MONOGRAM MILLS LTD. ETC. A

v.

THE STATE OF GUJARAT

May 7, 1976

[H. R. KHANNA, V. R. KRISHNA IYER AND P. K. GOSWAMI, JJ.] B

Bombay Industrial Relations Act (Bom. 1 of 1947) as amended by Gujarat Act 21 of 1972, ss. 53A and 53B and rules thereunder—Whether State Legislature competent to enact ss. 53A and 53B—Pith and substance—Rules—Field of operation of.

Sections 53A and 53B of the Bombay Industrial Relations Act, 1946, were inserted in that Act by the Bombay Industrial Relations and Industrial Disputes (Gujarat Amendment) Act, 1972. They relate to the constitution of joint management councils, which include representatives of the employees also, for the purpose of forestalling and preventing industrial disputes. Consequent amendments were made in the Bombay Industrial Relations (Gujarat) Rules. The appellants challenged the two sections on the ground that the State Legislature was incompetent to enact them. According to the appellants, the impugned legislation falls under Entries 43, 44 and 52 of List I, VII Schedule to the Constitution, which relate to matters of incorporation etc. The High Court held that they fall under Entries 22 and 24 of List III, which relate to labour welfare and industrial disputes, and that the State Legislature was competent to enact them. C D

Dismissing the appeal to this Court,

HELD : It has been recognised during the last hundred years that the wage earners should have an effective voice in the management of the industry in which they are working. The concept of joint management of industry by the employer and the employee may have a wide connotation, because, the joint management councils may not only perform such functions as pertain to welfare of labour, that is, those relating to the various objectives mentioned in cls. (a) to (f) of s. 53B(1), but may also claim to exercise such functions as can be discharged by the board of directors, This wider aspect of the joint management would however be impermissible under the impugned provisions, because the provisions should be so construed and implemented as would sustain their constitutional validity. They have been enacted by the State Legislature and so the functions which can be performed by the joint management councils have to be of such a character as would pertain to welfare of labour or prevent industrial disputes. If the impugned legislation, in pith and substance, relates to subjects which are within the competence of the State Legislature, the fact that there is an incidental encroachment on matters which are the subject-matter of Entries in List I, would not affect the legislative competence of the State Legislature to pass the impugned legislation. [628A, 629E] E F

Rules in the very nature of things can operate only in that field in which the parent Act can operate, and hence, the impugned rules, likewise, relate to subjects which are within the competence of the State Legislature. [628D] G

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 600-601 and 1699-1714 and 877-878 of 1975.

Appeals by Special Leave from the Judgment and Order dated 30th January 1975 of the Gujarat High Court in Spl. Civil Applns. Nos. 15, 1194, 88, 89, 90, 107, 113, 121, 122, 124, 125, 166, 182, 202, 112, 123, 177, 1757, 149, 150 of 1974 respectively. H

A *F. S. Nariman, K. S. Nanavati, P. C. Bhartari* and *J. B. Dadachanji,* for Appellant (In CA 600/75).

K. S. Nanavati, P. C. Bhartari and *J. B. Dadachanji,* for the Appellants (In CA 601/75 and CA 1700-1714/75).

V. M. Tarkunde, K. S. Nanavati, P. C. Bharatari and *J. B. Dadachanji* for the Appellant (in CA 1699/75).

V. N. Ganpule, for Appellants (In CA 877-878/75).

M. C. Bhandare and *M. N. Shroff,* for the Respondents (In CA 600-601 of 1975) and CA Nos. 1699-1714/75 and 877 to 878/75.

The Judgment of the Court was delivered by

C KHANNA, J.— This judgment would dispose of civil appeals Nos. 600, 601, 877, 878 and 1699 to 1714 of 1975 which have been filed by special leave against the judgment of Gujarat High Court dismissing petitions under article 226 of the Constitution of India filed by the appellants. The appellants in these petitions assailed the validity of sections 53A and 53B of the Bombay Industrial Relations Act, 1946 (Bombay Act No. 1 of 1947) (hereinafter referred D to as the principal Act). These sections along with some other provisions were inserted in the principal Act by the Bombay Industrial Relations and Industrial Disputes (Gujarat Amendment) Act, 1972 (Gujarat Act No. 21 of 1972). The appellants also challenged the validity of the rules which were added to the Bombay Industrial Relations (Gujarat) Rules, 1961 as per notification dated June 4, 1973. In addition to that, the appellants challenged the validity of notifica- E tion dated December 17, 1973.

The principal Act was enacted to regulate the relations of employers and employees, to make provisions for settlement of industrial disputes and certain other purposes. In 1956 the industrial policy resolution of the Government of India stated *inter alia* that in a socialist democracy labour is a partner in the common task of development and must participate in it with enthusiasm. Emphasis was F laid upon joint consultation of workers and technicians and for associating progressively labour in the management of the industry. Stress was again laid on joint management councils at the tripartite conference held in July 1957. Representatives of labour, management and Government were present at that conference. There was, however, no statutory provision for joint management councils and G whatever was done, was on a voluntary basis. Sections 53A and 53B were inserted in the principal Act by Gujarat Act 21 of 1972.

The two sections read as under :

"53.A(1) If in respect of any industry, the State Government is of opinion that it is desirable in public interest to take action under this section, it may, in the case of all under- H takings or any class of undertakings in such industry, in which five hundred or more employees are employed or have been employed on any day in the preceding twelve months, by general or special order,, require the employer to constitute

in the prescribed manner and within the prescribed time limit a Joint Management Council, consisting of such number of members as may be prescribed, comprised of representatives of employers and employees engaged in the undertaking, so however that the number of representatives of employees on the Council shall not be less than the number of representatives of the employers. Notwithstanding anything contained in this Act, the representatives of the employees on the Council shall be elected in the prescribed manner by the employees engaged in the undertaking from amongst themselves :

Provided that a list of industries in respect of which no order is issued under this sub-section shall be laid by the State Government before the State Legislature within thirty days from the commencement of its first Session of each year.

(2) One of the members of the Council shall be appointed as Chairman in accordance with rules made in this behalf.

53B (1) The Council shall be charged with the general duty to promote and assist in the management of the undertaking in a more efficient, orderly and economical manner, and for that purpose and without prejudice to the generality of the foregoing provision, it shall be the duty of the council—

(a) to promote cordial relations between the employer and employees;

(b) to build up understanding and trust between them;

(c) to promote measures which lead to substantial increase in productivity;

(d) to secure better administration of welfare measures and adequate safety measures;

(e) to train the employees in understanding the responsibilities of management of the undertaking and in sharing such responsibilities to the extent considered feasible; and

(f) to do such other things as may be prescribed.

(2) The Council shall be consulted by the employer on all matters relating to the management of the undertaking specified in sub-section (1) and it shall be the duty of the Council to advise the employer on any matter so referred to it.

(3) The Council shall be entrusted by the employer with such administrative functions, appearing to be connected with, or relevant to, the discharge by the Council of its duties under this section, as may be prescribed.

A (4) It shall be the duty of the employer to furnish to the Council necessary information relating to such matters as may be prescribed for the purpose of enabling it to discharge its duties under this Act.

(5) The Council shall follow such procedure in the discharge of its duties as may be prescribed."

B Consequent upon the insertion of sections 53A and 53B in the principal Act, the Bombay Industrial Relations (Gujarat) Rules were also amended and certain new rules were added. Rule 47A relates to the manner of election of two persons from amongst employees in disputes. Rule 61A reads as under :

"61-A. Constitution of Joint Management Council.—Any C employer who is required by an order made under sub-section (1) of section 53-A to constitute a Joint Management Council shall constitute within a period of ninety days from the date of the said order a Joint Management Council consisting of ten members, out of which the number of representatives of the employer to be nominated by the employer and the number of representatives of employees engaged in the under- D taking to be elected from amongst themselves shall be such as may be determined by the employer so however that the number of representatives of the employees on the Council shall not be less than the number of representatives of the employer."

E Rule 61B to rule 61T relate to election of employees representatives on the Management Council. Rule 61U prescribes for appointment of Chairman of the Council. Rule 61V deals with the constitution of the Council from time to time and the manner of filling in the vacancies. Rule 61W relates to the number of meetings of the Council and provides that the Chairman shall also have a second or casting vote in the event of equality of votes. Rule 61X makes other pro- F visions for the meeting, while Rule 61Y deals with annual returns. Rules 61Z, 61ZA and 61ZB to which reference has been made during the course of arguments read as under :

"61-Z. *Duties of the Council.*—It shall be the endeavour of the Council :—

(i) to improve the working conditions of the employees; G

(ii) to encourage suggestions from the employees;

(iii) to assist in the administration of laws and agreements;

(iv) to serve generally as an authentic channel of communication between the management and the employees;

H (v) to create in the employees a sense of participation;

(vi) to render advice, in the general administration of Standing Orders and their amendment when needed;

(vii) to render advice on matters pertaining to retrenchment or rationalisation, closure, reduction in or cessation of operations

61-Z-A. *Administrative functions with which the Council shall be entrusted by Employer.*—The Council shall be entrusted by the employer with administrative functions in respect of :

(i) operation of vocational training and apprenticeship schemes;

(ii) preparation of schedules of working hours and breaks and of holidays; and

(iii) payment of rewards for valuable suggestions received from the employees.

61-Z-B. *Matters in respect of which the Council shall be entitled to receive information.*—The Council shall be furnished by the employer with information in respect of :

(i) general economic situation of the concern;

(ii) the state of the market, production and sales programmes;

(iii) organisation and general running of the undertaking;

(iv) circumstances affecting the economic position of the undertaking;

(v) methods of manufacture and work;

(vi) the annual balance sheet and profit and loss of statement and connected documents and explanation; and

(vii) long term plan for expansion, re-employment etc."

Imugned notification dated December 17, 1973 reads as under :

"No. KH-SH-1988/BIR-1073-JH- Whereas in respect of the industry specified in the Schedule annexed hereto the State Government is of opinion that it is desirable in public interest to take action under section 53A of the Bombay Industrial Relations Act, 1964 (Bom. of 1947), in the case of all undertakings in the said industry in which five hundred or more employees are employed or have been employed any day in the preceding twelve months.

Now, therefore, in exercise of the powers conferred by sub-section (1) of the said section 53-A, the Government of Gujarat hereby requires the employer of each such undertaking in the said industry to constitute a Joint Management Council in the manner and within the time limit specified in rule 61-A-G of the Bombay Industrial Relations (Gujarat) Rules, 1961.

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Cotton Textile Industry as specified in the Government of Bombay Political and Services Department, Notification No. 2847/34-A, dated 30th May 1939 and the Government of Gujarat, Education and Labour Department, Notification No. BIR-1361, dated the 17th July 1961."

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Although a number of contentions were advanced before the High Court to assail the validity of sections 53A and 53B as well as the rules mentioned above, before us learned counsel for the appellants have restricted their challenge to the impugned provisions only on the ground of lack of legislative competence of the State legislature.

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So far as notification dated December 17, 1973 is concerned, we may state that the said notification is no longer in force and, instead of that notification, a fresh notification dated March 1, 1976 has been issued. In the circumstances, no opinion need be expressed on the validity of notification dated December 17, 1973. We also express no opinion on the reasons given by the High Court in upholding the aforesaid notification. It is also, in our opinion not necessary to express any opinion about the validity of notification dated March 1, 1976 as this notification was issued subsequent to the decision of the High Court and was not the subject matter of writ petitions before the High Court.

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We may now advert to the question of the legislative competence of Gujarat legislature to enact sections 53A and 53B reproduced above. In upholding the contention of the respondent-State that the impugned provisions were within the sphere of the legislative competence of the State legislature under entries 22 and 24 of List III in Seventh Schedule to the Constitution, the High Court has held that the subject matter of the above legislation was labour welfare even though it might have some incidental effect on corporate undertakings or controlled industries. Dealing with rule 61ZB the High Court held that the information to be furnished should be of such a nature that its disclosure would not be harmful to the undertaking. The information, it was held, should not be confidential or relating to trade secrets.

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Sections 53A and 53B, as already mentioned, were inserted in the principal Act by Gujarat Act No. 21 of 1972. This Act was published on October 19, 1972 after it had received the assent of the President. According to the respondents, the above provisions have been enacted under entries 22 and 24 of List III of the Seventh Schedule to the Constitution. Entry 22 relates to trade unions; industrial and labour disputes, while entry 24 deals with "welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits". As against that, the contentions advanced on behalf of the appellants is that the impugned legislation falls under entries 43, 44 and 52 of List I in the Seventh Schedule which relate respectively to "incorporation, regulation and winding up of trading corporations including banking, insurance and financial corporations but not including

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co-operative societies;" "incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities;" and "industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". A

We have given the matter our earnest consideration, and we find no sufficient ground to interfere with the finding of the High Court that the impugned statutory provisions fall under entries 22 and 24 of List III in Seventh Schedule of the Constitution and that the State legislature was competent to enact the same. The impugned provisions, in our opinion, are intended in pith and substance to forestall and prevent industrial and labour disputes. They constitute also in essence a measure for the welfare of the labour. B C

From a conceptual viewpoint, workers' management of undertakings or self-management represents the most far-reaching degree of association of workers in decisions concerning them. Probably the best known example of this type of workers' participation is the *Yugoslav* system of self-management. Under that system, the workforce of the undertaking exercises the principal functions of management through the self-management organs, the organisation and powers of which have been established since the sixties by the statute or internal regulations of the undertaking, namely, the workers' assembly and the workers' council. For varying lengths of time, in a large number of countries, and by virtue of a legal obligation, workers' representatives have been included in management organs in the public sector as a whole or in certain nationalised undertakings. In the private sector, the system which has pushed workers' representation to the furtherest degree is that of co-determination applied in the Federal Republic of Germany since the beginning of the fifties. By an Act of 1951, equal representation of workers was established on the supervisory boards of large iron and steel and mining undertakings. These boards generally include five workers' representatives, five representatives of the shareholders, and an eleventh member nominated by mutual agreement. In addition, one of the members of the directorate or management board, namely, the "labour director" who is generally responsible for personnel questions and social affairs, may only be nominated or dismissed in agreement with the majority of the workers' members of that board. Under an Act of 1952, the workers' representation on the supervisory boards of the companies which do not belong to the above industries is one-third of the total membership. Pressure is, however, being brought by the trade unions for equal representation of workers on the supervisory boards in sectors other than iron and steel and mining (*see* International Labour Organization Background Paper on Symposium on Workers' Participation in Decisions within Undertaking in Oslo in August 1974). The object of workers' participation in joint management councils is to enlist co-operation of workers with a view to bring about improvement in the performance of industrial organisations. It is assumed that the above scheme would give a robust feeling of participation to the workers in the management and thus result in improved functioning of the industrial undertaking. Another object appears to D E F G H

A be to democratise the industrial milieu and ensure egalitarianism in the process.

It has not been disputed on behalf of the appellants that the various objectives mentioned in clauses (a) to (f) of sub-section (1) of section 53B pertain to welfare of labour. What is, however, contended is that joint management councils may claim to exercise such B functions under the opening words of sub-section (1) of section 53B as can be discharged only by the Board of Directors. This contention, in our opinion, is not well-founded. The impugned statutory provisions, in our opinion, should be so construed and implemented as would sustain their constitutional validity. The functions which can be performed by the joint management councils have to be of such a C character as would pertain to welfare of labour or prevent industrial disputes. Such functions would be analogous to those specified in clauses (a) to (f). If the impugned legislation in pith and substance relates to subjects which are within the competence of the State legislature, as it in fact does, the fact that there is an incidental encroachment on matters which are the subject matter of entries in List I would not affect the legislative competence of the State legislature D to pass the impugned legislation. The impugned rules, in our opinion, likewise relate to subjects which are within the competence of the State legislature. The rules in the very nature of things can operate only in that field in which the parent Act can operate.

For about a hundred years the term industrial democracy has been often mentioned in the writings of socialists, trade unionists and social E reformers. Of late the industrialists have taken it over. The reason for that is that industrialists have become conscious that any approach which has the effect of treating workers as if they were commodities is unsound and wasteful economically. The industrialists, it has been said, tried paternalism or benevolent autocracy, and they have found that this did not work, just as Frederick the Great and his followers found that benevolent political despotism did not work. Democracy in F political terms means the consent of the governed in the governance of the country. In industry it means that wage earners shall have an effective voice. It has been observed by Edward Filence.

> "labour. . . ., having experienced the advantages of democracy in government, now seeks democracy in industry. Is it any stranger that a man should have a voice as to the G conditions under which he works than that he should participate in the management of the city and the state and the nation? If a voter on governmental problems, why not a voter on industrial problems?" (*See* page 339, Personnel and Labour Relations by Nash/Miner).

The above approach postulates trade unions as a potential positive H force. For management and union to share the pluralist ideology requires more than agreement about joint decision-making as such. It requires also that neither side enforces claims or imposes policies which are found excessively burdensome by its counterpart. As observed

by Alan Fox on page 303 of Beyond Contract Work and Trust Relations : A

> "It follows from this analysis that management will be readier to accept pluralistic forms of decision-making the greater its confidence that it will always be able, in the last resort, to bend employee claims towards acceptable compromises. It may even be convinced of its ability to charm them away altogether or at least much reduce them by 'rational' argument and persuasion designed to bring out the 'true' common interests. In this sense a formal acceptance of pluralistic patterns may mask unitary convictions on managements past about the nature of the enterprise. It may regard joint decision-making and a fully institutionalised handling of claims and grievances not as mechanisms for compromising genuine conflicts of interest but as devices which facilitate the 'working-through' of mistaken conceptions, psychological blockages, and organizational confusions by a process of 'rational' clarification."

B C

It would appear from the above that the concept of joint management has a much wider connotation. That wider aspect of joint management would plainly be impermissible under the impugned legislation as it has been enacted by the State legislature. Such legislation can operate only within a limited field because that is the only way in which its constitutional validity can be sustained against the challenge on the ground of want of legislative competence by the State legislature. D

With the above observations, we dismiss the appeals, but in the circumstances leave the parties to bear their own costs throughout. E

V.P.S. *Appeal dismissed.*