(1979) 03 MP CK 0018

Madhya Pradesh High Court

Case No: None

Ujjain Mill Mazdoor Sangh	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision: March 30, 1979

Acts Referred:

- Constitution of India, 1950 - Article 226, 254
- Government of India Act, 1935 - Section 107
- Industrial Disputes Act, 1947 - Section 36

Citation: (1980) 2 LLJ 287 : (1979) 24 MPLJ 764 : (1979) MPLJ 764

Hon'ble Judges: G.P. Singh, C.J; B.C. Verma, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

G.P. Singh, C.J.

This order shall also dispose of Misc. Petitions Nos. 9, 10, 11, 12, 18, 22, 27, 28, 41 and 54 all of 1978. The petitioners in all these petitions are trade unions registered under the Trade Unions Act, 1926 (Act 16 of 1926) and are recognised as Representative Unions u/s 13 of the Madhya Pradesh Industrial Relations Act, 1960 (Act No. 27 of 1960). hereinafter referred to as the State Act. The State Act was amended by the Madhya Pradesh Industrial Relations (Amendment) Ordinance, 1977 (No. 14 of 1977), hereinafter called the Ordinance, which came into force on 1st January, 1978. The Ordinance was repealed and replaced by the Amending Act No. 8 of 1977 which came into force on 4th April, 1978. A notice was issued to the petitioners on 2nd January, 1978 u/s 16(ii-a) of the State Act as amended, to show cause why their recognition as representative unions may not be cancelled on the ground that on the date of coming into force of the aforesaid Ordinance or at any time during the period of three months thereafter the membership of the petitioners happened to be less than 51 per cent of the total number of employees

employed in the industries concerned. By these petitions under Article 226 of the Constitution, the petitioners challenge these notices on the ground that the amendments introduced in Sections 13 and 14 of the State Act by the Ordinance and Amending Act were invalid and void under Article 254(2) of the Constitution.

The Industrial Disputes Act, 1947, hereinafter referred to as the Central Act, was, as stated in its long title, enacted by the Central Legislature to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. The subject-matter of the Act was covered by Item 29 of List III of the Government of India Act, 1935, which corresponds to Item 22 of List III of the Constitution. Section 36 of the Central Act deals with representation of parties. The section in the present shape was substituted by Act No. 48 of 1950 and amended by Act No. 36 of 1956 and Act No. 45 of 1971. Sub-section (1) of this section provides that a workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by (a) any member of the executive or other office bearer of a registered trade union of which he is a member; (b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated; and (c) where the worker is not a member of any trade union by any member of the executive or other office bearer of any trade union connected with, or or any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed. The State Act, i.e., the Madhya Pradesh Industrial Relations Act, 1960, as expressed in its long title, was enacted to regulate the relations of employees in certain matters, to make provisions for settlement of industrial disputes and to provide for certain other matters connected therewith. The subject-matter of the State Act also fell within Item 22 of List III of the Constitution. The State Act received the assent of the President. As provided in Section 1(2), the State Act can be applied by a notification issued by the State Government in respect of: (a) any or all industries; or (b) undertakings in any industry wherein the number of employees on any day during 12 months preceding or on the date of the notification or on any day thereafter, was or is more than such number as may be specified in such notification. Section 110 of the State Act provides that except Chaps. VA and VB and the provisions relating to lay-off and retrenchment compensation, nothing in the Central Act shall apply to any industry to which the State Act applies. Section 2(27) of the State Act defines "representative of employees to mean a representative of employees entitled to appear as such u/s 27. Section 2(28) defined "Representative Union" to mean a union for the time being recognised as representative union under this Act. Section 13 makes provision for an application for recognition as a representative union. This section provides that if on an application received from a union under that section, the Registrar is satisfied that the conditions for recognition as the representative union laid down in Section 14 are fulfilled, he shall enter the name of the union in the register maintained u/s 15 and shall issue a certificate of recognition in such form as may be prescribed. There was the proviso (i) to Section 13 which laid down

that where two or more unions fulfilling the conditions necessary for recognition applied for recognition in respect of the same industry in any local area, the union having the largest membership of the employees employed in the industry shall alone be recognised. Section 14 lays down the conditions of recognition. As originally enacted, the section required two conditions; (i) that membership of the union should be open to every employee employed in the industry in the local area; and (ii) that the union has for the whole of the period of 3 months immediately preceding the month in which the application for recognition was made u/s 13, a membership of not less than 25% of the total number of employees employed in the industry in the local area. The point to be noted is that a union could apply for being recognised as the representative union if it had a membership of 25% of the total number of employees employed in the industry in the local area. Section 16 provides for cancellation of recognition. One of the grounds under which the Registrar can cancel the recognition is that the membership of the union has for a continuous period of three months fallen below the minimum required u/s 14 for its recognition. Section 27 gives a representative union a preferential right of representation of the employees. A representative union can represent all the employees in the industry in the local area. Therefore, under proviso (b) to Section 97(1), in cases in which a representative union is a party to a registered agreement or a settlement or submission, all employees in the industry in the local area represented by it become bound. Further u/s 97(2) the State Government may, Section 97(2) the State Government may, after giving the parties affected an opportunity of being heard, by notification direct that such agreement, settlement or submission shall be binding on such other employers and employees in such industry in that local area as may be specified in the notification.

It will be seen that the Central Act does not make any provision for recognition of a representative union with a preferential right of representation of workmen. The State Act, on the other hand, makes provision for recognition of representative union in local areas for different industries and the representative unions so recognised have a preferential right of representation of the employees. The agreements entered into with a representative union can be binding on all the employees in the industry in the local area. We have already stated that Section 14, as originally enacted, provided that the union for being recognised as a representative union should have at least 25% membership of the employees employed in the industry concerned in the local area. The State Government issued notification u/s 1(2) applying the State Act to a number of industries. In view of the fact that the State Act was given the assent of the President, it prevailed over the Central Act in its application to the industries notified u/s 1(2) As provided in Section 110, except Chapters VA and VB dealing with lay-off and retrenchment compensation, nothing in the Central Act applied to any industry to which the State Act was made applicable by notification u/s 1(2).

It appears that a 30 member committee was constituted by the Central Government to give its report on Comprehensive Industrial Relations Law. The Committee submitted its report on 21st September, 1977. The Committee observed that the majority of the representatives of workers suggested that the union which gets over 51 % of the votes polled should be the bargaining agent for the workers. It was in the background of this report that the Chief Minister on 5th November, 1977 stated the "Industrial Policy". in a Symposium on "Industrial Relations" held at Bhopal. The Chief Minister said that an exclusive bargaining agent should be recognised when the trade union has secured 51% of the votes of the workers exercising their free choice by a secret ballot, and that where any union fails to secure such a majority, then a combination of like minded unions, who have a majority, should be given the right to become the sole bargaining agent. Now we have already seen that under the State Act a representative union is given a preferential right of representation and the agreements reached with such a union can be binding on all the employees in the industry in the local area. The condition for recognition as a representative union in the State Act was that the union should have a membership of 25% of the workers employed in the industry in the local area. In view of the changed policy, the Government decided to modify this qualification by making it necessary that a union for recognition as a representative union should have at least membership of not less than 51% of the total number of employees employed in the industry in the local area. To give effect to this policy, the Ordinance (No. 14 of 1977) was promulgated. By Section 4, the Ordinance amended Section 13 by omitting the first proviso to Section 13(2). The Ordinance by Section 5 amended Section 14 of the Parent Act to provide that a union for being recognised as a representative union should have a membership of not less than 51% of the total number of employees employed in the industry in the local area. Section 16 was also amended to enable cancellation of the recognition of the unions which has not the requisite membership. Consequential amendments were also made in Sections 17 and 18. The Ordinance, as already seen, was replaced by the Amending Act No. 8 of 1977, containing identical provisions. It would be useful to quote the amendments made in Sections 14 and 16 by Section 5 of the Ordinance:

5. Amendment of Section 14--In Section 14 of the Principal Act, for Clause (ii), the following clause shall be substituted, namely--(ii) the Union has for the whole of the period of 3 months immediately preceding the month in which the application for recognition is made u/s 13, a membership of not less than 51 per centum of the total number of employees employed in the industry in such local area.

Amendment of Section 16. -In Clause (b) of Section 16 of the Principal Act, after the second proviso to Sub-clause (ii), the following sub-clause shall be inserted, namely--

(ii-a) that on the date of coming into force of the Madhya Pradesh Industrial Relations (Amendment) Ordinance, 1977 (hereinafter referred to as the said Amendment Ordinance) or at any time during a period of 3 months thereafter the

membership of the Union happens to be less than the minimum required under Clause (ii) of Section 14 as substituted by Section 5 of the said Amendment Ordinance; or

The petitioners challenge the validity of the amendments introduced by the Ordinance and the Amending Act on the ground that the Ordinance and the Amending Act did not receive the assent of the President as required by Article 254(2) of the Constitution and, therefore, they are void for reasons of repugnancy with the Central Act, i.e., the Industrial Disputes Act, 1947. The argument of the learned Counsel appearing on behalf of the petitioners is that when the President gives his assent under Article 254 of the Constitution, he applies his mind to what is the existing law and to what Parliament has enacted and also considers the local conditions prevailing in a particular State, and if he is satisfied that judging by the local conditions a particular State should be permitted to make a provision of law different from the provision made by Parliament, he should give his assent and thereupon the State legislation would prevail. It is argued that when the State Act as enacted in 1960 was assented to by the President he only permitted it to prevail to the extent of the inconsistency that then persisted between it and the existing law, i.e. , the Central Act, and that any amendment to the State Act by the State Legislature which creates further inconsistency or repugnancy with the Central Act cannot be given effect to unless the Amending Ordinance or Act is again assented to by the President. It is submitted that the amendments introduced in the State Act by the Ordinance and the Amending Act requiring the qualification of membership of at least 51% of the employees in the industry concerned in the local area creates further repugnancy with the provisions of the Central Act and that the Ordinance and the Amending Act cannot be given effect to for want of assent of the President. In the same context it is also argued that when the President assented to the State Act in 1960 he only considered the provisions as they were then enacted and he allowed the State Act to prevail to the extent of the repugnancy between the State Act as it then stood and the Central Act. The State Act then required a membership of 25% for a union for becoming a representative union. The change introduced by the Ordinance and the Amending Act which require membership of 51% for being qualified to become a representative union, could not have been envisaged by the President at the time when he gave his assent and these changes cannot be given effect to unless they are also assented to by the President.

The contentions so put forward by the learned Counsel, for the petitioners are, no doubt, attractive: but, in our opinion, there is no merit in them. It is not disputed that the Ordinance and the Amending Act which are challenged in these petitions do not suffer from the defect of legislative competence. It was open to the Governor and the State Legislature to make the Ordinance and the Amending Act under Item 22 of the Concurrent List. The only question is whether the Ordinance and the Amending Act are repugnant to any provision of the existing law or a law made by Parliament within the meaning of Article 254(1) of the Constitution. It is only when

this question is answered in the affirmative that the assent of the President can be said to be necessary under Article 254(2) to make the Ordinance and the Amending Act prevail over the existing law or law made by Parliament. On the question of repugnancy the learned Counsel for the petitioners referred to Section 36 of the Central Act and argued that the Central Act did not recognise any representative union; that the recognition of representative unions was a new feature in the State Act; and that any further change in the provisions contained in the State Act for recognition of representative unions will create further repugnancy with the Central Act, A look at Article 254(1) of the Constitution would show that repugnancy must exist at the time of the making of the law by the State Legislature or the repugnancy must come into existence by a subsequent law made by Parliament. In the instant case, we have to examine whether at the time when the Ordinance and the Amending Act were promulgated and passed in Madhya Pradesh were they repugnant to Section 36 of the Central Act, Now, the Ordinance and the Amending Act do not make any change in the Central Act. They only amend certain provisions relating to the representative unions in the State Act. We have already seen that as the State Act was assented to by the President and as is specifically provided in Section 110, it completely displaced the application of the Central Act except Chapters VA and VB to the industries governed by it. As the amendments made by the Ordinance and the Amending Act are only in the State Act and in the field where the Central Act has no application, it cannot be said that at the time when the Ordinance was promulgated or the Amending Act was passed there was any repugnancy between the Ordinance or the Amending Act and Section 36 or any other provision of the Central Act. When a law made by a State Legislature, which is repugnant to a law made by Parliament or an existing law, is assented to by the President, it may within the area of its application completely displaces the existing law or law made by Parliament, or it may partially cover the field covered by these laws. If an amendment is made in the law made by the State Legislature in the field or area where it has exclusive operation, it cannot be said that the Amending Act would be repugnant to any provision of the existing law or law made by Parliament. But if the law made by the State Legislature is amended in its application to those matters to which the existing law or law made by Parliament wholly or partially applies, the effect of the Amending Act may be to displace those laws wholly or partially and to bring about repugnancy needing Presidential assent. In the instant case, the amendments introduced by the Ordinance and the Amending Act in the State Act were in respect of such matters which were exclusively governed by the State Act as the application of the Central Act had been completely displaced in those matters by the assent previously given by the President to the State Act. The amendments to the State Act were not in those areas which are still covered by the Central Act. If the State Act had been amended in a matter relating to layoff and retrenchment compensation covered by Chapters VA and VB of the Central Act, the amendment would have needed the assent of the President before it could be given effect to. But the amendments introduced by the Ordinance and the Amending Act

were not in any area where the Central Act was operative and, therefore, there was absolutely no clash between the Ordinance and the Amending Act on the one hand and the Central Act on the other. As earlier pointed out by us, the State Act had completely displaced the application of the Central Act in respect of the industries notified u/s 1(2). Any amendment to the State Act, except in relation to lay-off and retrenchment compensation, which are matters on which the Central Act still operates as provided in Section 110 of the State Act even in respect of industries governed by it, does not bring the amendments in conflict with the Central Act and it cannot be said that the amendments cannot be given effect to unless assented to by the President. On the application of the State Act to the industries governed by it, the Central Act has no application to those industries. It is true that the Central Act is not repealed. The Central Act is still in force, but its operation is limited to the industries to which the State Act does not apply. Any clash with the Central Act and a new Act amending the State Act can only take place when the Amending Act attempts to enter the field which is till occupied by the Central Act within the State. But if the Amending Act does not enter that field and is limited to the field occupied by the State Act which was assented to by the President, there is no repugnancy or clash between the Amending Act and the Central Act.

7-A The matter may be examined from another angle. When Article 254(2) applies, the law made by Parliament or the existing law prevails and the law made by the Legislature of the State becomes void for repugnancy. These two things go together. It is only when the law made by Parliament or the existing law prevails in a particular field that the law made by the Legislature of the State is voided on the ground of repugnancy. Now in the instant case, if we hold that the amendments introduced in the State Act by the Ordinance and the Amending Act arc void, we have further to hold that the Central Act prevails in those matters in respect of which the amendments were made by the Ordinance and the Amending Act. This is, however, not possible, because the Central Act had already been displaced on the question of representation of workmen by unions in respect of the industries which are governed by the State Act. It cannot, therefore, be held that the Central Act prevails on the subject on which the amendments were introduced by the Ordinance and the Amending Act. We are, therefore, of opinion that the Ordinance and the Amending Act did not require any assent of the President under Article 254(2) and that they are not void under Article 254(1).

Learned Counsel for the petitioners relied upon Hanuman Dall and General Mills, Hissar Vs. The State of Haryana and Others, Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., ; Basantlal Banarsilal Vs. Bansilal Dagdulal, and Mangtulal and Another Vs. Radha Shyam and Another, . In the Punjab case, there is an observation that if the State Act is assented by the President, the amendment of a provision of the Act which is with respect to one of the matters enumerated in the Concurrent List, will require the assent of the President. This observation is not of any real help to the petitioners. Firstly, the said observation cannot be construed to

mean that in all cases where the State Legislature amends a previous State Act which is assented to by the President in respect of a matter covered by the Concurrent List, the Amending Act shall need the assent of the President, even though there is no repugnancy between the Amending Act and the existing law or a law made by Parliament. Secondly, the observation relied upon is just an obiter because in the Punjab case the amendment to the State Act was made in a field not covered by the Concurrent List. In the Supreme Court case of K.S.E. Board v. Indian Aluminium Co. the question related to the validity of the Kerala State Electricity Supply (Kerala State Electricity Board and Licensees Areas) Surcharge Older, 1968, which was made u/s 3 of the Kerala Essential Articles Control (Temporary Powers) Act, 1965. Under the Kerala Act, electricity was declared to be an essential article before the President assented to the Act in 1967 when the life of the Kerala Act had been extended from 5 to 7 years. On the question that any repugnancy between the Surcharge Order made in 1968 and the Electricity Act, 1910 and the Electricity (Supply) Act. 1948, was cured by the assent given by the President in 1967, the Supreme Court held in the negative on the ground that it is only actual repugnancy that can be cured by the Presidential assent and not the possibility of repugnancy and that if the Surcharge Order. 1968 created a repugnancy between the Kerala Act on the one hand and the Electricity Act, 1970, and the Electricity (Supply) Act. 1948, on the other, it is only the Presidential assent subsequent to the Surcharge Order that can cure the repugnancy. This case is again distinguishable on the ground that there was a repugnancy created by the Surcharge Order made in 1968 and the existing law, i.e. , the Electricity Act, 1910, and the Electricity (Supply) Act, 1948, and the assent of the President was needed to cure this repugnancy. In the case before us, there is no repugnancy between the amendments introduced by the Ordinance and the Amending Act in the State Act and the Central Act for the reason that the Central Act had no application to the matters in respect of which the amendments were made by the Ordinance and the Amending Act. The Bombay case of Basantilal v. Bansilal, only states the principle behind Article 254(2) that the President, at the time of giving assent, should apply his mind to what Parliament has enacted and also consider the local conditions prevailing in a particular State, and if he is satisfied judging by the local conditions that a particular State should be permitted to make a provision of law different from the provision made by Parliament, he should give his assent and thereupon the State legislation would prevail. The case does not lay down that after assent is given to a State Act by the President, any further amendment in the State Act in the field from which the application of the Central Act is completely displaced, will also require the assent of the President for its effective operation. In the Patna case of Mangtulal v. Radha Shyam, the life of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, which had received the assent of the Governor-General u/s 107 of the Government of India Act, 1935, was extended by an Amending Act of 1951 which did not receive the assent of the President. The Bihar Act was repugnant to certain provisions of the Transfer of Property Act. A Full Bench of the Patna High Court held that as the Amending Act

continued the repugnancy between the Bihar Act and the T.P. Act beyond the original period of application of the Bihar Act, it needed the assent of the President under Article 254 of the Constitution. Here again, the Amending Act came in conflict with the existing law and, therefore, needed the assent of the President. None of these cases are applicable to the situation arising before us. As earlier pointed out by us, the Ordinance and the Amending Act have amended the State Act in respect of those matters which are exclusively governed by the State Act and not by the Central Act in respect of the industries to which the State Act applies. The amendments introduced thus did not come in clash with, and were not repugnant to any provision of the Central Act. There was, therefore, no question of obtaining the assent of the President.

In Misc. Petns. 22 and 41 of 1978, Shri Gulab Gupta, learned Counsel for the petitioners, submitted that the notices were issued on a misconstruction of Section 16 as amended by the Ordinance and the Amending Act. In our opinion, it is not possible for us to examine this question. The petitioners can reply to the notices and submit what, in their view, is the proper construction of the section. It would be for the authority concerned under the State Act to decide the question. If ultimately, the recognition of the petitioners as representative unions is cancelled on a misconstruction of Section 16, they will have a right of appeal u/s 22 of the State Act to the Industrial Court. It is not open to us at this stage to examine the correctness of the view on which the notices proceed.

All the petitions fail and are dismissed, but without any order as to costs. The security amount be refunded to the petitioner in each case.