CALCUTTA HIGH COURT

Bharat Glass Works (Private) Ltd

Vs

State of West Bengal

(Sinha , J.)

15.02.1957

ORDER

Sinha, J.

1. The petitioner in this case is Messrs. Bharat Glass Works (Private) Ltd. It carries on business as manufacturers and producers of glass and ceramics, having its factory at Belkhoris in the 24 parganas. On or about the 11th December, 1954 the respondent No. 4, the Bharat Glass Workers' Union, claiming to represent the workers of the petitioner-company, put forward a charter of demand. The demands were pretty exhaustive, but it is unnecessary for our purposes to deal with the nature thereof. The Govt, of West Bengal, by an order dated the 17th June, 1955 referred certain disputes between the petitioner-company and its workers, for adjudication under Section 10 of the Industrial Disputes Act, 1947. A copy of the Order of Reference is annexed to the petition and marked as Exhibit B. The petitioner-company appeared before the Tribunal, respondent No. 3 in this case, and took a preliminary objection to jurisdiction. The objection was that as the petitioner was carrying on a controlled and scheduled industry, an Order of Reference for adjudication could only be made by the Central Government, and that the order of reference for adjudication made by the Government of West Bengal was illegal, without jurisdiction and invalid, and consequently the Tribunal had no jurisdiction to take seisin of the matter. On the 6th of July, 1956 the Tribunal decided the preliminary objection and rejected it. On the 25th July, 1956 this Rule was issued call-Ing upon the respondents to show cause why this order of Reference should not be set aside and why the third . respondent should not be prohibited from dealing with the Reference and adjudicating upon the same. The short point before me is as to whether under the facts and circumstances of this case, an order of reference for adjudication should have been made by the Central Government or was it rightly made by the Government of West Bengal. The matter arises in the following manner. The Industries (Development and Regulation) Act, 1951, being Act LXV of 1951, came into operation on the 31st October, 1951. It is an Act to provide, for the development and regulation of certain industries, and is a central Act. Under Section 2, it is declared that it was expedient in the public interest that the Union

should take under its control the industries specified in the First Schedule, It appears that Item No. 37 in the First Schedule annexed to the Act is "Glass and Ceramics". It is, therefore, clear that the business carried on by the petitioner is an industry, controlled under the provisions of this Act. Mr. Sen Gupta appearing on behalf of the petitioner has taken me through the various provisions of the Act to show that the Union of India exercised, or had the right to exercise, a tremendous power of control over scheduled industries. That this is so cannot be denied. The Act envisages the establishment and constitution of a Central Advisory Council, and Development Councils. Chapter III deals with regulations of scheduled industries. The owner of every existing 'Industrial undertaking', that is to say, undertakings to which the provisions of the Act applies has to be registered. Then there are provisions for taking out licences. Whenever new articles are to be manufactured, consent of the Central Government is necessary. Power has been given to the Central Government to cause investigations and searches to be made in respect of any scheduled industry. Then there are powers granted for direct management or control of such Industrial undertakings, by the Central Government in certain cases. Under certain circumstances the Central Government might authorise any person or body of persons to take over bodily the management of the whole undertaking and to manage the same. Then there are sweeping powers given to cancel or vary contracts not made in good faith, and no compensation is to be given to anyone for termination of office or contract. These are roughly the relevant provisions which are necessary to be noted, save and except the last section, namely, Section 32 which is important, inasmuch as it has amended Section 2 of the Industrial Disputes Act, 1947 being Central Act XIV of 1947. It is necessary to come at once to that provision. The Industrial Disputes Act (Act XIV of 1947) came into operation on the llth March, 1947 and is an Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. It is under this Act that the alleged disputes between the workers and the Company have been referred to respondent No. 3 for adjudication. Under Section 10, the Reference has to be made by the "Appropriate Government." "Appropriate Government" has been defined in Section 2, the relevant provisions whereof are as follows:

"In this Act, unless there is anything repugnant in the subject or context,--

(a) "appropriate Government" means-

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government .....

or by a railway company (or concerning any such controlled industry as may be specified in this behalf by the Central Government).....or in relation to an industrial dispute concerning (a banking or an insurance company, a mine, an oil field), or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the Provincial Government;"

2. The words within brackets have been introduced by Section 32 of Act LXV of 1951. The learned Advocate-General appearing on behalf of the respondents has also drawn my attention to Section 31 of the said Act which says that the provision of that Act shall be in addition and not, save as otherwise expressly provided in the Act, be in derogation of any other Central Act for the time being in force relating to any of the scheduled industries.

3. It will be possible now to come at once to the argument put forward by Mr. Sen Gupta. He says that according to the definition of "Appropriate Government" in Section 2 of the Industrial Disputes Act, the proper authority to refer any disputes concerning any industry carried on under the authority of the Central Government, was the Central Government, and therefore, the Government of West Bengal had no authority to make such a Reference. He argues that an industry which is controlled in the manner laid down by the Industries (Development and Regulation) Act, 1951 must be said to be carried on under the authority of the Central Government. In other words, in respect of such industries, the Central Government exercises sweeping control, that is to say, authority. If, therefore, there is an industry in which the Central Government exercises sweeping authority, it must be said to be carried on under the authority of the Central Government. If this argument is correct, then of course it must be held that the Central Government alone was the referring authority in the case of an industrial dispute between the petitioner company and its workers, and the present order of reference dated the 17th June 1955, must be set aside. The question is as to what is meant by the words "carried on under the authority of the Central Government" in Section 2(a)(i) of the Industrial Disputes Act, This very provision of law came up for interpretation before an. Appellate Bench of this Court presided over by Harries C. J.: 'Carlsbad Mineral Water Mfg. Co. Ltd. v. P. K. Sarkar', (A). In that case, the applicant was a company manufacturing aerated waters. It entered into a contract with the Central Government by which it acquired a right to sell its aerated waters on the stations of a certain Railway, and on the trains running on that Railway. Under the contract, Government to some extent the workings of the company. A had a right to fix maximum prices and to control trade dispute occurred between the company and its workers, and the Government of West Bengal, by its order dated December 28, 1948 referred the matter for adjudication to an Industrial Tribunal. An application was made to this High Court for a Writ of Mandamus or Certiorari on the ground that this was a dispute which could not be referred for adjudication by the Government of West Bengal, and it was urged that it was the Central Government alone which could refer the dispute, as the applicants were carrying on business under authority of the Central Government. Harries, C. J., said as follows:

> "Argument for the appellants is that as the appellants have entered into a contract with the Central Government to provide amenities for Railway passengers which the Railway

would normally be called upon to provide, they are carrying on an industry by the authority of the Government.

It seems to me that what is referred to in Sections 2(a)(i) and 2(g)(i), is any industry owned by Government which is being carried on by or by some authority created by Government to Government itself, either through a department carry on that industry. An industry carried on by or under the authority of Government is a Government industry which, as I have said, may he carried on directly by Government or by somebody or person nominated by Government for that purpose. No business owned and carried on by a private person or a limited Company can be a business carried on by or under the authority of Government.

It seems to me that the words 'under the authority' mean much the same as 'on behalf of It is to be noticed that in Section 2(g)(ii) 'employer' means 'in relation to an industry carried on by or under the authority of a local authority, the chief executive officer of that authority.' With regard to such authority even if somebody has been authorised by the local authority to carry on the work, nevertheless the Chief Executive officer is in all cases to be regarded as the employer.

In my view, the learned Judge was right in holding that the appellant-company was not conducting an industry under or by authority of Government. It was conducting its own business of selling soda water and other aerated drinks..... The business was not the business of the Railway which was being conducted by the appellants as the nominated authority of the Railway, The business was the business of the appellants which they were conducting for their own personal profit and benefit. It was in no sense the business of Government and it appears to me that the appellants can in no sense be described as being persons authorised to carry on a Government business."

4. It is true that in the case quoted above, it was not necessary to consider the Industries (Development and Regulation) Act of 1951. I think, however, that the principle laid down applies and is a correct principle. It is true that under the Industries (Development and Regulation) Act, the Central Government has taken upon itself a large measure of control. But to say that the Central Government exercises a measure of control, is not the same thing as saying that the business was being carried on under its authority. As stated by Harries C. J., a business which is carried on by or under the authority of the Central Government must be a Government business. Where others carry on the business and are concerned with the profit and loss, it cannot be said to be a government business, however much the Government might control it. The matter, in my opinion, becomes clear by reason of the amendment which has been introduced into the definition of the word "appropriate Government". In Section 2 of the Industrial Disputes Act, the

amendment which has been introduced by Section 32 of the Industries (D and R) Act, has the following effect:

5. If there is a controlled industry and if it is specified in this behalf by the Central Government, then the 'appropriate Government' for the purposes of reference of any industrial dispute would be the Central Government, it follows that if there is a controlled industry which is not specified, in such, case the "appropriate Government" is not the Central Government but the State Government. If the words "Industry carried on under the authority of the Central Government" be synonymous with the words "controlled industry", then there was no necessity for this amendment. It is clear, therefore, that the two do not mean the same thing, and this supports the interpretation that has been put by Harries C. J., as mentioned above. The result, therefore, is as follows: Industries, that is to say an 'Industrial undertaking' which has been mentioned in the first schedule of the Industries (D and R) Act, 1951 are controlled industries but they are not necessarily industries carried on by or under the authority of the Central Government. For an industry to be carried on under the authority of the Central Government, it must be an industry belonging to the Central Government, that is to say, its own undertaking. A controlled industry, in spite of the sweeping controls . exercised upon it by the Central Government, is not necessarily an industry carried on by or under the authority of the Central Government. The only point which I am willing to leave open in this case is as to whether a controlled industry might come within that meaning where Government has taken over direct management under Section 18A and the other related sections contained in Chapter IIIA of the Industries (D and R) Act, 1951. That point does not specifically arise here and may be decided upon a future occasion. In the present case, it is conceded that the glass and ceramic industry has not been specified by the Central Government and, therefore, according to the rule of construction mentioned above, the appropriate Government to refer disputes is the State Government. Mr. Sen Gupta has drawn my attention to certain notifications which have been published in the Gazette of India dated January 5, 1957. It appears that by notification No. S R. O. 68, the Central Government, in pursuance of Sub-clause (1) of Clause (a) of Section 2 of the Industrial Disputes Act, has specified for the purpose of that sub-clause, controlled industries engaged in the manufacture and production of coal, including coke and other derivatives which have been declared as controlled industries under Section 2 of the industries (D and R) Act, 1951. In the same Gazette, there is another notification being S. R. O. 67, which delegates the power of the Central Government to the State Government under Article 258 of the Constitution of India, in so far as they relate to industrial disputes concerning seven industrial establishments mentioned in the schedule appended thereto. Mr. Sen Gupta argued that these notifications show that in respect of controlled industries the Cenral Government is the appropriate Government. These notifications, divorced from the particulars set out in the schedule appended to notification No, S. R. O. 67 would appear to support this argument. But once the schedule is looked at, the position becomes clear and is

destructive of the argument advanced by Mr. Sen Gupta. What has happened is that the controlled industries in the case of coal, including coke and other derivatives, have been first of all specified. As soon as it has been specified, the appropriate Government becomes the Central Government. Then in respect of certain specified industrial establishments, it has delegated its power to the State Government. It might be said that this is a curious way of doing things -- taking over power and then giving it back, but I am not concerned with the reasons behind such action. It may be that while taking over power in respect of a particular Industry generally, it was thought necessary to exclude certain establishments for political reasons or economic reasons. In any event, these notifications demonstrate that in the case of controlled industries generally, the referring authority is the State Government, but if specified in the proper manner, the power of reference is transferred to the Central Government. That being the position, the contention put forward by the petitioner that in its case the adjudicating authority, that is to say, the "Appropriate Government" was the Central Government and not the State Government, fails. In my opinion the "Appropriate Government" in such a case is the State Government and the reference has been made properly end In accordance with law.

6. The result is that no case has been shown for my interference, and this application must be

dismissed. The rule is discharged and the interim order is vacated. There will be no order as to costs. Stay of the operation of this order is granted for three weeks. Let the order be drawn up expeditiously. At the end of three weeks, if no further direction is obtained from the Court of Appeal, the records of the Tribunal may be sent down at once.