Heavy Engineering Mazdoor Union vs The State Of Bihar & Ors on 12 March, 1969

Equivalent citations: 1970 AIR 82, 1970 SCR (1) 995, AIR 1970 SUPREME COURT 82, 1970 LAB. I. C. 212, 1969 3 SCR 995, 1969 2 LABLJ 549, 1970 (1) SCJ 35, 19 FACLR 27, 39 COM CAS 905, 1969 2 COM CAS 273, (1969) 2 COM L J 273, 1970 BLJR 491

Author: J.M. Shelat

Bench: J.M. Shelat, Vishishtha Bhargava

PETITIONER:
HEAVY ENGINEERING MAZDOOR UNION

Vs.

RESPONDENT:
THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT:
12/03/1969

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
BHARGAVA, VISHISHTHA

CITATION:
1970 AIR 82 1970 SCR (1) 995
1969 SCC (1) 765
CITATOR INFO :
F 1975 SC1329 (5)
MV 1975 SC1331 (124,127)
F 1975 SC1737 (2,3)
D 1979 SC1628 (29)
RF 1981 SC 212 (38)
F 1982 SC 697 (21)
D 1984 SC1813 (16,21)
R 1984 SC1813 (16,21)
D 1984 SC1897 (6,8)
F 1985 SC 488 (12)
RF 1988 SC 469 (6)
D 1988 SC1369 (13)
F 1988 SC1708 (13)
D 1989 SC1713 (10)

ACT:
Industrial Disputes Act, 1947, ss. 2(a) and 10-Industry carried on by company incorporated under the Companies Act, 1956-Entire share capital subscribed by Central Government-Whether industry carried on "under the authority of" the Central Government and if that the "appropriate government". Industrial Employment (Standing Orders) Act, 1946-Questions pending before certifying authority-If bar to a reference of adjudication under s.10 of the Industrial Disputes Act, 1947.

HEADNOTE:
The Heavy Engineering Corporation Limited was incorporated under the Companies Act and its entire share capital contributed by the Central Government. It was therefore a Government Company under s. 617 of the Companies Act. its Memorandum and Articles conferred large powers on the Central Government including the power to give directions as regards the operation of the Company, the wages and salaries of its employees, and the appointment of directors of the company. Certain disputes arose between the Company and its workmen whereupon the State Government of Bihar referred these disputes by a notification in November 1956 to the Industrial Tribunal for adjudication. The workmen through their union filed a writ petition under Arts. 226 and 227 of the Constitution disputing the validity of the reference on two grounds :(i) that the appropriate Government to make the said reference under s. 10 of the Industrial Disputes Act, 1947 was the Central Government and not the State Government; and (ii) that the questions referred for adjudication were at the time actually pending before the certifying authority under the Industrial Employment (Standing Orders) Act, 1946, on an application for modification of the Company's Standing Orders and therefore the said questions would not be industrial disputes which could be validly referred for adjudication. The High Court negatived both the contentions and upheld the validity of the reference.
In appeal to this Court under Art. 133 (i) (c) it was contended inter alia on behalf of the appellant that the industry in question was "carried on under the authority of the Central Government" within the meaning of s. 2(a) of the Act and the reference under s. 10 was therefore required to be made by that Government.
HELD, Dismissing the appeal : (i) The words "under the authority of" mean pursuant to the authority, such as where. an agent or a servant acts under or pursuant to the authority of his principal or master. That obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the

articles of association. An incorporated company has a separate existence and the law recognises it as a juristic person separate and distinct from its members. The mere fact that the entire share capital of the respondent-company was contributed by the Central Government and the fact that all its shares were

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held by the President and certain officers of the Central Government did not make any difference. [998 H-999 G]

Salomon v. Salomon & Co., [1897] A.C. 22; Janson v. Driefontain Consolidated Mines, [1902] A.C. 484; Kuenigi v. Donnersmarck, [1955] 1 Q.B. 515; Graham v. Public Works Commissioners, [1901] (2) K.B. 781; The State Trading Corporation of India Ltd. v. The Commercial Tax officer Visakhapatnam [1964] 4 S.C.R. 99 at 188, per Shah J; Tamlin v. Hannaford [1950] 1 K.B. 18 at 25, 26; London County Territorial and Auxiliary Forces Association v. Nichols, [1948] 2 All. E.R. 432; referred to.

Although extensive powers were conferred on Central Government to give directions in regard to various matters, these powers were derived from the company's memorandum and articles and not by reason of the company being the agent of the Central Government. [1000 B]

The definition of "employer" in s. 2(g) of the Act suggests that an industry carried on by and under the authority of the Government means either the industry carried on directly by a department of the Government, such as the Posts and Telegraphs or the Railways, or one carried on by such department through the instrumentality of an agent. [1001 B]

Carlsbad Mineral Water Mfg. Co. v. P. K. Sarkar, [1952] (1) L.L.J. 488; Cantonment Board v. State of Punjab, [1961] (1) L.L.J. 734: Abdul Rehaman Abdul Gafur v. Mrs. E. Paul, A.I.R. 1963 Bom. 267, referred to.

(ii) There was no force in the contention that as the questions relating to the modification of the company's Standing Orders were pending before the certifying authority under the Industrial Employees (Standing Orders) Act, no reference could be made relating to these under s. 10 of the Act. [1001 D]

Management of Bangalore Woollen, Cotton and Silk Mills Co. Lid. v. Workmen, [1968] 1 S.C.R. 581; Management of Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. v. S. S. Railway Workers Union, [1969] 2 S.C.R. 131, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1463 of 1968.

Appeal from the Judgment and order dated September 5, 1967 of the Patna High Court in Civil Writ Jurisdiction Case No. 921 of 1966.

A. K. Nag, Jai Kishan and Ranen Roy, for the appellant. U. P. Singh, for respondent No. 1.

B. P. Singh, for respondent No. 2.

The Judgment of the court was delivered by Shelat, J.-The Heavy Engineering Corporation Ltd., Ranchi is a company incorporated under the Companies Act, 1956. Its entire share capital is contributed by the Central Government and all its shares have been registered in the name of the President of India and certain officers of the Central Government. It is, therefore, a Government company within the 99 7 meaning of s. 617 of the Companies Act. The Memorandum of Association and the Articles of Association of the company confer large powers on the Central Government including the power to give directions as regards the functioning of the company. The wages and salaries of its employees are also determined in accordance with the said directions. The directors of the company are appointed by the President. In its standing orders, the company is described as a Government undertaking. The workmen employed by the company have two unions, the Heavy Engineering Mazdoor Union and the Hatia Project Workers Union.

Certain disputes having arisen between the company and its workmen, into which it is not necessary for the purposes of this judgment to go, the State Government of Bihar by its notification dated November 15, 1966 referred two questions to the Industrial Tribunal for its adjudication : firstly, as regards the number of festival holidays and secondly, whether the second Saturday in a month should be an off-day. The Mazdoor Union thereupon filed a writ petition under Arts. 226 and 227 of the Constitution in the High Court of Patna disputing the validity of the said reference on two grounds : (1) that the appropriate Government to make the said reference under s. 10 of the Industrial Disputes Act, 1947 was the Central Government and not the State Government and (2) that the questions referred to were at the time actually pending before the certifying authority under the Industrial Employment (Standing Orders) Act, 1946 on an 'application for modification of the company's standing orders and that therefore the said questions would not be industrial disputes which could be validly referred for adjudication. Before the High Court it was conceded that the company was not an industry carried on by the Central Government but the contention was that considering the fact that the entire share capital was contributed by the Central Government and extensive powers were conferred on it, the company must be regarded as an industry carried on under the authority of the Central Government and that therefore it was that Government which was the appropriate Government which could make the said reference. On the second question, the contention was that the Industrial Employment (Standing Orders) Act was a self-contained code, that once a question relating to conditions of service was before the certifying authority constituted under that Act and was pending before him, the said question could not be an industrial dispute which could be referred for adjudication under s. 10 of the Industrial Disputes Act. It was urged that consequently the reference on both the grounds was invalid. The High Court negatived both the contentions and upheld the validity of the reference. The Mazdoor Union obtained a certificate under Art. 1 3 3 (1) (c) and filed this appeal impugning the correctness of that decision.

Under s. 2(a) 'appropriate Government' (leaving aside the words which are not relevant for our purposes) means (i) in relation to any industrial dispute concerning an industry carried on by or under the authority of the Central Government, the Central Government, and (ii) in relation to any other industrial dispute the State Government. As was done before the High Court, Mr. Nag, appearing for the appellant-union, conceded that he would not contend that the company is an industry carried on by the Central Government but argued that it is an industry carried on under the authority of the Central Government and therefore it is that Government and not the State Government which is the appropriate Government for making a reference under s. 10 of the Act. The first question raised by the appellant-union, therefore, turns solely upon the construction of the words "

carried on under the authority of the Central Government".

The contention was primarily grounded on the fact that the entire share capital of the company has been contributed by the Central Government, all its shares are held by the President and certain officers of the Central Government presumably its nominees and extensive control is vested in the Central Government.

Before considering the authorities cited by counsel before us, we proceed first to examine the meaning of the words used by Parliament in the definition clause of 'appropriate Government'. It is an undisputed fact that the company was incorporated under the Companies Act and it is the company so incorporated which carries on the undertaking. The undertaking, therefore, is not one carried on directly by the Central Government or by any one of its departments as in the case of posts and telegraphs or the railways. It was, therefore, rightly conceded both in the High Court as also before us that it is not an industry carried on by the Central Government. That being the position, the question then is, is the undertaking carried on under the authority of the Central Government? There being nothing in s. 2 (a) , to the contrary, the word 'authority' must be construed according to its ,ordinary meaning and therefore must mean a legal power given by one person to another to do an act. A person is said to be authorised or to have an authority when he is in such a position that he can act in a certain manner without incurring liability, to which he would be exposed but for the authority, or, so as to produce the same effect as if the person granting the authority had for himself done the act. For instance, if A authorises B to sell certain goods for and on his behalf and B does so, B incurs no liability for so doing in respect of such goods and confers a good title on the purchaser. There clearly arises in such a case the relationship of a principal and an agent. The words "under the authority of" mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master. Can the respondent-company, there-

99 9 fore, be said to be carrying on its business pursuant to the authority of the Central Government ? That obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association. An incorporated company, as is well known, has a separate existence and the law recognises it as a juristic person, separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that date

the persons subscribing to its memorandum of association and others joining it as members are regarded as a body incorporate or a corporation aggregate and the new person begins to function as an entity. (of Salomon v. Solomon & Co.) (1). Its rights and obligations are different from those of its shareholders. Action taken against it does not directly affect its shareholders. The company in holding its property and carrying on its business is not the agent of its shareholders. An infringement of its rights does not give a cause of action to its shareholders. Consequently, it has been said that if a man trusts a corporation he trusts that legal persona and must look to its assets for payment; he can call upon the individual shareholders to contribute only if the Act or charter creating the corporation so provides. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess only a nominal interest in its property or hold it in trust for him. (cf. Halsbury's Laws of England, 3rd Ed. Vol. 9, p. 9). Such a company even possesses the nationality of the country under the laws of which it is incorporated, irrespective, of the nationality of its members and does not cease to have that nationality even if in times of war it falls under enemy control. (cf. Janson v. Driefontain Consolidated Mines(2) and Kuenigi v. Donnersmarck(3). The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. Therefore, the mere fact that the entire share capital of the respondent-company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the shareholders being, as aforesaid, distinct entitles the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government. A notice to the President of India and the said officers of the Central Government, who hold between them all the shares of the company, would not be a notice to the (1)[1897]A.C.22. (2) [1902] A.C. 484.

(3) [1955] 1 Q.B. 515.

company; nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said officers.

It is true that besides the Central Government having contributed the, entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a cor- poration can easily be identified as the agent of the State as in Graham v. Public Works Commissioners(1) where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of a statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of

the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. (see The State Trading Corporation of India Ltd. v. The Commercial Tax Officer, Visakhapatnam(2) and Tamlin v. Hannaford(3). Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions. (cf. London County Territorial and Auxiliary Forces Association v. Nichols(4) In this connection the meaning of the word 'employer' as given in s. 2 (g) of the Act may be looked at with some profit as the legislature there has used identical words while defining (an employer'. An employer under cl. (g) means, in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in that behalf or where no such authority is prescribed, the head of the department. No such authority has been prescribed in regard to the business carried on by the respondent- (1) [1901] 2 K.B. 781.

(2) [1964] 4 S.C.R. 99 at 188, per Shah, J (3) [1950] 1 K.B. 18 at 25, 26.

(4) [1948] 2 All. E.R. 432.

company. But that does not mean that the head of the department which gives the directions as aforesaid or which supervises over the functioning of the company is the employer within the meaning of s. 2(g). The definition of the employer, on the contrary, suggests that an industry carried on by or under the authority of the Government means either the industry carried on directly by a department of the Government, such as the posts and telegraphs, or the railways, or one carried on by such department through the instrumentality of an agent. We find that the view which we are inclined to take on the interpretation of s. 2(a) is also taken by the High Courts of Calcutta, Punjab and Bombay. (see Carlsbad Mineral Water Mfg. Co. v. P. K. Sarkar(1), Cantonment Board v. State of Punjab(2) and Abdul Rehaman Abdul Gofur v. Mrs. E. Paul(3). In our view the contention that the appropriate Government to make the aforesaid reference was the Central Government and not the State Government has no merit and cannot be sustained. The second contention that the questions referred to were regulated by the company's standing orders and an application for a modification of the said standing orders relating to those questions was actually pending before the certifying authority under the Industrial Employees (Standing Orders) Act precluded a reference thereof under s. 10 of the Act requires no discussion as it is covered by the decision in Management of Bangalore Woollen, Cotton & Silk Mills Co. Ltd. v. Workmen(4) and The Management of Shahdra (Delhi) Saharanpur Light Railway Co. Ltd. v. S. S. Railway Workers Union(5).

Thus neither of the two contentions can be upheld. In the result the appeal is dismissed but there will be no order as to costs.

R.K.P.S. Appeal dismissed.

(1) [1952] 1 L.L.J. 388.
(2) [1961] 1 L.L.J. 734.
(3) A.I.R. 1963 Bom. 267.
(4) [1968] 1 S.C.R. 581.
(5) [1969] 2 S.C.R. 131.