
(2007) 07 AHC CK 0197
In the Allahabad High Court

Indian Industries Association

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 38, 43

Citation : (2007) 4 AWC 3825

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties including Shri J.N. Tewari learned Senior counsel Shri V.R. Agarwal and Shri Yogesh Agarwal, learned Counsel for Management/Industry owners and Shri K.P. Agarwal, learned Senior counsel and Shri A.C. tewari, learned Counsel for the workmen.

2. Through these two sets of writ petitions two Government Orders issued u/s 3(b) of U.P. Industrial Disputes Act of 1947 have been challenged. In the first set of writ petitions filed by Management of different Engineering Industries, Government order dated 15.5.2000 has been challenged. Through the said order wage structure for workmen of Engineering Industries has been provided. Through the second set of writ petitions Government order dated 31.1.2000 has been challenged through which wage structure for workmen employed in Hotel and Restaurant Industries has been provided.

3. Section 3(b) of U.P. Industrial Disputes Act is quoted below:

If, in the opinion of the [State Government] it is 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, it may, by general or special order, make provision -

(a)....

(b) For requiring 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;

(c)...

(d) for constitution and functioning of Conciliation Boards for settlement of industrial disputes in the manner specified in the order;

(e)...

(f)...

(g)....

Provided that no order may under Clause (b) -

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;

4. There is no corresponding provision in (Central) Industrial Dispute Act. The main argument of learned Counsel for the petitioners is that under the aforesaid clause only temporary measures may be taken while fixing wage structure is permanent in nature. The other substantial argument raised was that under minimum wages Act, minimum wages have been fixed and over and above that State Government has got no power to issue directions to the employers to pay wages. Some other minor arguments were also raised which have already been decided in *Hindustan Industries v. State* 1971 L.I.C. 1154 (op.cit). It was also emphatically argued on behalf of the employers- petitioners that there was no material to form the opinion regarding existence of any of the contingencies mentioned in the section and in the impugned orders merely language of section has been reproduced word by word.

5. Sri K.P. Agarwal learned Counsel for the workmen has argued that wages are of different kinds including minimum, living and fair. According to the learned Counsel Minimum Wages Act deals with minimum wages while impugned government orders have provided living wages as mentioned in Article 43 of the Constitution. Article 43 of the Constitution is quoted below.

The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise, work a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

6. The provision in question i.e. Section 3(b) of U.P.I.D. Act was for the first time considered by a Constitution Bench Authority of the Supreme Court in *State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd.*, Through the said

judgment Full Bench Authority of this Court reported in 1954 All 538 was reversed. At that time payment of Bonus Act 1965 had not been passed. State Government while exercising the power u/s about 3(b) of U.P.I.D. Act had directed payment of bonus to the workmen of Sugar industries. Supreme Court upheld the said government order. Supreme court further held that payment of bonus is term or condition of employment. The Supreme Court in paragraphs 9 and 10 of the aforesaid judgment held that power under Clause (b) of Section 3 of U.P.I.D. Act could be exercised in case of emergency. Supreme Court in para-9 further held as follows:

In our opinion where once the government has acted under Clause (b) on the ground that it was in the public interest to do so, it would not be open to the government to refuse to refer the dispute under Clause (d) for conciliation or adjudication.

7. A lot of emphasis has been laid upon the use of the word emergency by the Supreme Court in the aforesaid authority on behalf of the employers. According to their learned Counsel there was no emergency hence exercise of power was unwarranted. Learned Counsel for the workmen has argued that the word emergency used in the aforesaid authority means nothing more than emergent situation. Learned Counsel has further argued that in order to exercise power under Clause 3(b) it is not necessary that there must be wide spread agitation, violence and strike. According to the learned Counsel a general dis-satisfaction among the workers, mild protests demand for giving higher wages is sufficient for the Government to exercise powers under the aforesaid clause. According to the learned Counsel the measures to be taken under the relevant clause are in the nature of fire fighting measures and mere smoke must prompt a prudent government having sufficient foresight to take action without waiting for the fire to flare up and it is exactly what has been done by the Government by issuing impugned orders. It has further been argued by learned Counsel for workmen that satisfaction of the government under the aforesaid provision is purely subjective and in the counter affidavit by the State sufficient materials has been mentioned to justify the subjective satisfaction.

8. In respect of subjective satisfaction and its scrutiny by the courts a Constitution Bench authority of the Supreme Court reported in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, has been cited. In the said authority it has been held that formatting of opinion is subjective process and existence of circumstances suggesting inference of what has been set out must be made out. Some authorities of the Supreme Court dealing with the minimum wages have also been cited. An authority of Supreme Court reported in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, has also been cited wherein it has been held that subjective satisfaction of administrative authority regarding existence of urgency or emergent situation is open to judicial review in certain circumstances.

9. Some authorities of this Court have also been cited on the interpretation of

Section 3(b) of U.P.I.D Act. One is reported in 1978(36) F.L.R. 182 M/s Mohan Goldwater Breweries Ltd v. State of U.P. In the said authority it was held that in the impugned orders expressions contained in Clause (b) of Section 3 of U.P.I.D. Act had been recited however the orders did not contain any statement that there was any emergency much less any acute emergency necessitating action by the State Government. It was also held that even though it was open to the employer to raise an industrial dispute u/s 3(d) of U.P.I.D. Act however, if the order u/s 3(b) was without jurisdiction, it was open to the employer to seek relief against that order under Article 226 of the Constitution. In the said authority the notification which was challenged directed the employers of the distilleries and breweries to pay a sum of Rs. 32.20 per workmen. In the said Division Bench reliance was placed upon an earlier Division Bench of this Court reported in State of U.P. v. Prem Spinning & Weaving Mills Co. 1973 A.L.J. 65.

10. Several authorities have been cited for the proposition that if a statute permits a particular thing to be done in a particular manner then the said thing shall either be done in that manner or not at all.

11. Learned Counsel for the workmen have cited the following authorities:

1. British India Corporation Ltd v. State of U.P. 1976 (33) FLR 129 (Single Judge)
2. 1971 Labour and Industrial Cases 1154 Hindustan Industries v. State of U.P. (Division Bench)
3. Dil Pasand Biri Company v. State of U.P. 2003 (4) ESC 1959 (Division Bench)

12. Reference has also been made to Kesar Sugar Works Ltd. v. State of U.P. and Ors. (All India H.C.) 1962 F.L.R. 301. In this case it was held that it was not necessary to recite in the order u/s 3(b) of U.P.I.D. Act that there existed an emergency.

13. Unfortunately in the above two authorities of M/s Mohan Goldwater Breweries Ltd. and Prem Spinning & Weaving Mills Co. the authority of Hindustan Industries and Machine Mfg. Co. 1971 LIC 1154 was not considered. Each and every point raised by learned Counsel for the employers in these writ petitions has already been considered and decided in the Division Bench authority of Hindustan Industries. In the said authority twelve contentions were raised and decided. Contention Nos. 2 to 10 are quoted below:

2. The order is vitiated by an inherent contradiction because while its fundamental feature is the phasing of the higher wages over a period of five years it has been declared to be in force for a period of one year only.

3. The State Government when making the Order did not apply its mind to the considerations set out in Section 3(b) of the Act, and there was no emergency to warrant the making of the Order.

4. The Order does not take into account the paying capacity of the industry and therefore, the wage structure provided by it is contrary to law.

5. The order proceeds upon an invidious discrimination between private sector undertakings and public sector undertakings, between the Kanpur region and other comparable regions such as Ghaziabad and Meerut, and between undertakings within the Mahapalika limits of Kanpur and those immediately outside those limits consequently Article 14 of the Constitution has been violated.

6. The classification attempted in the Order between different regions was too vague and should have been broken down still further so as to produce clearly defined regions.

7. In respect of the foundry industry an order under the Minimum Wages Act already existed and there was no need for making the Order under consideration.

8. The order is self-defeating inasmuch as its stringent provisions if implemented would result in the closure of a number of undertakings belonging to the Industry.

9. The order is not in accord with Articles 38 and 43 of the Directive principles of State Policy set out in the Constitution.

10. Before the Order was made the Government was bound to consult the industry.

14. First argument raised in the said case was regarding retrospective operation of the order. In the instant cases the said argument has not been raised. Second contention onward were considered in para-18 and subsequent paragraphs of the said authority. In respect of third contention regarding existence of the grounds mentioned u/s 3(b) of the Act the Division Bench placed reliance upon *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, and *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, The decision of *Swadeshi cotton mills* was on the interpretation of an order u/s 3(b) of U.P. Industrial Disputes Act. The Division Bench in para-21 of its judgment dealt with this point as follows:

Para-21 In the present case the conditions precedent have been recited in the Order itself, and the burden is upon the petitioners to show that the recital of those conditions is not correct and that there has been no compliance with those conditions. In some of the petitions before us there is an averment that the conditions precedent recited in the Order did not exist in fact. In order to clear the position, we sent for the original records of The State Government on the basis of which the order was made. We find from the several reports and other notes contained in those records that the agitation of the workmen belonging to the industry had reached serious proportions and strikes were threatened in case the recommendations of the Central wage Report were not implemented. In the circumstances, it appeared necessary to make an order granting immediate relief to maintain public order and avoid disturbances and to ensure the continued supply of services essential to the life of the community and the maintenance of employment. Therefore, we are satisfied that the State Government did apply its mind deciding to make the order and that it did not act unreasonably or arbitrarily in passing the Order. The State government considered that an

emergency had arisen calling for the making of the order, and the material shows that it could have reasonably come to such a conclusion.

15. The aforesaid authority of Hindustan Industries also dealt with a similar Government order dated 13.7.1970 providing a wage structure for Engineering Industries in the State of Uttar Pradesh.

16. Similarly in the aforesaid authority of Dil Pasand Biri Company a similar order u/s 3(b) of U.P. Industrial Disputes Act in respect of Biri workers was upheld. In Writ Petition No. 33204 of 2000 counter affidavit of under Secretary, Labour U.P. Government was filed on behalf of State. Learned standing counsel requested that the said counter affidavit might be read in all the connected writ petitions. The court directed the learned standing counsel to supply copy of the said counter affidavit to the learned Counsel for the petitioners in the other connected writ petitions, if requested by them.

17. In the counter affidavit it has been stated that due to delay in considering the outstanding demand of the workman of engineering units regarding revision of their pay scale and constitution of tripartite committee notices were received by the concerned authorities from various trade unions. Copies of the said notices have been annexed. One of the annexures is a letter by Secretary of Bhartiya Mazdoor. Sangh, Uttar Pradesh, another by District Committee, Ghaziabad, Centre of Indian Trade Unions, another by Engineering Industries Workmen Union, Kanpur. It has further been stated in the counter affidavit that a meeting of Trade Arbitrator Committee was held and thereafter State Government through notification dated 6.7.1999 constituted tripartite committee which held a meeting on 6.8.1999 and another meeting on 13.10.1999 in consequence of which a proposal was sent by the Labour Commissioner to the State Government on 25.10.1999.

18. From the perusal of the representations received by the State Government through the Workers of the Industries in question which have been annexed as Annexure C.A.I to the counter affidavit is quite clear that there did exist the situation as contemplated by Section 3(b) and in terms of Supreme Court judgment of Basti Sugar Mills it could be described as state of emergency. For invoking powers u/s 3(b) it is not necessary that actually strike should be going on and there must be actual disruption and disturbance of large scale. Dissatisfaction among workers and possibility of strike is sufficient for invoking the powers under the said section.

19. In the end there is one more aspect of the matter which requires consideration. During last 15 years or so economic and industrial scenario in this Country has undergone a substantial change. Control and restrictions upon trade and business have been relaxed to a great extent. The changed scenario is termed as globalisation and liberalisation.

20. Initially workers enjoyed security of tenure. Now security of tenure is not so much guaranteed as it was earlier. Supreme Court in the constitution bench

authority of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has held that no employee or worker has got a right of regularisation. Supreme Court in Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, And Haryana State Electronics Development Corporation Ltd. Vs. Mamni, has held that even if termination of a workman is bad for non-payment of retrenchment compensation as required by Section 6-N of U.P. Industrial Disputes Act or 25-F of Industrial Disputes Act still reinstatement is not the proper order to be passed and award of consolidated damages/compensation is the proper relief. Alongwith reinstatement automatic and invariable award of full back wages has become a fairy tale. Burden to prove that workman worked for 240 days in a year now lies upon workman. Doctrine of loss of confidence has been evolved. Financial irregularity, however trivial or even negligible now entails dismissal. Opportunity to the erring workman to improve his working is no more in vogue. Delay of 5 to 7 years in applying for making reference is now considered to fatal. in this back ground no protection of any sort to workers will prove fatal.

21. During the last century two economic systems have been prevalent in the world. Under one system security of tenure is guaranteed but the proper wages are not. Under the other system security of tenure is not guaranteed but proper wages are paid. It will be highly inadvisable nay disastrous to borrow the concept of less wages from one system and of insecurity of tenure from the other system it will amount to having worst of both the worlds. Taking away the right of security of tenure requires to be balanced and compensated by payment of good wages.

22. A clear western wind is blowing. In order to miss it one will have to be as simpleton or "only fixed spot in this changing world" as Watson When Sherlock Holmes, during First world war, referred to eastern wind to him he completely missed the figurative hint and replied in the literal sense that actually the wind was warm and westernly ("His last Bow by Sir Arthur Conan Doyle).

23. In due course of time market forces will take over and take care the aspect of good wages. Let us hope that it happens sooner than later. However, until it happens, State including all its three organs, legislature, executive and judiciary will have to intervene to strike the balance.

24. Graduates of I.I.Ts, I.I.Ms and other good institutes get the jobs before completion of their courses with astronomical salaries. They ask what they will do with so much money. Other graduates spend years for getting meagre salary/income. For them searching a job is itself a whole time job.

25. The sensdex has touched 15000 mark three days before. it touched 1000 for the first time in 1990. This aptly sums up the change in economic scenario during this period. However, the question is as to whether this boom has percolated to the lower income group or not? Sadly the answer is in the negative. Lower income group is the foundation of economy and society. If the foundation is

weak, the whole structure will be weak. No chain is stronger than its weakest bond. Progress of only the higher starta is loopsided.

26. Recently the Prime Minster appealed to the elite business Community to reduce the pay package of top class C.E.Os. The targeted class naturally exhibited strong resistance. However, the point that huge disparity between earnings of different groups is not good cannot be ignored. The other way of reducing the disparity is to increase the wages/earning of people of other economic groups with special emphasis on the lowest income group. On the one hand land prices are in real sense sky rocketing in India. Nariman Point, Mumbai is third and Connaught place, Delhi is fifth most expensive area of the world, land cost wise. It is more than important that during last 2 or 3 years both these places have jumped two places upward. Previously these places were at SI. No. 5 and 7. Alas the wages of construction workers (the only segment open for unskilled workers at large) have not shown matching acceleration.

27. As far as industries are concerned, owner is primarily concerned with profit, worker with wage while interest of the public demands good quantity and quality of commodity/service at affordable cost. It is a sort of strife. The strife between capital and labour and the extreme stand which each takes and extreme arguments which each side advances are best illustrated by the drama "strife" by John Galsworthy written in 1909. Each side may have legitmate arguments in its favour. However, this is a world of compromises and no argument can be brought to its logical conclusion. Philosophers and mad dogs are liable to be shot because they want to bring their arguments to their logical conclusion (Thomas Hardy in "Far from the mad ding crowd").

28. Balance in nature is necessary for survival of the Universe. Similarly balance in society is also essential for its survival. Economic aspect is one of the most important aspects of human society. Economic balance will have therefore to be given a very high priority. For the sake of economic balance alongwith higher earning of upper section of the society, becoming higher and higher rapidly, good income/wages will have to be ensured to the lower section of the society.

29. Accordingly, it is essential that there must be clear provision for fixation of living, fair or proper wages and the steps for fixation of such wages shall be taken in respect of all the Industries.

30. Accordingly, I do not find any error in the impugned notifications. All the writ petitions are dismissed.

31. Under interim orders passed in these writ petitions operation of the impugned orders had been stayed. The arrears shall be paid by the employers to the workmen in four equal instalments on or before 1.10.2007, 1.1.2008, 1.4.2008 and 1.7.2008.