

(2006) 09 AHC CK 0075
In the Allahabad High Court

B.P.L. Display Devices Workers Union	APPELLANT
Vs	
Deputy Labour Commissioner and B.P.L. Display Devices Limited	RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Employment (Standing Orders) Act, 1946 — Section 1, 10, 2, 3, 4

Citation : (2006) 10 ADJ 56 : (2006) 7 AWC 7008 : (2006) 111 FLR 1003

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—The present Writ Petition under Article 226 of the Constitution of India has been filed, interalia, praying for quashing the order dated 3.8.2000 (Annexure No. 6 to the Writ Petition), stated to have been issued to the petitioner on 31.5.2001.

2. It is, interalia, stated in the Writ Petition that the petitioner is a registered Trade Union under the Indian Trade Unions Act, 1926, and its registration number is 7591 ; and that the establishment of the respondent No. 2 has Certified Standing Orders governing the service conditions of all the workers of the establishment of the respondent No. 2.

3. It is, interalia, further stated in the Writ Petition that the respondent No. 2 moved an application before the Deputy Labour Commissioner u/s 10 of the Industrial Employment (Standing Orders) Act, 1946 (in short "the Standing Orders Act, 1946"), interalia, proposing amendments/additions in the said Certified Standing Orders.

4. Copy of the said proposed amendments/additions sought for, has been filed as Annexure No. 4 to the Writ Petition.

5. It is, interalia, further stated in the Writ Petition that the petitioner moved an

Objection on the proposed amendments/additions submitted by the Management before the Deputy Labour Commissioner/Certifying Officer for Standing Orders, Ghaziabad Region, Ghaziabad.

6. Copy of the said Objection has been filed as Annexure No. 5 to the Writ Petition.

7. By the order dated 3.8.2000 (Annexure No. 6 to the Writ Petition), the Deputy Labour Commissioner/Certifying Officer for Standing Orders, Ghaziabad Region, Ghaziabad accepted the amendments/additions sought for in the Certified Standing Orders of the establishment of the respondent No. 2, and certified the Standing Orders incorporating the said amendments/additions.

8. As mentioned above, the said order dated 3.8.2000 passed by the Deputy Labour Commissioner/Certifying Officer is impugned in the present Writ Petition.

9. I have heard Sri Shyam Narain, learned Counsel for the petitioner, the learned Standing Counsel appearing for the respondent No. 1, and Sri C.B. Gupta, learned Counsel for the respondent No. 2, and perused the record.

10. Sri C.B. Gupta, learned Counsel for the respondent No. 2 has raised a preliminary objection that against the order impugned in the Writ Petition, an appeal lies u/s 6 of the Standing Orders Act, 1946.

11. It is submitted by Sri Gupta that the order impugned in the Writ Petition has been passed on an application under Sub-section (2) of Section 10 of the Standing Orders Act, 1946. It is further submitted by Sri Gupta that by Sub-section (3) of Section 10 of the Standing Orders Act, 1946, "the foregoing provisions" of the said Act, have been made applicable to an application filed under Sub-section (2) of Section 10, as they apply to the certification of the first Standing Orders.

12. In view of the provisions of Sub-section (3) of Section 10 of the Standing Orders Act, 1946, the submission proceeds, an appeal may be filed u/s 6 of the said Act against the impugned order.

13. Sri C.B. Gupta, learned Counsel for the respondent No. 2 has placed reliance on a decision of the Apex Court in Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers" Union, in support of his preliminary objection.

14. Sri Shyam Narain, learned Counsel for the petitioner has opposed the submissions made by Sri C.B. Gupta, learned Counsel for the respondent No. 2.

15. It is submitted by Sri Shyam Narain that: the Writ Petition may not be dismissed on the ground that an appeal may be filed against the impugned order dated 3.8.2000.

16. I have considered the submissions made by the learned Counsel for the parties.

17. In order to appreciate the submissions made by the learned Counsel for the parties, it is necessary to refer to the provisions of Section 5, 6 and 10 of the Standing Orders Act, 1946.

18. Section 5 of the Standing Orders Act, 1946 deals with certification of Standing Orders, and lays down as under:

5. Certification of Standing Orders - (1) On receipt of the draft u/s 3, Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, 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 in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under Sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under Sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

19. Thus, under Sub-section (2) of Section 5 of the Standing Orders Act, 1946, the Certifying Officer passes an order in writing regarding draft Standing Orders subject to any modifications or additions made after hearing the parties concerned.

20. Section 6 of the Standing Orders Act, 1946 makes provision for appeal against the order passed by the Certifying Officer under Sub-section (2) of Section 5 of the said Act. The said Section 6 lays down as under:

6. Appeals.- (1) [Any employer, workman, trade union or other prescribed representatives of any workman] aggrieved by the order of the Certifying Officer under Sub-section (2) of Section 5 may, within [thirty days] from the date on which copies are sent under Sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing order certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under Sub-section (1), send copies thereof of the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen,

accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner

21. Section 10 of the Standing Orders Act, 1946 provides for duration and modification of the Standing Orders. The said Section 10 is re-produced below:

10. Duration and Modification of Standing Orders. - (1) Standing Orders finally certified under this Act shall not, except on agreement between the employer and the workmen for a trade union or other representative body of the workmen] be liable to modification until the expiry of six months from the date on which the standing orders or the last modification thereof came into operation.

(2) Subject to the provisions of Sub-section (1), an employer or workman [or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing order modified, and such application shall be accompanied by five copies of [...] the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen [or a trade union or other representative body of the workmen] a certified copy of that agreement shall be filed along with the application]

(3) The foregoing provisions of this Act shall apply in respect of an application under Sub-section (2) as they apply to the certification of the first standing orders.

[(4) Nothing contained in Sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra].

22. Thus, in view of the provisions of Sub-section (1) of Section 10 of the Standing Orders Act, 1946, the Standing Orders finally certified under the said Act, are not liable to modification until the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation. However, the said bar of six months will not apply in case there is an agreement between the employer and the workmen or a trade union or other representative body of the workmen.

23. Sub-section (2) of Section 10 of the Standing Orders Act, 1946, inter alia, provides that subject to the provisions of Sub-section (1), an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the Standing Orders modified.

24. Sub-section (2), inter alia, further makes provision that such an application shall be accompanied by five copies of the modifications proposed to be made, and a certified copy of the agreement, if any, referred to in Sub-section (1) of Section 10.

25. Sub-section (3) of Section 10 of the Standing Orders Act, 1946 provides that "the foregoing provisions of this Act shall apply in respect of an application under Sub-section (2) as they apply to the certification of the first standing orders".

26. In view of Sub-section (3) of Section 10 of the Standing Orders Act, 1946, it is evident that the provisions contained in Sections 1 to 9 of the said Act, are applicable to an application under Sub-section (2) of Section 10 of the said Act.

27. Therefore, while dealing with an application filed under Sub-section (2) of Section 10 of the Standing Orders Act, 1946, the Certifying Officer will proceed in the manner provided u/s 5 of the said Act.

28. Accordingly, he will pass an order in writing after hearing the parties concerned, as provided in Sub-section (2) of Section 5 of the Standing Orders Act, 1946.

29. Further, an order passed by the Certifying Officer on an application filed under Sub-section (2) of Section 10 of the Standing Orders Act, 1946, will also be appealable u/s 6 of the said Act.

30. It is true that Sub-section (1) of Section 6 of the Standing Orders Act, 1946 refers to an order of the Certifying Officer passed under Sub-section (2) of Section 5 of the Standing Orders Act, 1946, against which an appeal may be filed.

31. However, as per the provisions of Sub-section (3) of Section 10 of the Standing Orders Act, 1946, the provisions of Sub-section (2) of Section 5 of the Standing Orders Act, 1946 apply to an application filed under Sub-section (2) of Section 10 of the Standing Orders Act, 1946, and therefore, an appeal will lie u/s 6 of the Standing Orders Act, 1946 against an order passed by the Certifying Officer on an application filed under Sub-section (2) of Section 10 of the Standing Orders Act, 1946.

32. In *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. v. S.S. Railway Workers Union* (supra), the question involved was as to the scope of Section 10(2) of the Standing Orders Act, 1946, as amended by Act No. 36 of 1956.

33. A perusal of the facts of the case, as mentioned in paragraph No. 2 of the judgment (as reported in AIR), shows that against the order dated December 28, 1963 passed by the Regional Labour Commissioner, who certified certain modifications in the Standing Orders, an appeal was filed which was disposed of by the Chief Labour Commissioner in April 1964.

34. The facts of this decision suggest that the order passed by the Certifying Officer for modification of the certified Standing Orders on an application filed under Sub-section (2) of Section 10 of the Standing Orders Act, 1946, is appealable u/s 6 of the said Act.

35. In view of the above, I am of the opinion that the petitioner has got an alternative remedy of filing an appeal u/s 6 of the Standing Orders Act, 1946

against the impugned order dated 3.8.2000 (Annexure No. 6 to the Writ Petition) passed by the Deputy Labour Commissioner/Certifying Officer.

36. The Writ Petition is, therefore, liable to be dismissed on the ground of availability of alternative remedy of filing an appeal u/s 6 of the Standing Orders Act, 1946

37. As regards the submission of Sri Shyarn Narain, learned Counsel for the petitioner that the Writ Petition may not be dismissed on the ground of alternative remedy, I find myself unable to accept the same.

38. Having regard to the nature of controversy involved in the present case, it will be appropriate that the petitioner be relegated to the alternative remedy of filing an appeal u/s 6 of the Standing Orders Act, 1946.

39. In view of the above, the Writ Petition is dismissed on the ground of availability of alternative remedy of filing appeal u/s 6 of the Standing Orders Act, 1946 against the impugned order dated 3.8.2000 (Annexure No. 6 to the Writ Petition).

40. In case, an appeal is filed by the petitioner within a period of two months from today, the same will be entertained without raising any objection as to limitation.