

British India Corporation Ltd., Kanpur vs Govt. Of Uttar Pradesh And Ors. on 5 March, 1954

Equivalent citations: AIR1954ALL550, (1954)IILLJ275ALL, AIR 1954 ALLAHABAD 550

ORDER

1. This is a petition under Article 226 of the Constitution. The petitioner is a public limited company which carried on the business of manufacturing and selling textiles and other commercial products. A branch of the petitioner's business is carried on under the name of Cooper Alien & Co., and on 13-4-1951, the petitioner issued a notice to its employees in that branch informing them that the directors had sanctioned the payment of a gratuity (by which, it is common ground, is meant what is ordinarily termed a bonus) in respect of the year ending 31-12-1950, equal to three months' basic wages. Certain qualifying conditions were laid down in the notice which further stated that acceptance of the gratuity would be held to imply that it had been accepted in full and complete satisfaction of all claims for a gratuity in respect of that period. Payment of the bonus was made accordingly by the petitioner in May, 1951, to all the employees of Cooper Alien & Co., who qualified therefor, and receipts were given by such employees in full and final settlement of all claims for bonus in respect of that year.

2. On 28-7-1951, the Kanpur Mechanical and Technical Workers' Union, respondent no. 4, made an application to the Chairman of the Regional Conciliation Board (Leather), Kanpur, in which it was prayed:

"that all the temporary and permanent workers who have not been paid bonus are entitled for bonus for the year 1950, and they should be paid the same for this year of 1950. That the quantum of bonus for the year 1950 should be enhanced to 6 months' wages with dear food allowance.

That no condition should be attached to the payment of bonus.

That the company should be asked to pay 12 /2 per cent, interest on the aggregate amount of money of the workers unlawfully withheld by them."

3. After the receipt of this application an attempt was made to constitute a Conciliation Board, but it appears that the attempt failed because of a mistake in the notification with regard to the name of the employer with the consequence that the petitioner did not nominate a member.

4. Thereafter on 27-10-1951, the Governor issued a Notification, No. 5122(TD)/XVIII-40(TD)/51, in which, after reciting that an industrial dispute existed between the concern known as Cooper Alien & Co., managed by the petitioner and its workmen, it referred that dispute to the State Industrial Tribunal which was required to determine :

"whether the rate of bonus declared by the employers for the year 1950, and the terms and conditions attached thereto need any revision? If so, in what manner."

This reference was made in exercise of powers conferred by Sections 3, 4 and 8 of the U. P. Industrial Disputes Act, 1947, and in pursuance of the provisions of Clause 10 of an order made on 15-3-1951, under that Act. On 16-11-1951, this petition was filed, and by an order of the Court of that date proceedings before the State Industrial Tribunal were stayed. The petitioner seeks, first, the issue of a writ in the nature of 'mandamus' directing the State Government and the Minister for Labour therein, who are the first and second respondents, to withdraw the Notification of 27-10-1951, so far as it is sought to be applied to Cooper Alien & Co.; secondly, a writ in the nature of prohibition prohibiting the State Industrial Tribunal, which is respondent No. 3, from giving effect to the provisions of that Notification so far as it is sought to be applied to Cooper Alien & Co., and from continuing the proceedings thereunder, and thirdly, a writ in the nature of certiorari quashing the proceedings pending before the State Industrial Tribunal.

5. The first submission made on behalf of the petitioner is that the power conferred by the Uttar Pradesh Legislature on the State Government by Section 3, U. P. Industrial Disputes Act, 1947, to constitute industrial courts is invalid as it amounts to the delegation of an essential legislative function.

6. The impugned Section , so far as it is material, reads as follows:

"3. 'Power to prevent strikes, lock-outs etc.' If in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or, special order make provision :

(a) for prohibiting, subject to the provisions of the order, strikes, or lock-outs generally, or strike or lock-out in connexion with any industrial dispute;

(b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

(c) for appointing industrial courts;

(d) for referring any industrial disputes for conciliation or adjudication in the manner provided in the order."

Sri Pathak's argument is that the United Provinces Legislature had no power to confer upon the State Government authority to appoint industrial courts and that Clause (c) of Section 3 is therefore invalid. His contention is that the constitution of courts is an essential legislative function which the Legislature cannot delegate to any other body or person. The Legislature in enacting Section 3,

Clause (c) of the U. P. Industrial Disputes Act did not, he contends, exercise its judgment on matters without a pronouncement on which no such legislation could be valid. It has not laid down what are to be the qualifications of the persons who can act as judges on such tribunals, it has not prescribed the procedure which they shall follow, nor has it imposed any limitation upon the orders which they may make. Vital matters of policy were left undetermined.

In support of his submissions Sri Pathak referred us to well known case of -- 'Queen v. Burah', 5 Ind App 178 tPC (A); -- Emperor v. Benori Lal Sarma¹, AIR 1945 PC 48 (B); --- 'State of Bombay v. Narottam Das Jetha Bhai', AIR 1951 SC 69 (C); -- 'Jitendra Nath v. Province of Bihar', AIR, 1949 FC 175 (D) and to what is known as the -- 'Delhi Laws Act (1912)', etc., in re AIR 1951 SC 332 (E). Sri Pathak's argument was forceful one, and it is due to no want of respect for learned counsel that we do not propose to discuss the cases to which he has referred. It appears to us however Unnecessary to do because the question of the extent to which a legislature can delegate its powers has been considered in two bench decisions of this Court which are binding on us.

7. In -- 'Basti Sugar Mills v. State of Uttar Pradesh', AIR 1954 All 538 (F)' a Full Bench of this Court had to consider the validity of an order made in July, 1950, by the State Government under Section 3 of this same Act, the U. P. Industrial Disputes Act, 1947, directing certain sugar factories to make payment of bonus for the preceding years 1947-48 and 1948-49. This order was made by the State Government under Clause (b) of Section 3 of the Act, but it is apparent from the argument of learned counsel and from the statement of the grounds set out in the judgment, upon which relief was sought, that the validity of Section itself was made the subject of attack. Ground no. 4, for instance, was in these terms :

"(4) That in any event Section 3 of the U. P. Industrial Disputes Act was 'ultra vires' inasmuch as the power to decide an industrial dispute could not be conferred on the executive.

Similarly in ground No. 5 the contention was "That it was not open to the legislature to delegate its own functions to the executive."

The validity of Section 3 was also challenged in grounds Nos. 6, 11, 12 and 14. In the course of his judgment Mr. Justice Bhargava, who delivered the leading judgment, said :

"Sri Pathak, learned counsel for the petitioners, challenging the validity of Section 3 of the U. P. Industrial Disputes Act (Act 28 of 1947) principally contended that this Section contained delegation of such legislative powers by the Legislature to the Executive as was unconstitutional and 'ultra vires' the Legislature."

and the learned Judge expressly held (on page 14 of the typed judgment) that the Act was valid and binding in the State of Uttar Pradesh. This he repeated on page 550 when he said:

"I consequently hold that S. 3 of the U. P. Industrial Disputes Act (U. P. Act 28 of 1947) is valid and not ultra vires the legislature on the ground of unauthorised

delegation of legislative power."

Mr. Justice Saprú did not differ from Mr. Justice Bhargava on the question of the State Legislature's power of delegation. He said :

"No doubt a law can be challenged on the ground of the incompetency of the particular legislature, whether Federal or State, to enact it or on the ground of its inconsistency with the fundamental rights granted by the Constitution, but provided the legislature concerned does not abdicate its power of legislation by wiping itself out and retains its control so as to be able to withdraw the legislative power conferred upon a subordinate authority whenever it considers proper to do so, it is not for courts to decide how much authority should be delegated or for how long such delegation should continue. (See the observations of Das, J., in --'AIR 1951 SC 332 at p. 422 (E)', referred to above).

The powers given by Section 3 may be, and are indeed, of a most wide character, but that fact alone cannot affect its validity. The remedy against delegated legislation is not judicial but political control with which courts have no concern. I am, therefore, clear in my mind that S. 3 of the U. P. Industrial Disputes Act, 1947 (Act 28 of 1947) was not beyond the competence of the legislature and cannot be declared 'ultra Vires' on the ground that it delegates legislative rule-making power of an unspecified character to the executive government"

Mr. Justice Saprú doubted the correctness of the conclusion reached by Mr. Justice Bhargava on a matter wholly unconnected with the question of delegation, namely whether Clause (b) of Section 3 had retrospective effect. The learned Chief Justice stated that he was in agreement with the views expressed by the other members of the Bench on the question of the legislature's power of delegation. It will be observed that although it would have been sufficient for the learned Judges in this case to have held that Section 3 was not invalid on any of the grounds advanced by learned counsel, they have gone further and have expressly held the Section to be valid.

8. The decision in the 'Basti Sugar Mills case, (F)', appears to us therefore to conclude the matter against the petitioner in the present petition. But if we are wrong in this, and the correct view is that the decision in the 'Basti Sugar Mills case, (F)', must be construed as being limited in its application to the validity of Clause (b) of Section 3, then the question whether Clause (d) is valid remains to be considered. The question of the extent to which a legislature may delegate its powers was exhaustively considered by the Supreme Court in. the 'Delhi Laws Act case (E)', and the decision, in that case has been the subject of consideration and interpretation by another Full 'Bench of this Court in -- 'Bhushan Lal v. State', AIR 1952 All 866 (G). The question which the Court had in that case to consider was whether Sections 3, 4 and 6 of the Essential Supplies (Temporary Powers) Act, 1946, were valid, and in order to determine this question it was necessary for the Court to consider how far the legislature had power to delegate its legislative functions. The Court held that the correct view was that if an Act of the legislature can be held to be "legislation" on a particular subject the extent of delegation is immaterial. What it said was this :

"If the correct view be that if an Act of the legislature can be held to be 'legislation' on a particular subject, the extent of delegation is immaterial, (& in our opinion this is the correct view), then there can be no question that Sections 3 & 4 of the Essential Supplies Act are legislation and are 'intra vires' the legislature. If, on the other hand, the correct view be that legislation, must in all cases lay down a policy or standard for the guidance of the delegates of the power of subordinate legislation, even then in our opinion Sections 3 and 4 of the Essential Supplies Act. are 'intra vires'."

There can in our opinion be no doubt that the , Industrial Disputes Act is legislation on the subject of industrial and labour disputes, a matter within the competence of the State Legislature, and Section 3 of the Act cannot therefore, in view of the decision in -- 'Bhushan Lal's case, (G)', be successfully challenged on the ground of legislative incompetence. Even on the alternative view that in order to be valid the legislation must . lay down a policy for the guidance of the delegates of the power of subordinate legislation ; such a policy is, in our view, laid down in the Act.

Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, authorised the Central Government to regulate or prohibit the production, supply and distribution of essential supplies and trade and commerce therein, and it laid down that the regulation and prohibition was for a definite object, namely for maintaining or increasing supplies of essential commodities or securing their equitable distribution and availability at fair prices. This Court in -- 'Bhushan Lal's case, (G)', held that this Section enunciated a definite policy in the shape of the objective to be achieved. So also it appears to us that Section 3, U. P.. Industrial Disputes Act no less enunciates a definite policy, that policy being stated in the opening words of the Section , namely, "securing ther public safety or convenience or the maintenance : of public order or supplies and services essential . for the life of the community, or for maintaining employment". We are of opinion, therefore, that Sri Pathak's first submission is concluded against him by authority which is binding on us.

9. Sri Pathak's second submission was That there existed no industrial dispute and that consequently there could be no valid reference to an Industrial Tribunal under Clause (d) of Section 3 of the Act. His contention is that no such dispute existed either at the time the Government sought to constitute a Conciliation Board or when the reference was made to the Industrial Tribunal; but he concedes that if an industrial dispute existed at the latter date that would be enough.

Under Clause 10 (1) of the Notification dated 15th March 1951, the State Government is empowered "if it is satisfied that an industrial dispute exists" to refer that dispute to an Industrial Tribunal; and in making a reference under this clause the Government is doing an administrative act: --'Sri Kastur Chand Gupta v. State of Uttar Pradesh', Writ Petn. No. 731 of 1953 (All) (H). As Patanjali Sastri C. J., said in -- 'State of Madras v. C. P. Sarathy', AIR 1953 SC 53 at p. 57 (I) :

"If the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competen' for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the

Government on which it could have come to an affirmative conclusion on those matters."

It is, we think, sufficient to say that in the present case there was in our opinion ample material upon which the Government could come to the conclusion that, at the time it made the reference, an industrial dispute existed.

10. Finally it was submitted that if the Tribunal made an award requiring the petitioners to pay a further sum to its employees, that award would contravene the fundamental right guaranteed to the petitioner under Article 19(1)(f) of the Constitution. Apart from the fact that no award has yet been made, the argument that an order for the payment of a bonus made under Section 3 of the U. P. Industrial Disputes Act can in any way be held to interfere with the right of the employer to acquire, hold or dispose of property was conclusively rejected in the 'Basti Sugar Company's case, (F)'.

11. In our opinion this petition fails and must be dismissed with costs, which we assess at Rs. 300.