

# **Indian Sugar Mills Association Through ... vs Secy. To Government, Uttar Pradesh ... on 14 September, 1950**

**Equivalent citations: AIR1951ALL1, AIR 1951 ALLAHABAD 1**

**Author: V. Bhargava**

**Bench: V. Bhargava**

## **ORDER**

1. This is an application on behalf of the Indian Sugar Mills Association through its President Shri Hari Raj Swarup under Article 226 of the Constitution for the following reliefs :

"It is, therefore, prayed that this Court may be pleased to issue writs in the nature of Mandamus, Prohibition, or such other writ or order as the Court may consider proper, restraining the opposite parties from enforcing Notfn. No. 1425(ST) (II) XVIII-13(ST)-50, dated 5-7-1950, or pass such other order as the Court may deem fit under the circumstances of the case."

2. This relief is claimed mainly against the State of Uttar Pradesh and certain officers of the State as also against three Labour Federations, the U. P. and Bihar Sugar Mills Workers Federation, the U. P. and Bihar Chine Mill Mazdoor Federation and the. National Sugar Mill Workers Federation.

3. Some dispute had arisen between the labourers working in sugar mills and certain sugar factories in this Province and the Government purported to appoint a Court of Enquiry under Sections 6 and 10, Industrial Disputes Act, 1947 (XIV [14] of 1947), which for the sake of brevity may be called the Central Act. The matters which were referred to it for report were, to put it shortly, bonus payable to the workmen in the crushing season, of 1948-49, adjustments of bonus paid in 1947-48 and payment of retaining allowance for the off season. The other matters about leave etc. are no longer in dispute and need not be referred to.

4. In the first Notfn. No. 167 (ST)/XVIII, Labour Department, Government of the United Provinces, dated Lucknow 11-1-1950, the Court of Enquiry consisted of the Hon'ble Mr. Justice Bind Basni Prasad, a learned Judge of this Court as Chairman and Sarvashri Hari Har Nath Shastri and D. R. Narang as members. By a Notfn. No. 217 (ST)/XVIII, Labour Department, Government of the United Provinces, dated Lucknow, 13-1-1950, the names of the other two gentlemen of the Court of Enquiry were removed and Bind Basni Prasad J. became the sole member of the Court of Enquiry. Certain amendments were also made by a Notfn. No. 192 (ST)/XVIII, Labour Department, Government of the United Provinces, dated Lucknow, 12-1-1950, about the question of payment of bonus. It is not necessary to set them put in detail.

5. Mr. Pathak has urged that the scheme of the Central Act contemplates the appointment of a Board of Conciliation which brings the two parties together and tries to settle the matter amicably. The Board of Conciliation has no power to give an award against the wishes of the parties. That there is also a provision for appointment of an Industrial Tribunal which can make an award. That a Court of Enquiry can be appointed under Section 6 only to enquire into any matter appearing to be connected with or relating to an industrial dispute. The report of the Court of Enquiry has to be published under Section 17 of the Act but there is no provision in the Central Act for its enforcement as an award. Prima facie, without expressing any definite opinion, this argument appears to have considerable substance. We may, however, point out that in the order, which is being challenged in these proceedings, the Government did not purport to enforce this report as an award but treated it merely as material on which it based its conclusions and adopted only so much of it as it approved and then purported to make an order of its own under Section 3, U. P. Industrial Disputes Act (XXVIII [28] of 1947). This Act, for the sake of brevity, has been hereafter mentioned as the U. P. Act.

6. The order complained against is in the Notfn. No. 1425 (ST)/XVIII-13 (ST)-50, Labour Department, Government of Uttar Pradesh, dated Lucknow, 5-7-1950. In, this notification it is mentioned that the Court of Enquiry had recommended the payment to the workers of bonus and retaining allowance and the same had been generally accepted by the State Government and the Governor, therefore, in exercise of the powers conferred by Section 3 of the U. P. Act was pleased to direct payment of bonuses and retainer allowance as detailed in that order. These payments are to be made by the sugar mills to their respective workers. Mr. Pathak's contentions are that this order is wholly illegal as being outside the scope of Section 3 of the U. P. Act, that Section 3 of the Act is ultra vires and further that the order affects the fundamental rights under Articles 14 and 19 of the Constitution.

7. A preliminary objection was, however, raised on behalf of the Government by the learned Standing Counsel that this application is not maintainable as it has not been filed by a person whose rights have been directly affected. It is, therefore, said that this application should fail on that preliminary point and it is not necessary to go into other points.

8. The application has been filed by the Indian Sugar Mills Association. We have already said that the order passed by the Governor was against the sugar mills. There is no order that any payment be made to workmen by the applicant. None of the mills against whom the order was passed is a party to this application. Reliance was placed by learned counsel for the applicant on Section 36 of the Central Act as giving, the Association the right to represent the mills. The section, however, provides that a workman who is a party to an industrial dispute is entitled to be represented in any proceeding under that Act by an officer of a registered trade union and also that any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceedings by an officer of an association of employers. It is clear that this section only refers to proceedings under the Central Act. The proceedings before us are 'not proceedings under the Central Act. There is no provision in the U. P. Act 1947 under which it can be said that the Indian Sugar Mills Association has been given the right to represent the mills. The rules and regulations of the Indian Sugar Mills Association have been placed before us. Learned counsel is not able to point out any provisions in

these rules or in any Act which gives the Association the right to represent the sugar mills in any legal proceedings before the Court or to move an application on their behalf. Without any such express authorisation, it cannot be held that the Association has the right to move this application on behalf of the sugar mills, nor can any order passed in these proceedings bind the mills. It has been urged by learned counsel that Article 226 of the Constitution does not provide who shall file the application for the appropriate order under that article. It is true that this article makes no mention as to who shall apply for an appropriate order and reliance is placed on the well recognised practice in England that writs for habeas corpus for wrongful detention need not be moved by the person detained or on his behalf and may be moved by anybody. Freedom of person being the most cherished right under the British Constitution, the Court take cognizance of the fact that a person has been illegally detained whatever the way in which the fact has been brought to their notice. In this Court, however, on two previous occasions application made by strangers, without instructions from those detained, were rejected on that ground. We do not want to express any opinion whether those orders were right or wrong, but other writs, directions or orders, cannot be placed on the same footing as a writ of habeas corpus and every one of the several million persons of this State cannot be given the right to come up and agitate and reagitate against an Act or order like the one in question when he cannot show that his rights are directly affected by that order. The applicant association has been registered under Section 4, Trade Unions Act (XVI [16] of 1926). Under Section 13 of the Act every registered Trade Union is a body corporate by the name under which it is registered and it has a perpetual succession to a common seal with power to acquire and hold both movable and immovable property. It can enter into contracts and can sue and be sued in its own name. The applicant is thus a distinct and separate person from the various mills which are members of it and the order complained against is not an order directing any payment out of the assets of the applicant. Neither the bonus nor the retainer allowance has to be paid out of movable or immovable property of the Indian Sugar Mills Association but has to be paid by the sugar mills out of their own separate funds.

9. It has been urged by learned counsel for the applicant that, though the amount may not be payable out of the property of the Association, yet inasmuch as the payments have to be made out of the funds of the sugar mills, a large number of which are members of the Association, the Association has the right to move the application on their behalf. We have already said that it is the interest of the applicant which must be directly affected by the statute or the order complained against and the applicant cannot claim that its interests are directly affected.

10. The further argument is that any person, whether his interests are directly affected or not, can file an application challenging any Act of the Legislature or the order of the Government on the ground that it is ultra vires. In this connection we cannot do better than quote the decision of the learned Judges of the Supreme Court of the United States in *Commonwealth of Massachusetts v. Andrew W. Mellon*, 262 U. S. 447:67 Lawyers Edn. 1078, Sutherland J., who delivered the opinion of the Court quoted with approval the remarks of Thomson J., with whom Story J., concurred, which were as follows :

"It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can

interpose relief."

Dealing with the question whether a single tax-payer can challenge the enforcement of a Federal Appropriation Act on the ground that it was invalid and would increase the burden of his taxes, the learned Judge observed :

"His interest in the moneys of the treasury--partly realised from taxation and partly from other sources --is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a Court of equity ..... If one tax-payer may champion and litigate such a cause, then every other tax-payer may do the same, not only in respect to the statute here under review, but also in respect of every other appropriation Act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained."

11. Those remarks are with reference to a suit. They are much more applicable to proceedings under Article 226 which are of a summary and of a coercive nature without providing for a normal trial or a right of appeal except in those cases where a substantial question of interpretation of the constitution arises. This Court is being flooded with applications under Article 226 of the Constitution which is seriously, affecting the normal work of the Court. We feel that the time has come when we may point out that Article 226 of the Constitution was not intended to provide an alternative method of redress to the normal process of a decision in an action brought in the usual courts established by law. The powers under this article should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him.

12. Having carefully considered the matter we are of the opinion that the applicant has no such legal interest in the matters affected by the order of Government as would entitle it to apply for the writ, order or direction that it claims. The application fails and is dismissed. As the preliminary objection was, however, not raised till after the arguments had been concluded on behalf of the applicant, we make no order as to costs.