

(1965) 10 MAD CK 0035
In the Madras High Court

Salem-Erode Electricity Distribution Company (Private) Ltd.	APPELLANT
Vs	
Salem-Erode Electricity Distribution Company Ltd., Employees' Union and Another	RESPONDENT

Date of Decision : 15-10-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 9A

Citation : (1966) 2 LLJ 242

Hon'ble Judges : Chandra Reddi, C.J.;Natesan, J

Bench : Division Bench

Judgement

Natesan, J.—This appeal has been preferred against the decision of our learned brother, Ramakrishnan, J,, allowing a writ petition arising out of an industrial adjudication and making the rule nisi absolute, with a direction to the industrial tribunal to restore the case to its file and dispose of it afresh. The management of the Salem-Erode Electricity Distribution Company. Ltd., Salem, is the appellant before us. The employees are represented by the secretary, the Salem-Erode Electricity Distribution Company," Ltd., Employees" Union, Salem, and the adjudication by the industrial tribunal, Madras, which was quashed on certiorari, was on an industrial dispute between the 62 workers of the above electricity distribution company and the management. The State Government referred to the industrial tribunal, Madras, for adjudication the question whether the curtailment of leave and holidays by the management of Salem-Erode Electricity Distribution Company, Ltd., Salem, in respect of the workers recruited after 1 October 1960, is justified and to what relief they would be entitled. The tribunal upheld the curtailment of leave and holidays by the management in respect of the new entrants as justified and concluded that the workers were not entitled to any relief.

2. The facts that led to the dispute and the reference may briefly be set out. The management, the appellant before us, is a public utility concern, its secretaries and treasurers being Octavia Steel & Co., Ltd., Calcutta. It buys power in bulk

from the State Electricity Board and distributes it to the consumers in Salem and Erode and certain villages around. It has got on Its rolls about 333 employees. While in 1940, it served about 3,000 consumers, at present, it has to serve about 29,000 consumers. Considering that the old rules as regards holidays and leave with pay enjoyed by the company's employees Introduced over two decades ago had become outmoded with the change of pattern of electricity consumption, and the ever-increasing number of consumers, and was inappropriate and detrimental to national economy when the company had to maintain an efficient and uninterrupted supply of electrical energy to a large body of consumers, the management decided to revise the old liberal scale of holidays and leave privileges. It made the revised rules applicable to the new entrants employed after 1 September 1960. These new entrants are required to enter into independent contracts of service in which the revised schedule of leave and holiday benefits are embodied. Fifty-five new recruits and seven recruits who were recruited on a temporary basis prior to 1 October 1960, and were confirmed after 1 October 1960, entered into independent contracts under the new terms of holidays and leave privileges. The employees' union, contending that even the new entrants should have the same privileges and holidays as the employees before the date and the discrimination between the two sets of employees would lead to heart-burning and industrial unrest, raised a dispute which led to the reference by the Government.

3. The relative position of leave and holidays before 1 October 1960 and after the date is given hereunder:

As observed by the learned Judge, the position is that by the revision, there has been a very substantial curtailment of sick leave from 30 to 12 days and the holidays have been curtailed to the minimum under the Madras Industrial Establishments (National and Festival Holidays) Act. In the case of privilege leave, no doubt there has not been any material change; but, considering the matter as a whole the alteration is significant and does involve sizable curtailment of leave and holiday privileges from those enjoyed by the employees prior to 1 October 1960.

4. The contention strongly pressed by Sri K. Rajah Ayyar, learned Counsel appearing for the appellant, rested on the freedom and sanctity of contract between an employer and employee and the right of the employer to fix terms of employment for new entrants, the workers being free to accept the terms and enter service or not learned Counsel emphasized the fact of the execution of independent contracts by the workers recruited after 1 October 1960, agreeing voluntarily to the revised terms of holidays and leave with pay, and contended that the power of collective bargaining will have to step down in favour of the individual worker's right to decide what is best for him. It is unnecessary to consider several other questions which came up for consideration incidentally before the tribunal, some of which have been the subject of consideration by our learned brother, Ramakrislman, J., as the live Issue now is the sanctity of the

contracts which the new entrants have entered into with the management. The industrial tribunal's award in this case is based more on a priori conclusions without reference to the actual facts, circumstances and conditions and has to a considerable extent sought guidance from certain observations in the dissenting judgment of Mudholkar, J., in *Rai Bahadur Diwan Badri Das v. Industrial tribunal, Punjab, and Ors.* 1962 I.L.J. 366. The industrial tribunal in this case observed that the learned Judge (Mudholkar, J.) has pointedly rejected the contention that it is open to an employee to take up employment on the existing conditions of service and immediately start clamouring for improving his conditions of service. Referring to the reliance by the tribunal on the observations in the minority judgment, Ramakrishnan, J., observes, if we may say so with respect, properly:

Subordinate Courts as well as tribunals which are bound by the Supreme Court's decision on questions of law under the provisions of the Constitution, have to accept the majority view in preference to the minority view, when the view is expressed on an identical point for decision. The opinion of a minority Judge on a point, which has not been dissented from by the majority, however, can be followed by the subordinate Courts.

The force of these observations will become apparent, particularly when the facts of the case before the Supreme Court and the conclusion in the majority judgment are referred to, a question similar to the present case having come up for consideration before the Supreme Court in that case. The case before the Supreme Court related to the Tribune Press and the dispute arose as the new rules in respect of earned leave made a distinction between the workers employed on or before 1 July 1956 and those who were employed after 1 July 1956. There was difference in the provisions applicable to the two categories of the workers. At the time when the new rules came into force, there were 94 old employees and 27 new employees. Gradually new hands had also been employed and one of the questions raised in the dispute by the Tribune Press Employees' Union was discrimination in the matter of earned leave, though there was no distinction in other terms and conditions of service between the workmen who joined the service before 1 July 1956 and those who had joined subsequently. The argument on behalf of the employer was that the employer was entitled to fix the terms of employment on which he would be willing to employ workmen, that it was open to the workmen either to accept the terms or not, and that industrial adjudication should not interfere in such matters. From the above statement of the relevant facts of the case before the Supreme Court, it will be apparent that Sri Rajah Ayyar's contention that the case before the Supreme Court was not one in which workers had entered into contracts subsequent to the introduction of the new rules, is not correct. In the case before the Supreme Court also, as in the instant case, a section of the workers had been entertained under the new rules, that is, they contracted and entered service under the new rules. Dealing with the argument on behalf of the employer in that case about the freedom of contract, Gajendragadkar, J. (as he then was), observes in 1962 11 I.L.J. 366 at 370:

The broad and general question raised by the learned Solicitor-General on the basis of the employer's freedom of contract has been frequently raised in industrial adjudication, and it has consistently been held that the said right is now subject to certain principle which have been evolved by Industrial adjudication in advancing the cause of social justice...

The following view of Mukherjea, J. (as he then was), in *Bharat Bank, Ltd., Delhi v. Employees of Bharat Bank, Ltd., Delhi* 1950 I.L.J. 921 , was then set out:

... In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace...

Proceeding, the learned Judge (Gajendragadkar, J.), observes in 1962 I.L.J. 366 :

The doctrine of the absolute freedom of contract has thus to yield to the higher claims for social justice. Take, for instance, the case where an employer wants to exercise his right to employ industrial labour on any wages he likes. It is not unlikely that in an economically underdeveloped country where unemployment looms very large, for industrial work, employees may be found willing to take employment on terms which do not amount to a minimum basic wage. Industrial adjudication does not recognize the employer's right to employ labour on terms below the terms of minimum basic wage. This, no doubt, is an interference with the employer's right to hire labour; but social justice requires that the right should be controlled...

It is, however, necessary to add that the general question about the employer's right to manage his own affairs in the best way he chooses cannot be answered in the abstract without reference to the facts and circumstances in regard to which the question is raised. If a general question is posed and an answer must be given to it, the answer would be both yes and no. The right would be recognized and industrial adjudication would not be permitted or would be reluctant to trespass on that right or on the field of management functions unless compelled by overriding considerations of social justice. The right would not be recognized and would be controlled if social justice and industrial peace require such regulation. That is why we think industrial adjudication always attempts not to answer questions in the abstract in order to evolve any general or inflexible principles...

5. In upholding the validity of the award by the industrial tribunal in that case which directed that all the workmen in the press section should be given the same quantum of leave irrespective of the fact that they came into employment on 1 July 1956, on merits, the Supreme. Court observed at p. 371:

... Generally, in the matter of providing leave rules, industrial adjudication prefers to have similar conditions of service in the same industry situated in the same region. There is no evidence adduced in this case in regard to the condition of earned leave prevailing in the comparable industry in this region. But, we cannot ignore the fact that this very concern provides for better facilities of earned leave to a section of its employees when other terms and conditions of service are the same in respect of both the categories of employees ...

6. Their lordships found on the materials on record that the argument that the continuance of two different provisions would lead to disharmony, could not be treated as frivolous. It may be pointed out that the only argument advanced in that case in support of the discrimination was the employer's right to provide for new terms of service to the new entrants in services and the validity of this argument was not accepted in the circumstances of the case.

7. The other learned Judge, Mudholkar, J., also does not say that industrial adjudication can under no circumstances override the contract between the employers and employees. In fact, Mudholkar, J., observed at p. 377:

No doubt the provisions the Industrial Disputes Act are wide enough, like those of other legislative enactments placed on the statute book, for promoting the welfare of the employees to permit an industrial tribunal to override the contract between an employer and his employees governing" the conditions of service of the employees. But it does not follow from this that no sooner a reference of a dispute is made to a tribunal for adjudication than the contract of service ceases to have any force. The power to interfere with a contract of service can only be resorted to in certain limited circumstances.

8. Reference was made on behalf of the appellant to a decision of this Court in *Tamilnad Electricity Workers' Federation and Anr. v. Madras State Electricity Board* 1964 I .L.J. 392, Therein, Anantanarayanan, J., delivering the judgment for the Bench, observes at p. 397:

In other words, the right of a free individual in this country, who may be a workman, to judge for himself as to an offer beneficial to him concerning his service conditions, and to exercise his choice in terms of that offer, cannot be taken away because a trade union, to which he may not even belong as a member ,does not share his view.

That is a case where the employer offered what would constitute a package deal in which there were certain concessions available to the workmen and some detrimental, so far as dearness allowance, casual leave, national and festival holidays were concerned. There was no reference of any dispute under the Industrial Disputes Act; nor was there any industrial adjudication. The workers' federation sought the issue of a writ of mandamus against the employer, a statutory board, to forbear from implementing its proceedings in so far as those proceedings altered the service conditions of the workmen of the board relating to items on dearness allowance, casual leave and national and festival holidays,

all subject of the " package deal." These items had been considered by the workmen to whom the offer had been made and had been accepted by them as beneficial. It is in those circumstances this Court observed that, even if the unions thought otherwise, they had no right to dictate to those workmen who might not even be members of the unions, and to claim that those beneficial provisions should not be implemented. This Court saw no ground for the issue of a writ of mandamus in that regard. The folio wing-from the judgment at 1934 I.L.J. 392 makes it clear that in that case also this Court recognized the jurisdiction in an industrial adjudication to go into the validity of the new deal:

It may be true that such an offer might, in the conceivable circumstances, amount to an unfair labour practice. Our attention has been drawn to a passage in " Labour Disputes and Collective Bargaining" by Ludwig Teller, Vol. 3, Section 290, to the effect that it may be an unfair labour practice for an employer " to negotiate or to attempt to negotiate with his employees individually in connexion with changes in the agreement." But we are quite unable to see how, so long as the workmen are seizures and the employer has a legal right to make an offer as to terms " any such unfair labour practice" will justify interference in writ jurisdiction, by issue of a writ. At the highest, for the organized labour, this may be a justification for raisins an " industrial dispute " and for seeking" a refine from the Government u/s 10(1)(c) of the Act. Nor can we agree with the learned Counsel for the appellants that even as regards the alleged limitation in holidays, only one view is possible. In the present state of national emergency, it may be beneficial to the workmen in the highest sense, because the welfare of the country is the welfare of all sections of its pickle, to accept shorter holidays as part of a comprehensive offer, which includes other benefits. Even in the view most favourable to the appellant union all that can be said is that, if they complain of a change effected by coercion or taking advantage of the illiteracy of the workers, without adequate notice as Section 9A requires, though it was a change by mutual consent, this would be a proper and due occasion for raising an "industrial dispute and obtaining the requisite reference of the executive. That cannot per se constitute any ground for interference by this Court in the exercise of its writ jurisdiction though the respondent board, as a public utility concern, may be amenable to such jurisdiction.

9. It is thus seen that the power of the industrial tribunal, if occasion requires it, to examine even the contract individually entered into by the workmen and give appropriate relief, has never been doubted. The concept of social justice pervades our industrial law and in industrial relationship one can speak of the sanctity of contract and true freedom of contract only relatively and when the contracting parties are equally placed in relation to their bargaining position. Freedom of contract will be notional In fact if the worker has no option but to accept the terms offered or go without the employment which he may be imperatively in need of. If the worker in such circumstances accepts the terms, it may be under his own economic pressure, where is the free and voluntary will, recognizable in industrial adjudication based on social justice where competing

claims of management and labour have to be resolved and industrial peace found in the interests of national economy ? Herein industrial adjudication comes to the rescue of the worker and of tan also to the relief of the management from unjustifiable demands of labour.

10. But as the ultimate object of industrial adjudication, even in ensuring industrial peace, is to help the growth and progress of national economy, this objective has to be borne in mind when looking for the establishment of industrial peace and harmonious relation between employer and employee avoiding unfair labour practice and heartburning among sections of employees. In an Industrial adjudication demands of management and labour will have to yield before the nation's immediate economic needs and objectives, and the attempt will be for a solution satisfactory from the standpoint of all the three interests; that of the nation, that of labour and that of the management. The disputes and claims of employer and employees will have to be scanned with the major objective of industrial adjudication in view and airplay and justice done. On this aspect of the matter again, we would quote the observations of Gajendragadkar, J. (as he then was), in *Rai Bahadur Diwan Badri Das v. industrial tribunal, Punjab*, and Ors. 1962 I.L.J. 366 (vide supra):

... It cannot be denied that the existence of industrial peace and harmony and the continuance of the said peace and harmony are relevant factors, but their importance should not be unduly exaggerated. If a frivolous demand is made by the employees and it is accompanied by a threat that non-compliance with the demand would lead to industrial disharmony or absence of peace, it would be unreasonable to treat the threat as relevant in deciding the merits of the demand. In this connexion, it is necessary to remember that the continuance of harmonious relations between the employer and his employees is treated as relevant by industrial adjudications, because it leads to more production and thereby has a healthy impact on national economy and so it is necessary that in dealing with several industrial disputes, industrial adjudication bas to bear in mind the effect of its decisions on national economy. In their zest to fight for their respective claims, the parties may choose to ignore the demand of national economy, but industrial adjudication cannot. If the demand is plainly frivolous, it has to be rejected whatever the consequences may be....

11. In the present case, the industrial tribunal will have to consider whether the management has valid reasons for limiting the holidays and leave in respect of the new entrants in the manner it has been duce, and whether the curtailment actually effected is necessary. The question being whether the altered conditions are such as to warrant as fair and reasonable, what labour would urge as drastic limitation on holidays and leave, when examining the dispute on the merits, the tribunal will have to bear is mind not only the particular contentions of the management and the workers, but also the necessarily changed concepts as regards the duties of employer and employee in the context of the present economic needs of the country and its expectations from industry. It cannot be

ignored that there is a general feeling that there are too many public holidays in our country and when the need for greater industrial production is paramount and pressing it is advisable to reduce the number of holidays. But the tribunal has not considered any precise data as to holidays and leave granted to employees engaged in comparable concerns in the same industry in the region or other relevant matters. Also, the increase in the number of consumers of electricity is not a feature only in the particular region but is general throughout the country and is common in South India. There are other electricity distribution concerns in the State and the State Electricity Board, from whom the appellant buys in bulk and distributes, also distributes electricity in retail in certain areas including Madras City. If comparison is made of the terms of leave and holidays fixed for the new entrants by the present appellant with similar privileges of similar concerns and such comparison establishes the new terms as just, fair and reasonable, that may be a proper ground for upholding the charge for the purpose of industrial adjudication. In our view, labour, even as the management, has to be alive to and be equally conscious of the nation's imperative needs at the present, the growing demand for increased output, and the essential prerequisite for the same, greater effort on the part of the labour force and fair and reasonable terms of service on the part of the management. A necessary step in the direction, it cannot be gainsaid by any section, is reduction in the number of holidays. To what extent and how it is to be achieved is a matter for enquiry and determination on a broad-based pragmatic approach. Our learned brother found that the tribunal has proceeded upon vague and general observations without precise data and without even reference to leave and holidays rules pertaining to concerns engaged in distribution of electricity in South India. The adjudication has, therefore, been set aside and a fresh disposal of the matter in accordance with law directed. We see no reason to differ from the view taken.

12. The appeal, therefore, fails and is dismissed without costs.