
(1953) 03 MP CK 0001
In the Madhya Pradesh High Court

Jiyaji Rao Cotton Mills, Ltd.

APPELLANT

Vs

Industrial Court

RESPONDENT

Date of Decision : 24-03-1953

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1953 MP 231 : (1954) 1 LLJ 127

Hon'ble Judges : Nevaskar, J;Chaturvedi, J

Bench : Division Bench

Judgement

Nevaskar, J.—This is a petition under Article 226 of the Constitution by the petitioner jiyaji Rao Cotton Mills, Ltd., Birla Nagar, Gwalior, for the issue of a writ of prohibition and also one of certiorari or for any other suitable direction. The writ of prohibition is prayed for in order to prevent the industrial court of Madhya Bharat from proceeding with the reference made to it u/s 73A, Bombay Industrial Relations Act, as applied to Madhya Bharat. The writ of certiorari is prayed for in order to secure the quashing of proceedings before that court.

2. The facts which gave rise to the present petition are that: A notice of change as contemplated u/s 42(2), Industrial Relations Act, in force in this State and under Rule 52 of the rules thereunder, was given by the President, Mazdoor Congress, Gwalior, to the management of the petitioner mill. This was dated 23 December 1950. This notice of change was based on the allegation that the clerical employees of the mill were not granted bonus equal to three months' basic salary as was granted to the other employees of the mill.

After this notice of change was served upon the management the matter was referred for conciliation. It is alleged that, while the proceedings before the conciliator were still pending, the president of the aforesaid union of workers, which is a registered union as contemplated under the Act, applied for referring the matter to the industrial court u/s 73A of the aforesaid Act.

The industrial court entertained the reference and issued notice, dated 16

February 1951, to the petitioner as required under the Act.

The petitioner appeared before the industrial court and contended that Section 73A under which the reference was purported to be made was ultra vires of Article 14 of the Constitution. The reference was, therefore, bad in law and inoperative and that that court had no jurisdiction to precede with such a reference.

The industrial court by its order, dated 30 March 1951, overruled the objection on the ground that the court was not a civil court and was therefore unable to pronounce on the constitutional question raised before it.

It is after this that the petitioner has moved this Court.

3. None of the parties submitted any return. The only question which was raised before this Court was whether the provisions of Section 73A, Bombay Industrial Relations (Adaptation) Act, Madhya Bharat, No. 31, Samvat 2006, is contrary to Article 14 of the Constitution and is, therefore, void.

4. It was contended by Mr. Patankar for the petitioner that the impugned provision of the Act is clearly contrary to Article 14 of the Constitution as it places two persons or bodies belonging to the same category in different positions for, whereas if there is an industrial dispute it is open for a registered union which has in its rules a rule not to sanction a strike unless all methods of settlement were exhausted as provided in the Act and a majority of members vote by ballot in favour of such a strike, can make a reference so as to compel the employer to submit to an arbitration by the industrial court, no such corresponding right is conferred upon the employer to enable it to make a reference upon the existence of the industrial dispute and he has to rest content and face the ordeal until the Government chooses to make such a reference. This makes an invidious distinction between the employer and the employees who have formed themselves into a registered union of employees although having regard to the object; of the Industrial Relations Act there is no reasonable basis for classification between them.

5. Although both the employer and the registered union of employees, the counsel contended, belong to the same category for the purposes of the Act, yet the employers are singled out for a discriminatory and hostile legislation. The counsel then cited three Supreme Court cases : Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, ; Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, ; and the The State of Punjab Vs. Ajaib Singh and Another, . On the basis of these authorities the counsel sought to deduce the following propositions: Firstly, classification sought to be made in a legislative provision must be based on intelligible differentia which distinguish persons included within the group from those left out of the group. Secondly, the classification must bear a reasonable and just relation to the object sought to be achieved by the legislation.

6. The object of the Act, urged the counsel, is to secure industrial peace and thereby to step up production for the good of the country and having regard to this object there is no reasonable basis for making a distinction between the employer and the employees and both are entitled to parity of treatment under the Act. This not being done, this provision of the Act, viz. Section 73A, is contrary to Article 14 of the Constitution and is void.

7. On the other hand the Advocate-General, Madhya Bharat, who appeared before us and represented the State, contended that the classification made between the employer and the employees of a registered union has in its Constitution a rule not to resort to strike until all avenues of conciliation are exhausted and if a majority of them decide by ballot to do so it cannot be said to be arbitrary or unreasonable. The learned Advocate-General traced the history regarding this branch of legislation and analysed various provisions of the Act to indicate general scope and object of this Act and from this he tried to indicate that the classification though apparently indicating inequality of treatment cannot be said to be arbitrary or unreasonable.

8. Now it cannot be denied that the principle of collective bargaining has come to stay in the present stage of social development. In the process of collective bargaining the employees can, within certain limits, resort to strikes thus paralyzing the industries. The industries or the employer, in order to counteract the force of a strike which may bring losses to the employer, may themselves form into union of Industries and act in a composite unit or may resort to victimization or may resort to lockouts. The forces of evil may spring up creating condition of unrest, breach of peace both industrial and general.

In the present stage of the country's economy the evils resulting from strikes or lockouts as weapons resorted to for trial of strength or for coercing the other party to give in may be very great and may give a considerable setback to material progress of the country.

9. In order to lessen the evil effect of this conflict which is inherent in the process of collective bargaining if it is allowed to operate unbridled the legislature has made various laws one of which is the industrial Relations Act.

One of the objects of the Act is to secure industrial peace and thereby step up production. Now this can be achieved by stimulating amongst the employees the formation of registered unions, which will resort to strike only as a last resort after all possible avenues of conciliation and arbitration have failed. As long as it is possible both the industries and the employees must try to meet each other half way by avoiding unreasonable attitude and when maximum approach has been secured the remaining differences can then be ironed out either by conciliation or ultimately by arbitration.

Arbitration, by mutual agreement of reference, is provided, what is objected to is arbitration at the desire of one of the parties.

These are all matters of legislative sagacity with which the courts of law are not expected to deal. Suffice to find that reasons for classification are conceivable which may bear reasonable and just relation to the object sought to be achieved by the provision.

10. The experience must have shown that in the absence of some such provision tendency amongst the employees to resort to strike for enforcing their demands against the employer and the attitude of the employer not to bend down would continue unabated and unless this zeal for strike is channelled out by a healthier, more peaceful and rational method of settlement the evil could not be remedied. It is conceivable that the legislature must have seen that the employers have got whip hand in many ways and the present provisions in their case of inducing the authorities to make a reference if the need arises, might be thought adequate, the urgency in their case being obviously less.

11. There is no doubt that this provision which enables a registered union of employees of particular description as indicated above will have the salutary effect of stimulating formation of such unions and of inducing them to have in their Constitution a rule not to resort to strikes except under the conditions laid down in the Act. This will tend to make them rational and peaceful, in their demands.

12. This may be one of the objects sought to be achieved. Many others can legitimately be conceived. Can it then be said that this classification is arbitrary or unreasonable or that it bears no reasonable and just relation to the object sought to be achieved by the Act?

13. In the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, " Mukherjea, J., said:

The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its law, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid.

See-Southern Railway Co. v. Green 1909 216 U.S. 400 at 412.

In a recent case- Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, , the same learned Judge has laid down:

The nature and scope of the guarantee that is implied in the equal protection clause of the Constitution have been explained and discussed in more than one decision of this Court and do not require repetition. It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relation must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers

of selection or classification of persons and things upon which such laws are to operate. Mere differentiation of inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any rational basis having regard to the object which the legislature has in view.

Thus no challenge can be based merely on the inequality of treatment.

14. There is no doubt that the legislature has made classification and therein included all the registered unions which have a rule of the sort indicated above in its Constitution and has conferred upon them this specific right.

In the group thus classified no inequality has been brought about and the law acts equally to all within the group. Nor can it be said that the reaping advantages of Section 73A have been so left out without any rhyme or reason.

As I have said above, the employers may have a whip-hand in many ways, but, even beside it, it is conceivable that even inducing the union of employers to form into registered unions of the sort contemplated in Section 73A may in itself be sufficient basis for the classification though other reasons may possibly exist.

15. On the whole I am,, inclined to hold that Section 73A, Industrial Relations Act, cannot be said to run counter to Article 14 of the Constitution. It is somewhat significant that this provision, viz., Section 73A, has been on the statute book in the State of Bombay for over three years after the Constitution of India came into being, and yet the counsel for the petitioner has not been able to bring to our notice any case from the High Court of that State where this provision was successfully challenged on the grounds urged by him.

As no other basis of challenge is put forth there is no force left in this petition. It is dismissed with costs to the Government. The counsel's fee be taxed at Rs. 100.

Chaturvedi, J.

16. I agree with my learned brother Nevaskar, J., that Section 73A, Bombay Industrial Relations Act, 1947 (as adapted in Madhya Bharat State), cannot amount to discrimination in the eye of the law and is, therefore, not within the inhibition of the equal protection clause of the Constitution. The aforesaid Section 73A (without the proviso which is not material here) runs as follows:

Notwithstanding anything contained in this Act, a registered Union which is a representative of employees and the rules of which provide for the matter specified in Clause (vi) of Sub-section (1) of Section 23, may at any time refer any industrial dispute for arbitration to the industrial court.

Section 23 deals with "approved unions" and Clause (vi) of Sub-section (1) lays down that no strike shall be sanctioned or resorted to by the said union unless all methods provided by or under this Act for the settlement of an industrial dispute

have been exhausted and the majority of its members vote by ballot in favour of such strike.

17. Section 73A is a later addition in the Act, as it was Inserted by Section 13 of the Bombay Act 43 of 1948. Mr. Patankar, learned Counsel for the petitioner, urges that inasmuch as a registered union has been empowered to refer any industrial dispute for arbitration to the industrial court and the employers have not been so empowered to refer such a dispute to the industrial court, there is inequality of treatment. The argument would have been cogent if there had been only two ordinary private litigants and If one of them had been given a legal right to approach a court of law for the decision of the dispute and the other had been denied that right. I shall hereafter attempt to show that such is not the position. The argument of the learned Counsel, it appears, overlooks the very object of the enactment which is the preservation or restoration of Industrial peace. The Act has been entitled "the Bombay Industrial Relations Act" and is intended to regulate the entire relations of the employers and the employees and its aim is not confined simply to determine differences between an employer and his employees. The arbitration of the industrial court was made compulsory in the interest of the whole general population to avert disastrous industrial disorganization. From the standpoint of the Act, the immediate combatants are not necessarily the chief objects of regards. Though a strike, for example, entails severe loss to the employers and the employees while it lasts, it is the non-combatants, the rest of the community, who after all suffer most. Except to protect the general public dependent upon the peaceful and orderly continuance of industries there could have been no legal or moral warrant for State control of any industrial quarrel. The employees and the employers both had formidable weapons, e.g., the strike and lockout, in their hands, for carrying out their economic warfare; but it was realized that the settlement of industrial disputes in some more humane and reasonable way than by strike or lockout, with the disturbance of industrial conditions, the bitterness, the cruel consequences to the weak and helpless, the dislocation of trade, the monetary loss to the community, which those crude methods involved, was more a matter of national than of private concern (sic).

The machinery of the Bombay Industrial Relations Act is therefore directed to arresting the disease before the unrest and commotion have taken the usual deplorable form of a strike or a lockout, with all the attendant miseries. The prevention and settlement of industrial warfare is the end marked out for attainment, and, conciliation and arbitration are the designed means to that end. Conciliation first, and if that fails, arbitration, must be attempted before the weapons of strike and lockout are taken in hand. If the voluntary settlement first attempted proves impossible, the Act enjoins upon a tribunal to proceed to the compulsory settlement. The provisions embodied in Sections 72 and 73, Bombay Industrial Relations Act, enable the State Government to refer an industrial dispute at any time to compulsory arbitration irrespective of the consent of the parties. u/s 72 the Government can refer any industrial dispute to the arbitration

of a labour court or the industrial court; but u/s 73 the Government can refer an industrial dispute to the arbitration only of the industrial court if it is satisfied, that, by reason of the continuance of the dispute, a serious outbreak of disorder or a breach of the public peace is likely to occur, or serious or prolonged hardship to a large section of the community is likely to be caused; or the industry concerned is not likely to be seriously affected or the dispute is not likely to be settled by other means, or, when it is necessary in the public interest to do so. It will be seen that these are wide powers vested in the Government, on behalf of the non-combatants, and in the interest of industrial peace, to arrest the disease by referring an industrial dispute to the arbitration of the industrial court. If the employers foresee any trouble (about any strike or disorder) they can approach the State Government and move it for taking action under this section. Though the powers of the Government are wide enough in this respect, still it may happen sometime that Government may not get the requisite information before a strike is declared by a registered union.

In order to provide for this contingency, and, as a measure of precaution only, in 1948, by virtue of Section 73A, a registered union was also enabled to refer any industrial dispute for arbitration to the industrial court. The section confers no privilege on the union but further curtails its right to declare a strike. It is to my mind a liability imposed upon a registered union. Lockouts may not have been considered so bad or so frequent as strikes by unions and so before declaring lockouts the employers are not required to refer an industrial dispute to the arbitration of the industrial court. If lockouts had been more frequent a similar provision would have been inserted in the Act for preventing employers declaring lockout before exhausting every other method of settling a dispute. But as it is, the right of the employers to lockout their employees in order to compel them to accept certain harsh conditions remains, to a certain extent, uncertified. There is nothing to prevent the legislature to undertake this legislation in future as soon as lockouts become frequent and cause anxiety. The inequality, if it can be so called, in the treatment, cannot be said to be palpably unreasonable (sic) and just relation to the facts as they exist. The varying needs of the employers and the employees required separate treatment and the discrimination is founded on an intelligible differential which has a rational relation to the object of preservation or restoration of industrial peace sought to be achieved by the Industrial Relations Act.

18. We have, however, arrived at this decision on the basis of the arguments addressed to us. But I feel I should make it clear that Mr. Patankar's arguments involved certain misconception about two important points.

19. Firstly, he assumed that the industrial court is a court of law. It is important to bear in mind that though it is called a court it is not a court of law but is only an arbitral tribunal; and "arbitration" is a term which, taken by itself, connotes a process for the settlement of dispute by submitting them to the decision of an arbitrator or to the decision of arbitrators selected by the parties

or accepted by them. Both the parties surrender their rights to reach a court of law and desire that the arbitrator or arbitrators should make an agreement for them by which they mutually consent beforehand to be bound. The range, then, of the authority of the arbitrator, if the Submission is wide enough, is coextensive with the powers of the parties to settle their disputes without him. Whatever they can lawfully agree to, he may lawfully award. And it is also important to note that there is no substantial difference between a voluntary arbitration and a compulsory arbitration. I am fortified in this view by certain observations of their lordships of the High Court of Australia in the *King v. the Commonwealth Court of Conciliation and Arbitration and the President thereof and the Boot Trade Employees' Federation Ex Parte Whybrow & Co.* 11 Com W. L.R. 1 and the *Boot Trade Employees' Federation v. Whybrow & Co.* 11 Com W. L.R. 311. Though the powers and the functions of the Commonwealth Court of Conciliation and Arbitration differ considerably from our industrial court and there is also no unanimity of opinion on the points pressed in the cases adverted to above, still I have derived considerable help from the general observations of certain learned Judges on the nature of proceedings in an arbitral tribunal.

20. "Arbitration" is defined by Lord Trayner in *Mc Millen & Son, Ltd. v. Rowan & Co.* 40 S.O. L.R. 265 ; in the following words:

An agreement to submit to arbitration simply means that the parties have agreed to have their differences determined otherwise than by a court of law, but does not even suggest whether the court they have chosen for themselves shall consist of one member or many or how many members.

The essence of the matter, then, is that the differences are to be decided otherwise than by a court of law.

21. The term "arbitration" then, has expanded in meaning during the last century so as to include methods and principles of adjudication, differing in many respects from those connoted by the term as known to the common law. It is abundantly clear that, in many enactments, it has been used in Great Britain and other countries of the Commonwealth of Nations during the last hundred years by arbitral tribunals, resort to which was compulsory, and in the constitution of which the disputants had no choice. The numerous enactments in force, while maintaining the method of arbitration, have made partial and successive inroads into the principle of voluntariness and they are decisive of the position that the term "arbitration" does not connote a possible choice of arbitrators. In the face of these enactments, it is impossible to maintain that arbitration ceases to be arbitration unless it retains its voluntary character. And when we have regard to the use of this word in connexion with the settlement of industrial dispute, it becomes still plainer that there is well recognized use of the word as describing permanent public arbitral tribunals for settlement of industrial disputes, constituted not by choice of the parties, but by public authority. Even when the tribunal has been appointed by law instead of the parties, and even if the submission has been compulsory instead of voluntary, it is significant to note that

the industrial court under the provisions of the Bombay Industrial Relations Act is a tribunal which is bound to settle trade disputes by way of arbitration and by no other method. It follows that it can in no way be restricted to legal points, but it has to settle disputes on equitable considerations; and according to Section 63 the proceedings in arbitration under chapter II of the Act are to be in accordance with the provisions of the Arbitration Act, 1940, in so far as they are applicable. It will thus be manifest that the very basis of Mr. Patankar's arguments that the industrial court; is a court of law is not sound.

22. Then, secondly, Mr. Patankar thought that the right conferred on a representative union to make a reference to industrial court of a pending industrial dispute is a substantive right. This too does not appear to be sound. I have already taken the view that it is in the nature of a liability imposed on the union. Even if it be considered to be a right then it appears to be a mere right of procedure with regard to moving the arbitral tribunal, and, it is too well known that questions of procedure do not enter into or form the basis of fundamental right. All that is essential is that in a recognized way, inquiry shall be made into the dispute, and that the employer or employees will be heard about the way in which the dispute is to be settled. As the tribunal is bound to settle dispute by way of arbitration the essential rights of the employers are already safeguarded. As observed in *A. Backus Jr. and Jone v. Fort Street Union Depot Company* [(1877) 169 U.S. 557 : 42 Law Ed. 853 at 859 Col. 2 (1) there is no vested right in a mode of procedure. Each succeeding legislature may establish a different one, provided only that in each is preserved the essential elements of protection. In this American case the respondents had alleged that they were entitled to a trial by jury of inquest; but had been forced to trial by a common law jury presided over and controlled by a circuit judge. The Supreme Court of Michigan State had upheld this procedure and had changed its previous decision. It was held by the Supreme Court of United States of America that it was a question about a matter of procedure and therefore the adjudication of the Supreme Court of a State could not be set aside as an unjust discrimination or a denial of the equal protection of the laws merely because it had changed its previous decision. The question whether a legislature could prescribe a different mode of procedure than that which had been existing was considered and *Brewer, J.*, who delivered the judgment of the Supreme Court of United States of America, observed as follows:

An Act of the legislature which in terms gave to one individual certain rights and denied to another similarly situated the same rights might be challenged on the ground of unjust discrimination and a denial of the equal protection of the laws. But that does not prevent a legislature, which has established a certain rule of procedure and continued it in force for years, from subsequently repealing the Act and establishing an entirely different mode of procedure. In other words, there is no absolute right vested in the individual as against the power of the legislature to change modes of procedure.

If an existing mode of procedure in a court of law can be altered by the legislature, it has also the power to alter the mode of procedure in an arbitral tribunal, and, I am clear in my mind that this alteration cannot be challenged on the ground of denial of the equal protection of the laws.

23. Considering the question from every point of view, I am of opinion that the petition must fail and therefore I agree with the order proposed by my learned brother.