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Court : Mumbai

Decided On : Mar-18-1950

Reported in : 1950CriLJ1311

Judge : Hemeon, J.

Appellant : The State

Respondent : V.S. Phadke

Judgement :

ORDER

Hemeon, J.

1. The non-applicants Shri V. 3. Phadke, Shri H. S. Munje and Shri P. B. Gole are members of the Board of Directors of a limited company known as the Central Potteries Ltd., which manufactures earthenware articles such as jars, cups and saucers as well as articles of stone. On 33rd November 1946. the Provincial Government issued notification No. 57901434-XXVI in which it referred to the trade dispute between that concern and its employees for adjudication by Shri P. D. Deshmukh, Additional District and Sessions Judge Nagpur. In March 1947 the three non applicants issued to the Provincial Government a notice under B, 80, Civil P.C., in which they stated that they did not admit the legality of the notification and that they were going to file a suit for a declaration that the reference to an adjudicator was illegal. Thereafter, they instituted civil suit No. 288A of 1947 in the

Court of the second Civil Judge. Class II, Nagpur, on 16th June 1947; and on 20th July 1948 that Court decided that the notification was ultra vires of the Provincial Government and it restrained the Provincial Government permanently from giving effect to the award. The Provincial Government have appealed against that decision and the appellate Court has stayed execution of that part of the decree which directs the Provincial Government not to enforce the award.

2. On 1st March 1948 during the pendency of the suit, the non-applicants were prosecuted at the instance of the Provincial Government for having committed an offence punishable Under Section 3, Central Provinces and Berar Validation of Award and Continuance of Proceedings (Industrial Disputes) Ordinance, 1947; and charges were in due course framed against them by the First Class Magistrate with 8. SO powers, Nagpur. The non-applicants thereafter went up in revision to the Sessions Judge, Nagpur, and he has now reported the cases Under Section 438, Criminal P. O., with a recommendation that the charges framed against the non-applicants be quashed on the ground of illegality.

3. The reasons given by the learned Sessions Judge are as follows. Before Defence of India Rule 81A was amended by Notification no. 1408-Or/42 dated 23rd May 1942, the Provincial Government had power to refer any trade dispute for adjudication in case of any undertaking, but in virtue of that amendment the Provincial Government lost the power to refer a trade dispute for adjudication in respect of any undertaking. Two conditions for reference to an adjudicator had to be fulfilled; viz., (i) Defence of India Rule 81-A should be made applicable to a particular area and (ii) the supply of the commodity manufactured or of the service rendered by the undertaking should be essential to the life of the community, if the object of the reference to the adjudicator was not the maintenance of order or public safety,

4. The notification of 23rd November 1946 does not mention any area and no area was mentioned in any earlier notification on the point. The notification of 23rd November 1946 does not also innovate that it was issued because it was necessary for 'securing the defence of British India, the public safety, the maintenance of public order, or the efficient prosecution of war', but it does state

that it was necessary for maintaining supplies and services essential to the life of the community, Defence of India Rule 81A does not, however, empower the Provincial Government to declare commodities or services as essential to the use of the community, if they are not otherwise of that character; but Defence of India Rule 34 (3) in defining 'essential commodity' prescribed that it could be one which was notified as essential for the existence of the community. Defence of India Rule 34 (8) was not, however, kept in force after 1st October 1946 by the Emergency Provisions (Continuance) Ordinance, 1946.

5. Defence of India Rule 81D (1)(aa) empowered the Provincial Government to declare by an order in writing any article as an essential article if they were of the opinion that the maintenance of the supply thereof was essential to the life of the community, but this Defence of India Rule was also not continued by the Emergency Provisions (Continuance) Ordinance, 1946 and ceased to be in force from 1st October 1946. The Essential Supplies (Temporary Powers) Act, 1946, defines 'essential commodity' in Section 2, but that definition does not cover the product of the Central Potteries Ltd.

6. In virtue of the Emergency Provisions (Continuance) Ordinance, 1946, which came into force on 1st October 1946, the relevant portions of Defence of India Rule 81-A run as follows:

(1) If in the opinion of the appropriate Government it is necessary or expedient so to do for securing the public safety or the maintenance of public order, or for maintaining supplies and services essential to the life of the community, the appropriate Government may, by general or special order, applying generally or to any specified area, make provision -

(c) for referring any trade dispute for conciliation or adjudication in the manner provided in the orders. (5) In this rule the expression 'appropriate Government' shall mean, in relation to trade disputes concerning any industry, business or undertaking carried on by the Central Government or by a railway company operating a Federal Railway and trade disputes concerning a mine or an oilfield or the port authority of a major port, the Central Government, and in relation to any other trade disputes, the Provincial Government....

7. It follows that the Provincial Government could in relation to trade disputes, other than those reserved for action by the Central Government, refer them for conciliation or adjudication if in their opinion it was necessary or expedient to do so for inter alia maintaining supplies and services essential to the life of the community. The order could be general or special and it had to be applied generally or to any specified area. The order in question, viz., that of 33rd November 1946, was *ex facie* a special order, but it was not made applicable to a specified area and it appears that no area was mentioned in any previous notification on the point. The reference in the order to the Central Potteries Ltd., Nagpur, cannot be said to be a reference to an area and it is plainly a reference to an undertaking. The point is not, however, of great import, for even if the reference could be construed as one to the area of Nagpur, there was another matter which rendered the order *ultra vires* of the Provincial Government,

8. The opinion of the Provincial Government vis-a-vis the necessity or expediency of the order is not open to question nor subject to objective tests. The cases of *Bex v. Comptroller-General of Patents* 1911(2) ALL. E. R. 677 : 1941(2) K. B. 808 and *The Rubli Electricity Co. Ltd. v. The Province of Bombay* are in point. The Defence of India Rule in question does not, however, relate to the maintenance of all supplies but to the maintenance of supplies which are essential to the life of the community and it would not be proper to hold that the products of the Central Potteries Ltd. fall within that category.

9. An essential commodity was defined in Defence of India Rule 34 (3) as food, water, fuel, light, power or any other thing essential for the existence of the community which is notified in that behalf by Government; and an essential article was defined in Defence of India Rule 81-A (aa) as an article which the Provincial Government or the District Magistrate, being of opinion that the maintenance of the supply thereof was essential to the community, declared by order in writing to be an essential article. A commodity other than food, water, fuel, light and power had thus to be notified before it could be an essential commodity, and before an article could be regarded as an essential article, there had to be a written order so declaring it. Resort to these definitions would not in the circumstances have availed the Provincial Government in the present case, and there was also the

cogent fact that both rules disappeared from the statute book on 1st October 1946 and were not kept alive by the Emergency Provisions (Continuance) Ordinance, 1946, which came into footed on that date.

10. The Essential Supplies (Temporary Powers) Act. 1916, which came into force on the same date, defined an essential commodity and it was extremely significant that commodities of the type manufactured by the Central 51 CrI.L.J. 165 Potteries, Ltd. were not included in the exhaustive definition therein. The dictionary meaning of the word 'essential' ia 'indispensable or important in the highest degree' and while the supply of the products of the concern in question contributes to the amenities of existence it cannot be said to be a supply which is indispensable or important in the highest degree to the life of the community.

11. The reference is accordingly accepted and the charges framed against the non. applicants are quashed.

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