnataka High Court
Case No : W.A. No. 80 of 1997

Brooke Bond Corporate Office Staff Union	APPELLANT
Vs	
Brooke Bond Lipton India Ltd. and Another	RESPONDENT

Date of Decision : 17-11-1997

Acts Referred:

Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963 —
Section 11, 3, 4

Citation : (1998) 1 LLJ 1133

Hon'ble Judges : R.P. Sethi, C.J.; A.M. Farooq, J

Bench : Division Bench

Advocate : M.C. Narasimhan, for the Appellant; K. Kasturi, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant, who was the respondent No. 2 in the writ petition has filed this appeal against the order passed by the learned single Judge allowing the writ petition filed by the first respondent.

2. The first respondent Industrial Establishment has its registered office at Calcutta. Its Corporate office was established in Bangalore in 1981. It has employed about 130 persons as its staff and it works five days a week. The appellant is the employees staff union of the establishment.

3. u/s 3 of the Karnataka Industrial Establishments (National & Festival Holidays) Act. 1963 hereinafter referred to as "the Act", all industrial establishments are required to allow paid holidays to the employees on January 26, August 15, and October 2, and five other days including May 1, of every calendar year and u/s 4 of the Act, the employer shall send a statement showing the holidays allowed in each calendar year u/s 3 apart from displaying the same in the premises of the Industrial Establishment. Accordingly the first respondent has seen the statement showing the number of holidays declared by them for the year 1996. At first they had declared 10 holidays, which they increased to 18 days. The

second Respondent who is the Inspector appointed under the Act after receiving the statement, issued notice to the appellant union. The appellant union filed objections to the same contending that the management had not consulted them before declaring the holidays and forwarding the statement to the Inspector, the first respondent. The Trade Union contended that the Management did not consult them before submitting the list of holidays in accordance with the agreement between the Management and the Union. They also contended that since the commencement of the first respondent office at Bangalore, the Management have been declaring holidays, as under the Negotiable Instruments Act and for each year the Management should declare holidays according to the holidays declared by the State Government under the Negotiable Instruments Act.

4. The second respondent after considering the objections filed by the Staff Union upheld the objections raised by the Staff Union on the ground that the Management had not consulted the Trade Union before forwarding the list and that when the Management was earlier declaring holidays as declared by the State Government under the Negotiable Instruments Act, they were required to continue the same and hence it was not possible to approve the list of holidays sent by the Management and accordingly made changes and sent an amended list of holidays to be declared by the Management. As per the said amended list the Management was directed to declare 22 holidays instead of 18 proposed to be declared by them.

5. Questioning the correctness of the order passed by the second respondent, the management the first respondent filed the writ petition and contended that the first respondent had no authority to pass such an order and his duty is to see that the list submitted by the Management conforms to Sections 3 and 11 of the Act and nothing more and when it is found that the statement submitted is in conformity with the said provisions, it has to be approved and if the workmen claim that the holidays have to be increased, they shall proceed under the Industrial Disputes Act, 1947. As against those contentions raised by the Management, the Trade Union submitted that since in the earlier years the Management was declaring holidays as declared by the State Government under the Negotiable Instruments Act, the same should be retained by invoking the provisions of Section 11 of the Act.

6. Section 3 of the Act reads as follows:

3. Grant of National and festival holidays-Every employee shall be allowed in each calendar year a holiday of one whole day on January 26, August 15, and October 2, and five 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:

Provided that except in the case of industrial establishments owned or controlled by the Government of India the number of such other holidays shall be six and

the first day of May shall be one of them.

7. Section 11 of the Act reads as under:

11. Rights and privileges under other laws, etc. not affected- Nothing contained in this Act shall affect any rights or privileges which any employee is entitled to, 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.

8. As could be seen from the above provisions, the employer is bound to follow the provisions of Section 3 and declare the minimum of eight holidays including January 26, August 15, October 2 every year. u/s 4 of the Act, the employer shall send a copy of the statement declaring the holidays u/s 3 apart from displaying the same in the factory premises.

9. Section 11 of the Act provides that the provisions of the Act shall not affect any right or privileges enjoyed by the employees on the date when the Act came into force if it was more favourable to them than they were entitled under the Act. It is not the case of the employees that they were enjoying any such right when the Act came into force. In fact, the establishment itself was not in existence on August 14, 1963, when the Act came into force.

10. It is contended by Shri M.C. Narasimhan, the learned counsel appearing for the appellant that for the earlier years the establishment was declaring holidays on the basis of the Notifications by the State Government under the Negotiable Instruments Act and therefore it was a privilege enjoyed by the employees earlier to the filing of the statement by the employer u/s 3 and therefore those privileges are not affected and the employer is not entitled to change them and hence the impugned order passed by the Inspector was in accordance with law.

11. We are unable to accept the said argument. The employer is bound to declare the number of mandatory holidays as provided u/s 3 and the duty of the Inspector under the Act is to see that the mandatory provisions are complied with. If the declaration is in conformity with Section 3 of the Act, the Inspector is bound to accept the same unless it is found that more favourable privileges were enjoyed by the employees when the Act came into force. In the present case, when it is undisputed that the establishment itself was not in existence at the time when the Act came into force, consideration of Section 11 does not arise.

12. The learned single Judge has held:

4. After having heard the respective counsels I am of the view that the impugned order cannot be sustained. The limited scope of the Act is to ensure that every employer coming within the ambit of the Act declares the number of holidays made mandatory u/s 3 of the Act. If the employer conforms to that requirement of the Act, primarily the duty cast on the first respondent ceases. His further duty would be to ascertain whether the employer deprives any of the legitimate right secured to the employees u/s 11 of the Act. To invoke Section 11 the basic

requirement is that the particular employee must have been enjoying the holidays claimed by him on the date of the commencement of the Act. Those holidays alone are saved by the Section. Hence, to earn the said protection, the establishment must have been declaring a particular number of holidays when the Act came into force. That eventuality does not apply in the instant case, because the petitioner was not in existence within the Karnataka State and was not subject to that Act when the Act came into force. If so, Section 11 had no field to operate.

We find ourselves in full agreement with the view expressed by the learned single Judge.

13. There is also no substance in the submission made on behalf of the appellant to the effect that the Inspector appointed under the Act has power u/s 7 of the Act to pass any order necessary for carrying out the purposes of the Act. Section 7(c) reads as follows:

7. Powers of Inspectors: Subject to any rules made by the State Government in this behalf, an Inspector may, within the local limits for which he is appointed:

(a)*****

(b) *****

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

As could be seen under the said provisions, the Inspector is empowered to see that the provisions of the Act are complied with by the employers and nothing more. If the employer has complied with Sections 3 and 4 of the Act and it is in conformity with the mandatory provisions, nothing more is envisaged to be done.

14. Let us now see the relevant rules framed under the Act. Rules 5,6 and 7 read as follows:

5. Consultations by Inspector with employee-As soon as may be after he receives the application under Rule 4 in respect of industrial establishment, the Inspector shall, where there is a registered trade union or unions of workmen forward to such union or unions the list of festival holidays proposed by the employer together with a notice in Form II, and where there is no such trade union, require the employer to display a copy of the list of festival holidays and a notice in Form III on the notice board of the establishment.

6. Objections or suggestions by employees-The trade union or where there is no such trade union the workmen of an industrial establishment may prefer objections or suggestions about the festival holidays proposed by the employer.

7. Approval of Inspector-Where Objections or suggestions about the festival holidays by the employer are received by the trade union or the workmen, as the case may be, the Inspector shall, after giving an opportunity to the employer to

make any representation in respect of such objections or suggestions, and after considering the objections or suggestions, and the representation of the employer, approve the list with such alterations as he deems necessary. The approved list of the festival holidays shall be communicated to the employer and the union or workmen, as the case may be within five days of approval of the list.

15. Under the above rules the Inspector after receipt of a Statement u/s 4 shall forward a copy of the same with notice in Form II to the trade union and the trade union is entitled to prefer objections. It is not disputed that the Rules 5 and 6 are complied with and under Rule 7 the Inspector after giving opportunities to both the parties approve the list with such alterations as he deems necessary. Rule 7 does not empower the Inspector to make alterations or additions, to the holiday list if the list submitted by the employer conforms to the provisions of Section 3 of the Act. When Section 11 of the Act is not attracted to the facts of the case, the Inspector had no authority to add certain more holidays to the list of holidays submitted by the employer. The only alteration that could be done by the Inspector is provided u/s 3 which provides that with regard to the five other holidays mentioned under the Section, the Inspector may in consultation with the employer and the employees specify them. Further it is not necessary for the employer to consult the employees or the trade union before the employer submits the statement u/s 4 of the Act.

16. In the present case, employer has given a statement declaring 18 holidays which is much more than what is provided u/s 3. The Inspector had no authority to add some more holidays and make it 22. The learned single Judge was, therefore, correct in allowing the writ petition and quashing the impugned order passed by the Inspector. There is no merit in this appeal and it is accordingly dismissed. The dismissal of this appeal shall not however come in the way of the appellant agitating the matter under the Industrial Disputes Act.