

(1961) 09 BOM CK 0010

In the Bombay High Court

Case No : Misc. Application No. 190 of 1961

Abdul Rehaman Abdul Gafur and Another

APPELLANT

Vs

E. Paul and Others

RESPONDENT

Date of Decision : 13-09-1961

Acts Referred:

Constitution of India, 1950 — Article 102, 104, 126, 15, 182
Industrial Disputes Act, 1947 — Section 11, 12, 2

Citation : AIR 1963 Bom 267 : (1963) 65 BOMLR 20 : (1962) 2 LLJ 693 :
(1963) MhLj 261

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : K.T. Sule and M. Phadnis, for the Appellant; A.M. Setalvad, for the Respondent

Judgement

1. This is a petition under Article 226 of the Constitution whereby the Petitioners claim a writ of mandamus and/or directions that the 1st Respondent, being the Conciliation Officer appointed by the State of Maharashtra; (the 2nd Respondent) do forbear and/or abstain from proceeding with the conciliation of industrial disputes between the Mazagaon Dock Limited being the 4th Respondent and its workmen regarding increase in wages, dearness allowance, leave paid holidays, etc.

2. The only contention which has been advanced before me in support of this petition is that the Mazagaon Dock Limited, the 4th Respondent, is an industry "carried on by or under the authority of the Central Government" and that accordingly the appropriate Conciliation Officers to consider any industrial disputes arising between the Mazagaon Dock Limited and its workmen are the Conciliation Officers appointed by the Central Government. For this reason it is argued that the 1st Respondent being the Conciliation Officer appointed by the State of Maharashtra, has no jurisdiction to act as Conciliation Officer in respect of disputes which have arisen between the Mazagaon Dock Limited and its workmen.

3. The above question has arisen under the following circumstances: On 26th February 1934 Mazagaon Dock Limited was incorporated as a public limited company under the Indian Companies Act. As from December 10, 1957, the Mazagaon Dock Limited was converted into a private limited company. From 1957 the whole of the share capital of the Mazagaon Dock Limited [hereinafter referred to as "the Company"]) was owned by two Commercial corporations of the names of P. and O. Orient Lines and British India Steam Navigation Company. In or about May 1960 the Union of India and/or the Central Government purchased the whole of the share capital of the Company from the above two corporations and owns the whole of the share capital of the Company. As a result of the Union of India purchasing the whole share capital, Articles of Association of the Company were altered in a large way and I will refer to some of the Articles when necessary. In November 1960 a union of workers of the name of "Association of Engineering Workers" on behalf of the workmen of the Company made certain demands and the demands were taken into conciliation proceedings by the 1st Respondent -- the Conciliation Officer appointed by the State of Maharashtra in February 1961. A further demand for payment of bonus was made subsequently and that demand was also admitted to conciliation proceedings on June 2, 1961. In pursuance of the directions of the 1st Respondent, a notice was put up by the Company for the information of the workmen that the demands made as aforesaid (being the two disputes) had been admitted into conciliation proceedings. The 2nd Petitioner is another union which also claims membership of the workmen of the Company. The 1st Petitioner is a workman of the Company. The Petitioners have made a contention as I have already mentioned above and argue that since the 1st Respondent cannot have jurisdiction, the mandamus and direction as claimed in the petition ought to be issued.

4. In connection with the above contention of the Petitioners, it is necessary to mention that under the scheme of the Industrial Disputes Act, 1947, Conciliation Officers and Conciliation Boards are appointed by appropriate Governments as mentioned in the Act. After report of a Conciliation Officer or a Conciliation Board is received, the appropriate Government is entitled to make a reference of disputes considered by a Board or an officer to Industrial Tribunals.

5. Mr. Sule for the Petitioners has, in this connection, relied upon the definition of the phrase "appropriate Government" as contained in Section 2(a) of the Act. The definition runs as follows:

" "appropriate Government" means --

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a banking or an insurance company, a mine, an oil field, or a major port, the Central Government; and (ii) in relation to any other industrial dispute, the State

Government;

X X X X X"

The Petitioners' contention is that the Mazagaon Dock Limited is an industry "carried on by or under the authority of the Central Government", whilst the Respondents' contention is that it is not such an industry.

6. In connection with the true construction of the provisions in the definition clause as quoted above, it is first relevant to notice that there is reference to "controlled industry" in the above definition. The "controlled industry" is required to be specified in a notification by the Central Government. Reference as above made to controlled industry is patently in contrast with "industry carried on by or under the authority of the Central Government". The above distinction is helpful in arriving at the true intention of the Legislature in using the phrase "industry carried on by or under". In spite of complete governmental control an industry may not be one carried on by or under the authority of the Central Government. The real question is as to the true meaning of the words "carried on by or under the authority of" as contained in the above Section.

7. Mr. Sule for the Petitioners contends that because the Union of India and/or the Central Government is the owner of the whole share capital of the Company, it is abundantly clear that the Company and/or the industry is carried on by or under the authority of the Central Government. He also contends that the provisions -- in the Articles of Association of the Company make it abundantly clear that the industry is carried on by the Central Government. Even if that is not so, he contends that in any event it is clear that the industry is carried on under the authority of the Central Government. In that connection he relies upon the extracts from the Articles of Association which are all annexed as Ex. A to the petition. Under Article 15, subject to the rights of the President of India, the shares are directed to be under the control of the Directors. Under Article 102 the President of India is authorised from time to time to determine as to the number of Directors of the Company. Under Article 104 Directors appointed are entitled to remuneration as fixed by the President from time to time. The President is also authorised to remove any Director appointed by him from office at any time. The President is authorised to fill in the vacancies arising in the office of Directors. Under Article 126 the President is authorised to appoint Chairman of the Board of Directors or the Managing Director. The President is further authorised to entrust the Chairman or the Managing Director with powers as exercisable by the Directors. Under Article 182 notwithstanding anything contained in the Articles the President is authorised from time to time to issue directions and instructions as he may consider necessary in regard to the affairs of the conduct of the business of the Company. The Directors are directed to comply with and give immediate effect to the directions or instructions issued by the President.

8. As against the above contentions made by Mr. Sule, in my view, it is important

to notice that the constitution of the Company is framed and enacted under the provisions of the Indian Companies Act. But for the provisions in the Articles of Association of the Company the president of India as such would have no authority to deal with the affairs of the business of the Company, The government of India as such has no right to deal with the business and affairs of the Company, In spite of the fact that the Government of India is the sole owner of the whole of the share capital of the Company, it is clear that the control that it has on the affairs and business of the Company is exercised by reason of the provisions in the constitution of the Company, viz. Memorandum of Association and Articles of Association of the Company. The provisions of the Indian Companies Act would continue to apply to the business and affairs of the Company. The contracts to be made by the Company will have to comply with the provisions of the Companies Act as well as the constitution of the Company. In theory it is quite possible that creditors of the Company would be entitled to initiate liquidation proceedings in respect of the Company in the event of the failure of the Company to make payments due to the creditors and in any other relevant contingencies mentioned in the Companies Act. In any event if the Company ceases to carry on business, I have no doubt that under the provisions of the Companies Act the affairs of the Company would have to be wound up. The profits of the Company would be receivable by the sole shareholder only as dividends. It appears to me that in spite of the ownership of the shares being vested in the Central Government the Company has independent existence in law. The Company also carries on its business according, to the constitution as contained in its Memorandum of Association and Articles of Association. The business is carried on even today through Directors appointed in accordance with the provisions of the Companies Act. The Directors would be continuously liable for misfeasance having regard to the provisions of the Companies Act. The question under the circumstances is as to whether in spite of the above facts can it be said that the industry, viz. the Mazagaon Dock Limited, is carried on by or under the authority of the Central Government Obviously, Mazagaon Dock is not a Department of the Central Government. Though: under the constitution of the Company directions may be given by the President, the Company is not working directly under the authority of the President or the Central Government. Having regard to the ownership of the shares being in the Central Government, the Directors of the Company can be nominated and some of the present Directors are Officers of the Ministry of Defence. Director No. 4 mentioned in paragraph 7 of the petition is Chairman of the Bombay Port Trust and is not an Officer of the Central Government. The ordinary business affairs of the Company are carried on through the Board of Directors and the Chairman and cannot be in law considered as carried on by the Central Government or under the authority of the Central Government. The employees of the Company cannot be said to be the servants and/or employees of the Government. The remuneration that is paid to the Directors and/or the other workmen is not paid by the Central Government and is paid by the Company as such. If at all it is intended that the Central Government should be "appropriate Government" in connection with this

industry, the Company may be notified as controlled industry and would thereafter be dealt with by the Central Government as "appropriate Government" under the provisions of the Industrial Disputes Act.

9. The phrase "under the authority of the Central Government" as contained in Section 2(a)(i) must mean and is intended to apply to industries carried on directly under the authority of the Central Government. Industries which are carried on for their own purposes by incorporated commercial corporations which are governed by their own constitutions, as authorised by the Indian Companies Act, cannot be described as carried on under the authority of the Central Government. The obvious reason to support the above finding is that these corporations are independent legal entities and run the industries for their own purposes. Even when the Central Government controls these corporations, their industries are worked under the authority of their own constitutions or charters.

10. In this connection, Mr. Setalvad for the Respondents has relied upon the case of *Tamlin v. Hannaford*, (1950) 1 K B 18. The question in that case was as to whether the "British Transport Commission" was a crown department or its property crown property and the "Rent Act" therefore did not apply to the properties of the commission. In that connection, what is mentioned in the head-note runs as follows :

"The only fact which, it could be suggested, made the commission a servant or agent of the Crown was the control over it exercised by the Minister of Transport; but there was ample authority for saying that such control was insufficient for the purpose.

. When Parliament intends that a new corporation should act on behalf of the Crown, it, as a rule, so states in the statute constituting the corporation. In the absence of any such provision, the proper inference in the case, at any rate, of a commercial corporation, is that it acts on its own behalf, even though it is controlled by a government department."

At page 24 of the Reports it is further observed as follows:

"These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the share-holders, or even of a sole shareholder, In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown, its servants are not civil servants, and its property is not Crown property.... It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government."

11. Similar observations are made in the case of *Carlsbad Mineral Water Mfg. Co. Ltd. Vs. P.K. Sarkar and Others*, . The question before the Court in that case directly related, to the true construction of the provisions of Section 2 (a) (i) of

the Industrial Disputes Act and it was observed as follows:

"It seems to me that what is referred to in Section 2(a)(i) and Section 2(g)(i) is any industry owned by Government which is being carried on by Government itself either through a department or by some authority created by Government to carry on that industry. An industry carried on or under the authority of Government is a Government industry, which as I have said, may be carried on directly by Government or by somebody or person nominated by Government for that purpose. No business owned by and carried on by a private person or a limited company can be a business carried on by or under the authority of Government.

It seems to me that the words "under the authority" mean much the same as "on behalf of. It is to be noticed that in Section 2(g)(ii) "employer" means in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority. With regard to such an industry, even if somebody has been authorised to carry on the work, nevertheless, the chief executive officer in all cases is to be regarded as the employer."

12. In my view, the Petitioners' contentions are not well founded. The petition is liable to be dismissed.

13. The petition is dismissed with costs.

14. Petition dismissed.