

(1950) 06 CAL CK 0036
In the Calcutta High Court
Case No : Civil Rule No. 563 of 1950

Municipal Commissioner of the Budge Budge Municipality	APPELLANT
Vs	
P.R. Mukherjee and Another	RESPONDENT

Date of Decision : 01-06-1950

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2, 7(1)

Citation : AIR 1950 Cal 457 : (1950) 1 CALLT 318 : 54 CWN 784

Hon'ble Judges : Harries, C.J.; Banerjee, J

Bench : Division Bench

Advocate : Amiya Kumar Basu, N.C. Sen Gupta, Sushil Chandra Dutt and Purnendu Sekhar Basu, for the Appellant; S.M. Bose and A.C. Sircar, for the Respondent

Final Decision : Dismissed

Judgement

Harries, C.J.—These are two Rules which have been issued in connection with an award made by an Industrial Tribunal. An application was made for the issue of a writ of certiorari or prohibition on the adjudicator concerning an award which he had made. In the application it was prayed that a writ of certiorari should issue for removing the proceedings to this Court and quashing the same. In the alternative it was prayed that an order, restraining the adjudicator from giving effect to the said award or from taking any steps in pursuance thereof, should be made.

2. Another application was made for a Rule to issue under Article 227 of the Constitution of India and in that application similar prayers were made.

3. The application for a writ of certiorari was heard by Bachawat J. sitting on the original side. He had jurisdiction to deal with that matter, but he had no jurisdiction to deal with the application made under Article 227 of the Constitution. He therefore referred both the matters to me and I directed that both the matters should be heard by this Bench. They have accordingly been

heard together.

4. The matters arise out of a dispute between the employees of the Badge Budge Municipality and the Commissioners of the Municipality. It appears that on 12th May 1948, a so-called charter of demands was submitted by the Trades Union representing the employees of the municipality. An increase of pay was demanded and on 23rd September 1948 certain increments of pay were sanctioned by the Municipality with effect from the month of August, 1948.

5. It seems that there were two Unions representing the interests of the employees and the Chairman of the municipality was the President of one of these Unions. The two Unions amalgamated and it is said that this displeased the Chairman of the Municipality and he severed all connection with the Union with which he was concerned.

6. On 1st July 1949, the conservancy menials employed by the Municipality went on strike. But on the intervention of the Subdivisional Officer that strike was settled on 7th July 1949.

7. Two employees, P. C. Mitter, Head Clerk, and Phanindra Nath Ghose were actively concerned in the affairs of the Union which had been formed by the amalgamation of the two previous Unions and it is suggested that these two employees incurred the displeasure of the authorities controlling the Municipality. On 13th July 1949, both these employees were suspended and a charge sheet was drawn up against them. On 30th July 1949 the Labour Commissioner intervened and called a conference for 5th August 1949. Apparently this conference could not be held and was adjourned until 12th August 1949. In the meantime the Commissioners of the Municipality met and on 6th August 1949 the two employees, P. C. Mitter and Phanindra Nath Ghose were dismissed. On 8th August 1949, the Labour Commissioner again wrote to the Municipality suggesting a conference on 12th August and asked that the status quo should be maintained. However, as I have said, the two employees had been dismissed by that time. It seems that representations were made to Government concerning these dismissals, but no action was taken. Eventually the Trades Union representing the workmen applied for the setting up of an Industrial Tribunal to enquire into the dispute and in due course an adjudicator was appointed to consider the matter under the Industrial Disputes Act. On 13th February 1950, he made an award and in that award he directed the municipality to reinstate the two dismissed employees Mitter and Ghose. On 9th March 1950, the Government made an order u/s 15(2) of the Act declaring the award to be binding and that order was published in the Gazette of that date.

8. Dr. Naresh Sen Gupta who has appeared on behalf of the petitioners, the Municipality of Budge Budge, has contended in the first place that the Industrial Disputes Act could have no application to any dispute between the Municipality and its employees and therefore the Tribunal appointed under the Act had no jurisdiction to make an award and that the award made is void and wholly

ineffectual. That being so, it is said that this Court should quash the proceedings or set aside the award under Article 227 of the Constitution.

9. There can be no doubt that the dispute in this case was between the employees of a Municipality and the Municipality. The argument is that such a dispute is not an industrial dispute and therefore not within the purview of the Act.

10. Industrial Tribunals are appointed by the appropriate Government u/s 7, Industrial Disputes Act, 1947. That section provides:

(1) The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act.

(2) A Tribunal shall consist of such number of members as the appropriate Government thinks fit. Where the Tribunal consists of two or more members, one of them shall be appointed as the chairman.

11. It will be seen therefore that there must exist an industrial dispute before an industrial tribunal can be appointed to adjudicate thereon.

12. The phrase "industrial dispute" is denned by Section 2(k), Industrial Disputes Act, and the definition is as follows :

" "Industrial dispute" means any dispute or difference between employers and employees, or between employees and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

13. It will be seen that in this definition no reference whatsoever is made to the nature of the employment of the workman or the nature of the business carried on by the employers. The term "employer" is not defined in the Act except where the term is used in relation to an industry carried on by a department of Government or by some local authority. The term "employer, therefore must be given its ordinary grammatical meaning, namely, a person who employs someone to work or to do something for him.

14. The term "workman" however is defined in Section 2(s) of the Act in these terms :

" "Workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act, in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Crown."

16. Here it is clearly stated that to be a workman the person must be employed in any "industry" and this latter word is defined in Section 2(j) of the Act. The definition is as follows :

" "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

16. It is somewhat unfortunate that the term "workman" is defined in terms of industry and in the definition of "industry" reference is made to the term "workman". However, the definition of "industry" is in the widest possible terms. But Dr. Sen Gupta has contended that the words "business, trade, undertaking or calling of employers" must be qualified by the adjective "industrial", and that the words "any calling, service, employment of workmen" should also be qualified by the same adjective "industrial". It will be noticed that in the definition of the word "industry" the word "industrial" is used to qualify the words "occupation or avocation of workmen". But it is not used to qualify the words "any calling, service, employment or handicraft of workmen" and it is not used to qualify the terms "business, trade, undertaking, manufacture or calling of employers". The omission appears to be intentional and therefore any undertaking is an industry and so is any service or employment of workmen in such an undertaking. Anybody employed in an industry is a workman and it appears to me that anyone employed in an undertaking, though it is not of an industrial nature, would be a workman and that undertaking would be an industry.

17. There are indications in the Act itself which suggest that persons employed in a public utility service are workmen, though the public utility service may be carried on not for gain. The term "public utility service" is defined in Section 2(n) of the Act and includes any system of public conservancy or sanitation. There can be no doubt that a municipality carries out such a utility service.

18. Section 22(2) makes it clear that in a public utility service workmen can be rare (?) employed. That Sub-section provides:

"No employer carrying on any public utility service shall look out any of his workmen"

19. The term "workmen" there must mean the term as defined in the Act and the definition means persons employed in any "industry" as that latter term is defined in the Act. If workmen can be employed in a public utility service then it appears to me that an industrial dispute could arise between such workmen and the authority carrying out such public utility service.

20. Again the word "strike" is defined in the Act in Section 2(q) as meaning a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

21. From this definition, it is clear that the term "strike" is used as something which occurs in an industry.

22. It is quite clear from Section 22 that a strike can occur in a public utility

service and there-fore that service must amount to an industry because the term "strike" only covers what occurs in an industry by reason of its definition.

23. There are therefore clear indications in the Act that anybody carrying on a public utility service is an employer within the meaning of the Act and the employees would be workmen within the meaning of that term.

24. Further in the proviso to Section 10(I) of the Act it is expressly provided :

"Provided that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this Sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced."

25. In this proviso it is expressly recognised that a dispute covered by the Act may arise in a public utility service and can be adjudicated upon under the provisions of the Act.

26. It appears to me that a municipality carries on an undertaking or a series of undertakings and carries on a public utility service. The municipality exists for the purpose of administering the municipal area and for providing amenities for the citizens who of course have to provide the income for the municipality. These municipalities, for instance, have to maintain the roads and repair the same. They have to maintain sanitation and conservancy. They are responsible for lighting and for a hundred and one amenities. They can be regarded as either carrying out a huge undertaking or a series of undertakings. Reference was made to Section 108, Bengal Municipal Act, which deals with the powers of the municipalities in Bengal. A perusal of that section makes it clear that the modern municipality carries on a huge business or undertaking and it seems to me that its employees are workmen and that any dispute arising between the employees and the municipality is an industrial dispute as defined in the Act.

27. Dr. Sen Gupta suggested that there could be no industrial dispute unless there was some undertaking carried on for profit. Some of the undertakings of a municipality may well be carried on for profit such as the running of trams or buses or such like. But it appears to me that where the draftsmen of a statute wish to make it clear that only industrial undertakings are referred to the word "industrial" is usually added.

28. In Section 299(2), Government of India Act, which deals with the power to make laws authorising the compulsory acquisition of land for certain purposes the word "undertaking" is used, but it is qualified by the words "commercial" or "industrial". It was realised that the word "undertaking" by itself does not necessarily involve the conception of industry or commerce as those terms are ordinarily understood and the draftsmen qualified the word "undertaking" by the words "commercial or industrial" to make it clear that what was contemplated

was an undertaking of a commercial or industrial nature and not any other kind of undertaking. It may be that a municipality does not carry on a commercial or industrial undertaking in the ordinary sense of the word, but it certainly carries on an undertaking and it appears to me that where a municipality provides light or water for payment it carries on a commercial undertaking and may actually carry it on at a profit. In any event it seems to me quite clear that a Municipality carries on an undertaking or undertakings and, therefore, its employees must be regarded as being employed in industry and, therefore, the Industrial Disputes Act can apply to disputes between such employees and the municipality.

29. Reference was made to an English decision in the case of National Association of Local Government officers v. Bolton Corporation (1943) A. C. 166 : (111 L. J. K. B. 674), in which the House of Lords expressly held that employees of the Bolton Corporation which would be similar to an Indian municipality, could have a trade dispute with the Corporation. The definition of "trade dispute" was similar to the definition in the Indian Act of "industrial dispute," but the definition of "workmen" was somewhat different. Viscount Simon dealing with the meaning of the phrase "trade dispute" observed at p. 176 as follows :

"First, as to the meaning of "trade dispute" in this connection. Having regard to its definition to the present purposes, and to the wide definition of "workman" which has to be read into it in order to ascertain its ambit, I think that the phrase can cover a dispute as to conditions of service of officers of a municipal corporation. Mr. Turner strenuously argued that such an interpretation gives no effect to the limiting word "trade." The answer is that the definition of "trade dispute" introduces no such limitation. It does not speak of disputes or differences connected with the employment or non-employment of persons "in trade" or "in trade or industry," but deliberately omits such limitation, though the limitation is to be found in the definition of "workman" in the Trade Disputes Act, 1906. If there can be a "trade" union to which the higher grades of officers of a municipal corporation can belong, it does not seem an impossible use of language to say that a dispute concerning their conditions of service may be a "trade" dispute."

30. As I have already pointed out in the definition of "industrial dispute" no reference is made to industry or trade though reference is made to industry in the definition of "workman" The position under the Indian Act is very much the same as that stated by Lord Simon to exist under the English law and it appears to me that by the same reasoning as that adopted by Lord Simon it can be held in this country that the employees of a municipality are workmen and may have an industrial dispute with their employers.

31. For these reasons, I am bound to hold that there is no force in the first contention put forward on behalf of the petitioners that the Industrial Disputes Act could have no application to the dispute existing in this case.

32. It was then argued that even if the workmen of a municipality could have an

industrial dispute with their employers such could not be governed by the Industrial Disputes Act. It was urged that the Industrial Disputes Act must be construed as having no application to municipalities.

33. The Industrial Disputes Act of 1947 is a Central Act and the Central Government were empowered to legislate upon such a topic by reason of item 29 of List III of Schedule 7, Government of India Act. That item is as follows: "Trade unions; industrial and labour disputes."

34. There can be no doubt whatsoever that the Central Government could enact a piece of legislation like the Industrial Disputes Act.

35. Dr. Sen Gupta, however, contended that the word "industrial" as used in item 29 of List III of Schedule 7 of the Act must be given its ordinary grammatical meaning and, therefore, "industrial disputes" mentioned in the item must be disputes arising in "industry" as the latter term is ordinarily understood. He contended that even if the definition given to "industrial disputes" in the Industrial Disputes Act was wide enough to cover disputes between a municipality and its employees, nevertheless the Central Government had no right to legislate in respect of such disputes when their power was given under item 29 of List III to legislate only on "industrial disputes" as that term is ordinarily understood.

36. It appears to me that there is no force whatsoever in this argument, because the Central Government are competent to legislate not only on industrial but labour disputes. The item reads: "Trade unions, industrial and labour disputes". Even if a dispute between the employees of a municipality and the municipality could not be regarded as an industrial dispute as that phrase is used in item 29 of list III, it would be clearly a labour dispute which ordinarily means a dispute between employers and employees and the Central Government could legislate concerning such a dispute. It seems to me that the Central Government were competent to legislate on disputes arising between employers and employees though the employers were not conducting an industry in the usual sense of that word. They could legislate in respect of all labour disputes, that is, in respect of disputes between employers and employees which are ordinarily regarded as labour disputes. 37. Dr. Sen Gupta however contended that the Industrial Disputes Act in so far as it applies to disputes between a municipality and its employees is ultra vires. He relies on item 13 of List II of Schedule 7, Government of India Act. That item reads as follows:

"Local Government, that is to say, the constitution and powers of Municipal Corporations, Improvement Trusts, District Boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

37. List II deals with the subjects which fall exclusively in the province of the Provincial and now the State Legislature. Dr. Sen Gupta's argument is that the Central Government could not legislate on the powers of a municipal corporation.

He has argued that the provisions of the Industrial Disputes Act interfere with the powers of a Municipal Corporation and such interference is only warranted if it is the result of Provincial or State legislation and not Central Legislation.

38. Learned advocate relied upon Section 66(2), Bengal Municipal Act which provides as follows" "Subject to the scale of establishment approved by the Commissioners under Sub-section (1) the Chairman shall have power to appoint such persons as he may think fit and from time to time to remove such persons and appoint others in their place."

39. Then follow provisos limiting the power to some extent.

40. The argument is that by a Provincial Act the Chairman has been empowered to appoint and dismiss employees and by reason of item 13 of List II of the Schedule 7, Government of India Act there can be no interference with those powers except by the Provincial or State Legislature. The powers of a municipality, it is contended, is not a matter upon which the Central Government can legislate at all. If the Act applies, as we have held it does on its true construction, to disputes between municipalities and its employees then the Act in so far as it applies to such disputes is said to be ultra vires. 42. What could be enacted by the Central and Provincial Legislatures in the year 1947 is dealt with by Section 100, Government of India Act and it is clear from Sub-section (3) that the Central Government could not make laws for a Province or any part thereof with respect to any of the matters enumerated in List II. There can be no doubt I think that if the Industrial Disputes Act applies to disputes between a municipality and its employees the Act does to some extent trespass on a Provincial subject, namely, the powers of a municipality. It is a trespass upon the rights of the Chairman of the municipality to appoint whomsoever he likes and to dismiss his employees in proper cases.

41. It has been held by the Federal Court that an adjudicator under the Industrial Disputes Act has jurisdiction to order the reinstatement of workmen lawfully dismissed. In the present case the award directs the municipality to re-instate the two employees, Mitter and Ghose who were dismissed by the Chairman apparently in accordance with the rules. There is therefore a clear interference with the powers of the Chairman and of the municipality and Dr. Sen Gupta contends that the Central- Legislature had no power to pass any legislation affecting the powers of a municipality.

42. There can be no doubt that the Industrial Disputes Act, 1947, is an Act dealing with the settlement of Industrial Disputes and it does not purport to be an Act dealing with the powers of a municipality. In dealing with Industrial Disputes the Act does trespass to some extent upon a Provincial subject, namely, the powers of a municipality. But such trespass would not in my view make the Central Act ultra vires. The effect of a trespass such as the one which has occurred in this case was considered by their Lordships of the Privy Council in the recent case of Prafulla Kumar v. Bank of Commerce Ltd., Khulna 74 I. A. 23: (A.

I. R. 1947 P. C. 60). In that case their Lordships laid down that in distinguishing between the powers of the divided jurisdictions under Lists I, II and III of Schedule 7 to the Government of India Act, 1935, it is not possible to make a clean cut between the powers of the various Legislatures. They are bound to overlap from time to time and the rule which has been evolved by the Judicial Committee whereby an impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining in which particular list the legislation falls, applies to Indian as well as to Dominion legislation. The extent of the invasion by the Provincial Legislature into subjects enumerated in the Federal List is material for the purpose of determining what is the pith and substance of the impugned Act.

43. In that case the Bengal Money Lenders Act, 1940, was impugned and Section 30 of that Act provided that "notwithstanding anything contained in any law for the time being in force, or in any agreement, (1) no borrower shall be liable to pay after the commencement of this Act" more than a limited sum in respect of principal and interest or more than a certain percentage of the sum advanced by way of interest; it was held that the Act was in whole intra vires the Provincial Legislature as in pith and substance it dealt with "money lending and moneylenders", a subject-matter within the legislative competence of the Provincial Legislature under entry 27 of List II, and whether it trenched incidentally on "promissory notes" and "banking", subject-matters reserved for the Federal Legislature under entries 28 and 38 respectively of List I was not fatal to the enactment as neither of those matters was its substance.

44. Lord Porter who delivered the judgment of the Board summed up the matter at page 43 in these words:

"Thirdly, the extent of the invasion by the Provinces into subjects enumerated in the Federal List has to be considered. No doubt it is an important matter, not as their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act. Its provisions may advance so far into federal territory as to show that its true nature is not concerned with provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the Impugned Act is not moneylending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content. This view places the precedence accorded to the three lists in its proper perspective."

45. I think there can be no doubt whatsoever that the pith and substance of the Industrial Disputes Act is industrial and labour disputes. There is a slight invasion respecting a matter in List II. But is this legislation, legislation on industrial or labour disputes, or is it legislation on the powers of a municipality? That is the question which Lord Porter has directed the Court to ask itself. When I asked myself--is the Industrial Disputes Act a piece of legislation on industrial and

labour disputes or a piece of legislation on municipal powers, there is only one answer that can be given. It is clearly legislation on labour and industrial disputes. The pith and substance of the enactment is therefore industrial and labour disputes and the trespass or invasion on an item in List n is merely incidental. The legislation can in no way be regarded as legislation on the powers of a municipality and therefore following the case of Prafulla Kumar Mukherjee v. Bank of Commerce Limited, Khulna (74 I. A. 23 : A. I. R. 1947 P. C. 60) it must be held that the Industrial Disputes Act is intra vires, though as I have said it does invade to a slight extent upon an item in List No. II. In my judgment there is no substance in the contention that the Act in so far as it applies to municipalities must be held to be ultra-vires. In the Bank of Commerce case* the Federal Court had held that the Bengal Money-Lenders Act in so far as it applied to promissory notes was ultra vires as promissory notes were a Central subject and would not be the subject of legislation by a Province. The Privy Council nevertheless held that the statute was intra vires and its provisions could be applied to promissory notes, though the latter were a Central Subject. In the same way it must be held that this Act is intra vires and does apply to disputes between municipalities and its employees.

46. Lastly, Dr. Sen Gupta contended that this award was bad on the merits.

47. It seems clear that an Industrial Tribunal is such a tribunal as is contemplated in Article 227 of the Constitution. As the Supreme Court very recently held that an Industrial Tribunal is a tribunal within the meaning of that term as used in Article 136. of the Constitution it must be held that an application can be made to this Court under Article 227. Once it is held that the Industrial Tribunal had jurisdiction, then no relief by way of certiorari or prohibition can be granted.

48. Dr. Sen Gupta has contended that we ought to interfere under Article 227 of the Constitution upon the merits. But it is extremely difficult for this Court to interfere upon the merits in a matter such as this. The Industrial Tribunal is constituted to settle an industrial dispute when the parties cannot do so by conciliation and direct agreement. The Industrial Tribunal does not settle a dispute in accordance with any rules of law. It must of necessity settle the dispute in the best way to secure future peace in the industry concerned. For example, an employer is legally entitled to dismiss an employee if he gives him the proper notice or wages in lieu of notice. But this Court and the Federal Court have held that an adjudicator can well order the employers to reinstate such a man if in the view of the adjudicator such would be a fair settlement of the industrial dispute.

49. Dr. Sen Gupta contends that there was no material upon which the adjudicator in this case would order reinstatement. I am very doubtful whether we can sit in judgment upon the views of the adjudicator. Possibly if he had conducted himself contrary to all the rules of natural justice we, might have a right to interfere. But there can be no question that in this case the adjudicator

did hear the parties and has considered the relevant materials. The adjudicator in his award makes it quite clear that in his view these men have been victimised and much can be said for that view. However, it is not for us to say whether that be the right or the wrong view. It is certainly a possible view and may well be the right view. If that be so, then it appears to me that the adjudicator was fully entitled to make this award ordering reinstatement. In any event, if the adjudicator was of opinion that the only way to bring this dispute to a peaceful end would be to order reinstatement, he was in my view fully entitled to do so. On the merits I do not think we could interfere. But even if we have power to interfere I can see no ground why we should interfere.

50. In the result, therefore, both the petitions fail. The petition for a writ of certiorari is dismissed with costs, and so is the petition filed under Article 227 of the Constitution. The interim injunction is dissolved. The petitioners must pay the costs of the State as well as of the Union. We assess a hearing fee of ten gold mohurs to each of the contesting opposite parties. There will be one set of costs for the two applications.

51. We grant a certificate under Article 132(I) of the Constitution.

Banerjee J.

I agree.