
(1991) 07 BOM CK 0016

In the Bombay High Court

Case No : Appeal No. 832 of 1987 in Writ Petition No. 582 of 1986

May and Bakar Ltd.

APPELLANT

Vs

Shri Kishore Jaikrishandas Ichaporia and Others

RESPONDENT

Date of Decision : 01-07-1991

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10A, 2A(1)

Citation : (1991) 63 FLR 319 : (1994) 3 LLJ 237 : (1991) MhLj 1070

Hon'ble Judges : S.P. Bharucha, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : P.K. Rele and A.M. Vernekar, for the Appellant; Radha D'Souza, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Bharucha, J.—The 1st respondent was employed by the appellant. On 28th April 1983 he was issued with a charge-sheet which alleged that he had committed some misconduct. On the same day he was suspended from service. A domestic enquiry was held. On 19th July, 1984 the 1st respondent was discharged from service. The appellant paid to the 1st respondent suspension allowance for the period of the suspension on the basis of the provisions of the Certified Standing Orders applicable to the appellant's industrial establishment.

2. The 1st respondent filed an application before the Labour Court u/s 13-A of the Industrial Employment (Standing Orders) Act, 1946. Section 13-A empowers the Labour Court to decide questions relating to the application or interpretation of a Standing Order certified under the Act. It was the 1st respondent's contention that he was entitled to subsistence allowance under the provisions of the Model Standing Orders, as then amended, under the Bombay Industrial Employment (Standing Orders) Rules, 1959. It was contended on behalf of the appellant in reply that the subsistence allowance which the 1st respondent was entitled to was regulated by the Certified Standing Orders and in any event, by Section 10-A(1) of the Act. The Labour Court came to the conclusion that unless

the Model Standing orders had been incorporated in the Certified Standing Orders applicable to the Industrial Establishment of the appellant, the 1st respondent could not take the benefit of the same. The concerned provision of the Model Standing Orders did not override the provisions of the Certified Standing Orders unless the proper procedure had been followed. The Labour Court came to the conclusion that, in these circumstances, it had no jurisdiction to deal with the dispute that was raised and it dismissed the 1st respondent's application.

3. The 1st respondent filed the writ petition to impugn the order of the Labour Court. The learned single Judge was of the view that the concerned provision of the Model Standing Orders being more beneficial than the provisions of Section 10-A, the former would prevail. He expressed the view that the normal rule should be that a Model Standing Order should prevail over the Certified Standing Orders but felt it unnecessary to go into the question. By the order under appeal he held the 1st respondent to be entitled to the payment of subsistence allowance under the concerned provision of the Model Standing Orders.

4. The amendments carried out to the Act as applicable to the State of Maharashtra make it very different from the parent Act. It will, therefore, be convenient to refer only to the provisions of the Act as applicable to the State of Maharashtra.

5. The Act was enacted to define "with sufficient precision certain conditions of employment in industrial establishments in the State.....". Section 2 defines various terms used in the Act. Sub-section (1-A) defines "amendments" to mean "in relation to the Model Standing Orders, any amendments proposed to such orders u/s 3 and includes any alterations, variations, or additions proposed thereto". Sub-section (ee) defines "Model Standing Order" to mean "Standing Orders prescribed u/s 15", and Section 15 empowers the appropriate Government to make rules to carry out the purposes of the Act and such rules may "set out Model Standing Orders for the purposes of the Act." The "appropriate Government" under Sub-section (b) of Section 2 is, for our purposes, the State Government. "Standing Orders" under Sub-section (g) of Section 2 are rules relating to matters set out in the Schedule to the Act and Item 9 of the Schedule deals, inter alia, with suspension. Section 2-A reads thus:"

"2-A. Application of Model Standing Orders to every industrial establishment-(1) Where this Act applies to an industrial establishment, the Model Standing Orders for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the Official Gazette appoint in this behalf:

Provided that nothing in this section shall be deemed to affect any Standing Orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment (Standing Orders) (Bombay

Amendment) Act, 1957.

(2) Notwithstanding anything contained in the proviso to Sub-section (1) Model Standing Orders made in respect of additional matters included in the Schedule after the coming into force of the Act referred to in that proviso (being additional matters relating to probationers or badlis or temporary or casual workmen) shall unless such Model Standing Orders are in the opinion of the Certifying Officer less advantages of them than the corresponding Standing Orders applicable to them under the said proviso also apply in relation to such workmen in the establishments referred to in the said proviso from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf."

Section 3 deals with the submission of amendments and Sub-section (1) states, "within six months from the date on which the Model Standing Orders apply to any industrial establishment u/s 2-A, the employer or any workman employed therein may submit to the Certified Officer...draft amendments for adoption in such industrial establishment". The proviso to Sub-section (1) makes it clear that no amendment which provides for the deletion or omission or any rule in the Model Standing Orders relating to any matter set out in the Schedule to the Act may be submitted. u/s 5 the Certifying Officer is required to forward a copy of the draft amendments to all concerned and to give them the opportunity of being heard. He has to decide whether or not any modification of the drafts is necessary and to make an order in writing accordingly. He is then bound to certify the draft amendments and to send copies of the "Model Standing Orders together with the copies of the certified amendments thereof to the employer and to the trade union or other representative of the workmen. Section 6 provides for appeals against the order of the Certifying Officer. The Certifying Officer and the appellate authority are obliged to send copies of their orders to the employer and the workman's trade union or other representative. u/s 7 the Standing Orders or amendments (that is to say, amendments to the Model Standing Orders proposed u/s 3) come into operation on the expiry of 30 days from the date of sending of the orders as aforesaid. Section 8 requires the Certifying Officer to register a copy of all Standing Orders or "Model Standing Orders together with all the amendments as finally certified", and to furnish a copy thereof to any person applying for the same on payment of the prescribed fee. Section 9 requires the employer to post at a prominent place in the industrial establishment the text of the Standing Orders or Model Standing Orders together with all the amendments as finally certified. By reason of Section 10 Standing Orders or the "amendments" finally certified are not, except on agreement between the employer and the workmen, liable to modification until the expiry of six months from the date on which the amendments or the last modifications thereof have come into operation.

6. The scheme of the Act, therefore, is that, by reason of Sub-section (1) of Section 2-A, the Model Standing Orders apply to every industrial establishment to which the Act is made applicable. The proviso to Sub-section (1) is on the

statute book only to protect industrial establishments whose Standing Orders have been certified and have come into operation before the coming into force of the State's amending Act (Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957). To those industrial establishments the Model Standing Orders do not become applicable. The provisions of Sub-section (2) of Section 2-A apply only in relation to such Standing Orders as have been provided for in the proviso and, by reason of Sub-section (2), Model Standing Orders made in respect of additional matters included in the Schedule after the coming into force of the aforesaid amendment Act are applicable to the workmen of industrial establishments to which the proviso applies unless the Model Standing Orders are, in the opinion of the Certified Officer, less advantageous to the workmen than the Certified Standing Orders applicable to them. We are not concerned here, admittedly, with industrial establishments that fall under the proviso. For our purpose only Sub-section (1) of Section 2-A is relevant. u/s 3 amendments to the Model Standing Orders have to be proposed for adoption and, after following the procedures for certification and appeal under Sections 5 and 6, come into operation u/s 7. These Certified Standing Orders are what are registered u/s 8 and posted at a prominent place in the industrial establishment u/s 9.

7. It is, in our view, clear from the proviso of the Act as aforementioned that the Model Standing Orders are applicable only until such time as amendments thereto have been proposed and certified. Once the amendments have been certified, the Certified Standing Orders operate. An amendment to the Model Standing Orders cannot, therefore, have effect until and unless modification of the Certified Standing Orders to bring them into line with the amended Model Standing Orders is proposed and certified.

8. We now turn to Section 10-A. It reads thus:

"10-A. Payment of subsistence allowance:- (1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-

(a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) if any dispute arises regarding the subsistence allowance payable to a workman under Sub-section (1), the workman or the employer concerned may refer the disputes to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947) within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour

Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provision of this section, where provisions relating to the payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State."

9. There is no dispute that the payment that was made by the appellant to the 1st respondent was in accord not only with the provisions of the Certified Standing Orders applicable to their industrial establishment but also with those of Section 10-A. It was urged by Mrs. D'Souza, learned counsel for the 1st respondent, that the 1st respondent was entitled to subsistence allowance as provided by the Model Standing Orders by reasons of Sub-section (3) of Section 10-A because the Model Standing Orders were "other law" within the meaning of Sub-section (3). We find this argument difficult to accept. The Model Standing Order, as also Certified Standing Orders, are law no doubt, but they are law made under the provisions of the Act. They are not provisions "under any other law". In our view, therefore, the provisions of Section 10-A supervene in relation to the payment of subsistence allowance over the provisions of the Model Standing Orders.

10. At the stage of the admission of the appeal the appellant was required to deposit in Court the amount of Rs. 25,000/- which was then understood to be the balance of the amount, approximately, that would be due to the 1st respondent on account of subsistence allowance on the basis of the Model Standing Order, and the 1st respondent was permitted to withdraw the same on furnishing a personal bond. We understand that the amount of Rs. 20,000/- has been so withdrawn. Mr. Rele, learned counsel for the appellant, told us that, regardless of the order that we passed, the appellant would pay to the 1st respondent an amount calculated on the basis of the Model Standing Orders less what he has already received by way of subsistence allowance, and we record his statement. The balance of Rs. 5,000/- lying in Court shall be adjusted and paid over accordingly.

11. The appeal is allowed. The order under appeal is set aside. The petition is dismissed. There shall be no order as to costs throughout.