

(1992) 01 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2328 of 1992

Amba Dutt Joshi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-01-1992

Acts Referred:

Constitution of India, 1950 — Article 19(1), 225, 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 25FF, 6N

Citation : (1992) 1 AWC 507

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : Ashok Khare and Saumitra Singh, for the Appellant;

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—This writ petition is on behalf of 78 workmen by the employees of the U.P. State Brass Ware Corporation Ltd. (hereinafter referred to as the "Corporation" only), Moradabad. The Petitioners by this joint writ petition have prayed for issuing a writ of certiorari quashing the termination notices dated 17-11-1990 and 18-11-1990, respectively. They have also prayed for a writ of mandamus directing the Respondents not to interfere in the functioning of the Petitioners on their respective posts and to pay regular monthly salary. Further Prayer is that the Respondents may be restrained not to effect sale of non-ferrous rolling mill (hereinafter referred to as the "mill" only). The Petitioners have also prayed for a writ, order or direction of a suitable nature commanding the Respondents to run the mill in the public sector or in the alternative to permit the workers and employees to run the same through the workers' cooperative.

2. The Petitioners have annexed the copies of the notices served to them u/s 6-N(a) of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") and to certain workmen notices dated 18-11-1990 under the provisions of the Rule 23(2) of the Service Rules of the Corporation terminating the services after 3 months since the mill run by the Corporation has ceased to function and

the services of the workmen were no more required.

3. A bare perusal of the notices aforesaid shows that the Petitioners have challenged the correctness, validity and propriety of the notices terminating their services in the mill of the Corporation. The dispute, in fact, raised by the Petitioners is nothing but a labour dispute which could be raised before the labour court under the provisions of the Industrial Disputes Act.

4. A preliminary objection about the maintainability of the writ petition under Article 226 of the Constitution of India in respect to a dispute concerning the Industrial Disputes whether could be entertained in a writ petition under Article 226 of the Constitution has been squarely answered in the Full Bench decision of this Court *Chandrama Singh v. Managing Director, U.P. Cooperative Union Ltd.*, Lucknow (1991) 2 UP LB EC 898, which makes it clear that the Court must not entertain under Article 226 a writ petition where an adequate, speedy and efficacious remedy is available to the Petitioners. Merely saying that such a relief is not available to the Petitioner in the petition would not remove the bar of alternative remedy for entertaining the writ petition before this Court, and the aforesaid Full Bench case clearly rules that the Petitioners have in fact to prove that such a remedy does not really exist. This question have been repeatedly considered by the Hon"ble the Supreme Court, this Court and the other High Courts and all the courts have ruled that a writ petition should be entertained only when there is no alternate adequate, speedy and efficacious remedy available to the Petitioner.

5. The bare perusal of the aforesaid impugned notices shows that they are the notices terminating the services of the Petitioners on the ground that the mill in question has ceased to function and the Petitioners' services were no more required. In other words, this is a case of retrenchment of the workmen of the mill.

6. The grievance of the Petitioners is that they have been served with termination notices on the illegal grounds that the mill was being closed by the Corporation as it failed to achieve its objects. They have annexed copy of the letter dated 3-5-1990 sent by the Joint Secretary, State of U.P. to the Managing Director of the Corporation which states that since the mill had been running on huge losses and there is likelihood of further increment in losses and the consequent debts of the mill, the Government had taken a decision to hand over the mill to the entrepreneurs in the private sector. It was also contemplated that the Government had decided that in case suitable person ready to take over the mill is not available, the assets of the mill would be sold by auction and the amount so received would be utilised for making payments of debts. It was also decided by the government that the officers and workmen as far as possible would be accommodated in different organisations as was done in the case of the U.P. Chalchitra Nigam and the HORTICO. The Petitioners have also annexed a copy of the resolution dated 17-11-1990 by which the government G.O. dated 17-11-1990 was ordered to be activated and the corporation (other than UPRN)

be transferred to certain other corporation and that the non-ferrous mills be sold off to provide it to private entrepreneurs. The resolution regarding the implementation further states that the G.O. activating the transfer of the staff of the Corporation in question be made to work pertaining to handling agent of the MMTC and the HCL and the other raw material activated to the U.P. Small Scale Industries Corporation Ltd., (2) marketing activity to the U.P. Export Corporation Ltd., and (3) the Peetal Basti Project and Jalesar Craft Complex to the U.P. State Industrial Development Corporation Ltd., It was resolved in the resolution aforementioned that the Managing Director of the U.P. State Brass Ware Corporation Ltd., in question be and is authorised to complete all the formalities with the prior approval and guideline of the Chairman of the U.P. State Brass Ware Corporation Ltd.

7. No doubt, in the writ petition the Petitioners have stated that neither the mill in question has been sold nor auctioned nor any step has so far been taken to materialise the privatisation and sale of the mill. All these steps are clearly to be taken as yet by the government as the Corporation had suffered huge losses and it was wholly uneconomic to pull on with this industry.

8. The main grievance of the Petitioners and this is one of their main challenge that the impugned notices terminating their services are illegal. However, before going into this question, this Court has to examine whether the Petitioners have got really an adequate alternate remedy elsewhere under the provisions of the Industrial Disputes Act and if that is available, that would work as complete bar to the entertainment of this writ petition in view of the aforesaid legal position of (1991) 2 UP LB EC 898 (FB).

9. The learned Counsel for the Petitioners submit that no doubt the first question is about the challenge to the notices impugned. If that be so, the aforesaid Act provide sufficient adequate alternative remedy and the Full Bench case (supra) fully applies to the facts and circumstances of the case. In spite of it, since in the present writ petition there are certain other questions, namely, the offer of the absorption of the workmen and the employees, formation of the cooperative society of the workmen and the employees of the mill to run the mill etc are also involved besides the question that the Petitioners are admittedly the workmen of the Corporation " and the State Government would not decide about the privatisation of the industry run by the Corporation without giving to the workers and the staff an opportunity to be heard in the matter of privatisation, the present writ petition would be maintainable. It is submitted that the old concept of the relationship between the employer and the employees has now substantially changed and now it has come to be accepted that the workmen who work in the industry and devote whole-heartedly to run the industry have got vested right in its running. The State Government or the Corporation could not unilaterally decide about the change of ownership or privatisation of the industry without hearing the case of the workmen and staff. The learned Counsel cited a large number of cases to fortify his submissions.

10. Before dealing with the other questions raised by the Petitioners. I would like to cite certain cases of the Hon''ble Supreme Court to examine the controversy on the alternative remedy.

11. The Hon''ble Supreme Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , has observed that if the industrial dispute relates to the enforcement of a right or obligation created under an Act, then the only remedy available to the suit or is to get adjudication under the Act. Hon''ble Untwallia, J. of the Supreme Court, speaking for an unanimous court, observed:

The object of the Act as its preamble indicates is to make provision for investigation and settlement of industrial disputes which means adjudication of such disputes also. The Government envisages collective bargaining contracts between the unions representing the workman and the management, a matter which is outside the realm of Common Law or Indian Law of Contract.

The Hon''ble the Supreme Court in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, , has observed (at page No. 435) that:

In *Deo v. Bridges* 1831 (1) B & Ad 847 at p. 849 are the famous and oft quoted words of Lord Tanterden, C.J., saying:

Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other.

Barraclough v. Brown 1897 AC 615, decided by the House of Lords is telling, particularly Lord Watson's statement of the law at p. 622:

The right and the remedy are given *uno flatu* and one cannot be dis-located from the other.

In short, the enforcement of a right or obligation under the Act, must be by a remedy provided *unto flatu* in the statute. To sum up, in the language of the *Premier Automobiles Ltd.*

If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suit or is to get an adjudication under the Act.

The Supreme Court in *Bihar Rajya Vidyut Parishad Field Kamgar Union v. State of Bihar* AIR 1987 SC 1875, dismissed the petition on the ground of alternative remedy as the questions relating to the the terms and conditions about the workmen could only be adjudicated on evidence and the High Court or the Supreme Court would not enter into the questions of fact. The *Rohtas Industries Ltd.*, case (*supra*) was relied in Full Bench decision of this Court in *U.P. Chal Chitra Nigam Ltd. Karmachari Union v. State of U.P.* (1991) 1 UP LB EC 175, in which the Lucknow Bench of our Court in paragraph 51 quoted Hon. Krishna Iyer, J. as under:

But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a China shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and the High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances lay for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered.

The decision of the case of the Rohtas Industries Ltd., (supra) was followed by the Patna High Court in Dinesh Prasad and Others Vs. State of Bihar and Others, . In Assistant Collector of Central Excise Vs. Jainson Hosiery Industries, , it was held that unless the High Court is satisfied that the clear statutory remedy is likely to be too dilatory or difficult to give reasonably quick relief, it should be loath to act under Article 226. The aforesaid case laws clearly show that the consistent view is that the availability of alternative remedy is a complete bar to entertaining writ petitions under Article 226 of the Constitution generally, and only in cases where the alternative remedy is dilatory and adequate relief is not possible to the litigant, this bar would not operate. And since I feel and hold that because adequate and efficacious alternative remedy is available to the Petitioners under the aforesaid Act, the present writ petition is liable to be dismissed so far as the challenge to the impugned termination notices is concerned.

12. The next question for consideration is whether the writ petition should be entertained as the question of absorption of the workman and the opportunity of participation in the decision about the closure of the mill by the Government/ Corporation are involved.

13. The learned Counsel for the Petitioners in connection with the participation of the workmen of the Corporation in deliberation and decision about the closure of the mill, cited Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , to show that in case of such Industrial dispute where the workmen were on strike and the management was taking action for retrenchment, the Court was of the view that the workmen were to be consulted in the matter before the actual action be taken. The facts of the said case and the present case are totally different. In the present case there is no industrial unrest or strike. It was merely a case of uneconomic planning and improper management which resulted in huge losses to the Corporation. Before taking action for sale or privatisation, as indicated in the notifications issued by the State Government, there was no occasion for making any attempt for revitalising the sick unit of the Corporation which was facing economic crises and huge losses. In Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, , the Hon'ble Supreme Court was considering the question of sale of redundant plants and equipments of the factory of the government company. The workmen had raised the question of their right for participation in the same. The Hon'ble Supreme Court negated the plea of violation of Fundamental Right of the workers under Article 19(1)(g) of the

Constitution of India, holding that the workmen have no such right. This case do not help the Petitioners which has actually no relevance to the present controversy. The next case cited on the point is National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, . The workers of the company sought permission to participate in the winding of the proceedings of the company. The Supreme Court held that although the workmen of the company are not necessary parties in the winding up of the proceedings, but are parties who may participate in the proceedings for winding up of the company. It was directed that the workmen were entitled to be heard and participate in the proceedings of winding up of the company before the provisional liquidator was appointed by the Company Judge. It was also made clear that if the workers were not heard, it would not have affected the order of the appointment of the provisional liquidator. The learned Counsel for the Petitioners cited Gurmail Singh v. State of Punjab 1991 SCC 189. The case indicates that the Hon"ble Supreme Court had observed that in proper cases of transfer of undertaking by the State or State instrumentalities running industrial undertakings, the employees of a predecessor before the insertion of Section 25-FF of the Act had no right to claim re-employment by the successor in business, save in exceptional circumstances, and the Industrial Tribunal while investigating such a claim had to carefully consider all the aspects of the matter. It has to examine whether the refusal to give employment was capricious or unjustified on the part of the successor in business or whether he could show cause for such refusal bonafide grounds such as want of work, inability of the applicant to carry out the available work sufficiently, late receipt of application for re-employment in view of the prior commitment of the employer, or any other case which in the opinion of the Tribunal made it unreasonable to force the successor in interest to give re-employment to all or any of the employees of the old staff. The discretion given to Tribunal is no longer generally available because of the insertion of Section 25-FF in the Act.

14. The perusal of the resolution of the Corporation and the G.O. dated 17-11-1990 and the resolution dated 18-11-1990 clearly makes provisions for adjustments and a absorption of the workmen of the mill in other organisations, corporations and the other departments of the State. The Petitioners have also cited an unreported case in C.M. Writ Petition No. 8531 of 1990 : U.P. State Mineral Development Corporation v. Umesh Chandra Pandey decided on 10-5-1991. In the aforesaid writ petition also; the services of a large number of workmen of the U.P. Rajya Khanij Vikas Nigam had been terminated by way of retrenchment. The workmen challenged their termination before this court. In the said controversy, the U.P. State Minor Mineral Development Corporation had entered into an agreement with the Hepworth Minerals and Chemicals Ltd. relating to the development of silica sand deposits at Lalapur, U.P. A deed of Memorandum of Understanding was executed between the Respondents and the Hepworth company. By the aforesaid Memorandum of Understanding, a joint sector was created for float glass project, whereby the float glass was to be

manufactured by the joint company. The action of the Corporation of retrenching the workmen and staff was held in the said case to be unwarranted. The Corporation was also continued and only a Memorandum of Understanding was entered into with the Hepworth. As such it was held in that case that retrenchment was illegal and this Court was pleased to issue direction for regularisation of the workman of the Corporation. The workmen were held to be entitled for back wages and reinstatement. The judgment was affirmed in Spl. Leave Petition No. 8531 of 1991 before the Hon'ble Supreme Court. The Corporation in the said case was directed to process the regularisation of the workmen within a period of one year. The period of regularisation was extended by the Hon'ble Supreme Court. The said judgment also does not really help the Petitioners nor it applies to the facts and circumstances of the case. The present case is not one in which the Corporation is functioning and few of the workmen only have been retrenched. It is a wholesale closure of the mill in question.

15. The facts and circumstances of the case fully establish that the controversy raised by the Petitioners are fully covered under the provisions of the U.P. Industrial Disputes Act, 1947. The Petitioners have sought redress in respect of retrenchment u/s 6-N of the Act and the other one under the service Rules of the Corporation. In the facts and circumstances, the Petitioners may seek proper and adequate remedy under the said Act before the labour court. Therefore, the present petition is liable to be dismissed on the ground of alternative remedy. This Court is not inclined to exercise the discretion under Article 225 of the Constitution.

16. The Respondents have themselves stated in the G.O. dated 17-11-90 that mill in question shall be transferred with assets and liabilities to private entrepreneurs. The terms and conditions, as provided in the aforesaid G.O. No. 1616/Chauwalia 2-90 dated 27th August, 1990, may be carried on. In case, the private entrepreneur is not available to take over the mill, the mill may be closed and the assets and liabilities be evaluated and thereafter be sold in auction, the proceeds of which may be utilised for repayment of the debts, dues, etc. It was also stated that the employees/workmen of the mill in question may be accommodated and absorbed in other organisation departments or institutions of the State as was done by the Government in the case of the U.P. Chalchitra Nigam and HORTICO. The Respondents have themselves taken care of the employees of the Mill. The Respondents have clearly stated about the measures to be adopted after closure of the mill. This is not unknown that most of the public sector undertakings are running at huge loss and a number of them have already been closed or declared sick. The Government is taking decision in matter of giving such public sector undertakings to private entrepreneurs for financial and economic reasons. It is within the domain of the Government to take policy decisions in such matters and not for the High Court to interfere under Article 226 of the Constitution. On these allegations about the decision of privatisation of the Mill also Petitioners have not been able to satisfy and invoke the discretionary jurisdiction under Article 226 of the Constitution.

17. In the result, the petition is dismissed. The costs on the parties.