

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.754 OF 2015

DISTRICT : NANDED

Marathwada Raste, Imarathi Va)
Pathbandhare Kamgar Union.)
Registration No.AWB/50, dt. 26.02.1966)
Through its General Secretary,)
Shri Bapurao K. Panchal, Age : 54 yrs.)
Occ.: General Secretary, R/o. Trade)
Union Centre, Kamgar Bhavan,)
Mahavir Nagar, Nanded 431 602.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Copy to be served on the office of the)
P.O. of MAT at Aurangabad.)
2. The Secretary.)
Public Works Department,)
Mantralaya, Mumbai.)
3. The Chief Engineer.)
Public Works Department,)
Marathwada Region, Bandhakam)
Bhavan, Aurangabad.)



4. The Superintending Engineer.)
Public Works Department, Nanded,)
District : Nanded.)
5. The Executive Engineer.)
Public Works Department, Nanded,)
District : Nanded.)
6. The Executive Engineer.)
Public Works Department, Bhokar,)
Tal. : Bhokar, District : Nanded.)
7. The Sub-Divisional Engineer.)
Public Works Sub Division, Kandhar,)
Ta.: Kandhar, District : Nanded.)
8. The Sub-Divisional Engineer.)
Public Works Sub Division, Degloor,)
Tal.: Degloor, District : Nanded.)
9. The Sub-Divisional Engineer.)
Public Works Sub Division,)
South Nanded, Tal. & Dist.: Nanded.)
10. The Sub-Divisional Engineer.)
Public Works Sub Division,)
North Nanded, Tal. & Dist. : Nanded.)
11. The Sub-Divisional Engineer.)
Public Works Sub Division, Loha,)
Tal.: Kandhar, District : Nanded.)
12. The Sub-Divisional Engineer.)
Public Works Sub Division, Naigaon,)
Tal. & Dist : Nanded.)
13. The Sub-Divisional Engineer.)
Public Works Sub Division, Hadgaon,)
Tal. & District : Nanded.)...Respondents



Shri A.S. Shelke, Advocate for Applicant.

Shri A.S. Deshpande, Special Counsel with Smt. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 03.02.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is made by a Labour Union espousing the cause of work charged C.R.T. and permanent employees working in Public Works Department throughout the Marathwada Region. The dispute arises out of threatened withdrawal of the facility of holidays on 2nd and 4th Saturdays and related therewith a move to recover the wages already paid in lieu of the work done on those days. This controversy is now fully governed by the **Superintending Engineer, PWD and others Vs. Konkan Sarvajanic Bandhkam Va Pathbandhare Kamgar Sangh, 2003 (1) M.L.J. 86**, which is fully applicable hereto in which the relevant and applicable provisions of Kalelkar Award were so interpreted as to hold that once having given the said facility, the



employer, in this case the Government, could not unilaterally withdraw the same.

2. The detailed inaugural Paragraph hereinabove apparently gives out a clear picture of what the controversy is all about. The facts which still need to be set out are that Government took a policy decision in 1986 whereby the appointment on daily wages was done away with. The entire work of PWD was decided to be done by the work charged C.R.T. and permanent employees of the said Department.


3. At this stage, be it noted that as set out in **Superintending Engineer, PWD** (supra) Para 3, the Government constituted a Special Board of Conciliation under Section 5 of the Industrial Disputes Act, 1947 for promoting the settlement of an industrial dispute relating to the Charter of 13 demands preferred by the workmen under the Irrigation and Power Department and Building and Communication Department. Shri Kalelkar was the Chairman of the Board and it is after whom that the award is called "Kalelkar Award". It became operative retrospectively from 1.10.1966. The judgment of the Hon'ble High Court in the 3rd Paragraph of **Superintending Engineer** (supra) has reproduced the demand No.5 and we



too can do so herein below along with the remaining portion from Pages 88 and 89 Maharashtra Law Journal.

“The work charged, regular, temporary and permanent employees shall get such public holidays as are sanctioned by the Government for these categories of employees. The daily rated employees will be granted 3 paid holidays in a year i.e. on (1) 26th January, (2) 15th August and (3) 2nd October, as at present. They will also be granted, subject to exigencies of work, four more optional paid holidays in a year which the employees may take on any festival according to their choice. These optional holidays will have to be applied for in advance.”

It is thus clear that except the daily rated employees all other categories of the employees are entitled to get such public holidays as are sanctioned by the Government for these categories of employees. The daily rated employees are allowed as paid 3 holidays in a year and four more optional paid holidays in a year as provided therein. The General clause of the settlement specifically clarifies who are governed by the present settlement. It reads as under:-



"In these presents the expression "employee", "Worker" shall mean an employee or worker of the Buildings and Communications Department or the Irrigation and Power Department of the Government of Maharashtra, who falls under the definition of a "Workman" in section 2(s) of the Industrial Disputes Act, 1947."

4. Here, in this matter also, the Government had given what can be called facility of holidays on 2nd and 4th Saturdays and the same was by the impugned action sought to be withdrawn which is why this OA came to be presented in 2005 before the Aurangabad Bench of this Tribunal and in due course of time, it stood transferred to the Principal Bench and is being hereby disposed of. The OA, therefore, is quite old and overdue for being decided.

5. We have perused the record and proceedings and heard Shri A.S. Shelke, the learned Advocate for the Applicant and Shri A.S. Deshpande, the Special Counsel with Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.



6. There are 13 Respondents. The 1st Respondent is the State of Maharashtra, the 2nd Respondent is the Secretary, P.W.D, the 3rd Respondent is Chief Engineer, P.W.D, Marathwada Region, the 4th Respondent is the Superintending Engineer, P.W.D, Nanded and then there are Executive Engineers and Sub-Divisional Engineers in different Talukas of District Nanded. The Affidavits-in-reply have been filed in various sets. We have perused them. A legal issue is sought to be raised with regard to the competence of this OA to seek redressal for the grievance because six months time has not elapsed. It is not necessary for us to dilate too much on this aspect of the matter, because in our opinion, it springs from misconstruction of Section 20 of the Administrative Tribunals Act, 1985. Some of the Respondents have pointed out that they were not the parties to the Writ Petition which came to be converted as Transfer Application. However, we do not think there is any substantial merit in this aspect of the matter because ultimately as we have already pointed out, this matter is now fully governed by **Superintending Engineer, PWD** (supra). As far as that particular judgment is concerned, according to the Respondents, there was no specific direction that the claim for payment in lieu of the work performed during 2nd and 4th Saturdays could be claimed.

A handwritten signature in black ink, consisting of a stylized, cursive script, is written above a horizontal line.

In our opinion, the judgment of the Courts and Tribunals are meant to be implemented in letter and spirit rather than indulging in avoidable and unnecessary heir-splitting. Whatever follows as a fall out of the mandate is itself a mandate to be followed.

7. We have already indicated that the State Government had accepted and implemented the 2nd and 4th Saturday holidays for which the relevant State instruments including a G.R. of Irrigation and Power Department, dated 10th January, 1974 are there on record.

8. At this stage, we may note the gist of the impugned order. A copy thereof is at Exh. 'E' (Page 59 of the paper book). It was addressed by the Government to the Executive Engineer, P.W.D, Nanded. It seems that similar communications were addressed to the other Engineers of different Districts as well. The opening Paragraph expresses displeasure at the failure on the part of the said authority to implement the order of the State Government to consider the effectuation of Kalelkar Award after the final decision of the Court and there was a reference made to an order dated 4.9.2003 of this Tribunal in its Aurangabad Bench and it was so construed as to mean that there was no question of considering the



payment in lieu thereof till the final decision of the Tribunal. Another impugned order is dated 21st May, 2005 which mandates the recovery to be made from the persons named therein.

9. It needs to be noted that after this OA came to be instituted, the Aurangabad Bench, by its order of 19.7.2005 was pleased to issue interim directions to the Respondents restraining them from effecting recovery pursuant to the Circular dated 17.5.2005 until further orders.

10. Even before that in Writ Petition No.3417 of 1991 between the same parties, the Hon'ble High Court was pleased to grant interim relief which in terms protected the Applicants from recovery. By a subsequent order, the same relief was extended to all similarly placed employees in Marathwada Region of the State. The Writ Petition came to be transferred to the Tribunal when it was numbered as TA 33/2002. A Division Bench of the Hon'ble Vice-Chairman and Hon'ble Member (Judicial) made the following order which needs to be reproduced.

"ORDER

Heard Shri A.S. Shelke holding for Shri S.K. Shelke, learned Counsel for the applicants and Shri Dewane, learned Presenting Officer for the respondent authorities.

2. The applicants represent the Govt. employees working in the Public Works Department through-out Marathwada Region. They seek direction that the employees working in P.W.D. in Marathwada Region are entitled to Second and Fourth Saturday as holidays with full pay. They seek quashing and setting aside of certain Circulars. All these Circulars are about holidays.

3. The respondents have not filed reply-affidavit. The learned Counsel for the applicants invites attention to the judgment of Bombay High Court in the case of Superintending Engineer, Public Works Department and Others Vs. Sarvajanik Bandhkam Va Patbhandare Kamgr Sangh reported in 2003 (1) MLJ page 86. In the said ruling it has been held that the State Govt. has no power and authority to withdraw any part of Kalelkar Award unilaterally and without following any due procedure of law. In that Writ Petition the clarification issued by the



State Govt. by letter dted.19/1/1981 withdrawing holidays enjoyed by the Field Staff was held to be illegal. The facts of the present case are similar to those in the said Writ Petition. The judgment of the Hon'ble High Court referred to above is applicable to the workmen similarly placed in the State of Maharashtra since they are governed by Kalelkar Award.

4. In the light of the above we may allow this Writ Petition and hold that the employees in P.W.D. in Marathwada Region are also entitled to public holidays including Second and Fourth Saturdays. No order as to costs."

Pertinently, this was an order inter-partes and all concerned including we in this Bench are bound thereby. It needs no further elaboration, except that the interpretation sought to be given to that judgment by the Respondents is inaccurate to say the least about it.

11. Now, in the above background, we return to the judgment of the Hon'ble High Court in **Superintending Engineer, PWD** (supra). We have already noted the gist thereof and also quoted a particular Para there from. The relevant provisions of Kalelkar Award which is fully



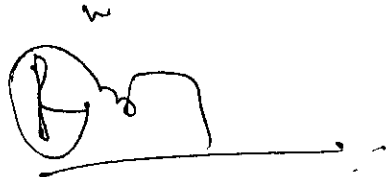
applicable hereto, came to be interpreted by the Single Bench of the Hon'ble High Court in **Superintending Engineer, PWD** (supra). The net result thereof in the manner of speaking would be an order in favour of the Applicants.

12. Mr. Deshpande, the learned Special Counsel for the Respondents who tried his utmost to salvage the case of the Respondents sought to contend that, as he put it, the provisions of Kalelkar Award applicable hereto may not have been properly construed in **Superintending Engineer, PWD** (supra). Now, the Constitutional and legal position such as it obtains is so clear that we need not even note down the various aspects of the matter that Mr. Deshpande tried to highlight before us in support of his contention. As a matter of fact, a very elaborate discussion is not necessary, but in a truly large number of cases, the legal position with regard to the law of precedents has been stated and re-stated including in **Official Liquidator Vs. Dayanand and Ors. (2008) 10 SCC 1**, more particularly, the observations in Paras 70 to 91. Another judgment in **U.P. Power Corporation Limited Vs. Rajesh Kumar & Ors., AIR 2012 SC 2728 (A)** is also apt for guidance. In fact, it has been held that a judgment rendered by a Larger Bench of the Hon'ble Supreme Court would be binding on




the Benches either of coordinate jurisdiction or composed of lesser number of judges. If this is the legal position with regard to the Supreme Court of India and also the High Courts, then in our opinion, there is no question of this Tribunal even thinking of taking any view of the matter other than laid down by the Single Bench of the Hon'ble High Court in **Superintending Engineer, PWD** (supra). That judgment is binding up to the level of Single Benches of the Hon'ble High Court and that in our opinion, should put an end to the matter and we must follow the mandate of the Hon'ble High Court in that particular matter.


13. Even otherwise, in so far as the recovery is concerned, it cannot be made by virtue of the law laid down in **State of Punjab and others Vs. Rafiq Masih, AIR 2015 SC 696**. Therefore, examine it from any angle and we do not think, the impugned orders can be salvaged at all. This OA, therefore, will have to be allowed. Even otherwise, when the orders of the Hon'ble High Court and then by Division Bench of this Tribunal held the ground, we do not think, it was congruous on the part of the Respondents to try to seek artificial ways and means to try to wriggle out of the same. That is not done in a civilized system of public administration. The ways and means in a systematic legal manner was the course of action to be

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line and a small flourish.

adopted and not according to it a self serving construction. That is not done.

14. It is held and declare^d that the relevant provisions of Kalelkar Award as interpreted by the Hon'ble Bombay High Court in **Superintending Engineer, PWD** and others' case (supra) **(2003) 1 Maharashtra Law Journal 86** is fully applicable hereto and the Respondents are directed to act and continue to act in accordance therewith. They shall so conduct themselves as to give to the members of the Applicant Union as well as other so similarly placed whose interest is involved herein as to give them holidays on 2nd and 4th Saturdays. There shall be no question of trying to make any recovery and the amount, if any, payable by the Respondents to the Applicants shall be made within three months from today. The Original Application is allowed in these terms with no order as to costs.


(R.B. Malik)
Member-J
03.02.2016


(Rajiv Agarwal)
Vice-Chairman
03.02.2016

Mumbai

Date : 03.02.2016

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\O.A.754.15.w.2.2016.doc