
(1954) 09 BOM CK 0001
In the Bombay High Court

Associated Cement Companies Ltd., Dwarka Cement Works and Others APPELLANT

Vs

P.D. Vyas and Others RESPONDENT

Date of Decision : 30-09-1954

Acts Referred:

Citation : (1955) 1 LLJ 8

Hon'ble Judges : Coyajee, J

Bench : Single Bench

Judgement

Coyajee, J.—The petitioners are a limited company carrying on business as Dwarka Cement Works at Dwarka and Sevalia Cement Works at Sevalia in the district of Khaira. Respondent 1 is a member of the industrial court, respondent 2 is the Commissioner of Labour and respondent 3 is the general secretary of Dwarka Cement Works Employees' Union. Respondent 4 is sued on behalf of all the other workmen employed by Dwarka Cement Works.

2. In this petition company complains of a certain order made under the Industrial Employment (Standing Orders) Act, 1946, together with the Bombay Industrial Employment (Standing Orders) Rules, 1948, The orders are made by the certifying officer under the said Act and the orders were confirmed by the appellate authority under the Act. The petitioners complain that in accordance with the provisions of this Act they had forwarded their standing orders for the approval of the certifying authority and the certifying authority have altered the said orders contrary to the provisions of this Act and thereby exceeded the jurisdiction vested in the certifying authority.

3. It is necessary for the purpose of understanding this contention to see what is the scheme of the Act. Shortly put, on a perusal of the several relevant sections, it is clear that the Act is framed for the purpose of crystallizing the different heads of terms between the employer and the employees, so that no friction may arise as to what those terms and conditions were which should be made known to the employees by such standing orders in writing exhibited on a board and u/s

12 it is stated that oral evidence in contradiction of standing orders is not admissible, namely, that no oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any court.

4. u/s 2(g) "standing orders" are defined and Section 2(g) says "standing orders" means rules relating to matters set out in the schedule and a schedule is given at the end of the Act which is headed "matters to be provided" in standing orders under this Act." In other words, the schedule gives classification of workmen, manner of intimation to workmen as regards hours of work, holidays, pay-days and wage-rates. It also provides for shift-working, attendance and late-coming and amongst other conditions are suspension or dismissal for misconduct, and acts or omissions which constitute misconduct for the purpose of suspension or dismissal.

5. Section 3, Sub-section (2) read with Section 4, Sub-section (b), are the relevant sections for the purpose of determining this question. u/s 3, within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the certifying officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment and thereafter Sub-section (2) runs as follows:

Provision shall be made in such draft for every matter set out in the schedule which may be applicable to the industrial establishment and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

Section 4 talks of the conditions for certification of standing orders and Sub-section (a) states that provision is to be made in the standing orders for every matter set out in the schedule which is applicable to the industrial establishment and Sub-section (b) says that the standing orders are otherwise to be in conformity with the provisions of this Act and further says that it shall not be the function of the certifying officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

6. Then Section 5, Sub-section (2), says that the certifying officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act and shall make an order accordingly.

7. u/s 15 power is granted to the Government to make rules and the appropriate Government may make rules and in making such rules may

(a) prescribe additional matters to be included in the schedule and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition; and

(b) Set out model standing orders for the purposes of this Act.

8. Although this is a long petition and counsel on behalf of the petitioners addressed the Court at great length, the question to be answered is an exceedingly narrow one which does not present difficulty in answering the question. What has happened is that the Government have made rules u/s 15 and have prescribed a model standing order as they are empowered to do u/s 15, Sub-section (b). The petitioners complain that the certifying authority has no power to deal with the reasonableness or fairness of any item in the standing orders and the change made by the authority in the standing orders submitted by the petitioners is not warranted under the power granted to the certifying authority under this Act. If one looks at Ex. C under the draft standing orders submitted it is stated that a notice of fourteen days shall be given in the event of the discontinuance of a shift, Under the model Standing orders it is stated that where a permanent workman is discontinued from service or discharged a notice of one month will be given and in the standing orders as certified in appeal by the appellate certifying authority it is stated that the workman is to be discharged only after a notice of one month is given.

9. The question is whether the certifying authority and the appellate certifying authority have a right to adjudge upon such an item and alter the term itself. It is argued that the only authority vested in the certifying authority is to see that the draft standing orders submitted are in accordance with the model standing orders as far as the Items therein are concerned and it is not for the certifying authority to deal with the fairness or reasonableness of the item itself. If one now turns again to the standing orders one will see that items 1 to 11 are set out in the model standing orders and it would be duty of the certifying authority to see that all these items are as far as practicable included in any standing orders submitted for certification, but it is not, as contended on behalf of the petitioners, the function of the certifying authority to adjudge upon the fairness or reasonableness of any particular item as regards the terms between the employer and the employees.

10. Now it is contended on behalf of the respondents that Section 3, Sub-section (2), makes it abundantly clear that the duties cast upon the certifying authority are to see that provision is made in such draft for every matter set out in the schedule which may be applicable to the industrial establishment and where model standing orders have been prescribed the section says that it shall be "so far as is practicable in conformity with such model." It is argued by Mr. Seervai on behalf of the respondents that the contention on behalf of the petitioners may be presentable in cases where no model standing orders are prescribed under the Act, but once the Government entered the field by prescribing model standing orders it is incumbent upon the certifying authority to see that the orders submitted for certification shall be in conformity with the model with the only limitation set out in Section 3, Sub-section (2), namely, "so far as is practicable." It is argued on the other hand that Section 4, Sub-section (b), clearly defines the power of the certifying officer and the appellate authority namely, that it shall not be the function of the certifying officer or appellate

authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

11. Now, as stated above, it is quite clear on reading Section 3, Section 4 and Section 12 together and looking at the preamble, that the object of the Act is to require employers in industrial establishments, to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. Now once these conditions which are a matter of contract between the employer and the employees are set out, it is laid down by Section 12 that once they are laid down in the form of standing orders no oral evidence shall be led to have the effect of adding to or otherwise varying the same. In other words, the object is clear to my mind and that is that the workmen should know clearly what their terms of engagement are and what is their liability. The model standing orders, on the other hand, necessarily includes certain items, namely, the items set out in the schedule and they are items 1 to 11 in the schedule. It may be that certain items in the schedule are not and cannot be applicable to certain types of industry and therefore a provision is made in Section 3, Sub-section (2), that these items shall be included so far as is practicable and in so far as they are practicable they shall be in conformity with the model.

12. The whole question is whether the certifying authority should be allowed to travel beyond what I have indicated above, namely, to see whether all the items as set out in the model standing orders are also in terms set out in the draft standing orders submitted to him. To allow the respondents' contention would be to allow the certifying authority to travel beyond the jurisdiction vested in them u/s 4, Sub-section (b), and that to my mind is a provision necessarily made so as to prevent certifying officers and certifying appellate authority from imposing a contract on the parties. To hold otherwise would be that the Act should be read as If the certifying officer and the appellate certifying authority are empowered to impose any terms on the contracting parties or to vary the terms of contract already existing between the parties which could not possibly be the intention of this Act, because if that were so, the words "it shall not be the function of the certifying officer or appellate authority to adjudicate upon the fairness and reasonableness of the provisions of any standing orders" would not have been there at all and to construe otherwise would amount to wiping out the provision from the Act.

13. From this point of view a further point made by counsel on behalf of the petitioners is worth mentioning and that is this that if this Act were to be read as anything more than this that the object of the Act was to allow workmen to know the terms and conditions of service and once they are made part of the standing orders no oral evidence to the contrary is adduced to that the employers do not resile from their contract. Therefore, to allow the certifying officer or the appellate certifying authority to tinker with any particular item or items of the standing orders would be tantamount to empowering them to enter upon an

adjudication in an industrial dispute. It is perfectly true that under the Act both the employers and the union representing the employees are to be heard by the certifying authority before he delivers the final draft, but that is to my mind only for the purpose of ascertaining which of the items in the model standing orders should be embodied in the standing orders submitted and that as far as practicable as set out in Section 3, Sub-section (2).

14. This construction of the Act is the only construction I am prepared to accept, because if the certifying authority is allowed to go beyond that I have indicated above, it is as if he is authorized to take upon himself the functions that are for an adjudicator to discharge under the Industrial Disputes Act. In fact if disputes arise between employers in industries and employees represented by their union on the terms and conditions of their work, that to my mind is expressly provided for under the Industrial Disputes Act and that is the Act under which such questions must be resolved and that is why to my mind it is expressly laid down u/s 4 that it shall not be the function of the certifying officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

15. On the above construction of the relevant section I am of the opinion that the function of the certifying authority and the appellate certifying authority is limited to seeing whether the items set out in the model standing orders are included in the draft standing orders submitted in so far as they are practicable and that is all and it is not the function or within the jurisdiction of the certifying authority or the appellate certifying authority to decide upon the nature of any particular term or condition between the employer and the employees.

16. On that finding I hold that the petition is properly brought and rightly presented and that an order must be made issuing a writ under Article 226 of the Constitution against the first and second respondents in the nature of a writ of certiorari quashing the orders made, dated 21 May 1954, and 5 May 1953. There will be no order as regards costs.

RULING

17. Mr. Vimadalal on behalf of the petitioners desire to read to me the speech of the Minister Dr. Ambedkar introducing a Bill. An objection to that has been taken by Mr. Seervai and Mr. Seervai objects to it on the following ground. He says that like the objects and reasons a speech on the floor of the House by a Minister should not be allowed to be quoted, because it is an accepted position that sections of an Act are not to be interpreted in the light either of the objects and reasons or in the light of the speech of the member Introducing the Bill. Mr. Vimadalal states that he wanted to quote this only for the purpose of showing the real object of introducing this enactment. The general rule has been laid down by the Privy Council in two decisions. One is the case of the Administrator-General of Bengal v. Prem Lal Mullick 22 I.A. 107, their lordships of the Privy Council state as follows:

The two learned Judges who constituted the majority in the Appellate Court, although they do not base their judgment upon them, refer to the proceedings of the legislature which resulted in the passing of the Act of 1874 as legitimate aids to the construction of Section 31. Their lordships think it right to express their dissent from that proposition. The same reasons which exclude these considerations when the clauses of an Act of the British legislature are under construction, are equally cogent in the case of an Indian statute.

This reasoning was followed by the Privy Council in the case of *Krishna Ayyangar v. Nallaperumal Pillai and Ors.* 47 I.A. 33, where it was held that to ascertain the meaning of the words used in the explanation a reference to the proceedings in the Legislative Council upon its enactment was not permissible. During argument Mr. Clauson, K.C., who desired to rely upon it to which an objection was taken by Mr. Kenworthy Brown, submitted that although a reference to the proceedings in the legislature was not admissible merely to ascertain the intention of enactment, it was admissible to show the sense in which particular words--here the words "as such"--were used. This contention shows that it was considered at the bar before the Privy Council that in any event it was certainly not admissible to ascertain the intention of the enactment. The only exception to that rule appears to be that where a constitutional question arises in those circumstances to find out the true Intent and meaning the debate on that question may be referred to. For instance, if the reasonableness of an action under a certain article in the Constitution is disputed or the reasonableness of an enactment is disputed, then for the purpose of finding out the Intention of the legislature in constitutional matters such an exception is allowed. This is apparent from the judgment of the Supreme Court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, , the relevant passage being at p. 3, namely, observation that speeches made by members of the House of Parliament on the floor of the House are not admissible as extrinsic aids to the interpretation of statutory provisions, but where there is the construction of a judicial Act or Constitution itself in that case an exception is engrafted thereon as appearing from this judgment.

18. Mr. Vimadalal has relied upon two authorities. First is the case of *Charanjit Lal Chowdhury v. Union of India* 53 B.L.R. 499 and relies on the comments at p. 504 where a reference to the parliamentary proceedings was made on behalf of a section of the shareholders of the Sholapur Company and that was in fact referred to by the Bench. He also refers me to a decision of the Supreme Court in the case of *State of West Bengal v. Subodh Gopal* AIR 1954 S.C.R. 92, the relevant observations being in Para. 36 at p. 104, where it was observed by Mr. Justice Das that it was well settled by that Court that the statement of objects and reasons is not admissible as an aid to the construction of the statute and in that case the learned Judge was not therefore referring to it for the purpose of constructing any part of the Act or of ascertaining the meaning of any word used in the Act, but for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same. But the

further observation is

those are all matters which as already stated must enter into the judicial verdict as to the reasonableness of the restrictions which Article 19(5) permits to be imposed on the exercise of the right guaranteed by Article 19(1)(f).

That itself answers the question, namely, that it is only where a constitutional question arises that in those circumstances the Court is entitled to look at the objects and reasons or look at the speeches on the floor of the House. It may be noted that no decision has been cited to me where either the objects and reasons or speeches on the floor of the House have been allowed to be cited where no question of constitutional matters or the construction of an article of the statute has been involved.

19. In these circumstances I uphold the objection raised by Mr. Seervai.