
(1967) 02 SC CK 0001
In the Supreme Court Of India
Case No : C.A. No. 22 of 1966

Moon Mills Ltd.

APPELLANT

Vs

Industrial Court, Bombay (M R Meher) & Ors

RESPONDENT

Date of Decision : 28-02-1967

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 114(2), 66, 74(1)
Constitution of India, 1950 — Article 226

Citation : (1967) MhLj 664

Hon'ble Judges : K. Subba Rao, C.J.;V. Ramaswami, J;S.M. Sikri, J;J.C Shah, J;C.A. Vaidialingam, J

Bench : Full Bench

Advocate : S.T. Desai, B. Dutta, C.G. Mathur, for J.B. Dadachanji and Co, for the Appellant; B. Sen and 3, B.P. Makeswari and B.N. Sachthey, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—This appeal is brought, by special leave, against the judgment of the Bombay High Court dated February 6, 1962 in Appeal No. 36 of 1960 from the Order of K.K. Desai J., in Miscellaneous Application No. 327 of 1969 filed by the Appellant under Article 226 of the Constitution of India.

2. The Appellant carried on business as a cotton textile mill prior to July 1, 1958. It had been registered as an 'undertaking' in the cotton textile industry under the Bombay Industrial Relations Act, 1946 (Bombay Act XI of 1947), hereinafter referred to as the 'Act'. The second Respondents are a representative Union of the Cotton Textile Industry in the City of Bombay and registered as such under the provisions of the Act. The second Respondents gave a notice of change in connection with the method to be adopted for grant of bonus for the years 1953 to 1957. The dispute arising out of that notice was referred to arbitration of the Industrial Court by a submission in writing dated February 28, 1956 u/s 66 of the Act. On March 1, 1956 an agreement was entered into between the Mill-owners' Association on behalf of certain cotton textile mills and the second Respondents

in connection with the method to be adopted for payment of bonus for these years. In accordance with that agreement the Industrial Court made an award dated March 13, 1956 in terms of the said agreement. Clause 10 of the agreement provided for decision by arbitration in future in the event of difference of opinion arising between the parties regarding the determination of available surplus of profits or the quantum of bonus to be paid by the Cotton Textile Mills.

3. The Appellant was not a party to the agreement and was accordingly not bound by the agreement. The Government of Bombay, however, issued a notification u/s 114(2) of the Act which states as follows:

In cases in which a Representative Union is a party to a registered agreement, or a settlement, submission or award, the State Government may, after giving the parties affected an opportunity of being heard, by notification in the Official Gazette, direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification:

Provided that before giving a direction under this section the State Government may, in such cases as it deems fit, make a reference to the Industrial Court for its opinion.

The notification of the Government is dated July 31, 1956 and reads as follows:

No. ARP-1256: Whereas the Raahtriya Mill Mazdoor Sangh, Bombay, a Representative Union for the Cotton Textile Industry in the local area of Greater Bombay (here in after referred to as 'the Union') is a party to an award dated the 13th March 1956 made by the Industrial Court in reference (IC) No. 114 of 1953, (IC) No. 24 of 1954, (IC) No. 25 of 1954 and submission (IC) No. 3 of 1956 providing for the payment of bonus for the years 1952 and 1953 and the years 1954 to 1957 both inclusive to the employees of the cotton textile mills in Greater Bombay (hereinafter referred to as 'the Award').

And whereas the Government of Bombay, considers that the award should be made binding upon the employers specified in column of the schedule hereto annexed and their employees in the said Cotton Textile Industry in Greater Bombay;

And whereas the said employers and the Rashtriya Mill Mazdoor Sangh, Bombay, Representing the said employees being the parties affected were heard as required by Sub-section (2) of Section 114 of the Bombay Industrial Relations Act, 1946 (Bombay XI of 1947) (hereinafter referred to as the 'said Act');

Now therefore, in exercise of the powers conferred by Sub-section (2) of Section 114 of the said Act, the Government of Bombay hereby directs that the said Award shall be binding on the employers specified in column 1 of the Schedule hereto annexed and their employees in the matter of payment of bonus for the years specified against the said employers in column 2 of the said Schedule.

SCHEDULE

Name of Employer 1. Years 2.

The Prakash Cotton Mills Ltd., Bombay 1952 to 1957 (both inclusive).

The Hirjee Mills Ltd., Bombay (In Liquidation) 1952 to 1953 and 1954.

The Sayaji Mills Company Ltd., No. 2, Bombay 1955 to 1956 and 1957.

The Moon Mills Ltd, Bombay 1953 to 1957 (both inclusive).

4. It is admitted by the second Respondents that bonus had been paid in accordance with the method contained in the agreement and the award dated March 13, 1956 for the years 1953 and 1954. There were disputes between the Appellant and the second Respondents with regard to the bonus to be paid for the years 1955 and 1956. The dispute was referred to the arbitration of Shri M.D. Bhat. The arbitrator gave his award on April 25, 1958. After certain correspondence between the parties the award was filed with the Registrar, Industrial Court u/s 74(1) of the Act. As the Appellant failed to carry out directions contained in the award the second Respondents made an application to the Labour Court-Application No. 574 of 1958-contending that the Appellant had committed an illegal change under the Act by not paying to their employees bonus as directed by the award dated April 25, 1958 and prayed for an order that the Appellant should be directed to withdraw the illegal change with immediate effect. The Appellant denied its liability, but the Labour Court allowed the application of the second Respondents by its order dated August 4, 1959 and directed the Appellant to withdraw the illegal change by complying with the directions contained in the award within one month from the date of the order. The Appellant took the matter in appeal to the Industrial Court, being Appeal No. 226 of 1959- By its order dated October 24, 1959, the Industrial Court rejected the appeal and affirmed the order of the Labour Court. Thereafter, the Appellant moved the Bombay High Court for grant of a writ under Article 226 of the Constitution to quash the order of the Industrial Court in Appeal No. 226 of 1959. The application was dismissed by K.K. Desai J. on July 1, 1960. The Appellant took the matter in appeal under Letters Patent, but the appeal was dismissed by the Division Bench consisting of Chainant C, J., and Tarkunde J. on February 6, 1962.

5. It was submitted on behalf of the Appellant that the notification of the State Government dated July 31, 1956 u/s 114(2) of the Act was the subject-matter of consideration in the The Prakash Cotton Mills (Private) Ltd. and Others Vs. The State of Bombay (Now Maharashtra), and it was held by this Court that the notification was ultra vires of the powers conferred on the State Government u/s 114(2) of the Act and must be struck down. Mr. S.T. Desai put forward the contention that the High Court should therefore have quashed the order of the Industrial Court by grant of a writ for an error of law apparent on the face of record. Mr. B. Sen on behalf of the Respondents, however, said that the case of

the Appellant is different from that of Prakash Cotton Mills (1) and the decision of this Court in that case does not govern this case. We are unable to accept the argument of the Respondents as correct. It was held by the majority judgment of this Court in Prakash Cotton Mills' case (1) that the notification dated July 31, 1956 was beyond the powers of the State Government u/s 114(2) of the Act, because there are three limitations on the State Government's power enacted under that Sub-section: (1) It is limited by the subject-matter of the agreement or settlement, submission or award sought to be extended, (2) It has to be in conformity with the Industrial Law laid down by the Full Bench of the Industrial Court and also by any decision of this Court, and (3) the State Government's power to make a direction under that section is co-terminus with the power of an adjudicator and the State cannot do what an adjudicator cannot do under the Act. At page 112 of the Report Wanchoo J., speaking for the Court stated as follows:

The contention on behalf of the Appellant is that it would not be open to an Industrial Court to grant bonus when profit was not adequate to meet all prior charges or where there was an actual loss and therefore, when the impugned notification made it possible for grant of bonus even in these cases (for prima facie the Appellant had made losses upto 1955), it directed something which even an Industrial Court could not do. In consequence, it is urged that the notification inasmuch as it makes this possible is beyond the powers conferred on the State Government u/s 114(2) because it allows something to be done which even an Industrial Court could not allow. Reliance in this connection is placed on the decision of this Court in *The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad*. In that case this Court was considering a similar agreement relating to Ahmedabad. The Industrial Court had imposed that agreement after its expiry for one year on the mills in spite of their contention that they were not bound to pay any bonus for the years in dispute in view of the law laid down by this Court in *The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another*. After examining the terms of the agreement then in dispute this Court came to the conclusion that in view of the law laid down in *The Associated Cement Companies' case* (3), the Industrial Court had no jurisdiction to impose that agreement on the mills. It further held that an agreement of that kind could only continue by consent of parties and could not be enforced by industrial adjudication against the will of any of the parties. The agreement in the present case directed to be enforced by the impugned notification is similar in terms and as held in *New Manekchowk's case* (2) it could not be enforced by industrial adjudication against the will of any of the parties. The power of the State Government u/s 114(2) being co-terminus with the power of an adjudicator under the Act, such an agreement cannot therefore be directed to be enforced against the will of the Appellant even u/s 114(2) inasmuch as by doing so the State Government would be going beyond the powers conferred on it by that section. The impugned notification therefore

must be held to be bad inasmuch as it goes beyond the powers conferred on the State Government u/s 114(2) and must therefore be struck down.

In our opinion, the present ease falls directly within the ratio of the decision of this Court in *The Prakash Cotton Mills (Private) Ltd. and Others Vs. The State of Bombay (Now Maharashtra)*, and it follows therefore that the award of Mr. Bhat dated April 25, 1958 is illegal and ultra vires and the decision of the Labour Court dated August 4, 1959 and of the Industrial Court dated October 24, 1959 must be quashed by grant of a writ of certiorari.

6. On behalf of the Respondents Mr. B. Sen, however, pointed out that the conduct of the Appellant does not entitle it to the grant of a writ, because it has been guilty of acquiescence or delay. It was pointed out that the award of Mr. Bhat was given on April 25, 1958 but an application to the High Court for grant of a writ was made long after on November 16, 1959. We do not think there is any substance in this argument, because the second Respondents had made an application dated August 19, 1958 to the Labour Court for enforcement of the award and the Appellant had contested that application by a written statement dated September 15, 1958. The Labour Court allowed the application on August 4, 1959 and the Appellant had preferred an appeal to the Industrial Court on August 31, 1959. The decision of the Industrial Court was given on October 24, 1959 and after the appeal was dismissed, the Appellant moved the High Court for grant of a writ on November 16, 1959. Mr. B. Sen then put forward the argument that the Appellant itself had acted on the bonus agreement and on October 14, 1957 had issued a notice informing its workers that "pursuant to the award of the Industrial Court in terms of the agreement dated March 1, 1956 reached between the Mills-owners' Association, Bombay and the Rashtriya Mill Mazdoor Sangh, regarding payment of bonus would be paid to them at 4.8 per cent, of the total basic earning during 1956". On October 27, 1956 the Appellant and the Secretary of the second Respondents signed a joint statement in which it was stated as follows:

Since it has not yet been possible to complete bonus calculations for all these years, It is hereby agreed between the Rashtriya Mill Mazdoor Sangh, Bombay and the Moon Mills Ltd., Bombay that under the Bonus Agreement the Moon Mills should pay a bonus at the rate of 4.8 per cent, for each of the years 1953, 1954 and 1955 as a tentative payment.

It was, therefore, contended that the Appellant itself had agreed with the second Respondents to pay bonus for 1953, 1954, 1955 and 1956 according to the terms of the bonus agreement. It was also pointed out that the Appellant had not pressed its objection with regard to jurisdiction before the Labour Court or the Industrial Court. But it appears that the decision of this Court in *Prakash Cotton Mills case (1)* was given on February 16, 1961 after the decision of K.K. Desai J. on July 1, 1960 and before the decision of the Letters Patent Bench on February 6, 1962. In the circumstances of this case, we do not consider that there is such acquiescence on the part of the Appellant as to disentitle it to a grant of a writ

under Article 226 of the Constitution. It is true that the issue of a writ of certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in *The Lindsay Petroleum Company v. Prosper Armstrong Hurd*, *Abram Farewell and John Kemp* 15 PC 221, 239, as follows:

'Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of 'limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

In the present case, we are of opinion that there is no such negligence or laches or acquiescence on the part of the Appellant as may disentitle it to the grant of a writ.

7. For the reasons already stated, we hold that the judgment of the Division Bench of the Bombay High Court dated February 6, 1962 must be set aside and the Appellant must be granted a writ in the nature of certiorari for quashing the order of the Industrial Court dated October 24, 1959 and of the Labour Court dated August 4, 1959. The appeal is accordingly allowed, but in the circumstances of the case there will be no order as to costs.

8. We should, however, like to make it clear that this decision will not prejudice the trial of any References with respect to bonus which may be pending or which may hereafter be made between the Appellant and its employees in respect of the years 1955 and 1956. If such references are pending or should hereafter be made they will be proceeded with and decided in accordance with law.

Appeal allowed.