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# THE TATA OIL MILLS CO. LTD.

*v.*

# K. V. GOPALAN AND ORS.

*April* 15, 1965

B

[P. B. GAJENDRAGADKAR, C.J., K.N. WANCHOO, M. HIDAYATULLAH AND V. RAMASWAMI, JJ.]

*Kerala Industrial Establishment (National and Festival Holidays) Act, 1958, ss. 3 and 11—Scope of.*

C

Under the Standing Orders of the appellant company, its employees were entitled to five holidays with pay on specified dates during each year. Furthermore, by an agreement with the respondents' union, the company had agreed to grant an additional day's holiday with pay, thus raising the total number of paid annual holidays to six. In 1958 the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958, was passed and s. 3 of the Act required every employer to declare holidays on every 26th January, 15th August and 1st May, and to grant four additional festival holidays each year, on dates to be fixed by the Inspector after consulting the employer and the employees. The number of paid holidays was thus statutorily fixed at 7.

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In 1962, the company obtained the Inspector's decision on the four festival holidays and declared the dates on which such holidays would be given. At that time, while an industrial dispute between the company and its employees was pending, the respondents filed applications under s. 33A of the Industrial Disputes Act, 1947, before the Tribunal. It was contended in these applications that the statutory provision in s. 3 for 7 paid holidays did not override or abrogate the existing arrangement as to paid holidays and that the holidays to be given under s. 3 would be in addition, to the holidays which the appellant was bound to give the respondents under existing arrangements; and that the appellant's attempt to limit the number of paid holidays to 7 during 1962 was contrary to the terms of employment evidenced by the existing arrangement and therefore violative of s. 33. This contention was upheld by the Tribunal.

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In appeal to this Court,

HELD: Under s. 3 the statutory requirement is 7 paid holidays each year. If under an existing arrangement the employees were entitled to more than 7 paid holidays, such more favourable right was protected by s. 11. The scheme of s. 11 clearly shows that s. 3 is not intended to prescribe a minimum number of paid holidays in addition to the existing ones and, in the present case, would operate only to raise the total number of holidays from 6 under the existing arrangements to 7 paid holidays in accordance with s. 3. [764 B-E]

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 150 and 160 of 1964.

Appeals by special leave from the award dated September 20, 1962, of the Industrial Tribunal, Ernakulam in Industrial Dispute Nos. 11 and 10 of 1962 respectively.

A *G. B. Pai, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain,* for the appellant.

*M.R.K. Pillai,* for the respondents.

The Judgment of the Court was delivered by

**Gajendragadkar, C. J.** The short question of law which these B two appeals raise for our decision relates to the construction of ss. 3 and 11 of the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 (No. 47 of 1958) (hereinafter called the Act). That question arises in this way. Two complaints were filed against the appellant, the Tata Oil Mills Company Ltd., by the two groups of respondents, its workmen, respectively under C s. 33A of the Industrial Disputes Act. These applications alleged that the management of the appellant had contravened the provisions of s. 33 of the said Act inasmuch as it had denied its employees leave with wages on Founder's Day and Good Friday in 1962. According to the respondents, they were entitled to have holidays with pay on the said two days under the terms and con- D ditions of service, and so, they claimed that the Tribunal should direct the appellant to give its employees holidays under the said existing arrangement and should pass other appropriate orders for the payment of wages for the two holidays in question. The appellant disputed the correctness of the respondents' contention. The Tribunal has rejected the appellant's plea and has declared that the E respondents are entitled to the privilege of paid holidays on Founder's Day and Good Friday in 1962. It has also ordered that the appellant should pay the wages to the respondents for those two days and the proportionate salary of the staff members as soon as the award comes into force. It is against these orders passed by the Tribunal on the two complaints preferred before it by the respec- F tive respondents that the appellant has come to this Court by special leave; and on its behalf, Mr. Pai has contended that in making the award, the Tribunal has misconstrued the effect of ss. 3 and 11 of the Act.

Standing Order 30 of the Standing Orders of the appellant G company makes provision for leave of all categories. S.O. 30 (vi) provides for holidays. It lays down that the factory will be closed on the following days which will be considered as Company Holidays with pay, and will not be counted against the casual or privilege leave of an employee:

1. New Year Day (1st January).
2. Founder's Day (Saturday nearest to 3rd March) H
3. Good Friday
4. Onam
5. Christmas Day (25th December)

There is a note appended to this provision which makes it clear that in the event of the Company being compelled to observe a holiday or holidays for reasons of State such day or days shall not be counted as against the privilege or casual leave of the employees but shall

be treated as a Company holiday or holidays. Thus, it is clear that under the relevant Standing Order, the respondents are entitled to 5 paid holidays every year.

After the Standing Orders were framed and certified, there was an agreement between the appellant and the respondents' Union as a result of which the appellant agreed to grant a further holiday, and this agreement raised the number of total paid holidays in a year to 6. The additional holiday which the appellant thus agreed to give to the respondents was to be given on the day when the respondents' Union would celebrate its Union Day. Apparently, this holiday was analogous to the Founder's Day, the idea underlying the agreement being that just as the appellant gave a paid holiday on the Founder's Day, the respondents should be given a paid holiday on the Union Day.

It appears that even after this agreement was reached, the respondents began to claim additional holidays; but the appellant was not prepared to make any addition to the list of holidays. It was prepared to leave the choice of the agreed holidays to the employees provided they submitted to the Company an agreed list of such holidays.

In 1958, the Act was passed and it came into force on the 29th December, 1958. Section 3 of the Act provides

"Grant of National and Festival Holidays—

Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the 15th August and the 1st May and four other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees specify in respect of any industrial establishment".

The result of this provision was that every employer to whom the Act applied had to declare holidays on the 26th January, the 15th August and the 1st May and had to give four other holidays according to the decision of the Inspector, the requirement of the section being that the Inspector had to consult the employer and the employees before fixing such other holidays. In other words, s. 3 statutorily fixed the number of paid holidays at 7; fixed three out of them and left the decision of the remaining four to the Inspector who had to consult the employer and the employees.

In pursuance of this provision, the Inspector declared certain holidays for the year 1959. Not satisfied with the decision of the Inspector, one of the appellant's employees Mr. Baskara Menon filed a writ petition in the Kerala High Court under Art. 226 of the Constitution challenging the validity of the Inspector's decision. In that writ petition, the question about the construction of s. 3 of the

A Act was agitated. In the result, the High Court held that the complaint made by the petitioner against the validity of the decision of the Inspector was not well-founded, and so, the writ petition was dismissed.

B In 1962, the appellant followed the same procedure and got a decision as to the festival holidays from the Inspector and declared that the said holidays would be observed as paid holidays in the year. At this time, certain industrial disputes were pending between the appellant and its employees belonging both to monthly and daily-rated categories before the Industrial Tribunal at Ernakulam. C The respondents felt that the declaration of the holidays made by the appellant for the year 1962 amounted to a contravention of s. 33 of the Industrial Disputes Act, and so, they filed the two present complaints before the Industrial Tribunal under 33A of the said Act. That, in brief, is the genesis of the present complaints.

D We have already noticed the provisions of s. 3 of the Act. The contention raised by the respondents before the Tribunal was that the statutory provision as to 7 paid holidays prescribes the minimum number of holidays which the employer has to give to his employees. This provision, according to the respondents, does not over-ride or abrogate the existing arrangement as to paid holidays. E In regard to paid holidays which are common to s. 3 and the present arrangement, they would, of course, have to be treated as paid holidays, but the four other festival holidays which the Inspector decides from year to year would be in addition to the holidays which the appellant is bound to give to the respondents under the existing arrangement, and since the appellant has limited the F number of paid holidays to 7 for the year 1962, it has acted contrary to the terms of employment evidenced by the existing arrangement as to paid holidays and that constitutes the violation of s. 33 of the Industrial Disputes Act. This contention has been upheld by the Tribunal; and Mr. Pai argues that the view taken by the Tribunal is plainly inconsistent with the true scope and effect of s. 3 read G with s. 11 of the Act.

That takes us to s. 11 of the Act, because this section has to be read along with s. 3 in determining the validity of the conclusion recorded by the Tribunal on the main point of dispute between the parties. s. 11 reads thus:—

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> "Rights and privileges under other laws, etc., not affected—Nothing contained in this Act shall adversely affect any rights or privileges which any employee is entitled to with respect to national and festival holidays on the date on which this Act comes into force under any other law, contract, custom or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act".

This section gives an option to the employees, they can choose to have the paid holidays either as prescribed by s. 3 or as are available to them under any other law, contract, custom or usage. In exercising this choice, it must, however, be borne in mind by the employees that the 26th January, the 15th August and the 1st May have to be taken as three holidays. That is the direction of s. 3. In regard to the remaining 4, the Inspector decides which days should be paid holidays. In other words, the statutory requirement is 7 paid holidays. If under the existing arrangement the employees are entitled to have more than 7 paid holidays, that right will not be defeated by s. 3, because s. 11 expressly provides that if the rights or privileges in respect of paid holidays enjoyed by the employees are more favourable than are prescribed by s. 3, their existing rights and privileges as to the total number of holidays will not be prejudiced by s. 3. The scheme of s. 11 thus clearly shows that s. 3 is not intended to prescribe a minimum number of paid holidays in addition to the existing ones, so that the respondents should be entitled to claim the seven holidays prescribed by s. 3 plus the six holidays to which they are entitled under the existing arrangement. If in addition to the three holidays which are compulsory under s. 3, the employees are getting, say 3 other paid holidays, then s. 3 would step in and would require the employer to give his employees one more paid holiday, so as to make the number of paid holidays 7. In our opinion, if ss. 3 and 11 are read together, there can be no doubt that the respondents' claim that they should have 7 holidays as prescribed by s. 3 plus 6 holidays as are available to them under the present arrangement is cleary untenable. In the present case, the respondents were having six paid holidays. The statute has fixed the minimum number at 7 paid holidays, and so, since the existing arrangement was less favourable to the employees, the statutory provision will come to their help and they will be entitled to claim 7 paid holidays in a year, and that means that s. 3 will be operative. If that be so, the procedure followed by the employer in consulting the Inspector and in fixing the list of 4 paid holidays for 1962 in addition to the three holidays fixed by the statute is perfectly consistent with the provisions of s. 3 of the Act. The Tribunal was, therefore, in error in holding that the appellant had contravened s. 33 of the Industrial Disputes Act.

In the result, the appeals must be allowed, the orders passed by the Tribunal in the two respective complaints set aside, and the two complaints dismissed. There would be no order as to costs.

*Appeals allowed.*