
(1999) 10 AHC CK 0136

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 33093 and 38838 of 1998

Electro Steel Castings Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 25, 250, 6V, 6W

Citation : (2000) 1 UPLBEC 651

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.K. Phaujdar, J.—The present matter was heard alongwith 3, more writ petitions bearing Nos. 33093 of 1998, 13086 of 1999 and 4333 of 1999. The dispute in question is between the Engineering Karmgar Union (in short function) and M/s. Electro Steel Casting Ltd., (in short "employer").

2. The present writ petition (38338 of 1998) has been initiated by the union against a notice dated 21.9.1998 intimating closure of the employer's industry at Ghaziabad w.e.f. 23.9.1998. On the presentation of the writ petition on 23.11.1998, the Court directed issuance of notice on the employer and stayed the operation of the disputed notice.

3. Writ Petition No. 4333 of 1999 was filed by the employer against the orders dated 26.10.1998, 10.12.1998 and 5.1.1999 recorded by the Dy. Labour Commissioner, Ghaziabad. These orders are in Annexures 9, 14 and 15 to writ petition. By the first mentioned order, the Dy. Labour Commissioner had issued recovery certificate and requested the Collector, Ghaziabad to proceed according to law for recovery of the unpaid dues of the employees after the illegal closure. The Second mentioned order was also issuance of a recovery certificate with a similar request to the Collector and so was the third mentioned order. This writ petition was filled on 31.1.1999 and was directed to be put-up alongwith Writ

Petition No. 38838 of 1999 by an order dated 5.2.1999. A caveat was filed on behalf of the Union in this writ petition. After hearing the parties, an order was recorded on 10.2.1999 by Hon"ble O.P. Garg, J. staying further proceedings of recovery against the employer.

4. Writ Petition No. 13086 of 1999 was again filed by the employer challenging an order dated 4.2.1999 (Annexure-8 to this writ petition) whereby the Labour Commissioner had issued a recovery certificate on 4.2.1999 requesting the Collector, Ghaziabad to recover the amount from the employer. On the presentation of this petition on 5.4.1999, appearance was caused on behalf of the Union and Hon"ble O.P. Garg directed to stay of further proceeding against the employers.

5. The last mentioned Writ Petition No. 33093 of 1998 is against the instance of the employers challenging the notice dated 20.6.1998 hereby the Assistant Labour Commissioner, Lohiya Nagar, Ghaziabad had issued notice to the employers to show cause against the illegal closure without obtaining prior permission from the relevant authorities. It appears that the notice was answered and a plea was taken that the employers were covered not by Section 25O of the Industrial Disputes Act (Central) but by the provisions of Section 6-W of the U.P. Industrial Disputes Act. Upon this writ petition, an order was passed directing issuance of notice to the respondents and staying further operation of the notice dated 26.9.1998. This writ petition was filed on 12.10.1998.

6. From the date of filing, it appears that the last mentioned writ petition was really the first in point of time wherein the notice to show-cause was under challenge and under an order of the Court, the operations of that notice was stayed. The other two writ petitions by the employers were directed against the actions taken pursuant to recovery of arrears of wages and one by the union, as indicated above, was against the notice of closure.

7. A preliminary objection was taken on behalf of the employers in respect of the writ petition by the union on the ground that a writ would not lie against a Private party and the objection was met with an argument that if it was in closure violation of statutory duty, a writ petition would always lie. We have before us a particular employer who had declared a closure of the industry affecting several workmen and it is alleged that there had been violation of statutory duty and in fact for this very allow violation, 3 more writ petitions have been entertained at the instance of the employer. It is, therefore, desirable that the writ petition of the union be also heard notwithstanding the preliminary objection.

8. The bar facts that are necessary for determination of all the writ petitions may now be stated. There is no denial that the employers run an industry under the name and style Electro Steel Casting Pvt. Ltd. at Ghaziabad and according to the allegations more than 100 workmen were employed in that industry. It is also not disputed that by a notice dated 21.9.1998, the employers declared closure of

the industry w.e.f. 23.9.1998. This closure is said to be against the provisions of law and on that presumption, the Labour Authorities of Uttar Pradesh have proceeded to issue show-cause notice and recovery certificate against the employers for the unpaid wages to the workmen during the period of the so called closure.

9. The law on the point of closure is covered by Section 25O of the Industrial Disputes Act, 1947 being Central Act No. 14 of 1947 as amended from time to time. Section 25O is covered in Chapter V-B of the Industrial Disputes Act and the present Section 25O got his present shape by amending Act No. 46 of 1982 which was brought to affect from a prospective date 21.8.1984 as per Section 14 of the Amending Act. Chapter V-B starts with Section 25K making provisions of that chapter applicable only to such industrial establishment in which not less than 100 workmen were employed on an average per working day in the preceding 12 months. Section 25O gives the procedure for closing down an industry and states that an employer who intends to close who an undertaking of an industrial establishment to which Chapter V-B applies shall in the prescribed manner apply for prior permission at least 90 days before the date of the intended closure to the appropriate Government stating clearly the reasons for the intended closure. Sub-section (6) of this Section indicates that where no application for permission is made as required the closure of the undertaking shall be deemed to be illegal and from the date of closure the workmen shall be entitled to all the benefits under any law to which they were otherwise entitled if the undertaking had not been closed down. For the State of Uttar Pradesh there is a State Legislation under the name of Uttar Pradesh Industrial Disputes Act, 1947 (U.P. Act No. 28 of 1947). The subject-matter of this legislation and the Central Legislation as quoted above are in the concurrent list and it is within the competence of Parliament as also the State Legislature to frame laws on the subject. A difficulty would arise if there be any repugnancy between the provisions of those Acts and the repugnancy is to be resolved by falling upon one of the legislations in terms of Article 254 of the Constitution. The repugnancy may now be indicated u/s 25O of the Industrial Disputes Act (Central) was brought into existence by the amending Act No. 46 of 1982 giving prospective effect to the provision from 21.8.1984. In the State Act also there is a provision for closure of an industrial establishment. Section 6-W gives the procedure for closing down and undertaking and it states that an employer who intends to close down and industrial establishment shall in the prescribed manner apply for prior permission at least 90 days before the date, on which intended closure is to become effective, to the State Government stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner. This language is at par with the provisions of Section 25O of the Central Legislation. Section 6-W of the State Legislation is covered by Section 6-W therein and it states that Section 6-W would apply to an industrial establishment pertaining to an industry other than an industry referred to sub-clause (i) of

clause (a) of Section 2 of the Central Legislation in which not less than 300 workmen were employed at an average per working day for the preceding 12 months. The repugnancy lies in the number of workmen engaged to make the law on the point of closure applicable to an industrial undertaking. Chapter V-B of the Central legislation makes the provision of closure applicable to an industry in which not less than 100 workmen were employed at an average per working day for the preceding 12 months. For resolving this repugnancy, we must look to the dated of enactment of the relevant provisions and, as aforesaid, to the provisions of Article 254 of the Constitution. Suming the number of workmen to atleast 100 for application of Chapter V-B of the Central Legislation was made by the Act No. 46 of 1982 which has been given effect from 21.8.1984 and the provisions of Section 6-V of the State Act through which Chapter 6-W has been applicable in the State was introduced by State Act No. 26 of 1983 and has been given effect from 3.8.1983. It is to denied that this amending Act 26 of 1983 as also the Industrial Disputes Act had received assent of the President and the Governor General respectively.

10. Article 254 of the Constitution speaks that if there be any inconsistency between the laws made by Parliament and those made by the State Legislatures in a matter covered in the concurrent list then, subject to clause (2), the law made by the Parliament shall prevail and the State Legislation to the extent of repugnancy shall be void. Clause (2) of this Article, however, states that were a law made by the legislature by a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of President and has received his assent shall prevail in the State. It further provides that nothing in this clause shall prevent the Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending varying or replacing the law so made by the Legislature of the State.

11. In view of the admitted facts that the State Legislation in the instant case had received the assent of the President and was made subsequent to the Central amendment, the only question we are confronted with is whether the Central Law given effect to in 1984, although made in 1982, would be deemed to be a second legislation to repeal the State law.

12. In this context reference was made to a decision of 3 Hon"ble Judges of Supreme Court in the case of Pt. Rishikesh and Another Vs. Salma Begum (Smt), . This very question as posed above was under consideration by the Supreme Court. It was observed that repugnancy for inconsistency depends upon when the laws are "made" and not when the laws are "commenced". The law is made by a Parliament or State Legislature as soon as the assent was given to it by the President or Governor and the Act is published in the Official Gazette.

Under the above interpretation Section 250 of the Central Legislation was made

in 1982 notwithstanding its being given effect in 1984. The State Legislation was made in 1983 and there was no further legislation by Parliament to affect the State Legislature in any manner to be covered by the proviso to clause (2) of Article 254 of the Constitution.

Upon all these considerations, it is held that there is a repugnancy between Section 6-W of U.P. Industrial Disputes Act read with Section 6-V thereof and Section 25O read with Section 25K of the Industrial Disputes Act, 1947 and the State Legislation having been made subsequent to Central Legislation and the State Legislation having the assent of the President, it will be applicable in the State of Uttar Pradesh notwithstanding the provisions of Section 25K and Section 25O of the Central Legislation. As a logical corollary, it must be held that for closure of an industrial establishment where 300 workmen were not working will not be required to give the requisite information to the State Government as per Section 6-W and despite an objection by the employers, the local Labour Law Enforcement Authorities failed to appreciate this point and had not only issued, a show-cause notice but had also taken up follow up actions by way of issuance of recovery certificates.

13. The petition in which his notice of closure without compliance of Section 6-W has been challenged by the union, must, therefore, fail and Writ Petition No. 38838 of 1998 stands dismissed.

14. The writ petitions by the employers challenger the show-cause notice and the recovery proceedings thus based on wrong application of the law. The impugned orders in Writ Petition Nos. 33093 of 1998, 13086 of 1999 and 4333 of 1999 stand quashed.

15. All the Writ Petitions in this bunch are, thus, disposed of.