
(1963) 12 MAD CK 0064
In the Madras High Court
Case No : Writ Appeal No. 285 of 1962

Tamilnad Electricity Workers Federation and Another	APPELLANT
Vs	
Madras State Electricity Board	RESPONDENT

Date of Decision : 11-12-1963

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79
Industrial Disputes Act, 1947 — Section 9

Citation : AIR 1965 Mad 111 : (1964) ILR (Mad) 1

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Anantanarayanan, J

Bench : Division Bench

Judgement

Anatanarayanan, J.

(1) The Tamilnad Electricity Workers Federation represented by its General Secretary, and the Madras Electricity Workers Union, also represented by its General Secretary have instituted this appeal from the judgement of Veeraswami J. in W. P. No. 45 of 1962. In that proceeding, those appellants sought the issue of a writ of mandamus to the Madras State Electricity Board respondent to forbear from implementing its proceedings No. 2704 dated 28-12-1961, in so far as those proceedings altered the service conditions of the workmen of the Board relating to dearness allowance, casual leave, and National and Festival Holidays. The learned Judge, Veeraswami J. declined to issue the writ, upon grounds set forth by him in his judgment under appeal.

(2) Before proceeding to the central issue that arises for our determination, within the compass of the present appeal, we shall first set forth, in a condensed form the events that led to the impugned proceedings of the Madras State Electricity Board, respondent. This board was constituted with effect from 1-7-1957, and the employees in the Electricity Department of the Government thereupon became employees of the Board under S. 79(c) of the Electricity (Supply) Act, 1948; the Board adopted the prior conditions of service of these employees, as applicable to them, as Transitory regulations. After the

appointment of a Negotiating Committee between the members of the appellant labour Unions and the Board (respondent), an agreement came into existence on 3-2-1959, which covered all categories of workers, and related to such matters as pay scales, dearness allowance, etc. It is important to note that there was no determined period of duration for this agreement. After this, there were two main developments in the relations between the Board and the Labour Unions, which were distance. With regard to an alleged increase in the hours of work directed by the Board (respondent) the Union instituted W. P. No. 727 of 1960 on the ground of violation of S. 9-A of the Industrial Disputes Act. A petition for stay in that proceeding C. M. P. 4630 of 1960 resulted in a stay which was vacated on an assurance by the Board with regard to notice under S. 9-A of the Act. Ultimately, upon this aspect or development there was an agreement between the Board, and the Federation of the employees, accepting certain changes in the hours of work, in accordance with S. 12(3) of the Act. The consequence was that W. P. No. 727 of 1960 became infructuous and was dismissed as such in November 1961.

(3) Parallel with this, there was another development, namely, in November-December 1960 the Board issued notices under S. 9-A, first for reduction of National and Festal Holidays, and restriction of casual leave facilities; and secondly, to effect a change in dearness allowance by merging it with pay, coupled with revision of house rent allowance. There was opposition to these proceedings from the Unions and conciliation was commenced. The Board posed changes, and further talks were adjourned. There was an attempt by the Unions to raise an industrial dispute over this matter, but on 29-4-1961 the Government by G. O. Ms No. 3441 (Labour) declined to make a reference u/s 10(1)(c) of the Act on the two main grounds of the pendency of W. P. No. 727 of 1960 in this court, and the fact that the agreement dated 3-2-1959 relating to dearness allowance was still in force. On 31-10-1961, the Federation of Workers sent a letter to the respondent Board terminating the agreement dated 3-2-1959 as between the parties, by giving notice of two months under S. 19 of the Act. While matters stood thus, 28-12-1961 the Board issued the impugned proceedings to which some separate reference now becomes essential.

(4) These proceeding included within their scope several matters relating to the service terms and conditions of the workmen, such as dearness allowance, pay scales National and Festival Holidays, Casual leave etc. But the points for special mention are these. In accordance with paragraph 8 of the proceedings, existing employees who did not opt for the offer contained in the proceedings within the time granted therein, were to continue to be governed by the status quo as regards all their service conditions. The option was to be exercised in the form of a declaration in writing to be given "within 21 days from the date of this notice". The declaration once made was final, and if an employee did not sign the declaration within the time, it was to be presumed that he did not wish to opt out of the terms prevailing up to the offer. Under this offer, a portion of the dearness allowance was merged with the pay scales, apparently in conformity with certain

recommendations of the pay commission, but, according to the Board (respondent) the entire offer was conceived in such manner, including the issue of dearness allowance, as to constitute a substantial benefit or increase in emoluments and conditions of service, in favour of the workmen. On 3-1-1962, the Labour Unions issued a notice of strike, and it is contended that, with effect from 4-1-1962 conciliation must be deemed to have commenced in accordance with the provisions of S. 20(1) of the Act.

(5) We are now in a position to come to the crux of the controversy, and the grounds are the same as those which are pressed before the learned Judge. According to the appellant Unions, the proposals of the Board, though they may constitute a "package deal" in which there are certain concessions favourable to the workmen, were detrimental to the workmen in so far as dearness allowance, National and Festival holidays and casual leave facilities are concerned, and are in violation of S. 9-A of the Act, since the proceedings which effect a change in the conditions of service, as soon as they come into effect, were not issued with the notice statutorily required. Next, they are violative of S. 19(2) of the Act, to the extent that there was the prior agreement governing the conditions dated 3-2-1959. Lastly, they are in violation of S. 33(1) of the Act, for the conciliation proceedings must be deemed to have commenced as soon as the strike notice was received by the board (4-1-1962). Though, at the first blush, it might appear as if these are, all of them, purely grounds relating to the applications of certain provisions of statute to facts concerned about which there is no dispute, the arguments really invoke far deeper and more significant implications than are apparent on the surface. The second ground, namely, that relating to the alleged violation of S. 19(2) of the Act, is within a very restricted compass, and was not pressed with any elaboration before us. We think it is sufficient for us to observe that there is no violation of S. 19(2) of the Act as the earlier agreement ceased to be binding on an from 2-1-1962 as the learned judge (Veeraswami J.) has pointed out. But the first and the third grounds, which are really interlinked, invoked certain aspects of great significance in the context of the present facts, with regard to the relationship between the employees and the federation of workmen. Hence, we do not think that any apology is needed for dwelling upon these aspects at some length.

(6) In *North Brook Jute Co. Ltd. and Another Vs. Their Workmen*, , the Supreme Court had occasion to consider the relationship of S. 9-A to S. 33 and the different stages to which S. 9-A refers. The material part of S. 9-A has been reproduced in that judgment, as well as by Veeraswami J. But it is essential to set this forth here also, for a great deal of the argument turns upon the construction and phraseology of the material part of S. 9-A, and, similarly of S. 33(1). The material part of S. 9-A needed for our purpose, runs as follows:

"No employer, who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth

Schedule, shall effect such change--(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or (b) within 21 days of giving of such notice:

Their Lordships of the Supreme Court observed as follows in this context:

"What is important to notice is that in making this provision for notice the legislature was clearly contemplating three stages. The first stage is the proposal by the employer to effect a change; the next stage is when he gives a notice and the last stage is when he effects the change in the conditions of service on the expiry of 21 days from the date of the notice. The conditions of service do not stand changed, either when the proposal is made or the notice is given but only when the change is actually effected. That actual change takes place when the new conditions of service are actually introduced. It necessarily follows that in deciding for the purpose of S. 33 of the Act, at what point of time the employer "alters" any conditions of service, we have to ascertain the time when the change of which notice under S. 9-A is given is actually effected. If at the time the change is effected, a proceeding is pending before a tribunal, S. 33 is attracted and not otherwise. The point of time when the employer proposes to change the conditions of service and the point of time when the notice is given are equally irrelevant."

It might be convenient this context itself is set forth S. 33(1) of the Act, which also concerns us, and which is in the following terms--"(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before a Labour court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings: or (b).

As we have earlier observed under S. 20(1) of the Act. "A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock out under S. 22 is received.

The main argument of Mr. V. G. Rao for the appellant Unions can now be set forth. As we had occasion to state earlier, the Board, in its proceedings dated 28-12-1961, unfortunately, made its package deal offer, with notice expressed in the following terms, namely that existing employees should exercise this option "within 21 days from the date of this notice". This was obviously copied from S. 9-A(b) but ignoring the fact that the section makes it clear that this is prohibited, and that the change cannot be effected within 21 days of the notice. Mr. Rao contends that whether the change be unilaterally imposed by the employer, or be a change bilaterally based, upon an offer by the employer and the consent of the concerned workmen, the change cannot be effected without the statutory notice under S. 9-A being strictly complied with. Nor will it matter that the change is

one beneficial to the workmen, If the terms are regarded as a whole. In the present case, apparently, the scheme of the Board did not include certain categories of labour, such as workmen of the Nominal Muster Roll and casual labour. For this reason, notice to the workmen and to the concerned labour Unions was essential. Mr. Rao did not press the argument that scheme by which workmen were given the option of accepting outright additions to their emoluments, without any other alteration of service conditions, such as the instance of an additional bonus, should be impugned merely because the statutory notice was not there. On that respect, the observations of the learned Judge, Veeraswami J. are pertinent:

".....it does not appear to me.....that even where the proposal is, for instance, to enhance the pay scales or to better the other terms by a unilateral decision of the employer, he should give notice under S. 9-A"

But, according to the learned counsel, the fact that this is an offer, and not an imposition of terms by the employer, is irrelevant. The fact that this offer was accepted by many workmen, within the period of notice, apparently upon a exercise of their individual judgment, to the effect that it was beneficial to them, is again irrelevant. The fact that the change has been effected (assuming that it has been so effected) with the consent of both parties concerned, while those not affected by the change continue to be governed by the pre-existing conditions of service in all respects, is equally irrelevant. Any change which affects the workmen even beneficially, can be effected by the employer though he may have the consent of the concerned workmen to the change, only with strict compliance as to notice under S. 9-A of the Act. Otherwise, the powers of this court under Art. 226 of the Constitution could be invoked, the respondent Board being a public utility concern to restrain the Board from giving effect to the change. Implicit in this line of reasoning is an assumption, incidentally commented upon by the learned counsel that this "package deal" is a coming intermixture of good and bad, by which unwary workmen, who have consented have suffered a true detriment in the matter of dearness allowance, and also in the matter of holidays. Lastly, it is strenuously contended that the whole proceeding smacks of an "unfair labour practice" designed to disrupt the ranks of organised labour, and should therefore be struck down to the extent prayed for.

(7) These arguments do appear to us to involve certain underlying assumptions, which are far-reaching and significant. We see that these assumptions also underlie the argument with regard to S. 33(1) of the Act, which as we have already observed, is inextricably connected with this line of reasoning. It appears to us to be very clear that S. 9-A was never designed to prevent the implementation of any change, which is not change imposed by the employer on the workmen, but which is based upon the consent of the workmen to the offer by the employer upon the exercise of their judgment that the change was beneficial. Nor can we agree that S. 33(1) would prohibit such a change, even though it may be that a period of conciliation had been commenced. In order to

clarify this, it is necessary proceed into the assumptions upon which the appellants, which are tow Unions of organised labour, are claiming to speak in this behalf even for those workmen who have accepted the offer, upon the exercise of a individual judgment as to its benefit to them.

(8) As will be clear from the study of any standard treatise upon the Trade Union Movement, such as the standard work of Sydney and Boatrice Webb, the whole theory of organised labour, and its statutory recognition Industrial legislation, is based upon the unequal bargaining power that prevails as between the capitalist employer and an individual workman, or disunited workmen Collective bargaining was the foundation of his movement, and it is in the interests of labour that statutory recognition has been accorded to Trade Unions, and their capacity to represent workmen, who are members of such bodies. But of course, there are limits to this doctrine, for, otherwise, it may become a tyranny stifling the freedom of the individual worker. It is not the law that every workman must necessarily be a member of the Trade Union, and that, outside its fold, he cannot exercise any violation or choice in matters affecting his welfare. Further, there may well be more than one organisation of labour within the ambit of an industry, the representational capacity of which will, naturally, be confined to the strength of its membership. Section 36(1) of the Industrial Disputes Act reflects this, and S. 36(1)(c) particularly specifies hat a workman who is not a member of any Trade Union maybe represented either by an officer of any Trade Union or even by any other workmen employed in the industry. The representative powers of organisations of labour, with regard to enactment"s, such as the Industrial Disputes Act, will have to be interpreted in the light of he individual freedoms guaranteed in the Constitution, and not as though such freedoms did not independently exist, as far as organised labour is concerned. In this context, it is highly significant that, under S. 18(1) of the Industrial Disputes Act.

"A settlement arrived at by agreement between the employer and workmen, otherwise than in the course of conciliation proceeding, shall be binding on the parties to the agreement."

(9) 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. To hold otherwise, would be to introduce a "new despotism" in industry the tyrants of organisations of labour over the rights and liberties of the individual workmen, which Lord Hewart raised his voice of protest in a famous work. It must at once be conceded in fairness to the learned counsel for the appellant Unions, that he does not contend for this extreme view. But, we are afraid that certain aspects of it are implied in the argument that, though this was strictly an offer or option extended by the employer Board, and though individual workmen concerned have accepted it as beneficial to their interests still the appellant unions have the right to claim that the choice of these

unwary workmen was unfortunate, and that these Unions possess superior wisdom in this respect. The point is not whether the terms as to dearness allowance in this "package offer" were, even considered separately, beneficial to the workman or otherwise. The learned Judge (Veeraswami J.) has gone into this aspect, and he came to the conclusion that even if these terms were regarded apart, they were beneficial and not prejudicial. But it is quite unnecessary for our present purpose to follow the learned Judge here. It is sufficient for us to emphasise that those terms were duly considered by the workmen to whom the offer was made, and that they were accepted as beneficial. Even if the appellant Unions think otherwise, we are quite unable to see how they have a right to dictate to those workmen, who may not even be members of the Unions, and to claim that those beneficial provisions should not be implemented by the Board; and further, that we should restrain the respondent Board by the issue of a writ of mandamus in this regard.

(10) The argument that certain categories of labour, namely, Nominal Muster Roll workmen and casual labour, were excluded from the offer, and that, therefore, the offer was bad for lack of strict notice under S. 9-A, appears as a strange contradiction. If the offer was really prejudicial, as the appellant unions to deem to believe, it should be a matter of gratification and not for complaint that certain categories of labour were not included within the scope of this offer. If the offer was not prejudicial, it is extraordinary attitude on the part of the organisations of labour to claim that even benefits can be received by workman only upon their dictation.

(11) We shall pass on to comment, very briefly, upon the related argument under S. 33(1) of the Act, that we have set forth earlier. One moot question was, whether S. 33(1) applied at all, in the context of the relevant dates. The learned Judge Veeraswami J. came to the conclusion that S. 33(1) did not apply because as he says:

"The impugned proceedings were issued prior to the date of the strike notice and the alteration, if any, subsequent to that date in the conditions of service is not by any step taken or act done by the respondent during the pendency of a conciliation proceeding"

We are not now concerned to canvass the correctness of this, for the simple reason, that, in any event, we are in entire agreement with the learned Judge that the other qualification under S. 33(1)(a), namely, "alteration to the prejudice of the workman concerned" is not at all in issue here. We have sufficiently indicated our reasons for this view. In our view, this is not a matter for the Trade Union officials claiming to speak for organised labour, or for the Unions themselves to judge any more than it is a matter for the employer to judge.

We would even go to the extent of holding that it is not even a matter within the province of this court to judge, in the exercise of its writ jurisdiction. Where a change has been effected by imposition, it may be sufficient that the concerned

workmen think it prejudicial, whether it be truly so or otherwise. But, where the change has been effected, by consent, as between certain workmen and the employer, upon an offer by the employer and the acceptance of the terms by the concerned workmen, and the rest of the workmen in industry are unaffected because the status quo prevails the organisations of labour cannot step in and presume to dictate, by telling the workmen that the choice was erroneous and that they are ignorant of their true welfare. In this context, it is highly significant that an affidavit by the appellants does contain an imputation that the concerned workmen were coerced or compelled to sign the declarations, get their consent; but learned counsel for the appellants has not offered a single fact or allegation in support of this.

(12) It may be true that such an offer might, in conceivable circumstances, amount to an "unfair labour practice". Our attention has been drawn to a passage in "Labour Disputes and Collective Bargaining" by Ladwig Teller, Vol. 3, S. 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 connection with changes in the agreement". But we are quite unable to see how so long as the workmen are sui juris, 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 the issue of a writ. At the highest for the organised labour, this may be a justification for raising an "Industrial dispute" and for seeking a reference from the Government under 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 people, to accept shorter holidays as part of a comprehensive offer, which includes other benefits. Even in the view most favourable to the appellant Unions, all that can be said that if they complain of a change effected by coercion or taking advantage of the illiteracy of the workers, without adequate notice as S. 9-A requires though it was a change by mutual consent, this would be a proper and due occasion for using 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.

(13) Upon all these grounds set forth above, the writ appeal fails and is dismissed. There will be no order as to costs.

(14) Appeal dismissed.