

Union of India (UOI) Vs Builders Association of India

Court: Calcutta High Court

Date of Decision: Aug. 3, 1976

Acts Referred: Constitution of India, 1950 – Article 14, 19(1), 21, 22, 245

Citation: 82 CWN 84 : (1976) 2 ILR (Cal) 462

Hon'ble Judges: M.N. Roy, J; Anil K. Sen, J

Bench: Division Bench

Advocate: Rathindra Nath Das, for the Appellant; P.P. Ginwala, R.N. Bajoria and Tapan Kumar Mitra, Nos. 1-16 and Saktiprosad Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Anil K. Sen, J.

This appeal under Clause 15 of the Letters Patent is by the Union of India and is directed against an interlocutory order

dated August 19, 1975, passed by A.K. Mookerji J., in Civil Rule No. 1088(W) of 1973. That was the order passed by the learned Judge

suspending hearing of an application filed on June 18, 1973 by the Appellant praying for vacating an interim order passed earlier on May 7, 1973.

while issuing the Rule.

2. The Respondent No. 1 is an association of Building Contractors and is a society registered under the Societies Registration Act. The other

Respondents being Respondents Nos. 2 to 16 are either the office-bearers of the Respondent No. 1 or the individual members thereof. On may 7,

1973, the said Respondents moved a writ petition in this Court disputing the constitutional validity of a Central " Act being Contract Labour

(Regulation and Abolition) Act, 1970 and the West Bengal Rules framed thereunder. They disputed the constitutional validity of the said Act

and the Rules on the ground that they are violative of Articles 14, 19(1)(f) and (g), 31, 265 and 301 of the Constitution. The substantial allegation

made in the writ petition is that the Act and the Rules impose unreasonable and arbitrary restriction on their rights to carry on their trade and

business as Building Contractors. In moving this Court in 1973, particular reliance was placed on pending proceedings before the Supreme Court

and the other High Courts wherein the constitutional validity of the said Act and the provisions of comparable Rules framed by other States were

pending decisions by the said Courts.

3. The learned single Judge issued the above Rule on the said writ petition and also granted an interim order restraining the Respondents, that is,

the present Appellant and the State of West Bengal, their officers, subordinates, servants and agents from enforcing and implementing the

provisions of the said Act and the West Bengal Rules framed thereunder and further restraining them from taking any steps in pursuance of or

implementing the same against the Petitioners pending the disposal of the Rule.

4. In its judgment and order dated March 20, 1974, passed in a group of writ petitions, the Supreme Court upheld the constitutional validity of the

aforesaid Act and the provisions of comparable Rules being the Maharashtra and Rajasthan Rules framed under the Act (Vide Gammon India Ltd.

and Others Vs. Union of India (UOI) and Others, . The various contentions similar in nature as these raised in the present writ petition, disputing

the constitutional validity of the said Act and comparable Rules framed thereunder were specifically dealt with by the Supreme Court and for

reasons given in the judgment they were overruled. That being the position, the present Appellant filed an application on June 18, 1975, praying for

an order that the interim order earlier passed by this Court on May 7, 1973, should be vacated. The prayer made in this application was not

allowed by the learned judge for twofold reasons. The first reason assigned by the learned Judge is that all the points raised by the Respondent-

Petitioners in the Rule had not been decided by the Supreme Court, namely, the competence of Parliament to enact the particular Act. The second

reason given by the learned Judge is that in view of the Presidential Order dated June 27, 1975, made under Article 359(1) of the Constitution,

hearing of the Rule as well as of the application filed by the Appellant is to be suspended during the period of emergency. In this view, the learned

Judge did not allow the prayer made in the application but suspended hearing of the application itself. Being aggrieved by the said Order, the

Appellant has preferred this appeal.

5. Mr. Das appearing on behalf of the Appellant has very strongly contended that since after the decision of the Supreme Court in the case of

Gammon India Limited v. Union of India Supra the constitutional validity of the Act and the Rules must be held to be beyond all dispute.

According to Mr. Das, the Supreme Court having upheld the Act and the comparable Rules as constitutionally valid it was no longer open to this

Court to entertain any dispute as to such validity by raising a plea that some grounds which would establish such invalidity had not been considered

by the Supreme Court. He contends that those grounds must necessarily be deemed to have been overruled by necessary implication by the

Supreme Court. Reliance is placed by Mr. Das on the decision of the Supreme Court in the cases of Smt. Somavanti and Others Vs. The State of

Punjab and Others, and T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, . Alternatively. Mr. Das has contended that no prima

facie case has been made out by the Respondents-Petitioners in the writ petition which can support their claim that the impugned statute which

provides for welfare of the contract labour is in any way beyond the legislative competence of the Union Legislature. Accordingly, Mr. Das

contends that the first reason assigned by the learned Judge could be no ground whatsoever for refusing the prayer made by the Appellant in their

application dated June 18, 1975, So far as the second reason assigned by the learned Judge is concerned, Mr. Das has contended that the

Presidential Order has merely suspended the right of a person to move any Court for enforcement of rights conferred by Articles 14, 21 and 22 of

the Constitution and the pending proceedings therefore, but the said Presidential Order can by no stretch of imagination be the ground for

suspending the hearing of an application for vacating an interim order in a case where no prima facie case of violation of any of the aforesaid

fundamental rights has been made out.

6. The appeal is being contested by the Respondents Nos. 1 to 16, that is, the Petitioners in the Rule who had obtained the interim order in their

favour. Mr. Ginwalla appearing on behalf of the said Respondents has contended that all the grounds of challenge as raised in the present writ

petition had not been covered by the judgment of the Supreme Court. He has contended, on the other hand, that the constitutional validity of the

Act itself was not the subject-matter of challenge before the Supreme Court at all so that the decision in Gammon India Limited v. Union of India

Supra can in no way conclude the points raised in the present writ petition nor is that a ground for vacating the interim order. So far as the second

reason assigned by the learned Judge in suspending the hearing of the application itself is concerned, Mr. Ginwalla has contended that when the

Presidential Order suspends all proceedings, it must be held that all applications filed in a proceeding being a part of the said proceeding must

necessarily be suspended. Mr. Ginwalla, therefore, has supported the order as made by the learned Judge in the trial Court.

7. We have carefully considered the rival contentions raised before us. So far as the first reason assigned by the learned Judge is concerned, it

must be pointed out at the outset that the same could have been no ground for suspending the hearing of the application filed by the Appellant. As

a matter of fact, the learned Judge in the trial Court has not come to any firm finding that any of the grounds of challenge to the constitutional

validity of the impugned Act and the West Bengal Rules made thereunder has not been covered by the decision of the Supreme Court in the case

of Gammon India Limited v. Union of India Supra so that a prima facie case for challenge still being left open to the Respondents-Petitioners the

interim order in their favour should not be vacated. He has merely referred to the said aspect as a part of the contention raised before him and not

really as the foundation for the order impugned. Hence, we are unable to hold that the said reason could be any ground for not considering the

prayer made on behalf of the Appellant. We have read very carefully the decision of the Supreme Court in the case of Gammon India Limited v.

Union of India Supra to find that the Supreme Court overruled the various contentions raised before the said Court disputing the constitutional

validity both of the Act and the Maharashtra and Rajasthan Rules framed thereunder the challenge being based on the ground of these provisions

violating Articles 14, 19 and 245 of the Constitution. In our view, the points raised by the Respondents-Petitioners in the present writ petition to

dispute the constitutional validity of the Act and the West Bengal Rules which are materially comparable with the Rules under consideration by the

Supreme Court are prima facie substantially covered by the said decision of the Supreme Court and little is left which could entitle the said

Respondents to sustain an interim order in their favour. So far as the Respondents' challenge to the legislative competence is concerned, we are of

the opinion that the impugned legislation being one in relation to contract labour is prima facie well within the competence of the Union Legislature.

Such being the position, in our view, the Appellant had made out a prima facie case for an order vacating the interim order earlier passed by this

Court at a time when the constitutional validity of the Act and the Rules was yet under consideration by the Supreme Court.

8. The more important aspect which has been agitated before us is as to whether pending the Presidential Order dated June 27, 1975, this Court

could hear and dispose of the application so filed by the Appellant. The Presidential Order is in the following terms:

Ministry of Home Affairs.

ORDER

New Delhi, the 27th June, 1975.

G.S.R. 361(E)--In exercise of the powers conferred by Clause (1) of Article 359 of the Constitution, the President hereby declares that the right

of any person (including a foreigner) to move any Court for the enforcement of the rights conferred by Article 14, Article 21 and Article 22 of the

Constitution and all proceedings pending in any Court for the enforcement of the above-mentioned rights shall remain suspended for the period

during which the Proclamations of Emergency made under Clause (1) of Article 352 of the Constitution on the 3rd. December, 1971 and on the

25th. June, 1975, are both in force. The order shall extend to the whole of the territory of India except the State of Jammu and Kashmir.

The order shall be in addition to and not in derogation of any order made before the date of this order under Clause (1) of Article 359 of the

Constitution.

(No. II/16013/1/75-S and P (D)-II).

S.L. Khurana, Secy.

9. There is a, strong controversy between the parties as to the true effect of this order. While according to the Appellant this order suspends a

pending proceeding to the limited extent of so far it is for the enforcement of the fundamental rights referred to in the order, according to the

Respondents, where the proceedings involves enforcement of such a right all the proceedings must be suspended. Thus, according to Mr. Das,

who is appearing on behalf of the Appellant, the Appellant's application not being a proceeding for the enforcement of the fundamental rights

specified in this Presidential Order, the Order could in no way bar hearing and disposal of the same. Mr. Ginwalla, on the other hand, has

contended that when the application was filed in a writ proceeding which itself involves enforcement of the fundamental rights specified in the

Presidential Order, the said writ proceeding being suspended by the Presidential Order, any application made therein being a part of the said

proceeding must necessarily be suspended. A Full Bench decision of the Himachal Pradesh High Court in the case of Raj Kumar v. Union of India

AIR 1976 A.P. 34 has held that an application of the present nature can well be entertained and disposed of notwithstanding the Presidential

Order because, according to the Full Bench,

An application for interim injunction or an application for vacating or modifying it, not being a proceeding for enforcement of the rights claimed in

the writ petition is not included within that directive [that is, the directive contained in Articles 358 and 359(1)]. Merely because for the purposes

of considering the grant of an interim injunction the Court must consider whether the Petitioner has a prima facie case on the merits does not mean

that the grant of the interim injunction amounts to an adjudication or enforcement of the rights claimed by the Petitioners.

10. The view so adopted by the full Bench of Himachal Pradesh High Court clearly goes against the contention raised by Mr. Ginwalla and the

view taken by the learned judge in the trial Court.

11. Thai apart, the point now raised before us and which had its origin in a decision of Sabyasachi Mukharji J, has since been concluded by a

decision of the Appeal Court setting aside the decision of Sabyasachi Mukhaiji J. that was the decision in Union of India and Ors. v. Harish

Chandra Agarwal F.M.A. No. 2633 of 1975 decided by Sanker Prasad Mitra C.J. and S.K. Datta J. on June 25, 1976. The reason assigned by

the Appeal Court in setting aside the judgment of Sabyasachi Mukharji J, is to be found in the case of Kanhaiyalal Agarwala v. Union of India

1976 (1) C.L.J. 293 earlier disposed of by the same Bench. The reason assigned is as follows:

It is well-known that interim orders are given in aid of the main reliefs sought for in the action, if, therefore, it is not permissible to have enforcement

of the rights tinder die said Articles during the period of emergency in any action, it is obvious that such rights also cannot be enforced temporarily

within the period of emergency which will be the effect of interim in junction. Accordingly, we are of the opinion that such injunction, which

amounts to enforcement of the aforesaid rights during; the pendency of the proceedings though temporarily is not available during the period of

emergency. There has been an argument that, as the proceedings for enforcement of such rights are suspended, if there has been an interim

injunction enforcing such rights at the time of notification of the orders suspending such rights, the proceeding cannot go on during the period of

emergency with the result that the interim relief enforcing the rights under the said Articles would be and continued to be available to the

complainants in the proceedings in spite of their suspension. The order suspending the proceeding for enforcement of fundamental rights does not

amount to or imply suspension of the proceeding in respect of other rights which may also be sought to be enforced along with the rights

suspended. Such proceedings and any injunction in respect thereof may continue if other rights are sought to be asserted. But it cannot be said that

by reason of the interim order such suspended rights will continue to be in force contrary to the provisions of the orders which suspended their

enforcement. Accordingly, the interim orders which enforce such rights during the period of emergency must necessarily be suspended.

12. This decision goes entirely against the contentions raised by Mr. Ginwalla and hence, Mr. Ginwalla contended very strongly before us that the

view so taken is not based on a correct interpretation of either Article 359(1) of the Constitution or the Presidential Order made thereunder. Mr.

Ginwalla, accordingly, suggested that the point involved being of great importance should be referred to a larger Bench.

13. We are conscious of the position that the above decision of this Court is in a way inconsistent with the Full Bench decision of the Himachal

Pradesh High Court referred to hereinbefore to the extent this Court has held that grant of any injunction on an interim application really amounts to

enforcement of fundamental rights infringement whereof is the subject-matter of the dispute raised in the writ petition. But even then there is clear

unanimity in both the views that an application of the present nature is quite maintainable and the Presidential Order constitutes no bar to such an

application being entertained and disposed of on merits. When for reasons given hereinafter, the present application of the Appellant is in our view

maintainable, we do not feel it necessary to make any reference to a larger Bench as suggested by Mr. Ginnwalla. We make it further clear that we

are not recording any dissent from the view earlier taken by the Appeal Court and relied on by Mr. Das nor is it necessary for us on the facts of

the present case to make any reference to a larger Bench disagreeing with the views therein expressed.

14. On the facts of the present case, when the interim order was granted in favour of the Respondents-Petitioners the constitutional validity of the

provisions of the said Act and comparable Rules framed thereunder were under challenge before the Supreme Court. In the case of Gammon India

Limited v. Union of India Supra that challenge having been overruled and the Supreme Court having clearly held that the provisions of the Act and

the comparable Rules framed thereunder are not violative of either Article 19(1)(f) and (g) or Article 14 of the Constitution, it must be held that

prima facie there is no case for enforcement of any of the rights suspended by the Presidential Order. The Presidential Order made under Article

359(1) suspends the right of a person to move any Court for enforcement of the fundamental rights specified in the Order and simultaneously

suspends all proceedings for enforcement of such rights. What is suspended is limited to enforcement of fundamental rights specified. Such an

order on the face of the provisions of Article 359(1) and the order made thereunder cannot and does not suspend the right to move any Court for

enforcement of other rights or any proceeding for enforcement of such other rights. Reference may be made to the decision of the Supreme Court

in the case of Sree Mohan Chowdhury Vs. The Chief Commissioner, Union Territory of Tripura, . It is obvious, therefore, that a person aggrieved

by infringement of any of his rights specified in the order and rights other than those can well move any Court for enforcement of those other rights

though his right to move the Court for enforcement of the rights specified in the order be suspended. Similarly, if a proceeding is pending since

before the Presidential Order for enforcement of both the types of such rights, it would be quite open to such a person to give up his suspended

rights for the time being and seek enforcement of other rights in that proceeding and seek for appropriate interim reliefs in that regard. The mere

fact that he had earlier moved the Court at a time when the Presidential Order had not been made claiming relief in respect of both the types of

rights would not stand in the way of his exercising choice to enforce such rights the enforcement whereof has not been suspended. Here we are

clearly of the opinion that the Presidential Order does not suspend the pending proceeding as a whole as contended by Mr. Ginwalla. Therefore,

there is no reason why hearing of an application filed therein to vacate an interim order should be suspended because of the Presidential Order,

more so when it is made on the ground that prima facie the writ petition itself does not make out any case of infringement of any of the fundamental

rights specified in the order. Any contrary view, in our opinion, may result in an undesirable consequence of the Court being powerless to vacate or

modify an interim order which had been obtained on grounds which have later been proved to be inconsequential or on frivolous or baseless

complaints as to infringement of rights suspended by the Presidential Order. We are, therefore, unable to accept the contention of Mr. Ginwalla

that by the term "all proceedings" what is meant is the entire proceedings initiated on the writ petition and not the proceedings limited to the

enforcement of the rights suspended by the Presidential Order. On the terms of the Presidential Order and on the provisions of Article 359(1) of

the Constitution, we must accept the contention of Mr. Das that the term "all proceedings" must necessarily mean different proceedings but all

those limited to the enforcement of the rights specified and as such, the Presidential Order does not stand in the way of entertaining an application

for vacating an interim order in a case where the Applicants make out a clear case that there is no question of infringement of any right including the

right suspended by the Presidential Order which prima facie would call for sustaining an interim order.

15. In this view, this appeal succeeds and is allowed. The judgment and order under appeal passed by the learned Judge in the trial Court is set

aside. The interim order passed by the said Court on May 7, 1973, is vacated. There will be no order as to costs.

M.N. Roy J.

16. I agree.