

(1964) 11 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 98 of 1961

Subodhchandra Himatlal and Others

APPELLANT

Vs

I.G. Thakore and Others

RESPONDENT

Date of Decision : 30-11-1964

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 73A, 78, 79, 83A, 84
Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 27A,
32, 33, 38A, 95(2)
Constitution of India, 1950 — Article 14

Citation : AIR 1966 Guj 71

Hon'ble Judges : J.B. Mehta, J;A.R. Bakshi, J

Bench : Division Bench

Advocate : C.T. Daru, for the Appellant; J.R. Nanavati, Asst. Govt. Pleader and K.L. Talsania, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Bakshi, J.—The only point canvassed at the hearing of this petition is about the constitutionality of Section 95 of the Bombay Industrial

Relations Act, 1948 (hereinafter referred to as the Act) which provides for review of a decision or award of an Industrial Court. The petitioners

who are the employees of the opponent Mills had obtained an order in their favour both from the Labour Court as well as from the Industrial Court

in appeal for compensation for loss in wages suffered by them on account of the fact that they were not given work on certain days in 1957 by the

opponent Mills. The opponent Mills preferred an application for a review of the order of the Industrial Court u/s 65 of the Act and in these

proceedings for review, the petitioners raised a preliminary objection that the Industrial Court had no jurisdiction to review its order as Section 95

of the Act was unconstitutional and void as it violated Article 14 of the Constitution of India. A Full Bench of the Industrial Court decided the question against the petitioners and the Industrial Court then allowed the review application and set aside its previous order and dismissed the claim of the petitioners for corn-pension. The order of the Full Bench declaring Section 95 of the Act as constitutional and the final order granting the review have been challenged in this petition.

2. Article 14 of the Constitution of India provides that the State shall not deny to any person equality before the law or the equal protection of the laws. The effect of this provision is to prohibit discrimination and partial legislation in favour of particular persons as against others in a like condition and in similar circumstances. Equality before the law connotes equal justice to all and generally speaking this article in the Constitution may be violated by the with-holding of equal access to Courts or by inequality of treatment in the matter of enforcement of rights as the right to equal access to Courts is a natural corollary to the equal protection clause. This clause no doubt, therefore, forbids invidious discrimination but it cannot be said that it always requires identical treatment for all persons without recognition of differences in relevant circumstances. It is also well settled that classification will not render a statute unconstitutional so long as it has a reasonable basis having a reasonable and just relation to the object of the particular enactment, and every state of facts sufficient to sustain the distinction can reasonably be pointed out or examined as having existed when the enactment was brought on the statute-book.

3. Bearing these general principles in mind, let us examine the contention of Mr. Daru, learned advocate of the petitioners that Section 95 of the Act infringes Article 14 of the Constitution of India. It was contended that Section 96 makes unfair discrimination between an employer and an employee, inasmuch as it does not permit an individual employee to apply for review of a decision or award of the Industrial Tribunal--whereas it confers such a right on an employer. According to Mr. Daru, such a discrimination in favour of a class is unfair and cannot be justified on a reasonable ground. Throughout the Act, it was contended, wherever the procedure in pursuit of a remedy in regard to matters falling under Schedule HI of the Act or in regard to standing orders and proceedings relating

thereto is prescribed, an individual worker has been given the right to act and resort to the-remedy without the Intervention of the representative union or body. Neither Section 79 of the Act which relates to commencement of proceedings before a Labour Court nor Section 84 which provides for an appeal to the Industrial Court from the decision of a Labour Court requires that an application to the Labour Court or an appeal to the Industrial Court should be made through the Union. But Section 95 of the Act restricts the right to apply for a review of the decision of the Industrial Court to an employer or an association or a group of employers or a registered union only and Recording to Mr. Daru there is nothing to justify such a discriminative restriction.

4. The learned Assistant Government Pleader has supported the validity of the section on the following grounds:

1. That Section 95 of the Act gives the right to file a review application to the Union and therefore there is no inequality or classification at all.
2. That the employer and the employees are not similarly situated.
3. That the provision for review in Section 96 is based on a reasonable classification which is founded on a reasonable basis having regard to the objective of the Act.

5. Section 95 of the Act provides as under:

(t) An employer or an association or a group of employers or a registered union may at any time apply to the Industrial Court for review of a decision or award of the Industrial Court and the Industrial Court may, for any sufficient reason and upon hearing the parties, review the decision or award.

2. No order, decision or award of the Industrial Court shall be called in question in any civil or criminal Court."

Section 78 of the Act enumerates the powers of the Labour Court and Section 79 provides for the initiation of proceedings before a Labour Court

Such proceedings can be started by any of the parties in the circumstances mentioned in the section and Section 84 provides for appeals to the

Industrial Court from the Decision of the Labour Court. When we come to Section 88, we find that no provision is made therein for an application

for review by the employee as is made in the case of employers and a registered union, it cannot therefore be said that no distinction whatsoever

has been made in Section 95 of the Act as regards the right to file an application for review.

6. The second part of the argument of the learned Assistant Government Pleader is based on and supported by the observations made by the High

Court in the case of the Ahmedabad Millowners' Association and Another Vs. Thakore (I.G.) (President Industrial Court) and Others, . The

relevant observations appear at p. 884 of the judgment (of ILR Guj): (at p. 127 of AIR) and are as follows:

A further contention raised on behalf of the petitioners was that Section 73A of the Bombay Industrial Relations Act is unconstitutional by reason

of (a) its being discriminatory and violative of Article 14, and (b) being repugnant to the Industrial Disputes Act, 1947. It was argued that the

section is discriminatory because it confers a right to refer to the Industrial Court an industrial dispute to a registered union and confers no such

right to an employer or an association of employers. Such a right given to a union only is in breach of the right of equal protection of law. In order

to reinforce his argument, Mr. Patwari drew our attention to Section 38A of the Central Provinces and Berar Industrial Disputes Settlement Act,

1947 whereunder such a right of reference is granted to both the employers and the employees. It will be seen from the terms of Section 73A that

though the right of reference is given to a union, it is only that union which is registered under Chapter III of the Act and which is also an approved

union under Chapter IV which is given this right. The right furthermore is hedged round with certain conditions, viz., that no such dispute can be

referred after two months from the date of completion of proceedings before the Conciliator or where the employer has offered in writing before

the Conciliator to submit the dispute to arbitration under this Act and the union has not agreed to do so or unless the dispute is first submitted to the

Conciliator and the conciliation proceedings are completed or the Conciliator has certified that the dispute is not capable of being settled by

conciliation. Such a dispute also cannot be referred to the Industrial Court where it is required by the Act to be referred to the Labour Court, for

its decision. We fail to appreciate how the section can be said to be discriminatory because an employer and an employee cannot be said to be

similarly situated and Article 14 can only apply to classification in the case of persons similarly situated. That the employers and employees are not

similarly situated Is a fact which is so well-recognised that both the Central and the State Legislatures had to enact various provisions recognising

thereunder the necessity of preserving the right of collective bargaining of employees through registered unions as a protective measure-"

It will be noticed that in industrial disputes, an employer and an employee have been differently placed and treated in the Act. The policy of

encouraging collective bargaining also finds place in some of the provisions of the Act. For example, Sub-section 27A, 32 and 33 contain

provisions which require that an individual worker should not appear in any proceeding himself or through any other person, where a representative

union has appeared. Section 27A provides that:

Save as provided in Sub-section 32 and 33, no employee shall be allowed to appear or act in any proceeding under this Act except through the

representative of employees." The proviso to Section 32 also imposes such a restriction. The section provides that:

A "Conciliator, a Board, an Arbitrator, a Wage Board, a Labour Court and the Industrial Court may, if he or it considers it expedient for the ends

of justice, permit an individual whether an employee or not, to appear in any proceeding before him or if:

Provided that no such individual shall be permitted to appear in any proceedings in which a Representative Union has appeared as the

representative of employees." In Section 33, which is set out below, the restriction is in regard to all proceedings before the Industrial Court, and

the matters falling under Schedule III are not exempted.

Notwithstanding anything contained in any other provision of this Act, an employee or a representative union shall be entitled to appear through

any person,

(a) in all proceedings before the Industrial Court;

(aa) in all proceedings before a wage board;

(b) in proceedings before a Labour Court for deciding whether a strike, lock-out, closure or stoppage or change or an order passed by an

employer under the standing orders is illegal or for deciding any industrial dispute referred to it u/s 72;

(c) in such other proceedings as the Industrial Court may, on Application made in that behalf, permit:

Provided that a legal practitioner shall not be permitted under clause (c) to appear in any proceeding under this Act except before a Labour Court

as provided in Section 83A or the Industrial Court:

Provided further that no employee shall be entitled to appear through any person in any proceeding under this Act in which a Representative Union

has appeared as the representative of employees.

The Legislature seems apparently to have regarded it as being in the interest of labour that it should speak in certain cases through a labour union,

which would have some workers as its members. Section 79 of the Act gives a right to an individual employee to file application before the Labour

Court. The decision of the Labour Court is made subject to an appeal to the Industrial Court and the right to file an appeal and challenge the

decision of the Labour Court is also given to an employee. The decision of the appellate Court has however been given a finality by making a

provision in Section 95(2) that:

(2) No order, decision or award of the Industrial Court shall be called in question in any civil or criminal Court." But the power to review its

decision is given to the Industrial Court on the application of the employer or of a registered union and it is only at this stage that a restriction is

introduced in the section. The restriction however is not absolute but it is provided that the application for review can be given by a registered

union, and not by an individual worker. The evident intention of the Legislature in doing this seems to be to prevent an individual worker, who had

already availed of his remedy in two Courts, from questioning the decision of the appellate Court and disturbing its finality unless he was supported

by a body of workers who had formed a registered union. The Act has recognised unions and representative bodies which are created for the

protection of the interest of workmen and through, which certain rights and grievances of the workmen can be enforced and ventilated. These

unions have been given a legal status in the Act and the policy seems to be to encourage collective bargaining. As illustrative of this policy we have

already made reference to Sub-section 32 and 33 of the Act. Such a policy, in view of the various provisions of the Act seems to have been

adopted to implement the object of the Act, such object being the regulation of relations between the employers and the employees and the

settlement of disputes between them. The employer envisaged in the Act is generally one who employs a large number of workmen whose rights against their employer are in many respects common and a decision given in an adjudication, would in many cases affect a large number of persons. When action is sought to be taken pursuant to a decision of the Industrial Court, the employer might find that the change brought about by the decision might affect the industry as a whole or a large number of workmen. Similarly a fairly large number of workmen might find that the decision is likely to prejudice the rights of workmen or a body of them. In such cases, it would become necessary to review the decision and that is why the power of review has been given to the Industrial Tribunal for "sufficient reasons" and the right to apply for a review to the employer or to a registered union, a unit which has been thought fit under the circumstances to represent a fairly large number of workmen, and to take care of the collective interest of the workers. An individual worker has the right to apply u/s 79 and can also file an appeal and get a final adjudication of his personal right but the finality that attaches to the decision of the Industrial Court is not allowed to be disturbed at the hands of an individual worker for his own individual and personal interest. The grounds on which an appellate Court can interfere to set right the decision of a Court of first Instance cannot be the same as the grounds on which an appellate Court is permitted to review its own decision and this would be more so in a matter under the Act where the decision of the Court would have several repercussions and would be likely to affect the industry or a large number of workmen, it is true that in some cases, there may not be a registered union in an industry and in such cases an individual worker would not be able to prefer a review application even through a union, but it must not be forgotten that he had sufficient opportunity to redress his individual grievance before the Labour Court and the Industrial Court and what is partially restricted is that before an application to disturb the final decision could be made, there must be a strong reason felt by a body of workmen for the review of the decision. It cannot be said therefore that the individual worker is subjected to an unfair and unreasonable discrimination.

7. Mr. Darn, on behalf of the petitioners had relied on the case of *Truax v. Corrigan* (1921) 66 Law Ed 254: 257 US 312 in which the question

was whether legislative discretion to grant or withhold relief in any class of cases could be so exercised as not to grant relief to one and to deny it

to others under like circumstances. Every case in which such a question arises would require to be decided on a consideration of the impugned

provision of law, bearing in mind the well-settled principles which have already been referred to earlier We may also refer to the following

observa-lions at p. 271 in the case of J. Pandurangarao Vs. Andhra Pradesh Public Service Commission, which summarise the scope and effect of

the provisions of Article 14 of the Constitution of India:

It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classifications for the purposes of legislation. When

any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are

satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things

grouped together from others left out of the group; and the second is that the differentia in question must have a reasonable relation to the object

sought to be achieved by the rule or statutory provision in question. As the decisions of this Court show, the classification on which the statutory

provision may be founded may be referable to different considerations. It may be based on geographical considerations or it may have reference to

objects or occupations or the like In every case, there must be some nexus between the basis of the classification and the object intended to be

achieved by the statute.

8. For the reasons aforesaid, we cannot uphold the contention that Section 95 of the Bombay Industrial Relations Act, 1946 is unconstitutional

because it gives the right to apply to an employer and a registered union for a review of the decision of the Industrial Court and not to an employee

In his Individual right and therefore infringes Article 14 of the Constitution of India.

9. The petition therefore falls and is dismissed. The rule granted on the petition is discharged and having regard to the nature of the question raised,

we make no order as to costs.