

Before I. S. Tiwana, J.

WORKMEN OF AMRITSAR OIL WORKS, AMRITSAR
AND ANOTHER,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 447 of 1980

December 12, 1983.

Industrial Disputes Act (XIV of 1947)—Sections 2(a), 2(ee), 2(g) and 10(1)—Industries (Development and Regulation) Act (LXV of 1951)—Sections 2, 18 AA & 18 B—Management of an industry taken over by the Central Government under section 18 AA(1) by constituting a Board—Such industry whether could be said to be run under the authority of the Central Government—Industry mentioned in Schedule I to the Industries (Development and Regulation) Act—Disputes arising between the management and the workman—Central Government—Whether the appropriate Government competent to make reference of the disputes.

Held, that for all intents and purposes the industry in question came under the control of the Central Government with the issuance of notification under section 18 AA(1) of the Industries (Development and Regulation) Act, 1951 and was being carried on by and under its authority at the time when the reference in question were made to the Tribunal. The very heading of Chapter III-A of the 1961 Act in which sections 18A and 18AA occur is a clear indication in this regard. It reads 'Direct Management or Control of Industrial Undertakings'. This chapter was apparently introduced to provide for 'management' and 'control' by or 'under' the Central Government. In these circumstances, it is concluded that the establishment was carried on directly under the authority of a department of the Central Government and, therefore, the appropriate Government which could make the reference under section 10 of the Industrial Disputes Act, 1947 was the Central Government and not the State Government. Even independently of the notification under section 18AA(1) the industry in question being a controlled industry having been mentioned in Schedule I to the 1951 Act, it was the Central Government who could make any valid reference under section 10 of the Industrial Disputes Act. No doubt there is a real distinction between exercising certain functions of control and the taking over of the management as a whole of an undertaking on an order under section 18AA of the 1951 Act, but a reading of section 2 of the 1951 Act alongwith section 2(a) and 2(ee) of the 1947 Act makes it abundantly clear that the undertaking in question came within the definition of 'controlled industry' for purposes of section 2 of the Industrial Disputes Act.

(Paras 8 & 10).

(7) It is not a matter of dispute between the parties in the light of the observations of their Lordships of the Supreme Court in *The Bombay Union of Journalists and others v. The 'Hindu', Bombay and another*, (1) and *Ruston & Hornsby (I) Ltd. v. T. B. Kadam*, (2) that the date relevant to judge the competency or validity of a reference is the date on which the reference under section 10 of the I.D. Act is made. It is again the conceded position that on the dates the respective references were made by the State Government to the Tribunal, the Board constituted by the Central Government was carrying on the working of the industry. In the light of this admitted position all that remains to be seen now is the factual and legal effect of Annexure P.1 in the light of the provisions of law referred to hereafter.

(8) It is abundantly clear from the relevant contents of the notification Annexure P.1 already reproduced above that:—

- (i) The entire management of the factory was taken over and vested in the Board;
- (ii) The Board was bound to comply with the directions issued to it by the Central Government from time to time; and
- (iii) The Central Government was competent to terminate the appointment of any person comprising the Board.

The consequences which automatically follow with the taking over of the management of an industrial undertaking are enumerated in section 18-B of the Act and some of these are:—

- (i) all persons in charge of the management, including persons holding office as managers or directors of the industrial undertaking immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;
- (ii) any contract of management between the industrial undertaking and any managing agent or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated;

(1) A.I.R. 1963 S.C. 318.

(2) A.I.R. 1975 S.C. 2025.

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- (iii) the managing agent, if any, appointed under section 18A shall be deemed to have been duly appointed as the managing agent in pursuance of the Indian Companies Act, 1913;
- (iv) the person or body of persons authorised under section 18A to take over the management shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims to which the industrial undertaking is or appears to be entitled, and all the property and effects of the industrial undertaking shall be deemed to be in the custody of the person or, as the case may be, the body of persons as from the date of the notified order; and
- (v) the person, if any, authorised under section 18A to take over the management of an industrial undertaking which is a company shall be for all purposes the directors of the industrial undertaking duly constituted under the Indian Companies Act, 1913 and shall alone be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial undertaking or from any other source.
- (vi) the person or body of persons authorised under section 18-A shall, notwithstanding anything contained in the memorandum or articles of association of the industrial undertaking, exercise his or their functions in accordance with such directions as may be given by the Central Government so, however, that he or they shall not have any power to give any other person any directions under this section inconsistent with the provisions of any Act or instrument determining the functions of the authority carrying on the undertaking except in so far as may be specifically provided by the notified order."

It is patent that for all intents and purposes the industry in question came under the control of the Central Government with the issuance of notification Annexure P.1 and was being carried on by or under its authority at the time when the references in question

were made to the Tribunal. The very heading of the Chapter III-A of the Act in which sections 18-A and 18AA occur, is a clear indication in this regard. It reads 'Direct Management or Control of Industrial Undertakings'. This chapter was apparently introduced to provide for 'management' and 'control' by or 'under' the Central Government. A question similar to the one in hand has exhaustively been considered by a Division Bench of the Bombay High Court in *D. P. Kelkar, Amalner v. Ambadas Keshav Bajaj and others*, (3) in the context of Clause (iv) of section 32 of the Bonus Act and after a detailed analysis of the various provisions of the Act, the learned Judges recorded a similar conclusion to the effect that the establishments in question were carried on directly under the authority of a department of the Central Government. I respectfully adopt the reasoning stated in this judgment. Mrs. Bindra, learned counsel for the petitioners is not in a position to refer to any judgment which has considered the effect or the consequences brought about by a similar notification in the light of the provisions of the Act referred to above. She, however, seeks support for her argument from certain observations made in *Heavy Engineering Mazdoor Union v. State of Bihar and others*, (4) and *National Textile Corporation v. The Industrial Tribunal and others*, (5). In both these cases the effect and legal consequences which flow from the provisions of the Act were not under consideration. Former was a case where the question arose with reference to a public limited company of which the entire share capital belonged to the Central Government and all its shares were registered in the name of the President of India. An industrial dispute having arisen between the company and the Union representing its workers, was referred to the Industrial Tribunal by the Government of the State of Bihar and the reference was challenged on the ground that the appropriate Government who made the reference under section 10 of the Industrial Disputes Act was the Central Government and not the State Government. The question that cropped up for consideration was whether the Heavy Engineering Corporation Ltd. was an industry carried on by or under the authority of the Central Government? The Supreme Court pointed out that the company and its shareholders were continuing to function as a company and they constituted distinct entities. They held that the mere fact that the entire share capital of the company was contributed by the Central Government and the fact that all its

(3) A.I.R. 1971 Bombay 124.

(4) 1969-II L.L.J. 549 (S.C.)

(5) 1979 Lab. I.C. 1024.

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shares were held by the President of India and certain officers of the Central Government, made no difference and that the industry was not being carried on by or under the authority of the Central Government. The facts and circumstances here, as pointed out above, are entirely different. This judgment has also been considered and distinguished by their Lordships of the Bombay High Court in *D. P. Kelkar's case* (supra).

(9) The second judgment relied upon by Mrs. Bindra was a case where the company had entered into an agreement with the Governor General in Council acting through the Chief Commercial Manager of the East India Railway Administration by which they secured the catering rights of providing mineral water on the East India Railway System. By the agreement they acquired a right to sell their mineral water on the stations of the East India Railway and the trains running on the that railway and under the contract the Government had a right to fix the maximum price and to control to some extent the working of the company. The argument raised by the management was that they were carrying on an Industry by the authority of the Central Government on the ground that they had entered into a contract with the Central Government to provide amenities for the railway passengers which the railways would normally be called upon to provide and that to some extent their activities were controlled by the Central Government. This case is thus clearly distinguishable from the present case and I see no analogy whatsoever between the manufacturing and selling mineral water on a railway system under a contract with the Government and to run an undertaking or industry by the Government through a legally constituted Board. Mrs. Bindra, as already pointed out, is not in a position to refer to any other judgment which directly deals with the provisions of the Act.

(10) Further I am also of the opinion that even independently of notification Annexure P.1, the industry in question being a controlled industry it was the Central Government who could make any valid reference in the instant case. No doubt there is a real distinction between exercising certain functions of control and the taking over of the management as a whole of an undertaking on an order under section 18-AA of the Act, but a reading of section 2 of the Act along with section 2(a) and 2(ee) of the Industrial Disputes Act, makes it abundantly clear that the undertaking in question came within the definition of 'controlled industry' for purpose of

the I. D. Act. Section 2 of the Act declares that it is expedient in public interest that the Union (Union Government) should take under its control the industries specified in Schedule I. It has been pointed out already that the industry in question is mentioned at No. 28 of Schedule 1 to the Act.

(11) In the light of the discussion above I see no infirmity in the conclusion of the Tribunal that in the instant case it was the Central Government which was the appropriate Government to make the references in question. Thus, for the reasons recorded above, these petitions fail and are dismissed but with no order as to costs.