

(2010) 09 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No's. 15517, 15518, 16716 and 16765 of 2001

Textile Technical Tradesmen Association and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 13, 14, 226, 245, 368
Industrial Disputes Act, 1947 — Section 17(A)

Citation : (2011) 1 LLJ 297

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R.N. Amarnath and V. Ajay kumar, for the Appellant; S. Haja Mohideen Ghisti, SCGSC, R. Krishnamoorthy, SC for K.S. Ahamed and N. Mala, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The constitutionality of Section 17(A) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act"), which

was introduced by the Industrial Disputes Amendment Act, 1956 and the consequential order passed u/s 17(A) of the Act by the Government of

Pondicherry in respect of an award made by the Special Industrial Tribunal, Pondicherry, under the Act are under challenge in this writ petition.

2. The Petitioners/Trade Union raised an industrial dispute regarding wage revision before the Special Industrial Tribunal and the Tribunal directed

the Respondents to revise the wages of the workmen, as detailed in the award. However, the Government of Puduchery, by the impugned order

issued u/s 17-A of the Act, has declined to enforce the same. Thus, the Petitioners are aggrieved by the same.

3. Section 17-A (1, 2, 3 & 4) of the Act reads as follows:

17A. Commencement of the award.- (1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication u/s 17:

Provided that--

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an

industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal,

that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the

appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall

not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to Sub-section (1), the appropriate Government or the Central

Government may, within ninety days from the date of publication of the award u/s 17, make an order rejecting or modifying the award, and shall,

on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by

a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under Sub-section (2) is laid before the Legislature of a State or before

Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under Sub-

section (2) is made in pursuance of a declaration under the proviso to Sub-section (1), the award shall become enforceable on the expiry of the

period of ninety days referred to in Sub-section (2).

(4) Subject to the provisions of Sub-section (1) and Sub-section (3) regarding the enforceability of an award, the award shall come into operation

with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award

becomes enforceable under Sub-section (1) or Sub-section (3), as the case may be.)

4. The main challenge to the constitutionality of Section 17(A) of the Act is on the ground that it is an affront to the independence of the judiciary,

which is one of the basic features of the Indian Constitution as laid down by a Constitution Bench of the Hon''ble Supreme Court in the famous

case in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . But, it is the contention of the Respondent Pondicherry

Government that there is no such violation of basic structure, and therefore, the impugned provision cannot be held to be void. It is further

contended that the impugned provision falls within the ambit of the Legislative competence of the Parliament.

5. It is brought to the notice of the Court by the learned Counsel for the Petitioner that when a similar challenge was made to Section 17(A) of the

Act, the High Court of Andhra Pradesh in Telugunadu Workcharged Employees State Federation Vs. Government of India and Others, , has

struck down the same as unconstitutional. Relying on the same, the learned Counsel for the Petitioner would submit that on the very same grounds,

more particularly, on the ground of violence to the independence of judiciary, this Court may also declare the impugned provision as void.

6. It is contended by the Respondent Puduchery Government that the judgment of the High Court of Andhra Pradesh is not binding either on the

Government of Pondicherry or on this Court and at the most, it can only have a persuasive effect in the Union Territory of Pondicherry. It is further

added that the High Court of Andhra Pradesh cannot exercise any extra territorial jurisdiction so as to declare the impugned provision as void even

in the Union Territory of Pondicherry.

7. The learned Counsel on either side have advanced arguments at length taking me through various judgments of the Hon''ble Supreme Court as

well as other High Courts in order to substantiate their rival contentions, about which I shall make reference at the appropriate places of this order.

8. Undoubtedly, a statute made by the Parliament can be declared as void as provided in Article 13 of the Constitution of India, in the event the

Court comes to the conclusion that the same violates any of the fundamental rights guaranteed in the Constitution. Apart from the same, the Hon''ble

Supreme Court in *Kesavananda Bharathi v. State of Kerala* (supra) case, while propounding a very popular concept, known as "basic structure concept", has further held that if there is any violence to the basic structure of the Constitution either by any constitutional amendment or Statute, then, the same shall be void.

9. Commencing from *Kesavananda Bharathi v. State of Kerala* (supra) case, the Hon"ble Supreme Court had several occasions to consider the

concept of basic structure of the constitution. The independence of the Judiciary and separation of powers between the Legislature, Executive and

Judiciary have been held to be basic structures of the constitution by the Hon"ble Supreme Court. In Paragraph No. 555 of the judgment in *Smt.*

Indira Nehru Gandhi Vs. Shri Raj Narain and Another, , the Hon"ble Supreme Court has observed as follows:

The Constitution is a document recording an act of entrustment and conveyance by the people of India, the political sovereign, of legal authority to

act on its behalf to a "Sovereign Democratic Republic". This Constitution has a basic structure comprising the three organs of the Republic; the

Executive, the Legislature, and Judiciary. It is through each of these organs that the Sovereign Will of the people has to operate and manifest itself

and not through only one of them. Neither of these three separate organs of the Republic can take over the function assigned to the other. This is

the basic structure or scheme of system of Government of the Republic laid down in this Constitution whose identity cannot, according to the

majority view in *Kesavananda Bharathi v. State of Kerala* (supra) case be changed even by restoring to Article 368.

Another Constitution Bench of nine Judges of the Hon"ble Supreme Court in *Supreme Court Advocates-on-Record Association and another Vs.*

Union of India, , while dealing with the concept of independence of the judiciary, has held as follows:

To say differently, it is the cardinal principle of the constitution that an independent judiciary is the most essential characteristic of a free society,

like ours.

10. In *S.P. Gupta Vs. President of India and Others*, , in paragraph No. 27, the Hon"ble Supreme Court has held as follows:

The questions are of great constitutional significance affecting the principle of

independence of the judiciary which is a basic feature of the Constitution and we would therefore prefer to begin the discussion by making a few prefatory remarks highlighting what the true function of the judiciary should be in a country like India which is marching along the road to social justice with the banner of democracy and the rule of law, for the principle of independence of the judiciary is not an abstract conception but it is a living faith which must derive its inspiration from the constitutional charter and its nourishment and sustenance from the constitutional values.

11. Later on, another Constitution Bench of Seven Judges of the Hon'ble Supreme Court in *L. Chandra Kumar Vs. Union of India and others*, , in

Paragraph No. 78, has held as follows:

78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was

first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated

important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would

indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the

judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down

laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement

age of Judges as well as the mechanism for selecting Judges to the superior Courts. The inclusion of such elaborate provisions appears to have

been occasioned by the belief that, armed by such provisions, the superior Courts would be insulated from any executive or legislative attempts to

interfere with the making of their decisions. The Judges of the superior Courts have been entrusted with the task of upholding the Constitution and

to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is

maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations.

12. In *Santosh Kumar Satishbhushan Bariyar Vs. State of Maharashtra*, , the

Hon''ble Supreme Court has again reiterated that both the separation of powers and independence of judiciary are basic structures of the constitution.

13. It has also been held in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*,

that whenever the action of the legislature makes intrusion thereby causing violation to the basic structures, it is for the higher judiciary to invoke its

powers of judicial review under Article 226 of the Constitution of India to declare the same as void.

14. It has been held in a catena of the judgments of the Hon''ble Supreme Court that the Labour Court performs judicial functions, and therefore, it

is a Court. In this regard, I may refer to a judgment of the Hon''ble Supreme Court in *The State of Maharashtra Vs. Labour Law Practitioners''*

Association and Others, , wherein, it has been held as follows:

The Labour Court performs the judicial functions and it is a Court. The Labour Court adjudicates upon the disputes that, had it not been for the

Industrial Disputes Act, the Bombay Industrial Relations Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour

Practices Act, would have been within the jurisdiction of the ordinary civil Courts to decide, although the ordinary civil Courts may not be able to

grant all the reliefs that are contemplated by these Acts. The Labour Courts are, therefore, Courts and decide disputes that are civil in nature.

15. Therefore, an award made by the Labour Court under the provisions of the Act is an adjudicatory order and the same is enforceable. Since

the Labour Court has been held to be a Court, the award passed by the Court is to be executed and the same cannot be allowed to be nullified

either by the executive or by the legislature. At this juncture, I may refer to a recent judgment of the Hon''ble Supreme Court in *Glanrock Estate*

(P) Ltd. v. State of Tamil Nadu CDJ 2010 SC 795, wherein the Chief Justice of India (Hon''ble Mr. Justice S.H. KAPADIA), presiding over a

three Judges Bench, has made a deep survey of various ""doctrines"" ""concepts"" and ""principles"" relating to the limitations on the power of the

Parliament to enact any law or to amend the constitution. The paramount limitation is in respect of the basic structure of the Constitution. The

Hon''ble Supreme Court further proceeds to remind the distinction between constitutional law and ordinary law in a rigid constitution like ours. The

Hon"ble Supreme Court describes the distinction as follows:

The said distinction proceeds on the assumption that ordinary law can be challenged on the touchstone of the Constitution. Therefore, when an

ordinary law seeks to make a classification without any rational basis and without any nexus with the object sought to be achieved, such ordinary

law could be challenged on the touchstone of Article 14 of the Constitution. However, when it comes to the validity of a constitutional amendment,

one has to examine the validity of such amendment by asking the question as to whether such an amendment violates any over-arching principle in

the Constitution. What is over-arching principle? Concepts like secularism, democracy, separation of powers, power of judicial review fall outside

the scope of amendatory powers of the Parliament under Article 368. If any of these were to be deleted it would require changes to be made not

only in Part III of the Constitution but also in Articles 245 and three Lists of the Constitution resulting in the change of the very structure or

framework of the Constitution. When an impugned Act creates a classification without any rational basis and having no nexus with the objects

sought to be achieved, the principle of equality before law is violated undoubtedly. Such an Act can be declared to be violative of Article 14. Such

a violation does not require re-writing of the Constitution. This would be a case of violation of ordinary principle of equality before law.

16. From the above, it is manifestly clear that separation of powers falls within the purview of ""over-reaching principle"". Independence of judiciary

is yet another concept falling within the said principle. To cause any deviation from these basic concepts, the Parliament cannot even use its

amending power under the Constitution, as otherwise, it would amount to re-writing the Constitution abrogating the basic frame work of the same.

When that much of rigidity the constitution has, it is needless to say that the Parliament lacks power under the Constitution to enact any ordinary

law to violate the basic structure. Thus, the Parliament cannot either expressly or impliedly empower the executive by enacting a law in any manner

to negate the judicial pronouncements made by any of the organs of the judiciary. Any such law made by the Parliament is void. No amount of

hesitation can be shown by the higher judiciary to strike down the provisions of such enactment.

17. Now, having the above settled position of law in mind, let me turn to the facts of the present case. The impugned provision viz., Section 17-A

of the Act empowers the appropriate Government to decline to enforce an award or to modify the same. This, in my considered opinion, is a

power vested in the executive so as to sit in appeal over the Award of the Labour Court. Under our constitutional scheme, the executive has not

been empowered to exercise an appeal jurisdiction over the judicial verdicts of the Courts. By conferring such power on the executive u/s 17-A of

the Act, the Parliament, has in essence, caused a severe jolt to the independence of the judiciary. Apart from that, the celebrated concept of

separation of powers as ordained in the Constitution is also infringed by the impugned provision. Thus, the impugned provision is a serious threat to

the basic structure and if allowed to remain in operation, it will undoubtedly shake the foundation upon which our democracy rests. If judicial

verdicts are to be nullified by the executive, it will be a mockery of the very judicial system. The independence of the judiciary is a very precious

and fundamental concept, which needs to be preserved. Therefore, I cannot have any hesitation to hold that the impugned provision viz.. Section

17-A of the Act is void, and accordingly, it is liable to be struck down.

18. When a similar challenge was made before the High Court of Andhra Pradesh in *Telugunadu Work charged Employees v. Govt. of India*

(supra), Hon"ble Mr. Justice B. SUBHASHAN REDDY, (as he then was, who later became the Chief Justice of Madras High Court) has struck

down the same impugned provision on the ground of violation of basic structure of the constitution. I am in full agreement with the said conclusion

arrived by the High Court of Andhra Pradesh.

19. The next important question is as to whether this Court needs to strike down the impugned provision, when the same has already been struck

down by the High Court of Andhra Pradesh. It is to be noticed that before the High Court of Andhra Pradesh, the Government of India was a

party. The said judgment has become final. The cardinal of question is as to whether such striking down of the impugned provision by the High

Court of Andhra Pradesh, has force even beyond the territorial jurisdiction of the High Court of Andhra Pradesh.

20. The learned Counsel on record have got divergent views on this point. On

one side, it is submitted that the High Courts have got no extra territorial jurisdiction to strike down a provision of a Central enactment beyond its territorial jurisdiction. According to the learned Counsel, though the impugned provision has been struck down by the High Court of Andhra Pradesh, insofar as the Union Territory of Pondicherry or any other State for that matter, the same shall have only a persuasive value and the same shall not bind either the Government of Pondicherry or the High Court of Madras.

21. The view expressed by some of the learned Counsel is that once a particular provision in a Central enactment has been struck down by a High Court holding that the same is void, as the same is a violation to the basic structure of the Constitution, it is no more in the Statute book for being struck down again by yet another High Court. It is pointed out that under Clause (2) of Article 226 of the Constitution of India, the High Court has got power to test the constitutionality of any of the provisions of the Central enactment and if it is once held by one High Court that it is unconstitutional, the said provision will no more remain in the Statute book. Therefore, as of now, Section 17-A of the Act is not available in the Statute book and so, the consequential order passed by the Government of Pondicherry in exercise of power under the said provision alone is liable to be quashed, it is submitted.

22. In order to find out the correct legal position on this disputed question, I made a survey of several judgments of the Hon"ble Supreme Court as well as the High Courts. I also sought the help of the bar to assist me in this regard. But, I am not able to lay my fingers at any judgment of the Hon"ble Supreme Court directly on this point. Nor the bar is able to bring to my notice any such judgment. However, the judgment of the Hon"ble Supreme Court of three Judges in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, may be useful to decide the said question. In Paragraph Nos. 21, 22, 28 and 29 of the said judgment, the Hon"ble Supreme Court has held as follows:

21. A parliamentary legislation when receives the assent of the President of India and published in an Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality

thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or

some of them which were implemented shall give rise to civil or evil consequences to the Petitioner. A writ Court, it is well settled would not

determine a constitutional question in vacuum.

22. The Court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary

Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect

throughout the territory of India subject of course to the applicability of the Act.

emphasis supplied

28. Lt. Col. Khajoor Singh Vs. The Union of India and Another, whereupon the learned Counsel appearing on behalf of the Appellant placed

strong reliance was rendered at a point of time when Clause (2) of Article 226 had not been inserted. In that case the Court held that the

jurisdiction of the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the

person affected by the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely,

the office of the authority who is to implement the order would attract the territorial jurisdiction of the Court was considered having regard to

Section 20(c) of the Code of CPC as Article 226 of the Constitution thence stood stating:

... The concept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express

provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the

territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to person residing far away from New

Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional

amendment in Article 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Article 226, nor can the concept

of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it.

29. In view of Clause 2 of Article 226 of the Constitution of India now if a part of cause of action arises outside the jurisdiction of the High Court,

it would have jurisdiction to issue a writ. The decision in *Lt. Col. Khajoor Singh v. Union of India and Anr.* (supra) has, thus, no application.

23. As held by the Hon^{ble} Supreme Court, in view of Clause (2) of Article 226 of the Constitution of India, if once it is adjudged by a High Court

that a particular Parliamentary Act or a provision of the said Act is unconstitutional, in effect, it is as if the said Act/provision had never been in

force. As a matter of fact, in *D.D. BASU'S COMMENTARY ON THE CONSTITUTION OF INDIA* edited by Hon^{ble} Mr. Justice Y.V.

CHANDRACHUD, it has been summed up succinctly as follows:

Where a Statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it

for their consideration are void; it constitutes a protection to no one who has acted under it and no one can be punished for having refused

obedience to it before the decision was made. "And what is true of an Act void in toto is true also as to any part of an Act which is found to be

unconstitutional and which consequently has to be regarded as having never at any time been possessed of any legal force.

24. Of course, it is true that the question under consideration in these writ petitions was not directly raised and argued before the Hon^{ble} Supreme

Court and answered in *Kusum Ingots & Alloys Ltd v. Union of India* (supra) case. It is obiter dicta of the Hon^{ble} Supreme Court. But, such

obiter dicta is also expected to be followed by the High Courts. In this regard, I may refer to a judgment of the Hon^{ble} Supreme Court *Sarwan*

Singh Lamba and others Vs. Union of India and others, , wherein it has been held by a Constitution Bench that "'normally even an "'Obiter Dictum

is expected to be obeyed and followed"". Recently, in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, , the Hon^{ble}

Supreme Court, in Paragraph No. 26, has held as follows:

An Obiter Dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by

this Court. But, as far as this Court is concerned, though not binding, it does have clear persuasive authority.

25. In the light of the above legal position, applying the principles stated in

Kusum Ingots & Alloys Ltd v. Union of India (supra), I am of the view that the impugned provision viz., Section 17-A of the Industrial Disputes Act, 1947, is no more in force in the Union Territory of Pondicherry also in pursuance of the judgment of the High Court of Andhra Pradesh in Telugunadu Work charged Employees v. Government of India (supra).

There can be no doubt that the judgment of the High Court of Andhra Pradesh, in which it has been adjudged that Section 17-A of the Act is unconstitutional, will have effect throughout the Territory of India.

26. In view of the said position, I am of the view that it would be suffice for this Court to declare that Section 17-A of the Industrial Disputes Act, 1947, is void and the same is unenforceable in the Union Territory of Pondicherry also, and consequently, the impugned notification dated August 11, 2001 passed by the Pondicherry Government u/s 17-A of the Act is liable to be set aside.

27. In the result, all these writ petitions are allowed; it is hereby declared that Section 17-A of the Industrial Disputes Act, 1947 is void and consequently the impugned notification dated August 11, 2001 passed u/s 17-A of the Industrial Disputes Act, 1947 by the Union Territory of Pondicherry is set aside. No costs.