Moon Mills Ltd vs Industrial Court Bombay (M.R. Meher) & ... on 28 February, 1967

Equivalent citations: AIR 1967 SUPREME COURT 1450, 1966 2 LABLJ 34

Bench: J.C. Shah, S.M. Sikri, V. Ramaswami

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           CASE NO.:
Appeal (civil)  22 of 1966

PETITIONER:
MOON MILLS LTD.

RESPONDENT:
INDUSTRIAL COURT BOMBAY (M.R. MEHER) & ORS.

DATE OF JUDGMENT: 28/02/1967

BENCH:
K. SUBBA RAO (CJ) & J.C. SHAH & S.M. SIKRI & V. RAMASWAMI & C.A.
VAIDYIALINGAM

JUDGMENT:
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JUDGMENT 1967 AIR (SC) 1450 The Judgment was delivered by RAMASWAMI, J This appeal is brought, by special leave, against the judgment of the Bombay High Court dated February 6, 1962 in Appeal No. 36 of 1960 from the order of K. K. Desai, J., in Miscellaneous Application No. 327 of 1959 filed by the appellant under Art. 226 of the Constitution of India.

The appellant carried on business as a cotton textile mill prior to July 1, 1958. It had been registered as an "undertaking" in the cotton textile industry under the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947), hereinafter referred to as the Act. Respondent 2 are a representative union of the cotton textile industry in the city of Bombay and registered as such under the provisions of the Act. Respondent 2 gave a notice of change in connexion with the method to be adopted for grant of bonus for the years 1953 to 1957. The dispute arising out of that notice was referred to arbitration of the industrial court by a submission in writing dated February 28, 1956 under S.66 of the Act. On March 1, 1956 an agreement was entered into between the Millowners' Association on behalf of certain cotton textile mills and respondent 2 in connexion with the method to be adopted for payment of bonus for these years. In accordance with that agreement the industrial court made an award dated March 13, 1956 in terms of the said agreement. Clause 10 of the agreement provided for decision by arbitration in future in the event of difference of opinion arising between the parties regarding the determination of available surplus of profits or the quantum of bonus to be paid by the cotton textile mills.

The appellant was not a party to the agreement and was accordingly not bound by the agreement. The Government of Bombay, however, issued a notification under S.114(2) of the Act which states as

follows :

> "In cases in which a representative union is a party to a registered agreement, or a settlement, submission or award, the State Government may, after giving the parties affected an opportunity of being heard, by notification in the official gazette, direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification :
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> Provided that before giving a direction under this section the State Government may, in such cases as it deems fit, make a reference to the industrial court for its opinion."

The notification of the Government is dated July 31, 1956 and reads as follows :

> "No. ARP-1256. - Whereas the Rashtriya Mill Mazdoor Sangh, Bombay, a representative union for the cotton textile industry in the local area of Greater Bombay (hereinafter referred to as the union) is a party to an award dated March 13, 1956 made by the industrial court in References (I.C.) No. 114 of 1953, (I.C.) No. 24 of 1954, (I.C.) No. 25 of 1954, and Submission (I.C.) No. 3 of 1956 providing for the payment of bonus for the years 1952 and 1953 and the years 1954 to 1957 both inclusive to the employees of the cotton textile mills in Greater Bombay (hereinafter referred as the award);
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> And whereas the Government of Bombay, considers that the award should be made binding upon the employers specified in Col. (1) of the schedule hereto annexed and their employees in the said cotton textile industry in Greater Bombay;
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> And whereas the said employers and the Rashtriya Mill Mazdoor Sangh, Bombay, representing the said employees being the parties affected were heard as required by Sub-sec. (2) of S.114 of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) (hereinafter referred to as the said Act); Now, therefore, in exercise of the powers conferred by Sub-sec. (2) of S.114 of the said Act, the Government of Bombay hereby directs that the said award shall be binding on the employers specified in Col. (1) of the schedule hereto annexed and their employees in the matter of payment of bonus for the years specified against the said employers in Col. (2) of the said schedule.

Schedule Name of employer Years (1) (2) Prakash Cotton Mills, Ltd., Bombay ... 1952 to 1957 (both inclusive).

Hirjee Mills, Ltd., Bombay (in liquidation) ... 1952, 1953 and 1954.

Sayaji Mills Company, Ltd., No. 2, Bombay ... 1955, 1956 and 1957.

Moon Mills, Ltd., Bombay ... 1953 to 1957 (both inclusive).

It is admitted by respondent 2 that bonus had been paid in accordance with the method contained in the agreement and the award dated March 13, 1956 for the years 1953 and 1954. There were disputes between the appellant and respondent 2 with regard to the bonus to be paid for the years 1955 and 1956. The dispute was referred to the arbitration of Sri M. D. Bhat. The arbitrator gave his award on April 25, 1958. After certain correspondence between the parties the award was filed with the registrar, industrial court, under S.74(1) of the Act. As the appellant failed to carry out directions contained in the award, respondent 2 made an application to the labour court-Application No. 574 of 1958-contending that the appellant had committed an illegal change under the Act by not paying to their employees bonus as directed by the award dated April 25, 1958 and prayed for an order that the appellant should be directed to withdraw the illegal change with immediate effect. The appellant denied its liability, but the labour court allowed the application of respondent 2 by its order dated August 4, 1959 and directed the appellant to withdraw the illegal change by complying with the directions contained in the award within one month from the date of the order. The appellant took the matter in appeal to the industrial court, being Appeal No. 226 of 1959. By its order dated October 24, 1959 the industrial court rejected the appeal and affirmed the order of the labour court. Thereafter, the appellant moved the Bombay High Court for grant of a writ under Art. 226 of the Constitution to quash the order of the industrial court in Appeal No. 226 of 1959. The application was dismissed by K. K. Desai, J., on July 1, 1960. The appellant took the matter in appeal under Letters Patent, but the appeal was dismissed by the Division Bench consisting of Chainani, C.J., and Tarkunde, J., on 6 February, 1962. It was submitted on behalf of the appellant that the notification of the State Government dated July 31, 1956 under S.114(2) of the Act was the subject-matter of consideration in Prakash Cotton Mills (Private), Ltd., and others v. State of Bombay 1962 (1) LLJ 108], and it was held by this Court that the notification was ultra vires of the powers conferred on the State Government under S.114(2) of the Act and must be struck down. Sri S. T. Desai put forward the contention that the High Court should therefore have quashed the order of the industrial court by grant of a writ for an error of law apparent on the face of record. Sri B. Sen of behalf of the respondents, however, said that the case of the appellant is different from that of Prakash Cotton Mills case 1962 (1) LLJ 108] (vide supra) and the decision of this Court in the case does not govern this case. We are unable to accept the argument of the respondents as correct. It was held by the majority judgment of this Court in Prakash Cotton Mills case 1962 (1) LLJ 108] (vide supra) that the notification dated July 31, 1956 was beyond the powers of the State Government under S.114(2) of the Act because there are three limitations on the State Government's power enacted under that sub- section :

> (1) It is limited by the subject-matter of the agreement or settlement, submission or award sought to be extended.
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> (2) It has to be in conformity with the industrial law laid down by the full bench of the industrial court and also by any decision of this Court.
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> (3) The State Government's power to make a direction under that section is co-terminus with the power of an adjudicator and the State cannot do what an

adjudicator cannot do under the Act.

At pp. 111-112 of the report Wanchoo, J., speaking for the Court stated as follows :"

> ..... The contention on behalf of the appellant is that it would not be open to an industrial court to grant bonus when profit was not adequate to meet all prior charges or where there was an actual loss and therefore when the impugned notification made it possible for grant of bonus even in these cases (for prima facie) the appellant had made losses up to 1955). It directed something which even an industrial court could not do. In consequence, it is urged that the notification inasmuch as it makes this possible, is beyond the powers conferred on the State Government under S. 114(2), because it allows something to be done which even an industrial court could not allow. Reliance in this connexion is placed on the decision of this Court in New Maneckchowk Spinning and Weaving Company, Ltd., and others v. Textile Labour Association, Ahmedabad 1961 (1) LLJ 521]. In that case this Court was considering a similar agreements relating to Ahmedabad. The industrial court had imposed that agreement after its expiry for one year on the mills in spite of their contention that they were not bound to pay any bonus for the years in dispute in view of the law laid down by this Court in Associated Cement Companies, Ltd. v. Its workmen 1959 (1) LLJ 644]. After examining the terms of the agreement then in dispute this Court came to the conclusion that in view of the law laid down in Associated Cement Companies case 1959 (1) LLJ 644] (vide supra), the industrial court had no jurisdiction to impose that agreement on the mills. It further held that an agreement of that kind could only continue by consent of parties and could not be enforced by industrial adjudication against the will of any of the parties. The agreement in the present case directed to be enforced by the impugned notification is similar in terms and as held in New Maneckchowk case 1961 (1) LLJ 521] (vide supra) it could not be enforced by industrial adjudication against the will of any of the parties. The power of the State Government under S. 114(2) being co-terminus with the power of an adjudicator under the Act, such an agreement cannot therefore be directed to be enforced against the will of the appellant even under S. 114(2) inasmuch as by doing so the State Government would be going beyond the powers conferred on it by that section. The impugned notification therefore must be held to be bad inasmuch as it goes beyond the powers conferred on the State Government under S. 114(2) and must therefore be struck down.
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> "In our opinion the present case falls directly within the ratio of the decision of this Court in Prakash Cotton Mills case 1962 (1) LLJ 108] (vide supra) and it follows therefore that the award of Sri Bhat dated April 25, 1958 is illegal and ultra vires and the decision of the labour court dated August 4, 1959 and of the industrial court dated October 24, 1959 must be quashed by grant of a writ of certiorari.
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> On behalf of the respondents Sri B. Sen, however, pointed out that the conduct of the appellant does not entitle it to the grant of a writ, because it has been guilty of

> acquiescence or delay. It was pointed out that the award of Sri Bhat was given on April 25, 1958 but an application to the High Court for grant of a writ was made long after on November 16, 1959. We do not think there is any substance in this argument, because respondent 2 had made an application dated August 19, 1958 to the labour court for enforcement of the award and the appellant had contested that application by a written statement dated September 15, 1958. The labour court allowed the application on August 4, 1959 and the appellant had preferred an appeal to the industrial court on August 31, 1959. The decision of the industrial court was given on October 24, 1959 and after the appeal was dismissed, the appellant moved the High Court for grant of a writ on November 16, 1959. Sri B. Sen then put forward the argument that the appellant itself, had acted on the bonus agreement and on October 14, 1957 had issued a notice informing its workers that"

pursuant to the award of the industrial court in terms of the agreement dated March 1, 1956 reached between the Millowners' Association, Bombay and the Rashtriya Mill Mazdoor Sangh, regarding payment of bonus it would be paid to them at 4.8 per cent of the total basic earning during 1956.

> "On October 27, 1956 the appellant and the secretary of respondent 2 signed a joint statement in which it was stated as follows :"

Since it has not yet been possible to complete bonus calculation for all these years, it is hereby agreed between the Rashtriya Mill Mazdoor Sangh, Bombay, and the Moon Mills, Ltd., Bombay, that under the bonus agreement the Moon Mills should pay a bonus at the rate of 4.8 per cent for each of the years 1953, 1954 and 1955 as a tentative payment.

> "It was, therefore, contended that the appellant itself had agreed with respondent 2 to pay bonus for 1953, 1954, 1955 and 1956 according to the terms of the bonus agreement. It was also pointed out that the appellant had not pressed its objection with regard to jurisdiction before the labour court or the industrial court. But it appears that the decision of this Court in Prakash Cotton Mills case 1962 (1) LLJ 108] (vide supra) was given on February 16, 1961 after the decision of K. K. Desai, J., on July 1, 1960 and before the decision of the Letters Patent Bench on February 6, 1962. In the circumstances of this case, we do not consider that there is such acquiescence on the part of the appellant as to disentitle it to a grant of writ under Art. 226 of the Constitution. It is true that the issue of a writ certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstance, cause prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sri Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell and John Kemp [Law Reports 5 P.C., 221 at 239] as follows :"

Now the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

In the present case, we are of opinion that there is no such negligence or laches or acquiescence on the part of the appellant as may disentitle it to the grant of a writ.

For the reasons already stated, we hold that the judgment of the Division Bench of the Bombay High Court dated February 6, 1962 must be set aside and the appellant must be granted a writ in the nature of certiorari for quashing the other of the industrial court, dated October 24, 1959 and of the labour court dated August 4, 1959. The appeal is accordingly allowed, but in the circumstances of the case, there will be no order as to costs.

We should, however, like to make it clear that this decision will not prejudice the trial of any references with respect to bonus which may be pending or which may hereafter be made between the appellant and its employees in respect of the years 1955 and 1956. If such references are pending or should hereafter be made, they will be proceeded with and decided in accordance with law.