
(1975) 07 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal No. 781 of 1973

Mahabir Jute Mills Ltd., Gorakhpore

APPELLANT

Vs

Shibban Lal Saxena and Others

RESPONDENT

Date of Decision : 30-07-1975

Acts Referred:

Constitution of India, 1950 — Article 133

Citation : AIR 1975 SC 2057 : (1975) 31 FLR 135 : (1975) 2 LLJ 326 : (1975) 2 SCC 818 : (1976) 1 SCR 168

Hon'ble Judges : A. N. Ray, C.J.; V. R. Krishna Iyer, J.; S. Murtaza Fazal Ali, J.; K. K. Mathew, J

Bench : Full Bench

Advocate : S.V. Gupte, A.K. Sen, E.C. Agarwala, Promod Swarup, for the Appellant; K.R. Chowdhury, S.L. Sethia, G.N. Dikshit, O.P. Rana, for the Respondent

Final Decision : Allowed

Judgement

S. Murtaza Fazl Ali, J.—This is an appeal by the management of M/s. Mahabir Jute Mills situated at Gorakhpore by a certificate granted by the High Court of Allahabad under Article 133 of the Constitution of India. M/s. Mahabir Jute Mills Mazdoor Sabha was formed some time in the year 1946 and soon thereafter when Shibban Lal Saxena one of the respondents was elected as President of the Labour Union of the Mill disputes arose between the workers and the Company as a result of which Shibban Lal Saxena sent notice to the management on December 31, 1946 threatening a general strike. Thereafter several disputes arose between the parties which were sometimes settled, sometimes reopened and in this appeal we are not concerned with those matters. In the previous disputes the order of the management retrenching some workers was upheld by the Regional Conciliation Officer and against that Shibban Lal Saxena served a notice of strike listing 18 demands and calling upon the management to reinstate the retrenched workers and pay them bonus. This notice was given on March 31, 1954. On April 16, 1954 a total strike was launched and Shibban Lal Saxena left

for China. During his absence it appears that the management arrived at some sort of settlement with the working President of the Union and the dispute for the time being was resolved on July 11, 1954. Shibban Lal Saxena, however, returned from China and with his re-entry into the Union matters assumed serious proportions and the disputes reached a high pitch. Mr. Saxena is alleged to have excited the workers and wanted to re-open the agreement reached between the management and the working President of the Union on July 11, 1954. He also started an agitation and the workers responded to the go-slow call given by Mr. Saxena as a result of which the production of the Company came down from 500 cuts to 300 cuts resulting in huge losses to the Company as alleged by the management. It is further alleged that Mr. Saxena had delivered a number of inflammatory speeches as a result of which the management charge-sheeted two workers for wilful jamming of bobbins in the Spinning Section as a result of which the spinning work came to a stop. On January 4, 1955 the management held an inquiry against the two workers and three other workers who appeared to be in sympathy with them were also charge-sheeted for their stay-in-strike. This strike continued right up to January 13, 1955 in spite of the efforts of the management to arrive at a settlement. This was followed by a charge-sheet which was served by the management on various workers on February 5, 1955. Mr. Saxena protested to the management saying that the charge-sheets were absolutely baseless. A notice was put on the main gate of the Mill on February 22, 1955 informing that an inquiry would be held on February 25, 1955 and after inquiry which the respondents described as a mere farce a large number of workers were served dismissal notices. It appears that out of 1000 workers all of them had been dismissed from service but 200 workers who apologised were reinstated and taken back. In view of these developments the Union invoked jurisdiction of the Regional Conciliation Officer under Clause 4(1) of the Government Notification dated July 14, 1954 passed u/s 3 of the U.P. Industrial Disputes Act, 1947. A Conciliation Board consisting of the Additional Regional Conciliation Officer as the Chairman and Shibban Lal Saxena and Shri Arora representing the labour and the management respectively as members was constituted. The Conciliation Board heard the case but unfortunately no settlement could be arrived at. Consequently the reports of the members of the Board forwarded to the Labour Commissioner were placed before the Government, Mr. P.C. Kulshreshtha, the Additional Regional Conciliation Officer and Chairman of the Board sent a secret report to the Labour Commissioner recommending that the allegations made by the workers against the management were baseless and should not be entertained. After considering the reports, the Government of U.P. by its order dated February 28, 1956 refused to make a reference to the Industrial Tribunal on the ground that it was not expedient to do so. There was some controversy before the Single Judge of the High Court on the question as to when the order of the Government was received by the workers and the High Court accepted the plea of the workers that there was sufficient delay in communicating the order of the Government to the workers as a result of which a writ petition was filed before the High Court after a

year and a half. But the High Court found that the petitioners were not guilty of laches. This matter is a closed issue and need not detain us.

2. A writ petition was eventually filed on May 15, 1958 for quashing the order of the Government dated February 28, 1956 and for directing a fresh reference. The writ petition was allowed by the order of the Single Judge dated October 7, 1963. Thereafter the management went up in special appeal to the Division Bench of the Allahabad High Court which decided the appeal on May 8, 1972 and quashed the order of the Government and directed it to reconsider the same in the light of the observations made by the High Court. It would thus appear that this writ petition was pending in the High Court for as many as fourteen years with the result that a strange situation has developed today. By the time the appeal has been heard by this Court more than seventeen years have elapsed when the impugned order of the Government was passed and almost twenty years after the management had dismissed 800 workers. It is said that the management after dismissal of the old workers had appointed new workers who had by now put in about twenty years of service. We are constrained to observe that labour matters should have been given top urgency and should not have been allowed to be prolonged for such a long period in the High Court, otherwise the inordinate delay results in a situation causing embarrassment both to the Court and to the parties. It is, therefore, very necessary and in the fitness of things that such matters should be given top priority and should be disposed of by the High Court within a year of the presentation of the petition.

3. The learned Single Judge while allowing the petition set aside the order of the Government and directed the Government to make a reference to the Industrial Tribunal after ignoring the secret report sent by the Assistant Regional Conciliation Officer. Another reason which the Single Judge gave was that as the order of the Government did not state any reasons and was not a speaking order it was legally invalid and was fit to be quashed. The Division Bench of the High Court in appeal has not accepted, and in our opinion, rightly, this part of the order of the High Court which was set aside. The Division Bench held as the order of the Government was purely an administrative order, unless there was any provision which required the Government to give reasons for the order, the same could not be vitiated for the absence of the reasons. The High Court observed thus:

The function of the Government is administrative. In law administrative decisions are not generally required to be accompanied by a statement of reasons. There is nothing in the Industrial Disputes Act or the notification aforesaid requiring the State Government to state its reasons in support of its conclusions. There was nothing particular in the present case impelling the issuance of such a direction to the State Government.

We find ourselves in complete agreement with the view taken by the High Court on this point. In a diverse society such as ours the Government has to work through several administrative agencies which have got a very wide sphere and if

every administrative order is required to give reasons it will bring the governmental machinery to a standstill. It is well settled that while the rules of natural justice would apply to administrative proceedings, it is not necessary that the administrative orders should be speaking orders unless the statute specifically enjoins such a requirement. But we think it desirable that such orders should contain reasons when they decide matters affecting rights of parties. The Division Bench of the High Court however has set aside the order of the Government refusing to make a reference to the Industrial Tribunal and directed it to reconsider the matter on the following three grounds:

- (1) that the Government took into consideration the secret report which has seriously prejudiced and coloured its decision;
- (2) that in accordance with the principle of natural justice the Regional Conciliation Officer should have shown the secret report to the other members of the Conciliation Board so that they may have an opportunity to rebut the same; and
- (3) that the Government order was based purely on the secret report sent by the Additional Regional Conciliation Officer as also the report of the Labour Commissioner.

In the aforesaid order of the Division Bench of the High Court certain mandatory directions have been given to the Government to ignore the secret report as also the report of the Labour Commissioner and to consider the reports of the other members of the Conciliation Board, namely, Shibban Lal Saxena and Mr. Arora. The Division Bench of the High Court has, however, granted the certificate of fitness by its order dated April 9, 1973.

4. Coming to the first ground which weighed with the High Court in setting aside the order of the Government refusing to make a reference to the Industrial Tribunal it seems to us that the High Court has proceeded on a complete misconception of the real position and on a premise which is wrong on a point of fact. Having perused the materials placed before us, we find that there is no reliable material on the record at all to show that the Government order referred to above was based mainly on the secret report of the Additional Regional Conciliation Officer or of the Labour Commissioner. The order does not say so; it only recites that the reference to the Industrial Tribunal was refused because the Government did not think it expedient to make a reference. The High Court, however, completely overlooked the specific averment made in the counter-affidavit filed by the Government before the High Court which is at p. 32 of Volume II of the Paper Book. In para-graph-29 of this counter-affidavit, while rebutting the allegations made by the petitioner it was stated thus:

That with respect to the contents of para 38 of the said affidavit it is stated that the opinion of the Government that it was not expedient to refer the dispute to adjudication was formed after the matter was fully considered by the State Government. The report of the Labour Commissioner submitted through his

letter No. 7241/I-CR-CB-5 (147)/1955, dated 22nd October, 1955, was also before the Department concerned. A true copy of the said letter of the Labour Commissioner is Annexure-III to this affidavit.

The Government took the decision after considering the said report and other surrounding circumstances. It is denied that there was any discrimination against the petitioner Union. Each case was duly considered on its merits and only those cases were dropped which in the opinion of the Government were not fit for reference.

This averment which has not been proved to be false manifestly shows that the Government before making the impugned order had considered all the aspects including the report of the Chairman and the members of the Conciliation Board, the Labour Commissioner and other surrounding circumstances. In these circumstances the finding of the Division Bench of the High Court that the order of the Government was based merely on the secret report of the Chairman or that of the Labour Commissioner is not sustainable. We fail to understand on what basis the High Court has presumed that the Government acted solely on the secret report of the Regional Conciliation Officer.

5. u/s 4-K of the U.P. Industrial Disputes Act the statute confers the power on the Government to refer any industrial dispute if it is of the opinion that such a dispute exists or that any matter is connected with, or relevant to, the dispute. The section runs as follows:

Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court if the matter of industrial dispute is one of those contained in the First Schedule, or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication:

Provided that where the dispute relates to any matter specified in the Second Schedule and is not likely to affect more than one hundred workmen, the State Government may, if it so thinks fit, make the reference to a Labour Court.

This section, therefore, gives a wide discretion to the State Government to act under certain circumstances. If the Government on the basis of the materials before it comes to the conclusion that no real dispute existed and it was not expedient to make a reference one can hardly find fault with the order of the Government passed u/s 4-K of the U.P. Industrial Disputes Act. There can be no doubt that while the secret report of the Additional Regional Conciliation Officer and the report of the Labour Commissioner, like other circumstances, had to be considered by the Government in making its overall assessment of the situation, there was no reason for excluding the secret report submitted by the Additional Regional Conciliation Officer at all. In these circumstances the first ground on which the Division Bench has set aside the Government order in refusing to refer the matter to the Industrial Tribunal is not legally sound and cannot be sustained.

6. As regards the second ground, the main contention of Mr. Gupte, learned Counsel for the appellant has been that the High Court was in error in applying the principles of natural justice to a matter like this and submitted that the cases relied upon by the Single Judge of the High Court regarding the application of the principles of natural justice to administrative proceedings cannot be invoked in the facts and circumstances of this case. To begin with we have to examine the ambit and scope of the Conciliation Board and the procedure adopted by it by virtue of the provisions contained in the notification issued by the Government u/s 3 of U.P. Industrial Disputes Act. The relevant portion of the notification runs thus:

5. Functions of Boards and submission of Memorandum or Report.

(1) Upon reference of a dispute to the Conciliation Board under Clause 4 it shall be its duty to endeavour to bring about a settlement of the dispute, and for this purpose the Board shall, in such manner as it thinks fit, and without delay, investigate the dispute and all matters affecting the merits and just settlement thereof, and may do all such things as it thinks fit for the purpose of inducing the parties to come to an amicable settlement.

(2) In any case where the Conciliation Board is successful in bringing about an amicable settlement between the parties it shall prepare a memorandum stating the terms of settlement arrived at and the Chairman shall send copies thereof to the State Government, the Labour Commissioner, U.P. and the parties concerned.

(3) Where no amicable settlement can be reached on one or more than one issue, the Chairman shall, within seven days (excluding holidays but not annual vacations observed by courts subordinate to the High Court) of the close of the proceedings, send to the State Government and the Labour Commissioner, a full report setting forth the steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about an amicable settlement thereof.

(4) The memorandum under Sub-clause (2) or the report under Sub-clause (3) shall be submitted by the Chairman within thirty days (excluding holidays but not annual vacations observed by courts subordinate to the High Court) of the date on which the reference was made to the Board;

Provided that the State Government may extend the said period from time to time.

(5) The memorandum under Sub-clause (2) or the report under Sub-clause (3) shall be signed by the Chairman and such members as may be present:

Provided that the memorandum under Sub-clause (2) shall also be signed by the parties to the dispute:

Provided that nothing in this clause shall be deemed to prevent any member of the Board from submitting a dissenting report.

A perusal of this notification would clearly show that the jurisdiction of the Conciliation Board is very limited. The procedure prescribed for the Board does not involve any adjudicatory process but is purely of an exploratory nature and what the Board has to do is to make an effort to bring about an amicable settlement between the management and the workers, and if it fails to do so it has to send a detailed report to the Government. That is the limited area within which the Board has to function. Nevertheless it is not disputed in this case that the Conciliation Board had held a full investigation in the matter, heard the parties and framed as many as 33 issues after going into the matter and then the Chairman and the members sent their reports. Thus before making the reports, all the rules of natural justice were fully complied with : the parties were given hearing, their points of view were fully considered and in fact the representatives of the management and that of the labour were the members of the Board. There is no provision in the notification or in the U.P. Industrial Disputes Act which enjoins that the report submitted by the Chairman or any other members should be shown to one another. This also does not appear to be necessary. The High Court seems to think that because the Chairman did not show his secret report to the other members of the Board, this has resulted in the violation of the principles of natural justice. We are, however, unable to agree with this line of reasoning. The principles of natural justice are no doubt very essential but they have got their own limits and cannot be stretched too far.

7. We would now like to deal with some of the cases which have been referred to in the judgment of the High Court and which are also relied upon by Mr. Chowdhri, counsel for the respondents. In the first place reliance was placed on A.K. Kraipak and Others Vs. Union of India (UOI) and Others, where this Court observed as follows:

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.... If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries.

This Court, however, took care to point out as follows:

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

The facts in Kraipak's case are quite different from the facts in the present case.

In Kraipak's case the main grievance of the petitioner was that in the Selection Board which was constituted for recommending the promotion of the State Officers to the Indian Forest Service Cadre the Chief Conservator of Forests was also a member of the Board, although he himself was also a candidate for promotion to the Indian Forest Service Cadre. Thus what happened was that the Chief Conservator of Forests acted as a Judge in his own cause. This was undoubtedly a gross violation of the principles of natural justice, because the very person who stood as a candidate also sat in the Selection Board which had to decide his own future as that of his rivals. Such is, however, not the case here. The Conciliation Board had completed its proceedings and the stage at which, according to the High Court, the rules of natural justice had to be applied was the stage of submitting the report. Full hearing was given to the parties concerned. Thus all the indicia of the principles of natural justice were present on the facts of the present case. In these circumstances we are satisfied that A.K. Kraipak and Others Vs. Union of India (UOI) and Others, could not be called into aid in support of the reasons given by the High Court. The procedure adopted in Kraipak's case was obviously so abhorrent to the notions of justice and fairplay that rules of natural justice were at once attracted.

8. Reliance was also placed on Union of India (UOI) Vs. Col. J.N. Sinha and Another, where also it was pointed out by this Court:

Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

In the present case we have already pointed out that neither Clause (5) of the notification referred to above nor Section 3 of the U.P. Industrial Disputes Act contained any provision which required that the members of the Conciliation Board were to show their reports to one another. All that was required was that they should send their reports to the Government through the Labour Commissioner. This was undoubtedly done. We are, therefore, unable to see any infection of the rules of natural justice in the present case.

9. Reliance was also placed on the decision of this Court in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . This case also does not appear to be of any assistance to the respondents, because in that case the entire procedure of inquiry held was in violation of the rules of natural justice. That, how ever, is not the position here.

10. It was then contended by Mr. Gupte that after quashing the order of the Government refusing to make a reference and asking it to reconsider the same it was not open to the High Court to have given peremptory directions so as to circumscribe the statutory jurisdiction of the Government u/s 4-K of the U.P. Industrial Disputes Act. In our opinion this contention is wellfounded and must prevail. Even if the High Court thought that the impugned order of the

Government suffered from any legal infirmity all that it could have done was to have asked the Government to reconsider it but it had no jurisdiction to direct the Government how to act and how to exercise its statutory discretion which was conferred on it by Section 4-K of the U.P. Industrial Disputes Act. There was absolutely no warrant for the High Court in prohibiting the Government from considering the secret report of the Additional Regional Conciliation Officer or that of the Labour Commissioner. The Government was fully entitled to consider the matter in all its comprehensive aspects and the secret report of the Chairman of the Conciliation Board or that of the Labour Commissioner were undoubtedly relevant materials which the Government could have considered. The High Court could not debar the Government from considering those matters nor could it compel the Government to exercise its discretion in a particular manner. In these circumstances we are satisfied that the order of the High Court is not legally sustainable and must be quashed.

11. The other point which arises for consideration is as to the relief which could be granted to the appellant. Mr. Gupte, counsel for the appellant, submitted that after the judgment of the High Court the Government had passed another order dated February 6, 1973, by which it has in consonance with the directions given by the High Court made a reference to the Industrial Tribunal. It was submitted that it was not at all proper for the Government to have revived a dead issue after more than twenty years and further as the order of the Government was based on the order of the High Court, if the order of the High Court was quashed the order of the Government making a reference to the Industrial Tribunal would fall automatically. We find ourselves in agreement with the learned Counsel for the appellant. There can be no doubt that the order of the Government dated February 6, 1973 is undoubtedly based on the order passed by the Division Bench of the High Court. This is proved by a letter written by Mr. Vishnu Prakash Upsachiv (Deputy Secretary), U.P. Government, to the Manager of the appellant Mills. The relevant portion of the letter after being translated in English runs thus:

I am directed to say that their Lordships of the High Court in their Judgment in Special Appeal No. 1963/915 (914 of 1963?) State v. Shri Shibban Lal Saxena (M/s. Mahabir Jute Mills Sahjanwa) have ordered that the Government after taking the dissenting reports from both the parties should consider on the question whether the aforesaid dispute should be referred for adjudication.

Therefore you are requested that within 10 days from the date of the receipt of this letter to send your dissenting report and whatever further you want to say on your behalf to the Government.

A perusal of this letter clearly shows that the Govt. did not exercise its independent decision u/s 4-K of the U.P. Industrial Disputes Act but was guided mainly by the judgment of the High Court and the directions given in Special Appeal filed in the High Court. If the order of the High Court is quashed, then it will undoubtedly materially affect the decision of the Government in making a reference to the Industrial Tribunal. Had the Government made the reference

uninfluenced by the High Court's directions the legal situation would have been different.

12. The learned Counsel for the respondents submitted that no prayer was made by the appellant for quashing the order of the Government for making a reference to the Industrial Tribunal. It was however, not necessary for the appellant to make such a prayer because if the High Court's order is quashed, then any subsequent proceeding which comes into existence as a result of the High Court's order would fall to the ground as a logical corollary of our finding. The learned Counsel for the respondents after due consideration submitted that he would have no objection if the Government order for making a reference is quashed provided the Government's discretion to make a fresh reference to the Industrial Tribunal on the dispute is not fettered. We would, however, like to make it clear that the Government has ample discretion to make a reference to the Industrial Tribunal u/s 4-K of the U.P. Industrial Disputes Act if it so thinks fit. This Court in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, clearly held that even if a reference was refused by the Government that will not debar the Government from making a reference at a later time if it is satisfied that in the changed circumstances a reference is necessary.

13. For the reasons given above, we allow the appeal, quash the order of the High Court dated May 8, 1972 and as a consequence of this we also set aside the order of the Government dated February 6, 1973 for making a reference to the Industrial Tribunal. In the peculiar circumstances of this case, however, we make no order as to costs throughout.