

RAJASTHAN HIGH COURT

Mewar Textile Mills Ltd.

Vs.

Industrial Tribunal

Civil Misc. Appln. No. 21 of 1951 (Writ)
(Wanchoo, C.J. and Bapna, J.)

10.08.1951

JUDGMENT

Wanchoo, C.J.

1. This is an application by the Mewar Textile Mills Ltd., Bhilwara, under Article 226, Constitution of India. By this application, the applicant challenges the appointment of Shree Sukhdeo Narain, retired Judge of the High Court of the former State of Jodhpur, as the Industrial Tribunal under Section 7, Industrial Disputes Act (No. XIV [14] of 1947). It may be mentioned that Shree Sukhdeo Narain is no longer working as the Industrial Tribunal now, as his appointment was terminated some time after the present application had been filed; but we have heard arguments on this application in spite of the termination of Shree Sukhdeo Narain's appointment, because, if the application prevails, the proceedings taken before Shree Sukhdeo Narain will all become void.

2. The main point that has been urged in support of the application is that the appointment is invalid, because Shree Sukhdeo Narain does not fulfil the qualifications laid down for a Tribunal under Section 7 (3), Industrial Disputes Act.

3. The main opposition to the application has been made by the State of Rajasthan. It is in the first place, contended on their behalf that as there are other remedies open to the applicant, it cannot invoke the jurisdiction of this Court under Article 226 of the Constitution. In the second place, it is urged that Shree Sukhdeo Narain was qualified within the meaning of Section 7 (3), Industrial Disputes Act.

4. We shall first deal with the objection that this Court should not exercise its power

under Article 226 of the Constitution, as there are other remedies open to the applicant. It is well settled that the extraordinary powers conferred on this Court under Article 226 of the Constitution are not to be ordinarily exercised unless there is no other remedy open to an applicant, or, if any remedy is open at all, it is not as convenient, beneficial and effective as the remedy under Article 226.

5. The contention on behalf of the State, in connection, is two-fold. In the first place, it is submitted that it is open to applicant to file a civil suit, and it is pointed out that, as a matter of fact, the applicant has given notice to the State under Section 80, Civil Procedure Code, intimating its intention to file a civil suit. So far as this is concerned, we are definitely of opinion that it is not open to the applicant to file a civil suit in order to get a decree invalidating the appointment of the Industrial Tribunal. We may refer to S. 9, Industrial Disputes Act, which reads as follows:

"No order of the appropriate Government appointing any person as a member of a Board, Court or Tribunal shall be called in question in any manner."

These words are very wide, and, in our opinion, bar the jurisdiction of the civil Courts in this matter. Reference may be made in this commotion to S. 9, Civil Procedure Code, which reads as follows:

"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

The words used in S. 9, Industrial Disputes Act, prohibit the calling into question of any appointment of an Industrial Tribunal "in any manner." These words, in our opinion, impliedly bar the jurisdiction of the civil Courts. Whether these words also bar the jurisdiction of this Court under Article 226 is another matter with which we shall deal subsequently. The first remedy, therefore, of a civil suit is certainly not open to the applicant.

6. The alternative argument on behalf of the State is that even if it is not open to the applicant to file a civil suit, he has the remedy of going in appeal to the Appellate Tribunal constituted under Central Act 48 of 1950. Section 7 of that Act, among other things, provides that an appeal shall lie to the Appellate Tribunal from any award or

decision of an industrial tribunal if the appeal involves any substantial question of law. It is urged that as the question involved in the present case is undoubtedly a substantial question of law, an appeal is competent to the Appellate Tribunal, and the applicant should appeal there. Section 7 provides an appeal from an award or decision of an industrial tribunal. The present is said to be a decision, for admittedly no award has yet been made. It is contended on behalf of the State that any decision of an industrial tribunal can be taken in appeal to the Appellate Tribunal, even though it may be an interlocutory decision. On the other hand, learned counsel for the applicant contends that it is only the final decision of the Tribunal which is open to appeal under Section 7 and not any interlocutory decision. In particular, it is pointed out that the word "decision" has been used in Section 7 because in certain State Acts, e. g., the Bombay Industrial Relations Act of 1947, the final order passed by the Industrial Court is called a decision. For example, S. 84, Bombay Industrial Relations Act of 1947 provides an appeal against a decision of the Labor Court to the Industrial Court. The decision of the Industrial Court would, in its turn, be appealable to the Appellate Tribunal. Further, S. 87 of the same Act, while defining the duty of the Industrial Court, provides for decision of appeals against orders passed by the Registrar, against decisions given by the Commissioner of Labor, and against decisions by Labor Court, and also gives it original jurisdiction to decide matters referred to it under various sections of that Act. Section 94 also provides that an order, decision or award of the Industrial Court shall be binding on all parties, and so on. It is obvious that the word decision used in Section 94 means a final decision, and there can be no doubt that the word "decision" was used in Section 7 of Central Act 48 of 1950, because of the provisions of various State Acts, for the decisions of State Tribunals were appealable to the Appellate Tribunal. We are, therefore, of opinion that the word "decision" used in Section 7 of Central Act 48 of 1950 means final decision and does not include an interlocutory order passed during the hearing of an industrial dispute. Learned counsel for the State was unable to point out to us a single decision of any Appellate Tribunal where appeal was entertained from an interlocutory order. Learned counsel for the applicant, on the other hand, referred to a number of decisions of the Appellate Tribunal reported in various Labor Journals where the Appellate Tribunal has consistently refused to hear appeals from interlocutory orders. In this connection, we may only refer to one case, which is reported in the Gazette of the Bombay Government of 19th April 1950, Part I, page 1902. Further, it may be pointed out that it could not have been the intention of the Legislature that all kinds of interlocutory orders should be taken in appeal to the Appellate Tribunal, as that might delay the

decision of industrial disputes indefinitely. We have, therefore, no hesitation in coming to the conclusion that the word "decision" in Section 7 of Act 48 of 1950 refers to a final decision and not to an interlocutory order. Further, even if it be conceded for argument's sake that this word covers interlocutory orders also, the bar of S. 9, Industrial Disputes Act would still remain. That section, as we have already pointed out, prohibits the calling into question of any order appointing an Industrial Tribunal in any manner. That prohibition will, in our opinion, extend to calling it into question before the Appellate Tribunal also. We are, therefore, of opinion that even if it were to be accepted for argument's sake that the word "decision" in Section 7 of Act 48 of 1950 includes interlocutory order, no appeal would, in any case, lie in any matter which calls into question the appointment of an Industrial Tribunal, in view of S. 9, Industrial Disputes Act. Learned counsel for the State could not point out any other manner, except these two, in which the applicant could call into question the appointment of the Industrial Tribunal in this case. As we are of opinion that the appointment cannot be called in question either by a civil suit or by an appeal to the Appellate Tribunal, there is therefore no other remedy open to the applicant except to come to this Court under Article 226 of the Constitution.

7. The next question is whether it is open to this Court, in view of S. 9, Industrial Disputes Act, to question the appointment of the Industrial Tribunal under Article 226 of the Constitution of India. We are of opinion that S. 9, Industrial Disputes Act cannot take away the jurisdiction of this Court conferred on it by Article 226 of the Constitution. In this connection, we may refer to the case of *Rex v. Nat Bell Liquors Ltd.*¹ in which their Lordships of the Privy Council remarked at pages 159-160 as follows:

"Long before Jervis's Acts statutes had been passed which created an inferior Court, and declared its decisions to be 'final' and 'without appeal,' and again and again the Court of King's Bench had held that language of this kind did not restrict or take away the right of the Court to bring the proceedings before itself by certiorari."

Further, we may refer to a passage in Halsbury's Laws of England, Edn. 2. Vol. 9, p. 861, para, 1455, which is as follows:

"Certiorari can only be taken away by express negative words. It is not taken

away by words which direct that certain matters shall be 'finally determined' in the inferior Court, nor by a proviso that 'no other Court shall intermeddle' with regard to certain matters as to which jurisdiction is conferred on the inferior Court."

What applies to certiorari applies, in our opinion, to all the writs, orders or directions which can be issued under Article 226 of the Constitution of India with this vital difference. In England the Parliament is supreme and it can take away the right of the superior Court to issue writs of certiorari and so on by express words. In India, however, the Constitution is supreme, and neither the Parliament nor the State Legislature can take away the right conferred on the High Courts under Article 226 of the Constitution. Such rights can only be abridged by an amendment of the Constitution, as provided in Article 368. Section 9, therefore, of the Industrial Disputes Act, even though it may be very widely worded, cannot take away the jurisdiction of this Court under Article 226 of the Constitution, and it is open to this Court, therefore, to consider the validity of the appointment of Shree Sukhdeo Narain as the Industrial Tribunal.

8. The appointment in question was made on 9th October 1950, after the Industrial Disputes Act had been applied to the State of Rajasthan on 24th January 1950. Section 7 (3) Industrial Disputes Act reads as follows:

"Every member of the Tribunal shall be an independent person :

(a) who is or has been a Judge of a High Court or a District Judge, or

(b) is qualified for appointment as a Judge of a High Court :

Provided that the appointment to a Tribunal of any person not qualified under part (a) shall be made in consultation with the High Court of the State in which the Tribunal has or is intended to have, its usual place of sitting."

The Notification, appointing Shree Sukhdeo Narain as the Industrial Tribunal, is as follows:

"(We omit the unnecessary portion). In exercise of the powers conferred by S. 7, Industrial Disputes Act, 1947 (XIV [14] of 1947) the Government of Rajasthan is pleased to constitute an Industrial Tribunal consisting of Sri Sukhdeo Narain, a retired Judge of the High Court of the erstwhile Jodhpur State for the adjudication of an industrial dispute in the Mewar Textile Mills Ltd., Bhilwara

in Rajasthan."

9. The contention on behalf of the applicant is that Shree Sukhdeo Narain was not qualified for appointment under part (a) of Section 7 (3), because he was a Judge of the High Court of the former State of Jodhpur. He refers to the Rajasthan Adaptation of Central Laws Ordinance, 1950 (IV [4] of 1950), in this connection. By this Ordinance the Industrial Disputes Act of 1947 was made applicable to the State of Rajasthan. The Ordinance was promulgated on 24-1-1950, and was published in the Rajasthan Gazette on 25-1-1950. Section 5 (vii) of this Ordinance is as follows:

"For the purpose of the application of any Central law to Rajasthan, unless there be anything repugnant in the subject or context,
(vii) references therein to High Court shall be deemed to be references to the High Court of Judicature for Rajasthan established under the Rajasthan High Court Ordinance, 1949."

It follows, therefore, that Section 7 (3) (a), Industrial Disputes Act, when it mentions 'a Judge of a High Court,' means a Judge of the High Court of Judicature for Rajasthan established under the Rajasthan High Court Ordinance of 1949. A person, therefore, who had been a Judge of the High Court of the former State of Jodhpur, cannot claim to be qualified as a Judge of the High Court under Section 7 (3) (a). In this view of the matter, Shree Sukhdeo Narain was not qualified for appointment as an Industrial Tribunal, and, therefore, all proceedings taken before him would be null and void.

10. But it has been urged on behalf of the State that even if Shree Sukhdeo Narain was not qualified for appointment as a former Judge of a High Court, he was certainly qualified for appointment as a former District Judge. We accept, for present purposes, that Shree Sukhdeo Narain was a District Judge in the former State of Jodhpur, though this was not the ground of qualification given in the Notification issued by the State Government. The question, however, arises whether Shree Sukhdeo Narain would be qualified, under Section 7 (3) (a), as a District Judge of the former State of Jodhpur. Reference in this connection may be made to sub-section (9) of Section 5 of Ordinance IV [4] of 1950, which reads as follows :

"For the purpose of the application of any Central law to Rajasthan, unless there be anything repugnant in the subject or context,

(ix) references therein to other civil, criminal and revenue Courts, to public offices, and to Judges, Magistrates, officers or authorities shall be deemed to be references to such Courts, offices and Judges, Magistrates, officers or authorities of or in Rajasthan;"

The question, therefore, that arises is whether a District Judge; as mentioned in Section 7 (3) (a), can refer to a District Judge of the former State of Jodhpur. Ordinance I [1] of 1949 defined 'Rajasthan as the United State of Rajasthan. This United State of Rajasthan came into existence on 7-4-1949, and the United State of Matsya was integrated with it on 15-5-1949. The question then falls for consideration is whether a District Judge of the former State of Jodhpur is included in the word "District Judge," which appears in Section 7 (3) (a), Industrial Disputes Act, when read with Section 5 (ix) of Ordinance IV [4] of 1950. Learned counsel for the State admits that Shree Sukhdeo Narain was not a Judge "of" Rajasthan within the meaning of Section 5 (ix) of Ordinance IV of 1950. His contention however, is that Shree Sukhdeo Narain was a Judge "in" Rajasthan, and, therefore, eligible for appointment. It is contended that the word "Rajasthan" in Section 5 (ix) is a geographical expression only, and as Shree Sukhdeo Narain was a District Judge in the former Jodhpur State, which was geographically situated in what is now called the United State of Rajasthan, he is qualified under Section 7 (3) (a) as a District Judge. We are, however, of opinion that in view of the provisions of Ordinance I [1] of 1949, the word "Rajasthan" has not a mere geographical meaning. Rajasthan, as we have already said, has been defined in Ordinance I [1] of 1949 as the United State of Rajasthan, and it has been provided in Section 2 of that Ordinance that in all Ordinances made after the promulgation of this Ordinance unless there is anything repugnant in the subject or context. "Rajasthan" would mean the United State of Rajasthan. It is obvious that the words "Judges, Magistrates, officers or authorities "of "Rajasthan" mean "Judges etc. who are in the service of the United State of Rajasthan". The word "Rajasthan", therefore, in Section 5 (ix) of Ordinance IV of 1950 means not merely a geographical area. The word "in" was used in this sub-section to cover, in our opinion, those Courts, offices, and Judges, Magistrates, officers or authorities who might be in the United State of Rajasthan but might not be in the service of the United State of Rajasthan; as for example, various offices and officers of the Government of India, which might be located, or who might be posted, in the United State of Rajasthan after it came into existence in 1949. The use of the word "in", therefore, in this sub-section does not, in our opinion, mean that anyone, who was at any time a District Judge in the areas,

which were united to form the United State of Rajasthan, became a District Judge for the purposes of Section 7 (3) (a). As we see it, it only refers to Judges, Magistrates etc., who were in the service of the United State of Rajasthan or who were acting as such in the United State of Rajasthan after it came into existence. We may, without meaning offence, mention that some of the Covenanting States which joined to form the United States of Rajasthan were very small principalities, and the use of the word "Rajasthan" in Section 5 (ix) of Ordinance No. IV of 1950 clearly meant that authorities of or in Rajasthan, after it came into existence, would be deemed to be meant by the various words used in the various Central Acts. It may very well have been the policy of the United State of Rajasthan not to recognize officers of all the Covenanting States to be equal in footing with the officers of or in the United State of Rajasthan. It has been pointed out that the Constitution of India provides that the period during which an advocate or judicial officer has been an advocate or has held judicial office in any area, which was comprised before 15-8-1947, within India, as defined by the Government of India Act, 1935, shall be taken into account in considering the eligibility of a judicial officer or an advocate for appointment to High Courts, and as such there is no reason why a District Judge of the former State of Jodhpur should not be considered to be a District Judge for the purposes of Section 7 (3) (a). The analogy is, however, deceptive, for the provision in the Constitution is specific. If there had been a specific provision in Ordinance No. IV of 1950, a District Judge of the former State of Jodhpur would have been eligible; but there is no such specific provision in the Ordinance, and we cannot consider the word "Rajasthan" used in Section 5 (ix) of Ordinance No. IV of 1950 as a mere area. If the intention was to include all the Covenanting States, the last words of sub-section (ix) of Section 5 would have been something like this, "such Courts, offices and Judges, Magistrates, officers or authorities of or "in Rajasthan or in any covenanting state". We are therefore, of opinion that Shree Sukhdeo Narain cannot be considered to be a District Judge within the meaning of Section 7 (3) (a). He could not, therefore, have been appointed an Industrial Tribunal under Section 7 (3) (a), Industrial Disputes Act.

11. Lastly, it is urged that even if he was not qualified under Section 7 (3) (a), he was certainly qualified under Section 7 (3) (b), which provides that anyone who is qualified for appointment as a Judge of a High Court is eligible for membership of a Tribunal. It may be accepted, for present purposes, that in view of Article 217 (2), Explanation (b), of the Constitution' Shree Sukhdeo Narain was qualified for appointment as a Judge of a High Court. But in such a case, the proviso to Section 7

(3) comes into play, which provides that the appointment shall be made in consultation with the High Court. It is not denied that the appointment of Shree Sukhdeo Narain was not made in consultation with the High Court of Rajasthan. The argument, however, is that this provision is merely directory and not mandatory, and, therefore, even though the High Court of Rajasthan was not consulted, the appointment does not become invalid. The words used in the proviso are these,

"The appointment to a Tribunal of any person not qualified under part (a) shall be made in consultation with the High Court."

As the words stand, the State Government is commanded to consult the High Court before appointing a person qualified under part (b) to Section 7 (3). The reason for this command is also clear. The Legislature intended that independent persons of proper caliber should be appointed to a Tribunal. It thought that so far as District Judges and Judges of the High Courts were concerned, prima facie they had the requisite qualifications, and, therefore, no provision was made for consultation with the High Court before their appointment. But in the case of a person, who was not, or who had not been, a Judge of the High Court or a District Judge, consultation with the High Court was provided, presumably with the intention of securing an independent person of the right caliber for such membership. In the case of Rajasthan in particular, consultation with the High Court would appear to be all the more necessary if the main object of the statute was not to be defeated, for there were different standards as to the qualifications of advocates in different Covenanted States in the same way as in the case of judicial officers, to which reference has already been made. In some of the Covenanted States it was not even necessary to have legal qualifications before one became an advocate or a judicial officer.

12. In this connection we may refer to the case of *Mathura Mohan v. Ramkumar Saha*,² where it was held :

"No universal rule can be laid down for the construction of Statutes. As to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience; it is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the Statute to be construed."

13. In our opinion, the direction that the appointment of a person not qualified under

part (a) shall be made in consultation with the High Court must be considered to be mandatory in the case of this Statute. In this connection reference may be made to *Montreal Street Railway Co. v. Normandin*,³ where it was observed at p. 144:

"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, edn. 5, p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

This case related to non-revision of the list of jurors maintained in a certain part of Quebec. It was held that there was neglect of the provisions as to the revision of the list of jurors for several years, with the result that if the provision was held mandatory, all trials held during the course of those years might have become null and void. Under those circumstances, it was held that the provisions were merely directory, as the main object of the Legislature, namely, that the trial should be held with the aid of a jury; was promoted, even though the lists were old. These considerations, however, do not apply to the present case. The words used are mandatory, and we are of opinion that the main object of the Legislature would be frustrated if it were held that the provision was merely directory and the State Government was not obliged to consult the High Court. We may in this connection refer to two more cases. The first is the case of *Frederic Guilder Julius v. The Lord Bishop of Oxford*,³ There it was said :

"The words in a statute 'it shall be lawful' of themselves merely make that legal and possible which there would, otherwise, be no right or authority to do. Their natural meaning is permissive and enabling only." This case, however, recognized that some time even these words may cast a duty, and may, therefore, be mandatory. The second case is *Lachmi Chand v. Ram Pratap*,⁴ There also the Patna High Court had to decide whether the words "it shall be

lawful to make rules" in S. 138, Bihar and Orissa Self-Government Act, 1885, were mandatory or merely directory, and it was held that under the circumstances of that case, they were mandatory. The case of the statute before us is stronger, inasmuch as there is a definite mandate that the appointment shall be made in consultation with the High Court. Under these circumstances, as the High Court of Rajasthan was not consulted the appointment of Shree Sukhdeo Narain cannot be upheld under Section 7 (3) (b), Industrial Disputes Act.

14. In this view of the matter, it is not necessary to consider the other points raised in detail. It is enough to say that we do not think that the appointment was invalidated because Shree Sukhdeo Narain was over 60 years old, or because the original order said that his appointment was for only two months or because there was some defect in the manner of publication of the appointment.

15. We, therefore, hold that the appointment of Shree Sukhdeo Narain is invalid. In the normal course, if he had been working still, we would have issued the necessary order in the nature of quo warranto. However, as he is no longer working as an Industrial Tribunal, it would be enough to make a direction that all proceedings taken by him in connection with the dispute between the applicant and its workers after his appointment are null and void. Considering the circumstances of the case, we think it proper that the parties should bear their own costs of this application.

Order accordingly.

Cases Referred.

1. (1922) 2 AC 128
2. AIR (3) 1916 Cal 136
3. (1880) 5 AC 214
4. AIR (21) 1934 Pat 670
- 5.