

PETITIONER:
EMPLOYERS OF THUNGABHADRA INDUSTRIES LTD.

Vs.

RESPONDENT:
THE WORKMEN AND ANOTHER

DATE OF JUDGMENT 04/05/1973

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
GROVER, A.N.

CITATION:
1973 AIR 2272 1974 SCR (1) 172
1974 SCC (3) 167

ACT:
Industrial Disputes Act 1947, s. 9(6)--Termination of
award--Requirements of s. 19(6)--Termination must be fixed
with reference to a particular date.

HEADNOTE:

By an award dated, September 26, 1958 in I.D. No. 20 of 1957 the respondent workmen received certain benefits apart from the fixing of basic wages for different categories. On March 8, 1968 the workmen submitted a charter of demands relating to categorization and scales of pay and dearness allowance respectively. Later the Union passed a resolution and intimated the management that the workmen will be on strike from April 15, 1968. They actually were on strike from April 15 to 20, 1968. Conciliation proceedings were attempted but failed. The State Government passed an order on July 25, 1968 referring the dispute for adjudication. The dispute was dealt with by the Tribunal in I.D. No. 43 of 1968., The appellant company raised a preliminary objection before the Tribunal that as the previous award in I.D. 'No. 20 of 1968 had not been terminated the present reference by the State Government on July 25, 1968, was incompetent. The Tribunal upheld the objection. A Single Judge of the High Court dismissed a writ petition filed by the workmen against the order of the Tribunal. The Division Bench however held that the earlier award had been terminated and the second reference was competent. In coming to this conclusion the Division Bench took into account the following circumstances namely, (a) that the workmen had raised demands which were inconsistent with the earlier award. (b) that the workmen had gone on strike and (c) that the management had participated in the conciliation proceedings.

Allowing the appeal by the company,

HELD : Though there is no particular form in which the notice of termination has to be given, still it is absolutely essential that the intention to terminate the award, with reference to a particular date, must be made clear by the parties, who set up a case of termination. In the instant case the charter of demands did not give any indication that the previous award had been terminated. Even assuming that by the charter of demands on March 8, 1968, the award was terminated, nevertheless, it *HI

continue to be in force for a further period of two months from the date under section 19(6). The fact that the workmen went on strike from April 15, 1968, even before the expiry of this two months period, was an indication that they were dissatisfied with the refusal by the management to accede to their demands. If really they had terminated the award on March 6, 1968, it was unreasonable to hold that the workmen would have gone on an illegal strike before the expiry of two months from the said date. [251E]

The fact that the appellant participated in the conciliation proceedings held by the Conciliation Officer, which was also on a subsequent date, was also of so importance. When a strike is on it, is obligatory on the part of the Conciliation Officer to initiate conciliation proceedings and the management had acted properly in participating in the conciliation proceedings. [250H]

Management of Bangalore Woollen Cotton & Silk Mills Co. Ltd. v. The Workmen & Anr., [1968] 1 S.C.R. 551, applied.

The Workmen of Western India Match Co. Ltd. v. The Western India Match Co. Ltd., [1963] 2 S.C.R. 27, explained.

4-L373Sup CI/74

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2271 of 1970.

Appeal by certificate from the judgment and order dated September 23, 1970 of the Andhra Pradesh High Court at Hyderabad in Writ Appeal No. 31 of 1970.

V. S. Desai, Naunit Lal and M. N. Shroff, for the appellant.

M. K. Ramamurthi and J. Ramamurthi, for respondent No. 1 (for one section of workmen).

B. P. Singh, for respondent No. 1 (for another section of workman).

The Judgment of the Court was delivered by

VAIDIALINGAM, J.-This appeal on certificate is against the judgment and order dated September 23, 1970, of the Division Bench of the High Court of Andhra Pradesh, in Writ Appeal No. 31 of 1970.

By order dated July 25, 1968, the State Government referred to the Industrial Tribunal Andhra Pradesh, Hyderabad, for adjudication certain disputes. The appellant raised a preliminary objection that in respect of the items covered by the present reference, there was a previous award in I.D. No. 20 of 1957 passed by the Tribunal on September 26, 1958. As the said award had not been terminated, the present reference by the State Government on July 25, 1968, was incompetent. The workmen, on the other hand, contended before the Tribunal that the previous award had been terminated according to law and, therefore, there was no bar to the State Government making the present reference. The Industrial Tribunal by its award dated October 31, 1969 upheld the objection of the company and held that the award in I.D. No. 20 of 1957 had not been terminated. In consequence, the Tribunal held that the reference was incompetent.

The workmen challenged the award in Writ Petition No. 4186 of 1969 before the Andhra Pradesh High Court. The learned single Judge, who dealt with the said Writ Petition, by his judgment and order dated December 8, 1969, dismissed the Writ Petition and agreed with the view of the Tribunal that the award in I.D. No. 20 of 1957 had not been terminated and

hence the present reference by the State Government was incompetent. On appeal by the workmen, the Division Bench in Writ Appeal No. 31 of 1970, however, took a contrary view and held that the, previous award had been terminated. In this view, the learned Judges held that the present reference was competent and directed the Industrial Tribunal to dispose of the reference on merits.

It is this view of the Division Bench that is attacked on behalf of the appellant by its learned counsel, Mr. V. S. Desai. There is no controversy that there was a previous award in I.D. No. 20 of 1967 dated September 26, 1958. This award was published in the State Gazette on October 30, 1958. Under the said award, various benefits were given to the staff, apart from fixing basic wages for different categories. On March 8, 1968, the Thursday hydra Industries Staff Union submitted a charter of demands to the management to be im-

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mediately complied with. The first and the second demands related to categorization and scales of pay and dearness allowance respectively. The union desired the management to consider the demands and intimate the union regarding the action taken on or before March 30, 1968. On 6th April, 1968, the union sent to the appellant a copy of the resolution passed by its general body on April 5, 1968. The resolution regretted the inaction of the management in respect of the demands made on March 8, 1968 and also intimated that the workmen will go on an indefinite strike from April 15, 1968. Accordingly the workmen were on strike from April 15, 1968 to April 30, 1968. The Assistant Labour Commissioner, Kurnool, held conciliation proceedings on April 30, 1968 and an agreement was arrived at. One of the terms of the, agreement was that the general demands of the staff union will be taken up in conciliation. The Conciliation Officer made a report on June 24, 1968, to the Government that conciliation was not possible. The State Government, after receipt of this report, passed an order on July 25, 1968, referring the dispute for adjudication. This reference was dealt with by the Tribunal in I.D. No. 43 of 1968.

Under section 19, sub-section (3) of the Industrial Disputes Act, 1947, (hereinafter to be referred to as the Act), an award is operative, subject to the provisions of the said section, for a period of one year from the date on which the award becomes enforceable under section 17A. Sub-section (6) of section 19 provides that, notwithstanding the expiry of the period of operation under subsection (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

The previous award in I. D. No. 20 of 1957 member 26, 1958 and was published in the State 30, 1958. Under section 17A, the said award on the expiry of 30 days from October 30, 1958, location under section 17. Under section 19(3) No. 20, of 1957 will remain in operation for a from the date when it became enforceable under section 17A. But by virtue of sub section (6) of section 19, though the said one year period may have expired, the award will continue to be in force and binding on the parties till a notice terminating the award is given by any of the parties. Even then the award will continue to be in force. for a period of two months from the date of the notice.

In the, case before us, when the charter of demands was presented to the management by the union on March 8, 1968,

admittedly the latter had not given any notice, as contemplated under section 19(6) of the Act. It is also not in dispute that the said charter of demands referred to all the matters covered by the previous award in 1. D, No. 20 of 1957.

Under these circumstances, the question arises whether the present reference dated July 25, 1968, is competent. Mr. V. S. Desai,

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learned counsel for the appellant referred us to the decision of this Court in Management of Bangalore Woollen, Cotton & Silk Mills CO. Ltd. v. The Workmen & Anr. (1) and urged that the view of the Division Bench of the High Court upholding the competency of the present reference is not correct.

The above contention of Mr. V. S. Desai was met by Mr. Ramamurthi, learned counsel for some of the workmen, by placing reliance on the circumstances noted by the learned Judges of the Division Bench as pointing to the termination of the previous award.

The Division Bench has proceeded on the basis that the subject matter of the dispute in the present reference is almost identical with the matters covered by the award made in I.D. No. 20 of 1957. The Division Bench has also held that no notice terminating the previous award, as required by section 19(6) of the Act, was given when the charter of demands was submitted to the management on March 8, 1968. But the learned Judges of the Division Bench have relied upon three circumstances as indicating that the union had terminated the previous award. Those circumstances are

- (1) The making of a charter of demands on March 8, 1968, inconsistent with the directions contained in I.D. No. 20 of 1957.
- (2) the workmen going on strike from April 15, 1968 to April 30, 1968 when the management did not accede to the demands; and
- (3) when the management participated in the conciliation proceedings initiated by the concerned officer on April 30, 1968.

These circumstances, according to the learned Judges, clearly lead to the conclusion that the workmen had indicated their intention not to abide by the previous award in I.D. No. 20 of 1957.

The approach made by the learned Judges of the Division Bench is erroneous. The judgment of this Court in Management of Bangalore Woollen, Cotton & Silk Mills Co. Ltd.(1) case, though referred to, has not been properly appreciated. The Division Bench missed the important circumstance that the union must establish the point of time when the previous award has been terminated. Therefore, the question that should have been tackled was whether on March 8, 1968, when the charter of demands was submitted, there has been a proper termination of the previous award, as required under section 19(6). The fact that the workmen went on a strike subsequently may indicate that they are dissatisfied with the refusal of the management to accede to their demands. But that will not satisfy the requirement under section 19(6). The fact that the appellant participated in the conciliation proceedings held by the Conciliation Officer, which is also on subsequent date, is also of no importance. When a strike 'is on, it is obligatory on the part of the Conciliation Officer to initiate conciliation proceedings and the management had acted pro-

(1) [1968] 1 S. C.R. 581.

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perly in participating in the conciliation proceedings. But it is to be noted that in the report dated June 24, 1968, the Conciliation Officer had clearly stated that with regard to the demand for categorisation and scales of pay, the management were not inclined to consider the same, as they had been fixed by the award in I.D. No. 20 of 1957 and that the said award had not been terminated so far. Therefore, the stand of the appellant as on April 20, 1968, the date when the conciliation proceedings were held, was that the previous award had not been terminated by the union.

Mr. Ramamurthi, learned counsel for some of the workmen, pointed out that the serving of a charter of demands clearly shows that the union had terminated the award. In our opinion, this contention cannot be accepted, because it does not satisfy the requirement of section 19(6). This Court has held in Management of Bangalore Woollen, Cotton & Silk Mills Co. Ltd. (1) case that regarding the termination of an award, it must be fixed with reference to a particular date so as to enable a court to come to the conclusion that the party giving that intimation has expressed its intention to terminate the award. Such certainty regarding the date is quite essential because the period of two months, after the expiry of which the award ceases to be binding on the parties, will have to be reckoned from the date of such clear intimation regarding the termination of the award.

Though there is no particular form in which the notice of termination has to be given, still it is absolutely essential that the intention to terminate the award, with reference to a particular date, must be made clear by the parties, who set up a case, on termination. In the instant case, after going through the charter of demands, we are satisfied that it does not give any indication that the previous award has been terminated. Even assuming that by the charter of demands on March 8, 1968, the award was terminated, nevertheless, it will continue to be in force, for a further period of two months from that date under section 19(6). The fact that the workmen went on strike from April 15, 1968, even before the expiry of this two months period, is an indication that they were dissatisfied with the refusal by the management to accede to their demands. If really they had terminated the award on March 8, 1968, it is unreasonable to hold that the workmen would have gone on an illegal strike before the expiry of two months from the said date.

The decision in The Workmen of Western India Match Co. Ltd. v. The Western India Match Co. Ltd., (2) which has been relied on by the Division Bench and also by Mr. Ramamurthi before us, has been explained by this Court in Management of Bangalore Woollen, Cotton & Silk Mills Co. Ltd. (1) case. The distinctive features and the particular circumstances under which the said decision was given, have not been properly appreciated by the Division Bench. Mr. Ramamurthi urged that in the Workmen of Western India Match Co. Ltd. (2) case, this Court has accepted the position that the charter

(1) [1968] 1 S.C. R. 581.

(2) [1968] 2 S. C. R. 27.

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of demands and various representations made by the workmen, which were inconsistent with an award already in force, will lead to the inference of an intention by the workmen to terminate the previous award. We are not inclined to accept this contention of the learned counsel. The said decision of this Court did not accept the position that the mere making of demands, without any thing more, will amount to a

termination of a previous award. On the other hand, ignoring the charter of demands as well as the various representations made, by the union, this Court in the said decision held that the letter dated April 8, 1957, written by the union, had the effect of giving notice to the management about termination of the settlement. It was after fixing this date as the date of termination of the settlement, this Court further held that the reference made by the State Government long after the expiry of two months from the said date, was competent. In fact the said decision is against the view taken by the Division Bench of the High Court in the case before us and the view which was sought to be supported by Mr. Ramamurthi.

We are not inclined to agree with the view of the Division Bench that there has been a termination of the award in I.D. No. 20 of 1957. If so, the Industrial Tribunal as well as the learned single Judge were right in holding that the present reference dated July 25, 1968, is incompetent.

In the result, the judgment and order of the High Court in Writ Appeal No. 31 of 1970 are set aside and the appeal is allowed. There will be no order as to costs.

G.C.

Appeal allowed.

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