

(1988) 05 AHC CK 0054

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4415 of 1988

U.P. Electronics Corpn. Karamchari Sangh

APPELLANT

Vs

Uptron India Ltd. and Another

RESPONDENT

Date of Decision : 19-05-1988

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4(1)

Citation : (1989) 59 FLR 842 : (1991) 1 LLJ 316

Hon'ble Judges : Om Prakash, J;K.P. Singh, J

Bench : Division Bench

Advocate : A. Kumar, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—A short question involved in this writ petition is where the notice contained in Annexure I, dated 1st March 1988, regarding change of weekly holiday from Wednesday to Sunday with effect from 6th March 1988, is bad in law and against the provisions of Section 4-1 of the Uttar Pradesh Industrial Disputes Act read with the Third Schedule thereof.

2. The relevant portion of the aforesaid Section 4-I of the Uttar Pradesh Act reads as below:

"Notice of change: No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Third 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 twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change -

(i).....

(ii)....."

The Third Schedule of the Uttar Pradesh Act reads as below:

"(See Section 4-I)

(Conditions of service for change of which notice is to be given)

1.

2.

3.

4. Hours of work and rest intervals.

5. Leave with wages and holidays.

6.

7.

8. Withdrawal of any customary concession or privilege or change in usage.

9.

10.....

11."

3.The aforesaid Section 4-I read with the Third Schedule thereof is almost similar to the provisions of Section 9-A read with the Fourth Schedule of the Central Act. Most of the rulings brought to our notice are concerning the provisions of Section 9-A read with the Fourth Schedule of the Central Act but they provide valuable guidelines to determine the question involved in the present case.

4. During the course of arguments, learned counsel for the petitioner has contended that their Lordships of the Supreme Court have expressed one view in *Workmen of Sur Iron & Steel Co. (P.) Ltd. v. Sur Iron & Steel Co. (P.) Ltd.* (1971 1 LLJ 570), whereby a change in the weekly off-day is not covered by the term "Conditions of service" as enumerated in the Fourth Schedule read with Section 9-A of the Industrial Disputes Act. The other view according to him appears to have been expressed in *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, , whereby it has been indicated that the change of weekly holidays from Sunday to some other day of the week would fall within the expression "change in usage or customary privilege" mentioned in the Fourth Schedule read with Section 9-A of the Industrial Disputes Act. He has also emphasised that the facts in the case under our consideration are somewhat similar to the facts under consideration by their Lordships of the Supreme Court in *Tata Iron & Steel Co. Ltd. v. Workmen of Tata & Steel Co. Ltd*, (supra) except that the change in that case under consideration was from Sunday to some other day of the week, whereas in the present case the change is from Wednesday to Sunday. Therefore, according to

him, the principle of law laid down in the case of Tata Iron & Steel Co. Ltd. (supra) should govern the present case and the writ petition deserves to be allowed.

5. In Workmen of Sur Iron & Steel Co. Pvt. Ltd. v. Sur Iron & Steel Co. (P) Ltd, (supra) their Lordships of the Supreme Court have indicated in para 3 of the judgment as below (P.573):

"On the applicability of Section 9-A of the Act, the position can be examined in two alternative aspects. Section 9-A applies to matters enumerated in the Fourth Schedule to the Act. There does not appear to be any specific entry in that Schedule which would cover a condition of service relating to weekly off-day. In the alternative, we can take notice of the contention put forward by learned counsel for the Union before us that the grant of weekly off-day will fall in item No. 4 of the Fourth Schedule. Even if this submission be accepted, it does not advance the case of the workmen, because the Tribunal has specifically found that the Government of the State of West Bengal in the Labour Department had issued a notification u/s 9-B of the Act laying down that no notice u/s 9-A was required to be served in respect of matters specified in item Nos. 4,6 and 11 of the Fourth Schedule to the Act for a period of three months from the date of publication of the notification in the Calcutta Gazette. This notification was published on 10th April 1962, without complying with the requirements of Section 9-A, Consequently, even if it be held that the alteration of weekly off-day from Sunday to Saturday was one of the conditions of service governed by Section 9-A as falling under item No.4 of the Fourth Schedule, compliance with the requirements of Section 9-A was not required to be carried out by the company because of the exemption granted by this notification issued by the State Government u/s 9-B of the Act."

6. No doubt, their Lordships of the Supreme Court have indicated that change of weekly off-day from Sunday to Saturday would not be one of the conditions of service contemplated by Section 9-A of the Central Act but the judgment appears to have proceeded on the notification issued by the State Government u/s 9-B of the Act. Therefore, we infer that their Lordships of the Supreme Court have not categorically held that the change of weekly off-day would in no circumstance be covered u/s 9-A of the Central Act. This aspect of the matter has not been taken note of in some later decisions of the highest Court and it has been observed that this case clearly indicated that change of weekly off-day would not be covered within the terms of conditions of service mentioned in Section 9-A of the Central Act.

7. In Tata Iron & Steel Co. Ltd. v. The Workmen of Tata Iron & Steel Co. Ltd, (supra) their Lordships of the Supreme Court have indicated in para. 12 of the judgment as below (at page 265):

"We now come to the main contention. Section 9-A, which has already been reproduced, lays down that change in the conditions of service in respect of any

matter specified in the Fourth Schedule shall not have effect unless a notice is given to the workmen likely to be affected by such change. The relevant entries of the Fourth Schedule have already been reproduced. It appears to us that entries dealing with "hours of work and rest intervals" and leave with wages and holidays" are wide enough to cover the case of illegal strikes and rest days. Indeed, entry No.8 dealing with "withdrawal of customary concession or privilege or change in usage" is also wide enough to take within its fold the change of weekly holidays from Sunday to some other day of the week, because it seems to us to be a plausible argument to urge that fixation of Sundays as weekly rest days is founded on usage and/or is treated as a customary privilege and any change in such weekly holidays would fall within the expression "change in usage or customary privilege".

8. It is noteworthy that the earlier case of *Sur Iron & Steel Co. Pvt. Ltd.*, (supra) had only mentioned that there was no specific entry in the Fourth Schedule dealing with weekly off-day whereas in *Tata Iron & Steel case* (supra) it has been indicated that the change of weekly rest day would fall within the expression "change in usage or customary privilege". Therefore, we think that in the present case the change of weekly off-day, from Wednesday to Sunday would be covered within the term "change in usage". The meaning of the word "usage" in *Chambers 20th Century Dictionary* has been indicated as "treatment, practice, custom". In the present case we find that Wednesday in Allahabad city is being observed as weekly off-day due to the provisions of U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use) Order, 1977. Section 3 of the aforesaid Order reads as follows:

"The non-continuous process of industries other than atta chakkis, cold storages, ice factories, petrol pumps automobile service and air filling stations situated in district specified in Schedule "A" to this Order shall observe the day specified in the said Schedule against it as the weekly holidays."

Schedule "A" of the aforesaid Order, item No.3, indicates Wednesday as day of weekly holiday in the district of Allahabad. The practice of observing Wednesday as weekly holiday in the district of Allahabad has been for more than a decade. Therefore, any change in the practice would be covered by the entry at item No.8 of the Third Schedule read with Section 4-I of the UP. Industrial Disputes Act. Therefore, we think that the notice contained in Annexure I attached with the writ petition is bad in law and does not give requisite notice of 21 days to the workmen, therefore, it deserves to be quashed.

9. In para. 13 of the judgment of *Tata Iron & Steel Co. case*, (supra) their Lordships of the Supreme Court have indicated as below (pp.265-266):

"We are not unmindful of the force of the argument pressed on behalf of the appellant that if a holiday is changed from Sunday to some other week day, it would not affect the material gain or financial benefit available to the workmen because workmen would nonetheless get one day off with pay in a week. Whether

the paid day of rest is a Sunday or some other week day would no doubt cause no financial loss to the workmen. But, the financial benefit cannot be the sole criterion in considering this question. In this connection it must not be ignored that due to long usage and other factors Sunday as a holiday may for conceivable reasons have assumed importance for workmen. For certain classes of workmen Sunday as a weekly rest day may also have special significance. Workmen may, for example, also generally like to have weekly rest day on a Sunday when their school-going children have a holiday so that the entire family may be able to take part in recreational or other social activities. This consideration has its own importance. If that be so, then notice for effecting such a change would be within the contemplation of Section 9-A.

10. From the above observations we infer that in the present case when the workmen of the contesting opposite party have adapted themselves to the weekly holiday of Wednesday for more than ten years, any change in the weekly holiday would adversely affect the workmen because they would have to disturb their practice which they have evolved due to the Wednesday being a weekly holiday. True that the workmen of the opposite party would not be put to financial loss merely by change of weekly off-day from Wednesday to Sunday, but they would be materially affected in being disturbed in the practice which they have adopted due to the power cut in supply in observing Wednesday as regular off-day for more than 10 years. To our mind, the observance of weekly off-day on Wednesday in the district of Allahabad has acquired the status of customary privilege and usage. Any change in customary privilege or usage would certainly attract the provisions of Section 4-I of the U.P. Industrial Disputes Act. In our opinion, the notice contained in Annexure-I attached to the writ petition is bad-in law and is liable to be quashed as it has not given 21 days' notice to the workmen.

11. It is noteworthy that their Lordships of the Supreme Court in Tata Iron & Steel Co. case, (supra) have indicated in para. 13 of the judgment as below (at p.266):

"Further, the real object and purpose of enacting Section 9-A seems to be to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to present their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital."

12. In the facts and circumstances of the case under our consideration, it appears that the notice contained in Annexure-I attached with the writ petition does not carry out the real object indicated above. The fact of the contesting

respondents in changing weekly off-day without giving requisite notice to the workmen indicates that the employer has not treated the labourers as co-sharers and the employer has tried to show the old tradition of labour subservience to capital. In the present case, the only grievance of the petitioner is to the effect that the workmen should get 21 days' requisite notice before changing the weekly off-day from Wednesday to Sunday. We think their claim is fully justified and is within the four corners of Section 4-I of the U.P. Industrial Disputes Act. The ends of justice demand that the petitioner should get requisite notice to put forward the grievance of the workmen before the contesting opposite parties which shall try to carry out the real object as indicated by their Lordships of the Supreme Court as mentioned above.

13. It is noteworthy that the real object indicated above by their Lordships of the Supreme Court has been confirmed in a later decision reported in *The Management of Indian Oil Corporation Ltd. Vs. Its Workmen*, .

14. From the foregoing discussion it is evident that the change of weekly off-day from Wednesday to Sunday in the present case without giving requisite notice to the workmen is against the principle of law indicated by their Lordships of the Supreme Court in *Tata Iron & Steel Co. Pvt. Ltd. v. Workmen of Tata Iron & Steel Co. Pvt. Ltd.* (supra)

15. In *Assam Match Company Limited Vs. Bijoy Lal Sen and Others*, , a Division Bench of the Supreme Court has indicated in para. 10 that in *Workmen of Sur Iron and Steel Co. Pvt. Ltd. v. Sur Iron and Steel Co, Pvt. Ltd.* (supra) the decision did not express any opinion on the question whether the alteration of the weekly off-day, from Sunday to Saturday, amounts to a change in the conditions of service. The observations in the judgment are that such an alteration will not attract Section 9-A. Here, we would like to emphasize that the observation to the effect that such an alteration will not attract Section 9-A should be understood in the light of the relevant notification u/s 9-B emphasized in the case reported in *Workmen of Sur Iron and Steel Co. Pvt. Ltd. v. Sur Iron and Steel Co. Pvt. Ltd.*, (supra). The abstract observation to the effect that such alteration will not attract Section 9-A would not mean that their Lordships had held that in no case Section 9-A would be attracted when change of weekly holiday was involved. To our mind, if the case is read between the lines, probably the inference would be somewhat different.

16. In *Assam Match Co. v. Bijoy Lal Sen* (supra) their Lordships have indicated as below (p. 153):

"It was held in the particular circumstances of that case that the alteration amounts to a change in the conditions of service. It must be noted that the workmen have been having for a long number of years Sunday as a holiday and that may have become a condition of their service. A holiday on a Sunday can only ; be on that day and no other day of the week can be Sunday. On this basis the decision has been rendered holding that cancelling the holiday enjoyed on

Sunday amounts, in the circumstances, to a change in the conditions of service."

7. Here, it would not be out of place to mention that in the present case under our consideration, the workmen have enjoyed Wednesday as a weekly holiday for more than ten years and, therefore, any change from Wednesday to Sunday would tantamount to a change in the conditions of service specially when we have indicated above that change in weekly off-day from Wednesday to Sunday would be covered within item No.8 of the Third Schedule read with Section 4 of the Act.

18. In *Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others*, , a Bench of three Hon"ble Judges have indicated as below at p.432:

"A close scrutiny of the various decisions would show that whether any particular practice or allowance or concession had become a condition of service would always depend upon the facts and circumstances of each case and no rule applicable to all cases could be culled out from these decisions."

19. From the above observations we think that no hard and fast rule can be laid down that mere change of weekly off-day would be contemplated by the term "conditions of service" mentioned in the Industrial Disputes Act (Central as well as local) but the present case under our consideration is fully covered by the dictum of law laid down in *Tata Iron and Steel Co, Pvt. Ltd. v. Workmen of Tata Iron and Steel Co. Pvt. Ltd.* (supra).

20. In *Mistry Lallubhoy & Co. v. Engineering and Metal Workers Union* (1978) 53 F.I R. 100 (Bom.) Hon"ble S.K. Desai, I, has indicated that change in weekly off-day from day A to day B may not attract the provisions of Section 9-A of the Central Act but while dealing with the question under his consideration he has made the following observation at p.110.

"There is nothing on the record which would suggest that the employees of this factory, considered as a separate unit or as part of the industry in a particular locality or region, had any vested right in enjoying Sunday as an off-day. The question, as indicated earlier, might have been different if there is a change proposed by the company to change the weekly off-day from Sunday to any other day not for one solitary occasion but prospectively for a longer period of time or permanently. Different consequences may follow such a proposal and the approach may conceivably be different, This is not the case before us and we are, therefore not required to consider whether such a proposal would render obligatory the procedure provided for by Section 9-A,"

21. If the above-mentioned observations of S.K. Desai, I, are applied to the facts of the present case, it would be evident that the opposite party is changing the weekly off-day from Wednesday to Sunday not on one or two solitary occasions but permanently and for a long time in future and, therefore, we think that the provisions of Section 4-I of the U.P. Industrial Disputes Act read with the Third Schedule item Nos.4, 5 and 8 would be attracted and the notice contained in

Annexure I attached with the writ petition deserves to be quashed. The petitioner is entitled to the claims at item Nos. (a) and (b) of the prayer mentioned in the writ petition. It would not be out of place to mention here that assuming even if some observations have been made in *Workmen of Sur Iron and Steel Co. Ltd. v. Sur Iron and Steel Co. Pvt. Ltd.* (supra), against the observations made in *Tata Iron and Steel Co. v. Workmen of Tata Iron and Steel Co. Ltd.* (supra), the latter case being later in time will hold the field unless varied by their Lordships of the Supreme Court in some subsequent case. The aforesaid *Tata Iron and Steel Cos* case (supra), appears to have been followed in *Indian Oil Corporation's* case (supra), though on different ground, yet we think that the aforesaid case reported in *Tata Iron and Steel Co's* case (supra), would govern the facts and circumstances involved in the present case.

22. From the foregoing discussion we think that the writ petition should succeed and the notice dated March 1, 1988, contained Annexure-I attached with the writ petition should be quashed and opposite party No. 1 in the writ petition should be directed not to give effect to the notice dated March 1, 1988, and not to force the members of the petitioner-union to work on Wednesday and to observe Sunday as weekly off-day. Ultimately, we allow the writ petition, quash Annexure-I attached to it and direct the opposite party No. i not to force the members of the petitioner-union to work on Wednesday and to observe Sunday as weekly off-day. It would be open to the opposite party No. 1 to give requisite notice to the workmen contemplated by the provisions of Section 4-I of the U.P. Industrial Disputes Act and thereafter, take decision in the matter keeping in view the observations made in *Tata Iron and Steel Co.'s* case (supra). Parties to are directed to bear their own costs.