

(1986) 11 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 1782, 1785, 1850, 1851, 1855 and 4090 of 1981

Gopalakrishnan Nair and Others

APPELLANT

Vs

Kerala State Electricity Board and Others

RESPONDENT

Date of Decision : 18-11-1986

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
Industrial Disputes Act, 1947 — Section 10, 11, 11(3), 17, 18
Kottayam Electric Supply Agency (Undertaking) Acquisition Act, 1980 — Section 11, 11(1), 3, 5

Citation : (1986) 11 KL CK 0007

Hon'ble Judges : V.S. Malimath, C.J; Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : T.K.M. Unnithan and M. RaghavaKurup, for the Appellant; M.V. Sukumaran Nair and Kurten Joseph, for the Respondent

Judgement

1. The Judgment of the Court was delivered by Bhaskaran Nambiar, J.-An electrical undertaking, the Kottayam Electric Supply Agency, licensed under the Electricity (Supply) Act, 1948 for the supply of electric energy within the Kottayam Municipal area, stood statutorily transferred to and vested in the State Government under the provisions of the Kottayam Electric Supply Agency (Undertaking) Acquisition Act, 1980, for short, the Act, with effect from 13th February 1980. Section 5 of the Act empowered the Government to transfer the undertaking vested in them u/s 3 to the Kerala State Electricity Board, (hereinafter referred to as the Board) and the Government transferred the undertaking to the Board with effect from 15th February 1980. The Petitioners in these writ petitions were existing employees of the undertaking and their services also stood transferred to the Board under the Act. They are, therefore, now employees of the Board.

2. Long before the date of vesting in 1980, as early as 16th September 1976, there was a settlement under the Industrial Disputes Act and the Petitioners and the other employees were bound by the terms of that settlement. This

settlement related to service conditions and pay scale, placement of the staff in the several categories and their designations, discipline, conduct, pension, provident fund etc. According to the Petitioners therefore, they are entitled to hold office under the Board "on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters, as could be admissible to them if the undertaking has not been transferred to and vested in the Government".

3. The retirement clause in the 1976 settlement deed provided thus:

Retirement.-Normal retirement age shall be fifty eight. But in deserving cases extension may be granted at the option of the management. At the time of retirement each employee is entitled for to a gratuity which will be equal to fifteen days salary per year subject to a maximum of fifteen months. Salary for this purpose will mean the total average of emoluments drawn during twelve months previous to retirement.

An employee has the right to retire voluntarily from the service, in case he has completed 25 years service, or attained the age 55, but should give two months notice of his intention to do so. This is not considered as resignation, and he will be paid the gratuity as specified in the preceding paragraph, and all other amounts if any standing to his credit.

If the retirement happens before 25 years of service but on attaining the age of 58 he will be entitled to get gratuity as above.

4. The Board, however, passed an order, B.O. No. PSI-887/80, dated 18th March 1981 in which it was stated thus:

The employees of the former Kottayam Licensee who are appointed to the Board's service with effect from 15th February 1980 will retire on attaining the age of 55 years. If any employee happened to work beyond the age of 55 years, then he should not be allowed to continue in the Board's service any longer. He will be retired from he Board's service with effect from the date of attaining the age of 55 years. However, the period of employment after attaining the age of 55 years will be treated as re-employment after retirement.

5. This was followed by Anr. order, B.O. No. PSI- 887/80, dated 18th March 1981 in which it was directed thus:

In exercise of the powers conferred upon the Board by virtue of the provisions contained u/s 11 of the Act read above and in exercise of all other powers enabling it to do so, the Board hereby orders that the services of the following former employees of the Kottayam Electric Supply Agency, whose names and particulars are given in the statement appended shall stand terminated with effect from the F.N. of 15th February 1980, since they had already attained the age of superannuation (55 years) prescribed for the employees of comparable categories under the K.S E. Board by that date. They shall be entitled to all retirement benefits like retrenchment compensation, gratuity, Contributory

Provident Fund etc. to which they should have been entitling to, had they retired, while under the services of the former Kottayam Licensee. The above retirement benefits payable by the former Kottayam Licensee in respect of the period during which the employees mentioned in the list had served under the licensee shall be paid by the Board and recovered from the licensee as a liability of the Licensee towards its employees.

However, the period during which they happened to work under the K.S.E. Board from 15th February 1930 shall be treated as re-employment after retirement. During the period of re-employment they shall continue to get the same salary and allowances that they were drawing immediately before 15th February 1980. Besides, no retirement benefits shall be payable by the Board in respect of the period of re-employment after 15th February 1980 i.e. after retirement. The re-employment after retirement will stand terminated w'th effect from 31st March 1981.

6. Thus, the service of the 3rd Petitioner in O.P. No. 1785 of 1981 and all the Petitioners in O.P. No. 1851 of 1981 stood terminated on 15th February 1980 as they had already attained the age of 55 years, They were thus retrospectively retired from the date when the undertaking vested in the Board and their service till 18th March 1981 was treated as re-employment after retirement. The Petitioners, therefore, challenge these two orders and claim consequential reliefs.

7. The Petitioners contend that they are entitled to continue till they attain the age of 58 years and that the Board has no jurisdiction to alter unilaterally the terms and conditions of their service. They further contend that their placement in any particular category is also safeguarded under the 1976 settlement and thus there can be no variation of any of the terms of the conditions of service incorporated in the earlier settlement except by fresh settlement or by recourse to the remedies available under the Industrial Disputes Act.

8. The Board resists the claim by stating that the orders have been issued by the Board, that the Board has power to alter the conditions of service of its employees or terminate the services of the erstwhile employees of the undertaking taken over by the Board, as specifically provided for, in the Act itself, and what the Board has done is only to apply uniformly the condition of service applicable to all the employees of the Board. The Board thus does not make any discrimination between its employees and the employees of the old undertaking.

9. To appreciate the contentions, it is, therefore, necessary to refer to the relevant statutory provisions in the Act.

10. Section 11 of the Act relating to transfer of services of existing employees reads thus:

Transfer of service of existing employees.-(1) Every whole time officer or other employee who was immediately before the appointed day, employed in connection with the undertaking shall, on the appointed day, become an officer

or employee as the case may be, of the Government of the Board and shall hold his office by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the undertaking had not been transferred to and vested in the Government or the Board, as the case may be, and shall continue to do so unless and until his employment under the Government or the Board as the case may be, is duly terminated or until his remuneration or terms and conditions of service are duly altered by the Government or the Board, as the case may be.

(2) If any question arises as to whether any person was a whole time officer or other employee in or in connection with the undertaking immediately before the appointed day, the question shall be referred, within a period of one year from the appointed day, to the Government and the Government shall, after giving a reasonable opportunity of being heard to the person concerned in the matter, decide it in such manner as they think fit and such decision shall be final.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other employee employed in or in connection with the undertaking to the Government or the Board, shall not entitle such employee to any compensation under that act or any other law for the time being in force and no such claim shall be entertained by any Court, tribunal or other authority.

It is thus clear that the employees, employed in connection with the undertaking prior to 13th March 1980 shall continue to hold office under the board on the same terms and conditions of service applicable to them as if the undertaking had not been transferred till-

(a) their services are duly terminated, or

(b) the terms and conditions of service are duly altered by the Board.

11. The short question, therefore, is whether under the impugned orders, the Board has duly terminated or duly altered the service condition of the Petitioners. It is the significance of the qualifying word "duly" that should provide the clue and the decision the Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, furnishes the answer.

12. In Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , the interpretation of Section 11 of the Life Insurance Corporation Act, 1956 arose for consideration. Section 11(1), alone relevant for our purpose, reads thus:

Every whole time employee of an insurer whose controlled business has been transferred to and vested in the Corporation and who was employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day shall, on and from the appointed day, become an employee of the Corporation, and shall hold his office therein by the same

tenure, the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same on the appointed day if this Act had not been passed, and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms and conditions are duly altered by the Corporation:

Provided that nothing contained in this sub-section shall apply to any such employee who has, by notice in writing given to the Centra] Government prior to the appointed day, intimated his intention of not becoming an employee of the Corporation.

Justice Pathak expressed thus:

Our attention has been drawn to Section 11(1), Corporation Act which empowers the Corporation to duly alter the terms and conditions of service of transferred employees. In construing the scope of the Corporation's powers in that behalf, it seems to me that appropriate importance should be attached to the qualifying word "duly" When the Corporation seeks to alter the terms and conditions of transferred employees, it must do so in accordance with law, and that requires it to pay proper regard to the sanctity of rights acquired by the cworkmen" employees under settlements or awards made under the Industrial Disputes Act.

13. The dissenting judgment of Justice Koshal, also agrees with Justice Pathak on this question when it is observed thus:

Now the word "duly" means properly, regularly or in due manner. In the context in which it is used it may legitimately be given even a more restricted meaning, namely, in accordance with law.

14. Thus, u/s 11 of the Act, the services of the "existing employees" of the undertaking absorbed in the Board from 15th February 1980 can be terminated and their service conditions altered by the Board only in accordance with law.

15. The Petitioners were "workmen" as defined in the Industrial Disputes Act when they were employed in the Kottayam electricity undertaking. A settlement was reached under that Act between the management and the employees as early as 1976. The terms of that settlement governed their conditions of service. These conditions of service are preserved for them u/s 11 of the Act. If therefore, these conditions of service have to be altered, the settlement arrived at under the Industrial Disputes Act has to be changed. The settlement arrived at under the Industrial Disputes Act can be changed only by a contract or settlement of an award, made in a reference u/s 10 of the Industrial Disputes Act. A settlement under the Industrial Disputes Act cannot be unilaterally changed by the management and no such power has been conferred on the Board by the present Act. The decision of the Board, therefore, to reduce the retirement age from 58 to 55 varies the 1976 settlement unilaterally and therefore it was not in accordance with law. Their services were not duly

terminated and the direction in the orders of the board retiring the 3rd Petitioner in O.P. 1785 of 1981 and all the Petitioners in O.P. No. 1851 of 1981 was therefore illegal.

16. This principle we have stated above, follows the decisions of the Supreme Court, for, in the very Life Insurance Corporation of India Vs. D.J. Bahadur and Others, relied on earlier, Krishna Iyer, J., also speaking for the majority, spoke thus:

The core question that first falls for consideration is as to whether the settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given u/s 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the notice of termination u/s 19(2) or 19(6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony.

It is obvious from Section 18 that a settlement, like an award, is also binding. What I emphasise is that an award, adjudicatory or arbitral, and a settlement during conciliation or by agreement shall be binding because of statutory sanction. Section 19 relates to the period of operation of settlements and awards and here also it is clear that both settlements and awards, as is evident from a reading of Section 19(2) and 19(6), stand on the same footing.

The award or settlement under the ID Act replaces the earlier contract of service and is given plenary effect as between the parties. It is not a case of the earlier contract being kept under suspended animation but suffering supersession. Once the earlier contract is extinguished and fresh conditions of service are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expire, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until a new agreement by way of settlement or statutory contract by the force of an award takes its place.

17. The Board did not have power to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the

fourth schedule of the I.D. Act unless the conditions prescribed in Section 9-A of that Act are satisfied.

18. Section 9-A of the Industrial Disputes Act reads thus:

9 A Notice of change.-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 giving such notice:

Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any settlement or award or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Service. (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official gazette, apply.

19. The Fourth Schedule includes, wages (including the period and mode of payment), classification by grades etc. There is no dispute that conditions prescribed u/s 9A were not satisfied when the impugned orders were issued by the Board. To the extent, these orders relate to the matters specified in the Fourth Schedule of the Industrial Disputes Act, they violate Section 9A of the Industrial Disputes Act also and are, therefore, not in accordance with law. The permissive provision of the latter part Section 11 of the Act can be invoked only if the conditions of service are "duly altered" and, when those conditions are varied, without compliance with the conditions specified in Section 9A of the Industrial Disputes Act, the alteration is not in accordance with law and has no statutory validity.

20. The only ground on which the Board can, therefore, sustain the orders is to contend, as they have done, that the Act overrides the Industrial Disputes Act. Strong reliance is placed on Section 17 of the Act which reads thus:

17. Effect of other laws.-(1) No provision of the Electricity Act, the Electricity Supply Act, or any other act for the time being in force or any rule made under any of those Acts or any instrument including licence having effect by virtue of any of those Acts or any rule made thereunder, shall, in so far as it is inconsistent with any of the provisions of this Act have any effect.

* * * * *

21. The Act overrides only those Acts in so far as they are inconsistent with the

provisions of this Act. Section 11 does not make any provision inconsistent with the Industrial Disputes Act. Thus Section 17 cannot be invoked to exclude the provisions of the Industrial Disputes Act in their application to the employees of the Board who were at one time employees of the Kottayam electric undertaking. This is sufficient to reject the contention of the Board. There is no dispute that the Board is an industry. The Petitioners, as employees of the Board, are workmen as defined under that Act. There can be no dispute on this aspect also. The Petitioners were workmen governed by the Industrial Disputes Act before they were transferred to the Board. If so, strong reasons and clear provisions alone can, if at all, exclude the beneficial provisions of the Industrial Disputes Act to one section of workmen in the same industry. There is no reason, therefore, to deny to the Petitioners the benefit of the Industrial Disputes Act or the general principles applicable to workmen under the industrial law.

22. When the Act intended to exclude the provisions of the Industrial Disputes Act, it has expressly done so, as would be clear from Section 11(3) itself extracted earlier. That provision excludes the liability of the transferor undertaking from payment of any compensation under the Industrial Disputes Act consequent on the taking over of the undertaking by the Government or the Board. Section 17 does not, advisedly mention specifically the Industrial Disputes Act while Section 11(3) expressly does so. The different phraseology is thus significant.

23. We have, therefore, no hesitation to conclude that the Petitioners were governed by the Industrial Disputes Act before their services were taken over by the Board and continued to be governed by the same provisions even after they became employees of the Board. When, therefore, their services are terminated or their conditions of service are altered without regard to the provisions of the Industrial Disputes Act or the settlement of 1976, the action is opposed to Section 11 of the Kottayam Electric Supply Agency (Undertaking) Acquisition Act. The Petitioners have thus been subjected to hostile discrimination and the orders are violative of Article 14 of the Constitution. The Board is "State" within the meaning of Article 12 of the Constitution and as its action can be challenged under Article 226 when there is a violation of a fundamental right, the impugned orders can be successfully assailed as violating Article 14.

24. In the result, the orders of the Kerala State Electricity Board, B.O. No. PSI-887/80, dated 18th March 1981 (Exts. P-2 and P-3), in O.P. No. 1785 of 1981, are quashed and it is declared that the third Petitioner in O.P. No. 1785 of 1981 and all the three Petitioners in O.P. No. 1851 of 1981 were entitled to serve the Board till they attained the age of 58 years and the termination of their services with effect from 15th February 1980 is illegal and contrary to Section 11 of the Kottayam Electric Supply Agency (Undertaking) Acquisition Act. It is also declared that all the other Petitioners in these writ petitions are entitled to continue with effect from 15th February 1980 under the same terms and conditions of service as per the settlement effected between the Kottayam

Electric Supply Agency and its employees on 16th September 1976, till those terms are altered by a fresh settlement or award under the Industrial Disputes Act.

The Original Petitions are disposed of as above. No costs.