

CASE NO.:
Appeal (civil) 6443 of 1997

PETITIONER:
NATIONAL JUTE MANUFACTURERS CORPORATION LTD .

Vs.

RESPONDENT:
KATIHAR MAZDOOR SANGH & OTHERS

DATE OF JUDGMENT: 12/04/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil, J.
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In these appeals the validity and correctness of the Award dated 18.10.1993 passed by the Industrial Tribunal, Patna, as affirmed by the learned single Judge and confirmed by the Division Bench of the High Court, is challenged.

By the impugned award, the tribunal ordered that the workmen shall get one days paid holiday on the occasion of Deepawali which was available to them prior to 1979. However they will not get any arrears on that count.

Rai Bahadur Hurdut Ray Motilal Jute Mills Pvt. Ltd. (for short the Mill) had remained closed from 25.2.1975 to 17.8.1979. On coming into force of the Jute Companies (Nationalisation) Act, 1980 (for short the 'Nationalisation Act') it stood transferred and vested in the Central Government with effect from 21.12.1980. In turn the Central Government under the provisions of the said Act transferred the Mill to the National Jute Manufacturers Corporation Limited (for short the 'Corporation'). Though the provisions of the Bihar Industrial Establishment (National and Festival Holidays and Casual Leave) Act, 1976 were not applicable to this Corporation being under the control of the Central Government as per Section 12(b) of the Act, the management through a tripartite settlement dated 27.4.1983 continued to allow the workmen the existing number of 10 national and festival holidays in addition to seven days casual leave in a calendar year. Further the said holidays thereafter were to be regulated in the manner as specified and within the framework of the said Act and Rules made thereunder.

When the management reduced one day Deepawali festival paid holiday, the workmen raised demand that during the period of private management Deepawali was a paid holiday; after the mill was taken over in 1979 it was made unpaid holiday which led to conciliation proceedings. The Conciliation Officer gave a written advice to the management to allow the festival holidays as before but the management

did not accept it contending that they were giving one days paid holiday on 2nd of October since 1979 instead of Deepawali holiday. Consequently the State Government referred the industrial dispute and the tribunal passed the impugned award.

The management in their rejoinder admitted that since 1979 paid holiday of Deepawali has been substituted by the paid holiday on 2nd October. C.P. Singh, Labour Welfare Officer (MW-1) stated that under the private management 10 days paid holidays were given and there was no holiday on 2nd October. He admitted that before nationalization workmen were getting Deepawali holiday; from the notice of the management dated 30.9.1979 it is clear that paid Deepawali holiday has been substituted by the paid holiday on 2nd October. Even the item No. 2 of the dispute indicated that Deepawali was a paid holiday prior to 1979. The tribunal looking to this evidence concluded that on Deepawali workmen were given a paid holiday prior to 1979.

The Tribunal, while noticing the contention of the management that the provisions of Industrial Establishment (National and Festival Holidays and Casual Leave) Act, 1976 (for short the 'Bihar Act') were not applicable to the Mill, it being under the control of the Central Government, took the view that by virtue of tripartite settlement dated 27.4.1983 the benefits available under the Bihar Act were given to the workmen. An employee was protected of his rights and privileges as is evident from Section 12(1)(b) of the Nationalisation Act, which, to the extent relevant, reads :

Section 12 - Continuance of employees

(1) Every person who has been, immediately before the appointed day, employed in any undertaking of any of the jute companies shall become, -

(a)

(b) where the undertakings of the jute companies are vested in the Jute Manufacturers Corporation, an employee of the said Corporation, on and from the date of such vesting,

and shall hold office or service under the Central government or the Jute Manufacturers Corporation, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Jute Manufacturers Corporation, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the Central Government or the Jute Manufacturers Corporation, as the case may be.

2)

The Tribunal further observed that the holidays would be regulated in the manner specified in the Bihar Act as per the tripartite settlement aforementioned. The Tribunal in para 8 of the award stated that:

As per the provision of the Section 13 of the Act, the benefits which the workmen were getting are protected and

cannot be denied by the Management and that they were enjoying 11 days paid holiday and the said benefit is protected by section 12 of the Nationalisation Act also.

The learned single Judge dismissed the writ petition filed by the appellant holding that the Award passed by the Tribunal, on consideration of the totality of facts and circumstances of the case was justified. The Division Bench of the High Court in the impugned order has stated that it is an admitted position that 2nd October came to be declared as a paid holiday of the workmen of the Mill in lieu of Deepawali, which was always granted to them as a holiday prior to 1979. The Division bench referring to Section 13 of the Bihar Act held that the privilege, which was already available to the workmen, could not be taken away. Finding no good reason to interfere with the Award of the Tribunal and the order of the learned single Judge, the Division Bench dismissed the Letters Patent Appeal.

Before us the learned counsel for the appellant urged that the workmen were given seven days casual leave in addition to 10 days paid holidays after taking over the Mill; 10 days holidays are maintained; in other words, there was no reduction in the paid holidays; there was only substitution of 2nd October as paid holiday in place of Deepawali paid holiday; thus neither rights nor privileges of the workmen were affected. The workmen were bound by the terms of tripartite settlement dated 27.4.1983 and it was open to the management to adjust 2nd October holiday in place of Deepawali holiday. In support of his submissions he cited a decision of this Court in *Indian Oxygen Ltd. vs. State of Bihar* [(1990) 2 SCC 254]. In opposition the learned counsel for the respondents made submissions supporting the impugned Award. It was added that on the facts and circumstances found in the case on hand the Award passed by the Tribunal as confirmed by the High Court is unassailable.

We have considered the submissions made by the learned counsel for the parties. Deepawali was a paid holiday to the workmen prior to 1979, is a finding of fact recorded by the Tribunal based on the evidence as stated above and rightly so. Although the management contended that the provisions of Bihar Act were not applicable to the appellant herein, the Tribunal and the High Court have found that by virtue of settlement dated 24.7.1983 and in view of Section 12 of the Nationalisation Act and Section 13 of the Bihar Act, rights and privileges more favourable to the workmen could not be taken away or affected. The said settlement itself indicates that the holidays were to be regulated in the manner specified and within the framework of the Bihar Act and Rules made thereunder. The stand of the management appears to be inconsistent. They say that the provisions of the Bihar Act do not apply to the appellant being under the control of the Central Government and that they were obliged to declare 2nd October as a paid holiday under the same Act. Section 13 reads:

Where any employee of an industrial establishment is entitled to such rights and privileges under any other law for the time being in force or under any contract or custom or usage applying to the said establishment, which are more favourable to him, then any right and privileges conferred by this Act, nothing contained in this Act shall affect such

rights or privilege.

The decision of this Court cited by the learned counsel for the appellant in Indian Oxygen Ltd. (supra), in our view, does not help the appellant. That said decision was rendered in civil appeal filed against the judgment of the High Court passed in the writ petition under Article 226 of the Constitution of India and did not arise from an industrial adjudication made by industrial tribunal. Further the situation in that case was different as noticed by the High Court. On the facts and circumstances of the present case, as found by the Tribunal as well as by the High Court, the said decision cannot be applied.

Considering all these aspects, in our view, it is not a case for interference with the impugned Award. Therefore, finding no merit in the appeal it is dismissed but with no order as to costs.

.....J.
[S. Rajendra Babu]

.....J.
[Shivaraj V. Patil]

April 12, 2001