Supreme Court of India
The Associated Cement Companies ... vs Cement Workers Kamdar Union And ... on 17 March, 1972
Equivalent citations: AIR 1972 SC 1552, 1972 (24) FLR 306, 1972 LablC 822, (1972) IILLJ 40 SC, (1972) 4 SCC 23
Author: K Mahtew
Bench: C Vaidialingam, D Palekar, K Mathew
JUDGMENT K.K. Mahtew, J.

1. This appeal, by special leave, is directed against the award of the Industrial Tribunal, Gujarat dated October 27, 1967, in Reference (IT) No. 126 of 1965.

2. The appellant is a Company registered under the Companies Act and is engaged in the business of manufacturing cement. The appellant owns and manages 16 cement works all over India including the cement manufacturing factory at Dwarka in the state of Gujarat called "The Dwarka Cement Works".

3. Respondent No. 3, representing the workmen employed at Dwarka Cement Works, made a charter of demands in the year 1951 and one of the demands related to the grant of sick leave with pay to daily-rated workers. The dispute relating to these demands was settled by the award passed in reference No. 151 of 1951. In that award it was held that daily-rated workmen were entitled to 15 days' sick leave with full pay subject to the condition that for obtaining the leave, medical certificate of a qualified doctor should be produced. Respondent No. 2, by its letter dated November 1, 1955, terminated the award and made 17 demands which inter alia included the demand that all employees, whether daily-rated or monthly-rated should be given 21 days' sick leave with full pay, that the sick leave should be allowed to be accumulated and that no medical certificate should be insisted upon for obtaining sick leave for less than 4 days. The Government of Bombay which, at the time was the appropriate Government, did not refer the dispute relating to the demand for sick leave for adjudication. Thereafter the second respondent, by its letter dated February 10, 1965, made a charter of demands including the demand that, the appellant should not insist upon medical certificate for granting sick leave for less than 3 days. The Government of Gujarat, which was the appropriate Government, by its letter dated October 19, 1965, referred the dispute relating to the following demands for adjudication to the Industrial Tribunal Gujarat:

(a) Medical Certificate not to be considered necessary in case of short and sudden illness. The Medical Certificate should not be considered necessary for getting sick leave for less than three days.

(b) Allowance for driving Heavy Vehicles:

Lorry or Truck Drivers, Pay Load Drivers, Tractor Drivers, Fork Lift Drivers and Drag Line Operators should be paid heavy vehicles allowance of Re. 1/- per day for each day of work from the date of the receipt of those demands.

4. The Tribunal, by its award, directed that the appellant shall not Insist upon production of medical certificate for obtaining sick leave when the illness of the workman is of the duration of a day and

expressed its hope that the workmen will not abuse this concession and that it will be open to the appellant to take disciplinary action against any workman when there is satisfactory proof that the concession has been abused.

5. It is not necessary to refer to the finding of the Tribunal on the second question referred, as this appeal is concerned only with the correctness of the finding on the first question.

6. In support of the appeal, it was contended that there is provision for 15 days' casual leave in the appellant's Company and if a workman is Indisposed and cannot attend to work for that reason, it is open to him to take casual leave, that sick leave with full pay can be availed of only for real sickness and there is nothing wrong in the appellant insisting upon medical certificate for obtaining sick leave even if it be for a day and that to dispense with a requirement of medical certificate would lead to grave abuses. It was further argued that, if for illness of the duration of a day, no medical certificate is insisted upon, it will be open to the workmen to avail of all the 15 days' sick leave without producing any medical certificate, if sick leave for a day is taken at intervals. Counsel for the appellant, in the course of his argument, referred to several awards passed by industrial tribunals holding that there are strong grounds for rejecting the demand of workmen for grant of sick leave even for two or three days without the production of medical certificate. He also referred to a passage from "Better Employment Relation" by Foenonder reading as under:

It is usual provision in an Australian Industrial award that upto one week per year without deduction of pay shall be allowed where, by reason of some ailment, the worker is unable to attend the Factory. There is reason to believe however, that the privilege has been shamefully abused at times, and sick leave successfully claimed in situations that are not genuine, or that do not qualify for the benefit Cases indeed have been brought to notice where workers, by resort to frequent change of employment and, deceit, have been able to draw no less than three week's sick pay in a year for time that was not worked. The extra burden imposed on industry by these frauds on awards does not stop short at the additional monetary charges that are involved: there is the further count of waste, and inefficiency, that are the inevitable accompaniments of a high Labour mobility, or quick employee turnover. Unfortunately, one Australian Trade Union at least has counseled its members by circular to exhaust any unclaimed sick leave before the expiration of relevant year;

and to the following observations in a publication entitled "The Management of Labour Relations" by Watkins and Dodd (Page 616):

The provisions of sickness benefits or insurance entails serious difficulties because of the necessity of guarding against feigned illness by astute malingners and the danger of making the slightest illness an excuse for absence from work.

Counsel said that it is because sick leave provisions are abused by workmen that no benefit is given under the Employees' State Insurance Act, 1948 for the first two days of illness.

7. Generally speaking no workman will get himself treated by a doctor on the very first day of an illness. For minor ailments, no workman would go to a doctor for treatment and it would be a great

hardship to the workmen if a medical certificate from a qualified doctor is insisted upon for sick leave for a day's illness. From a practical point of view, we do not think that it would be expedient to insist that a workman should produce a medical certificate from a qualified doctor to avail himself of sick leave for a day on the ground of illness. We do not say that the apprehension entertained by the appellant that the workmen would abuse the provision for sick leave with full pay, in some cases at least, if no medical certificate is insisted upon for the leave even if the duration of the illness is for a day, is unfounded. But at the same time one has to consider the practical inconvenience and the hardship to the workmen if a medical certificate is insisted upon for availing of sick leave for illness of the duration of a day.

8. The Tribunal has taken into account the pros and cons of the matter and on a balance of the relevant considerations has arrived at a conclusion. Should we interfere with that conclusion in an appeal under Article 136 of the Constitution?

9. In Bengal Chemical and Pharmaceutical Works Ltd., Calcutta v. Their Workmen 1959 Supp. (2) SCR 136 at p. 140 : , this court observed:

Though Article 136 is couched In widest terms, it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural Justice causing substantial and grave injustice to parties or raising an important principle of industrial law requiring elucidation and final decision by this Court or disclosing such other exceptional or special circumstances which merit the consideration of this Court.

See also Hindustan Antibiotics Ltd., V. The Workmen : .

10. The portion of the award with which we are concerned does not raise any important principle of law requiring elucidation and final decision by this Court. Nor does it disclose any exceptional or special circumstances which merit decision by this Court. On a question like this, where the Tribunal, on a consideration of all the materials placed before it and having regard to the overall picture came to a conclusion, we do not think this Court should interfere.

11. We therefore, dismiss the appeal with costs.