Rashtriya Mill Mazdoor Sangh, Nagpur Vs State Industrial Court, Nagpur

Court: Bombay High Court

Date of Decision: March 24, 1959

Acts Referred: Industrial Disputes Act, 1947 â€" Section 1, 1(3), 10, 10(1), 3

Citation: (1959) 61 BOMLR 1279 : (1959) 2 LLJ 737

Hon'ble Judges: S.H. Naik, J; J.R. Mudholkar, J

Bench: Division Bench

Judgement

Mudholkar, J.
In this application we have to consider mainly two questions. The first is the date on which S. 7A which was inserted by

Act XXI of 1955 [the Madhya Pradesh Industrial Disputes Settlement (Amendment) Act, 1955] which amendment the Industrial Disputes

Settlement Act of 1947, came into force. The second question is whether the Deputy Labour Commissioner, who was appointed as a Registrar

under S. 14 of the Act, was entitled to entertain the application of opponent 7.

2. The circumstances which have given rise to this petition are briefly these :

3. The Rashtriya Mill Mazdoor Sangh, Nagpur, who is the petitioner before us, was recognized as a registered union under S. 3 of the Industrial

Disputes Settlement Act, 1947, sometime during the year 1951-52. Taking advantage of the provisions of S. 7A, opponent 7 made an application

to the Assistant Registrar of Recognized Unions, Nagpur, on 25 April, 1958, for its recognition in place of the petitioner union. This application

was opposed by the petitioner. It was contended on behalf of the petitioner that S. 7A came into force on 11 March, 1958, by virtue of a

notification made by the Government of India under Sub-section (3) of S. 1 of the Act of 1947, that this section had only a prospective operation

and not a retrospective one, and that therefore it was not open to the union to make an application under S. 7A for its recognition till after the lapse

of one year from this date. It is not easy to follow the argument of Mr. Dhabe. It appears to be that a union which seeks recognition by an

application made by it earlier than one year after the date on which S. 7A was notified to come into force cannot do so as the notification could not

give retrospective operation to that section. In support of his contention Mr. Dhabe relied upon the explanation to Sub-section (4) of S. 7A, which

is in the following terms :-

Explanation. - In determining the membership for purposes of Sub-section (2) any person who -

(i) has not been continuously on the roll of members of the union for a period of at least twelve months immediately before the date of application;

and

(ii) is in arrears of subscription payable to the union for a period exceeding three months;

shall not be counted as a member of the union.

4. According to him, the comparative membership of the unions is to be determined with reference to a date which is one year prior to the coming

into force of S. 7A and that thereby the existing right of a union to continue to be a recognized union would be infringed if the application of another

union were to be granted before the expiry of one year from the date of the notification. Now, all that this section contemplates is that the relative

strength of the unions is to be considered only by taking into account those members who have been on the roll of the union continuously for a

period of twelve months prior to the application and have not been in arrears in the matter of payment of subscription for a period exceeding three

months. That is to say, the explanation requires the existence of a certain fact and the non-existence of another fact. It does not in any way tend to

give retrospective operation to any of the provisions of the statute. A newly recognized union will be entitled to function as a recognized union and

act on behalf of the workers engaged in an industry only from a date subsequent to its recognition. Till a new union is recognized, an existing union,

and here the petitioner, will continue to function as recognized union and exercise all its rights as such union. It is, therefore, difficult to appreciate

how the mere ascertainment of the existence of a certain fact during the course of one year prior to the application for recognition will amount to

giving retrospective operation to a provision of the statute.

5. Then Mr. Dhabe argued that by virtue of the explanation to Sub-section (4) of S. 7A no action under S. 7A can be taken unless the period of

two years has elapsed from the commencement of the Madhya Pradesh Industrial Disputes Settlement (Amendment) Act of 1955. If the amending

Act did not come into force till the notification of 6 March, 1958, the present application according to Mr. Dhabe is clearly premature as it was

made only a few days after the notification bringing S. 7A into force was issued. What is to be borne in mind is that the explanation refers to the

commencement of the amending Act of 1955 and not to the making of any notification. Mr. Dhabe, however contends that the amending Act of

1955 which introduced S. 7A of was not specifically brought into force by issue of any notification under Sub-section (3) of S. 1 of the Act of

1947. The scheme of this Act is that while it extends to the whole of the Central Provinces and Berar (which include the present territories of

Vidarbha) Sub-section (3) requires the issue of a notification bringing the sections other than S. 1 into force in such areas or of industries and on

such date as may be specified in the notification.

6. Now, according to Mr. Dhabe, the words ""commencement of the Act of 1955"" used in the explanation must be deemed to refer only to the

provisions of S. 7A and as no notification extending the provisions of that section or bringing them into force anywhere was issued till 11 March,

1958 the amending Act cannot be deemed to have come into force at all. He relied upon the decision of this Court in the Textile Mills Association

v. Rashtriya Mill Mazdoor Sangh [(1958) Special Civil Application No. 3400 of 1957, Chainani and Badkas, JJ., on 24 January, 1958

unreported] in which it was held that the provisions introduced into the Industrial Disputes Settlement Act of 1947 by the amending Act of 1955

did not come force at once and that it was necessary for the State Government to issue a notification under Sub-section (3) of S. 1 to bring those

provisions into force. In that case the Division Bench of this Court held that the provisions of the amending Act become a part and parcel of the

parent Act after the Act passed into law, and that consequently none of them could come into force until a notification was made by the State

Government under Sub-section (3) of S. 1. In taking this view, the Division Bench did not, if we respectfully point out, take into consideration two

facts. One is that the amending Act of 1955 does not specify the date on which it has to come into force, and the other is that the provisions

enacting the amending Act could not become part of the parent Act till the amending Act came into force.

7. Now S. 3, Sub-section (1)(b), of the Central Provinces and Berar General Clauses Act provides :

3. (1) Where any Madhya Pradesh Act is not expressed to come into force on a particular day then, ...

(b) in the case of a Madhya Pradesh Act made after the commencement of the Constitution, it shall come into operation on the day on which the

assent thereto of the Governor or the President, as the case may require, is first published in the official Gazette.

8. In the instant case the amending Act of 1955 was submitted to the President for his assent. That assent was received on 19 November, 1955,

and was published in the Madhya Pradesh Gazette on 25 November, 1955. Since the amending Act makes no provision regarding the date of its

commencement, it must be held under Sub-section (1) of S. 3 of the Central Provinces and Berar General Clauses Act that the amending Act

came into force on 25 November, 1955. Now, since it came into force on that date there was no need whatsoever to issue a notification under

Sub-section (3) of S. 1. The restraints imposed by this latter provision were intended to apply to the provisions of the main Act which was enacted

in the year 1947. It was open to the legislature to extend those restrictions even to the provisions of the amending Act. It has however not chosen

to do so. Therefore, the absence of a notification under Sub-section (3) of S. 1 is of no consequence.

9. No doubt, where an Act is amended by another Act, the provisions of the amending Act become part of the parent Act, but it is does not mean

that the provisions of the amending Act never come into force except by following the procedure laid down in the parent Act for bringing them into

force. The provisions of the amending Act could not become part of the parent Act without bringing into operation the amending Act. Once the

amending Act came into operation, S. 7A which was introduced into or superimposed on the original Act also came into operation. This the

coming into force of S. 7A of the Act and its becoming part and parcel of the parent Act was a simultaneous process. Since S. 7A has come into

force, the issue of the notification under Sub-section (3) of S. 1 bringing it into force would be redundant. It is for these reasons that we cannot

accept the view taken in the case.

10. It may be mentioned that consequent on the decision in that case the legislature has passed a validating Act. That Act is the Bombay Act LIX

of 1958. Section 2 of that Act runs thus :

2. Amendments to Central Provinces and Berar Act XXXII of 1947 made by Madhya Pradesh Act XXI of 1955 to come into force on the date

Madhya Pradesh Act XXI of 1955 commenced. - Notwithstanding anything contained in Sub-section (3) of S. 1 of the principal Act or in any

judgment, decree or order of a Court, the amendments incorporated in the principal Act by the amending Act (whether by way of amendment to,

insertion in, or substitution of, the provisions of the principal Act), which have not been brought into force by notification issued under Sub-section

(3) of S. 1 of the principal Act, shall be deemed to have come into force in the Vidarbha area of the State of Bombay on and with effect from 25

day of November 1955, in relation to the industries to which the principal Act applied on that date.

11. Now, one of the results of these provisions is to render ineffective the decision of this Court in the Textile Mills Association v. Rashtriya Mill

Mazdoor Sangh (supra). That being the position, we do not think it necessary to refer this case to a larger Bench.

12. The other argument of Mr. Dhabe is regarding the jurisdiction of the Deputy Labour Commissioner to entertain the application. According to

him, the Registrar of unions has to be appointed by name, and that since here the appointment is made only by office, the appointment is bad and

consequently the Deputy Labour Commissioner who is purporing to act as Registrar, has no jurisdiction to entertain the application. In our opinion,

there is no substance whatever in this contention. Sub-section (1) of S. 14 provides that the State Government shall, by notification, appoint the

Labour Commissioner or any other person to be the Registrar of Recognized Unions under the Act. Now, Mr. Dhabe contends that apart from the

Labour Commissioner, no other person can be appointed as a Registrar except by name. Mr. Dhabe, however, ignores the provisions of S. 14 of

the Central Provinces and Berar General Clauses Act which runs thus :

Where, by any Madhya Pradesh Act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is

otherwise expressly provided any such appointment may be made either by name or by virtue of office.

13. Clearly, a power to appoint by office is granted by the section. Mr. Dhabe, however, says that the provisions of this section are not applicable

to any matter arising under the industrial Disputes Settlement Act, and in this connexion he relied on two decisions of the Supreme Court. The first

of these is The United Commercial Bank Ltd. Vs. Their Workmen, . That, however, is not a case where it was held that the provisions of the

General Clauses Act cannot be applied to a matter arising under the Industrial Disputes Act. What was held was that the persons appointed under

S. 5(1) of the Industrial Disputes Act on the board of conciliation must be specified in the notification in order to invoke the jurisdiction to carry on

the conciliation proceedings. The view of their lordships was based on the fact that rule 5 of the rules framed under the Act required that the names

of the persons constituting a board, court or tribunal appointed under the Act should be noticed in the official gazette. In the case before their

lordships there was a clear breach of the requirements of the rule and, therefore they held that the board, the appointment of whose members was

not properly notified, had no jurisdiction to function under S. 5 of the Act. There is no requirement under the Industrial Disputes Settlement Act of

1947 of the rules framed thereunder for publishing the name of the person appointed to function as Registrar of Recognized Unions.

14. In the other case their lordships, The State of Bihar Vs. D.N. Ganguly and Others, they have held that the rule of construction enunciated by S.

21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked on respect of the

provisions of S. 10(1) of the Industrial Disputes Act. Now, under S. 10 of the industrial Disputes Act where the appropriate Government is of

opinion that an industrial dispute exists or is apprehended, it has a power to refer, among other things, the dispute to a board for settlement. The

dispute so referred by the Government of Bihar was eventually withdrawn by the Government and the question which came up before their

lordships was whether the Government which had referred the dispute to the board had power to withdraw it. One of the argument advanced

before their lordships was that under S. 21 of the General Clauses Act the Government had the power to withdraw the dispute. The argument was

negatived by Gajendragadkar, J., who delivered the judgment of the Court. He observed :

It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute

would depend on the subject-matter, context, and the effect, of the relevant provisions of the said statute. In other words, it would be necessary to

examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the rule

of construction enunciated by S. 21, the appellant''s contention is justified, that the power to cancel the reference case under S. 10(1) can be said

to vest in the appropriate Government by necessary implication.

15. What is, therefore, to be, considered in the present case is whether upon the consideration of all the relevant provisions of the Industrial

Disputes Settlement Act it could be said that the provisions of S. 14 of the General Clauses Act are excluded. No doubt, the learned Judges also

observed later on in the judgment that on general principles it is difficult to accept the argument that the appropriate Government should have an

implied power to cancel its own order made under S. 10 of the Act because such an order must have been made by it on the representation made

by the employer or his workmen and after the matter was fully considered by the Government. It would, therefore, be seen that the case before the

Supreme Court was very much different from the present one and further the provisions of the General Clauses Act, which were held to be

inapplicable to a matter arising under the Industrial Disputes Act, are also of a different character from those of S. 14 of the Central Provinces and

Berar General Clauses Act which we have to consider. The Supreme Court has not laid down any general proposition to the effect that the

provisions of the General Clauses Act have to be kept out of consideration in their entirety while interpreting industrial laws. Indeed, it would be

extremely dangerous to say that the provisions of the General Clauses Act ought not to be applied to industrial legislation. One of the objects which

the General Clauses Act serves is to fill in gaps or lacunae that may be found in different laws made by the legislature. The provisions are,

therefore, of a salutary character and we would not be prepared to hold that provisions do not apply to industrial legislation at all. The argument

therefore based on the mere fact that the appointment of the Registrar for the Vidarbha region was made not by name but by office has no

substance.

16. Then Mr. Dhabe contended that the provisions of S. 14 are ambiguous, and though they create the post of an Assistant Registrar and enables

that person to exercise all the powers of the Registrar, they do not provide for the transfer of cases to him by the Registrar. It may be that the

provisions are not every clear, but how that fact is of any assistance to Mr. Dhabe in his case is not easy to see. Apart from that, it may be pointed

out that it was by virtue of the agreement between the parties that the dispute may be taken up for consideration by the Registrar that it was so

taken up by him.

17. Foe all these reasons we are of opinion that the Registrar is competent to entertain the application of respondent 7 for being recognized as a

union under S. 7A of the Act. The Registrar was right in holding accordingly. The petition is dismissed. We are told that the matter is pending

before the Registrar for over a year. In matters like this it is desirable to arrive at a decision as early as possible. We therefore, direct the Registrar

to deal with this matter expeditiously. But of course it is the duty of the parties also to see to it that unnecessary adjournments are not taken by

them. Though we dismiss the petition and discharge the rule, we make no order as to costs.