
WHAT PREVAILS: NAVIGATING THE CONFLICT BETWEEN MODEL STANDING ORDERS AND PRIVATE SETTLEMENT THROUGH A CRITICAL ANALYSIS OF *BHARATIYA KAMGAR KARMACHARI MAHASANGH V. JET AIRWAYS LTD.*¹

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Introduction

The conflict between Model Standing Orders and private settlements poses significant challenges in labour law. These Standing Orders, which are legally mandated guidelines governing employment conditions, often collide with privately negotiated settlements between employers and employees requiring courts of law to go into the merits of these conflicts and settle the law regarding the same.

Two learned judges of the Supreme Court settled the law on whether the Standing Order issued in matters of industrial employment would override a private agreement between the parties. The Judgment authored by Justice Sanjay Karol, on behalf of himself and Justice Abhay S. Oka, upheld the civil appeal arising out of the Bombay High Court's impugned order. With the quashing of the Bombay High Court's judgment, which upheld the Central Government Industrial Tribunal's order against the workmen's trade union, the Supreme Court has clarified the twin issues framed in the appeal i.e., the jurisdiction of the Industrial Tribunal(s) and second, the nature and overriding powers of the Standing Order. Therefore, it becomes pertinent to look into the facts, the issues and the law applied to obtain a comprehensive outlook of the case at hand.

Brief Facts

The dispute arose out of a fixed term contract which engaged 169 workmen on temporary basis by the respondent company, Jet Airways. The respondent company, a commercial airline, employed the said workmen as loader-cum-cleaners, drivers and operators. The issue arose

¹ 2023 SCC OnLine SC 872

when the workmen were treated as temporary despite the completion of 240 days in terms of the Model Standing Order provided under the Bombay Industrial Employment (Standing Orders) Rules, 1959 and their nature of work being permanent and regular.

The workmen's demands were taken up by the trade union – Bharatiya Kamgar Karmachari Mahasangh, which resulted in a settlement between the parties. In the said settlement signed between the trade union and the company, the demand for the grant of permanency was given up by the union in lieu of which, numerous benefits were conferred on the workmen who waived off the said demand. However, due to rising disputes, the matter was taken to the Central Government Industrial Tribunal for adjudication. The key issue centred around whether the union's demand for reinstatement of 169 workmen with back wages was just and proper. The Tribunal answered in the negative.

The Central Government Industrial Tribunal (CGIT) noted that the letters issued by the airline were intended to appoint the workmen for a fixed term. While the workers' appointments were periodically extended through these letters, their employment was set to conclude once the designated term ended. Although the workers claimed they had worked for more than 240 days, performing regular and permanent tasks, the Tribunal observed that this fact was irrelevant due to the fixed-term nature of their contracts. It was further noted that the airline was compelled to cease renewing these contracts due to a shift in government policy.

When the matter reached the High Court, it upheld the CGIT's decision, ruling that merely completing 240 days of service did not automatically grant the workers the right to claim permanency under the Model Standing Order, particularly in light of the settlement, and more specifically, Clause 18 of that settlement. The High Court further upheld the Tribunal's rationale and emphasised that the Model Standing Order would not hold precedence over any privately entered settlement that alters the former.

The Supreme Court finally resolved the matter and settled the law on the overriding power of a beneficial Standing Order while quashing the impugned orders referred to in the judgment.

Judgment

Post hearing the counsels for the parties, the Bench framed the following issues for consideration:

- I. Which is the Appropriate Authority empowered to issue the Standing Order(s) under the Industrial Employment (Standing Orders) Act, 1946?

II. Whether private agreement/settlement between the parties would override the Standing Order?

The CGIT in framing its decision had relied upon the Section 25-H of the Industrial Disputes Act, 1947. On perusal of the said provisions, the Tribunal stated that there was no retrenchment since the non-renewal of the fixed term contract did not amount to be so as provided under Section 2 (00) (bb). Thus, any issue regarding re-employment of the workmen was invalid as per law. The High Court of Judicature at Bombay upheld the view of the Tribunal. It held that the mere completion of 240 days of work would not entitle the workmen to claim permanency under the Model Standing Order, specifically under Clause 18. Further, the Court stated that the Model Standing Order is not a statutory provision but a statutorily imposed condition of service alterable by an award or settlement.

The two-judge Bench of the Supreme Court disagreed.

First Issue

With regard to the first issue, the Court referred to the Section 2(b) of the Industrial Employment (Standing Orders) Act, 1946 that defines the expression ‘appropriate government’ in respect of industrial establishments.

Section 2(b) of the Act reads that the appropriate government means in respect of industrial establishments under the control of the Central Government, a railway administration, a major port, mine or oil-field, the Central Government, and in all other cases, the State Government.

On a bare perusal of the text the Supreme Court bench delineated that since the respondent company was not under the purview of the Central Government as per Section 2(b), the appropriate government would be the State Government. Thus, the Bombay Model Standing Order would be applicable to the parties.

Second Issue

The second issue was dealt by the bench primarily through judicial precedents which analysed the legislative intent of the Standing Order instrument in matters related to industrial establishments. The Apex Court noted that not only have courts time and again recognised the statutory force of certified Standing Orders but also acknowledged it as a statutory contract.

Scope of the Act - UP SEB v. Hari Shankar Jain²

² (1978) 4 SCC 16

The Supreme Court noted that a three-judge bench earlier had succinctly laid down the scope of the Act. It had been noted that the Act had been specifically designed to give the workmen a collective voice in determining the terms of employment and subjecting them to quasi-judicial adjudication. The Act was framed to secure the workmen's hard-won and precious rights. The Supreme Court while relying on this precedent opined that the Act could be understood as a special Act.

***Letter and Spirit of the Act - Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.*³**

The three-judge bench verdict recognised that the Act was a legislative response to the laissez-faire rule of hire and fire at sweet will. The Act attempts at imposing a statutory contract of service between two parties who otherwise are at an unequal footing to negotiate. It further clarified that the intent of the Act conclusively delineates the certified Standing Orders to become part of the statutory terms and conditions of service between the employer and the employee, governing their relationship.

***Overriding Nature - Western India Match Co. v. Workmen*⁴**

The Apex Court in this case had held that the terms of employment specified in the Standing Order would prevail over the corresponding terms in the contract of service in existence on the Order's enforcement. If an inconsistent prior agreement would not survive so wouldn't an agreement enforced after the enactment of the Standing Order. Upholding any special agreement would mean giving a go-by to the Act's principle of three-party participation in the settlement.

On the basis of the same case, the Court had further in cases such as *Rasiklal Vaghajibai Patel v. Ahmedabad Municipal Corpn.*⁵ had held that any condition of service inconsistent with certified Standing Order(s) would not prevail and that any settlement entered between the parties would not override the Model Standing Order unless it more beneficial to the employees.

Rationale

The Supreme Court disagreed with the conclusions drawn by both the Tribunal and the High Court in their assessment of the case. To support its position, the Court revisited key provisions

³ (1984) 3 SCC 369

⁴ (1974) 3 SCC 330

⁵ (1985) 2 SCC 35

of the Bombay Model Standing Orders that were central to the dispute.

Clause 4C of the Bombay Model Standing Orders states that any workman who has completed 190 days of uninterrupted service in a seasonal establishment, or 240 days in any other establishment within the preceding twelve months, must be made permanent. This status must be conferred by a written order signed by the Manager or an authorized representative, irrespective of whether or not the workman's name appeared on the muster roll for the entire period. Clause 32 further clarifies that the Standing Orders cannot operate in a way that undermines existing laws or any rights derived from contracts of service, custom, agreements, settlements, or awards applicable to the establishment.

The Court held that when these provisions are read together, it becomes evident that a workman completing 240 days of service in an establishment is entitled to be made permanent. No agreement, settlement, or contract can legally deprive the workman of this right. The Standing Orders Act, being beneficial legislation, ensures that agreements aimed at waiving employees' statutory rights do not override the protective provisions established under the Standing Orders.

The appeal was thus allowed holding the trade union entitled to all benefits per the Bombay Model Standing Order. The impugned orders of the Bombay High Court and the CGIT were quashed and set aside.

Critical Analysis

The Supreme Court's ruling in *Bharatiya Kamgar Karmachari Mahasangh v. Jet Airways Ltd.* decisively reinforced the principle that Standing Orders issued under the Industrial Employment (Standing Orders) Act, 1946, hold statutory force and cannot be overridden by private settlements or agreements between parties.

Statutory Contracts

One of the most significant aspects of the judgment is the recognition of certified Standing Orders as statutory contracts. The Court, referring to judicial precedents, emphasized that these Orders regulate the minimum conditions of employment and take precedence over any contrary private agreements. In this case, the Model Standing Orders for the state of Maharashtra, which governed the employment terms of Jet Airways' workmen, mandated that workmen who had served for more than 240 days must be made permanent. The Supreme Court held that no settlement entered between a trade union and the employer could curtail this statutory right, a position consistent with prior rulings in cases like *Western India Match Co. v. Workmen*, where

it was held that Standing Orders, once issued, would override any inconsistent provisions in a contract of service.

This is comparable to the treatment of statutory employment rights in other common law jurisdictions. In the UK, for instance, the statutory framework governing employment rights, such as the Employment Rights Act 1996, similarly mandates that contractual agreements between employers and employees cannot undermine the minimum legal protections. Similarly, in Australia, employment contracts and enterprise agreements must comply with statutory employment rights under the Fair Work Act 2009, with non-compliant provisions being void. This shared approach in common law jurisdictions reinforces the principle that legislative protections for employees cannot be waived or diminished by private agreements unless they confer greater benefits than the statutory minimum.

Workmen Oriented Act

Another key issue addressed by the Court was the treatment of fixed-term contracts. The respondent company argued that the workmen's employment was governed by a series of fixed-term contracts, which had been renewed periodically. However, the Supreme Court rejected this argument, stating that once the statutory requirement of 240 days of service was met, the employees were entitled to permanency, regardless of their temporary designation. This aspect of the ruling aligns with the broader common law principle that employment laws generally afford additional protections to employees who work beyond a certain period, converting temporary or fixed-term employment into permanent status. In Canada, for example, courts have consistently held that even fixed-term employees may gain rights to permanency depending on the nature of their work and the length of their employment.

Scope of Settlements

The judgment also touched upon the limited scope of settlements negotiated between trade unions and employers. The Supreme Court clarified that while settlements are a fundamental tool in resolving industrial disputes, they cannot operate to the detriment of employees' statutory rights under Standing Orders. Citing precedents such as *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.*, the Court reiterated that settlements which waive statutory rights, like the right to claim permanency after 240 days of service, would not be valid unless they were more beneficial to the workmen. This is consistent with the approach seen in other jurisdictions, such as the UK, where collective agreements negotiated between employers and

trade unions must comply with statutory minimum standards and cannot diminish workers' rights.

Conclusion

The ruling in *Bharatiya Kamgar Karmachari Mahasangh* establishes a robust precedent in favour of workmen's rights under the Industrial Employment (Standing Orders) Act. The decision not only clarifies the overriding nature of Standing Orders over private settlements but also aligns Indian industrial law with broader common law principles seen in other jurisdictions, reinforcing the protection of statutory employment rights. Employers must now ensure strict compliance with these statutory instruments, while employees and trade unions can rely on the continued enforcement of their legal protections.