
(1966) 04 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 991 of 1965

Rashtriya Mill Mazdoor Sangh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-04-1966

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42

Bombay Relief Undertakings (Special Provisions) Act, 1958 — Section 3

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 31

Citation : (1967) 69 BOMLR 140 : (1966) MhLj 1149

Hon'ble Judges : Deshmukh, J;Abhyankar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhyankar, J.—This petition under Articles 226 and 227 of the Constitution challenges the validity of the notification dated October 7, 1965, issued by the State Government of Maharashtra that in relation to respondent No. 2, which is a relief undertaking, an agreement dated November 7, 1964, between respondent No. 2 and the Rashtriya Mill Mazdoor Sangh, Nagpur, relating to the payment of dearness allowance should be suspended. They also challenged the notice issued by the Factory Manager of respondent No. 2 on October 9, 1965, as ultra vires and unauthorized exercise of powers by respondent No. 2. We may mention that the petitioners challenged the provisions of the Bombay Relief Undertakings (Special Provisions) Act, 1958, but that challenge" has not been pressed and no arguments were addressed before us with respect to that relief.

2. In order to understand the grievance of the petitioners certain facts are necessary to be stated.

3. Petitioner No. 1 is a registered trade union, it has also been recognized as a recognized union under the provisions of the C.P. and Berar Industrial Disputes Settlement Act, 1947, having been so recognized under the provisions of that Act while it was operative in this area. The Bombay Industrial Relations Act, 1946,

has now been made applicable to this region from May 1, 1965 and petitioner No. 1 claims that it is a representative of the employees and a representative union also within the meaning of the Bombay Industrial Relations Act, 1946. Petitioner No. 2 is an employee working in the Mills of respondent No. 2 and is directly affected by the notification and the notice challenged in this petition. Respondent No. 2 is a textile mill called Model Mills. It is a public limited company doing the business of manufacture and sale of textile products in this city. On July 18, 1959, the Government of India passed an order under the Industrial Development and Regulation Act, 1951, by which it appointed an authorized controller in respect of respondent No. 2 Mills. Later on the State of Maharashtra issued a notification on March 25, 1960, in exercise of its powers under Sections 3 and 4 of the Bombay Relief Undertakings (Special Provisions) Act, 1958. Under Clause (a) of that notification the Government declared that the Model Mills, to which a loan had been provided by the State Government, shall be conducted to serve as a measure of unemployment relief for a period of one year commencing from March 25, 1960 to March 25, 1961, and the undertaking should be taken over as relief undertaking thereof. By Clause (b) of the notification the Government directed that in relation to the said relief undertaking of respondent No. 2 for the period of one year certain provisions of the C.P. and Berar Industrial Disputes Settlement Act, 1947 and Chapter V-A of the Industrial Disputes Act, 1947, shall not be applied, and the undertaking shall be exempt from those provisions during the period mentioned in that notification.

4. Subsequent to this notification the Government of Maharashtra has been issuing periodical notifications continuing to treat respondent No. 2 as a relief undertaking. We have been supplied with copies of such notifications issued on March 8, 1961, April 4, 1961, January 13, 1962, March 29, 1962, September 19, 1962, March 25, 1963, March 25, 1964, March 9, 1965, and September 23, 1965. The net result of exercise of powers under Sections 3 and 4 of the Relief Undertakings Act is that respondent No. 2 is continued as relief undertaking and is continued to be exempted from several provisions of the statutes mentioned in the notifications from time to time.

5. A dispute between the textile Mills in the then State of Madhya Pradesh on the one part and the employees of the said textile mills in the State was referred for adjudication to an industrial tribunal at Nagpur and the Tribunal, which was presided over by Mr. Justice Mangalmurti of the Nagpur High Court gave an award on several matters in respect of which the dispute had arisen. One of such matters was regarding the claim for dearness allowance and the Award which was passed on September 15, 1948 makes a provision for payment of dearness allowance to textile workers at a uniform rate linking the payment to the Nagpur index number. A copy of the relevant portion of the Award in respect of the claim for dearness allowance has been filed and it shows that under the Award the scale of dearness allowance was increased from 1.5 to 1.15 per point rise of index. There are other provisions regulating the method of calculation etc. Respondent No. 2 as one of the textile mills in the State was a party to the

dispute and it is bound by the award.

6. It is common ground that subsequently an agreement was reached between the mill-owners of Madhya Pradesh including respondent No. 2, and recognized unions of textile mill workers in this region, on September 7, 1953, under which the rate of payment of dearness allowance was revised. Under this agreement, all employees of the textile mills were to be paid dearness allowance at the rate of 1.2 per worker per day instead of the then basis 1.15 per point rise in three monthly moving average of the official cost of living index of Nagpur over the figure of August 1939. While this provision relating to the payment of dearness allowance was in force, respondent No. 2 was declared as a relief undertaking in 1960 after the Government of India appointed a Controller under the notification dated September 15, 1959. An agreement was again entered into between the Model Mills i.e. respondent No. 2, and the union registered as a recognized union under the C.P. and Berar Industrial Disputes Settlement Act, 1947, on November 7, 1964. This agreement was as a result of notice of change given by employees u/s 32(7) of the C.P. and Berar Industrial Disputes Settlement Act, 1947, served by the union of employees on respondent No. 2. It appears the demand was in respect of revision of percentage of dearness allowance applicable to local textile workers of Nagpur in view of the rising cost of living index of prices. Under this agreement it was agreed that the employees working in the undertaking shall be paid dearness allowance at the rate of 1.29 pies per day per point rise in the official consumers' cost of living index number beyond 100. The rate became payable from August 1, 1964, and the agreement which was to come into force immediately was to remain in force for a period of two years from the date of the signing of the agreement. Term No. 4 of the agreement also recites that during the time the agreement was in force the parties shall not raise any dispute in respect of the rate of dearness allowance.

7. While this agreement was in subsistence, the State Government first issued a notification on September 23, 1965, purporting to exercise its powers under Sections 3 and 4 of the Bombay Relief Undertakings (Special Provisions) Act, 1958. Under this notification the period of continuance of respondent No. 2 as a relief undertaking was extended for a period of one year from September 25, 1965 to September 25, 1966, to be conducted as a measure of unemployment relief. Similarly, the undertaking continued to be exempt from the provisions of Chapter VA of the Industrial Disputes Act, 1947.

8. Soon thereafter, the State Government issued another notification amending the earlier notification dated September 23, 1965. That notification is as follows:

NOTIFICATION

Industries and Labour Department, Sachivalaya, Bombay-32, dated 7th October 1965.

(a) declared u/s 3 of the Bombay Relief Undertakings (Special Provisions) Act, 1958 (Bom. XCVI of 1958) (hereinafter referred to as "the Baid Act") that the

industrial undertakings called "the Model Mills, Nagpur, Limited; Nagpur", to which a loan has been provided by the State Government (hereinafter referred to "the said relief undertaking"), shall, for a further period of one year, commencing on the 26th day of September 1965 and ending on the 25th day of September 1966 (both days inclusive), be conducted to serve as a measure of unemployment relief and

(b) directed u/s 4 of the said Act that the provisions of Chapter VA of the Industrial Disputes Act, 1947 (XIV of 1947) shall not apply in relation to the said relief under-taking in respect of the period of one year and that the said relief undertaking shall be exempt from the aforesaid provisions;

And whereas, the Government of Maharashtra is of the opinion that the provisions of Sub-section (1) of Section 42, Clauses (ai)(i), (ii) and (iii) of Sub-section (2), and Sub-sections (3), (4) and (5) of Section 65 of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947) (so far as they relate to change in the terms of the Award or, as the case may be, Agreement applicable to the said relief undertaking, relating to payment of dearness allowance) shall not also apply in relation to the said relief undertaking in respect of the periods for which it continues as such; and the said relief undertaking shall be exempt from the aforesaid provisions in respect of such periods;

And whereas, the Government of Maharashtra is also of the opinion that the Award No. XI dated the 15th September 1948 of the Industrial Tribunal, Nagpur, and the agreement dated the 7th November 1964 (registered on 20th November 1964) between the Model Mills, Nagpur, Limited (U.A.C.), Nagpur, and the Rashtriya Mill Mazdoor Sangh, Nagpur, so far as the Award and the Agreement relate to payment of dearness allowance in the said undertaking, shall be suspended in operation in respect of the period for which the industrial undertaking continues to be a relief undertaking; and any right, privilege, obligation or liability arising from non-payment of dearness allowance as stipulated under the said Award and the agreement shall not be enforceable in respect of such periods;

Now, therefore, in exercise of the powers conferred by Section 4 of the said Act, the Government of Maharashtra hereby directs

(i) that the provisions of Sub-section (i) of Section 42, Clauses (ai), (i), (ii), and (iii) of Sub-section (2), Sub-sections (3), (4) and (5) of section 45 of the Bombay Industrial Relations Act, 1946 (so far as they relate to change in the terms of the Award or as the ease may be, the Agreement applicable to the said relief undertaking, relating to payment of dearness allowance) shall not apply in relation to the said relief undertaking in respect of the period for which it continues as such; and the said relief undertaking shall be exempt from the aforesaid provisions in respect of such period;

(ii) that in relation to the said relief undertaking and in respect of the period for which the said relief undertaking continues as such under Sub-section (2) of

Section 3 of the said Act, the Award No. XI, dated the 15th September 1948 of the Industrial Tribunal, Nagpur, and the Agreement dated the 7th November 1964 between the Model Mills, Nagpur Limited (U.A.C.), Nagpur, and the Rashtriya Mill Mazdoor Sangh, Nagpur, so far as they relate to payment of dearness allowance in operation and any right, privilege, obligation and liability arising from nonpayment of dearness allowance as stipulated under the said Award or Agreement shall not be enforceable in respect of the said period;

and for that purpose amends, with effect from the 1st day of October 1965, Government Notification, Industries and Labour Department No. BHU. 1065/123219/Lab. (I), dated the 23rd September 1965, as follows namely :?

In the said notification, in the operative part contained in the third paragraph for the word "and" at the end of sub-paragraph (a) and sub-paragraph (b) the following shall be substituted, namely :?

(b) directs that in relation to the said relief undertaking and in respect of the period for which it continues as such, the provisions of Chapter VA of the Industrial Disputes Act, 1947 (XIV of 1947) and the provisions of Sub-section (i) of Section 42, Clauses (ai), (i), (ii) and (iii) of Sub-section (2), and sub-sections(3), (4) and (5) of Section 46, of the Bombay Industrial Relations Act, 1946 (Bom. IX of 1947) (so far as they relate to change in the terms of the Award or, as the case may be, the Agreement applicable to the said relief undertaking; relating to payment of dearness allowance) shall not apply; and the said relief undertaking shall be exempt from the said provisions; and

(c) directs further that in relation to the said relief undertaking and in respect of the period for which it continues as such the Award No. XI, dated the 15th September 1948 of the Industrial Tribunal, Nagpur, and the Agreement dated the 7th November 1964 between the Model Mills Nagpur Limited (U.A.C.), Nagpur, and the Rashtriya Mill Mazdoor Sangh, Nagpur, so far as they relate to payment of dearness allowance in the said undertaking shall be suspended in operation.

By order and in the name of the Governor of Maharashtra,

B.V. Laud Under Secretary to Government.

9. By this amending notification the State Government exempted certain provisions of the Bombay Industrial Relations Act, 1946, from being applicable to respondent No. 2 undertaking- in so far as they relate to the terms of the Award or the Agreement applicable to the said undertaking relating to the payment of dearness allowance in respect of the period for which the undertaking was to be continued as a relief undertaking. The Government also suspended the operation of the Award dated September 15, 1948, and the agreement dated November 7, 1964, so far as they relate to the payment of dearness allowance by the respondent undertaking. In order to bring about these exemptions, it will be seen, the notification purports to effect the amendments from a date prior to the date of the notification i.e. from October 1, 1965. In other words, the notification

is made effective retrospectively.

10. After this notification was issued by the Government, the Model Mills put up a notice on October 9, 1965, informing the employees that it has decided that every employee should be paid by way of dearness allowance Its. 3.17 NP per head per day from the month of October. The notice also refers to the fact that for the month of September the employees were to be paid at the rate of Rs. 4.17NP per head per day and that payment would be carried out though the payment was to be made in October. The notice thus revises the rate of payment of dearness allowance per head per day retrospectively from October 1, 1965.

11. The petitioners challenge the validity as well as the legality of this notice also.

12. With regard to the notification issued by the State Government suspending the operation of the agreement dated November 7, 1964, the petitioners' contention is that the State Government had no such power to suspend the operation of an agreement which had been entered into between respondent No. 2 Mills and their employees after respondent No. 2 was declared a relief undertaking, and the notification is thus ultra vires of the powers of the Government. They also contend that the power of suspending the agreement could not be exercised retrospectively so as to make the suspension effective from a date prior to the date of the notification. As regards the validity of the notice issued by respondent No. 2 fixing a new rate for payment of dearness allowance, the contention of the petitioners is that whereas under the subsisting agreement in respect of the payment of dearness allowance between respondent No. 2 and the employees the payment of dearness allowance is linked with the cost of living index and related to it, the notice fixes the dearness allowance at a fixed rate and delinks it from the cost of living index with which it is intimately connected. Their further contention is that the notice reduces the rate of payment of dearness allowance contrary to the agreement dated November 7, 1964, which is binding between the parties as it has not been terminated. Another objection to the notice is that the notice gives effect to the revision of the rate affected by the notice, from a date prior to the date of the notice and is made to operate retrospectively which respondent No. 2 had no power to do in any case.

13. The petitioners also challenge the action of the State Government in issuing the notification, and of the Mills in issuing the notice dated October 9, 1965, as mala fide and not justified by the circumstances at all.

14. In resisting the petition respondent No. 2 which alone has filed a return, has urged that the notification issued by the Government on October 7, 1965, so far as it suspends the agreement dated November 7, 1964, has merely the effect of suspending in fact the Award dated September 15, 1948 as amended from time to time. As there could be no objection to the suspension of the Award in exercise of the powers u/s 4(7)(a)(ii) of the Bombay Relief Undertakings (Special Provisions) Act, 1958, it is contended that the power has been validly exercised

and could not be challenged. It is also urged that the issuing of the notification dated September 23, 1965, by which the period during which the undertaking is to be conducted as a relief undertaking, is extended, amounts to a fresh declaration in respect of the undertaking, and inasmuch as the agreement dated November 7, 1964 was an agreement entered into prior to the date of this notification dated September 23, 1965, the State Government could validly exercise its powers u/s 4(7)(a)(ii) of the Relief Undertakings Act, even in respect of the agreement dated November 7, 1964. Regarding the challenge of retrospectivity given to the efficacy of the notification, the respondents point to the provisions of Sub-section (2) of Section 4 of the Bombay Relief. Undertakings (Special Provisions) Act, 1958, which, according to them, expressly give power to the State Government to issue a notification u/s 4(7) with retrospective effect the only condition being that the retrospectivity need not be anterior to the date of the first declaration u/s 3(7) of the same Act. Both the respondents have denied that either the notification or the notice was issued without bona fides i.e. actuated by any ulterior or irrelevant consideration.

15. As regards the notice issued by respondent No. 2 on October 9, 1965, it is sought to be defended on two grounds. If the agreement dated November 11, 1964 is "validly suspended by the notifications dated October 7, 1965, then, according to their line of reasoning, respondent No, 2 would have the power to effect a change in the mode of payment of the dearness allowance in spite of the agreement dated November 7, 1964, or the Award dated September 15, 1948. The second defence as to the action of the respondent is that by virtue of the exemptions from the operation of Section 42(7), els. (ai), (i), (ii) and (in) of Sub-section (2), and Sub-sections (3), (4) and (5) of Section 46 of the Bombay Industrial Relation Act, 1946, respondent No. 2 is relieved from any obligation to give a notice of change or the penal consequences of making a change in violation of a registered agreement or an award. In other words, the contention is that the State Government having excluded respondent No. 2 from the operation of the provisions of these sections as stated in the notification dated November 7, 1965, respondent No. 2 is free to ignore the agreement dated November 7, 1964, or even to commit a breach of the same and fix dearness allowance as found suitable to it because there is no longer any obligation to give a prior notice to effect such a change in respect of the payment of the dearness allowance, nor do Sub-sections (2), (3), (4) and (5) of Section 45 of the Bombay Industrial Relations Act come in the way of respondent No. 2 in effecting a change in contravention of the terms of the registered agreement dated November 7, 1964. It is, however, conceded that if the agreement dated November 7, 1964 is held not to be validly suspended and to be in operation, then the notice dated October 9, 1965, would not be effective to authorise respondent No, 2 in withholding payment of the dearness allowance to the employees from October 1, 1965 to October 8, 1965, i.e. till the notice was actually issued. In other words, the effect of the notice would only be prospective and would not be retrospective if the notice is to be upheld only on the basis of

the second contention raised in respect of the notice.

16. We may dispose of the contention of the petitioners regarding the action of respondent NO. 1 being mala fide.. This plea is founded on the averments made in paras. 12 to 14 of the petition. A scrutiny of these averments would show, however, that there is no specific allegation that the Government of Maharashtra has acted mala fide or was actuated by malice as understood in law in issuing the impugned notification. A general statement is to be found in para. 14 of the petition that the Government of Maharashtra has also issued the impugned notification "under these circumstances." We are unable to construe this vague reference to "these circumstances" as an adequate plea necessary to found a charge of mala fides against the Government. We also fail to see how any charge of mala fides could be laid at the door of respondent No. 2 merely on the allegation of the petitioners that respondent No. 2 has made large profits or that the statement in the notice about piling up of their stock is not correct. The general allegations made regarding the profits alleged to have been earned by respondent No. 2 during the peak period or about the position of the stocks have been denied and would require an investigation before any claim of mala fides could be said to be satisfactorily established. We are not at all satisfied that the petitioners have made out a case or that they are right in challenging the notification or the notice impugned in this petition on this ground of mala fides.

17. Section 4(1)(a)(ii) of the Bombay Relief Undertakings (Special Provisions) Act, 1958, reads as follows:

4. (i) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the Official Gazette, direct that?

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under Sub-section (2) of Section 3...

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government, or before any loan, guarantee or other financial assistance was provided to it by, or with the approval of, the State Government, for being run as a relief undertaking, shall be suspended in operation, or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification...

18. We have mentioned above that the notification u/s 3(7) of this Act was issued by the State Government for the first time on March 25, 1960, and that notification declared that the industrial undertaking called the Model Mills, to which a loan had been provided by the State Government, shall, for a period of one year commencing on March 25, 1960 and ending on March 25, 1961, be conducted to serve as a measure of unemployment relief. There is thus no doubt

that the declaration was made by the State Government by this notification because the State Government had provided the Model Mills a loan. In exercise of its powers under Sub-section (2) of Section 3 the period during which the undertaking was. to be treated as such has been renewed from time to time as we have already pointed out. The latest of such notifications was issued on September 23, 1965. The learned Counsel for respondent No. 2 filed an application before us for permission to amend the return to point out that an additional loan was paid to the Model Mills on August 5, 1965, We have allowed this amendment, but we do not accept the contention based on it. The learned Counsel for respondent No. 2 wanted to contend that inasmuch as a fresh loan was supplied on August 5, 1965, the power to suspend the agreement u/s 4(7)(a) (ii) could be utilized in respect of the agreement prior to advance of his fresh loan. We do not think this, contention has any merit at all. The point of time referred to in Section 4(7)(a)(ii) is the date of acquisition or taking over of the undertaking or payment or guarantee of financial assistance which may be provided to it by or with the approval of the State Government, and this must necessarily refer to the first time when such loan, guarantee or assistance was given or approved of by the State Government. Once a declaration is made u/s 3(7) of the Act, the undertaking becomes a relief undertaking and is entitled to enjoy the benefit that may accrue to it as a result of action taken by the State Government in exercise of its powers u/s 4. But the subsequent notification which merely renewed the period during which the undertaking is to be treated as a relief undertaking, does not give a fresh cause of action to the Government so as to relieve it of the inhibition placed on its powers of suspending the agreements, awards, settlements or standing orders which may have become applicable to the undertaking after the date of the notification issued u/s 3(7) of the Act; in other words, after the State Government took a decision and issued notification declaring the industrial undertaking to be a relief undertaking for the first time. We are also unable to accept the construction sought to be put by the learned Counsel for the respondents on the provisions of Section 4(7)(a)(w), suggesting that the agreement, settlement, award or standing orders referred to in this sub-clause really means the original awards, agreements, standing orders as may be amended from time to time, whatever the amendment may be and whenever it may be made. Apart from the fact that it is not possible to construe the agreement dated November 7, 1964 as merely an amendment to anything previously subsisting, even by an amended award, if entered into after the declaration u/s 3(7) of the Act, the Government will have no power to order its suspension and the reason is obvious. Once an undertaking comes under the protection of the Act, it is ordinarily not conceivable that fresh agreement will be entered into without regard to the capacity and financial position of the undertaking itself. If with open eyes an undertaking after it is declared as a relief undertaking enters into agreement or submits to an arbitration and an award is passed, it does not appear to be the intention of this law to give a further protection to such undertaking even in spite of the agreement or award solemnly entered into after the undertaking is declared as a relief undertaking and had full

protection of the Government under the different provisions of the Act.

19. The text of the agreement entered into on November 7, 1964, between respondent No. 2 and its employees has been filed by the petitioners. The agreement came to be entered into after a notice of change was given by the employees u/s 32(7) of the C.P. and Berar Industrial Disputes Settlement Act which was then operative. According to the scheme of that Act, after notice of change was given an agreement must have been negotiated and ultimately resulted in an agreement dated November 7, 1964. That agreement makes no reference to the Award of 1948 and that is for the obvious reason that after the award of 1948 there was an agreement between the textile mills and their employees in this region, effected on September 7, 1955, whereunder the rate of dearness allowance was revised from 1.1 pies to 1.2 pies per worker per day and was linked with the cost of living index. There is no reference to the agreement dated September 7, 1955, in the agreement dated November 7, 1964. The agreement fixed a term of two years during which it was to remain in force from the date the agreement was to come into force i.e. from August 1, 1964. A perusal of the agreement therefore does not show that it is in any sense an amendment of the Award or operates on any previously existing agreement as such. This was a fresh agreement between the parties arrived at upon a notice of change demanded by the employees, and, therefore, outside the powers of the Government for suspending such agreement u/s 4(7)(a)(n) of the Act. There is yet another reason why in our opinion any agreement or award entered into after the relief undertaking is declared as such is not intended to be included within the powers of the Government and it is that the right of the employees to give a notice of change is kept intact. This right is given under the Bombay Industrial Relations Act u/s 42(2), and was also available to the employees under the C.P. and Berar Industrial Disputes Settlement Act u/s 32.

20. A careful reading of all the notifications issued by the Government u/s 3 read with Section 4 of the Bombay Relief Undertakings (Special Provisions) Act, in respect of respondent No. 2 will show that whereas the application of Section 31 of the C.P. and Berar Industrial Disputes Settlement Act has been exempted, there has never been an exemption of the applicability of Section 32 of the C.P. and Berar Industrial Disputes Settlement Act. It could not be the policy of the Government, in exercise of its powers u/s 4(7)(a)(i) of the Bombay Relief Undertakings Act, to shut the door of negotiations in respect of the demands initiated by the employees of respondent No. 2. The agreement dated November 7, 1964, is a conversion of such demands into a negotiated settlement with the employees of respondent No. 2 who had initiated it by a notice u/s 32(7) of the C.P. and Berar Industrial Disputes Settlement Act. It is, therefore, clear that even after an undertaking is declared as a relief undertaking u/s 3(7) of the Relief Undertakings Act the door is kept open for the employees of the undertaking to obtain a change in conditions of service by a notice of change, to have negotiations, and, if possible, an agreement. This is consistent with the policy of securing peace in industry and peaceful settlement of differences between the

employer and the employees. We are, therefore, satisfied that the State Government had no power to suspend the agreement dated November 7, 1964, and to that extent the notification issued is ultra vires of the powers of the Government. We must, therefore, strike down a reference to the agreement dated November 7, 1964 in the notification dated October 7, 1965 as unauthorized and illegal.

21. Once it is held that the agreement dated November 7, 1964 is subsisting, action could not be taken by respondent No. 2 to revise unilaterally the rate of dearness allowance payable to the employees in defiance of the agreement dated November 7, 1964. But it is contended that such a right has been revived in favour of respondent No. 2 because respondent No. 2 is relieved of the obligations imposed by the provisions of Section 42(7) of the Bombay Industrial Relations Act or by other provisions of Section 46, namely, Sub-sections (2), (5), (4) and (5) of the section. The argument is put this way. Under the Industrial law an employer intending to effect a change in respect of industrial matter specified in Schedule II is required to give a notice of such intention in the prescribed form. Among other matters mentioned in Schedule II, item 9 refers to wages including the period and mode of payment. "Wages" have been defined in Section 3(59) of the Act as meaning remuneration of all kinds, capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment and include any bonus, allowances (including dearness allowance), reward or additional remuneration. There is no doubt that dearness allowance is included in the definition of "wages", and if a change is made with regard to the payment of dearness allowance, ordinarily an employer would be required to give a notice of change u/s 42(7). Such a notice is now not required to be given because Section 42(7) does not apply to respondent No. 2 i.e. relief undertaking. It is also claimed that the consequences of making a change in contravention of the terms of settlement, award or an agreement are penal, and u/s 106 of the Bombay Industrial Relations Act any employer who makes a change which is declared by the Labour Court as illegal, is held liable to conviction, punishable with a fine which may extend to Rs. 5,000. This penal consequence will follow for disobeying the injunction in Sub-section (3) of Section 40 that no employer shall make any change in contravention of the terms of a settlement or award. Inasmuch as, the argument runs, the relief undertaking has been completely exempted from the operation of Sub-sections (2), (5), (4) and (5) of Section 46 of the Act, the employer must be considered free to make a change in contravention of the terms of the settlement or award. It is on this plea of exemptions given to respondent No. 2 from the provisions of Section 42(7) and Sub-sections (2), (3), (4) and (5) of Section 46 that respondent No. 2 justifies the issue of a notice dated October 9, 1965. We do not think this contention is well founded at all.

22. A careful perusal of the notification dated October 9, 1965, so far as it directs that certain provisions namely, Section 42(7), Sub-sections (2), (5), (4) and (5) of Section 46 shall not apply in relation to the relief undertaking i.e. respondent

No. 2, in respect of the period mentioned in this notification, will show that the exemption is neither absolute nor general. The exemption from the applicability of these provisions is limited and restricted in so far as it relates to a change in the terms of the award or the agreement applicable to the relief undertaking. Reference to the award and the agreement must be understood as referring to the Award dated September 15, 1948 and the agreement dated November 7, 1964, relating to the payment of the dearness allowance, to which in terms it refers. It is obvious that the State Government directed exemption from the applicability of these specified provisions of the Act because it considered that it had the power u/s 4(l)(a)(ii) of the Bombay Relief Undertakings (Special Provisions) Act to suspend the operation not only of the Award of 1948 but also of the agreement dated November 7, 1964. If the agreement dated November 7, 1964, could not have been suspended, as we have held it cannot be suspended by the State Government, the ancillary right of exemption from the provisions of Section 42(7) and Sub-sections (2), (3), (4) and (5) of Section 46, relating to this agreement are also not available to the relief undertaking. The first notification limits the exemption from the operation of these provisions of the law in so far as it relates to the agreement of November 7, 1964, and even in respect of this agreement to the portion regarding the payment of dearness allowance. As we have held that the provisions of the agreement continue to be binding between the parties, it must follow that the undertaking cannot claim exemptions from the provisions of the Act relating to the agreement.

23. Apart from this position it appears to us that exemption from the operation of Section 42(1) is a general exemption in respect of any notice of change that is required to be given in an industrial matter. But so far as the binding effect and continuance of obligation in respect of the agreement or settlement of awards are concerned, there is a special provision in the Bombay Industrial Relations Act, and Section 116 deals with it. u/s 116 of the Act a registered agreement or settlement or award shall cease to have effect on the date specified therein, and if no such date is specified therein, on the expiry of the period of two months from the date on which notice in writing to terminate the agreement has been given. Under Sub-section (6) a special right is conferred on either parties to a registered agreement, settlement or award, under which, if the agreement is to remain in force for a period exceeding one year, a party may after a period of one year from the date of commencement terminate the agreement by giving two months' notice in the prescribed manner. Thus, there is adequate provision u/s 116 for termination of subsisting agreement by the procedure indicated u/s 116. We are unable to interpret the exemption given to the relief undertaking from the applicability of Section 42(7) or Sub-section (2), (3), (4) and (J) of Section 46 of the Act as in any manner relieving it of its obligation u/s 116 of the Act. Section 116 of the Bombay Industrial Relations Act is an independent, separate and special provision which compels compliance with agreement, settlement or award by the parties during the period for which the agreement is to be effective, and also provides a machinery for terminating the agreement

according to the procedure prescribed therein. The relief undertaking cannot, therefore, claim the right de hors Section 116 of the Bombay Industrial Relations Act and in violation of these provisions merely because it claims to have been relieved from the provisions of Section 42(7) and Sub-sections (2), (3), (4) and (5) of Section 46 of the Industrial Relations Act. So far as exemption from the provisions of Sub-sections (2), (3), (4) and (J) of Section 46 of the Industrial Relations Act is concerned, it may be that the relief undertaking may not have to face the penal consequences of acting in violation of the injunctions or inhibitions of the several provisions of Section 46. But, so far as the liability or the duty to abide by the agreement and carry out the terms of the agreement voluntarily arrived at by the parties is concerned, the agreement created by Section 116 of the Industrial Relations Act cannot be negated or cannot be suspended unilaterally by the relief undertaking. We must therefore hold that the notice dated October 9, 1965 was ineffective and illegal both because the agreement dated November 7, 1964 is in force and has not been validly suspended and also because the obligation of the undertaking cannot be evaded by it on the basis of the alleged exemption from the operation of Section 42(7) or Sub-sections (2), (3), (4) and (5) of Section 46 of the Bombay Relief Undertakings (Special Provisions) Act.

24. Thus, the result is that the petition is allowed. The notification dated October 7, 1965, so far as it purports to suspend the agreement dated November 7, 1964 is liable to be quashed, and the notice dated October 9, 1965 given by respondent No. 2 refixing a new rate for payment of dearness allowance is also invalid and unauthorized and is hereby quashed. The petitioners are entitled to their costs from the respondents.