The Remington Rand of India Ltd. Vs. the Workmen

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Court : Supreme Court of India

Decided On : Aug-11-1967

Reported in : AIR1968SC224; [1967(15)FLR251]; (1967)IILLJ866SC; (1968)ILLJ542SC; [1968]1SCR164

Judge : K.N. Wanchoo, C.J. and; G.K. Mitter, J.

Acts : Industrial Disputes Act - Sections 17(1)

Appellant : The Remington Rand of India Ltd.

Respondent : The Workmen

Judgement :

Mitter, J.

1. This appeal by the Remington Rand of India Ltd. against their workmen arises out of an award dated 5th October, 1965 made by the Industrial Tribunal, Alleppey published in the Kerala Gazette dated 15th November, 1966.

2. The first point taken against this award is that it cannot be given effect to as it was published beyond the period fixed in the Act. The notification accompanying the gazette publication stated that Government had received the award on 14th October, 1966. It was argued by Mr. Gokhale that in terms of s. 17(1) of the Industrial Disputes Act the award had to be published 'within a period of thirty days from the date of receipt by the appropriate Government'. According to learned counsel, the award having reached Government on 14th October, 1966 it should have been published at the latest on 12th November, 1966 as s. 17(1) of the Act was mandatory. Our attention was also drawn to sub-s. (2) of s. 17 according to which it is only the award published under sub-s. (1) of s. 17 that is final and cannot be called in question by any court in any manner. We were also referred to s. 17-A and s. 19. Under sub-s. (1) of s. 17-A an award becomes enforceable on the expire of thirty days from the date of its publication under s. 17 and under sub-s. (3) of s. 19 an award is to remain in operation for a period of one year from the date on which the award becomes enforceable under s. 17-A. From all these provisions it was argued that the limits of time mentioned in the sections were mandatory and not directory and if an award was published beyond the period of thirty days, in contravention of s. 17(1) it could not be given effect to. To fortify his argument, learned counsel relied on certain observations of this Court in The Sirsilk Ltd. v. Government of Andhra Pradesh. : (1963)IILLJ647SC In that case, there was an order referring certain disputes between the appellant and its workmen to the Industrial Tribunal, Andhra Pradesh. The Tribunal sent its award to Government in September 1957. Before the Government could publish the award, the parties to the dispute came to a settlement and on 1st

October, 1957 a letter was written to the Government jointly on behalf of the employer and the employees intimating that the dispute which had been pending before the Tribunal had been settled and a request was made to Government not to publish the award. Government expressed its inability to withheld the publication taking the view that s. 17 of the Act was mandatory. The appellants filed writ petitions before the High Court of Andhra Pradesh under Art. 226 of the Constitution praying that Government might be directed not to publish the award sent to it by the Industrial Tribunal. The High Court held that s. 17 was mandatory and it was not open to Government to withhold publication. The contention on behalf of the appellants was that s. 17 providing for the publication of the award was directory and not mandatory. Mr. Gokhale relied on the passage at page 452 of the judgment reading :

'It is clear therefore, reading s. 17 and s. 17A together, that the intention behind s. 17(1) is that a duty is cast on Government to publish the award within thirty days of its receipt and the provision for its publication is mandatory and not merely directory'.

3. Ultimately, however, on a conspectus of Sections 17, 17-A, 18 and 19, it was observed that -

'though s. 17(1) is mandatory and the Government is bound to publish the award received by it from an industrial tribunal, the situation arising in a case like the present is of an exceptional nature and requires a reconciliation between s. 18(1) and s. 18(3), and in such a situation, the only way to reconcile the two provisions is to withhold the publication of the award, as a binding settlement has already come into force.....'

4. Reference was also made to the case of Erumeli Estate v. Industrial Tribunal [1962] 11 L.L.J. 144. There the question directly arose as to whether non-publication of the award within the period mentioned in s. 17(1) invalidated the award and the learned Judge observed that he was not inclined to accept that contention although it was highly desirable that the award should be published within the time mentioned. He said :

'Excepting that a slight delay in publishing the award under section 17(1) results in postponing its finality under s. 17(2) or its becoming enforceable under s. 17-A, no other consequence flows from the delay and therefore, in my view, the provisions of sub-s. (1) of s. 17 should be considered only to be merely directory.....'.

5. Mr. Gokhale also referred us to the case of The State of Uttar Pradesh & Others v. Babu Ram Upadhya : 1961CriLJ773 where there is an elaborate discussion as to whether the use of the word 'shall' in a statute made the provision mandatory. It was observed by Subba Rao. J. (as he then was) speaking for the majority of the Court that :

'For ascertaining the real intention of the Legislature the Court may consider inter alia, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions

is or is not visited by some penalty, the serious or trivial consequences that flow therefore, and, above all, whether the object of the legislation will be defeated or furthered.'

6. Keeping the above principles in mind, we cannot but hold that a provision as to time in s. 17(1) is merely directly and not mandatory. Section 17(1) makes it obligatory on the Government to publish the award. The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possible. For instance, there may be a strike in the press or there may be any other good and sufficient cause by reason of which the publication could not be made within thirty days. If we were to hold that the award would therefore be rendered invalid, it would be attaching undue importance to a provision not in the mind of the legislature. It is well known that it very often taken a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless harassment to the parties. The non-publication of the award within the period of thirty days does not entail any penalty and this is another consideration which has to be kept in mind. What was said in the earlier passage from the judgment in The Sirsilk Ltd. v. Government of Andhra Pradesh : (1963)IILLJ647SC merely shows that it was not open to Government to withhold publication but this Court never meant to lay down that the period of time fixed for publication was mandatory.

7. Coming to the merits of the case, Mr. Gokhale argued that the Tribunal had gone wrong in revising the wage scales as it had done. The head of dispute referred to the Tribunal was 'revision of wages as per award of the Madras Labour Tribunal in 38 of 1960'. The arguments advanced in this case were the same as in the Bangalore case (just now disposed of) and the Tribunal after noting the phenomenal progress of the Company and the enormous profits it was making, came to the conclusion that there was no reason why there should be any disparity in wages between the employees of a branch and the regional office when they were doing the same or similar work. In this case also, there was no evidence of comparable concerns. In our view, what we have said on this point of the dispute with regard to the Bangalore branch applies equally with regard to the Kerala branch and the matter will have to go back to the Tribunal for fixing the wages and the adjustment of the workers in the revised scale in the light of the observations made in that case bearing in mind Mr. Gokhale's offer on behalf of the Company to increase the wages as in the other appeal.

8. With regard to dearness allowance again, what was said the Bangalore appeal applies equally to this appeal. Here again the Tribunal said :

'It is also an accepted fact that the cost of living both at Trivandrum and at Ernakulam is higher than the cost of living at Madras. Therefore, there is no justification in perpetuating the disparity in the payment of D.A. to the workmen working at Madras and those working in the Trivandrum Branch.'

9. In the result, the Tribunal directed that the workmen of Ernakulam branch should get dearness allowance 'at the rate at which and in the manner in which' the pay and dearness allowance was being paid to the employees of Madras Regional Office. In our view, dearness allowance should be the same as decided in the case of the

workers of the Bangalore branch.

10. The Scheme for gratuity is the same as in the case of the Bangalore branch with the only difference that the maximum fixed was 20 months' wages after 20 years service. In our view, there is no reason why the scheme for gratuity should not be the same in the Ernakulam branch as in the Bangalore branch in case of termination of service for misconduct and the qualifying period should be 15 years' service.

11. Again, on principles already formulated, we hold that leave facilities at Ernakulam should be the same as those prevailing at Madras.

12. Next comes the dispute with regard to the working hours. The working hours of the employees of Trivandrum and Ernakulam as prevalent were from 9 a.m. to 1 p.m. and from 2 p.m. to 5.30 p.m. on week days and from 9 a.m. to 1 p.m. on Saturdays. At Madras the Company's workers work only for five days in a week from 9 a.m. to 1 p.m. and 1.45 p.m. to 5.30 p.m. The total working hours were therefore somewhat less than those at Trivandrum and Ernakulam. The complaint of the union before the Tribunal was that although by circular dated 24th March 1963 the Company had fixed the working hours from 9.30 a.m. for clerks and 9 a.m. for mechanics and peons, it was extracting half an hour's work per day extra contrary to their own orders. The Tribunal held that the circular should be given effect to and that the clerical staff should work from 9.30 a.m. to 1 p.m. and from 2 p.m. to 5.30 p.m. on working days and from 9.30 a.m. to 1 p.m. on Saturdays. We see no reason to disturb this portion of the award.

13. Another head of dispute related to work-load. The complaint of the union was that the workload was too heavy and that the method of calculation of workload was arbitrary. According to them, the workload fixed by agreement between the Company and its employees in Delhi and Lucknow was seven machines per day or 150 machines per month, while the workload at Trivandrum was 10 machines per day. According to the Management the workload fixed i.e. 10 machines per day, was not too much and there was no reason for disturbing the prevailing arrangement. But the Management did not deny that during the course of negotiations they had agreed to reduce the workload to seven machines per day or 150 machines per month and the Tribunal adopted this in the award with a rider that 'all the machines attended to, whether new or old, whether under the service contract or not, will be counted for the sake of workload'. No satisfactory reason has been adduced as to why we should disturb the award.

14. The last head of dispute was with regard to 'moving staff allowance'. The union demanded that workmen who were deputed on tour on Company's work should be given a day off if they had to travel two nights consecutively. Demand was also made that travelling staff should be paid overtime for the work done on holidays while on tour at double the normal wages for the day. The Management disputed this claim on the ground that it was not possible to calculate the number of hours worked by the employee at the out-station while on tour. The Tribunal found on examining a mechanic that the jurisdiction of the branch was limited to the districts Trivandrum, Quilon, Alleppey and Kottayam and even if he was forced to work on holidays he was given overtime wages. The Tribunal held that it was only just and reasonable that touring mechanics should be given a days off if they travelled on two consecutive days for reaching a place of work and also overtime wages at double the wages for the work done on holidays. It appears to us that with the limitation as to jurisdiction

noted above, the occasion for a mechanic spending two consecutive nights for reaching a place of work will arise very seldom, but if it does, there is no reason why he should not get overtime wages as awarded by the Tribunal and we see no reason to interfere with this portion of the award.

15. In the result, the matter will go back to the Tribunal for disposal of the issue as to the revision of wage scales and adjustment of workers in the revised scales. The scheme for gratuity will stand modified as indicated in our judgment in Civil Appeal No. 2105 of 1966 delivered today. The rest of the award will stand. The appellant will pay the respondent the costs of this appeal.

16. Award modified.