(2002) 04 SC CK 0051

Supreme Court of India

Case No: C.A. No.-002727-002727 / 1998

Union of India (UOI)		APPELLANT
	Vs	
Shree Gajanan Maharaj Sansthan		RESPONDENT

Date of Decision: April 29, 2002

Acts Referred:

- Advocates Act, 1961 - Section 30
- Constitution (Forty-Fourth Amendment) Act, 1978 - Section 1(2)
- Constitution of India, 1950 - Article 22, 32
- Industrial Disputes (Amendment) Act, 1982 - Section 1(2), 2

Citation: (2002) 93 FLR 1200 : (2002) 1 JT 94 Supp : (2002) 2 LLJ 554 : (2002) 4 SCALE 230 : (2002) 5 SCC 44 : (2002) 3 SCR 600 : (2002) 2 UJ 887

Hon'ble Judges: S. Rajendra Babu, J; Ruma Pal, J

Bench: Division Bench

Advocate: T.L.V. Iyer and H.W. Dhabe, Sanjay R. Hegde, S.M. Matto, R.N. Poddai, Priya Hegde, Y.P. Mahajan, Arvind Kumar Sharma, A.K. Sanghi, A.R. Patil, Kiran Suri, R.M. Lambat and B.V. Balram Das, for the Appellant;

Final Decision: Partly Allowed

Judgement

Rajendra Babu, J.

These are three matters, two of which are appeals arising out of orders made by two different High Courts and the third matter is a writ petition filed by the respondent (Shree Gajanan Maharaj Sansthan) in Civil Appeal No. 2727/1998 in this Court directly under Article 32 of the Constitution.

CIVIL APPEAL NO. 2727/1998

2. The respondent in this appeal registered as a charitable trust under the Bombay Public Trust Act filed a writ petition before the Bombay High Court, Nagpur Bench,

contending that Section 2(j) of the Industrial Disputes Act, 1947 [hereinafter referred to as "the Act"] provides for definition of the expression "industry"; that this Court interpreted the said expression in Bangalore Water Supply & Sewerage Board vs. A. Rajappa & Ors., 1978 (2) SCC 213 that separate judgments were rendered by Beg, C.J., Chandrachud, CJ. And Bhagwati, Krishna Iyer and Desai, JJ. together, while Jaswant Singh and Tulzapurkar, JJ. partially dissented; that they explained the definition of the expression "industry" in the Act; that all of them are of the view that the matter should be clarified by the Legislature by a suitable amendment; that the said definition of "industry" as interpreted by this Court would include ''charitable trust'' as well; that under the Industrial Disputes (Amendment) Act, 1982 by clause (c) thereof definition of the term "industry" has been amended and ''charitable organisations'' have been excluded from the term "industry"; that Section 1(2) of the Amending Act provides that the Act shall come into force on such date as the Central Government may by a notification in the Official Gazette appoint; that although most of the provisions of the Amending Act have been brought into effect by a notification dated August 21, 1984, clause (c), which has amended the definition of the term "industry", has not been brought into force; that thus, the definition of the term "industry" as it stood prior to the amendment is still applicable to the employees working in the appellant''s institution; that the Central Government has arbitrarily withheld the enforcement of the said provision for a sufficiently long time and, therefore, a writ of mandamus needs to be issued to the Central Government to notify the date for bringing the provisions into force. The Central Government took the stand that enforcing the provision under clause (c) without providing for appropriate remedies to the employees working in hospitals, schools and temples they would, therefore, be rendered without any remedy in the event the said clause is put into force without enacting an appropriate law or making certain amendments in the existing laws.

3. The High Court took the view that the Central Government in notifying the date when the provisions of the Act will come into force will have to examine the attending circumstances before bringing the same into force and such a power would not empower the Central Government to decide whether to bring a particular provision into force or not. However, the High Court was of the view that when the Amending Act was adopted by Parliament the difficulties put forth by the appellants were prevalent and, therefore, it authorised the Central Government to notify the appointed day. It is in these circumstances the High Court felt that it is obligatory for the Central Government to examine whether difficulties as expressed still subsist and what steps the Central Government had taken to surmount them and when more than 18 years had elapsed the appellant ought to examine and decide as to when it would be feasible to give effect to the provisions of the Amending Act. In this appeal the order made by the High Court is in challenge.

4. This Court made an order on 8.2.2001 to the following effect :-

"The direction issued by the High Court in respect of which these appeals are filed is that the Union of India should examine and decide within six months as to when it would be feasible to give effect to Sub-section 2 of Section 1 of the Industrial Disputes Amending Act, 1982 contained in the Amending Act. Now, it is stated on behalf of the Union of India that the said exercise has been done and they do not find it feasible to give effect to the provisions at this stage. It would be appropriate to file an affidavit in a matter of this nature and thereafter take a decision. Learned counsel for the Appellant-Union of India seeks six weeks time to file the affidavit. Call after six weeks."

5. Thereafter, an affidavit has been filed on behalf of the Central Government in this regards which is as follows :-

"(2) That this Hon''ble Court vide its order dated 18th April 2001 was pleased to grant one week time to the Union of India to file a better affidavit regarding the present stage of notifying the amendment of Section 2(c) of the Industrial Disputes (Amendment) Act, 1982. Pursuant to the said order, the present affidavit is being filed.

(3) That the Industrial Disputes (Amendment) Bill, 1982 was introduced to amend the definition of the term industry.

(4) That the Government also introduced the Hospitals and Other Institutions (Settlement of Disputes) Bill in the Rajya Sabha.

The former Bill was enacted but the later bill was not pursued because of opposition to various provisions.

As a consequence the amended definition of the term "industry" could not be brought into effect in the absence of alternative grievance machinery for employees in hospitals, educational institutions, etc. who would have been denied the protection of the Industrial Disputes Act, 1947.

(5)That another attempt was made by introducing, ''the Hospitals and Other Institutions (Redressal of Grievances of Employees) Bill'', but it lapsed with the dissolution of the Lok Sabha in 1989.

(6) That Bipartite Committee for new Industrial Relations law under the Chairmanship of Sh. G. Ramanujam was set up by the Government for formulation of comprehensive industrial formulations law, but the views of this Committee on the definition of the terms industry were not unanimous.

(7) That a proposal for modification of the definition of the term ''industry'' was placed in the Standing Labour Committee and thereafter the issue was referred to the new Bipartite Committee to formulate a comprehensive Industrial Relations Bill. It was wound up as no consensus emerged.

(8) That the Ministry of Labour prepared a proposal to amend the Industrial Disputes Act, 1947 including definition of ''industry'' and the proposal was sent to Committee of Secretaries.

(9) In the meeting of Committee of Secretaries (COS) on 15.2.1999 it was agreed that an Inter-Ministerial Group would be set up by the Ministry of Labour to finalise the proposals. Accordingly, an Inter-Ministerial Group was set up with the representatives of 13 Ministries/Departments.

(10) That Meetings of the Inter-Ministerial Group with the representatives of all the 13 Ministries/Departments were held on 14.5.1999 and 11.1.2001 to consider the amendment proposals.

(11) That meetings of COS under the chairmanship of the Cabinet Secretary were held on 15.2.1999, 3.11.1999, and 21.1.2000 to consider the amendment proposals.

(12) That the proposal was revised/recast on the basis of recommendations made by the Group and Inter-Ministerial Committee of Secretaries.

(13) That group of Ministers was constituted under the Chairmanship of Dy. Chairman, Planning Commission to suggest the amendment proposals. The group consisted of Ministers of 9 Ministries.

(14) That group of Ministers has met on 11.4.2000, 12.5.2000 and 27.5.2000.

(15) That the proposal to amend the Industrial Disputes Act were again revised on the basis of recommendations of Group of Ministers.

(16) That after finalising the proposals, it was sent to Ministry of Law, Justice and Company Affairs for the opinion of Department of Legal Affairs. Department of Legal Affairs have concurred in the proposals and a draft bill is being drafted by the Legislative Department, Ministry of Law."

6. A reference has been made to the following decisions and to the criteria upon which the delegated legislation and conditional legislation can be distinguished:

In re the Delhi Laws Act, 1912, the Ajmet-Merwara (Extension of Laws) Act, 1947 and The Part C States (Laws) Act, 1950, 1951 SCR 747, Rajnarain Singh vs. The Chairman, Patna Administration Committee, Patna & Anr., 1955 (1) SCR 290 , Hamdard Dawakhana (Wakf) Lal Kuan, Delhi & Anr. vs. Union of India & Ors., 1960 (2) SCR 671 , Suman Gupta and Ors. vs. State of J & K & Ors., 1983 (4) SCC 339 , Consumer Action Group & Anr. vs. State of T.N. & Ors., 2000 (7) SCC 425 , and Agricultural Produce Market Committee vs. Ashok Harikuni & Anr., 2000 (8) SCC 61 .

7. In Aeltemesh Rein vs. Union of India & Ors., 1988 (4) SCC 54 , when Section 30 of the Advocates Act, 1961 was not put into operation even after a lapse of 27 years of its enactment, this Court observed that the Court on account of long lapse of time though cannot issue writ of mandamus it can ask the Government to consider

within a reasonable time whether time for enforcing the provision has arrived or not and no more.

8. In A.K. Roy vs. Union of India & Ors., 1982 (1) SCC 271, , a contention was raised that despite the provisions of Section 1(2) of the 44th Constitution (Amendment) Act, 1978, Article 22 of the Constitution stood amended on 30.4.1979 when the Amendment Act received the assent of the President and that there was nothing more that remained to be done by the Executive except fixing a date for the commencement of the Act as provided u/s 1(2) thereof. According to the said contention, Section 1(2), which is misconceived and abortive, must be ignored and severed from the rest of the Amendment Act. This Court observed that no mandamus could be issued to the Executive directing it to commence the operation of the enactment; that such a direction should not be construed as any approval by the Court of the failure on the part of the Central Government for a long period to bring the provisions of the enactment into force; that in leaving it to the judgment of the Central Government to decide as to when the various provisions of the enactment should be brought into force, the Parliament could not have intended that the Central Government may exercise a kind of veto over its constituent will by not ever bring the enactment or some of its provisions into force; that if only the Parliament were to lay down an objective standard to guide and control the discretion of the Central Government in the matter of bringing the various provisions of the Act into force, it would have been possible to compel the Central Government by an appropriate writ to discharge the function assigned to it by the Parliament. It was further contended that an amendment can be bad because it vests an uncontrolled power in the executive in bringing an enactment into operation. This Court, however, noticed that such power cannot be held to give an uncontrolled power to the executive inasmuch as there are practical difficulties in the enforcement of laws and those difficulties cannot be foreseen. It, therefore, became necessary to leave the judgment to the Executive as to when the law should be brought into force. When enforcement of a provision in a statute is left to the discretion of the Government without laying down any objective standards no writ of mandamus could be issued directing the Government to consider the question whether the provision should be brought into force and when it can do so. Delay in implementing the will of the Parliament may draw adverse criticism but on the data placed before us, we cannot say that the Government is not alive to the problem or is desirous of ignoring the will of the Parliament.

9. In the circumstances set out in the affidavit filed on behalf of the Government, it would not be feasible for Government to set out any definite day as to when they can take action as indicated by the High Court and, therefore, the order made by the High Court cannot be given effect to at all. Though there has been a sense of urgency on the part of the Government in this regard, it has not been able to take a decision in the circumstances set forth in the affidavit. Hence, while noticing that appropriate action has to be taken by the Government to bring into effect the

Amending Act as indicated by the High Court, we also take note of the various circumstances which come in the way of the Government to give effect to the Amending Act immediately. That part of the order of the High Court by which writ of mandamus has been issued to the Government to take action and to indicate as to when it would be feasible to appoint a date for bringing into force the Amending Act stands deleted. In other respects, the order made by the High Court is maintained.

10. Appeal is partly allowed accordingly. No costs.

CIVIL APPEAL NO. 5393/1998

11. In this Civil Appeal, which is identical in nature with Civil Appeal No. 2727/1998, the view taken by the Karnataka High Court which is contrary from that of the Bombay High Court is in challenge.

12. In the light of the order made by us in Civil Appeal No. 2727/1998, this appeal stands dismissed. No costs.

WRIT PETITION (C) NO. 632/2000

13. In view of the order made in Civil Appeal Nos. 2727/1998, this writ petition stands dismissed.