

General Manager, Bhilai Steel Project, Bhilai

Vs

Steel Workers' Union, Bhopal and Ors.

Civil Appeals Nos. 764 to 766 of 1963

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

08.11.1963

JUDGMENT

DAS GUPTA J. –

These three appeals are directed against an order of the Industrial Court, Madhya Pradesh, in three appeals from an order made by one Mr. I. B. Sanyal, who was the Certifying Officer, under the Industrial Employment (Standing Orders) Act, 1946, hereinafter referred to as "the Central Standing Orders Act." By this order made on August 6, 1962, Mr. Sanyal had certified the draft standing orders submitted by the General Manager, Bhilai Steel Project, Madhya Pradesh. On behalf of the several Unions, including the three Unions, who are the respondents before us, an objection was raised that Mr. Sanyal had no jurisdiction to certify the Standing Orders inasmuch as the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959 applied to this industry and not the Central Standing Orders Act. Mr. Sanyal overruled this objection and passed his order, as already stated, on August 6, 1962 certifying the draft standing orders. The Industrial Court, Madhya Pradesh, to which the Unions appealed against the order of certification has however held that Mr. Sanyal had no jurisdiction to certify the Standing Orders and it was the Labour Commissioner, Madhya Pradesh, who was competent to certify these. Allowing the appeals the Industrial Court set aside the order of the Certifying Officer as void, being without jurisdiction. It is against this order that the present appeals have been filed after obtaining special leave of this Court.

Before us, it is no longer disputed that on June 9, 1960 when the draft standing orders were submitted to the Certifying Officer under the Central Standing Orders Act that Officer had no jurisdiction and the Labour Commissioner, Madhya Pradesh, had jurisdiction to certify them. It has however been urged before us that long before the date on which Mr. Sanyal made his order certifying the standing orders the Central Standing Orders Act had become applicable to this industry to the exclusion of the Madhya Pradesh Industrial Employment (Standing Orders) Act, and so, the certification could not be held to be without jurisdiction. We have no doubt that if before the actual date of certification Mr. Sanyal as the Certifying Officer under the Central Standing Orders Act had acquired jurisdiction the certification cannot be held to be void merely because on the date when the orders were submitted before him he had no jurisdiction. (vide *Municipal Board, Pushkar v. State Transport Authority, Rajasthan & Others* [[1963] Supp. 2 S.C.R. 373.]). The position in law is that the application for certification of the standing orders, though invalid at the time it was made because the officer had no jurisdiction to deal with them, became a valid application when he did acquire jurisdiction. To put the matter in another way, the application should be deemed to have been renewed immediately after the officer acquired jurisdiction in the matter and so, that jurisdiction having continued up to the date of the certification, the certification also would be with jurisdiction and binding. The question that requires examination therefore is : whether before the

date of certification i.e., August 6, 1962, the Certifying Officer under the Central Standing Orders Act had become competent to certify the standing orders for the Bhilai Steel Project.

The answer to this question depends on whether on that date, i.e., August 6, 1962 the Central Standing Orders Act or the Madhya Pradesh Industrial Employment Standing Orders Act applied to the Bhilai Steel Industry. The Central Act, the Industrial Employment Standing Orders Act, 1946, came into force on April 23, 1946. Shortly after this the C.P. & Berar Industrial Disputes & Settlement Act, 1947 was enacted. It extended to the whole of Madhya Pradesh. Sections 2 to 61 of the Act came into force in all the industries of Madhya Pradesh except certain industries specified in the notification that brought these sections into force. This notification was dated November 20, 1947. By a further notification dated July 22, 1958 this first notification was amended. The consequence of the amendment was that ss. 2 to 61 of the Act became applicable with effect from August 1, 1958 to the Steel Industry at Bhilai. In 1959 the Madhya Pradesh Legislature passed a separate Act, Act No. XIX of 1959 dealing with matters regarding standing orders for industrial workmen. This repealed s. 30 of the C.P. & Berar Industrial Disputes & Settlement Act, 1947. The result was that from the date on which Act XIX of 1959 came into force, i.e., December 31, 1960, s. 30 of the C.P. & Berar Industrial Disputes & Settlement Act, 1947, was no longer in force in Madhya Pradesh.

The provisions of Act XIX of 1959 as regards the certification of standing orders were also not applicable to Bhilai because s. 1, sub-s. 3 of this Act while laying down that the Act applied to every industrial establishment wherein 20 or more workmen were employed and to such class or classes of other industrial establishments as the State Government might by notification specify was made subject to a proviso in these words :-

"Provided that it shall not apply except with the consent of the Central Government to an industrial establishment under the control of the Central Government or a Railway Administration or mines or oil-fields."

Admittedly, this consent of the Central Government was not given to the application of this Act, the Madhya Pradesh Act XIX of 1959, to Bhilai at the same time, it is not open to dispute before us that the Steel Industry at Bhilai was an industrial establishment under the control of the Central Government. There was a faint attempt on the part of the learned counsel, who appeared before us on behalf of the respondents, to suggest that the Steel Industry at Bhilai was not under the control of the Central Government. No such point appears to have been raised either before Mr. Sanyal or the Industrial Court. So, we did not permit the respondents to raise this point for the first time here. It may also be mentioned in this connection that in the very notification made by the Madhya Pradesh Government on July 22, 1958, that Government made the definite statement that the Steel Industry at Bhilai was carried on under the authority of the Central Government. We think it reasonable to presume for the purpose of these appeals that this statement made by the Government of Madhya Pradesh was correct. It follows therefore that the Bhilai Steel Industry was an industrial establishment under the control of the Central Government within the meaning of the proviso to s. 1, sub-s. 3 of Act XIX of 1959 and consequently in the absence of the consent of the Central Government it did not apply to the Bhilai Steel Industry. On and after December 31, 1960, therefore neither s. 30 of the 1947 Act nor Act XIX of 1959 applied to the Bhilai Steel Industry. There is no escape therefore from the conclusion that on and after December 31, 1960, the Bhilai Steel Industry was governed as regards the matter of standing orders by the Central Standing Orders Act of 1946.

This continued to be the position till November 25, 1961 when Act XIX of 1959 was repealed and

was replaced by the Madhya Pradesh Act XXVI of 1961, Madhya Pradesh Industrial Establishment Standing Orders Act, 1961. It would seem that this Act was applicable to the Bhilai Steel Industry as it did not contain any provision similar to the one in section 1, sub-s. 3 of the 1959 Act. The Madhya Pradesh Act No. XXVI of 1961 was however amended in 1962 by the Madhya Pradesh Act 5 of 1962. This Amending Act added to sub-s. 1 of s. 2 of the 1961 Act the following provision :-

"Provided that it shall not apply to an undertaking carried on by or under the authority of the Central Government or a railway administration or a mine or an oil field."

The effect of this was that Act XXVI of 1961 which became applicable to the Bhilai Steel Industry on November 25, 1961 ceased to be applicable to the Bhilai Steel Industry on and from April 29, 1962, when the President assented to the Amending Act. After this date the position again became the same as it was immediately before the Madhya Pradesh Act 26 of 1961 came into force. That is, none of the Madhya Pradesh Acts about the standing orders was applicable to the Bhilai Steel Industry. So, the field was open for the Central Standing Orders Act to operate in respect of the Bhilai Steel Industry on and from the date when the Madhya Pradesh Act V of 1962 came into force.

We have therefore reached the conclusion that for sometime before August 6, 1962 when the order of certification was passed, the Certifying Officer under the Central Government Standing Orders Act had become competent to certify the standing orders for the Bhilai Steel Industry.

The Industrial Court took note of the Position that on the matter of the standing orders the 1947 Act was repealed by the 1959 Act with effect from December 31, 1960. It was however of opinion that there being no specific saving clause in the Act of 1959 as regards the notification of July 22, 1958, the Act of 1947 applied to the Bhilai Steel Industry and that notification not having been superseded by any subsequent notification it continued to be effective in respect of the Bhilai Steel Industry under s. 25 of the Madhya Pradesh General Clauses Act. On this view of the effect of s. 25 of the Madhya Pradesh General Clauses Act it based its conclusion that the State Act continued to be applicable to the Bhilai Steel Industry.

We are of opinion that s. 25 of the Madhya Pradesh General Clauses Act could not save the notification in question after the 1947 Act was repealed. That section provides :-

"Where any enactment is repealed and re-enacted by a Madhya Pradesh Act with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, regulation, form or bye-law made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, regulation, form or bye-law made or issued under the provisions so re-enacted."

It appears clear to us that the effect of the proviso to s. 1, sub-s. 3 of Act XIX of 1959 being that this new Act-the re-enacted legislation - did not apply to Bhilai the notification already issued under the old Act was clearly inconsistent with the new legislation. Section 25 of the Madhya Pradesh General Clauses Act was therefore of no avail and could not save that notification.

For the reasons mentioned above, we have come to the conclusion that though on June 9, 1960, when the draft standing orders were submitted to the Certifying Officer under the Central Standing Orders Act the Certifying Officer had no jurisdiction to deal with them, the Officer had acquired jurisdiction in the matter before August 6, 1962, when he passed the order certifying the standing orders.

We, therefore, set aside the order of the Industrial Court, Madhya Pradesh, but as that Court has not considered the other objections raised by the Unions in their appeals against the certification of the standing orders, we direct that the appeals be heard by the Industrial Court and disposed of in accordance with law after deciding the objections raised on merits.

The appeals are accordingly allowed. In the special circumstances of the case, we order that the parties will bear their own costs in this Court.

Appeals allowed.

</html