

(1968) 01 AHC CK 0043
In the Allahabad High Court

Srivastava (S.P.) and Another	Vs	APPELLANT
Banaras Electric Light and Power Company Ltd. and Others		RESPONDENT

Date of Decision : 25-01-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 1, 10, 11, 12, 13

Citation : (1968) 2 LLJ 483

Hon'ble Judges : M.H. Beg, J;K.B. Asthana, J;A.K. Kirtu, J

Bench : Full Bench

Judgement

M.H. Beg, J.—The appellant, S.P. Srivastava, was employed as an accountant by the respondent-company, Banaras Electric Light and Power Company, Ltd., Varanasi. He was suspected of having been responsible for the disappearance of a sum of Rs. 223 14.0 which was due from the company to another employee, Mahabir Prasad, towards payment of bonds. His past record and conduct also aroused suspicions. Therefore, on 10 October 1957, the company served a notice of termination of his services upon the appellant in accordance with the terms of the contract of service between the appellant and the company. On a reference to the labour court at Gorakhpur, it was found that the notice was not a proper one under Clause 7 of the terms of agreement between the parties. Therefore, the appellant was reinstated on 27 November 1958, and the entire amount due to him under the award was paid. But the company gave a fresh notices of termination of his services to the appellant on the ground that it had lost confidence in him. The appellant was paid one month's salary in lieu of period of notice. The matter was, however, again referred to the labour court which held on 8 October 1959, that the company had wrongfully and unjustifiably terminated the service of S.P. Srivastava inasmuch as the standing order, which provided for an opportunity to be given to the employee to explain his position before terminating his services in such circumstances, had not been complied with.

2. The Company then filed a writ petition against the award given by the labour

court on 8 October 1959. It claimed the benefit of the particular agreement between the parties and contended that it prevailed over the standing orders of the company. Oak, J. (as he then was), accepted the company's submissions and quashed the award of the labour court. Following his own previous decision in *J.K. Cotton Manufacturers Ltd., Kanpur Vs. J.N. Tewari and Others*, , the learned Judge held that a special contract would prevail over the provisions of the standing orders. S.P. Srivastava, the employee concerned, then filed a special appeal. Our learned brethren, Jagdish Sahai and B.D. Gupta, JJ., hearing the special appeal, seem to have taken by Oak, J. A Division Bench case of this Court in *British India Corporation Ltd. Vs. Labour Appellate Tribunal and Others*, where the view taken in the case of *J.K. Cotton Manufactures* (vide supra) had been affirmed, was also placed before them. Therefore, our learned brethren have referred the following question for decision by a Full Bench of this Court:

In the case of a conflict between the contract of service entered into between the employee and the company and the standing orders of the latter, which would prevail?

3. As the outset, we may mention an argument, based upon the provision of the standing orders of the company, which has been addressed to us by Sri Jagdish Swarup on behalf of the respondent company. It is that the standing Order 35 of the company itself provides for such special agreements. This standing order runs as follows:

35. The standing orders are general conditions of service applicable to every employee who shall also be subject to any special conditions which may be agreed at the beginning of his service subsequently. The company reserves the right to alter, add to or rescind these standing orders in accordance with the conditions contained in the Industrial Employment (Standing Orders) Act, 1946.

On the other hand, the appellant-employee relied upon standing Order 20, which is in the following terms:

20. The company has at all times a general right to discharge an employee from service not only for proved misconduct but also when the employer has lost confidence in the employee: provided that an employee before being discharged under this standing order shall be given a chargesheet and an opportunity to explain the charge made against him.

4. Now, the question of reconciling the provisions of the two standing orders, by holding that the special conditions mentioned in standing Order 35 do not touch one of the general conditions of service contained in standing Order 20, does not arise before us. Nor is the question of resolving any conflict between the special contract and standing Order 20, either by annexing the general conditions contained in standing Order 20 to the special agreement or in any way, before us. For the purposes of answering the question referred to us, we have to assume that there is a conflict between the terms of the special contract of service between the employee and company and the standing orders of the

company, which have been duly adopted and certified in accordance with the procedure laid down in the Industrial Employment (Standing Orders) Act 20 of 1946 (hereinafter referred to as the Act).

5. Both sides have placed some reliance upon the preamble to the Act. Although, a preamble cannot be used to contradict the specific provisions of an Act, yet it can be used as

the key to the statute, and affords a clue to the scope of the statute, where the words construed in themselves without the aid of the preamble are capable of more than one meaning.

See *Powel v. Kempton Park racecourse Co.* 1989 A.C. 143. The preamble of the Act before us gives the object of the Act to be-

to require employers in industrial establishments to define with sufficient precision the conditions to employment under them and to make the special conditions known to workmen employed by them.

It is contended on behalf of the company that the sole object of the Act was to give publicity to the conditions of employment offered but not to exclude contracts outside the conditions offered by the standing orders. On the other hand, the contention of the appellant is that the whole object of making the conditions of employment precise as well as known to the workmen was to inform the workmen those are general terms and conditions of employment which cannot be departed from by either side. The provisions of the statute, construed as a whole, appear to us to be more in conformity with the view advanced by the appellant than with that submitted on behalf of the company. These provisions may now be examined.

6. Section 1 of the Act provides that it applies to all industrial establishments where one hundred or more workmen are employed on any day during the preceding twelve months as well as to other industrial establishments notified in the official gazette by the appropriate Government. Section 14 of the Act, however, contains the power of the appropriate Government to exempt, conditionally or unconditionally, any industrial establishments from subjection to the provisions of the Act. In other words, unless the appropriate Government specifically exempts any industrial establishments, under an order passed by it, all industrial establishments covered by the Act are meant to be subjected to the provisions of it.

7. Section 2(g) of the Act defines "standing orders" as "rules relating to matters set out in the schedule." A glance at the schedule shows that these are general matters including "termination of employment and notice thereof to be given by employer and workmen" as well as "suspension or dismissal for misconduct of acts of omissions which constitute misconduct." The schedule also contains as item 11: "Any other matter which may be prescribed." Section 15 of the Act,

containing the powers of the appropriate Government to make rules by notification, mentions, the power to prescribe additional matters for inclusion in the schedule. Section 15(2)(b) of the Act specifies the power to prescribe model standing orders for the purposes of this Act. In other words, within the general pattern which may be prescribed by the appropriate Government for standing orders, each industrial establishment can have its own standing order "for the purposes of the Act.

8. Section 3 of the Act makes it obligatory upon every employer of an industrial establishment to submit drafts of proposed standing orders "for adoption in his industrial establishment" after due examination by a certifying officer appointed under the Act. Section 4 of the Act lays down the conditions of certification of the standing orders indicating that all matters specified in the schedule must be provided for and that the certifying officer must see that the standing orders conform to the provisions of the Act and adjudication upon "the fairness or reasonableness" of the provisions of the standing orders. Section of the Act provides a quasi-judicial procedure for certification of the standing orders and for their modification. Section 6 of the Act provides for appeals by aggrieved persons against the orders of the certifying officer. The date of the operation of the standing orders is governed by Section of the Act. The registration of the standing orders with a with a certifying officer, who is obliged to furnish a copy of the standing orders to any person applying for the same on payment of the prescribed fee, is contained in Section 8 of the Act. The standing orders are to be prominently posted by the employer in English as well as in the language understood by the majority of the language understood by the majority of the workmen of special boards to be maintained for the purpose so that the workmen may know the conditions by which they are governed. Modifications of the standing orders can only take place, according to Section 10 of the Act provides that the standing orders finally certified under the Act shall not be modified, except by agreement between the parties within six months of the certification of the last modification.

9. The whole procedure for the certification and modification of the standing orders is analogous to that followed in adjudications by civil Courts. Section 11 of the Act gives every certifying officer and appellate authority power of a civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling discovery and production of documents. These authorities are deemed to be civil Courts within the meaning of Sections 480 and 482 of the Code of Criminal procedure. It is also provided by Section 12 of the Act that no oral evidence can be led for the purpose of adding to or contradicting the standing orders as finally certified. It is thus obvious that the agreement between the employer on the one side and the employees as a whole on the other, having been reduced to writing in the form of the standing orders, cannot be varied except in accordance with the procedure provided under the Act. The obligation which the Act imposes upon every employer to submit drafts of the standing orders under the Act and not to modify them otherwise than in

accordance with procedure prescribed is capable of being enforced by the penalty of a fine extending up to Rs. 5,000 and, thereafter, by a further fine of Rs. 200 per day, under the provision of Section of the Section 13 of the Act. It is also provided by Section 13A of the Act that disputes relating to the application or interpretation of the standing orders certified under the Act are to be decided by labour courts constituted under the Industrial Disputes Act, 1947. The provisions of Section 13B of the Act indicate that the standing orders stand on a footing analogous to that or rules relating to conditions and termination of services and punishments of Government servants, framed by appropriate authorities, which govern relations between the Government and its servants. The object of the standing orders appears to be not only to ensure due publicity of terms and conditions service but also a precise formulation of those terms and condition, after considering that farness and reasonableness which demand some security of service and freedom from arbitrary deprivations of service, so that these conditions are observed of may prevail.

10. The abovementioned summary examination of the provisions of the Act clearly shows us that the standing orders were meant to constitute a set of basic general rules, which could not be ignored or abandoned, departed from, modified, or varied by special agreements with regard to any matter specifically contained in the standing orders. It is true that the standing orders do not prohibit special agreements between employers and employees. Such special agreements may be necessary for providing special terms and amenities to workmen having special value to their employers. But, it appears that the basic and general conditions contained in the standing orders could not be by passed by adopting the device of special agreements. If the general conditions, on matters expressly provided by the standing orders; could be avoided in this manner, the whole object of the standing orders would be frustrated and the elaborates machinery provided for their certification and enforcement would become meaningless. Therefore, even without going into the juristic niceties of what constitutes "law", which is binding upon those governed by it, it appears to us that the standing orders which have passed through the carefully devised mechanism of the Act were meant by the Act to be complied with by the employers and the employees alike. The mere fact that they take the form of an agreement which is subject to the process of adjudication by the certifying officer and the appellate authority before its adoption could not imply that they could be abandoned at the option of either aide or both sides. They were meant to be adopted and not to be discarded through some device even when the means employed for defeating them can be elevated to the level of an alluring or high-sounding doctrine such as that of freedom of contract. It is a well-established principle that there is no freedom left to contract out of the terms of a stature for persons governed by the statute. Several decisions of the Supreme Court of India were cited before us on behalf of the appellant to contend that the standing orders made under the Act have been treated as "statutory" rules by the Supreme Court.

11. In *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, the Supreme Court considered the ways in which the provisions of standing orders could be modified before and after the amendment of the Act in 1956. It was assumed there that employers and employees could not escape from the provisions of the standing orders in any manner outside the statutory provisions. It was held there that if an industrial dispute arises in respect of the provisions of the standing orders, an industrial tribunal was given the jurisdiction to deal with it on merits. The special jurisdiction of an industrial tribunal arose, however, under a statutory provision. Gajendragadker, J., observed at p. 411:

...It is thus clear that the scope of the enquiry before the certifying officer and the appellate authority under the original Act was extremely limited, and the right to claim a modification of the standing orders was not given to the employees prior to the amendment of Section 10(2).... Nevertheless the standing orders when they were certified become operative and bound the employer and all his employer and all his employees....

His lordship also observed at p. 411:

...The standing orders certified under the Act, no doubt, become part of the terms of employment by operation of Section 7; but if an industrial dispute arises in respect of such orders and if it is referred to the tribunal by the appropriate Government, the tribunal has jurisdiction to deal with it on the merits.

12. The binding character of the standing orders, so far as the employer on one side and his workmen on the other are concerned, was not doubted. It seems to follow from this view that, whatever may be the jurisdiction of the industrial tribunal when a dispute with regard to a standing order arises; the employer and the workmen are bound by their standing orders and could not modify them by adopting the simple device of a special contract.

13. In *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, Gajendragadkar, J., dealt with the object of the Act at p. 206:

...The Act was passed in 1946 because the legislature thought that

It was expedient to require employers in individual establishments to define with sufficient precision and to make the said conditions known to workmen employed by them.

Prior to the passing of the Act, conditions of employment obtaining in several industrial establishments were governed by contracts between the employers and their employees. Sometimes the said conditions were reduced to writing and in many cases they were not reduced to writing but were governed by oral agreements. Inevitably, in many cases, the conditions of service were not well-defined and there was ambiguity or doubt in regard to their nature and scope. That is why the legislature took the view that in regard to industrial establishments to which the Act applied, the conditions of employment subject to which industrial labour was employed, should be well-defined and should be

precisely known to both the parties. With that object, the Act has made relevant provisions for making standing orders which, after they are certified, constitute the statutory terms of employment between the industrial establishments in question and their employees. That is the principal object of the Act.

14. In the course of the same judgment, after pointing out the statutory mode of obtaining modifications of standing orders, it was observed at p. 208:

The object of the Act, as we have already seen, was to require the employers to make the conditions of the employment precise and definite and the Act ultimately intended to prescribe these conditions in the form of standing orders so that what used to be governed by a contract here to before would now be governed by the statutory standing orders....

15. Although the precise question before us was not considered in the cases mentioned above, the Supreme Court has treated the standing orders as enforceable rules actually governing the relationship between the employer and his workmen by superseding what used to be governed by what may be called unregulated contracts which were possible before the Act.

16. In *Workers of Dewan Tea Estate v. their management Workmen of Dewan Tea Estate and Others Vs. The Management*, the Supreme Court observed at p. 364:

...It the standing orders thus become part of the statutory terms and conditions of service, they will govern the relations between the parties unless, of course, it can be shown that any provision of the Act is inconsistent with the said standing orders. In that case, it may be permissible. In that case, it may be permissible to urge that the statutory provision contained in the Act should override the standing order which had been certified before the said statutory provisions were enacted....

In that case, the question under consideration was whether any provisions of the Act could have overridden the provisions of the standing orders. By holding that the standing orders could only be overridden by specific provisions of the Act, which may have been introduced after the standing order in question was certified, the Supreme Court seemed to rule out any method of modifying the obligation imposed by the standing orders falling outside statutory provisions.

17. It is true that, in the cases mentioned above, the Supreme Court pointed out that standing orders could be modified by agreement between the parties in accordance with the provisions of the Act itself. This meant that the manner for the modification of the standing orders by agreement having itself been specified by the Act, no other mode of modification by agreement was permissible. The particular agreements by which standing orders under the Act, Each agreement embodied in a standing order has to be certified before it can govern the relations between the employer and his workmen. This procedure for providing for certain matters means that individual agreements outside the provisions of the Act are forbidden for regulation these matters. It is a well-known canon of

construction that when a particular mode of doing some thing is specified by statute, other modes of doing that thing are prohibited by necessary implication. It is not essential, in our opinion that a particular section of the Act or a bar to what would really be contracting out of the terms of the standing orders, and, therefore, the statute.

18. The question whether a contract can override the terms of the standing orders did arise before the High Court of Gujarat in *Tata Chemicals Ltd. and Others Vs. Kailash C. Adhvaryu*, After considering the various provisions of the Act and the contentions advanced for the proposition that the right of the parties to enter into contracts in contravention of terms of the standing orders, P.N. Bhagwati, J., of the Gujarat High Court, held, at p.65:

...I am, therefore, of the opinion that on a true construction of the various provisions of the Act, the standing orders when finally certified under the Act are binding on the employer and the workman and it is not open to the employer and the workmen to contract themselves out of the rights and obligations created by the standing orders.

19. The Gujarat High Court considered the view taken by this Court in *J.K. Cotton Manufacturers Ltd., Kanpur Vs. J.N. Tewari and Others*, to be in conflict with the views expressed by the Supreme Court in *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, and *The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others*, . It was held by the Gujarat High Court:

The rights and obligations created by the standing orders derive their force and not force the contract between the parties but from the provisions of the Act. They are statutory rights and obligations and not contractual rights and obligations.

A Bench of the Patna High Court consisting of Ramaswami, C.J., and Chaudhary, J.; in *Behar Journals Ltd. Vs. Ali Hasan and Another*, has also held at p. 538:

...It is conceded and there is no doubt about it, that the certified standing orders have the statutory force and under the above standing orders there is a statutory contract between the employer and the workman. It could not, therefore, be possible is law for the parties in this case, namely, the petitioner and respondent 2, to enter into a contract overriding the statutory contract as embodied in the certified standing orders and any contract contrary to the above orders must be ignored. In face of the above standing orders, the petitioner could not appoint respondent 2 on conditions of service different from those defined in the standing orders without a modification of the standing orders themselves.

20. Sri Jagdish Swarup appearing on behalf of the respondent-company, submitted that the relationship between an employer and the employees retains its contractual character notwithstanding the certification of standing order under the Act. He compared the position to that which flowed from a consent decree

which was an order of the Court superimposed upon an agreement between the parties. The learned Counsel contended that the only purpose of the standing order was to define with precision the conditions of service, which were, nevertheless, governed by contract. According to the learned Counsel the amendment of the Act in 1956 gave the certifying officer and the appellate authority the jurisdiction to adjudicate upon the fairness and reasonableness of the provisions of the standing order which constituted nothing more than general conditions offered. It is pointed out that there was no express provision in the Act laying down that the standing orders will have the force of law. A law it was urged, cannot be submitted to an officer who certifies its reasonableness. It was also pointed out that a law cannot be modified by the consent of parties as standing orders could be modified. Furthermore, the provisions of Section 8 of the Act with regard to registration of standing order were said to be inconsistent with the view that the standing orders constituted law. A law, it was contended, is presumed to be known to all and operates unconditionally. It was also contended that Section 12 of the Act excluded oral evidence to contradict the terms of the standing orders, but there could be written agreements in addition to those provided by the standing orders, but there could be written agreements in addition to those provided by the standing orders which may contradict standing orders. Finally, the penal provisions of Section 13 making orders punishable offences were said to leave the validity of obligations created by contracts outside the standing orders intact.

21. Reference were made to certain decisions of the Supreme Court on the meaning of the term "law." In *Maharaja Shree Umaid Mills Ltd. Vs. Union of India (UOI)*, it was held:

There is no magic in the expression "legislative contract." A contract is a contract between two or more parties and is either executory or executed. If a statute adopts or confirms it, it becomes law and is no longer mere contract. That is all that a "legislative contract" means.

22. This case, cited on behalf of the company, only shows that a law can originate in consent or contract and can become "law" after its adoption in the manner provided by statute. The standing orders do provide for the statutory adoption of what may originate in agreement. In *Podar Plastics (Private), Ltd., Bombay v. its workmen Podar Plastics (P) Ltd. Vs. Its Workmen*, it was pointed out that the term "existing law" as used in Article 226(10) of the Constitution; included "rules, bylaws, and regulations made by virtue of statutory power to make them, but did not include administrative orders which derive their force from executive authority and were either made for the convenience of the administration or for the benefit of individuals. In that case, a "tharav order" (tharav means a resolution) was held to satisfy the definition of the term "law". In *Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another*, , *Gajendragadkar, C.J.*, held:

Stated broadly, a law generally is a body or rules which have been laid down for

determining legal rights and legal obligations which are recognized by Courts. In that sense, a law can be distinguished from a grant, because in the case of a grant, the grantor and the grantee both agree about the making and the acceptance of the grant, not so in the case of law.

23. We do not think that the three Supreme Court cases mentioned above, which were cited on behalf of the company, could possibly support the contention that the standing orders certified under the Act are not laws in the sense that they are rules binding upon and determining the legal rights and obligations of these subjected to the standing orders. The processes of lawmaking and the sources of law are diverse as a glance at works such as Prof. C.K. Allen's "Law in the Making" or Sir Henry Maine's, "Ancient Law" would disclose. None of the characteristics of standing orders, pointed out by learned Counsel, prevent them from having the force of law for these governed by a set of standing orders.

24. Sri Jagdish Swarup referred to a book of Prof. H.L.A. Hart, "The Concept of Law," in order to contend that tests of "law" are not satisfied by every set of rules. If, as the learned Counsel conceded, for our purposes, law is a set of rules recognized and enforced by courts, this practical test is satisfied by the standing orders. Rights and obligations laid down by the standing orders were in our opinion, meant to be recognized and enforced by Courts under the statute which provided for the manner in which the standing orders are made. As is evident from the decision relating to standing orders, quoted by us above, Courts have repeatedly recognized and enforced standing orders. This, in our opinion, is a sufficiently good test of what is "law."

25. The view put forward on behalf of the respondent-company that the sphere of "law" must be confined to that of rules which are necessarily imposed from above by an external authority, independently of the will of those governed by it, is much too narrow. The inadequacy of Austinian theory of law was realized long ago. In 1870, T.H. Green, in his lectures on "Principles of Political Obligation" pointed out that "will" by which he meant some form of consent, "not force, is the basis of the State," the principal law-making organization of today. In our opinion, the standing orders which employers are obliged to submit for certification satisfy even the narrower Austinian criteria of "law" inasmuch as every employer is obliged to formulate his standing orders and to get them duly certified after providing for certain matter which must be contained in and governed by the standing orders. The performance of this duty and compliance with standing orders can be enforced by action under penal statutory provisions. The more fact that the reasonableness and the fairness of the standing orders is subject to quasi-judicial adjudication after objections have been invited cannot take away the force of law from the standing orders.

26. In this connection, it may be observed that our Supreme Court, in H.C. Narayanappa and Others Vs. The State of Mysore and Others, characterized a scheme of nationalization of motor transport, under Chap. IVA of the Motor Vehicles Act by a quasi-judicial procedure, as "law." The manner in which a set of

rules which bind a group of persons, whether they like it or not, comes into existence does not prevent their recognition by Courts. In the ultimate analysis, it is the fact that Courts enforce those rules against persons subjected to them which gives authoritative recognition to certain rules as laws. The Courts are bound, in our opinion, to give such recognition to rules made under the provisions of a statute and meant by the legislature to be observed.

27. It may be that standing orders made under the Act cannot be called "statutory rules" in the sense in which that term was used in England under the Rules Publication Act, 1893. There, "statutory rules" were "rules, regulations, or bylaws made under Act of Parliament," relating to a Court or made by certain specified authorities. This Act was wholly repealed and replaced by the Statutory Instruments Act, 1946, which has enlarged the scope of "statutory instruments," a term applicable to all rules, by whichever body made, which are confirmed and approved by a Minister. These rules are sometimes required, by the Acts of Parliament under which they are made, to be laid before each House of Parliament before they are approved. In this narrow sense, the standing orders before us may not be "statutory rules," but they are statutory rules in the sense that they are made under an authority conferred by a statute and are binding upon all those governed by each particular set of standing orders.

28. As the learned Counsel for the company emphasized the fact that the "standing orders" took the form of "orders" after adjudication, it may be pointed out that the nomenclature of rules does not provide a conclusive test of their legal character. In England, the Committee on Ministers' Power expressed dissatisfaction with nomenclature current there in 1932. It said in its report at p. 64:

The expressions "regulation", "rule" and "order" should not be used indiscriminately in statutes to describe the instruments by which law-making power conferred on Ministers by Parliament is exercised. The expression "regulation" should be used to describe the instrument by which the power to make law about procedure is exercised. The expression "order" should be used to describe the instrument of the exercise of

(a) executive power,

(b) the power to take judicial and quasi-judicial decisions.

And Sir C.K. Allen, in his book "Law and Orders" (2nd Edn.) thus stated the position in England in 1956 at p. 110:

There is great variation in nomenclature and it is difficult to say that, if any substantial difference there is between an order, a rule and a regulation. There has been a sort of vague departmental understanding that rules and regulations are intended to be of general application throughout the Kingdom, whereas orders are of limited application to specific places, persons or classes of persons, e.g., housing orders, compulsory purchase orders, or town and country planning

order.

29. I have quoted above some of the observations made about the confusing nomenclature frequently employed to describe various types of rules and orders in England because the position is not clearer, if not more confusing, in this country from the point of view of nomenclature or manner in which the standing orders are made.

30. The standing orders under consideration are perhaps more closely akin in legal character to "bylaws" than to any other typed of "laws." Bylaws, rules, and regulations made "by persons, societies or corporations (whether by the common law or statute) who are conducting commercial or other enterprises whether of a public character or not" are classed under the heading of "subordinate legislation." See Craies on Stature Law, 5th Edn., p. 275.

31. It has been held that bylaws made by local Government authorities are binding upon them. In *Yabbicom v. King* (1899) 1 Q.B. 444 (a) it was said:

The district council could not control the law, and bylaws properly made have the effect of laws; a public body cannot any more than private persons dispense with laws that have to be administered; they have no dispensing power whatever.

In *William Bean & Sons v. Flaxion Rural Council* (1929) 1 K.B. 450 at 467, Sankey, L.J. said that:

A local authority has no power to sanction plans in contravention of its own bylaws properly made.

Thus, even law-making authorities are bound by the rules made by them. A fortiori; a private party is bound by the rules made under a statute even though that party may have participated in the process of rulemaking.

32. The Reasonableness and validity of bylaws can, it is well-established, be tested in Courts of law-see *Kruse v. Johnson* (1898) 2 Q.B. 91 and *Dyson v. London and Northwestern Railway Co.* (1881) 7 Q.B. 32. The bylaws of a local Government authority such as municipal corporation are generally made after discussion by adopting the prescribed legislative procedure. The bylaws of the railway company may be made under statutory authority after consideration on the administrative level only. The standing orders under consideration are adopted after observing a quasi-judicial procedure. But the resulting legal character of all the rules so made is that of binding rules or valid rules unless vitiated by some legal defect.

33. It is Clear to us that it is too late in the day to rely upon any doctrine of freedom of contract to assail the validity, propriety, or binding force of standing orders when the principal object of industrial legislation is to substitute just and reasonable standards for those which might otherwise prevail. Such an object is in conformity with our present Constitution. In *Rai Bahadur Diwan Badri Das Vs. The Industrial Tribunal, Punjab*, , Gajendragadkar, J. observed at p. 370:

The doctrine of the absolute freedom of contract has thus to yield to the higher claims for social justice. Take, for instance, the case where an employer wants to exercise his right to employ industrial labour on any wages he likes. It is not unlikely that in an economically underdeveloped country where unemployment looms very large, for industrial work, employees may be found willing to take employment on terms which do not amount to a minimum basic wage. Industrial adjudication does not recognize the employer's right to employ labour on terms below the terms of minimum basic wage. This, no doubt, is an interference with the employer's right to hire labour: but social justice requires that the right should be controlled. Similarly, the right to dismiss an employee is also controlled subject to well-recognized limits in order to guarantee security to tenure to industrial employees....

34. As we have reached the conclusion, after considering all the provisions of the Act, that the intention of the legislature, in providing for statutory standing orders and laying down the only made in which they could be modified and attaching penal consequences to violations of standing orders, was necessarily to prohibit terms of contract which clash with any of the standing orders, any terms of a contract which contravene a standing order would be struck by Section 23 of the Contract Act also. This provision in validates an agreement the object of which is, inter alia, "of such a nature that, if permitted, it would defeat the provisions of any law."

35. For all the reasons given above, our answer to the question referred to the Full Bench is that the terms of a standing order would prevail over the terms of a contract which conflicts with the standing order.