

(1967) 08 CAL CK 0019

In the Calcutta High Court

Case No : Civil Revision Case No. 136 (W) of 1964

Abani Bhusan Biswas

APPELLANT

Vs

Hindusthan Cables Ltd., Burdwan and Others

RESPONDENT

Date of Decision : 22-08-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Industrial Employment (Standing Orders) (Amendment) Act, 1956 — Section 13A

Industrial Employment (Standing Orders) Act, 1946 — Section 5

Citation : AIR 1968 Cal 124 : (1968) 38 CompCas 528 : 72 CWN 410 : (1968) 16 FLR 289 : (1968) 2 ILR (Cal) 92

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Gopal Narayan Chakraborty, H. Chakrabarty and Kalyanbrata Ray, for the Appellant; Prosanto Kumar Ghose, for the Respondent

Judgement

D. Basu, J.—The petitioner is an employee of Respondent No. 1, the Hindusthan Cables Ltd. (Annexure A to the petition), a Government of India Undertaking, "owned" by the Central Government within the meaning of Section 617 of the Companies Act, 1956, in which the Central Government is the sole shareholder

2. On 29-11-63, the petitioner, a Driver-cum-Mechanic was suspended by the Administrative Officer of respondent No. 1 by that order at Annexure B to the Petition. In this order, it was alleged that the petitioner was guilty of "insubordination and disobedience" to orders issued by his superior authority and was accordingly considered "undesirable" to be retained in the service of the company. On 2-12-63, the Administrative Authority served the charge-sheet at Annexure C to the petition and asked the petitioner to show cause why disciplinary action should not be taken against him on the charge of misconduct comprising of--

(i) Wilful insubordination or disobedience to superior order; (ii) Negligence of work; (iii) Habitual indiscipline and misbehaviour

3. Shri S. Bhattacharyya was appointed the Enquiry Officer and on the report of that Officer, the petitioner was asked to show cause by 8-2-64 why he should not be dismissed (Annexure D, pp. 24 and 22 of the petition). The petitioner obtained this Rule on 7-2-64 for quashing the impugned order on the grounds inter alia, that the impugned orders are ultra vires and violative of natural justice.

4. The petitioner's grievance, in substance, is that the requirements of Clause 14(a) of the Standing Orders of respondent No. 1, framed under the Industrial Employment (Standing Orders) Act, 1946 have been violated and, for the same reason, the rules of natural justice, as implied in the said clause, have been contravened. The plea of the respondent No. 1 is that neither the Standing Orders nor the rules of natural justice have been violated on the facts alleged, and, above all, the petitioner is not entitled to obtain any relief under Article 226 of the Constitution, inasmuch as respondent No. 1 is nothing but a private limited company under the Companies Act.

5. Before taking up the above points, I shall dispose of one point on which I am in complete agreement with the view expressed by A. C. Sen. J. In *Malik Ram v. Hindusthan Cables*, C. R. 779/W of 1963, D/- 4-1-1966 (Cal) namely, that an employee under the Hindusthan Cables Ltd. does not hold a civil post "under the Union or State", because as a Company registered under the Companies Act, it, has a separate legal entity and cannot, juristically, be identified with the Government of India or of State whatever may be the share, ownership or management of the Company. Hence, the employees of this Company cannot claim the protection of Article 311 of the Constitution.

6. In view of the above finding, it has been urged on behalf of the respondents that relief under Article 226 of the Constitution is not available against a company registered under the Companies Act. The answer to this question, however, is not simple and would depend upon some other considerations.

7. The first question to be determined is the legal character of the Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946. The question appears to have been settled by the Supreme Court, in the case of *Workmen of Dewan Tea Estate and Others Vs. The Management*, holding that, after a standing order is certified by the statutory authority u/s 5 of the Act, it becomes "part of the Statutory terms and conditions of service" between the employers and employees of the industrial establishment concerned. It is true that the Standing Orders may have been framed by a private industrial establishment which comes within the purview of the Act. But the Act provides for the conditions of service of employees of such establishments, which were previously left to the agreement of the parties, to be brought under statutory control. The Act, therefore, sets up a Certifying authority to whom draft standing orders have to be submitted and a Standing Order would be enforceable only after such Authority certifies it after being satisfied that it is intra vires the Act and "reasonable". There is provision for appeal against the orders of the Certifying Officer (Section 6) and the decision of the Appellate Authority is final.

Provision is made by the statute also for the Interpretation of a Standing Order, and a penal sanction is made for acting in contravention of a Standing Order (Section 13(2)). The Standing Orders which are thus certified were clearly described as "statutory standing orders" in *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, . In *Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Utter Pradesh and Others*, the Supreme Court has even upheld the validity of a State law which provided that a Standing Order would, in specified cases, prevail over the contrary provisions in a Central Act. They are also subject to the doctrine of ultra vires, like other subordinate legislation or statutory instruments (vide the case last cited).

8. There is thus no doubt that the Standing Orders after they are duly certified and, provided they are intra vires, have the force of law like any other statutory instrument. In view of the number of Supreme Court decisions just cited, it is not possible, with respect, to agree with Sen J. In C. R. 779 (W) of 1963 (Cal) that dismissal in violation of the requirements of a certified Standing Order is a mere "violation of the terms of the contract between the parties."

9. But even though I hold that the certified Standing Orders have the force of law and also that there is authority for the proposition that even a private party or a company may be compelled by mandamus to perform the duties imposed upon it by statute, (e.g. *R. v. Bristol Dock Co.* (1841) 2 QB 64; *R. v. Birmingham and Gloucester Rly. Co.* (1841) 2 QB 47; *R. v. Pharmaceutical Co.* (1854) 2 WR 220; *R. v. Carnatic Rail Co.* (1873) 8 QB 299 nevertheless, I hold that relief under Art 226 of the Constitution should be refused to the petitioner on the ground that the Industrial Employment (Standing Orders) Act has been held to be a self-contained Code and that it itself provides for an adequate remedy for a situation as that raised before me. The question whether remedy under Article 226 of the Constitution was available on the ground of violation of the requirements of a Standing Order was indeed raised before the Supreme Court in the case of *The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao*, and it was contended that suit was the proper remedy. The Court, however, kept the question open because, on the merits, it held that there was no such violation in the case before the Court. It appears that the existence of Section 13A, which was introduced into the Act by the Amendment Act of 1956, with effect from 10-3-57 was not and could not have been placed before the Court inasmuch as that case came up from the decision of the Nagpur High Court of September 26, 1938.

10. The Introduction of Section 13A, by Section 32 of the Amendment Act 36 of 1958 has changed the situation altogether. Section 13A provides:

"If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act 1947 (14 of 1947), and specified for the disposal of such proceeding by the appropriate Government by notification in the official Gazette, and the Labour Court to which

the question is so referred shall after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

11. It is clear, therefore, that a question as to whether any Standing Order has been properly applied to the facts of a given case or it has been contravened is a question to be referred for adjudication to the Labour Court set up under the Act. This section has been explained by the Supreme Court in the case of Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union, In these words--

"Once the standing orders are made, it is not unlikely that disputes may arise between the employer and the employees in regard to their application or their interpretation, and the Act has specifically made a provision for dealing with problems of this kind.....Section 13A provides that if any question arises as to the application of a Standing Order an employer or workman may refer the question to any one of the Labour Courts and the said Labour Court shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

12. Even apart from the provisions of the Industrial Employment (Standing Orders) Act. the employee can on the ground of contravention of a Standing Order, raise an industrial dispute under the Industrial Dispute? Act. as has been maintained in several cases Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co., .

13. In any ease, the petitioner has come to this Court without resorting to any of these alternative remedies, only to stop the inquiry pending before the Inquiry Officer appointed by the employers. In the circumstances of this case, relief under Article 226 of the Constitution cannot be granted. Nothing said herein will be deemed to be a pronouncement on the merits of the applicant's case.

14. The Rule is discharged without any order as to costs.