

Jiwan Mal & Co. vs Secretary, Kanpur Loha Mills ... on 2 March, 1955

Equivalent citations: AIR1955ALL581, (1957)ILLJ442ALL, AIR 1955 ALLAHABAD 581

Author: Raghubar Dayal

Bench: Raghubar Dayal, V. Bhargava

JUDGMENT

Raghubar Dayal, J.

1. This is a petition under Article 220 of the Constitution praying for the issue of a writ of certiorari quashing the order of the State Industrial Tribunal in a certain appeal in so far as it effected a modification or amendment of certain draft standing orders submitted by the petitioner company to the Certifying Officer and for the issue of a direction to the State Industrial Tribunal to declare that the said draft standing orders were certifiable under Section 4 of the Industrial Employment (Standing Orders) Act (Act XX of 1946).

2. The petitioner-company submitted certain draft standing orders to the Certifying Officer for certification in view of Section 3 of the Industrial Employment (Standing Orders) Act, 1940, which provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

The Certifying Officer passed an order under Section 5, Sub-section (2) of the Act modifying two draft standing orders, namely draft Standing Orders Nos. 15(a) and 16(a). The petitioner went in appeal to the appellate authority which is the industrial court. The appeal with respect to the modifications to these two draft standing orders was rejected by the State Industrial Tribunal, U.P., at Allahabad. It is this order of the Industrial Tribunal which the petitioner desires to be quashed by this Court.

3. The sole point for consideration is with respect to the power of the Certifying Officer in dealing with the draft standing orders submitted to him. It is contended for the petitioner that the Certifying Officer has merely to see whether the draft standing orders contain provision for every matter set out in the Schedule applicable to the industrial establishment and whether the standing orders were otherwise in conformity with the provisions of the Act and that the Certifying Officer could not look into the fairness or reasonableness of the provisions of any standing orders.

This contention is based on the provisions of Section 4 of the Act, which is "(4) Standing orders shall be certifiable under this Act if

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and (b) the standing orders are otherwise in conformity with the provisions of this Act; and it shall not be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders".

Reliance is also placed on the case reported in -- 'Electric Workers Union v. U.P. Electric Supply Co.,' AIR 1949 All 504 (A). It is argued that the purpose for which this Act was enacted is to define with precision the conditions of employment, that is to say, to provide for an unambiguous expression of the terms and that, therefore, the Certifying Officer could not have modified the terms of the draft standing orders.

4. The contention for the petitioner is met for the opposite parties on the ground that Section 3, Sub-section (2) of the Act provides that draft standing orders should conform, as far as practicable, to the model standing orders whenever model standing orders have been prescribed and that in case the draft standing orders are not in conformity with the model standing orders the Certifying Officer can modify the draft standing orders. Support is sought for this contention in the provisions of Section 5, Sub-section (2) of the Act.

5. Sub-section (2) of Section 3 of the Act is: "Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model". Section 5 of the Act is:

"5. (1) On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objection, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification, of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under Sub-section (2) to the employer and to the trade union or other prescribed representatives of the

workmen".

It appears to us that the framers of the draft standing orders should see that they make provision for every matter set out in the Schedule and applicable to that particular industrial establishment and also that such orders be, so far as practicable, in conformity with the model standing orders if prescribed.

6. The conditions for the certification of the standing orders are laid down in Section 4 of the Act whose Clause (b) requires the standing orders not only to be in conformity with the model standing orders, if any, but to be in conformity with the provisions of the Act. The Certifying Officer, therefore, has to see before certifying the draft standing orders that the conditions of Section 4 are satisfied.

The procedure which he has to follow before certifying the draft standing orders is laid down in Section 5, and requires him to forward a copy of the draft standing orders to the trade union of the workmen, or, in the absence of any trade union, to the workmen, who have to submit to him any objection within a certain time and then, after affording an opportunity to the employer and the trade union or the representatives of the workmen for a hearing, to decide whether any modification of or addition to the draft standing orders was necessary or not to render the draft standing orders certifiable under the Act.

All this means, therefore, that the Certifying Officer has not merely to see, as contended for the petitioner, that the draft standing orders deal with every matter set out in the Schedule applicable to the industrial establishment and that the draft standing orders resemble in form the model standing orders, if any, but that he has really to consider whether the draft standing orders were in conformity with the model standing orders so far as practicable.

It follows that in case there is a departure from the model standing orders, the framers of the draft standing orders have to satisfy the Certifying Officer that it was not practicable to follow the model standing orders in full and that is why the departure has been made. We are not prepared to interpret the provision of Section 3, Sub-section (2) or of Section 4, Clause (b), to mean that the draft standing orders have to be merely similar in form and not to be the same as the model standing orders in case it was practicable to adopt the model standing orders in their entirety.

7. It is true, as laid down in AIR 1949 All 504 (A), that the Certifying Officer has not to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. This has been laid down in Section 4 of the Act itself. What the Certifying Officer does in deciding whether the draft standing orders are in conformity with the model standing orders does not amount to his adjudicating upon the fairness or reasonableness of the draft standing orders.

He simply sees whether the draft standing orders conform to or are in accordance with the model standing orders. No occasion arises for him to decide upon the fairness or reasonableness of the draft standing orders. Such an occasion may have arisen if there were no model standing orders because in that case the Certifying Officer had to certify the draft standing orders and might have

been tempted to look into the propriety of those orders.

The Act provides that he is not to look into it. It is not his function as to what the standing orders should be in case the appropriate Government had not prescribed the model standing orders. Of course, even in such cases he has to see that the draft standing orders contain provision for every matter set out in the Schedule applicable to the industrial establishment.

8. Lastly, it was urged that the preamble to this Act indicates that the object of the Act was simply to provide for precise expression of the conditions of employment and not to provide for the fixing of conditions of employment and that, therefore, the model standing orders which in a way lay down the conditions of employment are beyond the scope of the Act and consequently the rule-making power of the appropriate Government under Section 15, which empowers it to make rules to come out the purposes of the Act. The heading, of the Act is "An Act to require employers in industrial establishments formally to define conditions of employment under them".

The preamble reads :

"Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them".

It is argued for the petitioner that the purpose of the Act was to provide for the laying down of the conditions of employment with sufficient precision and not to lay down the conditions themselves. We are not prepared to agree with this contention. It was expedient to define the conditions of employment and to make the said conditions known to workmen and that is why this Act was enacted.

The expression "with sufficient precision" between the words "define" and "the conditions" may lead to the supposition that greater emphasis was laid on precision than on the conditions. But precision of expression alone could not have been the subject-matter of an enactment. The enactment must be with reference to the conditions of employment. Of course, it is always desirable that such conditions be formally laid down and expressed with as great precision as possible.

It was to emphasise this aspect that this expression "with sufficient precision" was used in the preamble. We find support for such an interpretation of the preamble, even if the preamble was open to more than one interpretation from the language of the heading of the Act which says that this is "an Act to require employers in industrial establishments formally to define conditions of employment under them" and also from the expressions used in Sub-section (2) of Section 3.

This sub-section requires that the provision in such draft standing orders shall be, so far as is practicable, in conformity with such model where model standing orders have been prescribed. The word "provision" connotes the details of the standing orders and not merely their form.

The terms of the standing orders or the conditions of employment laid down in the draft standing orders should, therefore, be in conformity with the terms in the model standing orders relating to those matters. This should mean that the model standing orders should provide not only a mere draft language for actual standing orders but should provide for the conditions of service which were to be expressed in that language.

9. The fact that provision has been made in the Act for inviting objections from the trade union or workmen to the draft standing orders and for an appeal against the order of the Certifying Officer indicates that great importance was attached to the work which the Certifying Officer had to do in connection with the certification of the standing orders.

Such importance must be on account of the conditions of employment embodied in the standing orders and not on account of the mere language in which the proposed conditions of employment were expressed. A mere correction of the language in order to make it more clear and precise would not have necessitated the inviting of objections from the workmen and an appeal against the order of the Certifying Officer.

10. We are, therefore, of opinion that neither the model standing orders which lay down the conditions of employment are ultra vires of the Government prescribing them nor the Certifying Officer and the Industrial Tribunal, the appellate authority, acted beyond their jurisdiction in modifying the draft standing orders in accordance with the model standing orders. We, therefore, dismiss this petition with costs, which we assess at Rs. 200/-.