MYSORE HIGH COURT

Mysore Kirlosker

Vs

Industrial Tribunal

Writ Petn. No. 163, of 1957

(M. Sadasivayya and A. Narayana Pai, JJ.)

11.12.1958

JUDGMENT

A. Narayana Pai, J.

1. The petitioner is an Association of employees of the 2nd respondent, the Mysore Kirloskar Ltd., Under the provisions of the Industrial Employment (Standing Orders) Act (Central Act 20 of 1946), hereinafter referred to as the Act the 2nd respondent filed a draft of standing orders before the Labour Commissioner in Mysore, who is the certifying officer under the Act for certification. Before certifying the draft standing orders, the Certifying Officer is said to have made many modifications therein. In making those modifications the Certifying Officer virtually substituted for, the draft standing orders the model standing orders prescribed by the Government under the Act. Both sides were dissatisfied with the order of the Certifying Officer and therefore presented appeals under Section 6 of the Act before the Appellate authority prescribed under the Act, viz., the Industrial Tribunal, Bangalore, who is the 1st respondent in the petition. The Employees' Association being dissatisfied with the order of the Tribunal has come up before this Court with this Writ petition. The substantial prayer in the petition is for the issue of a writ of certiorari or other appropriate writ to quash certain of the standing orders as finally certified by the appellate authority. The win or substantial ground stated in support of the prayer is that the said specified standing orders have been certified in contravention of Sections 3, 4, 5 and 6 of the Act.

2. At the outset it must be pointed out that the prayer in the writ petition as well as the averments and contentions stated in the affidavit in support of it appear more or less to be a regular appeal directed to correct certain errors of law said to have been committed by the lower authorities, A petition under Article 226 of the Constitution cannot be made to serve the purpose of a regular appeal, nor can this Court be called upon to sit as a Court of appeal to correct every error which a statutory authority might have committed while functioning within the limits of its jurisdiction. The only way in which the writ petition can be supported is on the basis that the Act confers a limited jurisdiction on the Certifying Officer and the appellate authority functioning thereunder, and by showing that the authorities have exceeded their jurisdiction or have committed an error whereby they have conferred upon themselves a jurisdiction which they do not possess.

3. The object of the Act is to require employers Industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. Clause (g) of Section 2 defines standing orders to mean rules relating to matters set out in the schedule of the Act. Section 15 empowers the appropriate Government to make rules; prescribing among other things additional matters to be included in the schedule and also setting out model standing orders for the purposes of the Act. The principal obligation under the Act is to be found in Section 3 which requires that the employer shall submit to the certifying officer draft standing orders proposed by him for adoption in his Industrial establishment. Sub-Section (2) of the said Section reads as follows :

> "Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the Industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model."

Section 4 of the Act reads as follows :

> "Standing orders shall be certifiable under this Act if -
> "(a) provision is made therein for every matter set out in the schedule which is applicable to the Industrial establishment, and
> (b) the standing orders are otherwise in conformity with the provisions of this Act; and it shall not be the function of the certifying officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders."

Section 5 prescribes the procedure to be followed before the standing orders are certified. Sub-Section (1) deals with issue of notice and filing of objections. Sub-Section (2) requires that after giving the employer and the workmen or their representative an opportunity of being heard

> "the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act."

After making such modifications as may be so necessary, the certifying Officer is to certify the standing orders. Section 6 enables any aggrieved person to appeal to the appellate authority. That section states that

> "the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act."

4. The main and central provisions of the Act are contained in Sections 3 and 4. These Sections also govern the provisions of Sections 5 and 6 which give or describe the jurisdiction of the Certifying authority and the appellate authority respectively. Hence, in our opinion the answer to

the controversy in this case depends entirely on the true effect of the provisions of Sections 3 and 4. Before standing orders can be certified, they must be certifiable under the Act. For the said purpose they must comply with, the provisions of Section 4. Under that section, standing orders must make provision for every matter set out in the schedule, which is applicable to the industrial establishment in question; such matters will, of course, include any additional matters which the Government might have prescribed under the powers conferred by Section 15. Secondly the standing orders are required to be in conformity with the provisions of the Act. The only provision with which conformity is required is the provisions contained in Sub-Section (2) of Section 3, viz., that the standing orders should so far as is practicable be in conformity with model standing orders prescribed by the Government under the Act. The jurisdiction of both the certifying officer and the appellate authority is only to see that the standing orders prepared by the employer are certifiable and to make such modifications thereof or additions thereto as fire necessary to render the draft certifiable under the Act.

5. Two questions arise - (1) is an employer confined to the matters set out in the schedule alone, including of course additional matters prescribed by the Government, (2) what is meant by the requirement that the draft shall be so far as is practicable in conformity with model standing orders ?

6. We find no difficulty whatever in answering the first question in the negative. The compulsion of the statute is that the standing orders shall make provision for such of the matters set out in the schedule with the additional matters prescribed by the Government as are applicable to the industrial establishment in question. If any of the matters so set out in the schedule are applicable to the industrial establishment in question, the employer is bound to make provision for them. It does not, in our opinion, mean that provision cannot be made for any additional matters at all. The Act is not intended to cover or provide for all contingencies and all matters which may be applicable to each and every industrial establishment in the country. Certain important matters which are more or less of general application to all industries are set out in the schedule. The appropriate Government is also given the discretion having regard to the special conditions of the industries within its jurisdiction to add further matters to the list contained in the schedule. All such matters may be shortly described as compulsory matters. A direction or mandate to do certain things cannot in our opinion, be read as a direction or mandate not to do any other things.

7. In answering the second question, the statute itself furnishes two important clues. They are the use of the words 'conformity' and 'model'. Conformity, in our opinion, cannot by any stretch of imagination be equated to identity. When one thing is required to conform to another, it simply means that the former should be formed according to the pattern furnished by the latter or that the former should be similar to the latter or that the former should adapt itself to the latter. A model means a shape, a figure, or a pattern proposed for imitation.
When, therefore, Sub-Section (2) of Section 5 of the Act states that the draft standing orders shall be, so far as is practicable, in conformity with the model standing orders, it simply means that the model standing orders furnish the pattern which the draft should try to resemble or imitate. It cannot, in our opinion, mean that the draft should copy the model verbatim. Absolute identity being ruled out by the very use of the words found in the section, it is impossible to accept the construction that the draft should copy the model and should not depart from its wording. The use of the words 'so far as is practicable' also points to the same result, The learned counsel on behalf of the petitioner has contended that the draft should be identical with the model unless the

employer can show that it is not practicable to copy it. In our opinion, this is reading too much into the statute. The mandate of the statute is not that the model shall invariably be copied, but that the draft shall conform to the model as far as is practicable. The very content of the, mandate is limited to the practicability of achieving conformity. The mandate is not stated in absolute terms to be cut down in stated circumstances, but is itself limited in its terms on considerations of practicability. If the object of the statute was to prescribe an absolute standard or to finally standardise standing orders in cerain matters, the provisions would have been worded quite differently. It could well have prescribed those Rules and set them out in the schedule to the Act and provided that those Rulest shall govern all industries. But the Legislature has not done so. It has only made provision for a model being prescribed. The model standing orders are no more than a model. They do not have the force of a statutory rule which has to be obeyed without in any manner altering its content.

8. Much of the argument before us centered round the apparent conflict Between the judgment of Wanchoo, J. in *Electric Workers Union v. The U.P. Electric Supply Co1*[1]*.,* and the judgment of Chagla, C.J., in *Commissioner of Labour v. Associated Cement Co*[2]*.,* It seems to us that in essential particulars there is hardly any conflict between the views taken by the two learned Judges. The view stated by Wanchoo, J. that the Act does not require that wherever a Government has prescribed model standing orders, these standing orders should be substituted for the draft submitted by the employer is not dissented from by Chagla, C.J., nor does the learned Chief Justice- say that conformity means identity - The learned counsel relics strongly on the following passage from the judgment of Chagla, C.J. :

> "It is clear from the language used by the Legislature that a duty and obligation is cast upon the employer to make provision for every matter embodied in the schedule, and also where model standing orders have been prescribed to bring his draft in conformity with such model, the only qualification being that the conformity with the model should be so far as is practicable.

In other words, unless it is impracticable it is incumbent upon the employer to prepare a draft which is in conformity with the model prescribed." This passage does not, however, support the extreme contention that it is incumbent on the employer to copy the model standing orders verbatim and that he shall not depart from it or that making provision for any matters besides those enumerated in 'the schedule necessarily results

[1] AIR 1949 All 504

[2] AIR 1955 Bom 363

in non-conformity with the model. It could only mean that if after hearing both sides the Certifying Officer thinks that the employer's draft is either by reason of such provision made for additional matters or otherwise, not in conformity with the model, it is up to the employer to satisfy him that it was impracticable to conform to the model.

9. The only real or statable difference occurs in this was Section 4 states that it shall not be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of any standing orders. The preamble of the Act requires definition of conditions of employment with sufficient precision. Reading the two together Wanchoo, J. states that if a draft standing order is sufficiently precise in its statement, the Certifying Officer has no

jurisdiction to change the draft on considerations of fairness or reasonableness. There is a sentence in the judgment of Wanchoo, J. which reads,

> "..... It is not for the Certifying Officer to make changes in the draft standing orders which go beyond defining with sufficient precision the conditions of employment".

It is this sentence with which Chagla, C.J. does not agree and His Lordship states that the power of the Certifying Officer or appellate authority to make modifications or additions is exercised not because the draft standing orders submitted by the employer are unreasonable or unfair, but with a view to see that the statutory obligation upon the employer under Section 3(2) should be discharged by him.

10. The conclusion therefore is that in deciding, whether the draft standing orders produced by the employer are certifiable under the Act, the duty of the Certifying authority under Section 5 and of the appellate authority under Section 6 is cot to substitute the model standing orders for the draft but to see whether they are in conformity with the model standing orders in the sense we have explained above. The jurisdiction to decide if there is such conformity and if not to make the necessary modifications and additions is clearly that of these authorities, under the Act. If they act within the limits of such jurisdiction, their decision cannot be interfered with.

11. Hence the only question that can be agitated before us is whether the appellate authority in this case has exceeded the limits of its jurisdiction under Section 6, i.e. whether, in making the modifications, or additions it has purported to do anything more than to see that they are necessary to render the draft certifiable under the Act. The appellate authority while discussing general principles has correctly stated that conformity does not mean 'sameness' and that all that has to be seen is whether the standing orders 'to be certified would be against the substance and spirit of the model standing orders. It is in the light of these general principles that the appellate authority has approached the question before it The learned counsel for the petitioner has taken us through the discussions contained in the order of the appellate authority bearing upon the particular standing orders which he complains have been certified in contravention of Sections 3, 4, 5 and 6. We find that in no case can the modifications or additions made by the appellate authority to the draft standing orders be said to go beyond the requirements of the statute. The appellate authority has, in each case after discussing the contentions of both sides, either accepted the draft or has made modifications or additions to see that the draft conforms to the model of standing orders as far as is practicable. In coming to these several conclusions, the appellate authority was undoubtedly acting within the jurisdiction conferred on it by the statute.

Apart from the alleged contravention of Sections 3, 4, 5 and 6, the learned counsel for the petitioner pointed out one other matter in which he contended that the appellate authority has exceeded its1 jurisdiction. While discussing the standing order dealing with the question of leave, the appellate authority observes that there has been an agreement between the employer and the employees in respect of that matter which was to be in force till 31-12-11956; having regard to that agreement the appellate authority has directed that the provision relating to festival holidays and sick leave will not have any force after 1-1-1957, leaving it open to the parties to enter into fresh agreement in respect of those matters. The learned counsel contends that this contravenes Section 19(2) of the Industrial Disputes Act. That section, however, deals with awards and settlements and not such an agreement, as the one in question in this case. Section 10 of the Act, which prescribes the duration of standing orders, clearly states that the standing' orders finally

certified shall not except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation. The direction of the appellate authority, in our opinion, is quite in accord with this provision of the Act. We do not, therefore, find any justification for the contention that the appellate authority has to any extent exceeded its jurisdiction. This petition, therefore, deserves to be dismissed.

12. Before concluding we should add that the Industrial Employment (Standing Orders) Act has since been amended by Central Act 36 of 1956. The most important amendment carried out by this Act is to omit the word "not" occurring in the second part of clause (b), of Section 4. After this amendment the jurisdiction of the Certifying and the appellate authority has been extended so as to make it their function to examine the fairness and reasonableness of the draft standing orders also. Further Sub-Section (2) of Section 10 has been substituted by a new Sub-Section, under which not only the employer but also the workmen are enabled to apply for modification of certified standing orders subject to the minimum period of duration prescribed in Sub-Section (1) of the same section. By virtue of this Act it was perfectly open to the petitioner to apply for modification of the certified standing orders and question their reasonableness and fairness also. In the circumstances the writ petition was, in our opinion, uncalled for and unnecessary.

13. The writ petition is dismissed. The petitioner will pay the costs of the 2nd respondent. Advocate's fee ₹ 100/-.

Petition dismissed.