(1973) 05 CAL CK 0026

Calcutta High Court

Case No: Appeal No. 308 of 1971

State of West Bengal		APPELLANT
	Vs	
Jute and Jute Goods Buffer Stock Association and Others		RESPONDENT

Date of Decision: May 22, 1973

Acts Referred:

- Constitution of India, 1950 - Article 14, 19(1)(c), 226
- Industrial Disputes Act, 1947 - Section 10, 10(1), 10(1), 12, 12(5)

Citation: 77 CWN 809

Hon'ble Judges: A.K. Mookerji, J; A.C. Roy, J

Bench: Division Bench

Advocate: P.P. Ghosh and A.G. with Soumen Bose for Attorney General, for the Appellant;A. Chaudheri for the Respondent No. 1, for the Respondent

Final Decision: Allowed

Judgement

Amiya Kumar Mookerji, J.

This appeal is by the State of West Bengal and it is directed against the judgment end order dated 28th July, 1971, passed by Sankar Prasad Mitra, J. (as he then was) in an application under Art. 226 of the Constitution, holding that section 2A of the Industrial Disputes Act, 1947, read with section 10 of the said Act is void and illegal as it offends against the provisions of Article 14 of the Constitution, upon the view, that the power that the appropriate government enjoys u/s 10 of the said Act, results in discrimination when applied to cases coming within the scope of section 2A. On the 20th May, 1970, by a letter, the respondent No. 1--Jute & Jute Goods Buffer Stock Association, a trade Union registered under the provisions of the Indian Trade Union Act, 1926, terminated the services of the second respondent, Mrinal Kanti Bhowmick, a clerk in the employ of the first respondent, with effect from 13th June, 1970. Thereafter, the second respondent approached the Secretary to the employer for reconsideration of the matter and recall the order of termination

served upon him. The Secretary, however, did not accede to accept the proposal. On or about 13th June, 1970, the second respondent approached the Conciliation Officer of the Government of West Bengal with his grievances. The Concilation Officer, the Assistant Labour Commissioner, West Bengal, wrote to the first respondent on the 15th June, 1970. In reply to the said letter, the first respondent''s Secretary, N.S. Kothari, wrote on 25th June, 1970, that the first respondent was not an "industry" within the meaning of the Industrial Disputes Act, 1947, and, as such, no "industrial dispute" could be raised by any of its employees. It was further stated in the said letter that the first respondent was willing to give the second respondent another chance on a trial basis for one month; but the second respondent refused to avail himself of the chance and wanted to collect his dues within a couple of days. Thereafter, the appropriate Government by its order dated 10th October, 1970, referred the dispute in exercise of its power conferred by section 10 read with section 2A of the Industrial Disputes Act, 1947, to the Second Industrial Tribunal for adjudication of the issue, viz. whether the termination of services of Sri Mrinal Kanti Bhowmick was justified; to what relief, if any, he was entitled to? The first respondent, the employer, challenged the validity and legality of the said order of Reference made by the Government and also the jurisdiction of the Industrial Tribunal to adjudicate upon that reference and moved this Court on an application under Article 226 of the Constitution. A Rule Nisi was issued on the 27th of November, 1970; the said Rule came up for final hearing before Sankar Prasad Mitra, J. (as he then was) who made the said Rule absolute on July 28, 1971.

2. The learned Judge is of opinion that the provisions of section 2A of the Industrial Disputes Act, 1947, read with its preamble and other sections suggest, that, the Act was meant for settlement of collective disputes between the employers and the workmen and the enactment of section 2A destroys the concept of an industrial dispute as collective dispute; the provisions of section 2A appear to be against trade union rights and principles and do not fit into the general texture of the Act; in the provisions of section 2A, one cannot find the qualities and characteristics of persons who may be grouped together that would be absent in persons standing outside the group; the criteria for exercise of discretion u/s 10(1) of the Act would no longer be applied in section 2A as there cannot be any threat of interruption of production or of industrial strife or breach of industrial peace. Therefore, in the case of section 2A, the Government''s discretion u/s 10 becomes unguided as the Government has no yard stick to judge the gravity or intensity of the peril. The Government is free to make a reference in the case of one workman and refuse a reference in the case of another although both of them is situated exactly in the similar circumstances and for the above reasons, the learned trial Judge held, that section 2A read with section 10 offends Article 14 of the Constitution and, as such, it is ultra vires.

3. Besides the point of ultra vires, other two points were also raised before the trial court, viz. the first respondent was not an "industry" within the meaning of Industrial Disputes Act, 1947, and, in fact, there was no "dispute" between the

employer and the employee inasmuch as the employee made no demand to the employer but went straight to the Conciliation Officer. The learned trial Judge left other two points raised by the first respondent undecided, and, decided only the vires of section 2A of the Act.

4. The State of West Bengal being aggrieved by the said order preferred this present appeal.

5. It is well settled that only a person who has been aggrieved by the discrimination alleged can challenge the validity of law on the ground of violation of Article 14 of the Constitution. In the petition under Article 226 of the Constitution, there is no statement of facts how the employer has been discriminated against by section 2A of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act). The learned Advocate General, however, contended, and we think rightly, that where interest of a large number of persons has been involved upon the interpretation of section 2A read with section 10 of the Act, appearing on behalf of the State, he should not take any technical objections with regard to the pleadings. Therefore, we do not express any opinion on that point.

6. It is contended by the learned Advocate General in support of the Appeal that, the learned Judge erred in holding that section 2A of the Industrial Disputes Act, 1947, is void and inoperative and that section read with section 10 of the Act confers an unfettered and unguided discretion in the appropriate Government without any yard stick to judge the exigencies of the situation, upon misconstruing the decision of the Supreme Court in Niemla Textile''s case (A.I.R. 1957 S.C 329) that, apparently discriminating provisions of section 10(1) of the Act were saved by overriding conditions like imminence of industrial strife resulting in cessation of industrial production and breach of industrial peace endangering public tranquility and law and order, as those considerations are absent in section 2A of the Act, therefore, section 10(1) results in discrimination when applied to the cases coming within section 2A. It is further contended that provisions of section 2A do not violate Article 14 of the Constitution inasmuch as in section 2A there is a reasonable classification and the said classification has a nexus with the object of the Act. Section 10 of the Act has been declared valid by the Supreme Court, so there is no further scope of challenging that section as ultra vires Article 14 of the Constitution. Provisions of section 10 apply equally to all the industrial disputes including the individual dispute which are deemed to be individual dispute by section 2A of the Act. When application of sec. 10 is held to be valid in respect of disputes referred to in sec. 2(k) of the Act, it should not be declared to be invalid in its application u/s 2A of the Act.

7. The learned Advocate General submits that different authorities mentioned in Sec. 10 of the Act have been set up for different ends in view and entrusted with powers and duties necessary for the purpose for which they are set up. Reference may be made to any or other authority according to exigency but that exigency cannot be limited only to the illustrations given by the Supreme Court in Niemla

Textile''s case. Discretion conferred on the appropriate Government to make a reference to one or other authority is not an unfettered or uncontrolled discretion nor an unguided one, because, criteria for exercise of such discretion are to be found within the terms of the Act itself. Section 2A, the learned Advocate General submits, neither destroys the ''concept'' of individual dispute as a collective dispute nor it infringes the fundamental right to form a Union or association guaranteed under Art. 19(1)(c) of the Constitution.

8. Mr. Chowdhury, appearing on behalf of the first respondent, the employer, supported the reasonings of the learned trial Judge that section 2A when applied to section 10 of the Act results discrimination and as such, offends Article 14 of the Constitution. Mr. Choudhury, however, did not advance any new point or reason except submitting that guidance for exercise of discretion found in the Act was for collective dispute and that guidance could not be applied in cases of any individual dispute. So, the principles laid down by the Supreme Court in Niemla Textile''s case where section 10 of the Act had been declared valid, was not applicable in the present case, where vires of section 2A was challenged in its application u/s 10 of the Act.

9. To appreciate the contentions, it would be convenient to avert to the provisions of section 2A of the Ac which reads as follows:--

Where an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the workman and his employer connected with, or arising out of, such discharge dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

10. Parliament has power to make a particular law to attend a particular object and to achieve such purpose it can classify the persons to be brought under the provisions of the said law provided such classification has intelligible differentia and a reasonable nexus with the object of the Act. The Court can consider the statute from the limited point of view of rational classification and nexus. There is a presumption that legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discretion are based upon adequate grounds. Section 2A has been inserted by Act XXXV of 1965. Before enactment of the said section, industrial dispute normally indicates a collective dispute either between workman and employer or of a dispute in which the cause of one workman is supported by Union of workmen or other workmen against the employer. A classification is sought to be made by Parliament in section 2A between workman unaided by the union or other workmen to raise an industrial dispute relating to discharge, dismissal, retrenchment and termination of services. And workman or workmen espoused by the union or other workmen to raise all other disputes denned in section 2(k) of the Act, It is true that

quality and characteristic of the persons standing outside the group may be common with respect to certain matters but the fundamental difference between one class and the other is, that with respect to one class, for the purpose of a reference, a dispute must be espoused by the union of workmen or other workmen but with respect to the other class, the dispute need not be supported by the union or other workmen. Therefore, it cannot be said that the above classification has no intelligible differentia.

11. The learned trial Judge observed that section 2A destroyed the concept of an individual dispute as the collective dispute.

12. In the preamble of the Act the object is stated "to make the provisions for the investigation and settlement of industrial disputes and for certain other purposes". Before the decision of the Supreme Court in (1) Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, , there was a considerable conflict of judicial decisions whether a dispute between an employer and a single workman could be an industrial dispute within the meaning of section 2(k) of the Act. On a consideration of the various judicial opinions, the Supreme Court observed in that case that an individual dispute could not par se be an industrial dispute but might become one if it was taken up by a trade union or a number or workmen notwithstanding that the language of section 2(k) was wide enough to cover a dispute between an employer and a single employee. A Bench decision of the Mysore High Court, (2) P. Janardhana Shetty & Ors. v. Union of India, AIR 1970 Mys 171 held that the words "individual dispute" occurring in the Preamble of the Act are wide enough to cover dispute between employer and a single employee. Section 2A, therefore, is neither outside the scope indicated in the Premable of the Act nor inconsistent with the provisions of the Act.

13. The basis of classification, as observed by the Supreme Court, in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, may be gathered from the surrounding circumstances known to or brought to the attention of the Court. It appears to us that the object of making a classification in Section 2A, is to protect an individual workman, deprived of his employment, to get the benefits of Industrial Disputes Act and to eliminate the seed of dissatisfaction and industrial unrest at their very root, before it is aggravated or spread over to a large body of workman, apprehending threat of industrial strife. Where group interest of the union and other workman does not support an individual dispute, substantive right has been created in favour of an individual worker to have recourse to redress his grievance before the Industrial Tribunal under the provisions of the Act. In section 2A, individual dispute is "deemed" to be an industrial dispute notwithstanding that no other Workman or any union of workmen is a party to the dispute. It fits in with the structure of the Act, for the reason that all other provisions of the Act are to be read as if section 2A were in the Act. That "deeming" is not merely for the purpose of making a reference u/s 10(1) of the Act, it also affects the object of the Act.

Therefore, in our view, classification made in section 2A has a reasonable nexus with the object of the Act, Sec. 2A in our view, does not destroy the concept of Industrial dispute as collective dispute because that concept still remains in the major class and in all other provisions of the Act. The new section only widens the concept of Industrial dispute, so as to include the individual dispute, which was so long constricted by judicial pronouncements, within its fold, not even all individual disputes, only those specified in that section.

14. The fundamental right guaranteed under Art. 19(1)(c) of the Constitution is, to form association or union and that does not carry with it the right to represent a workman in an industrial dispute before an Industrial Tribunal. Therefore, it cannot be said that section 2A which gives right to an individual workman to represent his case before an Industrial Tribunal, infringes the fundamental right guaranteed under Art. 19(1)(c) of the Constitution.

15. The learned trial Judge in his judgment referred to the observations made by S.R. Das J. (as he then was) in The State of West Bengal Vs. Anwar Ali Sarkar, that differentia constituting the basis of classification and the object of the Act are two distinct things. Judged by that test, according to the learned Judge the criteria, in the case of the relevant provisions of the Industrial disputes Act, seem to be the extent to which industrial peace would be interrupted and the object of the Act is, the settlement of the industrial disputes. In other words, the classification is based on the extent of threat to industrial peace and the object is the settlement of the industrial disputes. The classification and the object cannot be mixed up. If five individual workmen entitled to invoke the provisions of section 2A approached appropriate government, u/s 10(1) of the Act the State Government has the power to send four of them to four different types of authorities. In other words, five persons having the same grievances against the same employer or different employers, would receive widely divergent treatments from the appropriate Government. The power that the appropriate govern merit enjoys u/s 10 results in discrimination when applied to cases coming within the scope of section 2A; for that reason, the learned trial Judge struck down section 2A as unconstitutional.

16. In Anwar Ali Sarkar''s case (3) (The State of West Bengal Vs. Anwar Ali Sarkar, the validity of section 5(1) of the West Bengal Special Courts Act (Act X of 1950) was challenged as ultra vires Article 14 of the Constitution. The majority of the learned Judges of the Supreme Court held that section 5(1) conferred unfettered and arbitrary power on the Government to classify offences or cases at its pleasure, since the Act did not disclose or lay down any policy to guide the discretion of Government in classifying cases or offences. To find out the differentia, Preamble of the Act was relied upon. S.R. Das J. (as he then was) held, that, the part of section 5 (1) which referred to ''cases'' was outside the Preamble, which referred only to ''offences'' and ''classes of offences''. The speedier trial mentioned in the Preamble was the object of the impugned law and the object by itself would not be the basis

of the classification.

17. The learned trial Judge sought to find out the basis of classification in section 2A in the object of the Act which, according to him, is the basic idea underlying the provisions of the Act, as found by the Supreme Court in Niemla''s case. Where classification is found to be based on intelligible differentia, as we have found in the present case, it is not necessary to find out its basis in the object of the Act but only its nexus with the object. Therefore, the observations of Das J. in Anwar Ali Sarkar''s case cannot be relied upon to find out the basis of classification in section 2A.

18. The basic idea and object of an Act are two different things. Basic idea may very according to different interpretations given to it at different times. Before enactment of section 2A, basic idea underlying all the provisions of the Act was the settlement of industrial disputes and the promotion of industrial peace so that production might not be interrupted and the community in general might be benefited as observed by the Supreme Court in Niemla''s case. But that basic idea had gone a radical change when individual dispute has been brought in within the ambit of industrial disputes. Therefore, those observations of the Supreme Court are to be read in the context of the Act before its amendment and unless there is any inconsistency, the principle laid down therein must be applied in section 2A, for the reason that by enacting the said section Parliament has only removed the clog between collective and individual dispute and puts certain specified individual disputes at par with collective disputes. Accordingly, we find no reason why the principle laid down by the Supreme Court in Niemla''s case is also not applicable in a case u/s 2A of the Act.

19. Let us now consider how far section 2A when applied to section 10 (1) of the Act results in discrimination so as to violate right to equality under Article 14 of the Constitution. In Balsara''s case (4) (F.N. Balsara v. State of Bombay, 1961 S.C.R. 682), the Supreme Court observed that in enacting a general law, it is not possible to foresee every situation or to envisage every contingency and to provide specially for it by excluding the operation of the law wholely or in part in respect of such situation or such contingency.

20. Provisions of section 10 of the Act was challenged before the Supreme Court that the discretion conferred on the appropriate government to refer an industrial dispute to one or the other authority set up under the Act violates Article 14 of the Constitution. In upholding this discretion, the Supreme Court in (5) Niemla Textile Finishing Mills Ltd. v. 2nd Punjab Tribunal and ors. (A.I.R. 1957 S.C. 329) held, that criteria for exercising the discretion in section 10 were enacted in the Act itself and it was not possible to lay down further rules for the exercise of that discretion as no two cases of actual or apprehended industrial disputes were alike and in such disputes in a particular establishment or undertaking, each dispute had to be treated according to the situation prevalent in the undertaking. The learned trial Judge was of the view that apparently discriminatory provisions of section 10(1) of

the Act were saved by overriding considerations, like the imminence of industrial strife resulting in cessation or interruption of industrial productions and breach of industrial peace endangering public tranquility and law and order, as those consideration were absent in a case u/s 2A of the Act, so the power that appropriate government used to enjoy u/s 10 resulted in discrimination when applied in section 2A.

21. The Supreme Court distinctly said in Niemla''s case that there was no discrimination in section 10. When the Act furnishes a guide for exercise of the powers, an exigency may be one of the various considerations for exercising such powers but such considerations can not be limited only to the four illustrations of exigencies given by the Supreme Court. A law cannot be struck down on assumption that in case of individual dispute the potentiality of mischief would be less than in collective dispute, so, in that case, the appropriate government is free to make a reference without any yard stick. Where an Act laid down a policy or principle for the guidance or exercise of discretion by Government in the matter of selection, as in the present case, law cannot be declared as invalid. If the appropriate government exercises the power arbitrarily or capriciously in a particular case, the Court shall strike down such exercise of power and not the law which confers such powers on the appropriate government.

22. In Niemla Textile''s case the Supreme Court observed that different authorities which are constituted under the Act are set up with different ends in view and, are invested with powers and duties necessary for the achievement of the purpose for which they are set up. The appropriate government is invested with the discretion to choose one or the other authority for the purpose of investigation and settlement of industrial disputes and whether it sets up one authority or the other for the achievement of the desired ends, depends upon its apprisement of the situation as it obtains in a particular industry or establishment.

23. In section 10(1) four different authorities are mentioned : (a) Board; (b) Court of Enquiry; (c) Labour Court and, (d) Tribunal.

24. Section 4 deals with conciliation officer; section 5 sets up the board of conciliation; duties of conciliation officer are enumerated in section 12. Ordinarily before making a reference to a board, labour court or tribunal, a pursuasive method is adopted to arrive at a settlement by conciliation proceedings. When a conciliation fails, the conciliation officer sends a report to the Government. On receipt of such a report, the appropriate government, if satisfied, that there is a case for reference to a board, labour court or tribunal, it may make such reference. Where the government does not make such reference, it shall record its reasons therefor and communicate the same to the parties concerned. This is a statutory obligation u/s 12 (5) of the Act. If the reasons are irrelevant, or have no bearing or connection with the dispute in question, then those are not reasons contemplated u/s 12(5) of the Act, and it would be open to the Court by a writ of Mandamus to ask the appropriate

government to give proper reasons required under the law although the government cannot be compelled to make a reference u/s 10 of the Act.

25. Section 6 of the Act sets up a Court of enquiry to enquire into any matter appearing to be connected with or relevant to an industrial dispute. Labour Court''s jurisdiction is for adjudication of industrial disputes relating to any matter specified in, Second Schedule to the Act. Second Schedule includes 6 matters of which item No. 3 relates to discharge or dismissal of workmen including reinstatement of or grant of relief to, workmen wrongfully dismissed. Tribunal comes in section 7A of the Act. The jurisdiction of the Tribunal is confined to matters specified in Second Schedule or the Third Schedule to the Act. The Third Schedule is within the exclusive jurisdiction of the Tribunal and includes 11 items. "Retrenchment" comes in item No. 10. With regard to Second Schedule, there is overlaping of jurisdiction between the Labour Court and Tribunal. A choice between the two, viz. a Labour Court or a Tribunal, in the matter of reference u/s 10 with regard to item No. 3 in Second Schedule or item No. 10 in the Third Schedule, as only those two items are covered in section 2A of the Act, has necessarily got to be determined by the Government in exercise of its best discretion, taking into account various factors, relevant for settlement of a particular dispute in a particular industry. In the present case, as soon as conciliation failed, the appropriate government referred the matter to an Industrial Tribunal which has jurisdiction to adjudicate both dismissal and retrenchment as well. Having regard to the various provisions of the Act set out hereinabove, with great respect, we are unable to share the views of the learned trial Judge, that, the power that the appropriate government enjoys u/s 10 of the Act results in discrimination when applied to cases coming within the scope of section 2A. Apart from section 10, in our view, provisions of section 2A becomes nugatory. For all the above reasons, we hold that neither section 2A of the Industrial Disputes Act, 1947, nor when it is read with section 10 of the said Act, offends Article 14 of the Constitution, and as such it is not void and illegal.

In the result, this appeal is allowed, the judgment and order of the learned trial Judge dated 20th July, 1971, are set aside and the case is remitted to the trial court for determination of other two points left undecided.

There will be no order as to costs.

Amaresh Roy, J.

I agree.