A AHMEDABAD MILLOWNERS' ASSOCIATION & ANR.

*v.*

I. G. THAKORE, PRESIDENT & ORS.

*January* 20, 1967

[M. HIDAYATULLAH, V. BHARGAVA AND G. K. MITTER, JJ.]

B *Bombay Industrial Relations Act* 1946 (*Bombay Act* 11 *of* 1947), *s.* 2(3)—*Applicability of Act to cotton industry in Ahmedabad—Bombay Industrial Disputes Act* 1938 *whether repealed by the* (*Central*) *Industrial Disputes Act,* 1947.

*Constitution of India, Art* 14—*Reference of dispute by Union of Workmen under s.* 73*A of Bombay Act* 11 *of* 1947—*Section in not giving* C *similar right to employers whether violates Art.* 14.

A dispute regarding amendment of rules relating to privilege leave etc. arose between the Ahmedabad Millowners' Association and the union of workmen employed in the textile industry. After conciliation proceedings were declared by the Conciliator to have failed, the union referred the dispute to the Industrial Court under s. 73A of the Bombay Industrial Relations Act, 1946. The Industrial Court decided against the Millowners D who filed a writ petition in the High Court and thereafter appealed to this Court. It was urged on behalf of the appellants that (i) s. 73A was violative of Art. 14 of the Constitution since it gave a right to the workers' union to make a reference but not to the employer (ii) the Act had not been made applicable to the cotton industry at Ahmedabad under s. 2(4) and it was not applicable under s. 2(3) because the Bombay Industrial Disputes Act, 1938 was repugnant to the (Central) Industrial Disputes Act, 1947 and must be deemed to have been repealed.

E HELD: (i) Section 73A was not violative of Art. 14.

Whenever any industrial dispute arises the employer can always ensure arbitration of that dispute by making an offer to the union under s. 66 of the Act, whereupon a registered and approved union is compelled to agree to submission of the dispute to arbitration. Clearly therefore there was no need to make any provision empowering the employer to make a reference of the dispute for arbitration to the Industrial Court. On the other F hand if a Union wants a dispute to be settled and even offers that the dispute be submitted to arbitration under s. 66 of the Act, the employer can refuse, whereupon the union would be left without any remedy. It is obvious that s. 73A was enacted to fill this gap and place the union on parity with the employer so as to enable the union to have any dispute settled by arbitration even when the employer does not agree to arbitration. This section, in these circumstances did not at all require that the G right granted to the union should also be granted to the employer. [441 G-H]

There was no difference in the procedure to be followed by the Industrial Court in a reference under s. 73A and that to be followed when the reference is under s. 66. In both the procedure under s. 92 had to be followed. [443 E-F]

(ii) Chapter V of the Bombay Industrial Disputes Act 1938 was not H repugnant to the Central Act of 1947 and therefore continued to be in force, and consequently under s. 2(3) of the Bombay Industrial Relations Act 1947 the latter Act became applicable to the industry of the appellants and did not require a notification under s. 2(4) to make it applicable [446 G-H; 447 A-B]

*Ex Parte McLean*, 43 C.L.R. 472 *Victoria and Others* v. *The Commonwealth of Australia and Others*, 58 *C.L.R.* 618, *Zaverbhai Amaidas* v. *The State of Bombay*, [1955] 1 S.C.R. 799, *Ch. Tika Ramji & Ors.* v. *The State of Uttar Pradesh & Ors.*, [1956] S.C.R. 392 and *Deep Chand* v. *The State of Uttar Pradesh and Others*, [1959] Supp. 2 S.C.R. 8.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 490 of 1965.

Appeal from the judgment and decree dated April 30, 1964 of the Gujarat High Court in Special Civil Application No. 39 of 1963.

*S. T. Desai*, *P. B. Patwari*, and *O. C. Mathur*, for the appellants.

Respondent No. 2 appeared in *person*.

*H. R. Gokhale*, *S. P. Nayyar* for *R. H. Dhebar*, for respondent No. 3.

The Judgment of the Court was delivered by

**Bhargava, J.** The appellants in this appeal are the Ahmedabad Millowners Association, of which all the cotton mills in Ahmedabad local area are members, including the second appellant, the Nagri Mills Ltd. The third respondent, the Textile Labour Association, Bhadra, Ahmedabad (hereinafter referred to as "the Union") represents the workmen employed in the various mills which are members of the first appellant Association. Under Standing Orders settled under the Bombay Industrial Relations Act, 1946 (Bombay Act XI of 1947) (hereinafter referred to as "the Act"), conditions of service, including those relating to leave, were prescribed in view of clause 6 of Schedule I of the Act. These Standing Orders were settled at a time when this clause 6 of the First Schedule to the Act read as follows:—

"Conditions, Procedure and Authority to grant leave." Subsequently, Schedule I was amended so as to read as:

"Procedure and authority to grant leave," and simultaneously, clause 11 was added in Schedule II which read as:

> "All matters pertaining to leave and holidays, other than those specified in items 6 and 7 in Schedule I."

Consequent to this amendment in the Schedules, matters pertaining to leave could, thereafter, no longer be prescribed by Standing Orders, which were confined to matters contained in Schedule I only.

By a letter dated 21st April, 1961, the Union gave notice to the first appellant, desiring that changes be made as specified in the Annexure to this letter. Those changes sought in the Annexure related to grant of privilege leave, sick leave, casual leave, and pay in lieu of privilege leave to all workers employed in the local textile industry in the same manner in which, under the earlier Standing

A Orders, the clerical and some other staff were granted these benefits. This notice was given by the Union under s. 42(2) of the Act. The dispute was not amicably settled, and consequently, the matter was referred for conciliation. The conciliation proceedings also failed, and, thereupon, the Conciliator, on 23rd June, 1961, issued a certificate that he had come to the conclusion from the discussions which
B the parties had before him that the dispute was not capable of being settled by conciliation. Thereupon, by the letter dated 29th July, 1961, the Union referred the dispute to the Industrial Court under section 73A of the Act. Before the Industrial Court, various pleas were taken on behalf of the appellants, and some of these pleas were the subject-matter of preliminary issues which were decided
C before the Industrial Court could proceed to give the final Award. Though a number of such preliminary issues were decided by the Industrial Court, we are only concerned with two such issues, as they were the only two matters pressed before us on behalf of the appellants in this appeal. One issue raised was that s. 73A of the Act was *ultra vires* Article 14 of the Constitution as it granted a right to the Union to make a reference to the Industrial Court, while
D no such right was granted to the employers. The second point urged was that the Act did not apply to the cotton mills which were members of the first appellant Association, because it had not been made applicable to them under s. 2(4) of the Act, while it could not become applicable to them under s. 2(3) of the Act, because the Bombay Industrial Disputes Act, 1938, was not in force in these
E industries immediately before the commencement of the Act. Both these points were decided by the Industrial Court against the appellants. Consequently, the appellants moved a petition under Articles 226 and 227 of the Constitution in the High Court of Gujarat. The High Court rejected these preliminary pleas raised on behalf of the appellants and upheld the view of the Industrial Court that the reference was competent. The appellants have now
F come up to this Court under certificate granted by the High Court against this order of the High Court.

As we have mentioned earlier, the appellants had raised a number of pleas which were the subject-matter of preliminary issues before the Industrial Court and several of them were the subject-
G matter of the petition before the High Court also. In this Court, however, reliance has been placed only on the two pleas, mentioned above. The first plea is based on the language of s. 73A of the Act which, on the face of it, grants the right to a Union only to make a reference of an industrial dispute for arbitration to the Industrial Court and does not grant any such right to an employer. It was,
H however, urged on behalf of the respondents that, in fact, this section was introduced in the Act for the very purpose of placing the employers and the Union on terms of equality, and that, instead of creating any discrimination between them, this section, on the

contrary, was necessary to satisfy the requirements of Art. 14 of the Constitution. A

To appreciate this submission made on behalf of the respondents, certain features of the Act have to be examined and their implication taken into account. Section 73A grants a right of making a reference of an industrial dispute for arbitration to the Industrial Court only to "a registered union which is a representative of employees and which is also an approved union." Further, under the proviso to that section, the reference cannot be made if the employer offers in writing before the Conciliator to submit the dispute to arbitration under the Act and the Union refuses to agree to it. Two other conditions attached are that the dispute must first be submitted to the Conciliator and can be referred for arbitration to the Industrial Court only when the Conciliator certifies that the dispute is not capable of being settled by conciliation, and that no such dispute is to be referred if, under any provisions of the Act, it is required to be referred to the Labour Court for its decision. It is the effect of all these detailed provisions, laying down limitations for reference under s. 73A, that requires examination. B C D

Under s. 12 of the Act, the Registrar has to maintain registers of unions registered by him and a list of approved unions. A Union is entitled to registration only if, during the whole of the period of three calendar months immediately preceding the calendar month in which it so applies, the membership of the Union has been not less than 15 per cent of the total number of employees employed in the industry, when it can be registered as a Representative Union. In case there is no such Representative Union, a Union can be also registered either as a Qualified Union or as a Primary Union. But it is clear from the language of s. 73A that only a Representative Union has been given the right under that section. Further, section 73A requires that the Union must also be an approved Union, which means that the Union must comply with the requirements of s. 23 of the Act and have its name entered in the approved list. Amongst the conditions required to be complied with by a Union to be brought on the approved list, the most important is one which lays down that its rules must provide that every industrial dispute, in which a settlement is not reached by conciliation, shall be offered to be submitted to arbitration, and that arbitration under Chapter XI shall not be refused by it in any dispute. It will thus be seen that the right of making reference under s. 73A is only granted to a Union which is registered as a Representative Union and, being on approved list, has already made rules laying down that the Union shall offer every industrial dispute for submission to arbitration and will also not refuse arbitration of any dispute if the employers offer to submit the dispute for arbitration under Chapter XI of the Act. Section 66 makes provision for submission of an industrial dispute for arbitration. Sub-s. (1) of that section gives the power to make a E F G H

A reference to any person chosen by agreement by the disputing parties, while sub-s. (2) gives the option that the submission of the dispute may be made to the arbitration of a Labour Court or the Industrial Court. Further, sub-s. (5) of s. 58 requires that before closing the conciliation proceedings before him, the Conciliator shall ascertain from the parties whether they are willing to submit the dispute to B arbitration. These disputes, to which these provisions apply, can only be those not relating to matters in Schedules I and III, because, under sub-s. (1) of s. 42, and employer is given the right to give a notice of change in respect of any industrial matter specified in Schedule II, while, under sub-s. (2) of s. 42, the employee is granted a similar right to give a notice if a change is desired in respect of an industrial matter not specified in Schedule I or III. In respect C of matters covered by Schedules I and III, provision is made in sub-s. (4) of s. 42 which lays down that such disputes are to be decided by making an application to the Labour Court; and, as we have indicated earlier, s. 73A does not apply to disputes which are required to be referred to a Labour Court. The result of all these provisions is that s. 73A of the Act comes into play only in cases where the D dispute relates to matters not contained in Schedules I and III, the dispute is not resolved by private agreement or by conciliation, and there is no submission of the dispute to arbitration under s. 66 of the Act.

It is in this light that the provision which has to be made by E the Union in its rules under s. 23(1)(v) assumes importance. Whenever a dispute is raised either by an employer or by a Union which can ultimately take advantage of s. 73A of the Act, the Union must invariably offer that the dispute be submitted to arbitration, and, in the alternative, if the employer offers to submit the dispute to arbitration, the Union must not refuse it. The result is that in respect of any such dispute, the Union has no option but to offer F or agree to arbitration of the dispute under s. 66 of the Act. On the other hand, there is no such limitation placed on the employer. There is no provision in the Act making it compulsory for the employer either to submit the dispute to arbitration or to agree to the submission of the dispute to arbitration when offered by the Union. Consequently, whenever any industrial dispute arises, the employer G can always ensure arbitration of that dispute by making an offer to the Union under s. 66 of the Act, whereupon the Union is compelled to agree to submission of the dispute to arbitration. Clearly, therefore, there was no need to make any provision empowering the employer to make a reference of the dispute for arbitration to the Industrial Court. On the other hand, if a Union wants a dispute to be settled and even offers that the dispute be submitted to arbitra- H tion under s. 66 of the Act, the employer can refuse, whereupon the Union would be left without any remedy. It is obvious that s. 73A was enacted to fill this gap and place the Union on parity with the

employer so as to enable the Union to have any dispute settled by arbitration even when the employer does not agree to arbitration. These provisions granting the rights to the employers and the Union are, of course, in addition to, and without prejudice to, the provisions contained in sections 72 and 73 of the Act, under which the State Government is given the power to refer any industrial dispute between employees and employees, and employers and employees to the arbitration of a Labour Court or the Industrial Court on the basis of a report made by the Labour Officer, or even otherwise. These provisions in sections 72 and 73 leave the discretion with the State Government to make a reference in appropriate cases, so that neither the employers nor the employees can, as of right, obtain a reference under these sections from the State Government. So far as they are concerned, the provisions contained in the Act require that the disputes between them must first go before a Conciliator for conciliation, and subsequently, either party can exercise its option of offering the submission of the dispute to arbitration when such an enquiry is made from them by the Conciliator under s. 58(5) of the Act. Thereafter, if the offer is by an employer, the Union, under its rules, is bound to accept the submission, so that whenever an employer desires that a dispute be decided by arbitration, the Union is compelled to agree to it. In the reverse case, when a Union wants submission of the dispute to arbitration, the employer has discretion not to agree, and then only can the Union resort to s. 73A and refer the dispute to the Industrial Court. This section, in these circumstances did not at all require that the right granted to the Union should also be granted to the employer.

In this connection, two other points were urged by learned counsel for the appellants before us. One was that, under s. 66 of the Act, the offer to submit the dispute for arbitration can be to any private individual also, and this did not give the right to the employer to have it decided by an Industrial Court so as to be equated with the right of the Union to have it decided by the Industrial Court. We do not think that the provision contained in s. 66 of the Act places the employer under any such handicap. Under sub-s. (2) of s. 66, the employer can straight away offer that the dispute be referred to the arbitration of the Industrial Court, and thereupon the Union would be debarred from refusing to agree to that submission. In any case, even if the Union were to refuse to agree to it, the State Government will determine under s.71 of the Act whether the dispute should be referred to the arbitration of the Labour Court or the Industrial Court and refer it to that body. The mere fact that the Union may not agree to the offer of the employer to submit the dispute for arbitration to the Industrial Court whereupon the State Government can direct that the arbitration be made by a Labour Court or the Industrial Court does not, in our opinion, place the employer in any disadvantageous position, and we do not

A think, therefore, that there was any requirement that the employer should also be given a right corresponding to the right of the Union under s. 73A of the Act.

The second point urged by the learned counsel was that if the dispute is referred to the Industrial Court by a submission under s. 66(2) of the Act, that Court will proceed to give its award in accor-
B dance with the provisions of the Arbitration Act, 1940 in view of s. 68 of the Act, while if the dispute is referred at the instance of a Union under s.73A of the Act, the Industrial Court will deal with it as a judicial Tribunal and will give its decision in accordance with the regulations made under s. 92 of the Act. We consider that this submission is based on a misapprehension of the scope of s. 92 of
C the Act. The rules and regulations made by the Industrial Court under s. 92 are to govern the procedure of the Industrial Court in all proceedings before it irrespective of the fact whether those proceedings come up before it by a reference made by the State Government under. s. 72 or s. 73 of the Act, or by a reference made by the Union under s. 73A of the Act, or by a joint submission made by the
D parties under s. 66(2) of the Act. Section 68 of the Act is in very general terms, and lays down that proceedings in arbitration under the whole of the Chapter XI are to be in accordance with the provisions of the Arbitration Act, 1940, in so far as they may be applicable. The provisions of the Arbitration Act have, therefore, been made applicable not only to arbitrations by submission under s. 66 of the Act, but also to arbitrations on references made by the
E State Government under s. 72 or s. 73 or a reference made by a Union under s. 73A of the Act. If the submission or the reference happens to be to the Industrial Court, that Court must follow the rules and regulations made under s.92, and the provisions of the Arbitration Act will only apply insofar as they may be applicable in view of those rules and regulations. Consequently, whether a
F dispute is referred for arbitration to the Industrial Court by submission under s. 66(2) of the Act, or by a reference under s. 73A of the Act, that Court has to proceed in the same identical manner and the parties seeking the reference obtain the award in both cases under identical circumstances.

In this connection, the regulations made by the Industrial Court,
G known as the Industrial Court Regulations, 1947, were brought to our notice. A perusal of these regulations shows that, in the matter of procedure of the Industrial Court for dealing with arbitrations made by submissions under s. 66, or by references under other sections, there is uniformity and no distinction is made between references under these different sections. The Industrial Court is
H required to proceed in the same manner in all cases and to give its decision under s. 87 of the Act. It is significant that s. 87, defining the duties of the Industrial Court, uses identical language in respect of all arbitrations by the Industrial Court; under clause (v) the duty

of the Industrial Court is laid down to be to decide industrial disputes referred to it in accordance with submissions registered under s. 66 which provide for such reference to the Industrial Court, and under clause (vi), the duty of the Industrial Court is similarly defined to be to decide industrial disputes referred to it under sections 71, 72, 73 or 73A. The Industrial Court, in all cases, is required to give a decision on the dispute, and hence, in all these proceedings, the parties have identical rights in the matter of procedure of the Industrial Court of hearing and of obtaining a decision from it. This makes it clear that s. 73A of the Act was required only to fill up a gap which would have existed, leaving no remedy to a Union to obtain arbitration of a dispute if the employers did not agree to that arbitration, and that no similar right was required to be conferred on the employers who, under the other provisions of the Act, could always obtain a reference of the dispute to arbitration by making a submission under s. 66 which the Union was bound to agree to. The first point raised on behalf of the appellants has, therefore, no force and s. 73A of the Act cannot be held to be invalid.

On the second question, it has rightly been urged on behalf of the appellants that the Act was not applied by the State Government to the industries run by the appellants, whether generally or by specifying any local area by issue of a notification under sub-s. (4) of s. 2 of the Act. On behalf of the respondents, reliance was placed on sub-s. (3) of s. 2 for urging that the Act became applicable to the industries run by the appellants, because the Bombay Industrial Disputes Act, 1938 (hereinafter referred to as "the Bombay Act of 1938") was in force in these industries immediately before the commencement of the Act.

Admittedly, the Bombay Act of 1938 was made applicable to the entire cotton industry throughout the Province of Bombay by various notifications issued in the year 1939 under that Act by the then Provincial Government. Ahmedabad, where the industries of the appellants are situated, was then a part of the Province of Bombay. The Bombay Act of 1938 was never entirely repealed. However, the Central Government enacted the Industrial Disputes Act No. 14 of 1947 which received the assent of the Governor-General on 17th March, 1947, and was brought into force from April 1, 1947. This Act did not, in terms, repeal the Bombay Act of 1938, but the contention on behalf of the appellants is that the Bombay Act of 1938 and the Central Industrial Disputes Act, 1947 both covered the same field of industrial disputes, and consequently, it should be held that the Bombay Act of 1938 became void on the ground of repugnancy with the Industrial Disputes Act, 1947 under sub-s. (1) of section 107 of the Government of India Act, 1935. It was urged that the Bombay Act of 1938 as well as the Industrial Disputes Act, 1947 were both enacted under the power conferred on

A the Bombay Legislature and the Central Legislature under item 29 of Part II of the Concurrent List III of the Seventh Schedule to the Government of India Act, 1935. The principle relied upon by the appellants is that, if two pieces of legislation cover the same field and each one of them contains a complete code making detailed provision for all aspects of the subject-matter of the legislation, B repugnancy must be held to arise, even though one Act may not, in terms, repeal the other and may not correspond section by section with the other. For this principle, reliance was placed on the tests enumerated by Nicholas in his Australian Constitution, 2nd Edition, p. 303, to determine inconsistency or repugnancy between a State law and a Commonwealth law in Australia. The three tests were C enumerated as follows:—

> "(1) There may be inconsistency in the actual terms of the competing statutes;
>
> (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, D or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and
>
> (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter."

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This principle was deduced from the decisions in *Ex Parte McLean*(1) *and the State of Victoria and Others v. The Commonwealth of Australia and Others*(2). Reliance was also placed on decisions of this Court in *Zaverbhai Amaidas v. The State of Bombay*(3), *Ch. Tika Ramji & Ors. v. The state of Uttar Pradesh & Ors.*(4) and *Deep Chand* F *v. The State of Uttar Pradesh and Others*(5). In the last of these cases, after quoting from Nicholas, this Court held: 'Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:—

> (1) Whether there is direct conflict between the two provisions;
>
> G
>
> (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and
>
> (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

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(1) 43 C.L.R. 472. (2) 58 C.L.R. 618.
(3) [1955] 1 S.C.R. 799. (4) [1956] S. C. R. 393.
(5) [1959] Supp. 2 S.C.R. 8.

Relying on these principles, it has been urged that the Industrial Disputes Act, 1947 intended to lay down an exhaustive code in respect of settlement of all industrial disputes, and since the Bombay Act of 1938 was also on the same subject, it must be presumed that the two statutes are repugnant, so that the Bombay Act of 1938 became void with effect from 1st April, 1947 when the Industrial Disputes Act, 1947 came into force. It has, however, been rightly pointed out by the High Court in the judgment under appeal that the Bombay Act of 1938 did not confine itself entirely to the subject of settlement of industrial disputes. Chapter V of that Act, containing sections 26 to 33 deals with a matter which is not covered by the Industrial Disputes Act, 1947 at all. These sections of the Bombay Act of 1938 lay down the procedure for prescribing Standing Orders regulating the relations between an employer and his employees, and for making changes therein. The prescribing of the Standing Orders and making of changes in them may not involve any industrial dispute at all. In fact, at the first stage, when Standing Orders are prescribed, no question would arise of any industrial dispute requiring settlement. The Industrial Disputes Act, 1947, did not contain any provisions at all dealing with this subject of prescribing Standing Orders and making changes therein. Consequently, even if the submission made on behalf of the appellants be accepted that the Industrial Disputes Act, 1947, is an exhaustive code dealing with the question of settlement of industrial disputes, only those provisions of the Bombay Act of 1938 can be held to be repugnant and void on account of the repugnancy which also dealt with the same subject matter of settlement of industrial disputes. The provisions contained in Chapter V of that Act, which had nothing to do with settlement of industrial disputes, could not, therefore, be affected by the enactment of the Industrial Disputes Act, 1947, and hence, the enforcement of the Industrial Disputes Act, 1947 did not in any way affect the applicability of the provisions of Chapter V of the Bombay Act of 1938 to the industry run by the appellants. To the extent that Bombay Act of 1938 contained these provisions in Chapter V, that Act, therefore, continued in force and also continued to apply to the industries now in question. It was also urged that the Industrial Disputes Act, 1947 did not, similarly, make any provision for arbitration of industrial disputes and, consequently, the provisions of the Bombay Act of 1938, relating to arbitration of industrial disputes, could not be held to have become invalid. It is not necessary to examine this further question in view of our decision that at least the provisions of Chapter V of the Bombay Act of 1938 continued in force. That Act did not stand repealed as a whole; at best, only a part of that Act can be held to have ceased to be effective because of the repugnancy with the Industrial Disputes Act, 1947. But, while another part of that Act continued to be in force, the Bombay Act of 1938 also continued to be applicable to the cotton industry in Ahmedabad

A B C D E F G H

A with which we are concerned. When the Bombay Industrial Relations Act, 1946 came into force on 29th September, 1947, therefore, the Bombay Act of 1938 was applicable to these industries, and consequently, under sub-s. (3) of section 2 of the Act, the Act became applicable to the industry of the appellants and did not require a notification under sub-s. (4) of s. 2 to make it applicable. This point was also therefore, rightly decided against the B appellants, and the judgment of the High Court must be upheld. The appeal is, therefore, dismissed with costs.

G. C. *Appeal dismissed.*