

(1981) 03 DEL CK 0061

In the Delhi High Court

Case No : Civil Writ Appeal No. 1297 of 1979

Leela Separators Pvt. Ltd.

APPELLANT

Vs

Secretary (Labour), Delhi Administration and Others

RESPONDENT

Date of Decision : 05-03-1981

Acts Referred:

Citation : (1981) 43 FLR 170 : (1981) ILR Delhi 24 : (1981) LabIC 1173

Hon'ble Judges : T.P.S Chawla, J;S.N. Kumar, J

Bench : Division Bench

Advocate : A.S. Vir, Rajni Kant, R.S. Yadav, K.M. Iyer and C.L. Choudhry, for the Appellant;

Judgement

T.P.S. Chawla, J.

(1) The question raised in this petition under Article 226 of the Constitution has also been raised in many others which we have heard alongside. This judgment will apply to all of them.

(2) In each case an order has been made u/s 10 of the Industrial Disputes Act, 1947 referring a dispute or disputes for adjudication to the labour court or industrial tribunal. The order has been made by the Secretary (Labour), Delhi Administration. He purports to have exercised the power delegated to him by the Central Government. The question is whether the Central Government was the "appropriate Government" to delegate that power.

(3) The relevant notification is dated 14th April, 1975, and is published in the Gazette of India dated 26th April, 1975. It reads as follows:

IN exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby directs that the powers of the State Government in regard to the Union territory of Delhi exercisable by it under sections 3, 10 and 10-A, sub-section (5) of Section 12 and Sections 17, 33-B and 36-A of the said Act be exercisable also by the Secretary (Labour) of the

Delhi Administration.

S.S. Sahasrawahan, Under Secy., It will be observed that in this notification the "Central Government" has delegated to the Labour Secretary the specified powers "of the State Government in regard to the Union Territory of Delhi". The argument is that the "Central Government" is not the State Government, and, Therefore, had no power to make this delegation.

(4) To my mind the answer is too simple to bear any elaborate discussion. The power to delegate is given by section 39 of the Industrial Disputes Act, It says: "The appropriate Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act or rules made there under shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,

(A)Where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(B)Where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification."

SO the question is, which is the "appropriate Government"? Section 2(a) of the Industrial Disputes Act defines "appropriate Government". It has two clauses. In relation to industrial disputes of the kind mentioned in clause (i), the "appropriate Government" is the "Central Government". We are not concerned with that clause, because the disputes here were admittedly not of that kind. Then, clause (ii) says: "in relation to any other industrial dispute, the State Government". It is agreed on all hands that it is this clause of the definition which applies. Hence, in regard to the present cases, the "appropriate Government" is the "State Government".

(5) But, when this ex facie conclusion from the section is applied, it gives rise to the question: Who or What is the "State Government" in a Union territory such as Delhi? Section 3(60) of the General Clauses Act, 1897 provides the answer. Leaving out all the immaterial parts, the section reads:

"In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context, (60) "State Government",

(O)as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor and in a Union territory, the Central Government."

This makes it plain that in relation to a Union territory, one must read "Central Government" for "State Government" in section 2(a)(ii) of the Industrial

Disputes Act. So the ultimate conclusion is that, in Delhi, the "Central Government" is the "appropriate Government" even in respect of disputes arising within section 2(a)(ii).

(6) Now, reading section 39 in this light, it is apparent that the "Central Government" could, as the "appropriate Government", delegate the "powers of the State Government in regard to the Union territory of Delhi". The phrase "powers of the State Government" has reference to the division of power made by section 2(a) between the Central Government and the State Government. In a Union territory, that division has no significance because the powers merge as there is only one Government, the Central Government. It is different in a State, properly so called, which has a separate State Government. But, in a Union territory there is none. As its very name indicates, it is the exclusive domain of the Union. Therefore, in a Union territory, "powers of the State Government" really means "powers of the Central Government", and the notification delegating powers to the Secretary (Labour) is not vitiated by any incongruity. As I see it, that is the end of the case, and the notification must be held to be valid.

(7) However, it was contended that in *The Management of Messrs Patiala Iron Works V. Union of India and others*, ILR (1975) Del 613, a full bench of this court had already held that the Lt. Governor of Delhi was the "State Government" for purposes of the Industrial Disputes Act, and so the "Central Government" could not be the "State Government".. This negative conclusion sought to be inferred from that judgment is neither logical nor warranted nor valid. It is based on a total misapprehension of some definitions in the General Clauses Act and the provisions of the Constitution.

(8) In the case before the full bench, the industrial disputes had been referred to the labour court by an order made by the Lt. Governor of Delhi. He exercised the power conferred upon him by the President "in pursuance of clause (1) of Article 239 of the Constitution". The notification was dated 24th March, 1961, and the operative part said: ".....the President hereby directs that the powers and functions of the State Government under the Industrial Disputes Act, 1947 (14 of 1947), except in so far as they relate to any industrial dispute concerning the Employees' State Insurance Corporation and except those u/s 38 of the said Act, shall, subject to the control of the President, and until further orders be respectively exercised and discharged by the Lieutenant Governor or the Chief Commissioner, as the case may be, of each of the Union territories of Delhi, Himachal Pradesh, Manipur, Tripura and the Andaman and Nicobar Islands, within his jurisdiction. It was argued that the "Lt. Governor is not the "State Government" and, Therefore, not the "appropriate Government" u/s 2(a)(ii)". The full bench held that he was.

(9) The reasoning of the full bench rests on a conjoint application of the definitions in section 3(8) and (60) of the General Clauses Act. I have already quoted section 3(60) which defines "State Government", and need not repeat it section 3(8) defines "Central Government", and omitting the irrelevant portions,

it reads as follows:

"In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,

(8)"Central Government" shall,

(B)in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include, (iii) in relation to the administration of a Union territory the administrator there of acting within the scope of the authority given to him under article 239 of the Constitution".

In Delhi, the "Administrator" is designated as the "Lt. Governor". Therefore, according to this definition, he is the "Central Government" provided he is "acting within the scope of the authority given to him under Article 239 of the Constitution". Since, according to section 3(60) of the General Clauses Act, the "Central Government" is the "State Government" in a Union territory, it follows that the "Lt. Governor" is also the "State Government". This is what the full bench held, and obviously it was right.

(10) For a further analysis of the matter, it is worth writing down the two definitions, which I have quoted from the General Clauses Act, in the form of equations. This will help in achieving clarity. Of course, it must be remembered that the assumption is a Union territory. From section 3(60) we get the equation: State Government = Central Government. From section 3(8) we get the equation: Central Government = the President = the Administrator. Since two things equal to the same thing must be equal to each other, these two equations can be combined to give the following comprehensive equation. State Government = the Central Government = the President = the Administrator. This shows that "State Government" in a Union territory has three other names: "Central Government", "President" and "Administrator". Nevertheless, it is one and the same executive power. Merely the name varies, and is chosen to suit the particular context. The full bench held that the "Administrator" was the "State Government". It does not follow from that that the "Central Government" is not. On the contrary, the very first equation shows that it is. The subsequent comprehensive equation establishes that both propositions are simultaneously correct. There is, Therefore, nothing in the full bench judgment which goes against the conclusion I have reached.

(11) A word of caution is now necessary. Though, I have expressed the definitions in the form of equations, they are not true in the perfect algebraic sense. Thus, whilst it is true, on the basis of section 3(60), that State Government = the Central Government, it is not true that Central Government = State Government, because there is no converse definition in the General Clauses Act. The same applies to section 3(8). That means that the equations are valid only if read from left to right, and not the other way. The reverse equation: The Administrator == the President = Central Government == State

Government is not valid, for the simple reason that there are no definitions in the General Clauses Act to support it. This was recognised by the Supreme Court in *The State of Bombay Vs. Purushottam Jog Naik*, when it said: Now though the term "State Government" appearing in an enactment means the Governor of the State, there is no "provision of law which equates the term Governor with the State Government of which he happens to be the head. On the contrary, the Constitution invests him with certain functions and powers which are separate from those of his Government." This limitation of the equations is most important, and must constantly be kept in mind to check the natural tendency to use the equations both ways.

(12) Now, going back to the judgment of the full bench, I would observe, with respect, that, unwittingly, it sanctions by implication a collateral fallacy. That seems to have happened because a point available was apparently not argued. In order to explain this, it is necessary to emphasise that the Lt. Governor, in that case, was exercising a power conferred upon him by the President under Article 239 of the Constitution. He was not exercising a power delegated to him u/s 39 of the Industrial Disputes Act. The application of the General Clauses Act to each of those two provisions does not yield the same result.

(13) As I have tried to show. the words "appropriate Government" in section 39 can be successively replaced by the words "State Government", "Central Government", and "President", by virtue of the definitions in the General Clauses Act (I ana deliberately leaving out "Administrator" for a reason which will presently emerge.) Consequently, the power to delegate u/s 39 can be exercised in any of those names. In particular, the "President", acting under Article 53 of the Constitution as the repository of "the executive power of the Union", can delegate the powers of the State Government under the Industrial Disputes Act.

(14) But, no similar process is possible with regard to Article 239(1) of the Constitution. That Article reads as follows: "Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator o be appointed by him with such designation as he may specify-" Here, the word is "President". There is no definition in the General Clauses Act enabling any other word or phrase to be substituted for that word. So, no further step is possible. To read "Central Government" for "President" in this Article would be to reverse the definition in section 3(8) of the General Clauses Act. Thus, the "President" acting under Article 239 is not the "Central Government", and hence not the "State Government", and, Therefore, not the "appropriate Government" under the Industrial Disputes Act. More specifically, the "President", whilst administering a Union territory under Article 239, cannot become the "appropriate Government" in section 39 because the definitions in the General Clauses Act are of no avail.

(15) This result is not surprising because in a number of cases it has been held that when the President performs his functions under Article 239, "he occupies a position different from that of the head of the Central Government" : see *Satya*

Dev Bushahri Vs. Padam Dev and Others, ; D. Gobalously Vs. Union Territory of Pondicherry and Others, and Ghousia Begum v. The Union Territory of Pondicherry, Air 1975 Mad 345 It is only when he exercises the executive power of the Union that he can be equated with the Central Government. That is a corollary from Article 53 of the Constitution, and is, borne out by Joti Prasad Upadhyaya Vs. Kalka Prasad Bhatnagar and Others, which states the like proposition with regard to the Governor of a State Presumably, it is because the President, whilst acting under Article 239 of the Constitution, could not exercise the power to delegate u/s 39 of the Industrial Disputes Act that the notification dated 24th March, 1961 does not refer to that section. It cites only "clause (1) of Article 239 of the Constitution."

(16) SO; one is face to face with another question : can the President, acting under Article 239, confer upon the "Administrator" the power of the "appropriate Government" (whether it be the "State Government" or the "Central Government") under the Industrial Disputes Act ? Since, as I have tried to demonstrate, the President, in that capacity, cannot become the "appropriate Government" under the Industrial Disputes Act, he has no power under that Act, and, Therefore, can confer no such power on the "Administrator". Non dat qui non habet. He gives not who hath not.

(17) It was suggested in argument that the power to "administer" a Union territory, vested in the President by Article 239, of itself made him the "State Government" for purposes of the Industrial Disputes Act. The only reason advanced in support of this proposition was that in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, it had been held that the power to refer disputes u/s 10 of the Industrial Disputes Act was an "administrative function" and, hence, must form part of the power to "administer" a Union territory. But there, as the judgment itself states, that phrase was being used "in contradistinction to a judicial or quasi-judicial function". It had nothing to do with the ambit of governance. The power to perform the "administrative function" of referring industrial disputes to a labour court or industrial tribunal is not a necessary ingredient or incident of the power to "administer" a Union territory. It is a special power conferred by a special statute... In keeping with the scheme of that statute, it happens to be conferred upon The "appropriate Government". But, it could have been conferred on anyone, and even on the parties to the dispute as does the usual form of arbitration agreement. So, it cannot be regarded as an automatic component of the power to "administer". I would, Therefore, conclude that the powers of the "State Government, under the Industrial Disputes Act do not inhere in the President by mere virtue of the fact that he "administers" a Union territory under Article 239 of the Constitution.

(18) It follows that the President could not, whilst purporting to act under Article 239, convey the powers of the "State Government" under the Industrial Disputes Act to the "Lt. Governor". Therefore, on this ground the notification dated 24th

March, 1961 was bad.

(19) Furthermore, in exercising the powers sought to be given to him by that notification, the Lt. Governor was not "acting within the scope of the authority" that could be given to him under Article 239 of the Constitution. In doing so, he did not come within the definition of "Central Government" in section 3(8) of the General Clauses Act. This is why I earlier omitted "Administrator" while applying that definition to section 39 of the Industrial Disputes Act.

(20) I can now briefly sum up the position. For the reasons I have stated, the President could delegate the powers of the "State Government" under the Industrial Disputes Act if he acted u/s 39 of that Act. But, he could not do so under Article 239 of the Constitution. Of course, even whilst acting u/s 39 of the Act, the President could have delegated the powers to the Lt. Governor. But, then it would be a delegation to the Lt. Governor not as the "Administrator" of a Union territory, but as an "officer subordinate" to the "Central Government" or the "State Government". Insofar as the full bench judgment impliedly upheld the notification dated 24th March, 1961 as being valid under Article 239, I would respectfully dissent.

(21) It is interesting to note that the full bench judgment was delivered on 27th January, 1975. Notwithstanding that the decision was in favor of the Government, they expeditiously issued, within less than three months, the notification dated 14th April, 1975 delegating power to the Secretary (Labour) u/s 39 of the Industrial Disputes Act. Perhaps, it would not be incorrect to infer that despite their success before the full bench, the advisers of the Government were not themselves convinced of the validity of the notification under Article 239 pursuant to which references had been made by the Lt. Governor.

(22) I have dwelt on these aspects in order to meet the arguments that were addressed to us. If the notification under attack in the present cases had been one under Article 239, I would have asked for the matter to be reconsidered by a larger bench. But since the notification is u/s 39 of the Industrial Disputes Act, the full bench judgment is only of peripheral application. As I have said, to the extent that it holds that the definitions in section 3(8) and (6G) of the General Clauses Act include the "Lt. Governor" within the concept of "State Government", provided that he is "acting within the scope of the authority given to him under Article 239 of the Constitution", I agree with it. Indeed, that is the clear purport of those definitions. The other questions, with which I have had to deal, do not seem to have been canvassed before the full bench. At any rate, the judgment does not go into them.

(23) That disposes of the main point argued, but there were also two subsidiary ones. It was contended that the notification dated 14th April, 1975 was void as it did not comply with Article 77(1) of the Constitution. That Article says that "All executive action of the Government of India shall be expressed to be taken in the name. of the President". The notification, it will be recalled, is issued in the name

of the "Central Government". Even assuming that there is some substance in this objection, it can have no effect on the validity of the notification. It is now settled law that provisions like Article 77 are directory and not mandatory : See J.K. Gas Plant Manufacturing Co. (Rampur) Ltd. and others v. Emperor, Air 1947 F.C. 38 (8); Ram Chander Singh Vs. State of Punjab and Others, , and Management of the Advance Insurance Co. Ltd. Vs. Gurudasmal, Supdt. of Police and Others, . A full bench of this court held in Zalam Singh and Others Vs. Union of India and Others, , that, having regard to section 3(8) of the General Clauses Act, it was immaterial whether the name "President" or "Central Government" was used, and, further, that the notification should "conform" to the "terms" of the section under which it is issued. In support of this view the court relied on The State of Bombay Vs. Purushottam Jog Naik, . Since section 39 of the Industrial Disputes Act refers to the "Appropriate Government", which I have found to be the "Central Government", it is more consistent with that section to use the name "Central Government" rather than "President". But, in any case, the validity of the notification is not affected.

(24) The other contention was that the notification should have been published in the Delhi Gazette and not the Gazette of India. This point is again devoid of substance. Section 3(39) of the General Clauses Act says :

""Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State."

Although, this definition does not indicate which notifications are to be published in which Gazette, common sense easily supplies the answer. Notifications issued by the Government of India should be published in the Gazette of India, and those issued by a State Government in the State Gazette. Each of these Gazettes is intended to record and give publicity to the acts of the Government whose name it bears. The notification, here, was issued by the Central Government. Therefore, it was rightly published in the Gazette of India. It is of no consequence that the contents of the notification pertained to the Union territory of Delhi. The author of the notification was the Central Government, and that is the deciding factor.

(25) As, in my opinion, none of the submissions made on behalf of the petitioners is sound, I would dismiss this petition, but, having regard to all the circumstances, leave the parties to bear their own costs.