M. P. Irrigation Karamchari Sangh

Vs

State of M. P. and Another

Civil Appeal No. 8454 (NL) of 1983

(D. A. Desai, V. B. Eradi, V. Khalid JJ)

27.02.1985

JUDGMENT

V. KHALID, J. -

1. This is an appeal, by special leave, against the judgment dated August 8, 1980, by the High Court of Madhya Pradesh at Jabalpur in Civil Miscellaneous Petition No. 127 of 1972.

2. The appellant is a trade union registered under the Trade Unions Act. It represents employees in the Chambal Hydel Irrigation Scheme under the Department of Chambal Project of Government of Madhya Pradesh in Gwalior Division. The union raised three demands and served notices of these demands on the Deputy Chief Engineer, Major Project, Chambal, Bhopal. the demands were : (1) Chambal allowance; (2) Dearness allowance equal to that of the Central Government employees; and (3) Wages for the period of strike lasting 20 days in the year 1966. Copies of these notices were sent to the Assistant Labour Commissioner, Indore and the Secretary, Government of Madhya Pradesh. The Deputy Chief Engineer did not respond to the demands. Thereupon, the Assistant Labour Commissioner, Gwalior, at the instance of the union tried for a settlement, but did not succeed. He sent a report under Section 12(4) of the Industrial Disputes Act. The State Government, the first respondent in the appeal, refused to refer the matter to the concerned Tribunal by its order dated March 15, 1969. The appellant took the matter before the High Court by filing Miscellaneous Petition No. 29 of 1969 for a mandamus to the State Government to refer the dispute for adjudication. The High Court allowed the writ petition, quashed the order of the State Government dated March 15, 1969, and directed it to consider the question whether a reference was necessary or not. When the matter went back to the Government, the Government took the stand that the provisions of the Industrial Disputes Act were not applicable to the workmen in the Chambal Hydel Irrigation Scheme since the Scheme was not an an Industry and hence again refused to refer the dispute to the Tribunal. The appellant pursued the matter further by filing Miscellaneous Petition No. 45 of 1970 before the High Court. The High Court allowed the petition and directed the Government to take suitable action under Section 12(5) of the Act. The Government challenged this decision before this Court by filing S.L.P No. 933 of 1972, without success. The matter, therefore, went back to the Government again. By its order dated January 13, 1972, the State Government referred only one question to the Tribunal and that related to the wages for the strike period but declined to refer the other two questions. The reasons given for this was : (1) that the Government was not in a position to bear the additional burden; and (2) that grant of the special allowance claimed would invite similar demands by other employees which would effect the entire administration. Miscellaneous Petition No. 127 of 1972 was, therefore, filed for a direction to the State to refer the other two demands also. In the mean while, this Court as per its decision dated July 20, 1978, had confirmed the decision of the High Court that Chambal Project was an Industry

within the meaning of the Industrial Disputes Act. After this decision was rendered by this Court, the Government reviewed the matter and passed an order on May 3, 1979 giving additional reasons for refusing to refer the dispute for adjudication. The reasons stated were as under :

> (1) That the State Government was not in a position to pay dearness allowance equal to that of Central Government employees. In the present situation the State Government would not pay dearness allowance equal to that to that of Central Government employees to any particular department. The question of such payment to to the petitioners, therefore, does not arise.
>
> (2) The work-charged employees were already given a consolidated pay. Therefore, there was no justification for paying such employees the Chambal allowance. The rules regulating the service conditions of the work-charged employees of the Chambal division do not provide for payment of Chambal allowance to them.

3. Before the High Court, it was contended by the appellant that the State Government had by refusing to refer the dispute to the Tribunal giving the above reasons taken upon itself the power to decide the dispute and had usurped the powers of the Tribunal. It was further contended that the question raised related to the conditions of service of the employees and was, therefore, a matter primarily to be decided by the Tribunal. The High Court repelled the contention and held as follows :

> It is now 12 years that the matter has been pending. But it would appear from the history of the case that the delay has been mostly due to the fact that the case was pending before various courts. The Government has not materially changed its stand. As regards Chambal allowance, they were, from the very inception, taking the stand that the work-charged employees of the Project were given a consolidated salary and the service conditions did not warrant payment of extra allowance. Now the rules regulating service conditions of the work-charged employees of the project did not contain the provision for payment of Chambal allowance to them. The Government was of the opinion that prima facie no case arises, particularly, when the extra benefit was already being granted to them. The Government undoubtedly could not decide the matter finally, but they could certainly consider whether a prima facie case for reference has been made out on merits. If no case is made out, it would be open to the Government to refer such a question and it could not be said that the Government was usurping the functions of the Tribunal and deciding the case finally. In our opinion, the State Government's order could not be said to be punitive and it takes into account the entitlement of the Chambal employees for the Chambal allowance.

As regards the other question, the State Government are on a firmer ground. Since the Government is not paying dearness allowance equal to that of the Central Government employees to the employees in any other department in the State, there is no reason to discriminate and pay the same to the Chambal employees. This is what the State Government have stated and we think that if the allowance at the rate payable to the Central Government employees is not paid to anyone in the State, the Government was justified in holding that no prima facie case has been made out by the petitioner for referring this dispute to the Tribunal. The State Government have also considered the question of expediency that by payment of such allowance to the Chambal employees alone, there would be dissatisfaction amongst the other employees of the State. Both these reasons are germane and relevant. The Government here was not deciding the case finally. It has to decide the question of

expediency and whether a prima facie case has been made out ....

> In support of this conclusion the High Court relied upon the observations made by this Court in Bombay Union of Journalists v. State of Bombay (AIR 1964 SC 1617 : (1964) 6 SCR 22 : (1964) 1 LLJ 351 : (1964-65) 26 FJR 32) and held that the Government was not precluded from making a prima facie examination of the merits of the dispute while considering whether a reference was necessary or not. It was further held that "the two reasons given by the State Government fulfilled necessary test laid down by the orders of this Court earlier and the various Supreme Court decisions cited by the petitioner".

4. In the appeal before us, it was contended that the approach made by the High Court was erroneous and that the High Court had failed to properly delineate the jurisdiction of the Government under Section 10 read with Section 12(5) of the Industrial Disputes Act. It was contended before us that the question raised by the appellant had to be decided by the Tribunal on evidence to be prima facie examination of the facts of the case. This submission was met with the plea that the Government had in appropriate cases at least a limited jurisdiction to consider on a prima facie examination of the merits of the demands, whether they merited a reference or not.

5. We have considered the rival contentions raised before us. The High Court apparently has relied upon the following passage in Bombay Union of Journalists v. State of Bombay (AIR 1964 SC 1617 : (1964) 6 SCR 22 : (1964) 1 LLJ 351 : (1964-65) 26 FJR 32) :

> But it would not be possible to accept the plea that he appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not.

We find that the approach made by the High Court was wrong and the reliance on the above passage on the facts of this case, is misplaced and unsupportable. This Court had made it clear in the same Judgment in the sentence preceding the passage quoted above that it was the province of the Industrial Tribunal to decide the disputed questions of fact.

Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. Therefore, while conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal to decide. Section 10 permits appropriate Government to determine whether dispute 'exists or is apprehended' and then refer it for adjudication on merits. The demarcated functions are (1) reference, (2) adjudication. When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of the power of a quasi-judicial Tribunal by an administrative authority namely the appropriate Government. In our opinion, the reason given by the State Government to decline reference are beyond the powers of the Government under the relevant sections of the Industrial

Disputes Act. What the State Government has done in this case is not a prima facie examination of the merits of the question involved. To say that granting of dearness allowance equal to that of the employees of the Central Government would cost additional financial burden on the Government is to make a unilateral decision without necessary evidence and without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterised as either perverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the Tribunal and to substantiate the reasonableness of the demand.

6. Same is the case with the conclusion arrived at by the High Court accepting the stand of the State Government that the employees were not entitled to the Chambal allowance as the same was included in the consolidated pay. This question, in fact, relates to the conditions of service of the employees. What exactly are the conditions of service of the employees and in what matter their conditions of service could be improved are matters which are the special preserve of the appropriate Tribunals to be decided in adjudicatory processes and are not ones to be decided by the Government on a prima facie examination of the demand. this demand again can never be said to be either perverse or frivolous.

7. There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Art nugatory.

8. We have no hesitation to hold that in this case, the Government had exceeded its jurisdiction in refusing to refer the dispute to the Tribunal by making its own assessment unilaterally of the reasonableness of the demands on merits. The High Court erred in accepting the plea of the Government that refusal to refer the demands in this case was justified. The demands raised in this case have necessarily to be decided by the appropriate Tribunal on merits.

9. In the result, we set aside the Judgment of the High Court, allow this appeal and direct the State Government to refer all the questions raised by the appellant to the appropriate Tribunal. The appeal is allowed with costs to the appellant quantified at Rs. 2500.

</html