Supreme Court of India
Raipur Manufacturing Co. Ltd vs Okhabhai Devrajbhai Patni on 26 November, 1975
Equivalent citations: 1976 AIR 683, 1976 SCR (2) 818
Author: P Bhagwati
Bench: Bhagwati, P.N.

PETITIONER:
RAIPUR MANUFACTURING CO. LTD.

Vs.

RESPONDENT:
OKHABHAI DEVRAJBHAI PATNI

DATE OF JUDGMENT26/11/1975

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
FAZALALI, SYED MURTAZA
SHINGAL, P.N.

CITATION:
1976 AIR 683 1976 SCR (2) 818
1976 SCC (1) 346

ACT:
Bombay Industrial Relations Act, 1946, ss. 42(4), 78(1)(A)(a)(i) and 79(1) and (3) and r. 53 of the Rules made thereunder-Scope of-Power to extend period after expiry of the inifial period-"Mutually fixed", meaning of.

HEADNOTE:
A combined reading of ss. 42(4), 78(1)(A)(a)(i), 79(1) and (3) of the Bombay Industrial Relations Act, 1946, and r. 53 of the Rules made under the Act, shows that an application under s. 79(1) to the Labour Court, in respect of a dispute falling under s. 78(1)(A)(a)(i) must be made within 3 months of the arising of the dispute; and that the dispute would be deemed to have arisen if, within a period of 15 days from the receipt of a letter of approach under s. 42(4) by the employer, or within such further period as may be mutually fixed by the employer and the employee, no agreement is arrived at in respect of the change desired by the employee.

In the present case, the letter of approach under s. 42(4) claiming that his age was only 56 years and so he should not be retired, was sent by the employee (respondent) to the employer (appellant) on February 13, 1973. Since

there was no response, the respondent requested the Labour Commissioner on March 17, 1973, to intervene. The Labour Officer of the appellant appeared before the Labour Commissioner and took adjournment in order to compromise the dispute. As no compromise was arrived at, the respondent filed his application under s. 78(1)(A)(a)(i) read with s. 79(1) before the Labour Court on June 7, 1973. The Labour Court and on appeal the Industrial Court, held, that the period of 15 days from the date of the receipt of the letter of approach expired on February 28, 1973; that the dispute between the parties should be deemed to have arisen at the latest on March 1, 1973; that the application under s. 79(1) to the Labour Court should have been filed within 3 months of that date, that is, on or before June 1, 1973; and that, therefore, the application filed on June 7, 1973, was barred under s. 79(3)(a). The High Court, however took the view that by reason of the Labour Officer of the appellant asking for adjournment for compromising the matter on or after March 17, 1973, there was an extension of the period to some date beyond March 17, 1973 by mutual agreement between the parties, and that therefore. the application filed on June 7, 1973, was within 3 months of the arising of the dispute.

In appeal to this Court, the appellant contended that (1) there was no valid extension of the period for settlement as such extension should have been fixed before the expiry of the initial period of 15 days, and (2) no period was mutually fixed between the parties.

Allowing the appeal on the second ground,

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HELD: (1) The further period for arriving at a settlement under r. 53(2) can be mutually fixed between the parties even after the expiration of the initial period of 15 days; and in such a case, the dispute would be deemed to have arisen only on the expiration of the extended period if within that time no settlement is arrived at. [824-G]

(a) There is nothing in the rule which provides that the further period should be fixed before the expiration of the initial period. The words in the rule "within 15 days of the receipt of the application by the employer or within such further period as may be mutually fixed between the employer and the employee" are sufficiently wide to cover a situation where the further period is fixed after the expiration of the initial period. [824 B.C.].

819

(h) The object of the rule is that, as far as possible, the employer and the employee should arrive at an agreement by negotiation in respect of the change desired by the employee and it is only where such an agreement is not possible that the employee should approach the Labour Court for adjudication. It is possible that even after the expiry of the initial period, the parties may arrive at a settlement and such settlement should not be discouraged by compelling the employee to apply to the Labour Court within

3 months of the expiration of the initial period of 15 days. [824 D-F]

[Obiter: The further period cannot, however, be fixed after 3 months have elapsed from the expiration of the initial period of 15 days and the application has become barred under s. 79(3)(a).] [825 B]

(2) But, it cannot be said in the present case that the further period was mutually fixed by the appellant and the respondent before the Labour Commissioner. [825-C]

(a) There must be a specific period agreed upon between the parties but there is no reference to any specific period in the present case. [825-E]

(b) Even on a liberal view that the Labour Commissioner granted the adjournment to the Labour Officer of the appellant for arriving at a settlement up to a specific date implying a specific period, there is no averment in the application under s. 79 to the Labour Court, that such specific period was mutually fixed between the parties, nor even a remote suggestion to that effect. It is not even stated that the respondent consented to the adjournment as to enable an inference of mutual agreement to be made. [825-EF]

(c) In fact, it was not the case of the respondent that any further period was mutually fixed to save the application from the bar of limitation. On the contrary, he prayed for condonation of delay, but the Labour Court has no power to condone the delay.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1102 of 1975.

Appeal by special leave from the judgment and order dated the 18th September 1974 of the Gujarat High Court in Civil Spl. Appln. No. 1224 of 1974.

F. S. Nariman, V. B. Patel and I. N. Shroff for the appellant.

V. N. Tarkunde, Vimal Dave for the Respondents. The Judgment of the Court was delivered by BHAGWATI, J.-This appeal, by special leave, raises a short question of construction of certain provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the Act). The facts giving rise to the appeal are few and may be briefly stated as follows.

The appellant carries on business of manufacturing cloth in a textile mill situate in the city of Ahmedabad. The respondent was working as a jobber in the textile mill in the employment of the appellant and, according to the records of the appellant, he was due to superannuate on 7th January, 1971 on reaching the age of 60 years and intimation to that effect was accordingly given to him by the appellant by a notice dated 1st October, 1970 under Standing Order 19. It appears,

however, that the appellant decided to continue the respondent in service for a period of one year after the date superannuation and the appellant accordingly gave a notice dated 24th September, 1970 under Standing Order 19-A continuing the service of the respondent for a period of one year and intimating to him that he would be retired on 8th January, 1972. Thereafter there was another extension of service granted by the appellant by a notice dated 12th January, 1972 issued under Standing Order 19-A and it was intimated to the respondent that he would be retired on 8th January, 1973. The respondent, by his letter dated 5th January, 1973, requested the appellant on compassionate grounds to grant him further extension of service for a period of two years from 8th January, 1973, but the appellant declined to do so and in the result the service of the respondent came to an end by retirement on 8th January, 1973. The respondent did not at any time until his retirement on 8th January, 1973 question the correctness of the records of the appellant or challenge the stand of the appellant showing that he had completed the age of 60 years on 7th January, 1971. It was only after his retirement that the respondent for the first time, by his letter dated 13th February, 1973, gave notice to the appellant that his age was only 56 years on 8th January, 1973 and his retirement was, therefore, null and void and he should be reinstated in service. This was rightly regarded as a letter of approach by the respondent to the appellant under s. 42 sub-s. (4) of the Act requesting for a change in respect of the order passed by the appellant under Standing Order 19 retiring the respondent. The appellant did not send any reply to this letter of approach and no agreement was arrived at between the appellant and the respondent within 15 days of the receipt of the letter of approach by the appellant. It appears that since there was no favourable response from the appellant, the respondent made an application to the Labour Commissioner on 17th March, 1973 requesting his intervention in the matter. The Labour Officer of the appellant appeared before the Labour Commissioner pursuant to the notice issued to the appellant and, to quote the words used by the respondent in his application before the Labour Court, "took adjournment for making compromise". But no compromise was arrived at between the parties and the respondent ultimately on 7th June, 1973 filed an application before the Labour Court under s. 79(1) read with s. 78(1) (A) (a) (i) of the Act praying that the order passed by the appellant resisted him from service should be treated as null and void and he should be reinstated in service with all benefits. The appellant resisted the application on various grounds and apart from disputing the claim of the respondent on merits, the appellant raised a preliminary objection that the application was barred by time under s. 79(3) (a) of the Act since it was filed more than three months after the arising of the dispute. The respondent had also filed along with the application under s. 78 (1) (A) (a) (i) an application for condonation of delay and to this application, the answer given by the appellant was that the Labour Court had no jurisdiction to condone the delay in filing the application under s. 78(1) (A) (a) (i). The Labour Court took the view that the application of the respondent under s. 78(1) (A)

(a) (i) was barred under s. 79(3) (a) as it was not filed within three months of the arising of the dispute and the Labour Court had no jurisdiction to condone the delay in filing the application and in this view, the Labour Court rejected the application without going into the merits. The respondent preferred an appeal to the Industrial Court, but the Industrial Court also took the same view and dismissed the appeal. The respondent thereupon preferred a petition in the High Court under Article 226 of the Constitution and on this petition, the High Court reversed the view taken by the Labour Court and the Industrial Court and held that the application filed by the respondent

under s. 78 (1) (A) (a)

(i) was within three months of the arising of the dispute and hence it could not be said to be barred under s. 79(3)

(a). The High Court accordingly set aside the order passed by the Industrial Court and remanded the application to the Labour Court to dispose it of on merits. This decision of the High Court is impugned in the present appeal brought with special leave obtained from this Court.

The question which arises for determination in this appeal lies in a very narrow compass, but in order to appreciate it, it is necessary to refer to a few relevant sections of the Act. The first material section to which we must refer is s. 42, sub-s. (4) which is in the following terms:

> "42 (4). Any employee or a representative Union desiring a change in respect of-
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> (i) any order passed by the employer under Standing Orders, or
>
> (ii) ----------
>
> (iii)---------- shall make an application to the Labour Court. Provided that no such application shall lie unless the employee or a representative Union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

What is the 'prescribed period' is to be found in r. 53 of the Rules made under the Act. That rule so far as material reads:

> "53(1). Any employee or a representative Union desiring a change in respect of (i) any order passed by the employer concerned under Standing Orders..... shall make an application in writing to the employer. An application for change in respect of an order passed by the employer under standing orders shall be made within a period of six months from the date of such order. Where such application is made by an employee it may be made to the employer direct or through the Labour Officer for the local area or the representative of employees concerned. A copy of the application shall be forwarded to the Commissioner of Labour and in cases where such application is not made through the Labour Officer for the local area to that officer.
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> (2) Where an application has been made by an employee under sub-rule (1) the employer and the employee may arrive at an agreement within fifteen days of the receipt of the application by the employer within such further period as may be mutually fixed by the employer and the employee or the Labour Officer for the local area or the representative of employee as the case may be.

> (3) Where an application has been made by a representative Union under sub-rule (1), the employer and the Representative Union may arrive at an agreement within fifteen days of the receipt of the application by the employer or within such further period as may be mutually agreed upon by the parties.

Then there is s. 78 which deals with the powers of the Labour Court and sub-s. (1) (A) (a) (i) of that section provides inter alia:

> "78(1). A Labour Court shall have power to-
>
> A. decide-
>
> (a) disputes regarding-
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> (i) the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders * * * * Explanation.-A dispute falling under clause (a) of Paragraph A of sub-section (1) shall be deemed to have arisen if within the prescribed period under the Proviso to sub-section (4) of section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said Proviso."

And lastly, sub-ss. (1) and (3) (a) of s. 79 provide how and within what time proceedings before a Labour Court in respect of a dispute falling under s. 78 (A) (a) (i) are to be commenced and they read as follows:

> "79(1). Proceedings before a Labour Court in respect of dispute falling under caluse (a) of Paragraph A of sub-section (1) of Section 78 shall be commenced on an application made by any of the parties to the dispute...
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> (2) * * * (3) An application in respect of a dispute falling under clause (a) of paragraph A of sub-section (1) of section 78 shall be made-
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> (a) if it is a dispute falling under sub-clause
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> (i) or (ii) of the said clause, within three months of the arising of the dispute;"

It will be seen on a combined reading of these provisions that an application to the Labour Court under s. 79(1) in respect of a dispute falling under s. 78(1) (A) (a) (i) must be made within three months of the arising of the dispute and the dispute would be deemed to have arisen if, within a period of 15 days from the receipt of the letter of approach under s. 42, sub-s. (4) by the employer or within such further period as may be mutually fixed by the employer and the employee, no agreement is arrived at in respect of the change desired by the employee.

Here in the present case, the letter of approach under s. 42 sub-s. (4) was sent by the respondent to the appellant on 13th February, 1973 and it may be presumed that it was received by the appellant

on the same day. The period of 15 days calculated from the date of the receipt of the letter of approach by the appellant, therefore, expired on 28th February, 1973 and admittedly until that time no agreement was arrived at between the appellant and the respondent in respect of the change desired by the respondent. There can, therefore, be no doubt that if nothing further had transpired, the dispute between the parties would be deemed to have arisen at the latest on 1st March, 1973 and the application under s. 79, sub-s. (1) read with s. 78(1) (A)

(a) (i) should have been filed within three months from that date, that is, on or before 1st June, 1973 and in the circumstances, the application made by the respondent on 7th June, 1973 would be clearly barred under s. 79(3) (a). Both the Labour Court and the Industrial Court accepted this view and rejected the application of the respondent in limine without examining the merits of the case. The High Court, however, took a different view and held that by reason of the Labour Officer of the appellant asking for adjournment on or after 17th March, 1973 in order to compromise the dispute between the parties, the period of 15 days was extended by mutual agreement between the parties to some date beyond 17th March, 1973 and the application filed by the respondent on 7th June, 1973 was, therefore, within three months of the arising of the dispute and was accordingly saved from the bar of s. 79 (3) (a). The question is: whether this view taken by the High Court is correct, or it suffers from any infirmity and requires to be set aside ?

Now, it is obvious that the view taken by the High Court can be sustained only if it can be shown that, though no settlement in respect of the change desired by the respondent was arrived at within a period of 15 days from the receipt of the letter of approach by the appellant, further period upto some date beyond 7th March, 1973 was mutually fixed between the appellant and the respondent, for then the dispute would be deemed to have arisen on or after that date and in that event, the application filed by the respondent on 7th June, 1973 would be within three months of the arising of the dispute and hence within time. The appellant submitted that two conditions were required to be satisfied for this purpose: (1) further period for arriving at a settlement must have been fixed before the expiration of the initial period of 15 days, and (2) it must have been mutually fixed between the appellant and the respondent. The respondent conceded that the second was a necessary condition, but so far as the first condition was concerned, the respondent contended that it was not necessary that the further period should have been fixed before the expiration of the initial period of 15 days. It was sufficient to attract the applicability of the provision, said the respondent, even if the further period was fixed after the expiration of the initial period of 15 days, so long as that was done before the period of three months expired and the application of the respondent became barred under s. 79(3)

(a). We think there is great force in the contention of the respondent. We do not find anything in rule 53(2) which provides that further period should be mutually fixed by the employer and the employee before the expiration of the initial period of 15 days from the receipt of the letter of approach by the employer. The words used by the rule making authority are "within 15 days of the receipt of the application by the employer or within such further period as may be mutually fixed between the employer and the employee" and these words are sufficiently wide to cover a situation where further period is mutually fixed after the expiration of the initial period of 15 days. There is really no warrant for reading in the words used by the rule making authority any restriction that

further period must be mutually fixed before the expiration of the initial period of 15 days. It must be remembered that the object of this provision is that, as far as possible, the employer and the employee should arrive at an agreement in respect of the change desired by the employee and it is only where an agreement is not possible that the employee should be allowed to approach the Labour Court. The provisions of the Act are intended to bring about settlement of disputes between the employer and the employees and so far as the methodology or mechanics of the resolution of such disputes is concerned, the greatest importance is attached by the legislature to settlement by negotiations. It is only where settlement through negotiations fails that other modes of resolution of disputes are provided by the legislature in the different provisions of the Act. It is in the light of this philosophy underlying the provisions of the Act and this policy and principle to promote, as far as possible, settlement by negotiation and avoid adjudication, that the words used by the rule making authority in rule 53(2) must be construed and if that is done, there can be little doubt that further period may be mutually fixed between the employer and the employee even after the initial period of 15 days has expired. It is quite possible that even after the expiration of the initial period of 15 days, the employer and the employee may come together and arrive at a settlement. Why should that be discouraged by compelling the employee to file an application under s. 78(1) (A) (a) (i) within three months of the expiration of the initial period of 15 days, on pain of his application becoming time barred. Such an interpretation would not advance the object and purpose of the Act. The employer and the employee may very well agree, even after the expiration of the initial period of 15 days, that they will try to negotiate a settlement and that would impliedly mean that during the time fixed by them for such negotiations, the employee should not rush to the Labour Court. It is only when such period mutually fixed by them expires without any settlement having been arrived at that a dispute can be deemed to arise, for adjudication of which the employee may approach the Labour Court under s. 78(1) (A) (a) (i). We are, therefore, of the view that further period for arriving at a settlement can be mutually fixed by the employer and the employee even after the expiration of the initial period of 15 days and where such is the case, the dispute would be deemed to arise on the expiration of such further period, if within that time no settlement is arrived at between the parties. We should of course make it clear that prima facie it seems to us that such further period cannot be mutually fixed after three months have elapsed from the expiration of the initial period of 15 days and the application of the employee under s. 78(1)(A)(a)(i) has already become barred under s. 79(3)(a).

It would, therefore, seem clear that if, as a result of what transpired before the Labour Commissioner, further period for arriving at a settlement in respect of the change desired by the respondent was mutually fixed between the appellant and the respondent, the dispute would not be deemed to have arisen till the expiration of such further period and in that event, the application made by the respondent on 7th June, 1973 would be within time. The question, however, is whether it can be said at all that further period was mutually fixed by the appellant and the respondent before the Labour Commissioner. We do not think this question can be answered in favour of the respondent. If we look at the application of the respondent, we do not find in it anything even remotely suggesting that further period for arriving at a settlement was mutually agreed upon between the appellant and the respondent. In the first place, there must be a specific period agreed upon between the parties. Here we do not find any averment of a specific period. Even if we construe the application of the respondent most liberally, the utmost we can extract from it is that

adjournment must have been granted by the Labour Commissioner to the Labour Officer for the purpose of arriving at a settlement upto a specific date and that would indicate a specific period. The difficulty, however, still remains that there is no averment that such specific period was mutually fixed by the parties. The only averment made in the application of the respondent is that at the hearing before the Labour Commissioner, the Labour Officer of the appellant "took adjournment to make a compromise", but ultimately no compromise was arrived at. It is not even stated in the application that the respondent consented to the adjournment, so that the application for adjournment by the appellant and the consent to the adjournment by the respondent could be construed as an agreement mutually fixing further period for arriving at a settlement. There being absolutely no averment of further period being mutually fixed between the parties, it is difficult to see how the case of the respondent could be brought within the latter part of rule 53(2). It was never the case of the respondent that further period was mutually fixed and that saved his case from the bar of limitation. The relief that he asked for from the Labour Court as well as Industrial Court was condonation of delay but so far as this relief is concerned, the Labour Court has unfortunately no power to condone the delay and hence his request was rejected. We are, therefore, of the view that the High Court was in error in holding that the application made by the respondent under s. 78(1)(A)(a)(i) was within three months of the arising of the dispute and was hence not barred under s. 79(3) (a).

We accordingly allow the appeal set aside the order passed by the High Court and restore the order of the Industrial Court rejecting the application of the respondent as barred under s. 79(3)(a). So far as the cost of this appeal is concerned, when the appellant was granted special leave, it was made a condition that the appellant would in any event pay the cost of the respondent. Therefore, the appellant, though it has succeeded, will pay the cost of the appeal to the respondent.

V.P.S Appeal allowed.