
(1996) 08 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 2476 of 1984

Gajanan Maharaj Sansthan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1998) 3 LLJ 831

Hon'ble Judges : B.V. Wahane, J;A.A. Desai, J

Bench : Division Bench

Advocate : A.P. Patil, for the Appellant; A.B. Chaudhari, R.B. Pendharkar, Amicus Curiae, for the Respondent

Judgement

A.A. Desai, J.

1 The petitioner Charitable Trust posed a question as to, whether the Central Government within its discretion as conferred by the Act, can refuse to bring a particular provision of the enactment into force. The facts leading to the question are thus:

2. The Industrial Disputes Act initially vide. Section 2(j) provide the definition of the term "Industry". Subsequently, the term was interpreted by the Supreme Court in a decision reported in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, case. The decision amplified the scope of term "Industry". It also covered the charitable trusts. Subsequently, the Parliament passed Industrial Disputes (Amendment) Act of 1932. By Clause (e), definition of term "Industry" has substantially been amended and Charitable organizations have been excluded from the term "Industry". However, the Amending Act, by Sub-section (2) of Section 1, provided, "It shall come into force on such date as the Central Government may by a Notification in Official Gazette, appoint". Accordingly, the; Government of India, by Notification dated August 21, 1984, brought into force most of the provisions of the Amending Act. However, Clause (c) which has amended the definition of term "Industry" has not been brought

into force. Consequently,, employees of the petitioner trust continued to be governed by the Industrial Disputes Act. We have heard Mr. Patil for the petitioner, Mr. A.B. Choudhari for respondent Union of India and we record with appreciation the assistance rendered by Mr. R.B. Pendharkar who acted as Amicus Curiae.

3. According to the learned Counsel for the petitioner, the Central Government has arbitrarily withheld the provisions for a sufficiently long time. As such a writ of mandamus needs to be issued to the Central Government to notify the date for bringing the provisions into force.

4. The Central Government in a return, precisely contended that enforcing the provisions particularly under Clause (c), would render the employees of hospitals, schools, temples, without any remedy. This has been the hindrance to bring the provisions into force immediately on August 21, 1984.

5. Counsel for the parties are unanimous firstly that no writ under Article 226 of Constitution of India could be issued to the Parliament or Legislature to make a particular enactment or to bring a particular enactment into force which is already adopted by the Parliament, In view of a decision reported in Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India (UOI) and Others, ,, this Court can only issue a direction to Central Government, to examine the issue.

6. Mr. Pendharkar tried at this stage to urge that to enforce or not to enforce a particular provision of the enactment should be an absolute discretion of the Central Government. Perhaps we may not agree with the submissions. Such a discretion would be contrary to the mandate of the Act itself. The Amending Act as reproduced only authorises the Central Government to notify a date when the provisions of the Act will come into force. As such the authority of the Central Government is to examine the contingency and attending circumstances for bringing into force a particular provision. It cannot be the authority of the Central Government to decide whether to bring a particular provision into force or not. Even otherwise, Mr. Choudhary appearing for the Union of India, has not setup such a plea. The plea of the Union of India as discussed, was that they couldn't bring into force Clause (c) of the Amending Act because of certain difficulties as enumerated.

7. difficulties as enumerated were prevailing when the Amending Act was adopted by the Parliament. The Government of India was, therefore, authorised to notify the appointment day. Now more than a decade has passed. It was obligatory for the Central Government to examine whether difficulties as expressed still subsist. What steps the Central Government has so far taken to surmount them ? Since more than 12 years have passed, it is utmost necessary and, therefore, we direct the Government of India to examine and decide within 6 months as to when it would be feasible, in exercise of power under Sub-section (2) of Section 1 of the Act to appoint a date for bringing into force the remaining provisions of the Amending Act. Rule made absolute in terms as above.