

State Through Labour Inspector vs M.N. Mehrotra And Ors. on 2 February, 1951

Equivalent citations: AIR1951ALL623

ORDER

Desai, J.

1. This is a reference by the Ses. J. of Allahabad recommending that the proceedings pending against the appcts. under Rule 81 (4), Defence of India Rules & various Ordinances be quashed as having abated. There is a similar reference made by the learned Ses. J. in respect of proceedings pending against another set of persons in or. Ref. No. 31 of 1950. The facts of the two references are common & they are being disposed of together.
2. The appcts. in the present reference are the managing director & other officers of the Central Bank of India, Ltd. while those in the other reference are the managing directors & other officers of the Hindustan Commercial Bank, Ltd.
3. On 12-10-1946, the Governor of U. P. in exercise of the powers conferred by Rule 81-A, Defence of India Rules, referred certain disputes existing between banks, including the Central Bank of India, Ltd. & the Hindustan Commercial Bank, Ltd., & their employees, for adjudication to the late Shri. B. B. Singh, the then Labour Comr. of the province. Shri Singh gave his award on the disputes on 11-3-1947, & it was enforced by the Govt. through their order dated 15-3-1947. The Govt. order contained the provision that any person contravening, or abetting the contravention of it was punishable under Rule 81-A (4), Defence of India Rules. Disputes again arose between the banks & their employees over the interpretation of the award. They were referred by one party or the other to the Govt. & Shri Singh who issued orders from time to time giving their interpretations. The interpretations were accepted by some banks but not by others. When some banks, including the two banks (the Central Bank of India & the Hindustan Commercial Bank), acted in accordance with their own interpretations & in disregard of the interpretations placed by the Govt. & Shri Singh, they were prosecuted under Rule 81-A (4), Defence of India Rules for the alleged contravention of the Govt. order of 15-8-1947. Those prosecutions are still pending. In 1947, the Govt. issued two Ordinances, Nos. 2 [II] & 13 [XIII] of 1947, conferring powers upon the Governor to refer industrial disputes for conciliation or adjudication and powers upon the Govt. to make an order for the continuance of an order previously made enforcing the decisions of an adjudicator or recommendation of a conciliator. In exercise of the latter power, the Govt. issued orders from time to time keeping the award of Shri Singh in force with certain modifications. The last order of the Govt. keeping the award in force is dated 13-9-1947. The Defence of India Rules having expired, there could be no prosecution under any provisions of them for contravention of the Govt. Order enforcing the award. The Ordinances, however, contained provisions to the effect that any person

contravening any rule or order made under them would be punishable. A reference to this punitive provision of the earlier Ordinance No. 2 [II] (the latter Ordinance No. 13 simply replaced the earlier Ordinance which had expired after six months) is made in the Govt. Order dated 13-9-1947. In December 1947, the Provincial Legislature enacted U. P. Industrial Disputes Act XXVIII [28] of 1947 embodying the provisions of the Ordinances. On 31-7-1948, the Governor in exercise of the powers conferred under the Industrial Disputes Act appointed a Conciliation Board, presided over originally by Shri Nimbkar & on his death by Bind Basni Prasad J., to conciliate the disputes existing between the banks and their employees over the interpretation of Shri Singh's award & other matters. While the proceedings were pending in the Conciliation Board, the Govt. stayed the proceedings pending against the two banks under Rule 81-A (4), Defence of India Rules. The Conciliation Board framed 106 issues: 64 dealt with the interpretation of Shri Singh's award & 42 with its revision & additional matters. The Conciliation Board gave its report in February 1949 only dealing with 64 issues relating to the interpretation. It did not deal at all with the remaining 42 issues. Thus it simply gave its own interpretation of the award, maintaining it intact. It did not revise or replace the award at all. On 30-4-1949, the Central Govt. passed an Ordinance No. 6 [VI] of 1949 conferring powers upon the Central Govt. in respect of disputes existing between the banks having branches or other establishments in more than one province & their employees. The Central Govt. did not want that disputes between such banks & their employees should be dealt with by different Provincial Govts. in different manners. Rule 4 of the Ordinance prohibits the Provincial Govts. from referring any industrial disputes concerning such banks to any authority or tribunal for adjudication, enquiry or settlement; that is a provision dealing with the future. Rule 5 is a provision dealing with the present; it lays down that where an industrial dispute has been referred by a Provincial Govt. to an authority or tribunal for adjudication or settlement, & proceedings in respect of it were pending on the date on which the Ordinance was passed, they will abate & the Central Govt. will appoint an All India Industrial Tribunal to deal with the disputes. Rule 6 deals with the past; it empowers the Central Govt. to refer a dispute, which has already been dealt with by an authority appointed by a Provincial Govt., to an All India Industrial Tribunal & to stay the implementation of the award or decision of the Provincial authority or tribunal.

4. On the passing of the Central Govt. Ordinance, the appcts. moved the Mag. before whom their cases were pending to quash the proceedings on the ground that they have abated under Rule 5. The learned Mag. rejected their applns. They went up in revision to the learned Ses. J. who accepted their contention & made these references.

5. The prosecution of the appcts. was launched on 8-5-48 on complaints filed by a Labour Inspector; it is under Rule 81-A (4), Defence of India Rules & Rule 14 of U. P. Ordinances of '47. The case against them is that they have contravened the Govt. orders, enforcing Shri Singh's award. I am only concerned with what the allegations against them are & not with whether they are true or false. The proceedings that are pending against them in the Ct. are undoubtedly "proceedings". Rule 5 of the Central Government Ordinance under which they are claimed to have abated, reads as follows (irrelevant portions are omitted) :

"Abatement of proceedings relating to disputes pending before Provincial tribunals & reference of such disputes to tribunals constituted by the Central Govt.--(1) Where

any industrial dispute concerning any banking company or any matter relating to such dispute has, before the commencement of this Ordinance, been referred by a Provincial Govt. to any tribunal or other authority for adjudication or settlement & any proceedings in respect of or arising out of such reference were immediately before such commencement pending before any tribunal or other authority then on the date of such commencement such reference shall be deemed to be withdrawn & all such proceedings shall abate."

The question is as to whether the proceedings pending against the appets. are "proceedings in respect of or arising out of such reference."

6. Rule 5 deals with disputes pending before Provincial tribunals; it does not deal with disputes which are no longer pending before them but have been already decided, settled or otherwise dealt with. This interpretation is in keeping with the general scheme of the Ordinance. The operative part of the Ordinance consists of three rules; Rule 4 deals with future references, Rule 5, with present or pending references and Rule 6, with past references. The reference that was made by the Provincial Govt. to Sri Singh is a past reference; Sri Singh gave an award & even that award was enforced long before the Central Govt. Ordinance was passed. What is the effect of the award & the Govt. orders enforcing it is to be decided with reference to Rule 6 & not Rule 5. The heading of Rule 5 itself makes it clear that it deals with proceedings relating to disputes pending before Provincial tribunals. The use of the words "has . . . been referred" & "withdrawn" shows that the rule deals with references which were pending for adjudication or settlement. Any reference that had been already adjudicated upon or settled & which, therefore, could not possibly be withdrawn, is outside the scope of the rule. It was impossible for the reference made to Shri Singh to be withdrawn & if it could not be withdrawn, there was nothing to abate. No proceeding relating to any dispute is pending before any Provincial tribunal; what is pending is only criminal proceeding before a Mag. There are "proceedings" before the Mag. but they cannot be said to be "in respect of or arising out of such reference." They are certainly not "in respect of" the reference to Shri Singh. The reference was followed by an award & merged in it & the award was followed by a Govt. order enforcing its operation & merged in it. The proceedings may be said to be in respect of, or arising out of, the Govt. order, but not in respect of, or arising out of, the reference or even the award. What is contemplated by Rule 5 is proceedings that arise direct from a reference. If A gives rise to B & B gives rise to C, B may be said to arise from A, & C from B, but one cannot always say that A arises from A. The proceedings pending against the appets. arose no more from the reference than the instant appln. for revision. There might have been no Govt. order if there were no award & there might have been no award if there were no reference but the proceedings arise out of the Govt. order & not out of the award or the reference. Once an award is made on a reference, all subsequent proceedings would be in respect of or arising out of the award & not the reference. Rule 14 of the Provincial Ordinances punishes contraventions of all rules & orders made by the Govt. under them; they include contraventions of rules & orders made even in the absence of references & awards. So there can be criminal proceedings even without there having previously been a reference & an award. When there has been no previous reference & award, criminal proceedings cannot be said to be in respect of or arise out of any reference; they can be said to be in respect of, or arise out of, only the Govt. order (that has been contravened). Only because in the present case there have been a

previous reference & award, it cannot be said that criminal proceedings are in respect of, or arise out of, the reference. The appcts. committed the offence, & incurred the liability for punishment before the Central Govt. Ordinance was passed. Apart from the general word "proceedings" there is nothing in the Ordinance to suggest that it contemplated the extinction of the liability. I do not think the Central Govt. could have desired that even when a Provincial Govt.'s order was contumaciously disobeyed & prosecution was launched, it should be withdrawn.

7. Rule 6 of the Ordinance makes it clear that an award, once it is made by a Provincial tribunal before the Ordinance came into force, would remain in force, even though the Central Govt. refers the same dispute to an All India Tribunal. The Central Govt. is empowered to stay implementation of the award or decision made by the Provincial tribunal but if it does not choose to do so, the implementation would continue ; in other words, the award would have to be obeyed by the parties concerned, & for disobedience they would continue to be liable as if the Ordinance had not been passed. The Central Govt. have, by their notfn. dated 13-6-1949, referred for an adjudication to an All India Tribunal some of the disputes existing between banks (including the two banks) & their employees. But they have not chosen to stay the implementation of the award made by Shri Singh. When the implementation has not been stayed, it means that it remains in force & has got to be implemented by the parties concerned. If it has got to be implemented, there is bound to be a provision for punishment for disobedience. The prosecution for disobedience is the only means by which the implementation of an award can be enforced. When it is said that the award continues to bind the parties, it follows that the provision relating to punishment for disobedience also continues. If a prosecution for disobedience can be launched even after the passing of the Ordinance, a prosecution which had already been launched & was pending on the date on which the Ordinance was passed would continue all the more. An award made by a Provincial tribunal would not cease to be in operation until after an All India Tribunal has submitted its report to the Central Govt. (See Para. 2 of Rule 6). The difference in the language of Rules 5 & 6 also is of significance. In respect of pending proceedings for adjudication or settlement they are to abate with effect from the date on which the Ordinance comes into force, & the Central Govt. are bound to refer the disputes to an All India Tribunal ; whereas in respect of past references on which awards have already been made by Provincial tribunals, the Central Govt. have the option of referring the same disputes to an All India Tribunal & to stay the implementation of the awards or decisions of the Provincial tribunals. Rule 6, & not Rule 5 of the Ordinance would govern Shri Singh's award. Mr. Pathak argued that Rule 6 does not apply to a re-opened award & that Shri Singh's award has been re opened particularly because the Conciliation Board has held it to be liable to revn. The Conciliation Board certainly held that Shri Singh's award should be revised but it has not revised it & simply interpreted its ambiguous provisions. It remains intact & in full force & it would be erroneous to say that it is a dead award. It would become dead only when the All India Tribunal submits its award to the Central Govt. & the Central Govt. order that it shall cease to be in operation.

8. The Ordinance prohibits a Provincial Govt. only from referring an industrial dispute concerning any banking or any matter relating to such dispute to any tribunal for adjudication, enquiry or settlement. This prohibition does not extend to prosecution for disobedience of an award. When a party to the dispute is criminally prosecuted for disobedience of the award (or Govt. order enforcing it), it is a prosecution & not a reference ; the proceedings before the Ct. are a trial & not an

adjudication, enquiry or settlement, & the prosecution might have been launched by any authority besides the Provincial Govt. Moreover, prosecution for infringement of the award (or the Govt. order enforcing it) cannot be said to be a matter relating to the industrial dispute. When Rule 4 does not prohibit future prosecutions, it would be absurd to interpret Rule 5 as making pending prosecutions abate. Rule 5 should be interpreted as to avoid this absurdity & it can be avoided only by interpreting the words, "proceedings in respect of or arising out of such reference" as excluding criminal proceedings for disobedience of an order enforcing an award made on such reference.

9. It is a well-known principle of interpretation of statutes that the scope of general words may be restricted if otherwise an absurdity would result. It is unnecessary for me to adopt this principle because my view is that "proceedings in respect of or arising out of such reference" cannot include criminal proceedings for disobedience of an order enforcing an award made on such reference. The word "proceedings" is of wide import, but here it is qualified by the words immediately following & this qualification excludes criminal proceedings.

10. I find that the proceedings pending against the appcts. are not hit by the provisions of Rule 5 of the Central Govt. Ordinance, I, therefore, reject these reference & direct the Mag. concerned to dispose of the cases against the appcts. expeditiously.

11. Let the records be sent back at once.