

(1985) 08 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No's. 17583, 17715 and 20248 to 20251 of 1984 and 2090 of 1985

International Instruments Ltd. and Others

APPELLANT

Vs

Labour Officer and Others

RESPONDENT

Date of Decision : 22-08-1985

Acts Referred:

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

Karnataka Industrial Establishments (National and Festival Holidays) Rules, 1964 —
Rule 6, 7

Citation : (1995) 3 LLJ 550

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Advocate : B.C. Prabhakar and Kasturi, for the Appellant; N. Devadas, G.P., Leelakrishna, G.S. Rao and V. Laxminarayana, for the Respondent

Final Decision : Allowed

Judgement

M. Rama Jois, J.—In this batch of writ petitions, presented by the managements of four industrial undertakings, the following common question of law arises for consideration:

"Whether the amendment made to Section 3 of the Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963, fixing the number of holidays other than three national holidays at six, instead of five and providing that First May shall be one or the said six holidays, empowers the Labour Officer to include First May as a holiday in addition to the holidays declared by the managements even if the number of holidays already declared by them was more than nine?"

2. The facts of the case, in brief, are as follows:

(i) W.P. No. 1771/1984: The petitioner in this petition is the management of International Instruments Limited. Clause 20 of the agreement entered into

between the management and its workmen fixed the holidays for the industry. It reads:

"National/Festival Holidays will be increased from 11 to 12 days a year effective from 1st January, 1980."

Section 3 of the Act, which was in force as in 1980, reads:

"3. Grant of National and Festival Holidays:- Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, 15th August, and the 2nd October, 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."

In view of Section 3, it was obligatory for the petitioners to give to its workmen three national holidays specified in the section and at least five other holidays. Thus, the maximum number of holidays which the petitioner was under law obliged to give were eight holidays.

The Rules framed under the Act make it obligatory for the industrial establishments to file the statement of holiday in terms of the Act and have it approved by the Labour Officer and display it in a conspicuous place in the establishment concerned.

Rule 4 requires every establishment to submit to the Labour Officer a statement of holidays before the end of November of the year. Rule 5 provides for consultation by the Inspector with the employees. Rule 6 provides that the employees may prefer objections or make suggestions regarding the holidays. Rule 7 empowers and requires the Labour Officer to approve the list with or without alteration. Rule 8 requires the displaying of the approved list of holidays in a conspicuous place in the concerned establishment. Rule 7 of the Rules reads:

"7. Approval of Inspector:- Where objections or suggestions about the festival Holidays proposed 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 the workmen, as the case may be, within five days of the approval of the list."

In accordance with the above rule read with Section 3 of the Act, list of 12 holidays including 3 national holidays had been submitted by the management and has been approved by the Labour Officer for the year 1984. On 30th April, 1984, an Ordinance was promulgated amending Section 3 of the Act. By the said amendment, for the word "five" in Section 3, the word "six" was substituted and, further a proviso was added which reads:

"Provided that First May shall be one of the said six other holidays."

In view of the aforesaid amendment, there could be no doubt that every industrial management to which the Act applied was in law bound to declare three national holidays and also to give six other holidays with a further condition that one of the six holidays must be First May of the year. In the circumstances, an application was made before the Labour Officer to amend the list of holidays for 1984 so as to bring it in conformity with the amended Section 3 of the Act. In other words, the request of the management before the Labour Officer was that in view of the proviso to Section 3, First May should be substituted for some other holiday. The Labour Officer, by his order dated 29th September, 1984, held that in view of amendment to Section 3, the workmen were entitled to one additional holiday, and, therefore, he made an order including, First May as a holiday, but without substituting it for any other holiday. As a result, though, according to the settlement, the management had agreed to give only 12 holidays, the management were compelled to give 13 holidays. Aggrieved by the said order, the petitioner has presented this petition.

(ii) The petitioner in W.P. No. 17583/ 1984 is the management of N.G.E.F. In the case of N.G.E.F. also according to the agreement in force, the total number of holidays for a year including the three national holidays were 12. After the promulgation of the Ordinance as aforesaid, the management moved the Labour Officer u/s 3 read with Rule 7 to include First May, 1984, as one of the holidays in substitution of any other holiday. But the Labour Officer by his order dated 6th Sept., 1984 (Annexure-A), included First May as one more paid festival holiday and refused to delete another holiday in lieu thereof. Aggrieved by the said order, the management of N.G.E.F. has presented this petition.

(iii) W.P. No. 2090/1985 is by the management of Kempsons Foundry. The said factory was a private industrial establishment. It was subsequently taken over by the N.G.E.F., but maintained as a separate unit. In respect of the said industry, the number of holidays which it was required to give to its workmen including three national holidays were 11 and the list of holidays was approved by the Labour Officer under Rule 7 for the year 1984 before the amendment, of Section 3. After Section 3 was amended, the management moved the Labour Officer to include First May, 1984 as one of the holidays in substitution of some other holiday already included in the list. The Labour Officer by his order dated 26th October, 1984, (Annexure-A), directed the inclusion of First May, 1984, as a holiday in addition to 11 holidays already included in the list taking the view that having regard to the amendment of the Act, it was obligatory for the management to give one more holiday and could not substitute it for a holiday which is already included in the list.

(iv) W.Ps. Nos. 20248 to 20251 of 1984 are by the management of Binny Limited. Under this management there are three units in respect of which number of holidays fixed were separate. For the head office, the number of national and festival holidays including the three national holidays were 18; in

respect of the Mills, it was 11 and in respect of the showrooms at M.G. Road and N.R. Road, the number was 16. In this case also the management after the promulgation of the Ordinance, approached the Labour Officer for including First May as one of the holidays in the list of approved holidays in substitution of any other holiday. In this case also, the Labour Officer, directed the inclusion of First May, 1984, as an additional holiday and refused to substitute it for any other holiday. Aggrieved by the said order, the management has presented these three petitions.

3. A preliminary objection was raised on behalf of the workmen and the Labour Officer to the effect that as the calendar year 1984 had already expired and the workmen have already enjoyed the extra holiday in terms of the order of the Labour Officer, the cause of action does not survive and, therefore, the writ petitions should be dismissed.

4. In reply to the above objection, learned counsel for the petitioners submitted as follows:

"The orders of the Labour Officer were illegal. If the orders are held to be illegal, the management would be entitled to recover a day's wages from the working. Further, the Ordinance has been subsequently replaced by an Act called Industrial Establishments (National and Festival Holidays) (Amendment) Act, 1985. It has come into force on 24th April, 1985. The amendment is similar to the Ordinance. In view of provisions of the Act the petitioners have moved the Labour Officer for substituting First May, 1985, as a holiday in substitution of any other holiday included in the list 1985 and the said matters are pending before the Labour Officer. Therefore, the question of law which arises for consideration is again the same in the matter pending before the Labour Officer and, therefore, it is a live issue which requires to be decided by this Court".

5. In my Opinion, the petitioners are right in their submission. If the contention of the petitioners is upheld, the orders of the Labour Officer have to be set aside as having been made without authority of law. Whether, as a consequence, the management should or should not be permitted to deduct a day's wages is a different issue, but it cannot be said that as the year 1984 was over, the petitions have become infructuous. As pointed out by the petitioners, the issue has to be decided on the matter for the year 1985 is again before the Labour Officer. Therefore, I reject the preliminary objection and proceed to consider the case on merits.

6. The plea of the petitioners may be summarised as follows: u/s 3 as it stood before its amendment, the management of every industry was required to give three national holidays and five other holidays. In the case of every, one of the petitioners, they had given more number of holidays than required to be given u/s 3. Two changes are brought about by the amendment. They are:

(i) The minimum number of holidays other than three national holidays must be six instead of five.

(ii) Out of the six other holidays, First May of the year must be one of the holidays.

In view of the amendment, if any management was giving only 3+5, i.e., 8 holidays, such managements were required to make it 3+6, i.e., 9 holidays, and one of the six holidays should be First May of the year. In respect of such industries the effect of amendment is certainly increase of one holiday. But, in respect of industries which were giving 9 or more holidays, there is no obligation on the part of the managements to increase the holidays from 9 to 10 or 10 to 11 or 11 to 12 or 12 to 13 and so on. The effect of the amendment was that in addition to three national holidays, there must be six holidays and out of the six holidays, First May must be one of them. If in respect of an industrial establishment the number of holidays fixed were the three national holidays and six or more other holidays and the list of holidays had been approved, it would be in conformity with the main clause of Section 3 even after its amendment. However, it becomes inconsistent with the proviso.

7. In order to give effect to the proviso, the only power and also a duty on the part of the Labour Officer was to ensure that one of the other holidays must be First May and for this purpose he had no other alternative than to delete some other holiday in consultation with the workmen. If the workmen agreed for deletion of any specific holiday that should have been deleted and if the workmen did not agree, the Labour Officer had to, at his discretion, delete one of the other holidays. He had no power to increase the number of holidays by one.

8. As against this, the plea of the workmen is as follows: In introducing the amendment, the Legislative intention was to give one more holiday to the workmen as is evident from the amendment of the figure "5" into "6" in the main part of Section 3. According to the proviso, that additional holiday must be given on First May of the year. Section 11 of the Act expressly saves the holidays which the workmen were already enjoying before the amendment by the Ordinance or the Act, as the case may be, and, therefore, the order made by the Labour Officer was in conformity with law.

9. Having regard to the rival contentions, in the first instance, it is necessary to understand the scope of Sections 3 and 11 of the Act and Rule 7 of the rules framed under the Act. Section 3 and Rule 7 are extracted earlier. Section 11 of the Act reads:

"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."

The scope of these provisions was considered by this Court in *N.G.E.F. v. Labour Officer* (1976) 49 FJR 245. In the above decision, this Court held as follows:

(i) Section 11 only saves the number of holidays which the workmen enjoyed on the date of commencement of the Act;

(ii) The Labour Officer who is authorised under Rule 7 to approve the list of holidays had no adjudicatory power. His power was limited to ensure that the list of holidays conforms to Section 3 and nothing more.

It is not the case of the workmen that on the date of commencement of the Act, they enjoyed more number of holidays than provided in Section 3. Hence Section 11 had no application to this case at all. Learned counsel for the workmen, however, contended that Section 11 also applied to the number of holidays enjoyed by the workmen on the date of amending the Ordinance/amending Act. This contention has been specifically negated in the above judgment and I am entirely in agreement with the said view. The language of the section is clear and unambiguous and gives no room for such construction. Therefore, I reject this contention of the workmen.

10. Now, the second aspect for consideration is: Whether in directing that First May should be included as a holiday in addition to the list of holidays, the Labour Officer was only ensuring compliance with the provisions of Section 3 as amended by the Ordinance or had exceeded his jurisdiction?

On the language of Section 3, as amended by the Ordinance/Act, the construction of Section 3 by the Labour Officer that it provided for increase of holidays even in respect of the establishments who had given the three national holidays and six or more other holidays is fallacious. The amended Section 3, as pointed out earlier, makes it obligatory that during every calendar year every employer should, in the list of holidays for the year;

(i) include three national holidays;

(ii) give at least six other holidays; and

(iii) ensure that one of the six other holidays is First May of the year.

Now, in respect of each of the petitioners, there is no dispute that three national holidays had been included in the list of holidays. Therefore, the first requirement was complied with. The second requirement was that in addition to the three national holidays, there must be not less than six holidays. That requirement was also complied with by each of the petitioners as the number of holidays other than national holidays fixed were admittedly nine or more than nine. Therefore, the only requirement which was required to be complied with after the commencement of the Ordinance/Act was that one of the holidays other than national holidays must be on First May. This only necessitated the inclusion of First May as one of the holidays and deletion of one holiday among other holidays unless the managements themselves voluntarily agreed to increase the holidays by one by the inclusion of First May in the list of holidays.

The point may be illustrated thus : If the amendment to Section 3 had come into

force prior to November, 1983, a management which according to the agreement in force was required to give 12 holidays including the three national holidays, could have and would have submitted a list of holidays to the Labour Officer including therein three national holidays and nine other holidays making First May as one of them. If so done, the Labour Officer had no other alternative than to approve the list. The position cannot be different just because the Ordinance was promulgated after the list was approved. Immediately after the amendment of Section 3, the Labour Officer himself ought to have taken action suo motu by sending circulars to all the industries in respect of which he had approved the list of holidays, to resubmit the same for effecting amendment to them so as to bring them in conformity with Section 3. In these cases, the petitioners themselves approached him for amending the list of holidays to make it in conformity with Section 3. The Labour Officer, however, instead of keeping himself within his power under the Act exceeded his power by proceeding to include First May in addition to the holidays already declared. This act of his is not in conformity with Section 3, but in transgression of the power conferred on him under the Act and Rule 7. What he could not do if the Ordinance had been promulgated before he approved the list, he could not do when he was approached by the petitioners for amending the list of holidays after the Ordinance was promulgated which was subsequent to the approval of the list of holidays. Therefore, I hold that the view taken by the Labour Officer that, in view of Section 3, one more holiday was required to be given though the number of holidays given by the management was already more than what is required u/s 3, is patently illegal and, therefore, his order increasing the number of holidays by one was without authority of law.

11. Learned counsel submitted that the very fact that the number of holidays was increased from five to six by amending the section gives the clearest indication that the legislative intention was to increase one holiday. The workmen are right only in respect of industries which were conforming to the prescribed minimum, namely 3+5 holidays. In respect of such industries, certainly there is an increase of one holiday. But, in respect of industries which were already giving 3+6 or more holidays, it is not so, for Section 3 only requires the giving of minimum number of holidays. If the number of holidays given was 3+6 or more, there is no compulsion to increase.

12. Learned counsel for the workmen submitted that when additional holiday was required to be given u/s 3 and the workmen already enjoyed the particular number of holidays, substitution of one holiday for another amounts to variation of conditions of service and this could not be done unless a notice required u/s 9A of the I.D. Act was given. This contention is also fallacious. The petitioners in each of the petitions had agreed to give more number of holidays than prescribed u/s 3 of the Act. Even after the amendment of Section 3, by raising the number of other holidays from 5 to 6, the number of holidays which the management had agreed to give was more than the minimum prescribed u/s 3. The only alteration brought about by the Act in respect of managements, which

were already giving six or more other holidays, was that one of such holidays must be first of May. Therefore, by the substitution of one of the holidays and including in its place first of May would constitute no alteration of conditions of service. Even if it is so, it is brought about by the Act of the Legislature and not by the act of the managements. Therefore, Section 9A of the I.D. Act is not attracted to this case. (See I.T.D.C. Employees' Union v. Hotel Ashok [1984] 64 FJR 194).

13. An additional argument was also addressed by Sri D. Lcelakrishna, learned counsel appearing on behalf of the workmen of the Binny Mills. Learned counsel submitted that as according to the certified standing orders of the Binny Mills, the holidays were required to be selected out of the list of 20 days specified therein and first May was not one of them, and that holiday was required to be given as an additional one, substitution of another holiday in lieu of first May, he maintained, would be in violation of the standing orders. Learned counsel for the petitioners submitted that list of holidays indicated in the certified standing orders was non est as holidays were not one of the conditions set out in the schedule to the standing orders. Even on the basis that the list of 20 days specified in the standing orders which did not include 1st May was a valid one, as the amendment to Section 3 of the Act is also intended to regulate the conditions of service of workmen, the first May should also be regarded as one of the holidays added to the list by the force of law. Therefore, the management had no other alternative than to select, in addition to the three national holidays, also the first May as a holiday. Consequently, the rest of the holidays alone could be selected out of the list included in the standing orders.

14. To sum up, my conclusions as to the effect, of the amendment of Section 3 of the Act are as follows:

(i) Increase of one holiday in respect of industries/establishments which were giving only five holidays other than three national holidays taking the total number of holidays from 3+5 to 3+6, i.e. from 8 to 9.

(ii) Creates no obligation on the management of industries/establishments who had already given six or more holidays other than three national holidays, to increase other holidays by one.

(iii) First of May should be one of the six or more other holidays.

15. In view of my conclusions as above, I hold that the petitioners are entitled to a declaration to the effect that Section 3, as amended, did not require the petitioners to increase the holidays by one, over and above the number of holidays which were in force and also for the setting aside of the impugned orders. The setting aside of the impugned order would entitle the management to recover one day's salary from the concerned workmen. But as the workmen have already enjoyed the holidays, I do not consider it expedient to give scope for any such action on the part of the management.

16. In the result, I make the following order:

(i) The writ petitions are allowed.

(ii) A declaration shall issue to the effect that u/s 3 as amended by the Karnataka Industrial Establishments (National and Festival Holidays) (Amendment) Ordinance, 1984, the petitioners were not required to increase the number of holidays by one day and that they were entitled to include first May as one of the holidays in the list of holidays in substitution of any other holiday.

(iii) The impugned orders of the Labour Officer in so far they increased one holiday over and above the number of holidays, which were in the approved list, are set aside subject to the condition that the petitioners shall not recover a day's wages from the workmen in respect of an additional holiday secured by them as a result of the impugned orders during the year 1984.

(iv) No costs.