

State of U.P. Vs. Prem Spinning and Weaving Mills Co.

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Court : Allahabad

Decided On : Oct-05-1972

Reported in : (1973)ILLJ504All

Judge : Satish Chandra and ;N.D. Ojha, JJ.

Appellant : State of U.P.

Respondent : Prem Spinning and Weaving Mills Co.

Judgement :

Satish Chandra and N.D. Ojha, JJ.

1. Relying upon the decision of the Supreme Court in State of U.P. v. Basti Sugar Mills 1967 -1 L.LJ-220 : A.I.R. 1961 S.C. 420, a learned single Judge held that the power to issue a notification under Section 3 (b) of the U.P. Industrial Disputes Act, 1947, is exercisable by the State Government only in cases of acute emergency. Upon the authority of the Supreme Court in Rohtas Industries Ltd, v. S.D. Agarwal : [1969]3SCR108 , the learned Judge held that when the subjective satisfaction of the Government in exercising a power conferred upon it is challenged in a Court of law, the authority must place before the Court the material upon which the satisfaction was based. On facts, the learned Judge held that no material had been placed on the record of the present case to show that there was any emergency, much less an emergency of an acute nature. Merely reciting verbatim the words used in Section 3 does not absolve the State Government from

its duty to produce material in support of its case. On this finding the learned Judge quashed the notification dated August 28, 1971. By this notification issued under Section 3 (b) of the U. P. Industrial Disputes Act the State Government extended the operation of its earlier notification dated 17th June, 1970, for a period of one year with effect from 22nd September, 1971. By the notification of 1970 the State Government had enforced the recommendations of the Central Wage Board for the Indian textile industry regarding pay scales of clerks and dearness allowance to the workmen including clerks, in respect of the respondent-company, namely, the Prem Spinning and Weaving Mills Company, Limited, Ujhani, District Budaun. Aggrieved, the State of U. P. has come up in appeal. During the pendency of the appeal it has filed an affidavit placing on record the materials on which the requisite satisfaction of the State Government was based.

2. In 1948 dispute arose between the management of the respondent-company and its workmen. The conciliation officer resolved them and on February 2, 1949 the Government issued a notification directing the respondent to give 10 per cent interim increase to the workmen on their wages as on 30th November, 1948. Meanwhile the dispute was referred to the Industrial Tribunal which gave an award on October 14, 1955 in consonance with the notification dated 2nd February, 1949.

3. The workmen, however, were not satisfied and as a result of negotiations they reached a statutory agreement with the respondent-company under which the management granted further ad hoc increase.

4. In 1959 the Government of India had appointed a Central Wage Board for the textile industry in India. Its report was published in March, 1960, according to which the consolidated wages were to be split up by a suitable machinery and the dearness food allowance was to be linked with the cost of living index number. At a tripartite conference held at Nainital the management of the respondent-company agreed as an interim measure to grant a further increase in the wages of the workmen. The question of rationalisation and splitting up of the wages was left to the arbitration of the then Chief Minister, Dr. Sampurnanand. Dr. Sampurnanand could not finish the arbitration because he was appointed

Governor of Rajasthan. Thereafter the State Government took no steps to resolve the dispute by either arbitration or reference to the Industrial Court for adjudication. The dispute regarding the actual working out of the recommendations of the Central Wage Board remained undecided.

5. On September 22, 1964, the State Government issued a notification under Section 3(b) of the U.P. Industrial Disputes Act fixing the wages and dearness allowance of the employees of the respondent-company without splitting them up. In this notification it was provided that the respondent-company shall pay dearness food allowance to its workmen at 12 paise per point rise in cost of living index above 700 points. This notification was extended every year for a period of one year at a time, the latest such extension being by the notification dated September 20, 1971.

6. It appears that on 20th March, 1967, the company entered into an agreement with its workmen by which it agreed to pay an ad hoc increase to its workmen at Rs. 20 per month on the consolidated wages. This agreement was registered on December 2, 1969, and under it the workmen had agreed that they would not demand any increase in the consolidated wages for a period of two years. In spite of this the State Government extended the notification of 1964 by the notifications dated September 24, 1970, and September 22, 1971.

7. The respondent-company's case was that in the context of these facts it was incumbent upon the State Government to have referred the dispute as to the manner of rationalisation and splitting up of wages in accordance with the Central Wage Board report to industrial adjudication under Section 4-K of the U.P. Industrial Disputes Act. Instead of doing so, the State Government has been repeatedly, every year, exercising its power under Section 3(b) of the Act. This latter power was exercisable only in the case of an acute emergency. No such emergency ever existed and certainly did not last for 7 years continuously. The exercise of the power was arbitrary and illegal.

8. Section 3 of the U.P. Industrial Disputes Act, 1947, authorises the State Government to pass general or special orders making provisions for matters specified in Clause (a) to (g) thereof. The power was exercisable if in the opinion

of the State Government it was necessary or expedient so to do, for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment.

9. It is clear that the power could be exercised on the basis of any one or more of the several clauses mentioned in the opening part of this section, one of which is maintaining employment.

10. Under Clause (b) of the order the State Government could require employers, workmen or both to observe for such period as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order. Under Clause (d) the State Government could pass an order referring any industrial dispute for conciliation or adjudication in the manner provided for in the order. The proviso stated that no order made under Clause (b) shall, inter alia, if an industrial dispute is referred for adjudication under Clause (d), be enforced after the decision of the adjudicating authority is announced by or under the consent of the State Government.

11. In Basti Sugar Mills case (supra) the Supreme Court repelled the argument that Clauses (b) and (d) operate in the same field and are hence alternative to each other, thus giving an arbitrary power to the State Government to act under Clause (b) even though the requirements of a situation may satisfy Clause (d) as well. The Supreme Court held that the words 'for such period as may be specified in Clause (b)' read with the second proviso make it clear that the provisions of Clause (b) can be availed of by the State Government only as a temporary measure and only in cases of an acute emergency, where mere resort to power under Clause (d) may be inadequate to meet the situation. So read the two clauses are not alternative to each other, and so no discrimination arises.

12. By the U.P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act of 1957 Clause (d) was amended. The power to refer a dispute to adjudication was deleted from this clause and was conferred on the State Government by a new Section 4-K. Section 4-K did not specifically provide for the existence of those conditions which were mentioned in the opening part of Section 3. Under it an industrial dispute could be referred for adjudication if the State Government was of

opinion that an industrial dispute exists or is apprehended. It has been held that the purpose of reference of an industrial dispute is to maintain industrial harmony and to achieve a peaceful settlement thereof: see *National Carbon Co. v. Gan* (M.N.) 1958-1 L.L.J. 472, and *Sawatram Ramprasad Mills Co. v. Baliram* 1963-1 L.L.J. 400. In this context a reference can be made under Section 4-K in a situation where the State Government is of the opinion that it is necessary or expedient so to do for maintaining employment. This is one of the situations in which power can be exercised under Clause (b) as well. Thus there can be situations in which both powers may come into play and may become exercisable.

13. The amendment of Clause (d) by the deletion of the power for reference therefrom and investing this power in the State Government by Section 4-K. did not place the exercise of the power of reference to adjudication and issuing an order under Clause (b) of Section 3 into different and water-tight compartments. There was still a likelihood of their overlapping, though not to such an extent as was the situation prior to the amendment of the Act in 1957.

14. In our opinion the construction placed upon Clause (b) by the Supreme Court in *Basti Sugar Mills case* (supra) still holds good and the State Government can exercise the power conferred by Clause (b) only as a temporary measure and in cases of an acute emergency where mere resort to power to refer for adjudication may be inadequate to meet the situation.

15. Our attention was invited to the decision of one of us (Satish Chandra, J.) in *Mahalakshmi Sugar Mills v. State of U.P.* : (1967)IILLJ763All . This decision was followed in *Rashtriya Chini Mill Mazdoor Union v. State of UP.* : (1968)IILLJ26All . In paragraph 8 of the former case, it was held that 'the fields in which the two powers operate are different. The two powers are not alternative to each other'. In our opinion this statement of the law is not quite accurate. As seen above the powers are still overlapping.

16. It has been seen that the dispute as to the rationalisation and splitting up of wages was referred to Dr. Sampurnanand for arbitration. The arbitration remained infructuous because the Chief Minister went to Rajasthan as Governor. Thereafter the State Government took no steps to complete those proceedings or to refer the

dispute to adjudication. The State Government had 11 years since then to refer the dispute to adjudication. On the record of this case there is no explanation whatever as to why the State Government did not make a reference all these years. It has been seen that the power under Clause (b) of Section 3 is exercisable only as a temporary measure to tide over an acute emergency; it cannot be used as an alternative to the power to refer for adjudication an existing industrial dispute, much less to resolve the industrial dispute unilaterally.

17. For the appellant-State reliance was placed upon a letter dated 9th December, 1970, from the union to the Labour Minister stating that for the reasons mentioned in that letter there was grave dissatisfaction amongst the employees. This letter prayed that the two orders of the State be enforced. It is not clear what were those orders. It appears that they were orders other than those already issued under Section 3 (b). The State also relied upon the letter dated 24th December, 1970, from the Labour Commissioner to the Labour Minister. It states several acts and omissions of the management and says that because of the actions of the management, there is grave dissatisfaction amongst the workmen. It prayed that the district authority should be asked to get the workmen paid their wages in 'accordance with the order of 22nd September, 1964, and the management should be asked to distribute the bonus for the year 1968-69 and the recommendations of the II Wage Board be enforced. In our opinion none of these two letters have any bearing upon the question whether there was any acute emergency requiring the continuance of orders issued since 1964, under Section 3(b). That notification had nothing to do with the bonus or the II Wage Board recommendations. These letters are, in our opinion, irrelevant to the point in issue before us.

18. In our opinion, the exercise of the power under Clause (b) of Section 3 was arbitrary and void. The learned single Judge was justified in quashing the impugned notification.

19. In the result the appeal fails and is accordingly dismissed with costs.