
(1953) 08 KL CK 0014
In the High Court Of Kerala

Sankara Allom, Ltd.

APPELLANT

Vs

The State of Travancore-Cochin and Others

RESPONDENT

Date of Decision : 05-08-1953

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2

Citation : AIR 1953 Ker 622 : (1953) 1 LLJ 644

Hon'ble Judges : G. Kumara Pillai, J

Bench : Single Bench

Judgement

G. Kumara Pillai, J.

1. This is a petition under Article 226 of the Constitution of India for Issuing a writ of certiorari or other appropriate directions quashing the order

of the Travancore-Cochin Government 12-12974/52/DD, dated 20 November 1952, published in the Travancore-Cochin Government Gazette,

dated 25 November 1952, referring an industrial dispute for adjudication to the industrial tribunal, Quilon.

2. The petitioner is Sri Sankara Allom, Ltd., represented by its managing director Sri T.V. Krishna Iyer. The Cape Comorin General Traffic

Company, Ltd., which is now in liquidation, owns salt factory, known as Company Allom or extension factory No, 2, at Thamarakulam. When the

liquidation court auctioned the right to manufacture salt in this factory for the Malayalam year 1128 the petitioner, Sri Sankara Allom, Ltd., bid the

same. After obtaining from the Assistant Controller of Salt, Tuticorin, the licence for the manufacture, collection and storage of salt required by the

Central Excises and Salt Act, 1944, Sri Sankara Allom began to work their lease and manufacture salt in the factory. Subsequently disputes arose

between their agent or power-of-attorney-holder, Sri K.V. Sivaramakrishna Iyer, and their employees in regard to certain matters touching the

industry; and, by their order No. 12-12974/52/DD, dated 20 November 1952, the Government of Travancore-Cochin referred the said industrial

disputes for adjudication to the industrial tribunal, Quilon. In the order the Government stated that in their opinion an industrial dispute existed

between Sri K.V. Sivaramakrishna Iyer (agent of Sri Sankara Allom, Ltd.), lessee of the Cape Comorin General Traffic Company, Ltd., Puthalam

Allom, Thamarakulam and the All-Travancore Salt Workers' Union, Puthalam, Nagarooil, representing the employees of the said allom and that in

exercise of the powers conferred on them by Section 10(1) of the Industrial Disputes Act of 1847 (Central Act XIV of 1947) they were referring

the dispute for adjudication to the industrial tribunal, Quilon, having its place of sitting at Quilon. It is this order that the petitioner seeks to quash.

3. u/s 10(1) of the Industrial Disputes Act it is only the "appropriate government" that can refer an industrial dispute to a tribunal for adjudication,

and u/s 2(a) of the same Act "appropriate government" means:

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway

company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial

dispute concerning a banking or an insurance company, a mine, an oil field, or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government.

Since salt was being manufactured in the factory under the licence granted by the Assistant Controller, Tuticorin Division, for the Salt Controller of

India in accordance with the provisions contained in Rule 102 of the Central Excise Rules framed under the Central Excises and Salt Act, 1944,

the petitioner contends that the industry in relation to which the dispute has arisen was one carried under the authority of the Central Government

and that the "appropriate Government" which should have made the reference was therefore the Central Government and not the Government of

the Travancore-Cochin State. It is urged by the petitioner that the order of the Government of the Travancore-Cochin State mentioned above

referring the dispute to adjudication is consequently ultra vires and illegal and

void; and on that basis it is prayed that the order should be quashed.

4. Counter-petitioners 1 and 3, viz., the Government of the State of Travancore. Cochin and the President of the All Travancore Salt Workers'

Union, Puthalam, oppose the petition. They contend that the "appropriate Government" in the case of the industry conducted by the petitioner is

the Government of the Travancore-Cochin State and not the Central Government and that no business owned and carried on by a private person

or a limited company like the petitioner can be a business carried on by, or under the authority, of the Central Government as contemplated in

Section 2(a)(i) of the Industrial Disputes Act of 1947. In the counter affidavit filed by the third counter-petitioner it is further stated that the Central

Government have specifically considered the question whether the executive power in relation to industrial and labour disputes as regards salt

industry must be exercised by the State Government or the Central Government and that it has decided that it was the State Government that must

exercise such power.

5. The short question for decision in this case is whether the industry that is being carried on by the petitioner is one carried on by or under the

authority of the Central Government. If the industry is being carried on by or under the authority of the Central Government the appropriate

Government in relation to the industrial dispute between the petitioner and the allom's employees would be the Central Government; and if the

industry is not being carried on by or under the authority of the Central Government the appropriate Government would be the State Government

It is conceded by both sides that it is only the appropriate Government which has the power to refer the dispute to adjudication. The petitioner's

contention is that on account of the licence the allom has obtained from the Assistant Salt Controller, Tuticorin, for the Salt Controller of India,

without which salt cannot be manufactured and stored, the petitioner's industry is one carried on by or under the authority of the Central

Government.

6. The petitioner's contention appears to me unacceptable. It is admitted that the petitioner got the right to work the factory by obtaining the lease

from the winding-up court in which the proceedings for winding up the Cape Comorin General Traffic Company, Ltd., are going on. The industry

is being carried on by the petitioner not for any public purpose or on behalf of, or for the benefit of, the Central Government but for the benefit of

the Sri Sankara Allom, Ltd., alone. The profits of the concern, after paying the rent to the court, belong to the petitioner and are taken by Sri

Sankara Allom. The provisions in the Central Excises and Salt Act of 1944 and the Central Excise Rules, 1944, are intended merely to carry out

the fiscal and public policy of the State and not to convert the industry, for which the licence is issued, from a private concern into a Government

business or a business carried under the authority of the Government. Nor can an overall control given to the Central Government over a class of

industries in general on account of the fiscal policy of the State or on considerations of public policy convert individual units of that industry, owned

and worked by private persons or companies into Government concerns or industry carried on by or under the authority of the Central

Government. Section 2(a)(i) of the Industrial Disputes Act, 1947, came up for consideration before a Division Bench of Calcutta High Court in

Carlsbad Mineral Water Mfg. Co. Ltd. Vs. P.K. Sarkar and Others, , and in that case Harries, C.J., observed:

It seems to me that what is referred to in Section 2(a)(i) and Section 2(g)(i)"" is any industry owned by Government which is being carried on by

Government itself either through a department or by some authority created by Government to carry on that industry. An industry carried on by or

under the authority of Government is a Government industry which as I have said may be carried on directly by Government or by somebody or

person nominated by Government for that purpose. No business owned and carried on by a private person or a limited company can be a

business carried on by or under the authority of Government.

I respectfully agree with the observations of the learned Chief Justice, referred to above; and in the view that he has so aptly expressed and that

has commended itself to me I have no doubt of the fact the industry., that is being carried on by the petitioner is not one carried by or under the

authority of the Central Government. It follows that in relation to the industrial dispute between the petitioner and the employees of the allom the

appropriate Government is not the Central Government but the Government of the State of Travancore-Cochin, and that the reference to

adjudication made by that Government Is not ultra vires of its powers or illegal and void. The petition is hence dismissed with costs.