

(1965) 07 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2357 of 1959

Mahalakshmi Sugar Mills

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 13-07-1965

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 3, 4, 4K

Citation : AIR 1967 All 330 : (1967) 2 LLJ 763

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : J. Swarup, for the Appellant; V.P. Misra, Standing Counsel and Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This is a petition under Article 226 of the Constitution. It prays for an order in the nature of certiorari to quash the notifications dated 28th January 1959 and 24th August 1969 made u/s 3. U. P. Industrial Disputes Act. 1947.

2. The petitioner is a company which carries on the business of manufacture and sale of sugar by its vacuum pan sugar factory situate in Iqbalpur, district Saharanpur, By the impugned orders the petitioner company has been directed to pay a sum of Rupees 1,09,000/- as bonus to its workmen for the crushing season 1957-58.

3. The question of payment of bonus to workmen of vacuum pan sugar factories had been agitating the management of various sugar factories in the State of Uttar Pradesh, their workmen and the State Government. For several years prior to 1957-68 the question of bonus was referred for consideration to State Tripartite Conference (Sugar) This Conference consisted of representatives of the management of various sugar factories, of the workmen and of the State Government. Such a State Tripartite Conference was held on June 28, 1958 to

consider the question of bonus for the year 1957-58. The Conference recommended that an ad-hoc committee for formulating principles for payment of bonus for this year be set up. The State Government accepted the recommendations of the Conference and by a notification dated 8th August 1958 appointed a committee to investigate and report to the Government on the question of payment of bonus for workers of Vacuum Pan Sugar Factories of the State for the crushing season 1957-58, within three months.

This committee consisted of the Labour Commissioner, Uttar Pradesh and six other gentlemen, out of those three were representatives of the employers and three of the workmen. This committee was successful in evolving an agreed basis for the payment of bonus. It recommended that a sum of Rs. 56,00,000/- be paid as bonus to the workers of sugar factories in the entire State and that the amounts of bonus payable by each factory shall be worked out by the Indian Sugar Mills Association, U. P. Branch in consultation with the Labour Commissioner, U. P. The Indian Sugar Mills Association recommended that the share payable by the petitioner company be determined as Rs. 1,09,000/-. The Labour Commissioner agreed with this and forwarded the recommendation to the State Government.

4. The State Government considered the report of the committee and the recommendation made by the Indian Sugar Mills Association and the Labour Commissioner, and ultimately by a notification dated 28th January, 1959 passed an order u/s 3, U. P. Industrial Disputes Act directing the payment of bonus for the crushing season 1957-58. The petitioner company was directed to pay a sum of Rs. 1,09,000/-. This order appointed a sub-committee consisting of the Labour Commissioner as Chairman and one representative of the workmen and one representative of the employer to examine and recommend to the Government the cases of factories claiming exemption from payment of the bonus. The factories were permitted to claim exemptions on the ground that they had suffered losses or made such meager profits during the year 1957-58 as to make it unreasonable for them to pay the amount of bonus mentioned in this order. Accordingly, the petitioner company made a claim for exemption by its letter dated 9-2-1959 on the ground that it had suffered a loss of Rs. 3,94,863. 41 nP. for the period ending 30th June 1968. The sub-committee heard the petitioner on its claim and in its report dated 28-5-1959 made to the Government it repelled the petitioner company's claim. Ultimately, by an order published in the Government Gazette dated 24-8-1959 the State Government passed an order u/s 3, U. P. Industrial Disputes Act directing the petitioner company to pay a sum of Rupees 1,09,000/- as bonus.

5. The two orders dated 28-1-1959 and 24-8-1959 passed u/s 3 of the Industrial Disputes Act have been challenged on various grounds mentioned in the petition. Sri Jagdish Swarup, learned counsel for the petitioner, stated that those grounds can no longer be pressed in view of the decision of the Supreme Court reported in State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd., wherein the

Supreme Court upheld the validity of a similar order passed in 1950. But learned counsel urged that in view of the change in the provisions, one point arises; and that is that Section 3 Clause (b) of the U. P. Industrial Disputes Act is void as it infringes Article 14 of the Constitution.

In order to properly appreciate this argument it is necessary to set out the provisions Section 3 of the Act as it stood prior to its amendment in 1957 as follows:

""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) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally, or a strike or lock-out in connection with any industrial dispute;

(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) for appointing industrial courts;

(cc) for appointing committees" representative both of the employer and workmen for securing amity and good relations between the employer and workmen and for settling industrial disputes by conciliation; for consultation and advice on matters relating to production, organization, welfare and efficiency;

(d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order:

(e) for requiring any public utility service, or any subsidiary undertaking not to close or remain closed and to work or continue to work on such conditions as may be specified in the order;

(f) for exercising control over any public Utility service or any subsidiary undertaking, by authorising any person (hereinafter referred to as the authorised controller) to exercise, with respect to such service, undertaking or part thereof such functions of control as may be specified in the order; and, on the making of such order the service, undertaking or part, as the case may be, shall so long as the order continues to be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order and every person having any functions of management of such service, undertaking or part thereof shall comply with such directions;

(g) for any incidental or supplementary matters which appear to the State Government necessary or expedient for the purposes of the order: provided that no order made 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;

(ii) shall, if an industrial dispute is referred for adjudication under Clause (d), be enforced after the decision of the adjudicating authority is announced by, or with the consent of the State Government."

6. In the State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd., it was urged before the Supreme Court that Clause (b) will not only apply where an industrial dispute has arisen, and in that case the State Government can take action under Clause (d) alone. It was also urged that if Clause (b) is susceptible of the Interpretation that it is applicable even when an industrial dispute has arisen, then, it will be void as it would enable the State Government to discriminate between an industry and industry or an industrial unit and another industrial unit or between a workman and workman by referring some cases for adjudication to an industrial court under Clause (d), and passing an executive order itself in respect of others.

The Supreme Court repelled both these submissions. It held that the words "for such period as may be specified in Clause (b)" and the provision of the second proviso make it clear that the provisions of Clause (b) can be availed of by the State Government only as a temporary measure and that such an order would be subject to any order that may be passed on adjudication under Clause (d). It also held that in the context of Section 3, Clause (b) would operate only in cases of an acute emergency where mere resort to power under Clause (d) may be inadequate to meet the situation. The Supreme Court held that the provisions of Clause (b) are not, in any sense, alternative to those of Clause (d) and as such no question of discrimination arises.

7. It will be seen that action under both the Clauses (b) and (d) could be taken if it was necessary or expedient for securing the public safety or convenience or the maintenance of public order and supply and services essential to the life of the community or for maintaining employment. Even then their Lordships Interpreted the provisions to mean that Clause (b) would come into play only in the case of an acute emergency The provisions of the U. P. Industrial Disputes Act, 1947 were substantially altered by the U. P. Industrial Disputes (Amendment & Miscellaneous Provisions) Act I of 1957. From Clause (d) the power to refer an industrial dispute for adjudication was taken away. After the amendment Clause (d) ran as follows:

""For constitution and functioning of conciliation boards, for settlement of industrial disputes in the manner specified in the order;" This Amending Act introduces a new Section 4-K, which reads as follows:

"4-K. Reference of disputes to Labour Court or Tribunal:

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 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."

8. It is apparent that this provision widens the power of the State Government to refer an industrial dispute for adjudication. Now the various conditions precedent mentioned in the preamble of Section 3 are no longer necessary to be complied with before the State Government can refer the industrial dispute for adjudication. If an industrial dispute exists or is apprehended it can be referred for adjudication. But the power under Clause (b) of Section 3 still continues to be hemmed in by the emergency provisions of Section 3. That power can be exercised only for public safety or maintenance of public order or supplies etc. etc. The fields in which the two powers operate are, therefore, different. The two powers are not alternative to each other.

9. In a case where the State Government thinks it fit to exercise the power conferred by Clause (b) of Section 3 even though an industrial dispute may be in existence or may be apprehended, the right of the employer or the employee to require the dispute to be referred for adjudication u/s 4-K would still be there and can be exercised by them by taking appropriate steps. If the matter is referred, the awards, on being enforced by the State Government, as provided in the Act, would supersede the order under Clause (b). Clause (b) operates for "such period as may be specified." When the State Government enforces the award given on a reference u/s 4-K, it will mean specification of the period of the operation of Clause (b) order to the date next prior to be coming into force of the award. There is thus no possibility of the two provisions overlapping or coming into conflict with each other.

It is the duty of the court to try to construe a statute in such a way as to obviate a conflict between its various provisions and also so as to render the statute constitutional in so far as it is reasonably possible to do to. The construction placed above reconciles Section 8 (b) and Section 4-K.

10. In the instant case the impugned order recites that in the opinion of the State Government it is necessary to enforce the recommendation of the Committee for ""securing the public safety and the maintenance of public order and supplies and services essential to the life of the community and for maintaining employment." The orders, therefore, comply with the conditions precedent to the exercise of the power under Clause (b). The legality of the orders cannot, therefore, be questioned.

11. No other point was pressed. 12. The petition fails and is dismissed with costs.