

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No. 5610 of 2002**

Judgment reserved on: July 14, 2008

% Judgment delivered on: August 19, 2008

1. Union of India
Ministry of Home Affairs
North Block
New Delhi – 110001
(Through: The Secretary)
2. The Registrar General of India
2/A, Man Singh Road
New Delhi – 110001
3. Union of India
Ministry of Personnel, PG & Pensions
Department of Personnel & Training
New Delhi
(Through: The Secretary) ...Petitioners

Through Ms. Purbali Vora, Advocate for Mr. Rakesh
Tiku, Advocate

Versus

1. All India Census Employees Association
Office of Director of Census Operations
Unit 9, Janpath
Bhubaneshwar – 751022
2. O.P. Shara, President
All India Census Employees Association
Office of Director of Census Operations
M.P. Janganana Bhawan,
Jail Road, Arera Hills
Bhopal – 462002

3. M.M. Samal, Secretary General
All India Census Employees Association
Office of Director of Census Operations
Unit 9, Janpath
Bhubaneswar – 751022

4. S.K. Sen (Computer)
Now re-designated as Senior Compiler
All India Census Employees Association
Office of Director of Census Operations
M.P. Jagananna Bhawan,
Jail Road, Arera Hills
Bhopal – 462002

...Respondents

Through Mr. Sandeep Sethi, Sr. Advocate with
Ms. Shikha Tandon, Mr. Narotam Vyas and
Mr. Vikram Jeet, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The primary issue in this case is the interpretation of paragraph 6 of the Office Memorandum dated 10th June, 1998 as modified by paragraph 2 of the Office Memorandum dated 20th February, 1989. These two paragraphs concern the Scheme for Joint

Consultative Machinery and Compulsory Arbitration for Central Government Employees, and the procedure for processing cases relating to arbitrable issues. The question is whether the period of six months prescribed in the office memoranda for placing the arbitral Award for its modification or rejection by Parliament is peremptory and binding. Our answer is in the negative.

2. The Respondents (hereinafter referred to as the Association) sought parity of pay scales for its members working as Computers in the office of the Registrar-General of India with the pay scales being given to Investigators of the National Sample Survey Organization and UDCs of the National Tuberculosis Institute, Bangalore. Since equivalent pay scales were not being given, the Association preferred O.A. No. 170 of 1988 in the Central Administrative Tribunal (the Tribunal). The O.A. was disposed of on 1st June, 1993 with the direction, inter alia, that the departmental council of the Department of Personnel and Training should hold negotiations in this regard and if they do not succeed, then the issue be referred for compulsory arbitration before the Board of Arbitrators under the Scheme for Joint Consultative Machinery.

3. As one would expect, the negotiations failed and the issue was referred for compulsory arbitration. The Board of Arbitrators gave its Award on 18th October, 1999 in which it was held:

“The pay scale of the Computers of the Office of the Registrar-General of India be revised so as to bring the same at par with the pay scale of Investigators of National Sample Survey Organization and National Tuberculosis Institute, Bangalore.”

4. The Award was neither accepted by the Central Government nor recommended for modification or rejection by Parliament, for a period of six months. This led the Association to file O.A. No. 1196 of 2001 in the Tribunal seeking implementation of the Award. By its judgment and order dated 22nd April, 2002 the Tribunal directed the Union of India to implement the Award within a period of three months and to release all arrears of pay and allowances with interest @10% per annum for a specified period.

5. Feeling aggrieved by the order of the Tribunal, the Union of India (Petitioner) is before us.

6. Paragraph 6 of the Office Memorandum dated 10th June,

1998 reads as follows:

“After the decision (Award) of the Board of Arbitration is received, the Award would either be implemented or Statements laid on the Table of both the Houses of Parliament within six months (proposing modification/rejection of the Award).”

7. Paragraph 2 of the Office Memorandum dated 20th February, 1989 modified paragraph 6 above in the following terms:

“It has now been decided that in respect of awards of the Board of Arbitration (JCM) which are proposed to be rejected/modified after obtaining Cabinet approval a formal Resolution may be moved in Parliament to seek the approval of Parliament for rejection/modification of the award in question instead of just placing the statement of modification/rejection on the Tables of both the Houses. The instructions in paras 5, 6 and 7 of the O.M. of even number dated 10-6-1988 may be treated as suitably modified to the extent mentioned above.”

8. The question is: What if the approval of Parliament is not sought for rejection or modification of the Award for a period of six months? Does the Award become automatically enforceable? According to the Tribunal, ordinarily a proposal for modification or rejection of the Award should be laid before Parliament within six months, but if that is not possible, then the period may be extended by another three months (at the most). In the present case, no steps were taken by the Petitioner

to place the Award before Parliament even within a period of nine months, and therefore, according to the Tribunal, it became automatically enforceable. Accordingly, as mentioned above, a direction was issued for its implementation.

9. The Tribunal seems to have overlooked Clause 21 of the Scheme for Joint Consultative Machinery and Compulsory Arbitration for Central Government Employees. This clause gives overriding authority to Parliament to modify and even reject an Award.

10. Clause 21 of the Scheme reads as follows:

“Subject to the overriding authority of Parliament, recommendations of the Board of Arbitration will be binding on both sides.

If, for reasons to be recorded in writing, the Central Government is of opinion that all or any of the recommendations Board of Arbitration should on grounds affecting national economy or social justice be modified, the Central Government shall, as soon as may be, lay before each House of Parliament the report of the Board containing such recommendations together with the modifications proposed and the reasons, therefor, and thereupon Parliament may make such modifications in the recommendations as it may deem fit. Modification may extend to the rejection of a recommendation.”

11. No time limit is prescribed for either laying the Award before

Parliament or for Parliament to take a decision. The time limit for laying the Award before Parliament (which is what we are concerned with) has been prescribed by the two office memoranda mentioned above. Neither of these memoranda tells us what would happen if the Award is not laid before Parliament for a period of six months. Is the Award automatically liable to be implemented or is it automatically liable to be rejected?

12. A situation such as this, where no sanction is provided for non-compliance, arose for consideration before the Supreme Court in *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344. That case concerned itself, inter alia, with the interpretation of Order VIII Rule 1 of the Code of Civil Procedure (CPC) which provides that on service of summons, a written statement in a suit should be filed within 30 days or within a maximum period of 90 days. The consequence of failure to file a written statement within 90 days has not been provided for. The Supreme Court held, under these circumstances, that it would be worth referring to the provisions of Order VIII Rule 10 of the CPC. Thereafter, it was held,

“In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the

defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. **There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted.** The court has wide power to “make such order in relation to the suit as it thinks fit”. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory.” (Emphasis given).

13. Much later, the same view was expressed, though in a different context in *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705* in which it was held:

“Although ordinarily when a public authority is asked to perform statutory duties within the time stipulated it is directory in nature but when it involves valuable rights of the citizens **and provides for the consequences therefor** it would be construed to be mandatory in character. (Emphasis given).

14. A similar view was also expressed in *Vidyawati Gupta v. Bhakti Hari Nayak, (2006) 2 SCC 777* and several other decisions, which we need not catalogue.

15. In our opinion, therefore, it cannot be said, in the absence of any consequence for non-compliance, that the period of six months

provided for in the two office memoranda is peremptory – the period is not mandatory but only directory.

16. Does this mean that the Petitioner can take its own time in processing the Award for placing it before Parliament? The answer is clearly in the negative. The Supreme Court has said, times without number, that where no time limit is prescribed for doing an act, it must be done within a reasonable period of time. What is a reasonable period of time would depend upon the facts of each case. In this regard, it may be useful to refer to *Pune Municipal Corporation v. State of Maharashtra*, (2007) 5 SCC 211 wherein it was held,

“We may only state that broad contention of the landowners that when no period of limitation is prescribed, revisional jurisdiction can be exercised *at any time* cannot but be rejected. If the law prescribes period of limitation, the action must be taken within such period. But where the law does not prescribe limitation, the court would import the concept of “reasonable time”. We may, however, hasten to add that what is the length of the reasonable time would depend upon the facts and circumstances of each case and no rule of universal application can be laid down.”

17. More recently, a similar view was taken in *Delhi Development Authority v. Joint Action Committee, Allottee of SFS Flats*, (2008) 2 SCC 672 (in a case pertaining to the Delhi Development

Authority [DDA]) to the effect that,

“What would be a reasonable time would, however, depend on the facts and circumstances of each case. No hard-and-fast rule can be laid down therefor. In a given case, it may be a few months but in another having regard to the conduct of DDA, it may be one year or more.”

18. In our opinion, in view of the clear law laid down by the Supreme Court, the Tribunal was in error in arbitrarily fixing a ‘grace period’ of a maximum of three months (beyond the six months period) for the Petitioner to place the Award before the Parliament. As held by the Supreme Court, the reasonableness of the ‘extended’ period would depend upon the facts of each case.

19. In so far as the present case is concerned, is the delay reasonable? In our opinion, the question has today been rendered academic. This is because now the admitted position is that the Award was placed before the Rajya Sabha on 11th March, 2003 and before the Lok Sabha on 12th March, 2003 with a recommendation to reject it. Parliament is, therefore, seized of the matter and has overriding authority on the Award. We do not think it proper to effectively ‘withdraw’ the matter from Parliament or encroach upon its authority by

holding, as the Association wants us to do, that there was an unreasonable delay on the part of the Petitioner in dealing with the Award and making its recommendation to Parliament. This is now entirely left to the wisdom of Parliament.

20. It is worth noticing a rather interesting and apposite case on the subject. In *Union of India v. Scientific Workers' Association, 1994 Supp (2) SCC 159* the Board of Arbitrators gave its Award on 12th August, 1985 effective from 22nd September, 1982. Since the Award was not being implemented, an Original Application was filed in the Tribunal by the Scientific Workers' Association seeking its implementation. During the pendency of that application, the Government of India decided to implement the Award, but with effect from 1st January, 1988. The Tribunal took the view that this was impermissible and directed implementation of the Award with effect from 22nd September, 1982.

21. Thereafter, the Government moved resolutions in both houses of Parliament (which were accepted) that the Award be implemented from 1st January, 1988 and not from 22nd September, 1982.

The Government then moved a review application before the Tribunal which held that the resolutions adopted by Parliament could not modify the order of the Tribunal. Under these circumstances, the issue that reached the Supreme Court was whether the Tribunal was correct in rejecting the review application. The Supreme Court held,

“In the present case the award given by the Board had not achieved finality in the sense that it was open to the Government of India to have invoked the procedure envisaged under clause 21 of the JCM Scheme. **The judgment of the Tribunal directing the implementation of the award could only mean that the Government of India was bound to implement the award subject to its power to have it modified in terms of clause 21 of the JCM Scheme.** The judgment of the Tribunal could not be read to mean that the Government of India was precluded from proceeding under clause 21 of the JCM Scheme.” (Emphasis given).

22. We find that in the present case, the Government is on a much better wicket. The decision of the Tribunal to implement the Award has not attained finality in as much as the issue remained pending in this Court. Additionally, and more importantly, learned counsel for the Association has assured this Court that he would not press the contempt petition filed in the Tribunal for non-implementation of its order. There was, therefore, an ‘effective stay’ of the operation of the order of the Tribunal. During this period, the Petitioner has taken

steps before Parliament to have the Award modified, which steps the Petitioner was entitled to take. That being so, and the matter being alive before Parliament, we do not think it appropriate to interfere in favour of the Association.

23. Accordingly, the writ petition is allowed and the order dated 22nd April, 2002 is set aside. The Petitioner will, quite naturally, be obliged to abide by the decision taken by Parliament.

MADAN B. LOKUR, J.

August 19, 2008
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J.R. MIDHA, J.

Certified that the corrected copy of the judgment has been transmitted in the main Server.