(1999) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12012 of 1992

Hindustan Steel Works Construction Ltd. Employees Union APPELLANT

Vs

Hindustan Steel Works Construction Ltd. and Another RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 9A

Citation : (1999) 5 ALT 251 : (2001) 3 LLJ 192

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—The short question that falls for consideration in the instant writ petition is -whether the respondent-Company is justified in withdrawing the construction allowance that was being paid to the employees of Hindustan Steel Works Constructions Ltd., Vizag Steel Project, Visakhapatnam.

2. The petitioner is the registered employees union representing the workmen of Hindustan Steel Works Constructions Ltd. There is no dispute whatsoever in the instant writ petition that the petitioner-Union represents all the workmen working in the respondent-Company''s unit at Visakhapatnam. It is aggrieved by the action of the respondent-Company in withdrawing the construction allowance that was being paid to its employees by Circular No. PER/W & S/S17 (HPPC) dated April 29, 1992, issued by the Deputy General Manager, for and on behalf of the respondent-Company. It is an admitted fact that the respondent-Company is incorporated under the Companies Act and it is a Government of India Undertaking and the entire shares are held in the name of the President of India. The respondent-Company is engaged, inter alia, in the business of construction of steel plant projects and various other projects of national importance and undertakes the works at various places in the country. It normally undertakes the works pursuant to the contracts awarded by various organisations. In that

process the respondent-Company obtained a contract for certain construction works, including the erection of blast furnace, from Visakhapatnam Steel Project, Visakhapatnam.

3. It is also an admitted fact that the establishment of the first respondent is located at a distance of about thirty kilometres from Visakhapatnam city. According to the petitioners, the area is not well developed and there are no English medium schools in the vicinity. The workers and non-executives have to spend huge amounts to get their children educated in private schools in English medium. According to the petitioner-Union the children of the workmen have to be necessarily admitted into the English medium schools, as the employees of the first respondent establishment are transferred frequently from place to place all over India. It is the specific case of the petitioner-Union that all the facilities like Housing, Schooling, Marketing and medical facilities are not provided to employees by the first respondent. The fact that the establishment is located at a distance of more than thirty kilometres from Visakhapatnam city is not in dispute. But, according to the respondent-Company the actual location of the establishment itself, is in a well developed township. It is, however, the case of the respondent-Company that almost all the employees of the first respondent establishment''. stay in Gajuwaka about ten kilometres away from the Steel Plant which is a developed town, where all the facilities are available. It has four schools, Central School, D.A.V. School, apart from hundred bedded hospital with all modem facilities. That apart, it is the case of the respondent-Company that it has made necessary arrangements for transportation of the children of the employees, free of charge, everyday, to-and-fro, from various schools and educational institutions. However, nothing turns upon this aspect of the matter. These facts are noticed only as a background to appreciate the controversy between the parties.

4. It is an admitted fact that the respondent-Company paid construction allowance to its employees because of lack of certain facilities such as Housing, Schooling etc. It is also an admitted fact that construction allowance was paid right from 1979 till April, 1992, when the impugned circular was issued by the respondent-Company.

5. The allowance paid is variously called as Project allowance/construction allowance/ field allowance etc. (for convenience, we shall refer the allowance as project allowance). It appears that there was a serious dispute between parties pertaining to wage/pay revision of the employees of the public sector undertakings which ultimately culminated in a proceeding before the Apex Court. The Apex Court by its order dated March 14, 1986, while dealing with several writ petitions filed by the employees of public sector undertakings had directed appointment of a High Power Committee. Accordingly, a High Power Committee was appointed on April 7, 1986 under the Chairmanship of the Hon''ble Mr. Justice R.B. mISHRA. The Committee submitted its final report to the Government of India on November 2, 1988. The Apex Court issued further

directions, directing the implementation of the recommendations made by the High Power Committee by its order dated May 3, 1990.

6. It is the case of the respondent- . Company that after disposal of the matter by the Supreme Court, there was a joint Meeting held at New Delhi on January 28, 1992 between the management and the entire body of workmen of the respondent-Company, wherein it was decided to leave the matter to the Board of Directors of the Company with regard to payment of project allowance and accordingly, the Board of Directors in their Meeting held on April 7, 1992 decided to withdraw the construction allowance at such places where all infrastructural facilities are available, one such being the Visakhapatnam. It is the case of the respondent-Company that the petitioner-Union had also participated in the meeting of the joint forum on January 28, 1992. However, with a view to mitigate the hardship, the respondent-Company had decided to pay H.R.A. @ 15% of the basic pay per month as against the prevailing 10%. Accordingly, the impugned circular dated April 29, 1992 has been issued by the respondent-Company.

7. It is the case of the petitioner-Union that HRA @ 15% of the basic pay was paid even from the year 1986 onwards and the same has nothing to do with the payment of project allowance. It is evident from the minutes of the meeting held on January 28, 1992 between the Joint Forum, which included the petitioner-Union herein and the Respondent-Company that no decision as such has been arrived at by the Management and the workmen for withdrawing the project allowance. The Minutes do not disclose, as if the matter was entirely left to the discretion of the Board of Directors, as claimed by the respondent-Company. On the other hand, when the CMD of the respondent-Company stated in the meeting that the construction allowance is not payable to the employees posted at the Units where Housing, Schooling, Marketing etc., are available at or near the project site, the members of the Joint Forum, including the petitioner appears to have joined the issue by stating that status quo in the matter of reimbursement of the medical facilities and payment of construction allowance should be maintained, because none of the existing benefits available to the employees should be discontinued. Thus, there was no binding settlement or consensus as such between the parties with regard to discontinuance of the project allowance.

8. It is evident from the record of the High Power Committee that the Board of Directors should be the nominated authority to declare the project sites for the purpose of entitlement of the project allowance, fixing the time limit and its phased withdrawal on condition of making available of facilities like Housing and schooling etc. It is true that the Board of Directors is entitled to take such decision in its discretion as it may consider fit and proper to withdraw the payment of project allowance in a phased manner, but subject to providing of facilities.

9. There is any amount of controversy between the parties about the availability of facilities. It is not possible for this Court to express any opinion on the said

contentious issue. But, I find it difficult to accept the submission made by the learned counsel for the respondent-Company, Mr. C.R. Sreedharan, that there has been a settlement between the management and the petitioner-Union with regard to the withdrawal of the project allowance. The Minutes of the meeting upon which, the learned counsel for the respondent-Company placed reliance would not support his contention. Undoubtedly, the issue has come up for discussion before the Joint Forum and the management and the representatives of the workers union, including the petitioner have stuck to their decision insisting that the payment of project allowance cannot be permitted to be withdrawn where no facilities referred to hereinabove. are made available. The statement made that the Minutes of the meeting held on January 20, 1992 are in the nature of settlement arrived at by and between the Employer and the workmen, cannot be accepted. The submission is not only farfetching but misconceived. There is no settlement as such and the minutes of the meeting cannot be equated to that of a settlement which is binding on the parties.

10. It is clear that the impugned circular proposing to withdraw the project allowance payable to the workmen is not in pursuance of any settlement as such. Now the only question that arises for consideration is - whether the respondent-Employer is entitled to withdraw the payment of project allowance without following the procedure prescribed under the Industrial Disputes Act, 1947 (for short ''the Act'').

11. Section 9-A of the Act mandates that no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change without giving the workmen likely to be affected by such change a notice in the prescribed manner of the nature of change proposed to be effected. Such change can be effected within forty two days of giving such notice. However, no notice shall be required for effecting any such changes where the change is effected in pursuance of any settlement or Award. The provision is couched in mandatory form. Under no circumstances, an employer can effect any change in the conditions of service in respect of any matter specified in the fourth schedule without giving forty two days notice to the workmen of the proposed change and the notice, itself, is required to be in the prescribed manner. The proposal by the employer to effect any change in the conditions of service can only be done in accordance with Section 9-A of the Act and not in any other manner. However, the mandatory requirement of notice is dispensed with for effecting such change in the conditions of service pursuant to any settlement or Award. Any change in the conditions of service without giving notice to the workmen, as provided for, will be void and non est.

12. The other question that arises for consideration is whether the withdrawal of the construction allowance/project allowance would amount to change in the conditions of service in respect of a matter specified in the fourth schedule of the Act. Item 3 of the fourth schedule relates to compensatory and other allowances

and is one of the conditions of service allowance for change of which notice is to be given. Thus, compensatory and other allowance is a condition of service and no change could be effected without following the mandatory requirement of law as provided for 1 u/s 9-A of the Act. The construction allowance/project allowance cannot be permitted to be withdrawn without any notice as required u/s 9-A of the Act, as such withdrawal would amount to change of conditions of service in respect of a matter specified in the fourth schedule.

13. Precisely and, may be, being aware of the consequences of the non-compliance of the mandatory requirement of Section 9-A of the Act, the learned counsel for the respondent-Company, Mr. C.R. Sreedharan made an attempt to characterise the minutes dated January 28, 1992 as a settlement, about which I have already adverted and rejected the said contention.

14. Learned counsel for the respondent-Company, however, made an attempt to submit that the remedy of the petitioner lies before the Industrial Tribunal and the writ petition deserves to be dismissed on the ground of availability of alternative remedy. No disputed questions of fact are involved in the instant writ petition requiring adjudication. I have already held that no opinion is expressed with regard to the disputed questions of fact that arise for consideration.

15. The simple question that arises for consideration is about the legality and validity of the impugned Circular dated April 29, 1992. There is no dispute whatsoever that the respondent-company is an instrumentality of the State and an authority within the meaning of Articles 12 and 226 of the Constitution of India. The petitioner is entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for the purposes of enforcement of its statutory right. Section 9-A of the Act not only imposed an obligation on the employer to issue notice before effecting the change in the conditions of service, but correspondingly confers right (sic) duty upon the employer for issuance of notice before effecting any change in service conditions. The decision of the respondent-Company, in the instant case, proposing to withdraw the project allowance admittedly has been taken without any prior notice to the workmen, as required u/s 9-A the Act. The law on the subject and the true nature, scope and the amplitude of Section 9-A of the Act is not res integra. The effect of non-compliance of Section 9-A of the Act renders the change in conditions of service void ab initio. This legal position is well settled in the case of Workmen of The Food Corporation of India Vs. Food Corporation of India, and Lokmat Newspapers Pvt. Ltd. v. Shankarprasad 1999-II-LLJ-600 (SC).

16. The action of the respondent-Company, which is an instrumentality of the State is ultra vires mandatory provisions of Section 9-A of the Act.

17. For all the aforesaid reasons, the impugned circular No. PER/W & S/S17 (HPPC), dated April 29, 1992 is declared as illegal. The members of the petitioner-Union are entitled for the revised rates of construction allowance/ project allowance as per the rates specified by the High Power Committee and as

approved by the Supreme Court by its order dated May 3, 1990.

18. Accordingly the writ petition is allowed to the extent indicated with costs quantified at Rs. 2,500-00. (Rs. Two thousand and five hundred). Let a Writ of Mandamus be issued.

