

(1987) 09 BOM CK 0077
In the Bombay High Court
Case No : Writ Petition No. 315 of 1983

India Security Press Mazdoor Sangh

APPELLANT

Vs

Currency Note Press and Others

RESPONDENT

Date of Decision : 07-09-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (1993) 3 LLJ 58

Hon'ble Judges : V.V. Vaze, J;P.B. Sawant, J

Bench : Division Bench

Advocate : C.S. Kalsekar, for the Appellant; S.G. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Sawant, J.—The question that falls to be considered in the present petition is whether the change effected in the hours of work is illegal.

2. The Petitioners are a trade union representing the workmen in the 1st Respondent-Currency Note Press, and the 2nd Respondent-India Security Press. The Respondents-Presses on 10th Jan. and 29th Jan. 1983, respectively, gave notices of change u/s 9A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act") reducing the number of weekly hours of work from 66 to 54. This necessitated a change in the hours of day and night shifts. The current and proposed working hours in the day and night shifts were as follows:

"CURRENT WORKING HOURS PROPOSED WORKING HOURS

Day Shift Night Shift Day Shift Night Shift

7.00 A.M. To 12.00 Noon & 6.45 P.M. To 11.45 P.M. & 7.00 A.M. To 12.00 Noon & 4.45 P.M. To 9.45 P.M.

1.00 P.M. To 7.00 P.M. 12.45 P.M. To 6.45 P.M. 1.00 P.M. To 5.00 P.M. 10.45 P.M. To 2.45 A.M.

(Recess 12.00 Noon To 1.00 P.M.) (Recess 11.45 P.M. To 12.45 A.M.) (Recess 12.00 Noon To 1.00 P.M.) (Recess 9.45 P.M. To 10.45 P.M.)

3. Aggrieved by the change the Petitioners have approached this Court by the 2 present petition filed under Articles 226 and 227 of the Constitution.

4. The contention raised on behalf of the Petitioners is that the current working 3 hours had become their condition of service by custom or usage of over 10 years and that privilege cannot be taken away by a mere notice of change u/s 9A of the Act. It can be done either by an 2 industrial award or a settlement between the parties and not otherwise. For this purpose, reliance was placed on the decision of a Division Bench of this Court reported in Haribhau Shinde v. F.H. Lala, 72 Bom. L.R. 192. We find no substance in this contention.

5. Admittedly, the current hours of work viz. 66 per week are in excess of the regular hours of work viz. 48 as laid down in the Factories Act. The Standing Orders also lay down the said maximum regular hours of work. The current hours are further not settled either by any settlement between the parties or by an award of a Court or Tribunal. They are prescribed or ordained by the respondents. It is, further, not disputed that these hours include hours of overtime work. The workers get enhanced salary for putting in the overtime work. The current shifts are therefore so arranged as to include not only the regular hours of work but also the overtime hours of work. It is well settled that no workman has a right to overtime work, which is necessitated by the exigencies to be determined solely by the employer. Merely because for a length of time of whatever duration, the shifts were so arranged as to include also the overtime hours of work that would not confer on the workman a right to overtime work. Just as the employer initiates overtime work, he has a right to withdraw it unilaterally. In fact, in the circumstances, there was not even a need for a notice of change. The change in the present case would not be covered either by items 4, 6 or 8 of the Fourth Schedule of the Act on which reliance is placed on behalf of the petitioners. Item 4 speaks of "hours of work" and "rest intervals". It is undisputed that the proposed working hours do not impinge on rest intervals. As far as "hours of work" are concerned, the item refers to the maximum regular hours of work as settled either under an award or settlement or prescribed by the statute. If, for example in the present case, such regular hours or work were sought to be increased, it would have required a notice of change u/s 9A. Admittedly that is not the case. The change is sought to be effected in the overtime hours of work and that too in their excess from 18 to 6. Item 6 speaks of starting, alteration or discontinuance of shift-working otherwise than in accordance with standing orders. It is admitted before us that there are no standing orders on the subject. Therefore, that item is clearly not attracted in the present case. So far as item 8 is concerned viz., withdrawals of any customary concession or privilege or change in usage, we are of the view that overtime work by its very nature cannot be covered by the said item. It cannot be called either a customary concession or a privilege or usage. It is dictated by

the exigencies of work which are variable from time to time. Hence no notice u/s 9A was necessary in the recent case. However, probably to be on the safe side, the Respondents had given the notices of change and there is no dispute that it is only after the expiry of the period of the said notices that the changes were effected. We are therefore unable to see any illegality in the Respondent's action.

6. The reliance placed by the Petitioners on the decision of this Court in Haribhau Shinde v. F.A. Lala 72 Bom.L.R. 192 (supra) is misplaced. What the said decision states is that if a condition of service has been prescribed either by an award or a settlement, the employer cannot change it by giving a notice u/s 9A of the Act. It can be changed only by another award or settlement. Since it is admitted in the present case that the current hours of work were not settled by any award or settlement, we do not see how the decision helps the Petitioners.

7. There was no other contention raised. The petition, therefore, fails and is dismissed. The rule is discharged. In the circumstances of the case, there will be no order as to costs.