

(1954) 12 BOM CK 0007

In the Bombay High Court

Case No : O.C.J. Appeal No. 122 of 1954

Commissioner of Labour

APPELLANT

Vs

Associated Cement Companies Ltd.

RESPONDENT

Date of Decision : 02-12-1954

Acts Referred:

Constitution of India, 1950 — Article 19

Criminal Procedure Code, 1898 (CrPC) — Section 480, 482

Evidence Act, 1872 — Section 92

Industrial Employment (Standing Orders) Act, 1946 — Section 1, 10, 11, 12, 13

Citation : AIR 1955 Bom 363 : (1955) 57 BOMLR 367 : (1955) ILR (Bom) 467 : (1955) 1 LLJ 13

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : H.M. Seervai, for the Appellant; S.D. Vimadalal and D.H. Buch, for the Respondent

Judgement

Chagla, C.J.—A short question has been raised in this appeal which however interesting is really not capable of very great elaboration. The petitioners, which are two limited companies, submitted certain draft standing orders to the Commissioner of Labour and the Commissioner certified them with certain, modifications. The petitioners objected to the modifications made by the Commissioner and appealed against his decision.

The Appellate, Authority confirmed the decision of the Commissioner of Labour, and the petitioners applied for a writ of "certiorari" against the decision of the appellate authority, and Coyajee J. quashed the order of the appellate authority, and the Commissioner of Labour has come in appeal.

2. In order to decide the rights of the parties we have to consider and construe a very short, and in our opinion a very simple Act passed by the Indian Legislature being the Industrial Employment (Standing Orders) Act (20 of 1946). The Act is entitled: "An Act to require employers in industrial establishments formally to

define conditions of employment under them." .

The preamble of the Act is in the following terms:

"Whereas it is expedient 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."

Section 1 deals with the application of the Act. Section 2 is the interpretation section, and the only relevant definition which may be referred to is in Clause (g) which defines "standing orders" as rules relating to matters set out in the Schedule, and when we turn to the Schedule it deals with 11 matters which have got to be provided in the standing orders under this Act.

Then comes Section 3 and Sub-section (1) casts an obligation upon every employer of an industrial establishment to whom the Act is made applicable to submit to the certifying officer, who in this case is the Commissioner of Labour, five copies of the draft standing orders proposed by him for adoption in his industrial establishment. Sub-section (2) deals with what provision has got to be made in this draft, and it lays down:

"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."

It is clear from the language used by the Legislature that a duty and obligation is cast upon the employer to make provision for every matter embodied in the Schedule, and also where model standing orders have been prescribed, to bring this draft in conformity with such model, the only qualification being that the conformity with the model should be so far as is practicable.

In other words, unless it is impracticable it is incumbent upon the employer to prepare a draft which is in conformity with the model prescribed. Then Section 4 deals with conditions for certification of standing orders.

Two conditions are laid down which it is necessary to comply with in order that the standing orders should be certified. The first condition is that provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and the second condition is that the standing orders are otherwise in conformity with the provisions of this Act.

It will be noticed that really Section 4(a) deals with the first obligation cast upon the employer u/s 3(2) which is to deal with every matter set out in the Schedule, and Section 4(b) deals with the second obligation cast upon the employer and which is to have the draft conform to the model.

Section 4(b) requires the standing orders to be Otherwise in conformity with the provisions of this Act and one of the clear provisions of the Act is that the standing orders shall, so far as practicable, be in conformity with the model

standing orders. Then there is a proviso to Section 4 which lays down 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.

If the draft submitted by the employer complies with the two conditions laid down in Clauses (a) and (b), then the certifying officer cannot sit in judgment upon that draft and investigate it from the point of view of reasonableness or fairness.

But the proviso only comes into operation after the two conditions laid down in Section 4 have been complied with. It would not be open, for instance, to the certifying officer to say that although the standing orders conform to the model, in his opinion even so the standing orders are not fair or reasonable.

The Act does not permit the employee to challenge a standing order on the ground of its being unfair or unreasonable, but an employee can challenge the standing orders either on the ground that there is an omission in them with regard to any matter included in the Schedule or, which is more important, that any one of the standing orders does not conform to the model standing orders.

If the challenge is made by the employee, that challenge can be repelled by the employer if the employer satisfies the certifying officer that he has not complied with the model standing orders because it was not practicable to do so.

3. Section 5 deals with the procedure that the certifying officer has to follow on receipt of the draft standing orders. He has got to send a copy to the trade union, and where there is no trade union, to the workmen in such manner as he may prescribe. Sub-section (2) of Section 5 confers the power upon the certifying officer after hearing the employer and the employee to 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 the Act and shall make an order in writing accordingly.

Therefore the certifying officer has been given the jurisdiction to modify or add to the draft, but his jurisdiction is limited to seeing that the draft complies with the conditions laid down in Section 4. It is only for that limited purpose that he has the jurisdiction to amend or modify the draft.

Therefore, if he finds that a draft does not conform to the model and if he also finds that it is not impracticable to conform to that model, then it is open to him under this sub-section to amend or modify the draft in order to bring it in conformity with the model standing orders. Sub-section (3) of Section 5 provides for the certifying officer certifying the draft standing orders after making the modifications referred to in Sub-section (2) and to sending copies of it to the employer and to the trade union or other prescribed representatives of the workmen.

4. The next relevant section is Section 8 which provides for the register of standing orders and a copy of all standing orders as finally certified by the

certifying officer has to be filed in a register. Section 9 provides for the posting of standing orders as finally certified. The posting is to be done by the employer on special boards to be maintained for that purpose at or near the entrance through which the majority of the workmen enter the industrial establishment.

Section 10 deals with the duration and modification of standing orders. Under Sub-section (1) except by agreement between the employer and the workmen, the finally certified standing orders shall not be liable to modification until the expiry of six months from the date on which the standing orders came into operation. Sub-section (2) gives the right to the employer who desires to modify his standing orders to apply to the certifying officer, and Sub-section (3) provides that the provisions of the Act shall apply in respect of an application for modification as they apply to the certification of the first standing orders.

Section 11 confers upon the certifying officer the powers of a civil Court and these powers are of receiving, administering oaths, enforcing the attendance of witnesses and compelling the discovery and production of documents, and the certifying officer is to be deemed to be a civil Court within the meaning of Sections 480 and 482, Criminal P.C. Section 12 is somewhat similar to Section 92, Evidence Act.

It introduces a rule of evidence and excludes oral evidence which may add to or otherwise vary or contradict standing orders as finally certified under the Act. In other words the only repository of the standing orders is the register which contains the standing orders as certified by the certifying officer and no other evidence.

Section 13 deals with penalties and procedure and Section 15 confers the power upon Government to make rules with regard to various matters referred to in that section, and the two important subjects are: (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.

5. Now, under this power to make rules the Government has framed model standing orders. The submission of Mr. Vimadalal is that this Act has an extremely narrow and limited objective and that objective is to compel the employer to define with precision the existing conditions of service, to make these conditions known to the workers, and to prescribe a rule of evidence embodied in Section 12.

It is seriously urged by Mr. Vimadalal that if an employer had settled certain conditions of service and those conditions applied to his employees before the Act was applied to him, his only obligation under the Act would be to submit a draft of standing orders embodying those existing conditions and the certifying officer would have no jurisdiction to alter or amend those standing orders even though they may not conform to the model standing orders.

It is urged that it was not the intention of the Legislature to standardize conditions of service. It is further urged that the only right to alter or amend the standing orders is conferred upon the employer, but it does not thereby mean that the employee is without a remedy. According to Mr. Vimadalal the only remedy that the employee has, if he is dissatisfied with any existing condition, is to raise an industrial dispute under the Industrial Disputes Act.

It is further pointed out that there is an express injunction upon the certifying officer against his going into the question of unreasonableness or unfairness of the standing orders and it is said that if the certifying officer were to insist upon the employer submitting standing orders which are in conformity with the model standing orders he would really lie going into the question of unreasonableness or unfairness.

6. It is then urged that the State Government has not been given the power to legislate with regard to what the standing orders should be and by their rule-making power conferred upon them u/s 15 the Govt. cannot insist upon a standardization of conditions of service and cannot impose upon the employer the obligation to fix conditions of service which are different from the conditions which existed at the time when the Act came into force.

Now, there is one patent and salient fact about this Act which no amount of ratiocination or argument can get over, and that is that the Legislature in clear and explicit terms u/s 3(2) has cast an obligation upon the employer to see that the draft of the standing orders which he submits shall as far as practicable conform with the model standing orders.

It is difficult to understand in face of this clear mandatory provision how it is even possible to argue that the employer is not bound, if the existing conditions of service were different, to comply with this obligation. Realising the obligatory nature of the language used by the Legislature, Mr. Vimadalal was driven to suggest that when there are no existing conditions of service it may be that the employer would be bound to submit draft standing orders which should be in conformity with the model standing orders.

Now, that argument really amounts to rewriting Section 3(2) of the Act. In other words, if Mr. Vimadalal's contention were to be accepted, we should alter and amend the clear mandate of the Legislature by providing that the employer need not conform to that mandate except when conditions of service do not exist at the date the Act came into force.

Now, in casting this obligation upon the employer, the Legislature has made no distinction whatever as to whether there are existing conditions of service or there are not. The obligation has been cast upon every employer, and it is futile to suggest that we should so construe Section 3(2) as to make an exception in the case of an employer who has settled certain conditions of service which should apply to his employees.

It may be pointed out that the case of the two companies in the petition is that they had, prior to the Act coming into force, prepared certain standing orders which would apply to the employees of both the companies and therefore according to them there were existing conditions of service by which the employees were bound.

7. Mr. Vimadalal wants us to look at the preamble of the Act and he wants to satisfy us that the Legislature in passing Act 20 of 1946 had a very limited objective in mind, and according to him that limited objective was merely to compel the employers to set out the conditions of service with precision and to enable the employees to know what were the conditions of service by which they were governed.

Mr. Vimadalal says that the Legislature never intended to alter or amend the existing conditions of service, nor to improve them by bringing into line with the model standing orders. According to Mr. Vimadalal that is the function of the Industrial Disputes Act, a separate piece of legislation, where the employee has a right to challenge a standing order on any ground, even including the ground that the standing order is not reasonable or fair.

Now, if ever there was one canon of construction which has been universally accepted, it is this that when you are construing an Act you must first go directly to the Act, and construe the language used by the Legislature. If the language is clear, explicit and unambiguous, then the duty of the Court is to give effect to the intention of the Legislature expressed in the Act and not anywhere else.

It is elementary" to say that the intention of the Legislature must be gathered from the language of the Act itself. It is only when there is ambiguity and when an expression used by the Legislature is capable of more than one meaning, that it is permissible to the Court to look at the preamble, even to look at the title of the Act, in order to find out what was the object with which the Legislature put the legislation upon the statute book or what was the mischief which the Legislature was out to remedy.

We find it really difficult to understand what is the ambiguity in Section 3(2) which requires us to resolve that ambiguity by looking to the preamble. The language used in the Act is very simple; the word "shall" can have only one meaning; the direction to the employer that the draft standing orders must conform to the model standing orders as far as practicable can also have only one meaning.

There are statutes which use abstruse language, which use words of equivocal meaning, but it is difficult to come across a provision of law which has been expressed in simpler, clearer and more emphatic language. It is said that the ambiguity arises by reason of, the fact that it is difficult to reconcile Section 3(2) with the proviso to Section 4.

We do not understand what the difficulty is in reconciling those two provisions.

As we have pointed out, in Section 3(2) no question of fairness or reasonableness arises. The only question to consider u/s 3(2) is whether the draft submitted by the employer conforms to the model standing orders or not. What the proviso to Section 4 deals with is an entirely different subject-matter and the Legislature has issued an express injunction against the certifying officer from sitting in judgment over the draft standing orders submitted by the employer on the ground that any of the orders are not fair or reasonable.

If the employer complies with the model standing orders and he has dealt with every matter set out in the Schedule, it will be incumbent upon the certifying officer to certify the standing orders. If the employer has not complied with the model standing orders, the certifying officer can take the employer to task, but even so the employer may still satisfy the certifying officer that try as he would he could not for practical reasons conform to the model standing orders. If the certifying officer is satisfied with the explanation given by the employer, he must again certify the standing orders.

Now, it is difficult to understand where in all this the question of reasonableness and fairness comes in. It is not open to the employer to suggest that he cannot comply with the model standing orders because they are unfair or unreasonable, nor is it open to the certifying officer to insist upon the employer conforming with the model standing orders on the ground that they are fair and reasonable if it is not practicable for the employer to conform to the model.

Therefore, whether from the point of view of the employer or the certifying officer, the question of reasonableness and fairness of the standing orders does not arise at all. It may also be pointed out that wide powers are conferred upon the certifying officer u/s 11, and the only answer that Mr. Vimadalal can give as to under what circumstances the certifying officer can exercise these powers is that he must consider u/s 4(a) whether the standing orders have dealt with every matter set Out in the Schedule and also whether any existing condition of service has been omitted from the standing orders if the employee makes a grievance about it.

It is difficult to understand why, if an issue can arise before the certifying officer with regard to Section 4(a), no issue can arise with regard to Section 4(b). The certifying officer has as much the right to investigate into the question of every matter set out in the Schedule being included in the standing orders as to see that the standing orders conform to the model standing orders referred to in Section 5(2) of the Act.

8. On the question of the preamble Mr. Vimadalal has referred us to certain authorities, but as we said before, the position in law is perfectly clear and it would be sufficient to refer to the well known authority, Graine on Statute Law at p. 188, where the learned author cites the Earl of Hals-bury in -- "Powell v. Kempton Park Racecourse Co., 1899 AC 143 and the learned Law Lord lays down two propositions which he says are quite clear, one that a preamble may afford

useful light as to what a statute intends to reach, and the other that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment.

The learned author also sounds a very useful note of warning and at the same page he says:

"..... .There is, however, another rule or warning which cannot be too often repeated, that you must not create or imagine an ambiguity in order to bring in the aid of the preamble or recital."

We are afraid that Mr. Vimadalal in this case has been creating or imagining an ambiguity when no such ambiguity exists, in order forcibly to bring before us the terms of the preamble so that we should construe sections not in the light of their own language, not according to the intention used by the Legislature and expressed in the sections, but in the light of the preamble. But even when we turn to the preamble, there is not much in that preamble which helps Mr. Vimadalal.

It is true that it refers to only two objects which the Legislature wants to achieve by passing this Act. One is to require employers in industrial establishments to define with sufficient precision the conditions of employment under them, and the second is to make the said conditions known to workmen employed by them. It with be noticed in the first plate that the preamble does not use the expression "existing conditions of employment".

It is rather Curious that although Mr. Vimadalal throughout his argument has laid emphasis on existing conditions of service, Act 20 of 1946 neither in the preamble nor in any section thereof has used that expression at all. But as Maxwell on Interpretation of Statutes, 10th Edn., at p. 46, rightly points out; ".....It is not unusual to find that the enacting part is not exactly co-extensive with the preamble."

The learned author says that in many Acts of Parliament, although a particular mischief is recited, the legislative provisions extend beyond it. Therefore, even though the particular mischief which is recited in the preamble is that employers do not define with precision the conditions of employment and the employees do not know the conditions, when we turn to the enactment the Legislature has proceeded to deal with another important mischief and that is that the terms of service given to the employees are not such as the Legislature thinks in modern times the employee is entitled to, and that is why the Legislature has prescribed model standing orders and has insisted upon the employer conforming to that model unless it is not practicable to do so.

Therefore it would be wholly erroneous to judge of the mischiefs aimed at by the Legislature merely from the fact that only some of the mischiefs are enumerated in the preamble and not all of them. If the language of the enactment is clear and that language leads the Court only to one conclusion that the Legislature

was aiming to remove other mischiefs besides the mischiefs referred to in the preamble, then the Court must give effect to the clear language of the enactment and help the Legislature to remove the mischiefs" indicated.

9. Mr. Vimadalal also at one time threatened to enlighten us by what the Law Member had said introducing this Bill in the Legislature. With all respect to the Law Member, we prefer to construe an Act of Parliament of the Central Legislature by the language used by the Legislature and not by what the Minister introducing the Bill thinks the Legislature is going to do or should do. Mr. Vimadalal told us that he had the high authority of the Supreme Court in support of this proposition. When we turn to the Supreme Court, the passage relied upon is in -- Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , and Fazi Ali J. says this :

".... .On the other hand, how important the doctrine of burden of proof is and how much harm can be caused by ignoring it or tinkering with it, will be fully illustrated by referring to the proceedings In the parliament in connection with the enactment of the Act, where the circumstances which necessitated it are clearly set out. I am aware that Legislative, proceedings cannot be referred to for the purpose of construing an Act or any of its provisions, but I believe that they are relevant for the proper understanding of the circumstances under which it was passed and the reasons which necessitated it."

Now, it is perfectly true that if it is relevant and material to consider the circumstances under which an Act was passed and the reasons which necessitated it, then the Court may, with great caution we may add, look at the debate in Parliament or in the Legislature. But this principle would only apply where a question arises for the decision of the Court "do hors" the Act or the statute. For instance, if the Court is considering Article 19 of the Constitution and the question that it has got to decide is whether the restriction imposed by the Legislature is a reasonable restriction or not, the Act passed by the Legislature can throw no light on that question.

Therefore it would be open to the Court not only to consider the affidavits made by Government to explain what the nature of the restriction was, not only to consider the affidavits made by the petitioner challenging the restriction as unreasonable, but to look also at the speeches made in Parliament which would go to show why the Act was necessary and under what circumstances it was passed.

This is also what is said in a later case of the Supreme Court in -- The State of West Bengal Vs. Subodh Gopal Bose and Others, . In that case Das J. expressly says that the High Court did not consider many matters which would have helped it to come to the right conclusion as to the reasonableness of the restrictions imposed by the impugned section, and he says that the statement of objects and reasons should have been placed before the High Court.

10. Reliance is placed on two decisions of two High Courts which have taken the

view contended for by Mr. Vimadalal. The first is a judgment of the Allahabad High Court and it is a judgment of a single Judge Mr. Justice Wanchoo. The case is reported in -- Electric Workers Union Vs. The U.P. Electric Supply Co., . Wanchoo J. accepted the argument of the employer that the provision in Section 3(2) is merely to help and guide the employers as to how they should frame the draft standing orders; it has nothing to do with the power of the certifying officer to substitute the model standing orders for the draft standing orders.

With great respect to the learned Judge, He has overlooked the language of Section 3(2) which is imperative in its character. He has also overlooked the provisions of Section 4(b) which requires that every draft standing order shall be in conformity with the provisions of the Act which includes Section 3(2). The learned Judge also observes that the certifying officer cannot make any changes in the provisions of the draft, where those provisions are clear, on the ground that the provisions made in the draft are not reasonable and fair and that other provisions which may have been provided in the model standing orders should be substituted for them.

Again, with very great respect, the approach of the learned Judge, in our opinion, is erroneous. When the certifying officer insists upon the employer bringing his draft standing orders in accordance with the model, he does not do so on the ground that the draft standing orders" submitted by the employer are unreasonable or unfair; he docs so in order that the statutory obligation upon the employer u/s 3(2) should be discharged by him.

In other words, he insists upon the draft standing orders being amended in order that they should be in conformity as far as practicable with the model standing orders, which is exactly what the Legislature has provided in Section 3(2). We are, therefore, unable to agree with the view of the provisions of the Act taken by the learned Judge of the Allahabad High Court.

11. The other decision relied upon is the decision of the Madras High Court reported in -- Sri. C. Baktavatsalu Nayudu, Industrial Tribunal, Madura at the Commercial Tax Officer Vs. The Chrome Leather Co. Ltd. and Another, . The question with regard to the construction of this Act did not directly arise before the Madras High Court. The question that really arose was whether an employee was entitled to raise an industrial dispute with regard to a standing order which gave effect to the existing right of the employee, and it was in this connection that the Madras High Court looked at the provisions of the Act which we are considering, and Mr. Vimadalal has relied on the judgment of Horwill J, where the learned Judge says (p. 861) :

"..It is thus seen that the purpose of this Act is very circumscribed and has, for its sole purpose, the clarification of the existing contract between the parties & affords no machinery at all for the changing of existing conditions in pursuance of an industrial dispute."

We may point out, again with respect to the learned Judge, that in expressing

this opinion the learned Judge has not referred to Section 3(2) of the Act at all. We are sure that if the learned Judge had referred to that section, he would have come to the conclusion that the purpose of the Act was not so circumscribed as the learned Judge thought it to be.

12. There is only one other minor matter to which reference, might be made and that is that the decision of the Commissioner of Labour, the certifying authority, which has been confirmed by the appellate Court, has also been challenged on a slightly different ground from the one on which the other changes made by the Commissioner are challenged by the petitioner. It seems that the model standing orders in Clause 22 set out the acts or omissions on the part of an employee which will amount to misconduct and one of the acts is going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof.

The draft standing orders submitted by the petitioners added a further act which would constitute misconduct on the part of the employee and that act was striking either singly or with other workers without giving 15 days previous notice. The intention of the employer by introducing this new ground was to make even a legal strike misconduct on the part of the employee if he did not give 15 days" previous notice.

Both the Commissioner of Labour and the appellate Court have struck out from the draft this particular additional act of misconduct, and Mr. Vimadalal's contention is that this is not a case of not conforming to the model standing orders but this is a case where the standing orders are silent and it is open to the employer to deal with a matter which has not been dealt with by the model standing orders, and according to Mr. Vimadalal in rejecting this additional ground of misconduct the Commissioner of Labour has really held that it is not fair or reasonable on the part of the employer to make a legal strike on the part of the employee a ground of misconduct.

Mr. Vimadalal would be right if the decision of the Labour Commissioner or of the appellate authority turned upon the question of fairness or reasonableness. As we have already pointed out, the certifying officer and equally the appellate authority had no jurisdiction to go into the question of fairness or reasonableness of any standing order.

But in our opinion it is clear that when the model standing orders laid down certain specific acts or omissions as constituting misconduct and if the employer adds to those cases, he is clearly not conforming to the model standing orders. It was open to the employer to point out to the authorities that it was not practicable in his case to conform with regard to those matters to the model standing orders. But no attempt to do so has been made and the only ground taken up by the employer is that the decision of the authorities is without jurisdiction.

13. In our opinion, therefore, both the decision of the Commissioner of Labour and the appellate authority was a decision with jurisdiction. It may hardly be said

that we are not concerned with the merits of the decision. The ground on which Coyajee J. quashed the order of the appellate authority was that it was an order without jurisdiction.

Mr. Vimadalal has attempted to support the order of the learned Judge also on the same ground, and his contention really has been that it is not competent to the certifying officer or the appellate authority to alter or amend the draft standing orders submitted by the employer if those standing orders embody the existing conditions of service even though they do not conform to the model standing orders.

The view we take is that not only the certifying officer and the appellate authority has jurisdiction to alter or amend the standing orders which are not in conformity with the model standing orders, but it is incumbent upon these authorities to insist upon the standing orders conforming to the model standing orders unless the employer can satisfy them that it is not practicable for him to do so.

14. The result, therefore, is that the order of the learned Judge below will be set aside and the petition will be dismissed and the appeal will be allowed. The learned Judge below has made no order as to costs of the petition. We see no reason why we should interfere with that order. With regard to the costs of the appeal respondents 1 and 2 must pay the costs of this appeal both of the appellant and of respondent 4.

15. Appeal allowed.