

(2000) 09 CAL CK 0011

Calcutta High Court

Case No: C.O. No. 6292 (W) of 1983

Food Corporation of India

APPELLANT

Vs

Central Government Industrial
Tribunal and Others

RESPONDENT

Date of Decision: Sept. 15, 2000

Acts Referred:

- Food Corporations Act, 1964 - Section 45
- Industrial Disputes Act, 1947 - Section 10(1)

Citation: (2001) 2 LLJ 167

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: Dipak Kumar Ghosh, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Bhaskar Bhattacharya, J.

The only question that arises for determination in this writ application is whether an amendment of Food Corporation of India (Staff) (55th Amendment) Regulations, 1978 by virtue of the power conferred u/s 45 of the Food Corporation Act, 1964 ("Act") can be referred to as a dispute in terms of Section 10(l)(d) of the Industrial Disputes Act, 1947.

2. The petitioner is a body corporate established by the Act and Section 45 of the Act empowers the petitioner to make regulation by notification in the Official Gazette with the previous sanction of the Central Government. The said section is quoted hereunder:

"45. Power of Food Corporation to make regulations. - (1) A Food Corporation may, with the previous sanction of the Central Government by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made

thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for-

(a) the methods of appointment, the conditions of service and the scales of pay of the officers and employees of a Food Corporation, other than the Secretary of the Food Corporation of India;

(b) the duties and conduct of officers and employees of a Food Corporation, other than the Secretary aforesaid;

(c) the functions and duties which may be entrusted or delegated to the managing director or, as the case may be, the General Manager, of a Food Corporation;

(d) the times and places at which meetings of a Food Corporation or any committee thereof shall be held and the procedure to be followed thereof;

(e) the fees and allowances payable to the members of a committee under Sub-section (6) of Section 14 or Sub-section (6) of Section 24;

(f) generally, the efficient conduct of the affairs of a Food Corporation.

(3) The Central Government may, by notification in the Official Gazette, rescind any regulation which it has sanctioned and thereupon such regulation shall cease to have effect.

(4) Any regulation which may be made by the Food Corporation of India under this Act may be made by the Central Government within three months from the establishment of that Corporation and any regulation which may be made by a State Food Corporation under this Act may be made by the Food Corporation of India within three months from the establishment of such State Food Corporation, and any regulation so made may be altered or rescinded by the Food Corporation concerned in the exercise of its power under this Act"

3. By dint of the power conferred u/s 45 of the Act, the Food Corporation of India Rules, 1965 came into force which however stood replaced by the Food Corporation of India (Staff) Regulations, 1971 ("Regulations").

4. By a notification dated October 27, 1978 the petitioner in exercise of the power conferred by Section 45 of the Act with the previous sanction of the Central Government effected the following amendment of the Regulation:

"1. (1) These regulations shall be called the Food Corporation of India (Staff) (55th Amendment) Regulations, 1978.

(2) They shall be deemed to have come into force on January 18, 1977.

2. The existing provisions under column 4 of Serial No. 5 of Part II General Admn. Cadre and Serial No. 1 of Part III Godown Cadre of Appendix-1 of the Staff Regulations shall be substituted as follows: -

"25% direct recruitment- 75% promotion".

3. The following entries shall be inserted under columns 7 & 8 of Serial No. 5 of Part II General Admn. Cadre and. Serial No. 1 of Part III Godown Cadre of Appendix I of the Staff Regulations Column 7 Column 8

At least II Class Grade 30 years

in Arts/Science/Commerce or Agriculture.

Experience

3 years experience in Genl. Admn. of Food and Allied fields.

Relaxable by 5 years in case of Corporation. employees and by further

5 years for employees belonging to Scheduled Caste/Scheduled Tribe Communities."

5. The aforesaid amendment of the Regulation gave rise to the present dispute, as a result, the Central Government in terms of the powers conferred by Section 10(1)(d) of the Industrial Disputes Act referred the following disputes to the Central Government Industrial Tribunal, Calcutta:-

""Whether the action of the Food Corporation of India, 16-20, Barakhamba Lane, New Delhi in amending the Staff; Regulation, 1971 to provide for direct recruitment of Assistant Manager (General/Depots) is legal, proper and justified in the circumstances? If not, to what relief are the employees entitled?"

6. Before the Tribunal below, the petitioner raised a preliminary objection as regards the maintainability of the reference on the ground that the disputes referred could not be adjudicated upon by the Tribunal as it had no authority to declare any amendment of a statutory provision as illegal and as such the reference was incompetent.

7. By the order dated March 25, 1983 the Tribunal having turned down such preliminary objection, an application for review of that order was filed. By order dated May 30, 1983, the Tribunal has rejected such application. Being dissatisfied with the aforesaid orders passed by the Tribunal, the petitioner has come up with the instant application.

8. A regulation framed under a statutory power is another form of legislation. Legislation is made either by the legislative body or by its delegate. The authority to delegate certain functions is inherent in the power to legislate. In view of the multifarious activities of a welfare State, the legislature cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily

delegate the working out of the details to the executives or some other agency. Having laid down the legislative policy and prescribed the standard and guidance, the Legislature can confer discretion on the executive as to the execution of policy and leave it to the agency to work out the details within the framework of the policy.

9. Therefore, the amendment effected by virtue of the power conferred u/s 45 of the Act with the prior approval of the Central Government in this case is an instance of delegated legislation. By the reference the Tribunal has been asked to consider whether such delegated legislation in amending the regulation was justified.

10. In my view, our Constitution does not authorise the Central Government Industrial Tribunal to consider a question whether a particular piece of legislation was justified in the fact of a given case; nor is such Tribunal vested with the authority to declare the same as unjust. The appropriate Government therefore acted without jurisdiction in referring the dispute to the Tribunal.

11. The Tribunal in this case erred in holding that it has the competence to adjudicate the question. I thus set aside the order impugned and hold that the reference to the Tribunal was incompetent and the same is accordingly quashed. No costs.