BASANT KUMAR SARKAR AND OTHERS

v.

EAGLE ROLLING MILLS LTD. AND OTHERS

1964

February 26

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI JJ.)

Employees State Insurance Act (XXXIV of 1948), s. 1(3) Constitutional validity—Central Government empowered to apply provisions of Act by notification—If excessive delegation.

The appellants as workmen of respondent No. 1 in all the three respondent concerns were getting free medical benefits of a very high order in a well furnished hospital maintained by respondent No. 1. Respondent No. 3, the Union of India issued a notification under s. 1(3) of the Employees State Insurance Act appointing 28th August, 1960 as the date on which some provisions of the Act should come into force in certain areas of the State of Bihar and the area in which the appellants were working came within the scope of the Act. In pursuance of the said notification, the Chief Executive Officer of Respondent No. 1 issued notices to the appellants that the medical benefits upto the extent admissible under the Act will cease to be provided to insurable persons from the appointed day and the medical benefits would thereafter be governed by the relevant provisions of the Act. The appellants in a writ petition to the High Court challenged the validity of s. 1(3) of the Act and legality of the notifications issued under it, *inter alia*, on the ground that it contravened Art. 14 of the Constitution and suffers from the vice of excessive delegation. The High Court rejected the plea and dismissed the writ petitions. On appeal by special leave the appellants contended that s. 1(3) of the Act suffers from excessive delegation and is, therefore, invalid.

Held: (i) S. 1(3) of the Act is not an illustration of delegated legislation at all, it can be described as conditional legislation. It purports to authorise the Central Government to establish a corporation for the administration of the scheme of Employees' State Insurance by a notification. As to when the notification should be issued and in respect of what factories it should be issued, has been left to the discretion of the Central Government and that is precisely what is usually done by conditional legislation.

Queen v. *Burah*, 5. I.A. 178, relied on.

(ii) Assuming there is an element of delegation, the plea is equally unsustainable, because there is enough guidance given by the relevant provisions of the Act and the very scheme of the Act itself. In the very nature of things, it would have been impossible for the legislature to decide in what areas and in respect of which factories the Employees' State Insurance Corporation should be established. It is obvious that a scheme of this kind, though very beneficent, could not be introduced

1964

Basant Kumar
v.
Eagle Rolling Mills

in the whole of the country all at once. Such beneficial measures which need careful experimentation have sometimes to be adopted by stages and in different phases, and so, inevitably, the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Government. That cannot amount to excessive delegation.

Edward Mills Co. Ltd. Beawar v. *The State of Ajmer*, [1955] 1 S.C.R. 735, *M/s Bhikusa Yamasa Kshatriya* v. *Sangamner Akola Taluka Bidi Kamgar Union*, [1963] Supp. 1 S.C.R. 524 and *Bhikusa Yamasa Kahtriva* v. *Union of India*, [1964] 1 S.C.R. 860 followed:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 721—723 of 1962.

Appeals by special leave from the judgment and order dated March 1, 1961, of the Patna High Court in Misc. Judicial Cases Nos. 1167, 1122 and 1235 of 1960.

N. C. Chatterjee, Raj Behari Singh and *Udai Pratap Singh*, for the appellants (in all the appeals).

B. P. Singh, N. P. Singh and *I. N. Shroff*, for the respondent No. 1 (in all the appeals).

C. K. Daphtary, Attorney-General, N. S. Bindra, V. D. Mahajan and *B. R. G. K. Achar*, for respondents Nos. 2 and 3.

February 26, 1964. The Judgment of the Court was delivered by

Gajendragadkar C. J.

GAJENDRAGADKAR, C.J.—The short question which arises in these appeals by special leave is whether section 1(3) of the Employees' State Insurance Act, 1948 (No. 34 of 1948) (hereinafter called the Act) is invalid. By their writ petitions filed before the Patna High Court, the appellants who are the workmen of the three respondent concerns, the Eagle Rolling Mills Ltd., the Kumardhubi Engineering Works Ltd., and Kumardhubi Fire Clay and Silica Works Ltd., respectively, alleged that the impugned section has contravened Art. 14 of the Constitution, and suffers from the vice of excessive delegation, and as such is invalid. These employers were impleaded as respondent No. 1 respectively in the three writ petitions. The High Court has rejected the plea and the writ petitions filed by

the appellants have accordingly been dismissed. It is against this decision of the High Court that the appellants have come to this Court and have impleaded the three employers respectively. The three appeals proceed on similar facts and raise an identical question of law and have, therefore, been heard together.

It appears that respondents No. 1 in all the three appeals are under the management of M/s. Bird & Co. Ltd., through a General Manager, and the appellants are their workmen. As such workmen, the appellants were getting satisfactory medical benefits of a very high order free of any charge. Respondent No. 1 in each appeal maintained a well-furnished hospital with provision for 60 permanent beds for the workmen, their families and their dependents. The main grievance made by the appellants is that as a result of s. 1(3) of the Act, the appellants have now to be content with medical benefits of a less satisfactory nature. That is why they challenged the validity of the impugned section and contest the propriety and legality of the notification issued under it. To these writ petitions as well as to the appeals, the Employees' State Insurance Corporation and the Union of India have been impleaded as respondents 2 and 3 respectively.

On the 22nd August, 1960, respondent No. 3 issued a notification under section 1, sub-section (3) appointing the 28th August, 1960 as the date on which some provisions of the Act should come into force in certain areas of the State of Bihar. By this notification, the area in which the appellants are working came within the scope of the Act. In pursuance of the said notification, the Chief Executive Officer of respondent No. 1 informed the appellants on the 25th August, 1960 that the medical benefits including indoor and outdoor treatment upto the extent admissible under the Act will cease to be provided to insurable persons from the appointed day. A notice in that behalf was duly issued and published by the said Officer. Similar notices were issued indicating to the appellants that medical benefits would thereafter be governed by the relevant provisions of the Act and not by the arrangements which had been made

1964

Basant Kumar
v.
Eagle Rolling Mills

Gajendragadkar C. J.

earlier by respondent No. 1 in that behalf. That, in brief, is the genesis of the present writ petitions and the nature of the dispute between the parties.

The first point which Mr. Chatterjee has raised before us is that s. 1(3) of the Act suffers from excessive delegation and is, therefore, invalid. In order to consider the validity of this argument, it is necessary to read section 1, sub-section (3):—

> "The Act shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof".

The argument is that the power given to the Central Government to apply the provisions of the Act by notification, confers on the Central Government absolute discretion, the exercise of which is not guided by any legislative provision and is, therefore, invalid. The Act does not prescribe any considerations in the light of which the Central Government can proceed to act under s. 1(3) and such uncanalised power conferred on the Central Government must be treated as invalid. We are not impressed by this argument. Section 1(3) is really not an illustration of delegated legislation at all; it is what can be properly described as conditional legislation. The Act has prescribed a self-contained code in regard to the insurance of the employees covered by it; several remedial measures which the Legislature thought it necessary to enforce in regard to such workmen have been specifically dealt with and appropriate provisions have been made to carry out the policy of the Act as laid down in its relevant sections. Section 3(1) of the Act purports to authorise the Central Government to establish a Corporation for the administration of the scheme of Employees' State Insurance by a notification. In other words, when the notification should be issued and in respect of what factories it should be issued, has been left to the discretion of the Central Government and that is precisely what is usually done by conditional legislation.

What Lord Selborne said about the powers conferred on the Lieutenant-Governor by virtue of the relevant provisions of Act 22 of 1869 in *Queen* v. *Burah*(1), can be said with equal justification about the powers conferred on the Central Government by s. 1(3). Said Lord Selborne in that case :

> "Their Lordships think that it is a fallacy to speak of the powers thus conferred upon the Lieutenant-Governor (large as they undoubtedly are) as if, when they were exercised, the efficacy of the acts done under them would be due to any other legislative authority than that of the Governor-General in Council. Their whole operation is directly and immediately under and by virtue of this Act (XXII of 1869) itself. The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute".

That is the first answer to the plea raised by Mr. Chatterjee.

Assuming that there is an element of delegation, the plea is equally unsustainable, because there is enough guidance given by the relevant provisions of the Act and the very scheme of the Act itself. The preamble to the Act shows that it was passed because the legislature thought it expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. So, the policy of the Act is unambiguous and clear. The material definitions of "benefit period", "employee", "factory", "insured person", "sickness", "wages" and other terms contained in s. 2 give a clear idea as to the nature of the factories to which the Act is intended to be applied, the class of persons for whose benefit it has been passed and the nature of the benefit which is intended to be conferred on them. Chapter II of the Act deals with the

(1) 5 I.A. 178 at p. 195.

1964

Basant Kumar v. Eagle Rolling Mills

Gajendragadkar C. J.

Corporation, Standing Committee and Medical Benefit Council and their constitution; Chapter III deals with the problem of finance and audit; Chapter IV makes provisions for contribution both by the employees and the employer, and Chapter V prescribes the benefits which have to be conferred on the workmen; it also gives general provisions in respect of those benefits. Chapter V-A deals with transitory provisions; Chapter VI deals with the adjudication of disputes and claims; and Chapter VII prescribes penalties. Chapter VIII which is the last Chapter, deals with miscellaneous matters. In the very nature of things, it would have been impossible for the legislature to decide in what areas and in respect of which factories the Employees' State Insurance Corporation should be established. It is obvious that a scheme of this kind, though very beneficient, could not be introduced in the whole of the country all at once. Such beneficial measures which need careful experimentation have sometimes to be adopted by stages and in different phases, and so, inevitably, the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Government. "Appropriate Government" under s. 2(1) means in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government. Thus, it is clear that when extending the Act to different establishments, the relevant Government is given the power to constitute a Corporation for the administration of the scheme of Employees' State Insurance. The course adopted by modern legislatures in dealing with welfare schemes has uniformly conformed to the same pattern. The legislature evolves a scheme of socio-economic welfare, makes elaborate provisions in respect of it and leaves it to the Government concerned to decide when, how and in what manner the scheme should be introduced. That, in our opinion, cannot amount to excessive delegation.

The question of excessive delegation has been frequently considered by this Court and the approach to be adopted in dealing with it is no longer in doubt. In *the Edward Mills Co. Ltd., Beawar and Others* v. *The State of Ajmer*

and Another(1), this Court repelled the challenge to the validity of s. 27 of the Minimum Wages Act, 1948 (No. XI of 1948), whereby power had been given to the appropriate Government to add to either part of the schedule any employment in respect of which it was of opinion that minimum wages shall be fixed by giving notification in a particular manner, and it was provided that on the issue of the notification, the scheme shall, in its application to the State, be deemed to be amended accordingly. In dealing with this problem, this Court observed that there was an element of delegation implied in the provisions of s. 27, for the legislature, in a sense, authorised another body specified by it to do something which it might do itself; but it was held that such delegation was not unwarranted and unconstitutional and it did not exceed the limits of permissible delegation. To the same effect are the recent decisions of this Court in *M/s. Bhikusa Yamasa Kshatriya and Another* v. *Sangamner Akola Taluka Bidi Kamgar Union and Others*(2), and *Bhikusa Yamasa Kshatriya (P) Ltd.* v. *Union of India and Another*(3). Therefore, we must hold that the impugned section 1(3) of the Act is not shown to be constitutionally invalid.

Before we part with these appeals, there is one more point to which reference must be made. We have already mentioned that after the notification was issued under s. 1(3) by respondent No. 3 appointing August 28, 1960 as the date on which some of the provisions of the Act should come into force in certain areas of the State of Bihar, the Chief Executive Officer of respondent No. 1 issued notices giving effect to the State Government's notification and intimating to the appellants that by reason of the said notification, the medical benefits which were being given to them in the past would be received by them under the relevant provisions of the Act. It was urged by the appellants before the High Court that these notices were invalid and should be struck down. The argument which was urged in support of this contention was that espondent

(1)[1955] 1 S.C.R. 735.
(2) [1963] Supp. 1 S.C.R. 524.
(3) [1964] 1 S.C.R. 860.

1964

Basant Kumar v. Eagle Rolling Mills

Gajendragadkar C. J.

No. 1 in all the three appeals were not entitled to curtail the benefits provided to the appellants by them and that the said benefits were not similar either qualitatively or quantitatively to the benefits under the Scheme which had been brought into force under the Act. The High Court has held that the question as to whether the notices and circulars issued by respondent No. 1 were invalid, could not be considered under Art. 226 of the Constitution; that is a matter which can be appropriately raised in the form of a dispute by the appellants under s. 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Courts under Art. 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to s. 10 of the Industrial Disputes Act, or seek relief, if possible, under sections 74 and 75 of the Act.

The result is, the appeals fail and are dismissed. There would be no order as to costs.

Appeals dismissed.

1964

February 26

SHIV PRASAD CHUNILAL JAIN

v.

THE STATE OF MAHARASHTRA

(K. SUBBA RAO, RAGHUBAR DAYAL AND J. R. MUDHOLKAR JJ.)

Criminal Trial—Whether the person must be physically present at the actual commission of the crime—Acts done by several persons in furtherance of common intention—Essence of—Indian Penal Code, 1860 (45 *of* 1860), *s.* 34.

In a trial by jury the appellants were jointly charged along with accused No. 1 with an offence punishable under ss. 471 and 467 read with s. 34 of the Indian Penal Code. The first charge was that in