

(2014) 10 MAD CK 0198
In the Madras High Court
Case No : Writ Appeal No. 56 of 2011

Union of India

APPELLANT

Vs

Textile Technical Tradesmen Association

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 143, 226, 226(2), 262
Industrial Disputes Act, 1947 — Section 17, 17(2), 17A, 17A(1), 17A(1)(b)

Citation : (2014) 6 CTC 427 : (2015) 145 FLR 34 : (2014) LabIC 4615 : (2014) 4 LLJ 683 : (2014) 5 LW 184 : (2014) WritLR 919

Hon'ble Judges : N. Paul Vasantha Kumar, J;K. Ravichandra Babu, J

Bench : Division Bench

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is preferred by the Union of India, Ministry of Labour and Employment, New Delhi, challenging the order passed by the learned single Judge in W.P. No. 15518 of 2001 dated 29.9.2010 wherein the first respondent Textile Technical Tradesmen Association prayed for a writ of Declaration declaring the Section 17-A(2), 17-A(3) of the Industrial Disputes Act, 1947 as ultra vires to the Constitution of India.

2. The said declaratory relief was sought for as the Government of Puducherry issued a notification indefinitely postponing the implementation of the award made in I.D. No. 1 of 2000 in a dispute regarding wage revision for the employees of the Anglo French Textiles after expiry of 30 days under section 17-A(1) of the Industrial Disputes Act, 1947. Having aggrieved over the said indefinite postponing of implementation of the award, connected writ petitions were also filed praying for direction to the appellant herein to publish the award in the Government Gazette and those writ petitions were also allowed.

3. The learned single Judge heard all the matters together and declared Sections 17-A(1), (2) and (3) of the Industrial Disputes Act, 1947 as unconstitutional and also declared that the notification issued by the Government of Puducherry dated 11.8.2001, published in the official gazette as illegal.

4. The brief facts necessary for disposal of the writ appeal are as follows:

(a) The first respondent Association raised an Industrial Dispute regarding wage revision in respect of workmen of Anglo French Textiles before the Special Industrial Tribunal and the Tribunal directed the Anglo French Textiles, a Unit of Puducherry Textiles Corporation Limited and the Puducherry Textiles Corporation Limited, to appoint an Expert Committee consisting of experts, having rich knowledge in Trade specialisation, nature of trade, mature, capacity, efficiency, knowledge of handle technical knowhow of the machineries, status of trade at Indian and world level, requirement of workers for the trade and their status of work etc., and a Triparty committee by award dated 18.4.2001. The Puducherry Government instead of complying with the said award by publishing the same in the Official Gazette has passed an order declaring that the said verdict is not enforceable in exercise of the powers vested with it under section 17-A(1) of the Industrial Disputes Act, 1947.

(b) The said order was challenged in the above writ petitions and the learned single Judge on consideration of the matter allowed the writ petitions and also granted declaratory relief as stated supra by following the judgments of the Andhra Pradesh High Court reported in Telugunadu Workcharged Employees State Federation Vs. Government of India and Others, where the very same provision viz., Section 17-A with sub-sections (1) to (4) was struck down on the ground of violation of basic structure of the constitution and also held that the Judgment of the Court cannot be nullified by the executive order as it affects the basic structure of the Constitution of India.

(c) The learned single Judge/writ Court in this case has relied on several judgments of the Supreme Court in support of his decision viz. His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, ; Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, ; Supreme Court Advocates-on-Record Association and another Vs. Union of India, ; S.P. Gupta Vs. President of India and Others, ; L. Chandra Kumar Vs. Union of India and others, ; Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, ; The Oriental Insurance Company Limited Vs. Meena Variyal and Others, ; Santosh Kumar Satishbhusan Bariyar Vs. State of Maharashtra, ; State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, ; CDJ 2010 SC 795 (Glanrock Estate (P) Ltd., v. The State of Tamil Nadu); etc.

(d) Though the learned single Judge passed common order, this writ appeal is preferred by the Union of India alone against the order made in W.P. No. 15518 of 2001 by contending that Section 17-A of the Industrial Disputes Act, 1947 is not arbitrary and the award being administrative order, need not be implemented and there is no arbitrariness or unconstitutionality in the said section.

5. The learned counsel appearing for the appellant submitted that the Andhra Pradesh High Court Judgement striking down Section 17-A with sub-sections (1) to (4) of the Industrial Disputes Act, 1947 will not have operation in the Union

Territory of Puducherry and therefore the action of Puducherry Government in declaring the award of the Special Industrial Tribunal as unenforceable, is valid.

6. In contrast to the said submission, the learned counsel appearing for the first respondent supported the order of the learned single Judge and submitted that under Article 226(2) of the Constitution of India, if a Parliamentary enactment is declared as unconstitutional by one High Court and if the said order has become final, the said order is applicable and enforceable throughout India and the attempt on the part of the appellant in restricting the applicability of the Andhra Pradesh High Court judgment is contrary to Article 226(2) of the Constitution of India. In support of his contentions, learned counsel cited some of the decisions.

7. When the writ appeal was posted for hearing on 16.9.2014, the learned counsel appearing for the Union of India prayed for time to ascertain as to whether the Andhra Pradesh High Court Judgment reported in Telugunadu Workcharged Employees State Federation Vs. Government of India and Others, has become final or reversed by the Division Bench or by the Apex Court and on his request the matter was adjourned to 22.9.2014. Again the matter was adjourned to get instructions on 24.9.2014 and 25.9.2014. On 25.9.2014 the learned counsel appearing for the appellant submitted that a Division Bench of the Andhra Pradesh High Court in W.A. No. 403 of 2004 Judgment dated 26.11.2004 stated that the Judgment reported in Telugunadu Workcharged Employees State Federation Vs. Government of India and Others, was originally appealed, however, the said appeal became infructuous as the Government in the meantime complied with the directions given by the learned single Judge. It is also stated in the said writ appeal order that another Government Order issued in exercise of the powers under Section 17-A(1) was struck down by the learned single Judge in W.P. No. 26339 of 1995 by order dated 26.12.2003 and the said writ petition was allowed by following the earlier order of the Andhra Pradesh High Court dated 23.4.1997 and the Government of Andhra Pradesh having aggrieved over the learned single Judge's order dated 26.12.2003 filed appeal in W.A. No. 403 of 2004 and the same was dismissed by the Division Bench by approving the judgment dated 23.4.1997.

8. The learned counsel appearing for the appellant fairly submitted that as against the said Division Bench Judgment made in W.A. No. 403 of 2004 dated 26.11.2004, no SLP was filed and the said order has become final.

9. Thus, the issue to be decided in this writ appeal is as to whether the appellant/ Union of India is justified in challenging the order of the learned single Judge, who followed the judgment of the Andhra Pradesh High Court, which has become final, particularly in respect of the declaratory relief declaring Section 17-A with sub-sections (1) to (4) of the Industrial Disputes Act, 1947 as ultra vires to the Constitution of India and non-est in law.

10. Section 17-A of the Industrial Disputes Act, 1947 reads as follows:

"17-A. 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 under Section 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 under Section 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."

The said provision empowering the Government to declare that the award shall not become enforceable on the expiry of 30 days from the date of its publication under section 17-A(1)(b) was held unconstitutional by the Andhra Pradesh High Court in the decision reported in Telugunadu Workcharged Employees State Federation Vs. Government of India and Others, . The operative portion of the said judgment reads thus,

"The Constitution has assigned the Courts the function of determining as to whether the laws made by the legislature are in conformity with the provisions of

the Constitution. In adjudicating the constitutional validity of the statutes, the Courts discharge an obligation which has been imposed on them by the Constitution. The Courts would be shirking their responsibility if they hesitate to declare the provisions of a statute to be unconstitutional, even though those provisions are found to be violative of constitutional scheme or the provisions. In view of what is stated supra and as I have come to the clear and unmistakable conclusion that the impugned provision encroaches upon the judicial power of the State, as it violates the basic concept of rule of law and democratic pattern envisaged by the Indian Constitution, unhesitatingly, I strike down the impugned provision as being ultra vires the constitution and consequently the provision contained under Sec. 17(2) of the act to the extent of the words "subject to the provisions of Section 17-A" and whole of Section 17-A with sub-sections 1 to 4 thereof are non-est under law. As an inevitable corollary, G.O. Ms. No. 2 Labour Department, dated 20.1.1994 is quashed as being unsustainable in view of what is held above. Now, the award which has been published in G.O. Rt. No. 2761, Women's Development, Chief Welfare and Labour Department, dated 23.12.1993 shall be operative and the same be implemented by respondents 3 to 5 within a period of one month from the date of receipt of a copy of this order."

11. Article 226(2) of the Constitution of India empowers the High Courts to declare even a Central Legislation as invalid, which will have effect throughout the Territory of India if the enactment was extended throughout the country. Article 226(2) of the Constitution of India reads thus,

"226. Power of High Courts to issue certain writs.

(1).....

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

12. The Industrial Disputes Act, 1947 is a Parliamentary Legislation and if any of the High Court declares a provision of the Parliamentary Legislation as unconstitutional, the said decision is applicable throughout the territory of India/ wherever the enactment was held applicable. The said issue was considered by the Honourable Supreme Court in the decision reported in Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, . In paragraphs 21 and 22 the Supreme Court held thus,

"21. A parliamentary legislation when it receives the assent of the President of India and is published in the 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 a vacuum.

22. The Court must have the requisite territorial jurisdiction. An order passed on a 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)

A Division Bench of the Karnataka High Court in the decision reported in Mr. Shiv Kumar Vs. Union of India and Others, considered similar issue and following the above cited Supreme Court decision held that pronouncement on the constitutionality of a provision of a Central Act by a High Court would be applicable throughout India.

13. The power of the Government to set aside the order of the competent Court, even by making a legislation, is impermissible as per the Constitution Bench Judgments of the Honourable Supreme Court.

(a) In the case of Cauvery Water Disputes Tribunal rendered on the basis of the reference made by the President of India under Article 143 of the Constitution of India, reported in 1993 Supp (1) SCC 96 (II) (Re: CAUVERY WATER DISPUTES TRIBUNAL), the Constitution Bench held that the Legislature cannot supersede the judicial verdict, though it can change the law in general by changing the basis on which decision was rendered, but it cannot set aside the decision inter-parties. In the said case an ordinance was promulgated by the Karnataka State, namely Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 and while declaring the said Ordinance as invalid, in paragraph 73 the Supreme Court held thus,

"73..... The State of Karnataka has thus arrogated to itself the power to decide unilaterally whether the Tribunal has jurisdiction to pass the interim order or not and whether the order is binding on it or not. Secondly, the State has also presumed that till a final order is passed by the Tribunal, the State has the power to appropriate the waters of the river Cauvery to itself unmindful of and unconcerned with the consequences of such action on the lower riparian States. Karnataka has thus presumed that it has superior rights over the said waters and it can deal with them in any manner. In the process, the State of Karnataka has also presumed that the lower riparian States have no equitable rights and it is the sole judge as to the share of the other riparian States in the said waters. What is further, the State of Karnataka has assumed the role of a judge in its own cause. Thus, apart from the fact that the Ordinance directly nullifies the decision of the Tribunal dated June 25, 1991, it also challenges the decision dated April 26, 1991 of this Court which has ruled that the Tribunal had power to

consider the question of granting interim relief since it was specifically referred to it. The Ordinance further has an extra-territorial operation inasmuch as it interferes with the equitable rights of Tamil Nadu and Pondicherry to the waters of the Cauvery river. To the extent that the Ordinance interferes with the decision of this Court and of the Tribunal appointed under the Central legislation, it is clearly unconstitutional being not only in direct conflict with the provisions of Article 262 of the Constitution under which the said enactment is made but being also in conflict with the judicial power of the State."

(Emphasis Supplied)

In paragraph 77 it is further held that the Ordinance issued has the effect directly to nullify the order of the Tribunal passed on June 25, 1991, and it impinges upon the judicial powers, and therefore it is ultra vires to the Constitution of India.

(b) Recently in Mullaiperiyar Dam case reported in C.R. Neelakandan and Another Vs. Union of India (UOI) and Others, it is held that the Legislature has no power to declare the final judgment of the Court a nullity as it is in violation of the doctrine of separation of power. In the said case the Honourable Supreme Court struck down Sections 62 and 62A of the Kerala Irrigation and Water Conservation Act, 2003, inserted in 2006. In paragraph 121 the Supreme Court held thus,

"121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus :

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law. In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs - legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution. Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs "legislature, executive and

judiciary" is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."

(Emphasis Supplied)

The only difference between the said Cauvery Water Disputes Tribunal case/ Mullaiperiyar Dam case and this case is, in those cases the Government of Karnataka/Legislative Assembly of the State of Kerala, to get over the order of the Tribunal/judgment of the Honourable Supreme Court in respect of sharing water/raising water level in Mullaiperiyar Dam from 136 feet to 142 feet, had issued the Ordinance in the year 1991/amended the Act in the year 2006 within few days, purported to be invoking the Public Trust Doctrine, and the said argument was repelled holding that the earlier Judgment of the Court between the parties reported in Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam Vs. Union of India and others, and Mullaperiyar Environmental Protection Forum Vs. Union of India (UOI) and Others, will bind the State of Karnataka and the State of Kerala respectively.

14. In this case, a competent Special Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, rendered a decision/award and if the parties to the award are aggrieved about the findings rendered or directions issued, they can only approach the appellate Court to challenge the award and exercising power under Section 17-A(1) of the ID Act, 1947, which was already declared as unconstitutional by the Andhra Pradesh High Court in the year 1997 itself, and the Union Territory of Puducherry is not justified in issuing a notification on 11.8.2000 by invoking the provision, which is not in existence on the date when the notification was issued.

15. It is noteworthy to mention here that Section 17-A of the Industrial Disputes Act, 1947 was not in the statute when the Gazette Notification dated 11.8.2000 was issued stating that the award of the Special Industrial Tribunal as unenforceable. The said position viz., declaration of unconstitutionality of Section

17-A with sub-sections (1) to (4) of the Industrial Disputes Act, 1947 holds good even today as the Division Bench of the Andhra Pradesh High Court reiterated the said position in W.A. No. 403 of 2004 dt. 26.11.2004 and the said judgment has not been reversed or set aside by the Hon"ble Supreme Court. Hence the learned single Judge was perfectly justified in allowing the writ petition and no ground is made to interfere in the order of the learned single Judge.

16. In fine, the writ appeal is dismissed and the order of the learned single Judge made in W.P. No. 15518 of 2001 dated 29.9.2010 is confirmed and a direction is issued to the second respondent herein to implement the award of the Special Industrial Tribunal made in I.D. No. 1 of 2000 dated 18.4.2001 within two months from the date of receipt of copy of this order. No costs.