

(1979) 03 BOM CK 0035

In the Bombay High Court

Case No : Special Civil Application No. 910 of 1974

Cooper Engineering Ltd.

APPELLANT

Vs

B.B. Vagyani

RESPONDENT

Date of Decision : 27-03-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 7A, 9A

Citation : (1980) 82 BOMLR 272 : (1980) MhLj 325

Hon'ble Judges : Pendse, J;Naik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Naik, J.—This petition raises an interesting question as to whether a notice of change reducing the number or working days from six to five days a week and converting the sixth working day into a day of leave without wages would be a change within the meaning of Section 9A read with the fourth schedule of the Industrial Disputes Act, 1947.

2. The question arises under the following circumstances: The petitioner Cooper Engineering Limited is a company manufacturing diesel oil engines, looms etc. situate at Satara Road in the District of Satara. It appears that because of the serious slump during the years 1969-70 by March 1970 as many as 5,500 diesel oil engines which were manufactured by the factory remained unsold and the number went to 12,000 by the end of May 1970. Having regard to this state of slump in the manufacturing industry all over India, while some of the factories actually closed business, it appears that the petitioner-company tried to negotiate with their employees in a bid to avoid retrenchment. Alternate suggestions were made by the representatives of the employees' union. Ultimately on May 9, 1970, the petitioner-company gave a notice of change about its intention of introducing a five day week scheme and grant of unpaid leave scheme. The matter was thereafter taken in conciliation and there was a failure report submitted on May 22, 1970. The Government however, refused to

make a reference.

3. The petitioner-company gave effect to the notice of change which was given by it. As a result of the same, the workers of the factory were required to work only for five days in a week, and to proceed on leave without wages on the sixth day. Out of the several employees only four of them chose to file applications to the authority under the Payment of Wages Act, 1936, on the allegation that their wages for the particular days mentioned in the petitions were unlawfully withheld.

4. The petitions were naturally resisted by the employer. It was contended on behalf of the employer in all the cases that since the change in the conditions of service of workers from six day working week to five day week and one day leave without wages was brought about by following the procedure provided by Section 9A of the Act, the authority under the Payment of Wages Act, had no jurisdiction to proceed with the applications under the Payment of Wages Act.

5. As common questions of law and facts were involved in all these applications they were heard together and disposed of by a single judgment by the learned. Civil Judge, Junior Division and authority under the Payment of Wages Act, Koregaon, by his order dated February 28, 1974. The learned Judge repelled the contention of the employer that the notice of change relied upon by the petitioners was covered by any of the items in the fourth schedule of the Industrial Disputes Act, 1947. He, therefore, held that he had every jurisdiction to entertain the applications as an authority under the Payment of Wages Act and by his orders directed the employer to pay to the employees amounts ranging from Rs. 40 to Rs. 50 and compensation of Rs. 25 in respect of each of the workers.

6. It is the propriety of that order which is challenged by the petitioner-company by filing this petition.

7. Mr. Ramaswami, the learned advocate appearing for the petitioner stated at the outset that the petitioner is not so much bothered about the small amounts which have been awarded to the four employees - respondents in this case and on the other hand, the petitioner is very much interested in the point of law being settled for if the matter rests where it is, the company stands the risk of being required to pay several thousands of rupees having regard to the fact that there are more than 3,000 employees borne on its establishment.

8. Mr. Ramaswami assailed the judgment of the learned authority under the Payment of Wages Act, by contending that the authority was not justified in holding that the change which was brought by the notice u/s 9A, is not covered by the fourth schedule. He submitted that the change which was brought about is very much covered by item No. 1 dealing with wages and item No. 4 dealing with hours of work and rest intervals and item No. 5 which deals with leave with wages and holidays.

9. As against that, Mr. Dharap, the learned Counsel for the respondents

submitted that before the authority under the Payment of Wages Act reliance was placed only on item No. 5 of the fourth schedule which deals with leave with wages and holidays and, therefore, the petitioner should not be permitted in this petition to place reliance on the other items like item Nos. 1 and 4 of the fourth schedule. He further submitted that item No. 5 which deals with leave with wages and holidays cannot be interpreted to mean as leave without wages. He, therefore, submits that there is no reason to interfere with the view taken by the authority under the Payment of Wages Act.

10. In our judgment, there seems to be considerable force in the submission of Mr. Ramaswami and there is absolutely no force in the submission of Mr. Dharap.

11. Section 9A in so far as it is material reads as under:

No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:...

12. The fourth schedule under the heading, "Conditions of Service for change of which notice is to be given", provides as many as eleven items. The items which are material for our purpose are items Nos. 1, 4 and 5, and they are to this effect:

1. Wages including the period and mode of payment;

4. Hours of work and rest intervals; and

5. Leave with wages and holidays;

13. The question which we have to consider is as to whether in the instant case, the notice of change which was admittedly given on May 9, 1970 changing the number of working days with wages from six days to five days in a week and providing for grant of unpaid leave for one day is covered by the change in the conditions of service mentioned in any one of the above three items in the fourth schedule. The interpretation of the items in the schedule cannot be made in the abstract by having recourse to the dictionary. For arriving at a true and correct interpretation of the items mentioned in the schedule, one has to bear in mind the scheme of the Industrial Disputes Act, 1947.

14. Section 7A(1) of the Act provides inter alia, that the appropriate Government may, by notification in the Official Gazette constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the second schedule or the third schedule. It is enough to state that so far as the second schedule is concerned, the same deals with six items under the heading, "matters within the jurisdiction of Labour Courts", and

Mem No. 4 deals with "withdrawal of any customary concession or privilege". It may be mentioned that item No. 8 in the fourth schedule is an identical item inasmuch as it deals with, "withdrawal of any customary concession or privilege or change in usage". So far as the third schedule is concerned there are eleven items mentioned therein under the heading, "matters within the jurisdiction of Industrial Tribunals". The first item viz. "wages, including the period and mode of payment", is identical with item No. 1 in the fourth schedule. Item No. 2 in the third schedule viz. "compensatory and other allowances", is identical with item No. 3 in the fourth schedule. The item No. 4, "leave with wages and holidays", is identical with item No. 5 in the fourth schedule. While giving, therefore, the true and correct meaning to the items Nos. 1, 4 and 5 in the fourth schedule we must, having regard to the rule of construction, bear in mind that since identical items occur in the third schedule as well, these items wherever they occur in the second, third or the fourth schedule must bear the selfsame meaning both in their width and scope. It would at once appear reading Section 7A that in respect of industrial disputes relating to the matters specified in second and third schedules, the Legislature intended that the Industrial Tribunal alone should be the exclusive tribunal to adjudicate upon these industrial disputes. Again by the very nature, the items which are mentioned must be given the widest meaning and they must be very liberally construed inasmuch as the whole scheme of the Act is to deal with the industrial disputes which are by their very nature of an extremely complex nature. Any narrow interpretation or recourse to dictionary meaning would defeat the very purpose of the Act. Any such narrow interpretation is likely to set at naught the exclusive tribunals which have to be established for the adjudication of disputes under the Industrial Disputes Act. The very object of Section 9A is to provide for the several contingencies which may occur either in a particular unit of industry or industries as a class. For reasons beyond the control of either the employer or the employee occasion may arise when it is necessary to change the conditions of service of the workmen. It may be that in a given situation where the need of the hour is to increase the production at a fast rate, the workers may be required to forego their holidays or as in the present case, it may be a case that because of the slump in the business and the glut of accumulated manufactured products for want of market the industry could not afford to go on with its production with the usual force. It is to meet such diverse situations that the Legislature introduced Section 9A which provides inter alia, that an employer who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the fourth schedule, should give a notice of that intended change in the prescribed manner to the workmen. The idea underlying obviously is that the employer and the workmen should meet together and ,the employer must try to convince the employees with facts and figures as to why the change to the detriment of the workers was called for and how and where it is justified by the circumstances of the case. In other words the idea underlying Section 9A is that both the employer and the employee must meet together and see how they could jointly and collectively and harmoniously face a given situation. In other

words the idea is that the situation must be met both by the employer and the employees harmoniously and collectively with a sense of responsibility and both of them must have a conscious feeling about their responsibility in the larger interest of the society. If that be the object and intention of Section 9A, requiring a notice of change, it would at once appear that the items in the fourth schedule must be given a very liberal meaning. If that is done, it would appear that in the instant case, since it could not be disputed that the change has in fact very much adversely affected the wages of the workers inasmuch as the sixth working day with wages has been converted into a day of leave without wages, the wages of the workmen have been immediately adversely affected and, therefore, item No. 1 dealing with wages including the period and mode of payment are immediately attracted. It is actually because the wages were withheld and which the workmen thought were unlawfully withheld or deducted that they rushed to the authority under the Payment of Wages Act. Thus the moment the wages of the workmen were adversely affected by this change, item No. 1 of the fourth schedule was, in our opinion, immediately attracted.

15. We are also of the view that since the hours of work of the workmen which were forty-eight hours with six working days were reduced to forty hours in view of five days working week, item No. 4 was also attracted as the hours of work and rest intervals were also affected. So also, item No. 5 which deals with leave with wages and holidays is also wide enough to take in a case of leave without wages. In the instant case undoubtedly by the notice of change given u/s 9A, the sixth working day with wages has been changed to a day of leave without wages. We cannot agree with the learned authority under the Payment of Wages Act when it said that it is not permissible to read the item, leave with wages and holidays as covering the cases of leave without wages also. By doing so, the learned authority has interpreted the item disregarding the context and disregarding the scheme of the Act and by having recourse only to the grammatical meaning. Actually as we have stated since some of these items are common to third schedule also, to accept the interpretation adopted by the authority under the Payment of Wages Act and supported by Mr. Dharap would not be ultimately in the interest of the workers as well. After all here we are concerned with the industry, its growth and smooth function and that is possible only with the co-operation of both the employer and the employee. Having regard to that fact as we have pointed out, the proper interpretation to be put on these items is a wider and liberal interpretation and not a narrow interpretation. In any view of the matter, we are of the view that the instant change in the case is covered by item No. 1 and also by item Nos. 4 and 5 of the fourth schedule.

16. In the view we are taking about the interpretation of Section 9A and the fourth schedule we are fortified by the decision of the Supreme Court in the case of Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others, In para 15, the Supreme Court has observed as under (p. 1923) :

In our opinion, in order to effectively achieve the object underlying Section 9-A,

it would be more appropriate to place on the Fourth Schedule read with Section 9-A a construction liberal enough to include change of weekly rest days from Sunday to some other week day.

17. In that case Sunday was a weekly rest day. The employer changed it to some other day of rest without giving notice of change as required by Section 9A of the Act. That gave rise to cross complaints of lock out and illegal strike. The Supreme Court took the view that the entries dealing with "hours of work and rest intervals" and "leave with wages and holidays" are wide enough to cover the case of illegal strikes and rest days and that entry No. 8 dealing with, "withdrawal of any customary concession or privilege or change in usage" is also wide enough to take within its hold the change of weekly holiday from Sunday to some other day in the week.

18. We are therefore of the view that on a true and correct interpretation of Section 9A read with the fourth schedule, it must be held that the notice of change given in the instant case was fully covered by item Nos. 1, 4 and 5 of the fourth schedule and, therefore, it became perfectly effective. Therefore, the learned authority under the Payment of Wages Act was not right in the view it took. That being the position it would follow that it had no jurisdiction to deal with the matter.

19. The petition must, therefore, succeed. But, however, as we pointed out at the outset after dealing with the question of correct law, which is applicable to the facts of the case, we do not propose to direct the respondents to refund the small amounts" which they have received from the petitioner inasmuch as Mr. Ramaswami admitted at the outset that he is not interested in recovering that amount and that he is only interested that this Court should lay down the law on the point. We might also mention that it is perfectly open to the other workmen to approach the Government for making a reference inasmuch as merely by reason of the fact that the reference was once rejected, the power of the Government to make reference could not be said to have been exhausted.

20. Rule made absolute to the extent indicated but the petitioner is not to recover the monies from the respondents. No order as to costs.