

Heavy Engineering Mazdoor Union

Vs

State of Bihar and Others

Civil Appeal No. 1463 of 1968

(J.M. Shelat, V. Bhargava JJ)

12.03.1969

JUDGMENT

SHELAT, J. :-

1. 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 meaning of Section 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.

2. Certain disputes having arisen between the company and its workmen, into which it is not necessary for the purpose 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 adjudications, 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 Articles 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 Section 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 cornered 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 referred for adjudication under Section 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. 133(1)(c) and filed this appeal impugning the correctness of that decision.

3. Under Section 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, Sri 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 Section 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.

4. 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 carried 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 Section 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 authorized 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 this 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, therefore 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 recognizes 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. (Cf. *Salomon v. Salomon & Co* (1897 AC 22) 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 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 person 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 possess 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. Driefentain Consolidated Mines* (1902 AC 484) and *Kuenigi nigi v. Donnersmarckv. Donnersmarck* (1955 (1) QB 515)). 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 entities, 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 held between them all the shares of the company, would not be a notice to the 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.

5. 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 associations 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 corporation can easily be identified as the agent of the State as in *Graham v. Public Works Commissioners* (1901 (2) KB 781) 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 *State Trading Corporation of India, Ltd. v. Commercial Tax Officer, Visakhapatnam* (1964 (4) SCR 99 at 188, per Shah, J.) and *Tamlin v. Hannaford*). 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. Nichol's* (1948 (2) All ER 432).

6. In this connection the meaning of the word 'employer' as given in Section 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 Clause (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-company. But that does not mean that the head of the department which gives the directions as aforesaid of which supervise over the functioning of the company is the employer within the meaning of Section 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 Section 2(a) is also taken by the High Courts of Calcutta, Punjab and Bombay (See *Carlshad Mineral Water Mfg. Co. v. P. K. Sarkar*, (1952 (1) LLJ 488) *Cantonment Board v. State of Punjab* (1961 (1) LLJ 734) and *Abdul Rehaman Abdul Gafur and another v. Mrs. E. Paul* (AIR 1963 Bom 267). In our view the contention that the appropriate Government to make the aforesaid reference was the State Government and not the central Government has no merit and cannot be sustained.

7. 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 Employment (Standing Orders) Act precluded a reference thereof under Section 10 of the Act requires no discussion as it is covered by the decision in *Management of Bangalore Woollen, Cotton and Silk Mills Company Ltd. v. Workmen* (1968 (1) SCR 581) and *The Management of Shahdara Delhi-Saharanpur Light Railway Company Ltd. v. S. S. Railway Workers Union* (CA No. 27 of 1968, decided on September 18, 1968).

8. 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.

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