

(1974) 02 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 636 of 1973

Khadi Ashram

APPELLANT

Vs

The Workmen of Khadi Ashram, etc.

RESPONDENT

Date of Decision : 02-02-1974

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(2), 2
Khadi And Village Industries Commission Act, 1956 — Section 10, 15, 15(1), 15(2), 16
Societies Registration Act, 1860 — Section 12, 4, 5, 6

Citation : (1976) 1 ILR (P&H) 293

Hon'ble Judges : R.S. Narula, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : G.C. Mittal and P.C. Jain, for the Appellant; S.M. Ashri, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—The common question of law which has arisen in these two appeals (L.P. As. 636 and 637 of 1973) is whether the State Government or the Central Government is the "appropriate Government" within the meaning of Section 2(a) of the Industrial Disputes Act (14 of 1947) (hereinafter called the 1947 Act) in respect of the disputes between the workmen and the management of the Khadi Ashram, G.T. Road, Panipat, a society registered under the Societies Registration Act, which society has been recognised as a Khadi institution by the Khadi and Village Industries Commission (hereinafter referred to as the Commission) established u/s 4 of the Khadi And Village Industries Commission Act, 1956 (hereinafter called the 1856 Act).

2. Three different references (Nos. 55 of 1971, and 9 and 36 of 1972) were made by the State of Haryana to the Industrial Tribunal Haryana, Faridabad, in respect of different claims of some of the workmen of the Appellant. In all the three references a preliminary objection was raised on behalf of the Appellant that the reference was invalid for want of jurisdiction as the appropriate

Government in the matter of the Appellant's establishment was the Central Government and not the State Government. By his order, dated July 21, 1972, Shri O.P. Sharma, Presiding Officer, Industrial Tribunal, Haryana, agreed with that objection and held that the appropriate Government for referring the disputes in Question for adjudication is the Central Government and not the State Government as the business of the Appellant is carried on under the authority of the Central Government, inasmuch as the Appellant industry functions by virtue of a certificate issued under, the authority of the Commission, which authority is reviewed from time to time and without which authority the Appellant industry cannot legally function. It was observed that the Commission is entirely controlled by the Central Government in the matter of its constitution and working, and in the matter of achievement of its constitution and objects, and this leads to the conclusion that the Appellant is engaged in an industry which to all intents and purposes is running under the authority of the Central Government, and that being so, the appropriate Government within the meaning of Section 2(a) of the Act is the Central Government and not the State Government. The workmen at whose instance reference had been made to the State Government filed Civil Writ 3066 of 1972, for quashing the order of the Labour Tribunal to the above effect and for directing the Presiding Officer of the Industrial Tribunal to proceed with the case on merits.

3. In reference No. 193 of 1970, similarly made by the State Government of Haryana to the Labour Court at Rohtak, the same objection was raised by the management (the Appellant) before Shri P.N. Thukral, Presiding Officer of that Court. By his order dated May 13, 1971, Shri Thukral repelled an additional objection of the Appellant to the effect that the reference in question was barred on principles of res judicata, and directed the parties to produce such evidence as they desired on the question of the validity of the reference. The Appellant filed Civil Writ 1018 of 1973 against that decision.

4. Both those petitions were disposed of by a learned Single Judge of this Court (M.R. Sharma, J.) on August 13, 1973. The learned Judge allowed Civil Writ 3066 of 1972, following his own earlier judgment in Messrs Punjab Khadi Gram Udyog Sangh, Adampur Doaba, District Jullundur v. The State of Punjab and Ors. (XIII) 1973 Curr. L.J. 541, wherein it had been held by him that the said Khadi institution in Punjab, which was working under a similar authorisation from the Commission, was not a department of the Central Government. For the same reason Civil Writ 1018 of 1973, was dismissed. L.P.A. 636 of 1973, has been filed against the decision of the learned Judge allowing the writ petition of the workmen, and L.P.A. 637 of 1973, has been filed against the order of Sharma, J., dismissing the writ petition of the present Appellant. The contention of the Appellant in both the cases is that the Central Government is the appropriate Government in respect of the Appellant institution, and therefore, each of the two references made by the State of Haryana should be held to be without jurisdiction and should be annulled.

5. The precise question which calls for our decision has been the subject-matter of discussion in at least five different cases at the hands of different Labour Courts and Industrial Tribunals. The earliest decision, to which our attention has been invited, is of Shri Manohar Singh Bakshi, Presiding Officer, Labour Court, Jullundur, dated August 3, 1967, in reference No. 72 of 1967, between the workmen and the management of Messrs Punjab Khadi Gram Udyog Sangh, Adampur Doaba. After referring to the various relevant provisions of the 1947 Act and the 1956 Act, the learned Labour Court held that the Central Government was the appropriate Government because:

(i) the industry in question is not only financed by the Central Government but also, planned, organised and controlled by the Commission established under the Khadi and Village Industries Act, 1956;

(ii) the Certification Committee constituted under the 1956 Act had certified the institution in question amongst several other such institutions in India, and the Certification Committee ensures that the institution is running strictly in conformity with the rules laid down by the Committee and conducts periodical audits and inspection, and conducts investigation into complaints made against that institution, and helps to avoid conflict and unhealthy competition between that institution and other small privately managed industries; and

(iii) the industrial dispute in question related to an industry which was being carried on under the authority of the Central Government as it was financed and controlled by the Central Government.

6. The next judgment on this point was given by Shri K.L. Gosain, Presiding Officer, Industrial Tribunal, Haryana, on January 22, 1968, in reference No. 83 of 1967, between the workmen and the management of Messrs Unni Patti Kendra, Panipat. The reference which had been made in that case also by the Haryana Government was held by the learned Industrial Tribunal to be invalid on the ground that the industry in question was being carried on under the authority of the Central Government, inasmuch as the letter of authority authorising the industry to continue its business had been issued by the Commission from Bombay, and the Commission was "admittedly" constituted by the Central Government u/s 4 of the 1956. Act, and one of the functions of the Commission u/s 15 of the 1956 Act was to authorise an industry of this type being carried on at any place approved by the Commission.

7. Shri P.N. Thukral, Presiding Officer, Labour Court, Rohtak took a contrary view in his judgment, dated November 3, 1971, in reference No. 193 of 1970 (and 78 of 1971) between the workmen and the management of the Khadi Ashram, Panipat, the same industry which is the Appellant before us in both these appeals. The "previous decisions of Bakshi Manohar Singh and Shri K.L. Gosain were placed before Mr. Thukral and he referred to both in his order. Mr. Thukral, however, held that the Khadi Ashram is a society registered by the State Government under the Societies Registration Act, and though it carries on

business under the authority of the Commission, the Commission cannot be equated with the Central Government, and therefore, it cannot be held that the Khadi Ashram is being run under the authority of the Central Government. The question of correctness of the decision of Mr. O.P. Sharma, Presiding Officer, Industrial Tribunal, Haryana, Faridabad, dated July 21, 1972, adopting the same view as was taken by Bakshi Manohar Singh and Shri K.L. Gosain, is sub judice. before us in L.P.A. 636 of 1973.

8. Section 10(1)(c) of the 1947 Act provides that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to the dispute, if it relates to, any matter specified in the Second Schedule, to a Labour Court for adjudication. The power to make the reference has been conferred on the "appropriate Government". That expression has been defined in Section 2(a) of the 1947 Act to mean:

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any control-led industry as may be specified by the Central Government.

9. It is the admitted case of both sides that the Appellant's industry is not being carried on "by the Central Government." The only problem that remains to be solved is whether the said industry is or is not being carried on "under the authority of the Central Government." Since the reliance for taking the view in favour of the management on the abovementioned question has been placed on various provisions of the 1956 Act, the relevant sections of that Act may be noticed at this stage. The Act extends to the whole of India. (Sub-section (2) of Section (1). The establishment of the Khadi and Village Industries Commission (with effect from such date as the Central Government may, by notification in the Official Gazette, fix) as a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and with power to enter into contracts and to sue and be sued has been provided by Sub-section (1) of Section 4. The constitution of the Commission including the authority to appoint its members, its chairman and its vice-chairman by the Central Government have been provided by Sub-sections (2) and (3) of Section 4. The duty to appoint the Secretary of the Commission in consultation with the Commission has been enjoined on the Central Government by Section 5. Similarly, Section 6 provides that the Central Government shall appoint a Financial Adviser to the Commission. The provision for constituting the Khadi and Village Industries Board, consisting of a Chairman and such members as the Central Government may think fit for the purpose of assisting the Commission in the discharge of its functions under the Act has been made by Section 10. Sub-section (1) of Section 15 states that subject to the provisions of the 1956 Act the functions of the Commission shall generally be to, plan, organise and implement

programmes for the development of Khadi and Village Industries. Sub-section (2) of Section 15 authorise the Commission (without prejudice to the generality of the powers vested in it under Sub-section (1) to take such steps as it may think fit, inter alia, to plan and organise the training of persons engaged in the production of Khadi or in village industries; and to provide for the sale and marketing of Khadi or of products of village industries. Section 16 requires the Commission to be bound in the discharge of its functions under the Act by such directions as the Central Government may give to it. The money due to the Commission under any agreement is liable to be recovered in the same manner as an arrear of land revenue. The budget of the Commission has to be submitted to the Central Government for approval u/s 20. The requirement for the maintenance of accounts and the audit of the same, the preparation of an annual statement of its accounts, its balance-sheet and profit and loss account in such form as may be prescribed by the Central Government; in consultation with the Comptroller and Auditor General of India has been provided by Section 23. Section 24 requires the Commission to furnish to the Central Government various returns and statements and also to furnish certain particulars. Section 26 authorises the Central Government to make rule to give effect to the provisions of the 1956 Act. Section 27 authorises the Commission to make regulations with the previous sanction of the Central Government which regulations are not inconsistent with the Act and the rules made u/s 26.

10. A perusal of the above-mentioned relevant provisions of the 1956 Act shows that the Commission is possibly functioning under the authority of the Central Government in spite of its being a separate legal entity though it is not a department of the Central Government. It must, however, be remembered that Section 2(a) of the 1947 Act does not say that the appropriate Government in relation to any industrial dispute concerning any industry carried on under the certificate issued by an institution or a legal person which legal person is working under the authority of the Central Government shall be the Central Government. So "far as the relevant part of Section 2(a)(i) of the 1947 Act is concerned, the Central Government is the appropriate Government only in cases where the dispute concerns (i) any industry carried on by the Central Government itself or (ii) any industry carried on under the authority of the Central Government. Nothing contained in the 1956 Act shows that the Appellant-industry is or was ever being carried on under the authority of the Central Government. The Appellant-industry is a distinct separate legal entity having its own independent existence, as it is a Society registered under The Societies Registration Act (No. XXI), 1860. A society can be registered under that Act if it is established for the promotion of literature, science, or the fine arts or for the diffusion of useful knowledge, the diffusion of political education or for charitable purposes (Section 20). A society is registered under the 1860 Act upon the memorandum of its association (disclosing the name of "the Society, the objects of the Society; and the names, addresses and occupations of its first body of management) and a certified copy thereof, being filed with the, Registrar of Societies and upon the

payment of the requisite registration fee. A certified copy of the rules and regulations of the Society has also to be filed with the memorandum of association for the purposes of registration. Section 4 of the 1860 Act requires the submission of an annual list of the managing body of the Society to the Registrar once in every year. The property-movable and immovable belonging to a Society registered under the 1860 Act is not vested in the trustees but is deemed to be vested in the trustees but is deemed to be vested in the governing body of the Society. (Section 5) Section 6 states that every Society registered under the 1860 Act may sue or be sued in the name of its president, chairman or practical secretary, or trustees, etc. Section 12 authorises the governing body of any Society registered under the Act to alter, extend, or abridge the purposes for which it has been formed, or to amalgamate it either wholly or partially with any other Society, in the manner prescribed by the provision.

11. The above mentioned provisions of the 1860, Act would show that the Appellant-industry which is registered as a Society under that Act is a legal person like a Company registered under the Companies Act, 1956. No provision in the 1956 Act shows that the Central Government can in any manner control the business or working of the Society. Nor does the Appellant-Society require any authority from the Central Government to function. The authority or certificate of the Commission required by the Appellant is not to be "issued or authorised by the Central Government. I am, therefore, of the opinion that the learned Single Judge was correct in holding that the Appellant-Society is not being run under the authority of the Central Government and hence the State Government alone is the proper Government which can refer any industrial dispute between the Appellant's workmen and management to an Industrial Court u/s 10(1)(c) of the 1947 Act. The judgment of K.K. Desai, J., in Abdul Rehaman Abdul Gafur and Another Vs. E. Paul and Others, also supports this view. It was held in that case that industries which are carried on for their own purposes by incorporated commercial corporations which are governed by their own constitutions, as authorised by the Companies Act, cannot be described as carried on "under the authority of the Central Government", as such corporations are independent legal entities and run the industries for their "own purposes, It was further observed that even when the Central Government controls such corporations, their industries are worked under the authority of their own constitutions or charters and even if the Central Government owns the entire shares of a corporation," the appropriate Government in respect of the disputes between the management and workmen of such a corporation cannot be the Central Government within the meaning of Section 2(a)(i) of the 1947 Act. The argument of the learned Counsel for the Appellant about the entire finances of the Commission being provided by the Central Government does not at all appear to me to be relevant. It seems that the Appellant is at times equating the Commission with the Appellant and that at other times are equating the Central Government with the Commission. Both those assumptions are wholly baseless. Even if it could be shown that the Appellant-industry is being financially fed by

the Commission, which in turn draws all its funds from the Central Government, it would not by itself show that the Appellant-industry is being run under the authority of the Central Government In Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , it was held that the word "authority" in Section 2(a) of the 1947 Act 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. It was observed that a person is said to be authorised or to have an authority when he is in such a position that he can act in such a manner without incurring liability, to which he would be exposed but for the authority, or, so as to produce the same effect as if the person granting the authority had for himself done the act. The judgment of the Supreme Court appears to me to authoritatively settle the point that the expression "authority" has been used in relation to the definition of appropriate Government in Section 2(a)(i) of the 1947 Act to denote an authority of the kind which is vested by a principal in his agent. Even counsel for the Appellant could not argue that the Appellant-industry is in a legal position to commit the Central Government either in any contract. or in the matter of incurring any liability. It cannot, therefore, be said that the Appellant-Society is functioning under the authority of the Central Government. The Supreme Court held that the question whether a corporation is an agent of the State must depend on the facts of each case. It was made clear that in the absence of a statutory provision identifying a corporation as an agent, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department would ordinarily be presumed not to be a servant or agent of the State. It was further observed that the fact that a Minister appoints the members or directors of a corporation and that the Minister is entitled to call for information, to give directions, which are binding on the directors and to exercise supervision over the conduct of the business of the corporation does not render the corporation an agent of. the Government.

12. Some of the documents produced by the workmen and proved by them before the Industrial Tribunal in this case also appear to us to be relevant. It is a matter of regret that the Industrial-Tribunal, having specifically referred to those documents in his impugned order, dated July 21, 1972, did not at all deal with the same at any length. The earliest out of those documents is Exhibit W.W. 1/5, that is, letter, dated May 28, 1969, from the Assistant Labour Commissioner (C), Chandigarh; to the General Secretary of the Appellant's workmen (General Secretary of the Khadi Karamchari Sangh, Kastur Bhawan, Krishanpura, Panipat) sent in reply to the Charter of demands of the said Workers' Union. The workers of the Appellant were specifically informed in that letter that the appropriate Government in their cases was the State of Haryana and that further reference, if any, should be made to that office. In the last sentence of the letter, the workmen were informed that they may approach the Chief Labour Commissioner, (C) New Delhi for the copy of the letter declaring the. State Government of Haryana as the appropriate Government. The next in order of time is Exhibit WW 1/7, that is, a letter, dated November 17/1969, from the Under-Secretary to the

Govrenment of India in the Ministry of Labour and Employment, to the Secretary to the Haryana Government, in the Labour Department, on the subject of "Appropriate Government" in relation to the disputes concerning the Punjab Khadi Gram Udyog Sangh, Adampur and the Khadi Ashram, Panipat, for the purposes of the 1947 Act. The letter reads:

I am directed to say that it has been brought to the notice of the Government of India that the Labour Court, Jullundur, in its award regarding the Gram Udyog Sangh Adampur, and the Industrial Tribunal, Haryana, Chandigarh, in its award, adted the 22nd January, 1968, concerning Messrs Punjab Khadi Ashram Panipat have held that the said two disputes fell within the purview of the Central Government. The matter has since been carefully examined and this Ministry have been advised by the Union Ministry that the appropriate Government in relation to any industrial dispute concerning such establishments would not be the Central Government but would be the State Government concerned u/s 2(a) (ii) of the Industrial Disputes Act, 1947, the relevant extract from the Law Ministry's advice is enclosed for the information of the State Government.

(2) In view of the Law Ministry's advice referred to above, I am to request that the State Government might kindly continue to deal with these disputes, notwithstanding the decisions of the Labour Court/Tribunal and they might take up the matter in the higher judicial forums at the appropriate time, if considered necessary.

The last communication which is directly relevant and which was admitted into evidence by the Labour Tribunal is Exhibit WW 1/2, that is, letter, dated April 9, 1970, from the Under-Secretary to the Government of India in the Ministry of Labour, Employment and Rehabilitation, addressed to the General Secretary to the Khadi Karamchari Sangh, Krishnapura, Panipat, on the subject of "Appropriate Government in realtion to the disputes in respect of Khadi Ashram, Panipat". That letter reads:

I am directed to refer to your letter No. KKS/70(2), dated the 24th January, 1970, on the above subject and to say that your letter together with its enclosures has been forwarded for disposal to the Government of Haryana, who are the appropriate Government in the matter. It is, therefore, requested that all future correspondence in the matter may kindly be addressed to the Haryana Government.

I think the Central Government was correctly advised in this connection.

13. After considering all the abovementioned aspects of the matter, I am of the opinion that there is no escape from the conclusion that the Khadi Ashram, Panipat, which is a Society registered under the 1860 Act and which is functioning on the grant of a certificate by the Khadi and Village Industries Commission, established u/s 4 of the 1956 Act, is not being run either by or under the authority of the Central Government. That being so, the "appropriate Government" in relation to any industrial dispute concerning the Appellant-

industry and its workmen is not the Central Government within the meaning of Section 2(a)(i), but is the State Government referred to in Section 2(a)(ii) of the 1947 Act. No fault at all can, therefore, be found with the view taken in this matter by the learned Single Judge. Both these appeals must, therefore, fail and are accordingly dismissed with costs.