
(1999) 11 RAJ CK 0015
In the Rajasthan High Court
Case No : Writ Petition No. 914 of 1989

Director, Central State Farm	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 86 FLR 116 : (2000) 3 LLJ 1477 : (2000) 1 RLW 562 : (2000) 2 WLC 391

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed against the impugned award dated August 14, 1989 passed by the Labour Court in Reference Case No. 59/1986, by which an award has been in favour of respondent-workman and direction has been issued to the respondents to reinstate him with all consequential benefits i.e. back wages and continuity in service.

2. The fact and circumstances giving rise to this case are that respondent-workman, who had been working with petitioner, was removed from service vide order dated March 20, 1985. On his application, reference under the provisions of the Industrial Disputes Act, 1947 (for short, "the Act") was made on July 24, 1986 as to whether the termination of services of respondent-workman vide order dated March 20, 1985, was in consonance with the provisions of the Act and if not, to what relief he was entitled for?

3. The Award was made by the Labour Court on August 28, 1989 (Annexure 12) giving the respondent-workman all the reliefs, i.e. reinstatement and full back wages etc. Hence this petition. Petitioner has taken a specific ground that the Labour Court erred in not appreciating the documents/evidence showing that the impugned order of removal/termination dated March 20, 1985 had been

withdrawn by the petitioner vide order dated March 25, 1985 and the respondent-workman had been taken back on work on March 26, 1985 and there was no cause of action on which the Labour Court could have given the award.

4. Respondent-workman has vehemently contended before the Labour Court as well as before this Court that it was merely a pretext to escape the liability arising out of the award. The order withdrawing the termination order had never been communicated to the respondent-workman and even if there was such an order, the workman had never been employed. Several other legal issues have also been raised.

5. Mr. Lodha has urged that the findings recorded by the Labour Court are perverse and warrant review/re-appreciation of evidence by this Court. In addition to this submission, he has also raised the other legal issues, namely, (i) as the farm is involved in agricultural activities, the same cannot be held to be an "industry" within the meaning of Section 2(j) of the Act; (ii) the Government of Rajasthan was not the "Appropriate Government" within the meaning of Section 2(a)(i) of the Act and, thus, not competent to make a reference to the Labour Court as the petitioner company may be an "industry" carried on by the authority of the Central Government"; and (iii) there was no cause of action for making a reference to the Labour Court as the impugned order of termination had been withdrawn by the Appellate Authority.

6. Section 2(j) of the Act defines "industry" in an elaborate way and it means any business, trade, undertaking, manufacture or calling of employers etc. The said definition was sought to be amended by the Amendment Act in 1982 and it clearly provides that an "industry" does not include any "agricultural operation" except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as referred to in the foregoing provisions of this "clause) and such other activity is the predominant one. However, this amended definition has not been enforced.

7. Mr. Lodha has placed reliance upon various judgments in support of his submission that petitioner company cannot be held to be an "industry". In Thiru Arooran Sugars Ltd. Vs. Industrial Tribunal and Others, , the Hon"ble Court has held that the predominant factor to determine whether a particular establishment is an "industry" within the meaning of Section 2(j) of the Act, is the nature of the interrelated activities and if the same cannot be associated with the agricultural activity in the company, the same has to be held an "industry". The same view has been taken by the Madras High Court in its judgment dated August 1, 1996 delivered in Writ Petition No. 10524/1987, the Management of State Farm Corporation of India Ltd. v. the Presiding Officer, Labour Court. In D.N. Banerji Vs. P.R. Mukherjee and Others, and Harinagar Cane Farm and Others Vs. State of Bihar and Others, , it has been held that whether a company is an industry or not, would depend upon the factor as how the agricultural work is being organised. While deciding the case in Harinagar Cane Farm (supra), the Hon"ble Supreme Court also placed reliance upon its earlier judgment in The Ahmedabad

Textile Industry"s Research Association Vs. The State of Bombay and Others, , wherein the Court has held that the activity of the research association amounts to an "industry" because the manner in which the association had been organised showed that the undertaking as a whole was in the nature of business and trade.

8. It has been held time and again that an establishment may be held to be an industry within the meaning of Section 2(j) of the Act provided it is not performing the regal and sovereign functions and the activities are of such a nature which cannot be carried on by a private citizen or a group of private citizens. Vide The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, ; Ahmedabad Textile Industries Research Association (supra); and Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, .

9. The test to be an "industry" has been laid down as under:

"Thus, the manner in which the activity in question is organised or arranged, the condition of co-operation between employer and employees, necessary for its success and its object to render material service to the community should be regarded as some of the features which could be distinctive of the activity to which Section 2(j) applies."

10. In Hospital Mazdoor Sabha (supra), the Court explained as under:

"Such an activity generally involved the co-operation of the employers and the , employees; and its object is the condition of human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure."

11. The issue has also been considered in Bombay Telephone Canteen Employees" Association, Prabhadevi Telephone Exchange Vs. Union of India and another, , General Manager, Telecom Vs. A. Srinivasa Rao and Others, and All India Radio v. Santosh Kumar and Anr. AIR 1998 SC 951 : 1998 I LLJ 817 , wherein it has been held that where the activity was not of such a nature which cannot be carried out by private citizens, the establishment may be held to be an "industry" provided it fulfils the other requirements.

12. The activities of the petitioner are required to be examined in view of the above referred legal proposition. The Memorandum of Association of the petitioner company provides that the main object of establishing it is to setup and run agricultural farms for the production primarily of seeds of food grains, oil seeds, vegetables and fruits as well as studying of these crops in various parts of the country; to setup poultry, sheep, pigs and other cattle breeding farms; to undertake development, reclamation and improvement of lands, even the land belonging to private parties on payment or on full cost of these operation to carry on all or any of the business of farmers, producers, processors, exporters, packers and importers of all agricultural produce of all kinds including dairy, poultry, garden and horticulture produces; to carry on business of keepers,

producers, importers, exporters and traders of poultry and catties of all kind etc. etc. The activities mentioned therein are in such a nature which can be held to be regal and sovereign functions of the State or which cannot be alienated in favour of private citizens or there is any inhibition under any law to carry out such activities by private citizens or group of citizens.

13. Thus, in view of the above, it is held that the petitioner carries on the agricultural operations in an organised manner like a business or trade and, therefore, is an "industry" within the meaning of Section 2(j) of the Act

14. Section 2(a) of the Act defines the "Appropriate Government" for the purpose of making reference. The definition of appropriate government is an illustrative one and includes large number of establishments/corporations. For the purpose of making reference by the Central Government, the determining factor has been provided in the first sentence of Clause (1), which provides that "in relation to any industrial dispute, concerning any industry carried on by or under the Authority of the Central Government."

15. Mr. Lodha has submitted that as the petitioner company is directly under the control of the Central Government, the only "appropriate government" to make the reference of the dispute is the Central Government and, therefore, the reference made by the Government of Rajasthan was bad and the award made in pursuance thereof is inconsequential. The issue was considered by this Court in relation to the petitioner farm itself in Kishanlal Sharma Vs. Prem Kishore, , wherein after considering large number of judgments, the Court held as under:

"It is an admitted position that the Central Government is not carrying on directly the industry. The company is not a department of the Central Government. The company is a juristic person and is carrying on the business... The word "authority" must be construed according to its ordinary meaning and, therefore, must mean a legal power given by one person to another to do an act. The words "under the authority of" mean pursuant to an authority such as where an agent or servant acts under such authority of his principal."

16. And in view of the above, this Court held that as the petitioner farm was a Limited Company registered under the Indian Companies Act, 1956, it cannot be held to be an "industry" directly run by the Central Government and, therefore, the Rajasthan Government was the "Appropriate Government" for the purpose of making the reference. The said judgment of this Court makes it clear that the Award has been made in pursuance of a valid reference by the appropriate government. Judicial propriety require that unless there are compelling circumstances or the judgment of the Apex Court or of a Larger Bench is/are there, the single Judge should follow the judgment of the The Secretary, Finance And Planning Department and Others Vs. Salada S Rao and Another, .

17. In Hindustan Aeronautics Ltd. Vs. The Workmen and Others, , the Hon"ble Supreme Court considered its earlier judgments on the issue, particularly in

Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , wherein the Court had held that on the ground that it was a case of a Government Company carrying on an industry where private sector undertakings were also operating and where it was not an industry which the Government alone was entitled to carry on to the exclusion of private operators, the distinction so made was of no consequence. The Court further observed as under:

"The "Appropriate Government" in Section 2(a)(i) certain statutory corporations were incorporated in the function to make the Central Government an Appropriate Government in relation to the industry carried on by them. But no public company, even if the shares were exclusively owned by the Government, was attempted to be roped in the said definition....The other leg of the argument to challenge the competency of the West Bengal Government to make the reference is also fruitless....For the purpose of the Act and on the facts of this case, the Berrackpore Branch was an industry carried on by the company as a separate unit. The workers were receiving their pay package at Berrackpore and were under the control of officers of the company stationed there. If there was any disturbance of industrial peace at Berrackpore where a considerable number of workers were working, the Appropriate Government concerned with the maintenance of industrial peace was the West Bengal Government. The grievances of the workmen of Berrackpore were their own and the cause of action in relation to industrial dispute in question arose there. The reference, therefore, for adjudication of such a dispute by the Government of West Bengal was good and valid."

18. In D.P. Kelkar Vs. Ambadas Keshav Bajaj and Others, a Division Bench of Bombay High Court held that the question as to whether a particular industry is carried on by or under the authority of the Central Government, is a mixed question of law and facts and for determining the true nature, the activities carried on by an industry/ establishment have to be examined.

19. In Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , the Hon"ble Apex Court considered a catena of its earlier decisions, particular in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Food Corporation of India Workers" Union Vs. Food Corporation of India and Others, , and held that the "Appropriate Government" in such a case would be the Central Government. However, that was a case where the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, were involved.

20. In Hindustan Machinery & Tools (supra), the Hon"ble Supreme Court had held that a corporate company, has a separate existence and law recognises it as a juristic person separate and distinct from its members. "This new personality emerges from the moment of its incorporation and from that date the persons subscribing to its Memorandum of Association and others joining it as members, are regarded as a body-corporate or a corporation aggregated and the new person begins to function as an entity." In fact, in the said case, the issues

involved had been as to what was the meaning of the word "employer" as given in Section 2(g) of the Act, 1970, and the Court held that the definition of "employer" suggests that an industry carried on by or under the authority of the Government, which means either the industry carried on directly by the Department of a Government; such as the Post & Telegraph or the Railways or one carried on by such department through the instrumentality or an agent. In the instant case, the petitioner cannot claim parity with the department of Post and Telegraphs or Railways, nor it is run by an agent of the Central Government.

21. In Food Corporation of India Workers' Union (supra), the Hon"ble Supreme Court had held that an industry carried on by or under the authority of the Central Government would mean "pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master." In the instant case, the situation is entirely different as the Farm is directly managed by the company itself and not by the servant or agent of the Central Government.

22. In Air India Statutory Corporation (supra), the Hon"ble Supreme Court compared the said Corporation with a statutory authority and it again described "employer" which means who is running the industry through an agent or servant under or pursuant to the authority of the Central Government.

23. In Bhuri Nath and Others Vs. State of Jammu & Kashmir and Others, , the Hon"ble Supreme Court held as under:

... .The expression "Corporation owned and controlled by the State" clearly indicates that the control should be total control which is as good as ownership of the corporation of the State. The ownership of the acquired property is through its corporation owner by the State. The corporation is only a cloak. The State should be able to deal with the property transferred to the corporation by virtue of its control as if it deals with the property transferred to itself for the corporation or the corporation is only a conduit pipe itself to use the property as if it is owned by itself. The control of the State.... should have nexus with the property transferred to the Corporation."

24. Similarly in E M/S. Electronics Corporation of India Ltd. Etc. Etc. Vs. Secretary, Revenue Department Govt. of Andhra Pradesh and Others Etc. Etc., , the Constitution Bench of the Hon"ble Supreme Court has held that the companies which are incorporated under the Companies Act, have a corporate personality of their own, distinct from the Government of India. The land and buildings in question in that matter were vested in and owned by the company. The Government of India only owned the share capital.

25. The Apex Court further placed reliance on its earlier judgment in Rustom Cavasjee Cooper Vs. Union of India (UOI), , wherein it had been held that a share-holder has merely an interest in the company arising under its Articles of Association, measured by a sum of money for the purpose of liability and by a share in the distributed profit but the company remains a separate and distinct

legal person from its individual members.

26. If the facts and circumstances of the instant case are examined in view of the above decisions, one reaches the inescapable conclusion that the petitioner company is an entity and has no character like Post & Telegraphs or Railways, nor it is run by the agent or servant of the Central Government and, therefore, the State of Rajasthan is an "Appropriate Government" and competent to examine the reference and I see no reason to take a view contrary to the view taken by this Court earlier in the case of present petitioner itself.

27. The other two issues pertain to factual controversy. It has been submitted by Mr. Lodha that the findings recorded by the Labour Court are perverse and warrant review/ re-appreciation of evidence by this Court. This Court has very limited scope of interference in exercise of its powers under Article 227 of the Constitution as per the law laid down in *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, wherein it has been held that even the errors of law cannot be corrected in exercise of revisional jurisdiction under Article 227 of the Constitution sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For intervention, there must be a case of flagrant abuse of fundamental principles of law or justice or where order of the Tribunal etc. has resulted in grave injustice. Vide Constitution Bench judgments of the Apex Court in *D.N. Banerji v, P.R. Mukherjee (supra)* and *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. Vide *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, *Rukumanand Bairoliya Vs. The State of Bihar*, *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, *Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives*, *Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others*, *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, and *Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others*.

28. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them Vide: *Mrs. Rena Drego Vs. Lalchand Soni, Etc.*, *Mrs. Rena Drego Vs. Lalchand Soni, Etc.*, *Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja*, and *M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another*. Unless the findings are patently erroneous and de hors the factual and legal position on record, exercising the power under Article 227 of the Constitution may not be justified and in that eventuality disturbing the findings of facts would

amount to jurisdictional error. Vide: Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, . Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling reappreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. Union of India and Others Vs. Himmat Singh Chahar, . Similarly, in Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the Apex Court held that there is no justification for the High Court to substitute its views for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

29. The main averment of the petitioner had been that as the termination order dated March 20, 1985 had been withdrawn by the Appellate Authority, there was no cause of action for the Appropriate Government to make a reference and this issue had been agitated before the Labour Court but the Labour Court did not appreciate it in correct perspective. In the affidavit (Annexure 10) filed by the respondent-workman before the Labour Court, it is mentioned that after revocation of the termination order dated March 20, 1985, his leave had been sanctioned upto March 24, 1985 but when he presented himself for duty on March 25, 1985 before the Security Officer, he was not taken on work. Thus, it makes it abundantly clear that the order of termination dated March 20, 1985, terminating the services of the respondent-workman had been withdrawn and it was in his knowledge. In his cross-examination before the Labour Court, the respondent-workman has admitted that he did not ask the Security Officer to give him anything in writing and when he made an application before the Appropriate Authority to make a reference, he had forgotten to mention this particular fact. Even before the Conciliation Officer, this issue was not raised. The petitioner establishment had filed an affidavit (Annexure 11) of the Security Officer stating that the workman did not appear before him on March 25, 1985 or March 26, 1985. He has further stated that the workman was directed by the Authority concerned even on March 27, 1985 to attend the duty and the workman was also given a notice on April 1, 1985 to attend the duty within a period of seven days. But one thing is clear from the record that the Conciliation Officer, in his report dated February 13, 1985 while considering the issue of withdrawal of the impugned order dated March 20, 1985, has recorded a categorical finding of fact that the establishment had made an offer to allow the workman to join the duty with a clear-cut stipulation that he will not be given the benefit of continuity in service. Therefore, whatever may be the meaning of the orders passed by the Authority concerned from time to time, once the Authority became adamant that the workman shall not be given the benefit of continuity in service, the order passed in appeal on March 25, 1985 withdrawing the order of termination dated March 20, 1985, becomes meaningless and inconsequential the establishment can not be permitted to take benefit of these technicalities and cannot further be permitted to take benefit of its own wrong. The Labour Court has considered this aspect in correct perspective and no fault can be found with

the award on this count.

30. The case also requires to be considered in the light of the post-award developments as the respondent-workman did not join the company after the award was made, nor he made any application u/s 17-B of the Act for getting the benefit of the Award and, thus, in such a situation he may be entitled only for the relief of compensation in lieu of reinstatement. The respondent-workman had been appointed on February 28, 1984 and his services were terminated on March 20, 1985. The reference was made on July 24, 1986 and the Award was made on August 14, 1989. Considering the special facts and circumstances of this case, he may be entitled to 50% of the back wages from the date of reference till the date of Award, i.e. for a period of three years.

31. Thus, the Award is modified to the extent that the respondent-workman shall be entitled for 50% of the back wages for the said period with interest @ 10% (ten per cent) per annum. With this modification of the Award, the petition is dismissed. There shall be no order as to costs.