Reckeit and Colman of India Vs Fifth Industrial Tribunal and Others

Court: Calcutta High Court

Date of Decision: Feb. 27, 1980

Acts Referred: Constitution of India, 1950 â€" Article 131, 132, 133, 133(1), 134
Industrial Disputes Act, 1947 â€" Section 10

Citation: 84 CWN 657

Hon'ble Judges: R.K. Sharma, J; M.M. Dutt, J

Bench: Division Bench

Advocate: R.C. Deb, P.N. Biswas, Jatin Ghose and M.M. Guha, for the Appellant;Arun Prokas Sircaf for Respondent No. 2 and Parthasarathi Sengupta, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Dutta, J

1. This is an application for a Certificate for appeal to the Supreme Court under Article 134A of the Constitution. The Certificate has been prayed

for in respect of our judgment passed by us in F.M.A. No. 344 of 1979, (reported) 84 CWN 344). affirming the judgment of Basak. J. While

upholding the award of the Tribunal, it was held by us that the disputt; raised by the car drivers of the applicant company was an industrial dispute.

Mr. R. C. Deb, learned Advocate appearing on behalf of the applicant, has raised the following questions as substantial questions of law of general

importance :

i) When there is in existence a Union of the workmen of a company, whether espousing the dispute of an insignificant number of workmen (12 out

of 1000) by an outside general Union would make the dispute an industrial dispute so as to enable the State Government to make an order of

reference u/s. 10 of the Industrial Disputes Act;

ii) When there is in existence a Union of the workmen employed by the company and there is no Union of any particular class or category or craft

of the workmen of the Company, whether a dispute espoused by an outside general Union representing workmen of different industries and not

being a Union of any particular craft could be termed as industrial dispute so as to enable the State Government make an order of reference u/s. 10

of the Industrial Disputes Act;

iii) Whether an outside general Union purporting to represent different categories of workmen of a particular industry can espouse an industrial

dispute in respect of workmen of a particular class/category of another industry;

iv) Whether a dispute espoused by an outside general Union in respect of workmen belonging to a particular class or category would become an

industrial dispute although the same has not been espoused by the Union of the workmen of the company;

v) Whether there can be any inference of employer-employee relationship only because of the fact that an order of reference has been made by the

Government u/s 10 of the Industrial Disputes Act.

2. Mr., Parthasarathi Sengupta, learned Advocate appearing on behalf of the respondent no. 3, the Motor Workers Union, has taken a preliminary

objection to the maintainability of the application. It is contended by him that after the amendment of Article 133 (1) and the introduction of Article

134A in the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978, no written application is maintainable for a certificate for

appeal to the Supreme Court. He submits that as provided in Article 134A. the aggrieved party has to make an oral application before the Court

immediately after the passing or making of the judgment, decree, final order or sentence, as the case may be. Article 134A does not contemplate,

the making of a written application for a certificate for appeal. Article 133(1), as amended, inter alia provides that an appeal shall lie to the

Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies

under Article 134A etc. Article 134A provides as follows :

Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of Article 132 of clause (1) of Article

133, or clause (1) of Article 134,--

(a) may, if it deems fit so to do, on its own motion, and

(b) shall, if an oral application is made by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree,

final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in

clause (1) of Article 132, or clause (1) of Article 133 or, as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in respect

of that case.

3. It is contended by Mr. Sengupta that if Article 133(1) had not been amended by the introduction of the words ""if the High Court certifies under

Article 134A"", a written application could be made, but after the amendment of that Article read with the new Article 134A, any contention to the

making of an application in writing subsequently to the passing of the judgment, decree, final order, or sentence is excluded. On the other hand, it

Is contended by Mr. Deb that Article 134A is an enabling provision authorising the High Court to entertain an oral application immediately after the

passing or making of a judgment, decree, final order or sentence He submits that it is not the intention of the legislature that an aggrieved party will

be prevented from making a written application. According to him, if the legislature had intended that only oral application would be maintainable,

in that case, the provision of order 45 of the CPC and the provision of Article 132 of the Limitation Act would not have been left unamended. Rule

2 of order 45 provides that whoever desires to appeal to the Supreme Court shall apply by a petition to the court whose decree is complained of.

Under Article 132 of the Limitation Act, the period of Limitation for a certificate of fitness to appeal to the Supreme Court is 60 days from the date

of decree, order or sentence. So it is contended by Mr. Deb that Article 134A of the Constitution is only an enabling provision whereby the High

Court can entertain an oral application for a certificate if made immediately after the passing of the judgment, decree, final order or sentence. He

submits that in any event this Court may grant the certificate in exercise of its suo motu power, as conferred by clause (a) of Ariticle 134A.

4. We have given our anxious consideration to the contentions made on behalf of either party. In our view, the contention made by Mr. Sengupta

has considerable force, Article 133(1), as amended, lays down the grounds upon which a certificate will be granted by the High Court. It also

directs that the certificate shall be granted under Article 134A. In other words. Article 133 is not only a substantive provision, but also refers to the

procedure that may be followed for the grant of the certificate. The procedure has been laid down under Article 134A, namely, by an oral

application to be made immediately after the passing or making of the judgment, decree, final order or sentence. In the circumstances, in our view,

it is difficult to hold that Article 134A is only an enabling provision. It may be that the provisions of order 45 of the CPC and the provision of

Article 132 of the Limitation Act have not been amended so as to bring them in conformity with the provisions of Articles 133(1) and 134A. But,

in our view, that fact cannot be taken into consideration in ascertaining the intention of Parliament for the simple reason that the amendment made

to Articles 133(1) and the introduction of the new Article 134A have been made in plain, simple and unambiguous language. When the language of

a statute is plain and unambiguous there is no question of ascertaining the intention of the legislature from extraneous circumstances. It has been

stated already that Article 133(1)not only lays down the grounds upon which a certificate may be granted, but also it refers to Article 134A which

lays down the procedure to be followed in obtaining the certificate from the High Court. The intention of Parliament is quite clear and we do not

think that because of the fact that certain other provisions have not been amended suitably, any intention contrary to what appears from the plain

language of Articles 131 and 134A should be adopted. In the circumstances, we are of the view that the application which has been made long

after the passing of the judgment, though within the period of limitation as prescribed by Article 132 of the Limitation Act, is not maintainable.

5. Mr. Deb has also prayed for the grant of the certificate in exercise of our suo motu power under clause (a) of Article 134A. We are afraid, we

cannot exercise the power at this distant point of time. Under Clause (a) of Article 134A, the High Court may, if it deems fit so to do, on its own

motion, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of

Article 132, or clause (1) of Article 133 or, as the case may be, subclause (c) of clause (1) of Article 134, may be given in respect of that case. It

is, therefore, clear that the suo motu power for the determination of the question has to be exercised ""as soon as may be"". It will not be proper, nor

is it the provision of Article 134A that after an aggrieved party makes an application in writing, the High Court will consider the question of

exercising its suo motu power under clause (a). If after delivering the judgment, the High Court considers that a substantial question of law of

general importance should be decided by the Supreme Court, it may in the exercise of its suo motu power determine the question as to the grant of

a certificate. But before doing that the High Court has to intimate about the same to the party against whom such power may be exercised. That

may take some time. So, it is provided that the question may be determined ''as soon as may be after the passing of the judgment etc. and not

immediatly'' as in the case of an oral application. In the circumstances, the prayer for the grant of the certificate by us suo motu cannot be allowed.

6. Mr. Sengupta also submits that even on the merits of the application, no certificate should be granted. It is contended by him that even assuming

that the questions that have been raised may be substantial questions of law, they do not require to be decided by the Supreme Court inasmuch as

we have disposed of the case also on an alternative ground, namely, it was held by us that as a substantial number of workmen had raised the

dispute, it was an industrial dispute, In view of our finding that the application is not maintainable, we do not think that we are called upon to decide

whether the questions raised on behalf of the applicant are substantial questions of law of general importance and need to be decided by the

Supreme Court.

7. For the reasons aforesaid, the application is dismissed, but there will be no order for costs.

The certified copy of our judgment may be returned to the learned Advocate on his furnishing a plain copy thereof.

The interim stay, as granted by us, will continue for a further period of four weeks from date.

Sharma, J.

I agree.