
(2010) 08 BOM CK 0218

In the Bombay High Court

Case No : Writ Petition No. 5400 of 1996

The Union of India (UOI) and The General Manager, Currency
Note Press

APPELLANT

Vs

The Workmen and Currency Note Press Staff Union and The
Hon''ble Shri S.B. Panse, The Presiding Officer, Central Govt.
Industrial Tribunal No. 2

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Factories Act, 1948 — Section 2(1), 61, 61(10)
Industrial Disputes Act, 1947 — Section 18, 2, 20, 20(2), 9A

Citation : (2010) 5 BomCR 549 : (2010) 127 FLR 424 : (2011) 1 LLJ 78

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Neeta Masurkar, Vinay Masurkar and D.A. Dubey, for the Appellant;
S.M. Dharap, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The petition challenges the award of the Central Government Industrial Tribunal (in short "the Tribunal") dated 10.10.1995. By this award the Tribunal has allowed the reference of the dispute raised by respondent No. 1 union. The Tribunal has further held that the action of the management of the India Security Press - petitioner No. 2 and the Currency Note Press - petitioner No. 3, Nashik, in issuing the notice of change dated 8.10.1991 proposing to increase the weekly hours was not justified in view of the agreement dated 11.5.1988 entered into between both the Presses and the workmen. This notice of change was issued to increase the weekly hours of work from 37 1/2 hours to 44 hours per week in respect of the ministerial staff, namely, clerks, office peons, record sorters and medical staff.

2. The facts giving rise to the present dispute are as follows:

The workmen employed in both the Presses were working for 37½ hours a week. On 20.10.1987, the Government decided to increase the number of working hours per week to 44, based on the recommendations of the Fourth Pay Commission. Accordingly, the petitioners issued a notice of change u/s 9A of the Industrial Disputes Act, 1947 (in short, "the I.D. Act") on 16.1.1988 (for short, the 1988 notice) declaring that the working hours per week would be increased with effect from 7.2.1988 from 37½ hours to 44 hours a week. The union representing the workmen employed in both the India Security Press as well as the Currency Note Press, issued a notice of strike on 25.1.1988 proposing to proceed on an indefinite strike in view of the unjustified demands of the petitioners to increase the working hours. The matter was then admitted in conciliation. The Conciliation Officer admitted both the disputes, relating to the notice of change dated 16.1.1988 as well as the strike notice dated 25.1.1988. The parties appeared before the Conciliation Officer and agreed that since a writ petition was pending in the Calcutta High Court on the same issue i.e. the increase in working hours per week, the notice dated 16.1.1988 would not be given effect by the petitioners till the disposal of that petition. The strike notice was also not implemented.

3. It appears that the writ petition before the Calcutta High Court being C.O. No. 9523 (W) of 1988, was dismissed on 7.1.1991. Ten months" later on 8.10.1991 (for short, the 1991 notice), the petitioners issued a notice u/s 61 of the Factories Act indicating that the hours of work would be changed from 37½ hours to 44 hours. The respondent workmen opposed the same and the dispute was admitted in conciliation. The conciliation officer submitted a failure report. Significantly, no reference was made to the conciliation proceedings in respect of the 1988 notice in that report.

4. The Central Government refused to refer the dispute for adjudication. The respondents, therefore, filed a writ petition before this Court challenging the decision of the Central Government refusing to refer the dispute for adjudication. This court dismissed the writ petition and gave liberty to the respondents to approach the Central Administrative Tribunal. Accordingly, the workers then approached the Central Administrative Tribunal (in short, the C.A.T.) through their union. The C.A.T. set aside the order of the appropriate Government i.e. the Central Government and directed it to make a reference to the Industrial Tribunal within four weeks.

5. The Central Government thereafter referred the matter for adjudication before the Central Government Industrial Tribunal (in short, the C.G.I.T.) on 11.11.1993. The dispute referred for adjudication was as follows:

Whether the action of the management of India Security Press, Nasik and Currency Note Press, Nasik in issuing the notice of change dated 8.10.1991 proposing to increase weekly hours of work from 37½ to 44 per week in respect of ministerial staff, namely, clerks, office peons, record sorters, and medical staff is justified in view of agreement dated 11.5.1988 signed between the two

managements and the workmen in conciliation before conciliation officer and ALC (C)-III, Bombay. If not, what relief the workmen concerned are entitled to?

6. The C.G.I.T. by the impugned award has upheld the contention of the respondent workmen that the notice of change of 1991 could not have been implemented during the pendency of the petition before the Calcutta High Court and has, therefore, allowed the reference. This award was challenged by the petitioners before the C.A.T., Mumbai, on 9.1.1996 by filing Original Application No. 99 of 1996. The original application was dismissed by the Administrative Tribunal as it had no jurisdiction in respect of the award passed by the Industrial Tribunal. The petitioners, therefore, preferred the present writ petition.

7. Mrs. Masurkar appearing for the petitioners contends that the Industrial Tribunal had no jurisdiction to make an award since the workmen concerned were not industrial workers. She submits that ministerial staff of the Presses do not work on machines and, therefore, are not workmen under the Factories Act. According to the learned advocate, they are civil servants and are not governed by the I.D. Act. To support this submission she has relied on the judgment of the Constitution Bench of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, . Her next submission is that the substratum of the reference has been demolished since the petition pending before the Calcutta High Court has been dismissed on 7.1.1991. The appeal filed against that judgment was withdrawn in the year 2005. According to her, the reference was therefore not maintainable and ought to have been dismissed. It appears that a reference is now pending for adjudication in respect of certain demands raised by the workmen in India Security Press and the Currency Note Press in Calcutta, including the hours of work per week. Hence she submits that the award must be set aside. The third submission of Mrs. Masurkar is that the number of working hours per week were increased in view of the recommendations of the Fourth Pay Commission. She submits that the workmen have accepted the benefits of the recommendations of the Pay Commission, inasmuch as, they are drawing wages in accordance with these recommendations. According to her, the workmen have also submitted undertakings to abide by the recommendations and, therefore, the reference was not maintainable. The fourth submission of the learned advocate is that the notice of change given u/s 61(10) of the Factories Act, 1948 could be implemented immediately without waiting for a decision on that notice of change. The last submission advanced by the learned advocate is that the C.A.T. could not have directed the Central Government to refer this dispute for adjudication and, therefore, the reference itself is bad.

8. Mr. Dharap, the learned advocate appearing for the respondent No. 1 workmen submits that the Tribunal has committed no error by passing the impugned award. He submits that the award does not contain any infirmity for this Court to exercise its jurisdiction under Article 227 of the Constitution of India. The learned advocate submits that the notice of change of 1991 issued under the Factories Act, could not have been implemented without a notice of

change being given u/s 9A of the I.D. Act. He points out that no such notice was issued by the petitioners u/s 9A. Therefore the Tribunal has rightly concluded that the aforesaid notice under the Factories Act could not be implemented, urges the learned advocate. He further submits that the proceedings before the Conciliation Officer in respect of the 1988 notice were closed in view of the agreement arrived at between the parties that it would not be implemented till the Calcutta High Court took a decision in the matter. He further points out that no failure report was submitted by the Conciliation Officer in respect of this notice nor was there any settlement in terms of Section 2(p) read with Section 18 of the I.D. Act. He, therefore, submits that the conciliation in respect of the 1988 notice was, therefore, closed and no longer survived. Mr. Dharap then relies on the judgment of the Supreme Court in the case of *Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery*, . The Supreme Court has enunciated in this judgment when a conciliation proceeding comes to close. He then points out that the proceedings in conciliation in respect of the strike or lock out can be deemed to have been concluded only u/s 20 of the I.D. Act in terms of the settlement or when a failure report is submitted by the Conciliation Officer to the appropriate Government or a reference is made to the Court for adjudication of the dispute during the pendency of the conciliation proceedings. He submits that the settlement which is envisaged u/s 20(2)(a) is a settlement u/s 2(p) read with Section 18 of the I.D. Act and not merely a Memorandum of Understanding. According to him, therefore, the notice of 1991 could not have been implemented though it mentions that it was issued in continuation of the 1988 notice. He then submits that it is not open for the petitioner to contend now that the reference was not maintainable in view of the fact that the Central Administrative Tribunal had no jurisdiction to direct the appropriate Government to make a reference. According to him, this issue was never raised by the petitioners either by challenging the reference or in the written statement or in the present writ petition.

9. The contention of Mrs. Masurkar that the reference was not maintainable is without merit. To buttress this proposition she has relied on the judgment in the case of *L. Chandra Kumar* (supra). Mrs. Masurkar has submitted that, in view of the observations of the Supreme court in para 99 of the judgment, the Central Government Industrial Tribunal had no jurisdiction to entertain the reference. This submission of the learned advocate is without any basis. The judgment has no application to the facts in the present case. The judgment deals with the constitutional validity of the Administrative Tribunals Act and the powers conferred on the Tribunal constituted under the Act. The learned advocate has also relied on this judgment in support of her contention that the Ministerial Staff of the Government Presses would not be covered by the provisions of the I.D. Act but by the Administrative Tribunal Act. This submission is also without any basis. The judgment does not in any manner indicate that peons working in the Central Government Presses would not be covered by the I.D. Act. In fact, if that is the contention of the petitioners, then the question of issuing a notice of

change u/s 9A as they had done in 1988 or u/s 61(10) of the Factories Act in 1991, would not have arisen. Mr. Dharap is right in contending that such a submission cannot be allowed to be urged at this stage without there being any pleading whatsoever at any stage.

10. The next issue which arises for consideration is the submission of Mrs. Masurkar, that the ministerial staff of the Presses do not work on machines and, therefore, are not workmen and consequently not covered by the I.D. Act. This submission is again without merit. u/s 2(1) of the Factories Act, 1948, a worker has been defined as follows:

Section 2(1): "worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process, but does not include any member of the armed forces of the Union.

Under the I.D. Act the definition of "workman" contained in Section 2(s) is as follows:

Section 2(s): "workman" means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding six thousand five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

A peon or a clerk working in the factory may not be a worker strictly under the Factories Act but he certainly is a workman under the I.D. Act. Therefore, any change in the service conditions of peons working in the India Security Press or the Currency Note Press must be preceded by a notice u/s 9A of the I.D. Act. Issuance of the notice only u/s 61(10) of the Factories Act would be of no avail to

the petitioners for having the working hours changed. u/s 9A a notice of change is required to be issued whenever a change is proposed in respect of any matter specified in the Fourth Schedule of the I.D. Act. The change in the hours of working is one of the reasons that would require a notice u/s 9A of the I.D. Act. Therefore, in my opinion, the petitioners have no right to change the service conditions unilaterally, without a notice being issued u/s 9A. The submission that since the notice u/s 61(10) was issued in continuation of the earlier notice, there was no need to give a fresh notice of change is also unsustainable. The earlier notice of 1988 was kept in abeyance till the Calcutta High Court decided the issue. The conciliation in respect of that notice was closed. Therefore the notice of 1988 could not have been revived after three years. Before bringing in any change as proposed under the notice of 1991, it was necessary to give a fresh notice of change u/s 9A. The Labour Court, in my opinion, was right in its conclusion that the petitioners have illegally changed the service conditions of the workmen. The Labour Court has, in my opinion, committed no error by allowing the reference.

11. In the case of *Navbharat, Hindi Daily, Nagpur v. Navbharat Shramik Sangha* reported in 1984 BCI (0) 46, the Division Bench of this Court has explained the procedure which an employer is required to follow when proposing to effect a change in the conditions of service of the workmen. Para 13 of the said judgment reads as follows:

Any employer who proposes to effect change in the conditions of service applicable to the workman in respect of any matter specified in the fourth Schedule, can effect a change only after giving the workman, likely to be affected by such change, a notice in a prescribed manner and after waiting for 21 days, the proposed change can be brought about. The intention behind the notice appeared to be that the workman affected has a chance to raise a dispute by approaching proper authorities. The said dispute can also mature into a reference if the parties do not arrive at an amicable settlement. It is thus, apparent that Section 9A was enacted with a view to protect the interests of workman who may be affected by a proposed change of the employer. In these circumstances, it would be difficult for us to hold that the provisions of Section 9-A are not mandatory.

12. The submission of Mrs. Masurkar that the substratum of the reference has been demolished because the Calcutta High Court has disposed of the petition is also without substance. The reference is in respect of the notice of 1991. The dispute regarding notice of 1988 was closed by the Conciliation Officer and, therefore, the reference which has been adjudicated by the C.G.I.T. and which is impugned in the present petition has no nexus with the notice of 1988.

13. The next submission of Mrs. Masurkar is that the weekly working hours were increased only because of the recommendations of the Fourth Pay Commission. It may be true that the Fourth Pay Commission has recommended an increase in the working hours per week. However, this change though recommended by the

Pay Commission, cannot be implemented unless it is preceded by a notice of change u/s 9A.

14. The submission that the reference itself was bad because C.A.T. could not have directed the Central Government to refer the dispute for adjudication cannot be permitted to be urged at this stage. There is nothing on record to show that the petitioners were prevented from challenging the reference itself when it was made for adjudication. The petitioners therefore cannot raise this issue at this stage especially when no such contention was raised before the C.G.I.T. nor has it been raised in the present petition.

15. The question which arises now is what relief the respondents are entitled to. According to Mr. Dharap, the money deposited in this Court by the petitioners should be paid over to the workmen. A civil application has been filed for that purpose. Admittedly, the workers have been paid an amount of Rs. 1,28,03.868/- in accordance with the orders passed by this Court. This amount has been paid in respect of the overtime worked beyond 40 hours. This order was passed while admitting the present petition by the learned Single Judge of this Court. The learned Judge noticed that the Fourth Pay Commission has recommended that the staff should work for 40 hours per week and were entitled to overtime allowance in case they worked beyond 40 hours. Therefore, at the time of admission, this Court had directed that the overtime allowance should be calculated from 16.7.1992 and should be paid to the employees. Accordingly an amount of Rs. 1,28,03,868/- has been paid to the employees. An amount of Rs. 1,05,63,048/- has been deposited in this Court and has been invested in a nationalized bank. In view of dismissal of the writ petition, the amount deposited in this Court shall be paid over to the respondents together with the accrued interest.

16. Mr. Dharap appearing for the respondent No. 1 workmen submits that the petition has been prolonged only because of the callous and negligent attitude of the petitioners thereby depriving the workers of their rightful dues for more than 20 years. He points out that the petition was dismissed and later, restored, when the petitioners dragged the workers all the way to the Supreme Court. He, therefore, submits that the petitioners should be directed to pay exemplary costs.

17. The writ petition is dismissed. Rule discharged with costs quantified at Rs. 10,000/-.

18. The award shall be implemented within eight weeks from today.

19. Mrs. Masurkar prays for stay of this order. Stay refused.

20. In view of disposal of the writ petition, Civil Application Nos. 1522 of 2010 and 1182 of 2003 also stands disposed of accordingly.