
(1976) 04 AHC CK 0020
In the Allahabad High Court

J.K. Rayon Workers" Union

APPELLANT

Vs

J.K. Rayon Co. Ltd.

RESPONDENT

Date of Decision : 23-04-1976

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 14, 19, 9

Citation : (1978) 2 LLJ 428

Hon'ble Judges : B.N. Saprú, J

Bench : Single Bench

Judgement

B.N. Saprú, J.—The petitioner in this case is the J. K. Rayon Worker"s Union, which is a trade union registered under the Trade Unions "Act, and its members are the employees of the respondent M/s. J. J. Rayon Co. Ltd. The said company is incorporated under the Indian Companies Act.

2. The company and the trade union entered into a settlement which was registered by the duly authorised conciliation officer as provided in Section 6B (3) of the U.P. Industrial Disputes Act. By Clause (i) amongst other things, the settlement provided for the payment of dear food allowance (D.F.A.) and by Clause 6 for payment of a milk allowance of forty-five paise per workman to those workmen who were not entitled to those allowances prior to the date of the settlement. The duration of the settlement was upto the end of 1976.

3. On 7-1-1976 the company gave a notice u/s 4-1 of the U.P. Industrial Disputes Act read with Rule 7(a) of the Rules framed under the Act. The notice complied with the requirements of Section 4-I of the U.P. Industrial Disputes Act inasmuch as it was given in the prescribed manner and gave 21 days notice of change as required u/s 4-I of the Act. The changes proposed were that the company would not pay D.F.A. as required under the settlement and will also discontinue payment of milk allowance as provided in the aforesaid settlement.

4. Aggrieved by the action of the company the petitioner trade union has filed the present writ petition. It is prayed that the notice of change dated 7-1-1976

be quashed and a writ of mandamus or other direction be issued to the company commanding it not to give effect to the notice dated 7-1-1976 and to withdraw the same. Some other consequential reliefs have also been claimed.

5. The basic ground on which the writ petition has been filed is that the settlement arrived at between the parties was to be in operation upto 31-12-1976, and as such, the company had no jurisdiction to issue the notice of change u/s 4-I of the Act. It was pleaded by petitioner trade union that the settlement cast a statutory duty of a public nature of the company and that duty could, therefore, be enforced by means of a writ petition. It was further the case of the petitioner trade union, that the powers vested in an employer u/s 4-I of the U.P. Industrial Disputes Act could not be exercised in a manner which would render a settlement entered into between the parties u/s 6B of the Act ineffective.

6. On behalf of the respondent-company it is said in opposition to the writ petition that the only limitation on the powers of an employer to make a change in the condition of service is to be found within the four corners of Section 4I of the Act; that the workman, if they were aggrieved by the action of the respondent in issuing the notice u/s 4-I of the Act were entitled to raise an Industrial dispute and request the State Government to make a reference to the Labour Court and, as such, they had an adequate alternative remedy and so ,the writ petition should not be entertained.

7. It was further the case of the respondent that it was a company incorporated under the Indian Companies Act and, as such, no writ of mandamus can be issued to it, as it had no public or statutory duty to perform, and in any case no writ lies against a company incorporated under the Indian Companies Act.

8. The first question to be decided in this writ petition is whether an employer can give notice of change of conditions of service while the settlement arrived at between the parties under the provisions of Section 6B of the Act is in force. Sri S.N. Kacker on behalf of the company has argued that the only limitation on the power of an employer to make a change in the condition of service of worker is to be found in Section 4-I of the Act. Section 4-I in so far as it is relevant is quoted below :

Notice of Change-No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matters specified in the Third Schedule shall effect such change :

(a) Without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected ; and

(b) Within 21 days of giving such notice.

It is urged that the only requirement that the employer has to fulfil is that the notice of change should be given in the prescribed manner and that it should be of 21 days. According to the learned Counsel, the notice issued by the

respondent-company fully complied with the conditions laid down in Section 4-1 of the Act. It is true that there are no further limitations to be found on the powers of employer to give a notice of change u/s 4-I of the Act itself. However, Section 19 of the Central Industrial Disputes Act, 1947 provides that a settlement arrived at between the parties shall come into force on the date agreed upon, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties. Sub-section (2) of Section 19 provides that :

Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

9. There are similar provisions in regard to the validity of an award given under the Central Industrial Disputes Act, 1947. Under the U.P. Industrial Disputes Act an award of a Labour Court or a Tribunal or an award given in arbitration proceedings shall remain in force for a period of one year or such shorter period as may be specified therein. The State Government has been given a power to extend the period of operation of an award. The State Government has further been given the power to shorten the period of the operation of the award. As regards the settlement arrived at u/s 6B of the Act there is no duration prescribed for the binding force of the settlement except that in Section 6B (1) of the U.P. Act it is provided as follows ;

A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall except as provided in Sub-section (4) be binding on the parties to the agreement.

10. In this case, the parties, had settled amongst themselves that the settlement would be binding till the end of 1976, and consequently it would continue to have binding force until the end of 1976 by virtue of Section 6B of the Act.

11. It is then clear that the employer's power to give a notice of change u/s 4-I of the Act is subject to the other provisions of the Act, and cannot be used in a manner which would destroy the effect of a settlement or an award under the U.P. Industrial Disputes Act.

12. The conditions pre-requisite for the giving of a notice of change u/s 4-I of the U.P. Industrial Disputes Act are only procedural and the section does not purport to give the employer a power to effect the life of an award or a settlement.

13. Learned Counsel for the respondent-company urged that Section 19 of the Central Industrial Disputes Act has to be applied to a settlement arrived at u/s 6B of the U.P. Industrial Disputes Act. It is only where there is conflict between

the two acts that the U.P. Industrial Disputes Act will prevail over the Central Act as it had received the assent of the President. Strong reliance has been placed by the learned Counsel for the respondent on the decision of a learned single Judge of this Court in case of *A. Tillery and Sons Vs. Carpet Mazdoor Sabha, a Registered Trade Union and Others*, That was a case where there had been an award the duration of which had expired, but it had continued to bind the parties as no notice of change had been given. The company gave a notice of change, but the notice was shorter than the period prescribed under the law. In that case, the question that has arisen in present case, did not arise as the power of an employer to issue a notice of change on expiry of the validity of the award cannot be disputed. The learned Judge while dealing with the application of the Central Industrial Disputes Act to the proceeding under the U.P. Industrial Disputes Act has held that the U.P. Legislature deliberately omitted to introduce a provision parallel to Section 19 of the Central Industrial Disputes Act, 1947 in the U. P. Act, However, the learned Judge, has considered the case also as if Section 19 of the Central Industrial Disputes, Act, 1947 was applicable. In these circumstances, I cannot take it as an authority for the proposition that Section 19 of Central Industrial Disputes Act, 1947 can have no application to proceedings under the U. P. Industrial Disputes Act, 1947. Further, that was a case dealing with an award which had expired, while the present case is one in which there is a valid settlement in force.

14. The next question is whether a writ petition is maintainable by the petitioner against the respondent M/s. J. K. Rayon Corporation Limited. Admittedly, the Corporation is incorporated under the Companies Act. It is urged on behalf of the respondent that no writ can be issued to the respondents as it is a company incorporated under the Indian Companies Act and has no public or statutory duties to perform. It has now been settled that a writ petition can be issued to statutory Corporation if they have public or statutory duties to perform. The latest case is that of *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, . There it had been held that bodies like Oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance Corporation which are incorporated under statutes are authorities within the meaning of Articles 12 of the Constitution. It has further been held that if they act in violation of the terms under which they are incorporated or of their rules and regulation, and an employee is aggrieved by their action, a writ petition is maintainable against them. The Hon"ble Chief Justice observed in paragraph 18 of his judgment:

In America a public agency" has been defined as an agency endowed with Governmental or public functions, It has been held that the authority to act with the sanction of Government behind it determines whether or not a Governmental agency exists.

15. In that case all the earlier cases, viz. S.R. Tewari Vs. District Board Agra and Another, ; Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others, ; Calcutta Dock Labour Board Vs. Jaffar Imam and Others, ; Mafatlal Naraindas Barot v. Divisional Controller S.T. Mehsana 1964 I L.L.J. 437; Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, ; Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, and Indian Airlines Corporation Vs. Sukhdeo Rai, , were considered and explained.

16. In Sukhdeo Singh's case referred to above, the Court was not concerned with the question whether a writ petition could be issued against a private corporation. However, Mr. Justice Mathew who concurred with the majority judgment observed as follows :

Generally speaking, large Corporation have power and this power does not merely come from the statutes creating them. They acquire power because they produce goods or services upon which the community comes to rely. The methods by which those corporations produce and the distribution made in the course of their production by way of wages, dividends and interest as also the profits withheld and used for further capital progress and the manner in which and the condition under which they employ their workmen and staff are vital both to the lives of many people and to the continued supply in line of the country. Certain imperatives followed from this. Both big business and big labour union exercise much quasi public authority. The problem posed by the big corporation is the protection of the individual rights of the employees. Suggestions are being made that the corporate organisation of big business and labour are no longer private phenomenon ; that they are public organisms and that constitutional and common law restrictions imposed upon State Agencies must be imposed upon them. The governing power wherever located must be subject to the fundamental constitutional limitation. The need to subject the power centres to the control of Constitution requires an expansion of the concept of State action. The historical trend in America of judicial decisions has been that of bringing more and more activity within the reach of the limitations of the Constitution. The next step would be to draw private Governments into the tent of State action. This is not particularly startling proposition, for a number of recent cases have shown that the concept of private action must yield to a concept of State action where public functions are being performed.

17. In Marsh v. Alabama C.A. No. 1543 of 1947, (1957) 13 S.C. L. J. 172, a Corporation owned a company town Marsh, a Jehovah's witness offered his pamphlets and preached his doctrine on one of the town corners. He was arrested for trespassing by one of the company guards, was fined five dollars and the case went all the way upto the Supreme Court. On straight property logic Marsh, of course, was trespassing. He was unwanted visitor on company's real estate. But, Court said, operation of a town is a public function. Although private in the property sense, it was public in the functional sense. The substance of the doctrine there laid down is that where a corporation is privately performing

a public function it is held to the constitutional standards regarding civil rights and equal protection of the laws that apply to the State itself. The Court held that administration of private property of such a town, though privately carried, was, nevertheless in the nature of a public function. That the private rights of the corporation must, therefore, be exercised within constitutional limitations, the conviction for trespass was reversed "

18. Subsequently, in a later part of the judgment in paragraph 181 Mr. Justice Mathew has observed that:

In America, Corporation or Associations, private in character, but dealing with public rights have already been held subject to constitutional standards. Political parties, for example, even though they are not statutory organisations, and are in form private clubs, are within this category. So also are Labour Unions on which statutes confer, the rights of collective bargaining.

19. In *Conpus Juris Secundum*, Vol. 55, in paragraph 222 it is stated that:

Mandamus will lie to compel a corporation to perform a specific legal duty which it owes to the public unless some other adequate remedy is provided." It is further made clear in paragraph 229 of that volume as follows :

Some of the Courts seem to hold that the public duty, performance of which by a corporation may be compelled by mandamus, must be clearly enjoined by charter or statute but by the weight of authority it may be either express or implied, and it be imposed either by charter, statute, a valid municipal ordinance, a valid order, rule, or regulation of a State Commission or similar official board or agency, or by the common law. In any case, a writ of mandamus will issue to compel performance of a public duty by a Corporation only where there is a specific legal duty on the part of corporation to do the Act sought to be compelled and actual default in the performance of that duty it will not issue in anticipation of a supposed Commission of duty.

20. In the subsequent paragraphs of that volume a large number of illustrations have been given as to the situations in which writ of mandamus has been issued to private corporations. It is not necessary to quote them all.

21. Sri Kacker has also placed reliance on the case of *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, ; where it has been held by the Supreme Court after reviewing the earlier cases that a writ cannot issue against a Registered Cooperative Society which has terminated the services of an employee against the provisions of the statutes applicable thereto. It has been held that it was held in earlier cases that a writ will not be issued to compel an employer to reinstate a workman whose services have been terminated contrary to the rules or regulations as that would amount to the enforcement of a contract of personal service which is prohibited by Section 21 of the Specific Relief Act. The Supreme Court reiterated its decision in the case of *Executive Committee, U.P. Warehousing Corporation Vs. Chandra*

Kiran Tyagi, . This case again is no authority for the proposition that a writ cannot be issued against a private Corporation even if it is entrusted with the performance of a statutory or public duty.

22. Sri Kacker has also placed reliance oft decision of a learned single Judge of this Court in Writ No. 1398 of 1967 decided on 1st April, 1976. In that case the respondent J.C. Malhotra, an employee of the Central Inland Fishery Research Institute, which was a society registered under the Societies Registrition Act, had filed a suit against the society in a matter relating to his employment. He had also sought an injunction which had been granted. The learned Judge held that a Society registered under the Societies Registration Act is not a Corporation and that the Act only confers a certain legal personality on the Society so that it may be in a position to sue and be sued in its name. He further held that a society so registered is merely an Association Of persons for certain purposes which is recognised as a legal entity. Thus, the relationship with the employees is contractual and, therefore, no suit could be filed against it in view of the provisions of the Specific Relief Act. With these findings the learned Judge quashed the Injunction order and issued a writ of prohibition directing the civil Judge not to proceed any further with the trial of the suit. It will be immediately seen that the question involved in the present case was not before the learned Judge. Here no contract of employment is being sought to be enforced. What is being sought to be enforced are certain duties which are said to be statutory or public duties.

23. Sri Kacker on behalf of the respondents has also placed strong reliance on the case of National Seeds Corporation Employee's Union and Another Vs. National Seeds Corporation, New Delhi, ; where the question was whether the employees could get a writ of mandamus in a case wherein a notice of change had been given by the employees contrary to the provisions of Section 9 of the Industrial Disputes Act, 1947. The Delhi High Court held that no writ of mandamus can be issued to the employer even if the employer had acted contrary to the provisions of Section 9 of the Central Industrial Disputes Act. There the Delhi High Court quoted the judgment of the Supreme Court in the case of The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, , and relied upon it for holding that a writ could not be issued in the case. Moreover the Delhi High Court in this case does not overrule possibility of a writ being issued to a company as it has observed :

Article 226 of the Constitution cannot be utilised to grant relief against purely private persons who have no statutory or legal existence. Similarly, writs cannot normally be issued where another remedy is open.

24. Counsel for the petitioner has also relied upon the decision in the case of Praga Tools Corporation v. Imanuel and Ors. (supra). There the Supreme Court held that a corporation being incorporated under the Indian Companies Act, there was neither a statutory, or a public duty imposed on it by statute in respect of which enforcement could be sought by means of mandamus nor was there in

its workmen any corresponding legal right for enforcement of any such statutory or public duty.

25. It will be immediately seen that the Supreme Court has left the question, whether a writ of mandamus can be issued to a company incorporated under the Companies Act to enforce a statutory or public duty open.

26. It is, therefore, necessary to examine whether, any statutory or public duty was cast on the respondent-company by virtue of the settlement arrived at by it with its workmen in accordance with the provisions of Section 6B of the U.P. Industrial Disputes Act. Section 6B has been enacted to bring about Industrial harmony and peace and to encourage settlement of Industrial disputes between the employers and the employees. Some of the consequences flowing from a settlement are set forth in the provisions of Section 6C of the U.P. Industrial Disputes Act as follows :

(1) No person employed in an industrial establishment shall go on strike :

(a) without giving to the employer a notice of strike within thirty days before striking ; or

(b) during any period in which a settlement or award is in operation, in respect of the matter covered by the settlement or award

(c) No employer shall lock-out any of his workman during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

27. It must be remembered that u/s 6B (3) of the U.P. Industrial Disputes Act it is provided as follows :

On receipt of application for registration under Sub-section (2), the conciliation officer or an authority notified by the State Government in this behalf either (1) register the settlement in the prescribed manner, or (2) refuse registration if it considers it to be inexpedient to do so on public grounds affecting social justices, or if the settlement has been brought about as result of collusion, fraud or misrepresentation.

28. Thereafter Section 6B (4) provides:

Where a settlement under Sub-section (1) has been refused registration, it shall not be binding under this Act...

29. A perusal of Section 6B will show that a settlement arrived by agreement between employers and the employees does not become legally binding by itself. The settlement has to be registered. A public officer examines whether the settlement should or should not be registered. He has to take into account public grounds affecting social justice. He can refuse registration on public grounds affecting social justice, or if a settlement has been brought about as a result of collusion on fraud or misrepresentation. When a settlement has been registered

then u/s 6B of the U.P. Industrial Disputes Act a contract in respect of the matter covered by the award or the settlement is binding and further an employer cannot lock-out any of his workmen during any period in which a settlement is in operation in respect of any of the matters covered by the settlement. Similarly workmen cannot go on strike in violation of the terms of the settlement which would be covered by the provisions of Section 14 of the Act which provides that any contravention of the provisions of the Act is punishable unless otherwise provided with imprisonment upto a term of three years or with fine or with both.

30. Section 6B provides that settlement which has been registered shall be binding on the parties. Obviously, the duration for which the settlement is entered into would also be binding. Apart from this Section 19 of the Central Industrial Disputes Act, 1947 provides that a settlement arrived at between the parties shall be binding for the entire duration of the period for which it was entered into. Under the settlement there was a duty cast upon the respondent-company to pay to their employees dearness food allowance and milk allowance according to the terms of the agreement. It cannot be forgotten that the respondent-company employs a large number of workmen. It is obvious that there is a statutory duty to comply with the terms of a settlement, in the same manner as it would be obligatory on the workmen and the employees to abide by the award of an Industrial Tribunal or a Labour Court.

31. It is argued on behalf of the respondent that if the petitioner were dissatisfied with the notice of change given u/s 4-I of the Act they could raise an industrial dispute and the State Government could be moved to refer it for adjudication. The petitioners do not deny that the matter could be agitated by means of an industrial adjudication. Moreover, I cannot ignore the fact that unless this Court had intervened by means of an interim order dated 23-1-1976, by which it stayed the notice issued by the company on 7-1-76, the allowances would have been left to resort to long drawn proceedings under the Industrial Disputes Act. It is also necessary to clarify the effect and scope of Section 4-I of the U.P. Industrial Disputes Act in cases where a settlement has been arrived at between the parties, u/s 6B of the U.P. Industrial Disputes Act, Thus, I do not think, the instant case is unfit one in which the petitioner should be denied in writ of mandamus on the ground that an alternative remedy exists.

32. In the result, the writ petition succeeds and is allowed, A writ of mandamus shall issue to the respondent company not to act on the notice of change issued by it u/s 4-I of the U.P. Industrial Dispute Act on January 7, 1976 and to continue to pay dearness food allowance and milk allowance to its workmen in accordance with the terms of the settlement arrived at between the parties, u/s 6B of the U.P. Industrial Disputes Act, The petitioner-union will be entitled to its costs of this petition.