Saxby And Farmer (India) Pvt. Ltd vs Their Workmen on 29 March, 1973

Equivalent citations: 1975 AIR 534, 1973 SCR (3) 830, AIR 1975 SUPREME COURT 534, 1973 3 SCC 528

Author: A.N. Grover

Bench: A.N. Grover

PETITIONER:
SAXBY AND FARMER (INDIA) PVT. LTD.

Vs.

RESPONDENT:
THEIR WORKMEN

DATE OF JUDGMENT29/03/1973

BENCH:
GROVER, A.N.
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GROVER, A.N.
VAIDYIALINGAM, C.A.

CITATION:
1975 AIR 534 1973 SCR (3) 830
1974 SCC (3) 327

ACT:
Labour Law-Company producing essential goods for railways-Whether workmen entitled to unpaid festival holidays in addition to ten paid holidays.

HEADNOTE:
The appellant company was a unit of the Engineering Industry in West Bengal having three factories in various parts of Calcutta. It was solely engaged in the production of brakes and signalling equipment for the railways. The Government of West Bengal declared the appellant to be a public utility service in exercise of power conferred by s. 2(c)(vi) of the Industrial Disputes Act, 1947, and also an 'essential service' under the Defence of India Rules.. At the instance of the appellant company the Government of West Bengal referred to the Industrial Tribunal the question whether the

nine unpaid festival holidays allowed by the company to its workmen in addition to paid festival and other holidays should be continued. The Tribunal, impressed by the fact that unpaid festival holidays had been enjoyed by the workmen for a long time gave its award in favour of the workmen.

Allowing the company's appeal,

HELD : The Tribunal was wholly oblivious of the present day conditions and the necessity for increased production, particularly, in the matter of utility companies and the companies that are producing goods for essential services like those carried on by the Indian Railways. This Court has observed on more than one occasion that it is generally accepted that there are too many public holidays in our country, and that when the need for industrial production is urgent and paramount, it may be advisable to reduce the number of such holidays in industrial concerns Indeed it cannot be disputed that a necessary step in the direction of increasing the country's productivity is the reduction of number of holidays.

There was accordingly no reason or justification for unpaid holidays not being curtailed in the present case. All the conditions which were necessary had been satisfied and the appellant was carrying on the kind of work which requires efficiency and increased production [833E, 834A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal 'No. 1923 of 1968.

Appeal by special leave from the Award dated March 11, 1968 of the VIIth Industrial Tribunal, West Bengal Calcutta in Case No. VIII-287 of 1966 published in the Calcutta Gazette dated April 18, 1968.

D. N. Mukherjee, for the appellant.

The respondent did not appear.

The Judgment of the Court was delivered by GROVER, J. This is an appeal by special leave from the award of the Seventh Industrial Tribunal, West Bengal. The appellant company is a unit of the Engineering Industry in West Bengal having three Factories in various parts of Calcutta. The company employs about 1650 workmen in all these factories. According to the appellant, it is solely engaged in the production of brakes and signalling equipment for the railways. Its products, it is claimed, are essential for the smooth working of the railways, which are its sole customers. In order to ensure smooth production and uninterrupted flow of supply, the government of West Bengal declared the appellant to be a public utility service in exercise of the power conferred by sub-clause (vi) of clause (c) of s. 2 of the Industrial Disputes Act, 1947, and also as 'essential service' under the Defence of India Rules. It is said as a unit of engineering industry, the appellant was a party to

certain omnibus major awards made in 1958 and the earlier awards of 1949 and 1950. In these awards, the service conditions, including leave and holidays of the workmen were standardised. The appellant has been granted leave and holidays as per those awards and in accordance with the provisions of the Factories Act, the Shops and Establishment Act and the Employees State Insurance Act. The paid holidays which are being granted are ten in a year. There used to be a system in the appellant company's establishment of granting nine days unpaid festival holidays in addition to the paid festival and other holidays. It is pointed out that in no, other major industry in the region this system of unpaid festival holidays is being followed any longer.

At the instance of the appellant-company, the government of West Bengal referred the following issue by an order dated June 7, 1966 to the industrial tribunal for adjudication.

> "Curtailment of unpaid festival holidays". In the written statement, which was filed by the appellant, it was stated in para. 8 that the company allows nine festival unpaid holidays, and the continuance of the said holidays would not only entail loss of wages to the workmen but also loss of production and would prejudicially affect the country's economy. It was also asserted that the system of granting unpaid holidays was no longer being followed in the engineering industry. Moreover, other holidays enjoyed by the workmen along with the workmen of other similar units were far in excess of what prevails in other countries.
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> The union filed a written statement on behalf of the workmen. In reply, the position taken up was that the assertion of the com-
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> pany that the nine unpaid holidays should be discontinued, was in clear disregard of the principle and practice followed so far in the matter of giving benefits in the industrial concerns. It was said that the trend of the decisions of the Industrial Tribunals in respect of major Engineering concerns has always been against the curtailment of the existing facilities, and that the management of the appellant-company had made an unfair attempt to curtail those benefits, relating to unpaid festival holidays. The main ground given was that in the interest of industrial peace, production and better relations between the workmen and the management, the workmen should be kept contented. Any attempt to curtail the existing benefits according to time-honoured practice, would provoke discontent and labour unrest.
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> Each side examined one witness, P.W. 1, Gobind Day, who appeared on behalf of the appellant, supported the assertions made, in the written statement filed on behalf of the appellant. In other words, he stated that 19 holidays were being given to the workers at present, out of which ten were paid holidays and the rest, without pay. Ten festival holidays were allowed on the basis of the ,award made by the tribunals. He admitted in his cross-examination that in Bengal holidays for certain days like Netaji's birthday or for religious festivals, were considered very essential. O.P.W.1, who appeared on behalf of the workers and who was the working president of the Union at the time he gave evidence, merely con tented himself by saying that nine

unpaid festival holidays had been enjoyed by the workers since he joined the factory and prior to that time. According to him, even on festival holidays, workers attended the factory and worked there and drew wages. Over- time wages were paid at the rate of 150% of the basic wages. The industrial tribunal does not appear to have given any substantial reasons for coming to the conclusion that the unpaid holidays should not be curtailed. According to it, there was no evidence to show to what extent the Railways which were the sole customers of the company, depended on the company to meet their requirements. The tribunal proceeded to say that the company might be solely engaged in the production of signalling equipment, but that was not sufficient to show the nature and extent of the dependence of the Railways on the supplies of the company. The representative of the company had argued that because the number of the holidays was large, the production was suffering and the company was unable to meet the demands of the Railways in time. The Tribunal, however, thought that in the absence of any evidence to that effect, it could not be held that the production was not adequate or was suffering because of the number of holi-

days for the workers. This is how the Tribunal reasoned in the matter :

"..... in my humble opinion without reducing the number of important festival holidays of any community in India-which is the home of different communities and religions the number of working holidays can be increased as a compensatory measure by converting a good many Sundays to working days. I think this is quite a feasible proposition and can be offered as a suggestion to those who take the view that as festival and religious holidays are quite large in number they should be reduced without reference to the feelings of the affected religious group or community. But then this is too wide and too large a question for my embarkation and perhaps such views will not find favour with the west oriented intellect and so-called cosmopolitan outlook. Anyway, that I say is that there is no good ground to cut down the number of festival holidays simply because the number of overall holidays is large." The tribunal appears to have been impressed by the contention raised on behalf of the workmen that they had enjoyed the facilities for a long time.

It appears that the tribunal was wholly oblivious of the present day conditions and the necessity for increased production, particularly, in the matter of utility companies and the companies that are producing goods for essential services like those carried on by the Indian Railways. This Court has observed on more than one occasion that it is generally accepted that there are too many public holidays in our country, and that when the need for industrial production, is urgent and paramount, it may be advisable to reduce the number of such holidays in industrial concerns. Indeed, it cannot be disputed that a necessary step in the direction of increasing the country's productivity is the reduction of number of holidays. See Pfizer(P)Ltd.Bombay v.The Workmen(1) and Associated Cement Staff Union and another v. Associated Cement Company and others.(2) In Pfizer's case, the holidays. which were being granted were reduced to ten from the number which the workers were enjoying previously in

accordance with those sanctioned under the Negotiable Instruments Act i.e., 16 holidays. (1) [1963] Supp. 2 S. C. R. 627, 651. (2) [1964] 1 L L.J. 12,15.

8 34 On giving the matter careful consideration, we find no reason ,or justification for unpaid holidays not being curtailed in the present case. All the conditions which are necessary have been satisfied and the appellant is carrying on the kind of work which requires efficiency and increased production. There should be more concentration on increase of production and efficiency than on enjoying the holidays if this country is to march ahead on the road to prosperity. We would, accordingly, allow this appeal and set aside the award. In other words, the system of unpaid holidays will not continue with effect from the 1st January, 1973. There will be no order as to costs.

G.C. Appeal allowed'.
835.