M/s. Mahabir Jute Mills Ltd., Gorakhpore

Vs

Shri Shibban Lal Saxena and Others

Civil Appeal No. 781 of 1973

(CJI A. N. Ray, K. K. Mathew, Syed Fazal Ali, V. R. Krishna Iyer JJ)

30.07.1975

JUDGMENT

FAZAL ALI, J. -

1. 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 Ltd. was formed sometime 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 disput arose between the workers and the company as a result of Which Shibban Lat 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 Chiana 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 reopen the agreement reached between the management and the working President of the Union on July 11, 1954. He also started so 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 worker 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 worker who appearedto be in sympathy with them were also charge-sheeted for their stay-in-strike. This strike continued right upto 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 more farce a large number of working 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 notices. It appears that out of 1000 workers all of them had been

dismissed from service but 200 workers who apologised were reinstated and Government Notification dated July 14, 1954 passed under section 3 of the U.P. Industrial Disputs Act, 1947. A Conciliation Board consisting of the Additional regional Conciliation Officer as the Chsirman and Shibban Lal Saxena and Shri Arora representing the labour and the mangement respectively as members was constituted. The Conciliation Board heard the case but unfortunately no settlement could be arrived at. Consequently the reports of the member 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 recommanding 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 it was not expedient to do so. There was some controversy before the Single judge of the High Court on 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 diesting 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, 1962 and quashed the order of the Government and directed it to reconsider the same in the light of the observation 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 dismissed of the old workers had appointed new workers who had by now put in about twenty years of services. We are constrained to observe that labour matters should have been given top ungency 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 Additional Regional Conciliation Officer. Another reason which the Single Judge gave was that as the order of the Government did not state any resons 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, this part of the order of the High Court which was set aside. The Division Bench has held that 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 aconclusion. There was nothing

particular in the present case impelling the issuance of such a directions 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 though 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 stand-still. 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 had seriously prejudiced and its decision;

2. That in accordance with the principles 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 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 give to the Government to ignore the secret report as also the report of the Labour Commissioner and to consider the report of the other member of the Conciliation Board, namely, Shibban Lal Saxena and Mr. Arora. The Division Bench of the High court as 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 on a complete misconception of the real position and on a premise which is wrong on a point of fact. Having perused the material placed before us, we find that there is no reliable 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 if at p. 32 of volume II of the Paper Book. In paragraph 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 it was expedient to refer the dispute to adjudication was formed after the matter was fully considered by the 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 Chairmen 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. Under Section 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 of 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 under Section 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 fact and circumstances of this case. To being 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 under section 3 of the U.P. Industrial

Disputes Act. The relevant portion of the notification runs thus :

> 5. Functions of Board 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 Bard shall in such manner as it thinks fit, and without delay, investigate the dispute and all matter affecting the merits and just settlement thereof, and may do all such thing as it thinks fit for purpose of including the parties to come to an amicable settlement.
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> (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 parties concerned.
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> (3) Where no amicable settlement can be one or more than one issue, the Chairman shall, seven days (excluding holidays but not annual vacations observed by court subordinate to be the High Court) of the close of the porceeding send to the State Government and the Labour Commissioner, a full report setting the step taken by the Board for ascertaining the facts and circumstances relating to the dispute and for brining about an amicable settlement thereof.
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> (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 vacation observed by court subordinate to the High Court) of the date on which the reference was made to the Board :
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> Provided that the State Government may extend the said period from time to time.
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> (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 resent :
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> 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 persual 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 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 has held a full investigation in the 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 member 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 v. Union of India ((1970) 1 SCR 457 : (1969) 2 SCC 262), Where this Court observed as follows : (SCC p. 272, Para 20)

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The rules can operate only in area not coveed 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 of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is from quasi-judicial enquiries.

This Court, however, took care to point out as follows : (SCC PP. 272-273, Para 20)

> 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 ome principles of natural justice had been contravened the court has to decided whether the observance of that rule was necessary for a just decision on the facts of that case.

The facts in Kraipak's case (supra) 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 a that of his rivals. Such is, however, not the case here. The Conciliation Board had completed it 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 Kraipak's case could not be called into aid in support of the reason given by the High Court. The procedure adopted in Kraipak's case was obviously abhorrent to the notions of justice and fair play that rules of natural justice were at once attracted.

(8) Reliance was also placed on Union of India v. Col. J. N. Sinha ((1971) 1 SCR 791 (1970) 2 SCC 458) where alo at once attracted.

Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends 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 Counciliation Board were to show their reports to the Government through the Labour Commissioner. This was undoubtedly done. We are, therefore, unable to see any infraction 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 v. Dr. (Miss) Binapani Dei ((1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266). 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 naturaljustice. That, however, 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 under Section 4-K of the U. P. Industrial Disputes Act. In our opinion this contention is well founded 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 Discretion 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 reports 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 thoese matter nor could it compel the Govermnent to exercise its discretion in a particular manner. In the 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 a 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 a 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 Up Sachiv (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 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 foresaid 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 whether further you want to say on your behalf to the Government.

A Perusal of this letter clearly shows that the Government did not exercise its independent decision under Section 4-K of the U.P. Industrial Disputes Acts 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 logical corollary of our finding. The learned Counsel for the respondents after due consideration submitted that he would have no objection if the Government' discretion to make a fresh reference is quashed provided the Government's discretion to make a fresh reference to the Industrial Tribunal under Section 4-K of the U.P. Industrial Dispute Act if it so thinks fit. This Court in western India Match Company Ltd. v. Western India Match Co. Workers Union ((1970) 3 SCR 370 : (1970) 1 SCC 225) 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 circumtances a reference is necessary.

(13) For the reasons given above, we allow the appeal, quash the order of the High Court dated April 9, 1973 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 to the Industrial Tribunal. In the Peculiar circumstances of this case, however, we make no order as to costs throughout.

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