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SUPREME COURT AS GUARDIAN OF INDUSTRIAL WORKERS: AN OVERVIEW

AUTHORED BY - DR. HANS RAJ

Assistant Professor, Department of Law, Mahatma Gandhi Kashi Vidyapith, Varanasi

The New approach of the judiciary in the context of Industrial Jurisprudence is very positive, pro worker and encouraging. P. Ishwar Bhat concludes that¹ The "social transformation performance" of judiciary in India is of high order, and is a key feature of public law in recent decades, that earned for its approach a depiction of judicial activism because of its attempt at fundamental recodification of power relations. The magnitude and reach of judicial activism for social transformation are exponential. The paradigm shift in Kesavananda towards social justice oriented interpretation (especially by elevating the importance of Directive Principles) was the forerunner of impressive body of decisional law that expanded content of human and welfare rights and institutional preparation for their enforcement. Siri Gloppen² has provided a theoretic framework for evaluation of transformation performance of courts in new democracies. It consists of four stage questions: whether marginalised community could voice their claims? Whether courts respond to the marginalised groups' concern? Do the courts have capability to give legal effect to their social and welfare rights? Is the compliance scene confidence building in its effect? Siri considers that judiciary possibly contributes by creating an arena for redressing the suffering, by protecting against erosion of pro-poor institutional arrangement regarding basic necessities of life, by bolstering up pro-poor state policies, by contributing towards effective struggle for remedies and by serving as a platform for mobilisation of pro-poor public opinion.

Firstly, the voice of the marginalised could echo in the portals of the courts because of liberalisation of locus standi rule and emergence of Public Interest Litigation as a movement and a phenomenon, Expansion of access to justice through PIL and extension of legal aid and services have attempted to satisfy the hopes of the aggrieved class.

Secondly, the courts have responded with magnanimity and realisation of their constitutional duty by a value-based interpretation of the Constitution, for rendering remedies.

1. Law and Social Transformation in India, EBC Lucknow, 2020, Reprint, pp. 210-213.

Thirdly, competence of the judiciary for transformation performance is enhanced by building a sound tradition and principle of judicial independence, by application of contempt power or power of doing complete justice and by popular endorsement of court decisions. The participation of civil society and persuasion by media have also added to courts' strength.

Fourthly, the compliance scene is largely promising as the follow-up action by the legislature and executive have supported the judicial outcome.

Emergence of the Supreme Court as the living voice of the Constitution with a clear thrust for social transformation is greatly admired in academic writing. M.P. Jain considers that the people-oriented approach of the Court by integrating the Fundamental Rights with Directive Principles has produced with a high order of creativity a strong impulse towards building a welfare state." The Court has charted the socio-economic destination for the poor with an unparalleled dynamism, humanism and empathy. The Court's inevitable role as an umpire in pluralistic society has served to resolve competing political claims, according to S.P. Sathe,¹⁶⁴ In mediating between freedom of religion and social reform, in upholding right to equality against region-based or language-based discriminations and in traversing the path of economic justice as opposed to respecting the exploitative dimensions of property right, the judiciary has effectuated the constitutional aspiration for desirable social transformation. Using multiculturalism as a tool, method or parameter for social transformation has also augured quite well, and yielded welcome result.

In *Bharat Bank Ltd. v. Their Employees*² the court held- [T]he functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a court. The rules framed by the Tribunal require evidence to be taken and witnesses to be examined, cross-examined and re-examined. The Act constituting the Tribunal imposes penalties for incorrect statements made before the Tribunal. While the powers of the Industrial Tribunal in some respects are different from those of an ordinary civil court and it has jurisdiction and powers to give reliefs which a civil court administering the law of the land (for instance, ordering the reinstatement of a workman) does not possess in the discharge of its duties it is essentially working as a judicial body. The fact that its determination has to be followed by an order of the Government which makes the award binding, or that in cases where

² Supreme Court (1950) 2 LLJ 921.

Government is a party the legislature is permitted to revise the decision, or that the Government is empowered to fix the period of the operation of the award do not, to my mind, alter the nature and character of the functions of the Tribunal. Having considered all the provisions of the Act it seems to me clear that the Tribunal is discharging functions very near those of a court, although it is not a court in the technical sense of the word.

.... In my opinion the wording of Article 136 is wide enough to give jurisdiction to the court to entertain an application for leave to appeal, although it is obvious that having regard to the nature of the functions of the Tribunal this court will be very reluctant to entertain such an application.

Fazal Ali J. [majority opinion] Can we then say that an industrial tribunal does not fall within the scope of Article 136? If we go by a mere label the answer must be in the affirmative. But we have to look further and see what are the main functions of the tribunal and how it proceeds to discharge those functions. This is necessary because I take it to be implied that before an appeal can lie to this court from a tribunal it must perform some kind of judicial function and partake to some extent of the character of a court.

In the preceding chapter, it has been noted as to how the institution of labour tribunals came into existence within the framework of the statute to play its dynamic role within the institutionalized set up of law. Such a role of labour tribunals was hitherto unknown to the ordinary court system. In other words, the labour tribunals are created by appropriate governments acting under statutory powers. Despite the absence of any provision relating to appeals from labour tribunal's decisions in the Industrial Disputes Act, the ordinary courts, of late, have started interfering with the determinations and awards of labour tribunals within the so called frame-work of the Constitutional set up in India. Therefore, primarily an attempt is made in this chapter to trace the concept of judicial control, its meaning and Constitutional frame-work. Subsequently, a brief narration would be made of growth of Administrative Law, which is also of recent origin and has formed the nucleus for the ordinary courts in controlling the activities of administrative bodies under various circumstances. There would also be an attempt to show how labour tribunal, on account of its exclusiveness, falls out side the purview of general Administrative Law concept. Finally, the main provisions of the judicial control of labour tribunals, within the framework of the Constitution of India, would be analysed in the light of the body of norms evolved by the courts in the exercise of such control.

A Critique of Bharat Bank³

In establishing the relationship of the Labour Tribunals, constituted under the Industrial Disputes Act, with the ordinary courts, the thesis of Justice Mahajan was that the Labour Tribunal discharged those functions which were the functions of ordinary courts. The Labour Tribunals were not purely administrative bodies. Lastly the Labour Tribunals were outside the ordinary judicial system.

The said thesis was propounded in the *Bharat Bank Ltd. v. The Employees of the Bharat Bank*.⁴ The relevant facts were that the Bharat Bank Limited was a company registered under the Indian Companies Act. Its employees made certain demands against the Bharat Bank and as a result of unfavourable response, they commenced strike on March 9, 1949. After serving notices, the Bank proceeded to discharge a number of employees. The Central Government intervened and constituted a tribunal of three persons for adjudication of the industrial dispute under section 7 of the Industrial Disputes Act, 1947. The dispute was heard and the tribunal made its award on January 19, 1950. This award was published in the Government of India Gazette of February 4, 1950 and was signed by two members of the Tribunal out of three. The Bank sought for and obtained a special leave to appeal under Article 136 of the Constitution of India 1950, which, according to the appellant, gave the jurisdiction to the Supreme Court to hear the dispute between the parties as determined by the tribunal.

A preliminary objection was raised on behalf of the Central Government, which appeared as an intervener, as also on behalf of the respondent employees, that the Supreme Court had no jurisdiction to grant special leave to appeal against the determinations of an Industrial Tribunal in-as-much as it did not exercise the judicial powers of the State and that its determinations were not in the nature of a judgement, decree or order of a court so as to be appealable. They, however, conceded that if any tribunal, whether administrative, domestic or quasi-judicial, acted in excess of its jurisdiction, it could be controlled by the High Court under Art. 226 of the Constitution of India. But when the Tribunal trespassed the statutory jurisdiction, the remedy would lie elsewhere and not by way of petition of special leave under Art. 136. It was also conceded that the tribunal constituted under the Industrial Disputes Act exercised quasi-judicial powers.

3. *The Bharat Bank Ltd. v. The Employees*, AIR 1950 S.C. 188.

4. AIR 1950 SC 188.

Justice Mahajan, delivering the leading opinion for the Court, considered the scope of Art. 136 with particular reference to the meaning of the expression "tribunal" and "court" and formulated the test that:

Tribunals which do not derive authority from the sovereign power cannot fall within the ambit of Art. 136. The condition precedent for bringing a tribunal within the ambit of Art. 136 is that it should be constituted by the State. Again a tribunal would be outside the ambit of Art. 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties. Tribunals, however, which are found invested with certain functions of a court of justice and have some of its trappings also would fall within the ambit of Art. 136 and would be subject to the appellate control of this Court whenever it is found necessary to exercise that control in the interests of justice.

He proceeded to consider whether a tribunal constituted under the Industrial Disputes Act, 1947 exercised all or any of the functions of a court of justice and whether it discharged them according to law or whether it could act as it liked in its deliberations and was guided by its own notions of right and wrong. After making a reference to the phrase "industrial dispute" as defined in section 2(k) of the said Act, he concluded:

Such a dispute concerns the rights of employers and employees. Its decision affects the terms of a contract of service or the conditions of employment.... Adjudication of such a dispute affects valuable rights. The dispute and its results can always be translated in terms of money. The point for decision in the dispute usually is how much money has to pass out of the pocket of the employer to the pocket of employee in one form or another and as to what extent the right of freedom of contract stands modified to bring about industrial peace."

In order to appreciate the said observations, mention here may be made of the general rule followed by the ordinary courts in purely contractual matters. It is a fact that the ordinary courts do not create rights under the contract of employment. Therefore, any right created under an award of the Tribunal, which, of course, has to be processed through adjudication, would tantamount to affecting the rights of freedom of contract, which is a policy matter, and could not be translated into a right and duty which are traditionally known to be the subject-matter of judicial process before the ordinary courts. In the light of this inviolable rule prohibiting the judiciary from curtailing rights relating to freedom of contract the Legislature as a matter of

policy created the institution of Labour Tribunals to deal with only those cases which effect the freedom of contract. Keeping this in view, the conclusion drawn by Justice Mahajan raises a fundamental proposition whether the Supreme Court, as the highest court in the realm under the hierarchy of ordinary courts, is vested with power to lay down policy and procedural details for the labour tribunals, regarding the quantum of money it can order to be transferred from the pocket of an employer to the pocket of an employee? Justice Mahajan took a very wide view of its powers under Art. 136. How far the rule so laid down is constitutionally permitted would be analysed a little later, but it is suffice to say here that the Supreme Court in its subsequent decisions have rigidly followed the opinion given by Justice Mahajan in preference to the opinions of other judges.

However, referring to the nature and functions of the Industrial Tribunal, Chief Justice Kania was of the view that the Supreme Court under Art. 136, perhaps as a policy matter, would be very reluctant to entertain such an application. Justice Fazl Ali was also convinced about the true nature of the subject matter of the adjudication before the Industrial Tribunal on one hand and the power conferred upon the Supreme Court on the other under Article 136, when he observed:

(T)his court in *Pritam Singh v. The State*,⁵ (pointed out) that the power under Art. 136 of the Constitution being a special power is to be exercised only in special cases. The rule so laid down is bound to restrict the scope of the appeal in practice in almost all the cases which fall under Art. 136. But in some a limitation will be imposed on the scope of the appeal by the very nature of the case and of the tribunal from which an appeal is sought to be brought and a case under the Industrial Disputes Act seems to be an example of such a case."⁶

Another important proposition, laid down by Justice Mahajan, was with regard to following the law as contained in the statute, viz., the Industrial Disputes Act. In other words, whether the Industrial Tribunal could act according to law or it could act as it Affirmative answer to this proposition was found by Justice Mahajan in section 7 of the Act which cast a duty on the tribunals to adjudicate "in accordance with the provisions of the Act." He admitted that "that law may be different from the law that an ordinary court of justice administer." Was it a rule of law which was administered by the Industrial Tribunal? Perhaps Justice Mahajan

5. AIR 1950 SC 169

6. AIR SC 188 at 191-192

confused with the concept of well-established procedural law not unknown to the Common Law and as laid down in the Industrial Disputes Act, with the rules of law laid down by the legislature to administer justice by the courts in accordance with that law. Though there was no consistency in the reasoning as propounded by the learned judge for he realized little later the error he committed in coming to the said conclusion that the tribunals were to follow law. Fortunately he referred to the Western India Automobile Association case⁷ in order to ascertain the true nature and scope of adjudication by the Industrial Tribunal. When he found difficulty in obtaining any assistance to support his proposition and rather that would go contrary to the cherished belief, he changed the course of his argument from the concept of adherence to law to the rules of game and the power sanctioned by law, i.e., of a jurisdictional issue. No doubt, the statute provided for the constitution of labour tribunals and empowered them to adjudicate industrial disputes. By virtue of this special statutory power, the tribunals were competent to make the contract for the parties, which power as noted earlier was and is unknown to the ordinary courts. This has found manifestation in the following observations of Justice Mahajan:

The tribunal having been entrusted with the duty of adjudicating a dispute of a peculiar character, it is for this reason that it is armed with extraordinary powers. These powers, however, are derived from the statute. These are the rules of the game and it has to decide according to these rules. The powers conferred have the sanction of law behind it and are not exercisable by reason of any discretion vested in the members of the tribunal.⁸

However, the conclusion of the thesis of Justice Mahajan (in his own words) was :

In my opinion, the observations made in that case (ie. *Moses v. Parker*)⁹ have no apposite application to the provisions of the statute with which we are concerned. I do not see any difficulty in this case in testing the propriety of the determination of the tribunal.¹⁰

It is clear, therefore, that- The Supreme Court of India has always been, through its Judicial wisdom upholding and strengthening the basic structure of the Constitution setting right the aberrations and excesses of the Executive as well as declaring ill-conceived statutes of the Legislature as unconstitutional. The landmark verdict in April 1973 of the Special Bench

7. *Western India Automobile Association v. Industrial Tribunal, Bombay*, AIR 1949 FC 111.

8. AIR 1950 SC 188 at 197.

9. *Moses v. Parker* (1896) A.C. 245.

10. AIR 1950 SC 188 at 199-200.

of the Supreme Court of India in the Keshavananda Bharathi case that Parliament has no power to alter the basic structure or framework of the Constitution has been rightly hailed by the legal fraternity as “inspired by an exceptional display of art, courage and craft and one of the greatest contributions of Indian Judiciary to theory of institutionlism. In another landmark judgement in Maneka Gandhi’s case, the Supreme Court by a most creative and inspiring interpretation of the Fundamental Right to personal liberty and life expanded its content to include right to privacy, right to free legal aid and speedy trial. This has helped to curb and control unbridled powers of discretion by the Executive.

