

State of Maharashtra Vs. Anantha Krishnan (K.) and ors.

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Court : Mumbai

Decided On : Jul-10-1961

Reported in : (1961)IILLJ732Bom

Judge : Chinani, C.J. and; Mody, J.

Appellant : State of Maharashtra

Respondent : Anantha Krishnan (K.) and ors.

Judgement :

Chinani, C.J.

1. The facts giving rise to this appeal are that on 21 May 1958, the workers employed by respondent 2, the Associated Cement Companies, Ltd., hereinafter referred to as the company, presented a charter of demands to the company. The demands were made on behalf of the workers by the secretary of the union, respondent 1. On 23 May 1959, five out of the twenty-six demands were referred to the industrial tribunal consisting of Sri M.R. Meher, under Section 10 of the Industrial Disputes Act. One of the demands, which had been made, was for a reduction in working hours. The demand, which had been made, was as follows:

Office time or working hours,--Working hours shall be from 10-30 a.m. to 5-30 p.m. on week days with one hour recess and on Saturdays, the working hours shall be from 10-30 a.m. to 1-30 p.m.

2. This demand was not referred to the industrial tribunal. On 23 June 1959, a letter was addressed by Government to the general secretary of the union, in which the reasons for refusing to refer this demand to the industrial tribunal were given as follows:

Hours of work.--It is for the management to fix the working hours within the limits laid down in the Bombay Shops and Establishments Act. A similar demand was rejected by the tribunal earlier.

3. On 23 November 1959, the company gave a notice of change, by which they proposed to increase the working hours from 34 hours to 37 hours per week. The change proposed was as follows:

It is proposed to increase the hours of work of the office from 34 hours per week to 37 hours per week. Accordingly, the office timings from 15 December 1959 will be as follows:--On week days ... 10-00.a.m. to 1-30 p.m.and2-30 p.m. to 4-45 p.m.On Saturdays ... 10-00 a.m. to 1-30 p.m.

The union objected to this change. At the end of their letter, dated 25 November 1959, the union suggested to the company that if it wanted to Increase the working hours, it should approach the Government for a reference of the dispute to an Industrial tribunal for adjudication. On 7 December 1959, the company represented to Government and requested that the change, which they proposed to make in the working hour; should be referred to the adjudication of Sri Meher. It appears that this letter of the company was put up for orders to the Minister for Labour. He made an endorsement on it that a reference should be made. On

12 December 1959, an order was Issued by Government under Section 10 of the Industrial Disputes Act, by which the dispute mentioned in the schedule as the order was referred to the industrial tribunal consisting of Sri Meher constituted under the notification issued previously on 12 March 1957. Instead of referring to the demand made by the company for increase in working hours, the schedule referred to the demand, which the workers had made, for reduction in the working hours. On the same day; on which this order was issued, a letter was written to the company, in which the company was informed that the dispute regarding working hours had been referred to the industrial tribunal. A letter was also addressed to the secretary of the union, in which, after making a reference to the previous letter of 23 July 1959, by which the union had been informed about the Government's refusal to refer their demand for reduction in the working hours to the industrial tribunal, it was stated that on reconsideration the Government had decided to refer the dispute to the industrial tribunal. This letter undoubtedly suggested that the Government, had reconsidered the matter and had decided to refer for adjudication the demand made by the workers for reduction in the working hours. The company appears to have discovered the mistake and on 14 December 1959, a letter was addressed by the company to the Minister for Labour, in which it was pointed out that instead of their demand being referred for adjudication, the demand made by the union for reduction in the working hours had been referred. The mistake was noticed by the Labour Department when it received this letter. On the same day, an attempt was made to obtain back from the union the letter, which had been sent to it on 12 December 1959. On 15 December 1959, Government issued another order in modification of that issued on 12 December 1959, and by this order, Government referred to the adjudication of the tribunal consisting of Sri Meher, the demand made by the company for increasing the working hours. On 20 January 1960, the union addressed a letter to Government, it protested against this and requested Government to withdraw the order of 12 December, 1959 and restore the order of 12 December, 1959. On 3 February 1960, the Government informed the union that this request could not be granted. The respondent 1 then filed a petition under Article 226 of the Constitution, in which he prayed for a direction being given to respondent 3, Sri Meher, to proceed with the reference made by Government by its order, dated 12 December 1959. In reply to the affidavit, which was made in support of this petition, an affidavit was filed by Sri Shanbhag, Under Secretary to Government in the Labour Department, who had signed the two orders, which had been issued on 12 December 1959 and 15 December 1959. In Para. 6 of his affidavit, he stated that after receiving the company's letter of 7 December 1959.

the Government on being satisfied that the Industrial dispute existed regarding the Increase of the hours of work, decided to refer the said question of the increase of the hours of work to the industrial tribunal

consisting of Sri Meher. He further stated that through a mistake or inadvertence in the schedule to the order, the demand about reduction of the hours of work made by the union, which had been rejected by Government, came to be incorporated instead of the company's demand for increase of the hours of work. In his rejoinder, respondent 1 denied that a mistake had been made in issuing the order issued on 12 December 1959. He relied on the reference in the Government's letter of 12 December 1959 to Government's earlier letter of 23 June 1959, which according to him, indicated that Government had reconsidered the matter and then referred the workers' demand for reduction of the working hours for adjudication. A further affidavit was filed by Sri Shanbhag, in which he stated that Government had not reconsidered its previous decision rejecting the union's request for referring the question of reduction of the working hours for adjudication. He also stated that Government's real intention was to refer for adjudication the company's demand as set out in its letter of 7 December 1959. The petition came up for hearing before Justice Sri K.K. Desai. He accepted the Government's contention that a mistake had been made while issuing the order on 12 December 1959. In the judgment he had observed that it was abundantly clear that the dispute, which the Minister for Labour had directed to be referred to the tribunal, was the dispute raised by the company for increase in the working hours to 37 1/4 hours each week. Justice Sri Desai, however, took the view that Government had no power to cancel the previous reference made by its order of 12 December 1959, having regard to the decision of the Supreme Court in the State of Bihar v. D.N. Ganguly and Ors. : (1958) IILLJ634SC . He, therefore, allowed the petition and made an order directing respondent 3 to proceed with the reference made by Government on 12

December 1959. Against the order made by Justice Sri K.K. Desai, the present appeal has been filed.

4. The learned Advocate-General, who has appeared on behalf of the State, has raised two main points. He has first urged that the decision of the Supreme Court in the State of Bihar v. D.N. Ganguly and Ors. : (1958)IILLJ634SC (supra) is per in curia and that consequently it is not binding on Government. He has also urged that the Supreme Court's decision does not apply to the facts of the present case. In the case, which was before the Supreme Court, Government had subsequently changed its original decision and cancelled the reference made by it. That is not the position here. In the present case, according to the Advocate-General, the first order of 12 December 1959 WSB made through a mistake and consequently Government had power to rectify it. He has drawn our attention to cases, in which it has been laid down that Government is not bound by the mistaken act of its officers.

5. On the materials on record there can be no doubt that the first order of 12 December 1959 had been issued through a mistake. Sri Shanbbag, who had signed this order, has filed two affidavits, which make it dear that what Government had decided to refer for adjudication was the demand made by the company for increase in the working hours and not the demand which the union had made for reduction in the working hours. The order was made on the letter which the company wrote to Government on 7 December 1859, in which they mentioned the notice of change given by them, for increase in the working hours. Before this letter was written, Government had on 23 June 1959 Informed the union that its demand for reduction in the working hours could not be referred to the tribunal for the reasons mentioned in the letter. No representation had been made by the union against this, nor has any fresh request been made to Government to refer the question of reduction in the working hours to the industrial tribunal. Sri rule has urged that Government might have reconsidered the question, as there was not much substance in either of the two reasons given for rejecting the demand of the workers for a reference to the tribunal. The evidence in this case, however, shows that the question of referring the demand for reduction in working hours had not actually been reconsidered by Government. The question which Government considered after receiving the company's letter on 7 December 1959, was whether the request made by them for referring the question of increase in the working hours should be granted. The letter which was written to the company on 12 December 1959 also suggests that Government had acceded to the request made by the company. Sri Shanbhag in his affidavit has stated that as soon as It was found that a mistake was committed, Sri Rajdhyaksha, the superintendent In the labour department approached the union and asked for the return of the letter, which had been sent to the union on 12 December 1959. All these facts show that a mistake had been made in the order issued on 12 December 1959. By the order, the workers' demand for reduction in the working hours was referred to adjudication, whereas the decision of Government was that the demand made by the employers for increase in the working hours should be so referred.

6. The next question to be considered is whether Government had power to rectify the mistake. It seems to us that Government had this power. The first order having been made through a mistake, Government was competent to correct it. The decision of the Supreme Court, which has been relied upon on behalf of the union, does not apply in the present case. In that case, Government had taken a decision and referred to certain dispute for adjudication. Subsequently Government changed its mind and cancelled the order of reference. It was held by the Supreme Court that Government had no Jurisdiction to cancel its previous order. In the present case, however, the first order did not embody the decision of Government. The second order was, therefore, issued In order to correct the mistake, which had been made and to give effect to the real decision of Government. In our opinion, therefore, the decision of the Supreme Court cannot be relied upon in the present case.

7. We, therefore, set aside the order made by Justice Sri K.K. Desai and dismiss the original petition made by the respondent 1. We hope that since the question of increase in the working hours has been referred to the industrial tribunal. Government will also consider the question of the demand made by the workers for reduction in the working? hours being referred to the same tribunal, so that the tribunal may be able to consider the question of the number of working hours In all its aspects.

8. There will be no order as to costs either Of the appeal or of the hearing before Justice Sri Desai.

9. Liberty to the appellant's attorneys to withdraw the turn of Rs. 500 deposited in Court.

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