

(2000) 05 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 172 of 2000

Samtel Workers Union (BMS)	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 24-05-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 13A
Industrial Employment (Standing Orders) Act, 1946 — Section 10, 6

Citation : (2001) 1 LLJ 632 : (2001) 1 ShimLC 15

Hon'ble Judges : C.K. Thakker, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Subhash Sharma, for the Appellant; Sanjay Karol, A.G. and M.L. Chauhan, D.A.G. for Respondent Nos. 1 and 2 and Shrawan Dogra, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—This petition is filed by Samtel Workers Union (BMS), Parwanoo ("Union", for short), through its Secretary, for an appropriate writ, direction or order quashing and setting aside Certified Standing Orders, if any, of Samtel India Limited, Solan, respondent No. 3 herein ("Company", for short). A prayer is also made to direct respondent No. 3-Company to submit draft Standing Orders in accordance with the provisions of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as "the Act") and the Industrial Employment (Standing Orders) Himachal Pradesh Rules, 1973 (hereinafter referred to as the Rules). A further prayer is made restraining the third respondent Company from implementing or giving effect to order passed by it on the basis of unlawful Standing Orders and by restoring the rights of the members of the petitioner-Union declaring the action taken by the Company as illegal, unlawful and ultra vires.

2. The case of the petitioner is that it is a Union duly registered on May 25, 1998 under the Trade Unions Act, 1926. It was alleged that without observing the

provisions of the Industrial Disputes Act, 1947, an illegal lock out was declared by the Company. The petitioner - Union was therefore constrained to approach this Court by filing CWP No. 106 of 2000. It may be stated that though the allegation of the petitioner was that the lock out effected by the Company was illegal and contrary to law, respondent No. 3 Company was not made party-respondent in the petition. According to the petitioner, the Company subsequently realised that the lock-out declared by it was illegal and it was, therefore, lifted. Be that as it may, the said petition is still pending and hence we do not wish to enter into correctness or otherwise of the allegations levelled in the said petition.

3. It is averred by the petitioner that after the unjustified lock out was lifted by the Company, the members of the petitioner -Union reported for work on March 25, 2000. But the Company did not allow them to enter. It is further alleged that under the garb of Certified Standing Orders, negative approach was adopted by the company and certain workers were transferred or their services terminated. All those steps were taken by way of victimisation. The petitioner-Union was never informed about so called Standing Orders. Draft Standing Orders were never sent to the Union, nor their view point was sought nor they were called upon to submit their objections, if any, in the matter and respondent No. 3 Company, in collusion with respondent No. 2, Labour Commissioner, got Draft Standing Orders certified. The said action was clearly illegal, improper, unlawful and ultra vires. The petitioner, therefore, was constrained to approach this Court by invoking its writ jurisdiction under Article 226 of the Constitution.

4. On April 11, 2000, notices were issued by the Court upon the respondents and time was granted to file affidavit-in-reply. No reply was filed by respondent Nos. 1 and 2, though an affidavit is filed by respondent No. 3-Company.

5. In the counter affidavit, the third respondent has raised several contentions. Preliminary objections were also raised as regards maintainability of the petition on the ground that if the petitioners were aggrieved by the certification of the Draft Standing Orders, an alternative remedy was available under the Act and they could not invoke writ jurisdiction of this Court. Moreover, the petitioner had already issued a demand notice and conciliation proceedings had already been started and on that count also, the petition was not maintainable. It was also contended that aggrieved workmen were not joined as petitioners and, hence, the petition was not-competent. On merits, it was urged that the action taken by the Company was in accordance with law and the Competent Authority had certified the Draft Standing Orders after observing all the requirements of the Act and the Rules and the petitioner had no right to make grievance against it.

6. Rejoinder to the affidavit-in-reply was filed by the petitioner reiterating the objections raised in the petition and describing the action of the Company as illegal and unlawful.

7. We have heard Mr. Subhash Sharma, learned counsel for the petitioner, Mr.

Sanjay Karol, learned Advocate General, for respondent Nos. 1 and 2 and Mr. Shrawan Dogra, learned counsel for respondent No. 3.

8. Mr. Sharma, learned counsel for the 1 petitioner, mainly raised the following contentions:

(i) The action of so called certification of Standing Orders, said to have been taken by respondent No. 2, is illegal, unlawful, de hors the Act and is liable to be quashed and set aside.

(ii) No alternative remedy is available to the petitioner-Union against the act of certification of Standing Orders by respondent No. 2 since such orders cannot be said to be "Standing Orders" in the eye of law, subject to appeal.

(iii) Even otherwise, the remedy under the Act cannot be said to be efficacious since the power of appellate authority is either to confirm or to modify Certified Standing Orders. It has, however, no jurisdiction to quash such Standing Orders.

(iv) As the action of respondent No. 2 is contrary to law and violative of principles of natural justice, alternative remedy is no bar to Article 226 of the Constitution.

9. Mr. Karol, learned advocate General for the authorities and Mr. Dogra, appearing for respondent No. 3-Company, on the other hand, contended that several alternative and equally efficacious remedies are available to the petitioner. They submitted that more than one remedy is available to the petitioner-Union under the Act. Section 6 provides for an appeal and if the petitioner - Union feels aggrieved by the action taken by respondent No. 2, it can file an appeal under the said provision. Likewise, Section 13-A, as inserted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, states that if any question arises as to the application or interpretation of Standing Orders certified under the Act, it is open to the employer, workman, trade Union or other representative body of the workmen to refer the said question to one of the Labour Courts constituted under the Industrial Disputes Act and the Labour Court would decide the question after affording the party an opportunity of being heard. In addition, u/s 10 of the Act, Standing Orders finally certified under the Act can be modified after a period of six months. It was stated at the Bar that the Standing Orders were certified in or about July, 1999 and, hence, the period of six months is over. The petitioner, therefore, can avail of Section 10 of the Act for modification of Standing Orders. It was also urged that one more remedy is available to the petitioner-Union of raising an Industrial Dispute u/s 10 of the Industrial Disputes Act, and this Court may not entertain the petition at this stage.

10. Though the learned counsel for the parties also made submissions on merits, we wish to express no opinion on merits one way or the other as we are of the view that the preliminary objections raised by the respondents are well founded and deserve to be upheld.

11. The question, therefore, is whether alternative remedies are available to the petitioner-Union under the Act or under any other law and whether such remedies can be said to be equally efficacious.

12. In this connection, our attention was invited by the learned Counsel for the parties to the relevant provisions of law as also leading decisions of the Supreme Court on the point. To appreciate the controversy raised in the petition in the light of preliminary objections put forward by the respondents, let us consider important provisions of the Act.

13. Section 2 defines certain words and phrases, including Standing Orders, as "rules relating to matters set out in the Schedule." Section 3 provides for submission of draft Standing Orders. Sub-section (3) thereof states that the draft Standing Orders submitted under the Section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade Union, if any, to which they belong. Section 4 lays down conditions for certification of Standing Orders which is relevant and may be quoted in extenso:

"4. Conditions for certification of Standing Orders. Standing Orders shall be certifiable under this Act if-

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment; and

(b) the Standing Orders are otherwise in conformity with the provisions of this Act;

and it shall be the function of the Certifying Officer or Appellate Authority to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders."

14. Section 4 enjoins the Certifying Officer, on receipt of the draft u/s 3, to forward a copy thereof to the Trade Union, if any, of the workmen, or where there is no such trade Union, to the workmen in such manner, as may be prescribed, together with the notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the Draft Standing Orders to be substituted by him within fifteen days from the receipt of the notice. After giving the employer and the trade Union or other representatives of the workmen an opportunity of being heard, the Certifying Officer will decide whether or not any modification of or addition to the draft submitted by the employer is necessary and pass an order accordingly. After certifying the Standing Orders with or without any modification, the Certifying Officer will send copies of such certified Standing Orders within seven days from the decision to the employer and to the trade Union or other prescribed representatives of the workmen.

15. Section 6 provides an appeal either by the employer or by workmen or by other representative of the workmen aggrieved by the order of the Certifying Officer. It reads thus:

"6. Appeals.- Any employer, workman, trade Union or other prescribed representatives of the workman aggrieved by the order of the Certifying Officer under Sub-section (2) of Section 5, may, within thirty days from the date on which copies are sent under Sub-section (3) of that Section, appeal to the appellate authority, and the Appellate Authority, whose decision shall be final, shall by order in writing confirm the Standing Orders either in the form certified by the Certifying Officer or after amending the said Standing Orders by making such modifications thereof or additions thereto as it thinks necessary to render the Standing Orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its orders under Sub-section (1), send copies thereof of the Certifying Officer, to the employer and to the trade Union or other prescribed representatives of the workman, accompanied, unless it has confirmed without amendment the Standing Orders as certified by the Certifying Officer, by copies of the Standing Orders as certified by it and authenticated in the prescribed manner".

16. Section 7 declares the date of operation of Standing Orders and Section 8 deals with register of such Standing Orders. Section 10 is also important. It provides that the Standing Orders finally certified under the Act shall not, except on agreement between the employer and the workman or a trade Union or other representative body of workmen be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation. Thereafter, it is open to the employer or workman or a trade Union or other representative body of the workmen to apply to the Certifying Officer to have the Standing Orders modified. Detailed provisions have been made for such modification. The material part thereof may be reproduced:

"10. Duration and modification of Standing Orders. - (1) Standing Orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation.

(2) Subject to the provisions of Sub-section 1, an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the Standing Orders modified and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workman or a trade union or other representative body of the workmen a certified copy of that agreement shall be filed along with the application.

(3).....

(4)....."

17. Section 11 enables the Certifying Officer and the appellate authority to

exercise certain powers of a Civil Court. Section 13-A permits any employer or workman or a trade Union or other representative body of the workmen to refer any question as to application of interpretation of the Standing Orders to the Labour Court and the Labour Court after hearing the parties will take a decision, which is made final and binding on the parties.

18. Section 15 of the Act empowers the appropriate Government to frame Rules for carrying out the purposes of the Act.

19. In exercise of the said powers, the State of Himachal Pradesh framed Rules known as the Industrial Employment (Standing Orders) Himachal Pradesh Rules, 1973. Detailed provisions have been made therein with regard to the certification of Standing Orders, authentication, signature, seal, etc. They also provided machinery, details relating to memorandum of appeal when an aggrieved party intends to file an appeal under Sub-section (1) of Section 6 of the Act and power and duty of the appellate authority. Schedule 1 of the Rules refers to Model Standing Orders. Rule 21 provides for exhibition of Standing Orders. It reads as under:

"27. Exhibition of Standing Orders.- A copy of these orders in English and in Hindi shall be posted at the manager's office and on a notice board maintained at or near the main entrance to the establishment and shall be kept in a legible condition."

20. The point for our consideration is whether remedies provided under the Act as also under the Industrial Disputes Act can be said to be alternative and equally efficacious remedies and whether the petition deserves to be dismissed on that ground.

21. In this connection, our attention was invited by the learned Counsel of the parties to several decisions. We would, however, refer to some of them, which, in our opinion, are relevant and material to the issue raised before us.

22. In *Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another*, the Hon'ble Supreme Court considered the provisions of the Act, the Industrial Disputes Act, 1947, and jurisdiction of Industrial Tribunal to adjudicate upon matters covered by the Standing Orders. Referring to several earlier decisions, their Lordships, in paragraph 23, observed as under in *Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another*,

"Further, accepting the contention of learned counsel for the appellant, will be to practically wipe out the existence of the Act, so far as industrial establishment governed by the Standing Orders Act, are concerned. The Legislature, in 1956, amended, by the same Act viz., Act XXXVI of 1956, both the Act and the Standing Orders Act. Schedules were also incorporated in the Act, and, in particular, the same item, which is referred to in Section 13-A of the Standing Orders Act, is again referred to, as item 2, of the Second Schedule to the Act,

over which the Labour Court has jurisdiction. Item 5 of the Schedule to the Standing Orders Act, as interpreted, by this Court, gives jurisdiction to the authorities under that Act, to frame Standing Orders, with reference not only to the procedure for grant of leave and holidays, but also in respect of the quantum of leave, and allied matters. The Legislature, in item 4 of the Third Schedule to the Act, dealing with "leave with wages and holidays, has conferred jurisdiction, in that regard, on the Industrial Tribunal. The Standing Orders: Act which, has for its object, the defining, with sufficient precision, the conditions of employment, under the industrial establishments and to make the said condition known to the workmen employed by them has provided more or less a speedy remedy to the workman, for the purpose of having a Standing Order modified, or for having any question relating to the application or interpretation of a Standing Order referred to a Labour Court. But there is no warrant, in our opinion, for holding that merely because the Standing Orders Act is a self-contained statute, with regard to the matters mentioned therein, the jurisdiction of the Industrial Tribunal, under the Act, to adjudicate upon the matters covered by the Standing Orders, has been, in any manner, abridged or taken away. It will always be open, in a proper case, for the Union to raise an industrial dispute as that expression is defined in Section 2(k) of the Act, and, if such a dispute is referred by the Government concerned for adjudication, the Industrial Tribunal or Labour Court, as the case may be, will have jurisdiction to adjudicate upon the same.'"

23. In *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, a direct question arose before a Bench of three Judges of the Hon"ble Supreme Court relating to interpretation of certain provisions of the Act, as amended by Act XXXVI of 1956. The majority considered the provisions of the Act as they stood prior to 1956 and after 1956 and observed that prior to the Amendment Act of 1956, there was a prohibition against Certifying Officer going into the question of reasonableness or fairness of the draft Standing Orders submitted to him by the employer. His power was limited to certify or refuse to certify the Draft Standing Orders. In 1956, however, Parliament effected radical changes in the Act widening its scope and altering its very complexion. Section 4, as amended by 1956 Act, entrusted the authorities under the Act with the duty to adjudicate upon fairness and reasonableness of the Standing Orders. After amendment, the enquiry concerning Standing Orders for certification is two-fold:

- (1) Whether the Standing Orders are in consonance with the Model Standing Orders; and
- (2) Whether they are fair and reasonable.

The majority, considering the amendment in the Act, observed:

"The workmen, therefore, can raise an objection as to the reasonableness or fairness of the draft Standing Orders submitted for certification. By amending Section 10(2) both the workmen and the employer are given the right to apply

for modification and by reason of the change made in Section 4 a modification has also now to be tested by the yardstick of fairness and reasonableness. The Act provides a speedy and cheap remedy available to the individual workman to have his conditions of service determined and also for their modifications. By amending Sections 4 and 10, Parliament not only broadened the scope of the Act but also gave a clear expression to the change in its legislative policy. Parliament knew that the workmen, even as the unamended Act stood, had the right to raise an industrial dispute, yet, not satisfied with such a remedy, it conferred by amending Sections 4 and 10 the right to individual workman to contest the draft Standing Orders submitted by the employer for certification on the ground that they are either not fair or reasonable, and more important still, the right to apply for their modification despite the finality of the order of the appellate authority u/s 6. Parliament thus deliberately gave a dual remedy to the workmen both under this Act and under the Industrial Disputes Act."

24. The majority also considered the effect of "finality clause" under Sub-section (1) of Section 6 of the Act and observed that the effect of Section 6 read with Section 12 is that the finality given to the certification by the 1 Appellate Authority was only against the challenge of Certified Standing Orders in a Civil Court. That does not, however, mean that the finality given to the Appellate Authorities order is not subject to modification. Section 10 1 does not lay down any restrictions to the right to apply for modification. That apart, the workmen can raise an industrial dispute with regard to such Standing Orders. Further, there is nothing in the Industrial Disputes Act restricting the right to raise an industrial dispute when a new set of circumstances arise. The majority considered certain illustrative cases in which such a contention can be raised either before the authorities under the Act or under the Industrial Disputes Act. It was, therefore, held that a person aggrieved has remedies under the Act of filing an appeal within the stipulated period before the Appellate Authority or making an application for modification, or alteration, after a period of six months from such certification, or by approaching an Industrial Tribunal under the Industrial Disputes Act, 1947.

25. In paragraph 12, it was observed as under:

"The Act is a beneficent piece of legislation and, therefore, unless compelled by any words in it we would not be justified in importing in Section 10 through inference only a restriction to the right conferred by it on account of a supposed danger of multiplicity of applications. The policy of Section 10 is clear that a modification should not be allowed within six months from the date when the Standing Orders or the last modifications thereof came into operation. The object of providing the time limit was that the Standing Orders or their: modifications should be allowed to work for sufficiently long time to see whether they work properly or not. Even that time limit is not rigid because a modification even before six months is permissible if there is an agreement between the parties."

26. Justice BHARGAVA (minority view), an interpretation of the provisions of the

Act and alternative remedies available to the workmen, took a similar view. His Lordship stated:

".....While the Act was in its unamended form, if the workmen had a grievance, they could not apply for modification of certified Standing Orders and, even at the time of initial certification, they could only object to a Standing Order on the ground that it was not in conformity with the provisions of the Act or Model Standing Orders. After amendment, the workmen were given the right to object to the draft Standing Orders at the time of first certification on the ground that the Standing Orders were not fair and reasonable and, even subsequently, to apply for modification of the certified Standing Orders after expiry of the period of six months prescribed u/s 10(1) of the Act. These rights granted to the workmen and the powers conferred on the Certifying Officer and the Appellate Authority, however, still had to be exercised for the purpose of giving effect to the object of the Act as it continued to remain in the preamble, which was not altered. Before the amendment of the Act, if the workmen had any grievance on the ground of unfairness or unreasonableness of the Standing Orders proposed by the employer, their only remedy lay under the Industrial Disputes Act. By amendment in 1956, a limited remedy was provided for them in the Act itself by conferring on the Certifying Officer the function of judging the reasonableness and fairness of the proposed Standing Orders. These amendments cannot, however, affect the alternative remedy which the workmen had of seeking redress under the Industrial Disputes Act if they had grievance against any of the Standing Orders certified by the Certifying Officer."

27. Again, in *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, the Supreme Court reiterated the law laid down in the aforesaid decision and observed that it could not be contended that since the question referred to were regulated by the Standing Orders of the company and the application for modification of Standing Orders was pending, no reference would be competent u/s 10 of the Industrial Disputes Act.

28. In *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, departmental proceedings were initiated against employees of the Corporation and their services were terminated by way of penalty. Those employees filed civil suits seeking a declaration that the orders, terminating their services were illegal and invalid and they must be deemed to have continued in service. The trial Court decreed the suits and appeals preferred by the Corporation were dismissed by the District Court as well as by the High Court. The matters were then carried to the Hon"ble Supreme Court. Several leading decisions came to be considered by the Hon"ble Supreme Court, including *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, and *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, and the following principles were laid down by the Court in *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*,

"32. We may now summarise the principles flowing from the above discussion:

(1) Where the dispute arises from general law of contract, i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2 (k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the fora created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called "sister enactments" to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the fora created by the Industrial Disputes Act. Otherwise, recourse to civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly - i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the fora created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister

enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil Courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

29. In the instant case, principles (3), (6) and (7) are relevant. Reading the above principles, there is no doubt in our minds that when a remedy is provided under the Act, ordinarily, this Court would be loath to exercise extra-ordinary jurisdiction under Article 226 of the Constitution. In our considered opinion, in the case on hand, three remedies are available to an aggrieved party. Firstly, against Certified Standing Orders, the petitioner can file an appeal u/s 6 of the Act. Secondly, it can also, after a period of six months, approach the Authority u/s 10 of the same Act and seek modification of certified Standing Orders. Finally, it can raise an industrial dispute by invoking jurisdiction of the Industrial Tribunal u/s 10 of the Industrial Disputes Act, 1947.

30. In the light of the fairly settled legal position, to us, it is clear that the remedies provided by the Act and also by the Industrial Disputes Act, 1947 are alternative and even more efficacious than the remedy provided under Article 226 of the Constitution as, in our opinion, power of this Court of judicial review is limited and, indeed, not to the extent conferred on the Certifying Officer or on the appellate authority, under the Act or on the Industrial Tribunal u/s 10 of the Industrial Disputes Act.

31. Over and above the provision, the scope of Section 13-A of the Act is also very wide and extensive. Though the Section provided for interpretation of Standing Orders, it has been liberally interpreted. In *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*,

"17. So far as the meaning and ambit of Section 13-A of the Standing Orders Act is concerned, a good amount of debate took place before us. Certain decisions of the High Courts have also been brought to our notice. The Section provides that "if any question arises as to the application or interpretation of a Standing Order certified under this Act", any employer or workman or their union may refer the question to "the Labour Court constituted under the Industrial Disputes Act, 1947 and specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette". The determination of the Labour Court is made final and binding on the parties. The contention of Shri Altaf Ahmed, learned Additional Solicitor General is that any and every violation of Standing Order entitles the workman to approach the Labour Court directly under this provision and obtain relief. He submits that the Labour Court is empowered under this provision to adjudicate disputes between workmen and employer arising from the certified Standing Orders and grant such relief as is appropriate in the circumstances of the case. We are afraid, we cannot give

effect to this submission. Acceptance of the said submission would mean that Section 13-A creates a parallel forum for adjudication of the very questions which the Labour Court or the Industrial Tribunal has been empowered to adjudicate under the Industrial Disputes Act and that too without the requirement of a reference by the Government. While we agree that language of Section 13-A is not very clear, it cannot certainly be understood as creating a forum for adjudication of industrial disputes involving the application and/or interpretation of the Standing Orders. That is the function of the Courts and Tribunals constituted under the Industrial Disputes Act. The limited purpose of Section 13-A is to provide a forum for determination of any question arising "as to the application or interpretation" of the certified Standing Orders as such, in case either the employer or the employee(s) entertain a doubt as to their meaning or their applicability. Probably it was thought that a decision of the appointed forum on the said question would itself facilitate the resolution of an industrial dispute, whether existing or apprehended. So far as the Labour Court, Industrial Tribunal or other adjudicatory bodies under the Industrial Disputes Act are concerned, it is agreed on hands and we endorse that where a dispute is referred to any of them they are undoubtedly competent to go into and decide questions as to the application or interpretation of the certified Standing Orders insofar as they are necessary for a proper adjudication of the question or dispute referred. "

32. We may also refer to a recent decision of the Apex Court in *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors*, In that case, draft Standing Orders submitted by the Corporation and certified by the Appellate Authority permitted the delinquent workman to be defended in a departmental inquiry by a fellow workman of his choice, who must be an employee of the Corporation. The Model Standing Orders, however, allowed such representation by an office bearer of a trade Union of which the delinquent was a member. A contention was, therefore, advanced that the draft Standing Orders submitted by the Corporation and certified by the Appellate Authority were contrary to and inconsistent with Model Standing Orders curtailing the right of an employee to be represented by an office bearer of a trade Union of which he was a member. A petition was filed in the High Court of Bombay which came to be allowed holding Certified Standing Orders to be inconsistent with Model Standing Orders inasmuch as it partly interfered with the right of an employee to be represented by an office bearer of a trade Union and were thus contrary to law. The Corporation approached the Supreme Court. The question before the Supreme Court was whether such a Standing Order could be said to be against the provision of law. Considering the relevant provision of the Act in the light of the earlier decisions of the Court, the Apex Court observed that the jurisdiction of the Certifying Officer before the Amendment Act, 1956 was limited and his power was only to see whether the Standing Orders made by the establishment and submitted for certification were in conformity with Model Standing Orders. As a result of "radical changes" introduced in 1956, however the scope of the Act was not only widened but the jurisdiction of the Certifying Officer was expanded

conferring power on him as also on the Appellate Authority to adjudicate upon and decide "fairness and reasonableness" of such Standing Orders. According to the Court, hence interference by the High Court in the matter was not called for. The Appeal was, therefore, allowed and the judgment and order passed by the High Court were set aside.

33. Strong reliance was, however, placed by the learned Counsel for the petitioner on a decision of a Single Judge of the High Court of Allahabad in *Bijli Mazdoor Sangh Vs. Resident Engineer, Allahabad Electric Supply Undertaking, U.P. State Electricity Board, Allahabad and Others*, In that case, it was contended that while exercising powers u/s 6 of the Act, the Appellate Authority cannot altogether cancel Standing Orders certified by the Certifying Officer. Considering the phraseology used in Section 6 of the Act, the learned single Judge held that the only power conferred upon the Appellate Authority under Sub-section (1) of Section 6 is to confirm the certified Standing Orders with or without modification and the said power does not extend to completely cancel the Standing Orders appealed against.

34. It is, no doubt, true that the ratio laid down in the above decision supports the contention raised by the petitioner. We must, however, frankly admit that we are unable to subscribe to the said view. Firstly, the decision is of a single Judge of the High Court of Allahabad and this Court is not bound by it. That apart, the learned Judge has not considered the material provisions of the Act, scheme as a whole, the amendment made by Parliament in the year 1956 and the underlying object thereof. The attention of the Court was also not invited to the leading and relevant decisions of the Supreme Court interpreting material provisions of the Act. For all these reasons, in our opinion, it would not be advisable to come to a conclusion on the basis of the decision in *Bijli Mazdoor Sangh* (supra) relied upon by Mr. Sharma. We would rather come to our own conclusion on consideration of the relevant provisions of the Act, the Industrial Disputes Act, 1947 and the principles laid down by the Supreme Court in the decisions referred to by us in the earlier part of this judgment.

35. In the light of the above discussion, in our opinion, more than one alternative remedy is available to the petitioner. In our view, in the light of amendment in Sections 4 and 10 of the Act in 1956, the remedies available to the petitioner under this Act and under the Industrial Disputes Act, 1947 are much more effective and efficacious. The preliminary objection raised by the learned counsel for the company, therefore, deserves to be upheld.

36. For the foregoing reasons, the petition deserves to be dismissed only on the ground that alternative and equally efficacious remedies are available to the petitioner. We may state that, as clarified in the earlier part of the judgment, we have not expressed any opinion on merits of the matter and as and when the matter will come up before an appropriate authority, it will be decided on its own merits without being inhibited by any observation made by us in this judgment. The writ petition is accordingly dismissed. Notice discharged. In the facts and

circumstances of the case, there shall be no order as to costs.

CMP No. 292 of 2000

37. In view of the dismissal of the writ petition, the present application stands dismissed.