
(1964) 01 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 226 of 1963 (I)

Burhanpur Tapti Mills Ltd.

APPELLANT

Vs

Industrial Court

RESPONDENT

Date of Decision : 15-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 227

States Reorganisation Act, 1956 — Section 125, 125(1), 125(2)

Citation : (1964) J LJ 256

Hon'ble Judges : P.V. Dixit, C.J.; S.P. Bahrgava, J

Bench : Division Bench

Advocate : G.M. Chaphekar and P.D. Pathak, for the Appellant; Y.S. Dharmadhikari, M.V. Tamaskar and Gulab Gupta, for the Respondent

Judgement

P.V. Dixit, C.J.—In this application under articles 226 and 227 of the Constitution, the petitioner seeks a writ of certiorari for quashing an award made in two parts by the State Industrial Court overruling the petitioner's objections to the jurisdiction of the Industrial Court to entertain and decide an industrial dispute referred to the Industrial Court of the old Central Provinces and Berar by a notification dated the 22nd August 1955 u/s 39 of the C.P. and Berar Industrial Disputes Settlement Act, 1947, issued by the Government of the old C.P. and Berar. The petitioner also prays that the Industrial Court be restrained by the issue of a suitable direction from proceeding with the reference in any manner.

2. The matter arises thus: On 22nd August 1955, the C.P. and Berar Government issued u/s 39 of the C.P. and Berar Industrial Disputes Settlement Act, 1947, referring to the arbitration of the State Industrial Court a dispute between eleven textile mills, enumerated in schedule I to the notification, and their employees in the mechanical and engineering branches. This reference was pending before the Industrial Court of the C.P. and Berar when the State Reorganisation Act, 1956, came into force. In the reorganisation of States, nine out of eleven-textile mills, stated in schedule I to the notification, became located in the new State of

Bombay, now Maharashtra, and the remaining two mills, namely, the petitioner-Mill and the B.N.C. Mills Ltd., Rajnandgaon, fell in the new Madhya Pradesh. When after the reorganisation the reference came up for hearing before the State Industrial Court at Nagpur, an objection was raised on behalf of nine mills in the Bombay State that the reference made by the C.P. and Berar Government on 22nd August 1955 did not subsist and the Industrial Court at Nagpur had no jurisdiction to continue the proceedings arising out of the reference inasmuch as they did not relate exclusively to the territory which had become part of the territory of the successor State as defined in the States Reorganisation Act, 1956. This objection was rejected by the Nagpur Industrial Court by its decision, dated 15th May 1958, reported in 1958 ICR (Bom.) page 1350. The Industrial Court took the view that although there was a common notification referring the industrial disputes between the eleven textile mills and their employees and the subject-matter of the disputes was common, the reference must be deemed to be a separate reference in regard to each mill and its workmen; that thus there were in effect under one notification eleven references of industrial disputes between each of the mills and their workmen; and that consequently by virtue of section 125(1) of the States Reorganisation Act 1956, the reference, in so far as it related to the disputes with regard to the nine mills was within its cognizance. It appears from the report of that decision that at one stage of the proceedings before the Industrial Court at Nagpur, a reference was made to the Bombay High Court for a decision on the question whether the proceedings, in so far as they related to the nine mills, stood transferred u/s 125 of States or Reorganisation Act the Industrial Court at Nagpur. According to the report, the Bombay High Court expressed the opinion that a reference u/s 125 (2) could be made if a court or tribunal entertained a doubt as to whether a proceeding before it should or should not be transferred to the corresponding Court or tribunal in another State, and that there was no question in the reference made to the Bombay High Court of transfer of any proceeding to a corresponding Court or tribunal in the State of Madhya Pradesh. After this decision, some correspondence was exchanged between the Government Labour Officer, Burhanpur, and the Industrial Court at Nagpur, as also between the Industrial Court, Indore, and the Industrial Court, Nagpur. As a result of this correspondence, the Industrial Court at Indore registered the reference in so far as it related to the petitioner-mills and the B.N.C. Mills Ltd., Rajnandgaon.

3. While the reference in regard to the two mills was pending before the Industrial Court, Indore, the Madhya Pradesh Industrial Relations Act, 1960, which repealed the C.P. and Berar Industrial Disputes Settlement Act, 1947, came into force on 31st December 1960. Section 112, which repealed inter alia the C.P. and Berar Industrial Disputes Settlement Act, 1947, contained a proviso, namely proviso (e), laying down that any proceedings pending before the State Industrial Court, the Industrial Court, a District Industrial Court, Labour Court even and proceedings relating to the trial of offences punishable under the provisions of the Act repealed, the provisions of the repealed Act shall be

continued and completed as if the Act of 1947 had not been repealed, and continued in operation. Subsequently, the M.P. Industrial Relations Act, 1960, was amended by M.P. Industrial Relations (Amendment) Act, 1961. By section 20 of this amending Act, for proviso (c) to section 112 of the principal Act, the following proviso was substituted -

(c) any proceedings pending under the provisions of the Acts so repealed or any proceedings maintainable under the said Act in pursuance of the provisions of clause (b) before a Court or authority specified in column (1) of Schedule III shall, as the case may be, stand transferred to or, be instituted in or before, the Court or authority specified in the corresponding entry in column (2) thereof, and shall thereupon be disposed of or proceeded with as if the said Acts had not been repealed and any penalty imposed in such proceeding covered under the Acts so repealed.

Section 21 of the amending Act added a new Schedule, namely, Schedule III, to the Act of 1960. It was as a result of these amendments that the reference, which was pending before the M.P. State Industrial Court constituted under the C.P. and Berar Industrial Disputes Settlement Act, 1947, when the M.P. Industrial Relations Act, 1960, came into force that the reference stood transferred to the Industrial Court constituted u/s 9 of the Act of 1960, as amended in 1961.

4. The two main objections, which the petitioner-mills raised before the Industrial Court, were, first, that u/s 1 (3) of the Act of 1960 a separate notification was necessary for making the amendments made by sections 20 and 21 of the amending Act of 1961 legal and operative; and that as no such notification had been issued by the Government, therefore, the Industrial Court had no jurisdiction to entertain the reference; and, secondly, that the reference made by the Government of C.P. and Berar by the notification dated 22nd August 1955, issued u/s 39 of: the C.P. and Berar Industrial Disputes Settlement Act, 1947, was a composite reference in regard to all the eleven mills mentioned in Schedule I of the notification; that the reference being a collective reference in regard to all these mills could not be split up and treated as eleven references in regards the eleven mills separately; and that consequently the proceedings under the reference made by the notification dated 22nd August, 1955, could not be regarded as proceedings exclusively to any part of the territories of the old C.P. and Berar which from 1st November 1956 become the territories of the new Madhya Pradesh so as to attract section 125 (1) of the States Reorganisation Act, 1956, and result in the transfer of the proceedings under the reference in relation to the petitioner mills and the B.N.C. Mills Ltd., Rajnandgaon, from the Industrial Court at Nagpur to the Industrial Court in Madhya Pradesh. Both these objections were rejected by the Industrial Court, Indore, taking the view that the effect of the amendments made by sections 20 and 21 of the amending Act of 1961 was to make the new proviso (c) to section 112 and Schedule III a part of section 112 of the Act of 1960 and no separate notification was necessary u/s 1(3) of the principal Act for bringing into force the provisions of section 112 as

they stood originally or after amendment in 1961; that the reference made by the notification dated 22nd August 1955, issued u/s 39 of the C.P. and Berar Industrial Disputes Settlement Act, 1947 must be deemed to be separate references of industrial disputes in regard to each mill mentioned in the first Schedule; and that, therefore, the reference proceedings in relation to the petitioner-mills and the B.A.C. Mills Ltd., Rajnandgaon, stood transferred u/s 125(1) of the States Reorganisation Act, 1956, to the Industrial Court in the new State of Madhya Pradesh function under the C.P. Act of 1947.

5. Before us, Shri Chaphekar, learned counsel appearing for the petitioner, assailed only the decision of the Industrial Court embodied in part-2 of the award in regard to the transfer of reference proceedings u/s 125(1) of the States Reorganisation Act, 1956. It was argued that u/s 125(2) of the States Reorganisation Act the Industrial Court at Indore had no jurisdiction to decide the question whether the reference made under the notification dated 22nd August 1955 was a composite reference of in effect embodied separate references in regard to each of the eleven mills, enumerated in Schedule I, and whether under that reference the proceedings in relation to the petitioner mills and the B.N.C. Mills Ltd., Rajnandgaon, stood transferred to the Industrial Court, Nagpur, to the Industrial Court, Indore, u/s 125(1) of the States Reorganisation Act; and that the competent Court to decide the question was the High Court of Judicature at Bombay. It was further said that in the absence of any decision of the Bombay High Court on the question of transfer of proceedings in regard to the petitioner-mills and the B.N.C. Mills Ltd., Rajnandgaon, from the Industrial Court at Nagpur to the Industrial Court at Indore, the latter Court had no jurisdiction to entertain the reference.

6. In order to see how far this contention is tenable, it is necessary to refer to the material provisions of section 125 of the States Reorganisation Act, 1956. They are as follows-

125.(1) Every proceeding pending immediately before the appointed day before a Court (other than a High Court), tribunal, authority or officer in any area which on that day falls within a State shall, if it is a proceeding relating exclusively to any part of the territories which as from that day are the territories of another State or from a Union territory, stand transferred to the corresponding Court, tribunal, authority or officer in the other State or the Union territory, as the case may be.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1), it shall be referred to the High Court having jurisdiction in respect of the area in which the Court, tribunal, authority or officer before which or whom such proceeding is pending on the appointed day, is functioning and the decision of that High Court shall be final.

It will be observed that under the first sub-section the transfer of proceeding relating exclusively to any part of the territories which from 1st November 1956

are the territories of another State and which was pending immediately before 1st November 1956 before a Court, tribunal, authority or officer, which on that day fell within a State to the corresponding Court. Tribunal authority or officer in the other State or the Union territory, as the case may be, is automatic. No separate order therefore is necessary. Sub-section (1) nowhere requires that for transfer of a proceeding under that provision, it must first be found whether the proceeding relates exclusively to any part of the territories which from 1st November 1956 are the territories of another State or from a Union territory. If the conditions set out in sub-section (1) are satisfied, then the proceedings stand automatically transferred. This is clear from the plain language of sub-section (1). The language of sub-section (2) is equally clear. It says that if any question arises as to whether any proceeding should stand transferred under sub-section (1), then it is not the Court, tribunal authority or officer before which or whom the question is raised that is competent to decide it, but it is the High Court having jurisdiction in respect of the area in which the Court, tribunal, authority or officer before which or whom such proceeding was pending on 1st November 1956 was functioning. In the present case, the reference proceedings were pending before 1st November 1956 before the Industrial Court at Nagpur and this Court was functioning in the area over which the Bombay High Court had, and still has, jurisdiction. Therefore the question of the transfer of the reference relating to the petitioner mills and the B.N.C. Mills Ltd., Rajnandgaon, from the Industrial Court at Nagpur to the Industrial Court at Indore could be decided only by the Bombay High Court and not either by the Industrial Court, Nagpur, or by the Industrial Court at Indore. In fact, as the language of sub section (2) shows, the question of the transfer of proceedings in regard to the petitioner-mills and the B.N.C. Mills Ltd., Rajnandgaon, could not at all be raised before the Industrial Court, Indore. The question that can be referred to the High Court concerned under sub-section (2) for decision is the question whether any proceeding should stand transferred under sub-section (1) and not whether the transfer of proceeding already made to the corresponding transferee Court, tribunal, authority or officer in another State is valid. The expression "whether any proceeding should stand transferred under sub-section (1)" occurring in sub-section (2) plainly shows that the question of transfer must be raised before the Court, tribunal, authority or officer from which or whom the proceeding is to be transferred and not before that Court, tribunal, authority or officer to which or whom the proceeding has been transferred. It is thus clear that the Industrial Court at Indore had no jurisdiction to entertain and decide the petitioner's objection to the transfer of the proceeding resting on section 125 of the States Reorganisation Act, 1956. The decision of the Industrial Court at Indore contained in part 2 of its award, holding that the proceedings before it related exclusively to the part of territories which from 1st November 1956 became the territories of the State of Madhya Pradesh and therefore, it had jurisdiction to entertain the reference in regard to the petitioner mills and the B.N.C. Mills Ltd., Rajnandgaon, being one which the Industrial Court had no jurisdiction to give must, therefore, be quashed.

7. But it does not follow from quashing the decision of the Industrial Court embodied in part-2 of its award that it has no jurisdiction to entertain and proceed with the reference before it until there is a decision of the Bombay High Court under sub-section (2) of section 125 of the States Reorganisation Act, 1956, on the question of the transfer of proceedings, section 125 nowhere says that if any question arises whether any proceeding should stand transferred under sub-section (1), then the corresponding Court, tribunal, authority or officer in the other State shall not entertain, or deal with, the proceeding unless and until the question is decided under sub-section (2) by the High Court having jurisdiction to determine it. If a certain proceeding comes up before a Court, tribunal, authority or officer in a State on the footing that it stood transferred to it u/s 125 (1) from the corresponding Court, tribunal, authority or officer of another State, then until a question regarding the validity of the transfer is raised before the Court, tribunal, authority or officer before which of whom the proceeding was pending immediately before 1st November 1956 by the party interested in questioning the transfer of the proceeding, and decided by the High Court under sub-section (2) of section 125, it must be taken that the Court, tribunal, authority or officer to which or whom the Proceeding has been transmitted as a result of section 125 (1), has jurisdiction to entertain and deal with the proceeding. This conclusion is inescapable when the transfer of a proceeding u/s 125 (1) automatic and does not require any order of the Court, tribunal, authority or officer before which or whom it was pending for the transfer, when, the jurisdiction of the corresponding Court, tribunal, authority or officer in the other State to which or whom the proceeding is sent does not depend on any such order of transfer and when it or he has no jurisdiction to decide whether the conditions set out in sub-section (1) for the transfer were satisfied. In this view of the matter, the petitioner's contention that the Industrial Court has no jurisdiction to entertain and decide the reference unless and until there is a decision of the Bombay High Court u/s 125 (2) cannot be accepted.

8. As stated before, learned counsel for the applicant did not attack before us the first part of the award rendered by the Industrial Court overruling the petitioner's objection that u/s 1 (3) of the Act of 1960 a separate notification was necessary for making the amendments effected by sections 20 and 21 of the amending Act 1961 operative. The objection is really unsubstantial. Section 1 (3) of the M.P. Industrial Relations Act, 1960, provided that section 1 and section 112 of the Act shall come into force at once and the State Government may by notification bring all or any of the remaining provisions of the Act into force in respect of any industries or undertakings on such date as might be specified in the notification. Section 1 (3) is plain enough to show that no separate notification was necessary for bringing section 112 into force. It came into force at once when the Act came into force. The rule of construction with regard to effect of amendment is that a statute amended is to be understood in the same sense exactly as if it had read from the beginning thus amended. The

amendment in section 112 made by sections 20 and 21 of the amending Act of 1961 became thoroughly and integrally a part of section 112 itself. The amendments made Were not "part" of any of the remaining provisions of the Act which required a separate notification for bringing them into force u/s 1 (3) of the Act of 1960.

9. For the foregoing reasons, the decision of the Industrial Court contained in part-2 of the award on the question of the transfer of the reference proceeding to it u/s 125(1) of the States Reorganisation Act, 1956, is quashed by the issue of a writ of certiorari. The petitioner's prayer for the issue of a direction restraining the Industrial Court from proceeding with the reference is rejected. It is needless to add that if the petitioner thinks that the transfer of the proceeding to the Industrial Court, Indore, from the Industrial Court, Nagpur, was not valid u/s 125 (1) , it is open to it to obtain the decision of the Bombay High Court on the point by raising a question in the manner laid down in sub-section (2) of Section 125 of the States Reorganisation Act, 1956. It is in the discretion of the Industrial Court whether or not to stay the proceedings before it till the petitioner obtains a decision of the Bombay High Court on the question of the transfer of the reference The petitioner shall pay costs of the respondent No. 2. Counsel's fee is fixed at Rs. 150. The outstanding amount of security deposit, if any after deduct on of costs, shall be refunded to the petitioner.