Barauni Refinery Pragatisheel Shramik ... vs Indian Oil Corporation Ltd. on 17 July, 1990

Equivalent citations: AIR1990SC1801, [1991(61)FLR203], JT1990(3)SC123, (1991)1SCC4, [1990]3SCR282, 1990(2)UJ485(SC), AIR 1990 SUPREME COURT 1801, 1991 (1) SCC 4, 1990 LAB. I. C. 1481, 1990 UJ(SC) 2 485, (1990) 3 JT 123 (SC), (1991) 78 FJR 143, 1990 3 JT 123, (1990) 2 LAB LN 288, 1990 LABLR 465, (1991) 1 LABLJ 46, 1991 SCC (L&S) 1

Bench: A.M. Ahmadi, K. Ramaswamy

JUDGMENT

1. These two appeals by two different Trade Unions of Barauni Refinery are directed against the decision of the High Court of Delhi which set aside the modification of Clause 20 of the Standing Orders certified under Section 5 of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter called 'the Standing Orders Act). The brief facts giving rise to these two appeals are as under:

2. Two companies, namely, the Indian Refinery, Limited and Indian Oil Company, Limited amalgamated in 1964 and a new Company known as Indian Oil Corporation, Limited (IOCL) was incorporated. This newly formed company comprised essentially of two divisions, namely, (1) Marketing Division, representing the staff, assets and business of Indian Oil Company, Limited and (2) Refinery and Pipe Lines Division, representing the staff, assets and oil refinery manufacturing of petroleum products of Indian Refinery, Limited. The age of superannuation of the staff in the Marketing Division was 60 years whereas the age of superannuation for the Refinery and Pipe Lines Division was fixed at 58 years under Clause 20 of the Standing Orders concerning Barauni Refinery. The IOCL has refineries in different parts of the country including one at Barauni. The Standing Orders concerning the Barauni Refinery came into force on 5th December, 1964 as provided by Section 7 of the Standing Orders Act and apply to all workmen employed in the said industrial establishment. Clause 20 of the Standing Orders reads as under:

> Every employee shall retire from service on completing the age of 58 years. Extension for a maximum period of 5 years but not for more than one year at a time may be given at the discretion of the company provided the employee is certified to be fit by the Company's Medical Officer and provided further that the employee concerned also consents to such extension.
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> By a Joint letter dated 15th December, 1981, 14 recognised Unions representing the employees of the IOCL working in different refineries and pipe lines divisions submitted a charter of demands in terms of Clause 2.1.3 of the long term settlement dated 3rd December, 1979. By Clause 18 of this charter of demands the

superannuation age was sought to be enhanced to 60 years. A similar charter of demands was-forwarded by the Barauni Telshodhak Mazdoor Union to the General Manager, IOCL, Barauni Refinery, on 23rd December, 1981. Pursuant to the presentation of this charter of demands, meetings were held between the Management of IOCL (R & P Division) and the recognised Unions of the said Division from time to time. As a result of discussions held at the said meetings as settlement was mutually arrived at by and between the parties on May 24, 1983. Clauses 19 and 21 of this general settlement concerning all the Refineries and Pipe Lines Divisions, inter alia provided as under:

19. The Corporation agrees that such terms and conditions of service as well as amenities and allowances as are not changed under this settlement shall remain unchanged and operative during the period of the settlement.

21. The Unions agree that during the period of operation of this settlement, they shall not raise any demand having financial burden on the Corporation other than bonus provided that this Clause shall not affect the rights and obligations of the parties in regard to matters covered under Section 9A of the Industrial Disputes Act, 1947.

This general settlement was to remain in force from 1st May, 1982 to 30th April, 1986. After this general settlement was signed by the Management and the Union representatives a separate Memorandum of Settlement dated 4th August, 1983 was signed between the IOCL (R & P Division), Barauni Refinery, and their workmen represented by Barauni Telshodhak Mazdoor Union, Barauni Refinery, under Sections 12(3) and 18(3) of the Industrial Disputes Act, 1947, in conciliation proceedings initiated by the Assistant Labour Commissioner and Conciliation Officer, Begusarai. This settlement too was to remain in force from 1st May, 1982 to 30th April, 1986. Clauses 19 and 21 of this settlement were verbatim reproduction of those in the general settlement dated 24th May, 1983 extracted hereinabove. It may here be mentioned that despite the specific demand made in the charter of demands for the upward revision of the ags of superannuation, no specific provision was made in that behalf either in the general settlement or in the special settlement concerning Barauni Refinery. On the contrary Clause 19 of both the settlements provides that the terms and conditions of service which are not changed under the Settlement shall remain unchanged and operative during the period of settlement.

3. The Petroleum and Chemical Mazdoor Union through its General Secretary, Ram Vinod Singh, served notice on the Regional Labour Commissioner (Central) under Section 10(2) of the Standing Orders Act for modification of Clause 20 of the certified Standing Orders of Barauni Refinery for raising the age of superannuation from 58 years to 60 years mainly on the ground that the staff members working in the Marketing Division superannuated on completing the age of 60 years. It was also contended by the said Union that the demand for the upward revision of the age of superannuation could not be pressed at the time of the settlement arrived at pursuant to the charter of demands because the age of retirement was fixed at 58 years under the relevant certified Standing Orders. It was, therefore, felt necessary that Clause 20 of the certified Standing Orders applicable to Barauni Refinery of the IOCL should be got suitably modified to raise the age of retirement to 60

years. This demand was based on the averment that the nature of work performed by the workmen in the Refinery and Pipe Lines Division was identical to that performed by the staff members of the Marketing Division. The pay-scales of the employees of the Refinery Division and Marketing Division were also identical. It was, therefore, contended that there was no valid reason for fixing different ages for retirement for the staff members working in the said two Divisions of IOCL.

4. The Regional Labour Commissioner after hearing the rival parties allowed the application for modification of Clause 20 of the certified Standing Orders. By his order he directed that Clause 20 should be modified as under:

> Normally the age of retirement of workman of the Corporation is fixed at 60 years. No notice is required to be given by a workman of his intention to retire on superannuation or by the Management to the workman that he is due to reach the age of superannuation on certain date. The workman should not, however, leave his place of duty without being relieved.

5. Against this order of 11th October, 1984, the IOCL preferred an appeal to the Appellate Authority under Section 6 read with Section 10(3) of the Standing Orders Act. The Appellate Authority while dismissing the appeal directed a slight modification in Clause 20 of the Standing Orders. Clause 20 as modified by the Appellate Authority was worded as under:

> Every workman shall generally retire on attaining the age of 58 years. Between the 57th and 58th year Company's Medical Officer would conduct the medical test and if the workman is found to be medically fit he shall be retained in service for a period of two more years beyond the age of 58 years i.e. upto 60 years.
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> Feeling aggrieved by this order of the Appellate Authority the IOCL preferred a writ petition No. CWP No. 1717/87 in the High Court at Delhi for quashing the impugned order of the Certifying Officer dated 1lth October, 1984 and the impugned order of the Appellate Authority dated 4th May, 1987. The Union which had initiated the proceedings for modification of Clause 20 of the certified Standing Orders also felt aggrieved by the said order of the Appellate Authority and prefer-red a writ petition No. CWP 3417/87 in the High Court of Delhi. Both these writ petitions were heard by a Division Bench and were disposed of by a common Judgment. The writ petition filed by the IOCL was allowed while the other writ petition was dismissed.

6. While hearing these two writ petitions the High Court for umlauted two points for consideration, namely, (i) "Whether the Certifying Authority under the Standing Orders Act has the jurisdiction to entertain an application for amendment of a Standing Order which fixes the age of retirement of the workmen as 58 years which is in consonance with the model Standing Order and enhances the age of retirement to 60 years without first giving any finding whether it is practicable to give effect to the model Standing Order" and (ii) "Whether the settlement arrived at under Section 18(3) and Section 19(2) of the Industrial Disputes Act, 1947, between the petitioner and the workmen represented by their recognised majority union and which settlement was in force when impugned orders were

made, had put any bar on the rights of the workmen to approach the authorities under the said Act for seeking modification of the Standing Orders with regard to the fixation of the age of superannuation of the workmen". The High Court answered the first question in the affirmative holding that it was open to the Certifying Authority to entertain an application for modification of the clause fixing the date of superannuation, the provisions in the model Standing Orders, notwithstanding. On the second point the High Court came to the conclusion that the settlement arrived at in conciliation proceedings was binding on the workmen and as Clause 19 of the settlement kept the service conditions which were not changed in-tact and Clause 21 of the settlement did not permit raising of any demand throwing an additional financial burden on the IOCL, it was not permissible to modify the certified Standing Orders by an amendment as that would alter the service condition and increase the financial burden on the Management. In this view that the High Court took it quashed the orders passed by the two authorities below and made the rule in CWP No. 1717/87 absolute while dismissing CWP No. 3417/87 with no order as to costs. It is against this order that the Trade Unions have approached this Court.

7. The Standing Orders Act was enacted to define with sufficient precision the conditions of employment for workers employed in industrial establishments and to make the same known to them. The object of the Act was to have uniform Standing Orders in respect of the matters enumerated in the schedule to the Act regardless of the time of their appointment. With this in view the Act was enacted to apply to all industrial establishments wherein 100 or more workmen were employed on any date of the preceding 12 months. Within six months from the date on which this enactment becomes applicable to an industrial establishment, the employer is obliged by Section 3 to submit to the Certifying Officer draft Standing Orders proposed by him for adoption in his industrial establishment. Sub-section (2) of Section 3 lays down that in such draft Standing Orders provision shall be made for every matter set out in the schedule which may be applicable to the industrial establishment and where model Standing Orders have been prescribed shall be, so far as practicable, in conformity with such model. Section 4 provides that the Standing Orders shall be certifiable if (a) provision is made therein for every matter set out in the schedule which is applicable to the industrial establishment and (b) the Standing Orders are otherwise in conformity with the provisions of the Act. It further casts a duty on the Certifying Officer or Appellate Authority to adjudicate upon the fairness and reasonableness of the provisions of any Standing Orders. On receipt of the draft Standing Orders, Section 5 requires the Certifying Officer to forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen desire to make to the draft Standing Orders. Thereafter the Certifying Officer must hear the concerned authorities and decide whether or not any modification of or addition to the draft submitted by the employers is necessary to render the draft Standing Orders certifiable under the Act. He is then expected to certify the draft Standing Orders with modifications, if any, and send authenticated copies thereof in the prescribed manner to the employer, to the trade union or other prescribed representatives of the workmen within 7 days. Section 6 provides for an appeal against the order of the Certifying Officer. The Appellate Authority has to communicate its decision to the Certifying Officer, to the employer and the trade union or other prescribed representative of the workmen within 7 days from the date of its order. Section 7 provides that the Standing Orders shall, unless an appeal is preferred, come into operation on the

expiry of 30 days from the date on which authenticated copies thereof are sent under Section 5(3) or where an appeal is preferred, on the expiry of 7 days from the date on which copies of the orders of the Appellate Authority are sent under Section 6(2). Standing Orders duly certified as above for the Barauni Refinery came into operation on 5th December, 1964 as provided by Section 7. We then come to Section 10 which provides for modification of certified Standing Orders. Sub-section (1) thereof states that the Standing Orders finally certified shall not, except on agreement between the employer and the work-men or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modification thereof came into operation. Sub-section (2) of Section 10 reads as under:

> Subject to the provisions of Sub-section (1), an employer or workman or a trade union or other representative body of the workman may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application.
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> It was under this provision that Clause 20 of the certified Standing Orders was sought to be modified.

8. Since the High Court has answered the first point in the affirmative i.e. in favour of the workmen, we do not consider it necessary to deal with that aspect of the matter and would confine ourselves to the second aspect which concerns the binding character of the settlement. Section 2(p) of the Industrial Disputes Act, 1947 defines a settlement as a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the officer authorised in this behalf by the appropriate Government and the Conciliation Officer. Section 4 provides for the appointment of Conciliation Officers by the appropriate Government. Section 12(1) says that where any industrial dispute exists or is apprehended the Conciliation Officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner. Sub-section (2) of Section 12 casts a duty on the Conciliation Officer to investigate the dispute and all matters connected therewith with a view to inducing the parties to arrive at a fair and amicable settlement of the dispute. If such a settlement is arrived at in the course of conciliation proceedings, Sub-section (3) requires the Conciliation Officer to send a report thereof to the appropriate Government together with the memorandum of settlement signed by the parties to the dispute. Section 18(1) says that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of the conciliation proceedings shall be binding on the parties to the agreement. Sub-section (3) of Section 18 next provides as under:

> A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section

(3-A) of Section 10-A or award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on-

(a) all parties to the industrial dispute:

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause:

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates:

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

It may be seen on a plain reading of Sub-sections (1) and (3) of Section 18 that settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the Union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority. The High Court was, therefore, right in coming to the conclusion that the settlement dated 4th August, 1983 was binding on all the workmen of the Barauni Refinery including the members of Petroleum and Chemical Mazdoor Union.

9. The settlement does not make any specific mention about the age of retirement. Clause 19 of the settlement, however, provides that such terms and conditions of service as are not changed under this settlement shall remain unchanged and operative for the period of the settlement. The age of retirement prescribed by Clause 20 of the certified Standing Orders was undoubtedly a condition of service which was kept intact by Clause 19 of the settlement. The provisions of the Standing Orders

Act to which we have adverted earlier clearly show that the purpose of the certified Standing Orders is to define with sufficient precision the conditions of employment of workman and to acquaint them with the same. The charter of demands contained several matters touching the conditions of service including the one concerning the upward revision of the age of retirement. After deliberation certain conditions were altered while in respect of others no change was considered necessary. In the case of the latter Clause 19 was introduced making it clear that the conditions of service which have not changed shall remain unchanged i.e. they will continue as they are. That means that the demand in respect of revision of the age of retirement was not acceded to.

10. By Clause 21 of the settlement extracted earlier the Union agreed that during the period of the operation of the settlement they shall not raise any demand which would throw an additional financial burden on the management, other than bonus. Of course the proviso to that clause exempted matters covered under Section 9A of the Industrial Disputes Act from the application of the said clause. However, Section 9A is not attracted in the present case. The High Court was, therefore, right in observing: "when the settlement had been arrived at between the workmen and the company and which is still in force, the parties are to remain bound by the terms of the said settlement. It is only after the settlement is terminated that the parties can raise any dispute for fresh adjudication". The argument that the upward revision of the age of superannuation will not entail any financial burden cannot be accepted. The High Court rightly points out: "workmen who remain in service for a longer period have to be paid a larger amount by way of salary, bonus and gratuity than workmen who may newly join in place of retiring men". The High Court was, therefore, right in concluding that the upward revision of the age of superannuation would throw an additional financial burden on the management in violation of Clause 21 of the settlement. Therefore, during the operation of the settlement it was not open to the workmen to demand a change in Clause 20 of the certified Standing Orders because any upward revision of the age of superannuation would come in conflict with Clause 19 and 21 of the settlement. We are, therefore, of the opinion that the conclusion reached by the High Court is unassailable.

11. In view of the above we see no merit in these appeals and dismiss them with no order as to costs.

12. Interim orders in each appeal will stand dissolved.