
(1998) 07 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24313 of 1989

Hindustan Lever Mazdoor Sabha

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4A

Citation : (1998) 07 AHC CK 0057

Hon'ble Judges : S.H.A.Raza, J

Final Decision : Allowed

Judgement

1. A trade union registered under the Trade Union Act, drawing its membership amongst the employees of the respondentcompany, espouses the cause of its members, has filed the present writ petition with the prayer to issue a writ in the nature of mandamus commanding the State Government to exercise its powers under Section 4Ka of the U.P. Industrial Disputes Act (hereinafter referred to as the U.P. Act) and refer the matter in dispute arising out of the "imposition of ceiling on dearness allowance payable to the workmen" as raised vide C.B. Case No. 11 (Ga)/75 for adjudication to an appropriate authority constituted under the U.P. Act.

2. The said writ petition was filed through its Chairman R.P. Bidani, who has also sworn the affidavit and is represented by Shri Arvind Kumar, Advocate and Shri K.P. Agarwal, learned Senior Advocate has put in appearance on behalf of the petitioner.

3. During the pendency of the writ petition, an application on behalf of the Hindustan Lever Mazdoor Sabha Ghaziabad Centre, Ghaziabad through its Chairman, Pradhuman Kumar Sharma was preferred on 18/9/1991 for the withdrawal of the writ petition as there existed no dispute between the petitioner and respondent No. 4 in respect of the matter raised before the conciliation officer in C.B. Case No. 11 (Ga)/75. The said application was vehemently opposed by the petitioner's unions represented by Shri R.P. Bidani, who has

initially filed the writ petition, alleging that the management with a view to see that the petitioner's union does not get the relief in the writ petition, through some persons claiming themselves to be the office bearers of the petitioner's Union, have filed an application before this Court with the prayer to treat the petition as infructuous or permit them to withdraw the same.

4. It was averred that the President of Hindustan Lever Mazdoor Sabha by means of its letter dated 30th October, 1992 had informed the factory manager, Ghaziabad that just on the basis of a fraudulent paper indicating that a general body meeting was alleged to have held on 30th November, 1990, the management proceeded to collude certain employees of the management and attempted to impose new terms and conditions of service on its new constituent and any action taken by anyone, in pursuance of the alleged general body meeting dated 30/11/1990, was itself illegal and void.

5. It was further alleged that Shri Pradhuman Kumar Sharma has no locus standi whatsoever to prefer the application for withdrawal of the writ petition. It was also denied that the petitioner's union had ever signed any settlement with the management on 5/5/1991, as such question of so called clause 20 (5) of the so called settlement dated 3/5/1991 being applicable to the subject matter of the writ petition did not arise as dispute still subsisted, the writ petition had not become infructuous. It was vehemently denied that Shri Pradhuman Kumar Sharma was not the Chairman of Hindustan Lever Mazdoor Sabha, Ghaziabad Centre, Ghaziabad and writ petition was not filed by him and such a dispute can only be decided by the process of adjudication and not otherwise.

6. The case of management as well as Shri Pradhuman Kumar Sharma before this Court appears to be is that a chartered of demand was served by the union represented by Shri Pradhuman Kumar Sharma on 15/9/1984 on Lipton India Ltd., which step into the shoes of Hindustan Lever Ltd. After the transfer of the Union by the Hindustan Lever Ltd. to Lipton India Ltd. and on the basis of the said chartered of demand a settlement was signed with the management on 3/5/1991, On the other hand the case of the union represented by Shri R.P. Bidani is that they have never submitted any such chartered of demand and have not entered into any settlement with the management on 3/5/1991.

7. In view of the said reasons it has been submitted by Shri K.P. Agrawal, learned Senior Advocate representing the petitioner union, which had initially filed the writ petition, that as no chartered of demand was filed by the union represented by Shri R.P. Bidani, hence there existed no question of any conciliation of settlement being reached in that behalf. The registering authority of that settlement has wrongly put its seal over the settlement at the back of the union represented by Shri R.P. Bidani. Such allegation of fact can only be decided through process of adjudication and the same cannot be raised in the writ petition.

8. I need not delve into that question because the allegations of fact which have

been raised by both the sides as to which set of union has the authority to spouse the cause of the workers. The controversy can be best decided by adjudication and such disputed question of facts cannot be adjudicated upon by this Court in the present writ petition.

9. The view which I have taken is fortified by the observation of Hon"ble Supreme Court in *Brooke Bond India Ltd. v. Workmen*, AIR 1981SC1660, wherein it was observed:

"The language of Section 18 (1) clearly shows that the settlement will be binding only" on the parties to the agreement. The definition of "settlement" in Section 2 (p) of the Act also states that "settlement" means a settlement arrived at "between the employer and the workmen. So, normally in order that a settlement between the employer and the workmen may be binding on them. It has to be arrived at by agreement between the employer and the workmen. Where the workmen are represented by a recognised Union, the settlement may be arrived at between the employer and the Union.

If there is a recognised Union of the workmen and the constitution of the Union provides that any of its office bearers can enter into a settlement with the management on behalf of the Union and its members, a settlement may be arrived at between the employer and such office bearer or bearers. But, where the constitution does not so provide specifically, the office bearer or bearers who wish to enter into a settlement with the employer should have the necessary authorisation by the executive committee of the Union or by the workmen."

It was further held:

"Unless the office bearers who signed the agreement were authorised by the executive committee of the Union to enter into a settlement or the constitution of the Union contained a provision that one or more of its members would be competent to settle a dispute with the management, no agreement between any office bearers of the Union and the management can be called a settlement as defined in Section 2 (P)"

In the concluding part of the judgment it was further indicated:

"Therefore, where a settlement is alleged to have been arrived at between an employer and one or more office bearers of the Union and the authority of the office bearers who signed the memorandum of settlement to enter into the settlement is challenged or disputed, the said authority or authorisation of the office bearers who signed the memorandum of settlement has to be established as a fact and it is not enough if the employer merely points out and relies upon the fact that the memorandum of settlement was signed by one or more of the office bearers of the Union."

10. In the present case the only relevant question is as to whether the demand of workmen that they were entitled for the payment of their dearness allowance on the basis of 1961 D.A. Scheme settled between the management of Hindustan

Lever Ltd. and its workmen as represented by the Hindustan Lever Mazdoor Sabha is legal or not. The said scheme provided that the dearness allowance be paid on the basis of Delhi working class cost of living index estimated and published by the Ministry of Labour, Government of India either at the rate of 21 ps per month per point indexed over 100 or on a percentage scale whichever is higher.

11. According to the petitioner the respondents started paying dearness allowance to its workmen at Ghaziabad with an unauthorised and arbitrary imposed ceiling at point 1450 of the cost of living index for workmen in the hourly rated Grade 1 to 8 and service staff and service staff at point 1360 of the cost of living index for workmen in the monthly rated Grade T1 and at point 1300 cost of living index for workmen in monthly rated Grade T2 to T4 and C2 to C4, which, according to the petitioner, meant a substantial reduction in the wages payable to each and every workman of the establishment. According to the petitioner, the imposition of such a ceiling without following the mandatory provisions of Section 9A of the Industrial Disputes Act corresponding to Section 4A of the U.P. Industrial Disputes Act was wholly illegal, inoperative and unenforceable.

12. As the management did not pay to the workmen the dearness allowance as provided in the D.A. Scheme of 1961, the petitioner filed an application before the conciliation board on 731975 under the U.P. Act to seek a reference of the dispute of imposition of the ceiling of dearness allowance to the labour Court under Section 4K of the U.P. Act. The said application was contested by the management on the ground that a settlement was arrived at between the management of Hindustan Lever Ltd. with certain office bearers of the Hindustan Lever Mazdoor Sabha on 5121977. According to the petitioner the management colluded with certain office bearers who were not authorised to enter into a settlement. It was submitted on behalf of the petitioner that the controversy between the workmen of Ghaziabad establishment and the company relating to the so-called settlement dated 521977 can only be adjudicated upon even though the parties had been at issue on it from its beginning.

13. The management relied upon the agreement entered with the workmen or some of the office bearers or the rival union. Mr. R.P. Bidani, who was the Chairman of the Union concerned, filed an application under Section 33C(2) of the Industrial Disputes Act, 1947. The labour Court at Meerut passed the order dated 2531985 holding that the freeze imposed on dearness allowance was illegal and unjustified. The respondent company has also filed a writ petition bearing No. 8502 of 1985 before this Court impugning the order passed by the labour court at Meerut.

14. It has rightly been asserted by the petitioner union that it has not entered into any settlement with the management by means of which the petitioner union relinquished its right which accrued to the workmen under 1961 settlement. Therefore, any settlement entered by the management with any

person or class of persons or union cannot be said to be binding on the petitioner and its members.

15. The contention of the petitioner that the claim of workers in respect of progressive linkage of the Dearness allowance with the cost of living index for industrial workers is inconsistent with the policy of the State Government. On 22/10/1975, the State Government informed the petitioner that it found that the dispute was not "fit for adjudication."

16. Shri K.P. Agrawal, learned Senior Advocate appearing on behalf of the petitioner submitted that although the management of the respondent has altered the conditions of service of its employees even then the State Government committed manifest error of law by passing a cryptic order that it has not found the dispute "fit for adjudication" and in that regard he relied upon the various decisions of Hon'ble Supreme Court including the Life Insurance Corporation of India Case, 1980 Lab 1C 1218 SC ; The Brooke Bond Case, 1981 II LU 184 SC ; The Indian Hume Pipe Ltd. Case, 1986 (1)LLJ 520 SC.

17. In the aforesaid cases the Hon'ble Supreme Court observed that the revision of bonus or dearness allowance under an existing scheme cannot be done to the detriment of the workmen in absence of compelling circumstances particularly, when the scheme operating before alteration was working satisfactorily and such a revision or alteration is not permissible.

18. It was submitted by Shri K.P. Agarwal that no compelling reason for altering or revising the dearness allowance scheme was made out by the management. Such a revision would amount to altering

the conditions of service, which cannot be allowed and whenever such a dispute is raised, the burden would be on the employer to justify certain changes.

19. It was further submitted that since 22/10/1975 the petitioner has been representing to the State Government for referring the dispute for adjudication, but its representations were not at all considered and the dispute was not referred for adjudication although the controversy in respect of the matter stood finally settled by the decision of Hon'ble Supreme Court in the case of Akhil Bharti Shikshit Railways Mazdoor Sangh, AIR 1981 SC 298 and a Full Bench decision of this Court in Umesh Chandra v. Krishi Utpadan Mandi and others, AIR 1984 All. 46.

20. In M.P. Irrigation Karamchari Sangh, 1985 (50) Indian Factories and Labour Report, 422, the Hon'ble Supreme Court observed:

"Therefore, while conceding a very limited jurisdiction of the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by the workmen should be left to the tribunal to decide....."

It was further observed:

"Government should be very slow to attempt an examination of the demand with a view to decline reference....."

21. In *Ram Avtar Sharma and others v. State of Haryana and another*, 1985 (51) Indian Factories and Labour Reports 71 and in *Nirmal Singh v. State of Punjab*, 1984 Labour and Industrial cases 1312, the Supreme Court issued a command to the appropriate Government to refer the dispute that has been raised by the workmen.

22. In *Workmen of Syndicate Bank, Madras v. Government of India*, 1986 Labour and Industrial Cases 63, the Supreme Court observed;

"It would not be right for the Government of India to refuse to make the reference on the ground that the charges of misconduct against the worker were proved during a duly constituted departmental enquiry..... If such a ground were permissible, it would be the easiest thing for the management to avoid a reference to adjudication and to deprive the worker of the opportunity of having the dispute referred for adjudication....."

23. In a case where a similar word had been used by the State Government that the case was not fit for being referred for adjudication, this Court following the decision of the Supreme Court in *Ram Avtar (supra)*, in *C.P. Singh v. State Cement Corporation*, 1988 (56) Indian Factories and Labour Reports 726 held:

"Beyond stating that on an examination of the merits of the case it does not find the present to be a fit case for reference, the Government has disclosed no other reasonsThe impugned order is hence liable to be quashed with a direction to the State Government to consider the matter and pass a fresh order supported by reasons....."

24. The Bombay High Court in *R.C. Vithal Prabhu v. Union of India*, 1989 (58) Indian Factories and Labour Reports, held that only in exceptional cases reference can be denied such as:

(1) When the Tribunal itself has adjudicated the dispute:

(2) There is gross delay; and

(3) When reference would lead to industrial unrest.....Though apart from the fact that the Government has finally adjudicated upon the matter, obviously the above communication is nonspeaking and even to that extent the order cannot bear scrutiny. In fact no reasons are assigned by the Government and nothing can be made out either by the Petitioner or by this Hon"ble Court....."

25. There are catena of cases where the orders of the State Government refusing to make a reference of a dispute has been quashed by various High Courts.

26. In view of the aforesaid reasons, I am of the view that the State Government itself ought not to have adjudicated upon the dispute by indicating that it has

found the reference to be inexpedient (Unupyukta) and should have left the matter to be decided by the Labour Court or Tribunal.

27. It was vehemently asserted by the learned Counsel for the respondents that there was inordinate delay in filing the writ petition, hence the writ petition should be thrown. From the affidavit on the record it transpires that the dispute between the workmen and the respondents arose on 11/1/1975. The demand was raised on 9/1/1975.

1975. An application for conciliation was moved on 7/3/1975. On 5/11/1975 the petitioner union was communicated that the State Government has rejected its application to refer the dispute to the Labour Court/Tribunal. The union again and again represented the matter to the State Government to reconsider its decision. None of the representations was rejected on the ground that there has been delay in making the representations.

28. The Industrial Disputes Act is a welfare legislation to ameliorate the grievance of the workmen. The courts have always taken liberal view in such matters which pertain to the interest of the workmen, in construing the provisions of the Act. The writ petition was filed in the year 1989. Undoubtedly, there was a delay in filing the writ petition, but that delay has been explained by stating that the petitioner union has been making representations to the State Government to refer the dispute to the labour court/tribunal but when no response was received, the writ petition was filed. Hence I am of the view that on the ground of limitation the writ petition cannot be thrown out, particularly, when the writ petition was entertained on 19/12/1989 by a Division Bench of this Court, the affidavits were exchanged, lengthy arguments were advanced from both the sides. Hence it would not be appropriate to throw out the writ petition on the ground of laches.

29. The last submission of the respondents is that the Hindustan Lever had been taken over by M/s. Lipton India on 1/5/1984, hence the writ petition has become infructuous. According to the workmen the alleged transfer of Ghaziabad Unit of Hindustan Lever Ltd. to Lipton India Limited makes no difference as the Lipton India Limited has stepped into the shoes of the Hindustan Lever Limited. According to the deed of transfer the terms and conditions the employees remain the same. The dispute does not cease and continue to exist.

30. I am of the view that neither the State Government nor this Court can adjudicate upon the question as to whether the dispute was appropriate or inappropriate, proper or improper, expedient or inexpedient. That question can be determined only by the labour court/tribunal.

31. In view of what has been indicated hereinabove, the writ petition succeeds and is allowed. A writ in the nature of mandamus commanding the State Government is issued to refer the matter in dispute pertaining to imposition of ceiling on dearness allowance payable to the workmen as raised vide C.B. case No. 11 (Ga)/75 for adjudication to the labour court/tribunal under Section 4K of

U.P. Industrial Disputes Act within a period of three months from the date of receipt of a certified copy of this order.

32. However, in the facts and circumstances of the case there shall be no order as to costs.

WP allowed.