

(2003) 07 AHC CK 0226
In the Allahabad High Court
Case No : C.M.W.P. No. 2086 of 1990

Dilpasand Bidi Co. and Others		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 3, 4K

Citation : (2003) 6 AWC 4767

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : S.N. Agarwal, J.N. Singh, Anil Shukla and Neeraj Agrawal, for the Appellant; N.K. Srivastava, S.G. Hasnain, Addl. C.S.C. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned notification dated 21.11.1989 (Annexure-A-III to the writ petition).

2. We have heard learned Counsel for the parties.

3. The Petitioners are manufacturers of Bidis. They engage labour for rolling the Bidis. It is alleged in para 2 to the writ petition that the Central Government created various Zones in India for regulating the wages of Bidis Rollers. It is alleged in para 3 that a settlement was arrived between the State Government, representative of the Labour Unions, and the employers in 1982 and the State Government by notification dated 21.5.1982 fixed the minimum wage at Rs. 7.50 per thousand Bidis (vide Annexure-A-1 to the writ petition) which has been issued u/s 3(b) of the U.P. Industrial Disputes Act, 1947.

4. It is alleged in para 4 of the petition that in 1987 the prices of the commodities rose up and hence, the State Government of Madhya Pradesh raised the minimum wages of Bidi Rollers to Rs. 10.50 per thousand Bidis (vide Annexure-A-II to the writ petition). Again in 1989 on account of rise in prices of

commodities and the price index, the State of Madhya Pradesh raised the minimum wages of Bidi Rollers to Rs. 14 per thousand Bidis (vide Annexure-A-III to the writ petition).

5. It is alleged in paragraph 6 that since the wages in U.P. was only Rs. 11 per thousand Bidis, the Labour Unions made representations to the State Government that in Madhya Pradesh the wages were higher, and the rate for one zone consisting of Madhya Pradesh, Bihar and Uttar Pradesh should be the same. True copy of the representation is Annexure A-IV. On this representation the U.P. Labour Minister issued letters to various Union Representatives and employers (vide Annexure-A-V to the writ petition).

6. It is alleged in paragraph 8 to the petition that a settlement was reached on 25.10.1989 and the U.P. Labour Minister agreed that the minimum wage would be Rs. 14 per thousand Bidis. This was settled between the Labour Minister, the representatives of Labour Unions, and the employers. True copy of the settlement dated 25.10.1989 is Annexure A-VI to the writ petition). By this notification the wages in U.P. for Bidi Rollers was put on parity with that in Madhya Pradesh.

7. In paragraph 10 of the petition it is alleged that for mala fide reasons, the U.P. Labour Minister got a notification issued in the U.P. Gazette on 21.11.1989 fixing the minimum rate at Rs. 15 per thousand Bidis (vide Annexure A-VII) which was made retrospective from 25.10.1989.

8. It is alleged in paragraph 14 that this notification is totally against the tri-partite settlement mentioned above. It is alleged in paragraph 15 that there should be parity between the wages in the same zone. Aggrieved, this petition has been filed.

9. A counter-affidavit has been filed on behalf of Respondent Nos. 1, 2 and 3 and we have perused the same.

10. In paragraph 5 it is stated that in respect of revision of minimum rate of wages in Bidi Industry, the last revision before the issuance of the impugned notification was done by notification dated 11.8.1987 fixing minimum rate of Rs 11.50 per thousand Bidis.

11. In paragraph 6 it is alleged that there was a rise of 50 index points in the Consumer Price Index, and hence the Labour Unions sent representations to the State Government for revision of minimum rate of wages for employment of Bidi making in U.P., failing which a large scale agitation would be started. It may be mentioned that about 5.50 lac workers are engaged in the State of U.P. in this industry, and therefore, the State Government thought that it would not be appropriate to allow work stoppages, as it may disrupt employment as also the law and order situation. Accordingly, a Tri-partite Conference was convened under the Chairmanship of the Labour Minister on 25.10.1989 whereby a consensus was reached vide (Annexure-C.A. I to the counter-affidavit) and

notification dated 21.11.1989 was issued. This has been substituted by notification dated 21.6.1991 u/s 3(b) of the U.P. Industrial Disputes Act, 1947 because the rise in the cost of living index was over 50 index points. There was a rise of 67 index points between January to June, 1989 alone as mentioned in the All India Consumer Price Index Number. This was an abrupt increase in the cost of living index, and the Government had to act very fast in this connection to avoid agitations. The impugned notification has been superseded by another notification dated 21.6.1991 and hence on this ground also the petition deserve to be dismissed.

12. In paragraph 11 of the counter-affidavit, it is stated that in the Tripartite Conference it was noted that a difference of Rs. 1.00 per thousand Bidis is not very relevant for shift of the industry from U.P. to Madhya Pradesh.

13. In paragraph 16 it is stated that it is not necessary to have parity with the rise in Madhya Pradesh, because the relevant consideration was not only the minimum rate of wages but also the total cost of production. We have also perused the rejoinder-affidavit.

14. On the facts of the case, we find no merit in this petition. It may be mentioned that a notification u/s 3(b) of the U.P. Industrial Disputes Act is a piece of delegated legislation vide *Basti Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . Hence this Court should not ordinarily interfere with such notifications as they are intended to maintain peace and harmony in the industry.

15. In *State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd.*, , the Supreme Court upheld the validity of Section 3(b) of the U.P. Industrial Disputes Act.

16. The impugned notification was evidently issued because of the fear that there may be industrial unrest, strife and agitations, which may disrupt the industry and make lacs of workers unemployed and also create a law and order situation. An order u/s 3(b) is a piece of delegated legislation and hence no opportunity of hearing need be given before issuing it.

17. No doubt adjudication can be done by a labour court in a reference u/s 4K of the U.P. Industrial Disputes Act, but in an emergency an order u/s 3(b) can also be issued vide *State of U.P. v. Basti Sugar Mills* (supra). The two provisions therefore, operate in different fields vide *Mahalakshmi Sugar Mills Vs. State of U.P. and Another*, . The impugned notification has been issued u/s 3(b) of the U.P. Industrial Disputes Act and it is a statutory notification as held in *Basti Sugar Mills Company Ltd. v. State of U.P.*, 1971 LIC 1259. In that decision it was also held that even though the notification u/s 3(b) may be based on the recommendation of a tri-partite Committee, the notification operates on its own irrespective of the recommendation of the Committee. The notification cannot be struck down on the ground that the company was not agreeable to issue of such notification. In *British India Company Ltd. v. State of U.P.*, 1976 (33) FLR 129 , it was held that a threat of agitation and strike is sufficient for the Government to

exercise power and issue orders u/s 3(b). However, it has been held that an order u/s 3(b) cannot be retrospective vide *State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd.*, .

18. In *E. Sefton and Company v. Textile Mill Mazdoor Union* AIR 1958 All 80, it was held that no certiorari lies for quashing a notification u/s 3(b) as it does not incorporate in it any decision or determination by any judicial or quasi-judicial authority.

19. We have already held in *Kanpur Aloo Arhati Association and Anr. v. State of U.P. and others*, Writ Petition No. 43985 of 1997, decided on 1.7.2003, that the Court should not ordinarily interfere with delegated legislation unless there is clear violation of the parent Act or the Constitution. The judiciary must maintain self-restraint in such matters. Wage fixation is a complex exercise and Judges are not experts in such matters.

20. We find no violation of any provision of the parent Act or the Constitution by the impugned notification.

21. It may be mentioned that much of Labour Laws infringe the freedom of contract, but as held by the Supreme Court in *Rai Bahadur Diwan Badri Das Vs. The Industrial Tribunal, Punjab*, , "the doctrine of the absolute freedom of contract has to yield to the higher claims for social justice". Industrial Law is based on the belief that the bargaining strength of the employer and the worker are not equal, and hence the workers, being in a weaker bargaining position, have to be protected from exploitation. As observed by the U. S. Supreme Court in *West Coast Hotel Co. v. Parrish* 300 US 379 (1937). "The Legislature has recognised the fact that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting."

22. In that decision the Court also observed : "The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenceless against the denial of a living wage is not only detrimental to their health and well being, but also casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The community is not bound to provide what is in effect a subsidy for unconscionable employers. The community may direct its law making power to correct the abuse."

23. In this case an interim order was passed by the Court on 11.9.1990 staying operation of the impugned notification till further orders. Unfortunately the petition remained pending for 13 years, and is only now being dismissed.

24. Since we are dismissing this petition now, we direct that the arrears of the difference between the wages payable to the Bidi rollers under the impugned notification and the wages actually paid to them shall be paid to them or their heirs (if the worker is dead) within two months from today by the employers.

The employers must also pay interest on these arrears at 10% per annum from the date of the impugned notification till the date of payment, and such interest must also be paid within two months.

25. We may mention that there is a misconception about interest. Interest is not a penalty or punishment, but is the normal accretion on capital. If A has to pay a certain amount to B at a particular time, then had he paid it at that time B would have invested it somewhere and earned interest thereon. But if A delays in making this payment he himself earns interest on it. Money doubles in six years (because of interest), and hence in twelve years Rs. 100 becomes 400. Hence ordinarily interest should be awarded, unless a statutory provision forbids it, otherwise even by winning a case a party may really lose it if there is several years delay in deciding a case and an interim order continues during this period.

26. With these observations the petition is dismissed.

27. Let the Registrar General of this Court send copy of this order to the D.M., Farrukhabad forthwith, and the said authority will ensure prompt payment as directed in this judgment.