B. B. Rajwanshi

Vs

State of U.P. and Others

Civil Appeal No. 864 of 1987

(E.S. Venkataramiah, N.D. Ojha JJ)

08.04.1988

JUDGMENT

VENKATARAMIAH, J. –

1. The appellant has questioned in this appeal by special leave the constitutional validity of sub-section (4) of Section 6 of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and also the validity of the order dated December 5, 1984 passed by the Government of Uttar Pradesh remitting an award passed by the Labour Court, Meerut for reconsideration by it.

2. The appellant was an employee of the Management, M/s. Electra (India) Ltd., Meerut - respondent 5 in the above appeal. The services of the appellant were terminated by the Management by its order dated April 4, 1977 and the said termination led to an industrial dispute. The State Government by its order dated May 5, 1979 made under Section 4-K of the Act referred the said dispute for adjudication to the Labour Court, Meerut. The question which was referred to the Labour Court read as follows :

> Whether the termination/removal from work of the employee Shri B. B. Rajwanshi by the employers by their order dated April 4, 1977 is justified and/or legal ? If not, to what benefits/damages is the concerned employee entitled and with what other details ?

3. On the basis of the pleadings filed by the parties, the following issues were framed by the Labour Court :

> (1) Was Shri B. B. Rajwanshi not a workman as defined in the U.P. Industrial Disputes Act ? If so has this court jurisdiction to try this case ?
>
> (2) Did Shri B. B. Rajwanshi not make efforts to minimise the losses due to unemployment ?
>
> (3) To what relief, if any, is Shri B. B. Rajwanshi entitled ?
>
> (4) Has Shri B. B. Rajwanshi been retrenched ? If so, how does it affect the case ?

4. After recording the evidence adduced by the parties and hearing the arguments the Labour Court held, (i) that the appellant was a workman as defined in the Act, (ii) that the termination of the services of the appellant was illegal and (iii) that the appellant was entitled to be reinstated in his post with continuity of service and also to the payment of back wages and other benefits. The

Labour Court accordingly passed an award on August 2, 1984 and forwarded it to the State Government. Instead of publishing the award in the official gazette, as required by sub-section (3) of Section 6 of the Act, the State Government passed an order dated December 5, 1984 under Section 6(4) of the Act which read as Follows :

Government of Uttar Pradesh

Labour Anubhag - I

No. 5277 (ST) 36-1-84

Lucknow, dated December 5, 1984

* * *##

BY ORDER

In the matter of dispute between Messrs. Electra (India) Ltd., Meerut and their workman Shri B. B. Rajwanshi, No. Adjudication 46/79 and the Award given by the Labour Court, Meerut, the Governor is pleased to remit it for reconsideration under sub-section (4) of section 6 of the U.P. Industrial Disputes Act, 1947.

Sd/- (Subhash Chandra Bahukhandi) Joint Secretary.##

5. After the matter was remitted to the Labour Court as per the order of the Government of Uttar Pradesh, extracted above, the appellant appeared before the Labour Court on January 9, 1985 and submitted through his counsel that he did not want any reconsideration of the award. On February 7, 1985 on behalf of the Management an application was filed in which inter alia it was stated that the Management wanted to produce some more records in the case to show that the appellant never worked as a workman, that the Executive Director of the Management, namely, Arun Kumar Jain had remained busy in connection with the obtaining of the ticket of Congress (I) Party for Vidhan Sabha from December 30, 1984 to February 5, 1985, that the Management wanted to summon some more witnesses to give evidence on the question that the appellant was not a workman and that the case might be fixed for hearing after two months. The appellant opposed the said application for adducing additional evidence filed on behalf of the Management. The case was adjourned to March 11, 1985. Again on March 11, 1985 the Management moved for further adjournment of the case. The case was then adjourned to March 26, 1985. In the meanwhile the Management also moved the State Government to transfer the case from the file of the Labour Court, Meerut to another Labour Court or Industrial Tribunal on the ground that the Labour Court was biased against the Management. The State Government promptly passed an order dated August 16, 1985 transferring the case from the Labour Court, Meerut to the Industrial Tribunal, Meerut. Aggrieved by the order remitting the award to the Labour Court and the subsequent order transferring the case from the Labour Court, Meerut to the Industrial Tribunal, Meerut, which had the inevitable result of delaying the proceedings which had gone on for six years by then and which exposed the appellant to the risk of losing the benefit of the award itself, the appellant filed a writ petition on the file of the High Court of Allahabad in Civil Miscellaneous Writ Petition No. 13975 of 1985 questioning the order dated December 5, 1984 passed under Section 6(4) of the Act and the order dated August 16, 1985 transferring the case from the Labour Court, Meerut to the Industrial Tribunal, Meerut. The High Court by its judgment dated May 23, 1986 dismissed the writ petition filed in respect of the order made under Section 6(4) of the Act, but set aside the order of transfer passed by the State

Government. Aggrieved by the judgment of the High Court upholding the order passed under Section 6(4) of the Act, the appellant has filed this appeal by special leave.

6. It may be stated at this stage that the appellant has by the leave of the court raised an additional ground before this Court questioning the constitutional validity of sub-section (4) of Section 6 of the Act itself. We have heard counsel for both the parties on the said question.

7. We shall first take up for consideration the question relating to the constitutional validity of sub-section (4) of Section 6 of the Act. The provisions of the Act are enacted for achieving more or less the very same object with which the Industrial Disputes Act, 1947 (Central Act 14 of 1947) has been enacted. The Act is passed with the object of making provision for preventing strikes and lock-outs, and for the settlement of industrial disputes and other incidental matters. Under Section 4-A of the Act the State Government is authorised to establish Labour Courts. A person shall not be qualified to be appointed as Presiding Officer of a Labour Court unless he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or he has held the office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, or of any Tribunal, for a period of not less than two years; or he has been a Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for a period of not less than five years; or he has held any judicial office in India for not less than seven years; or he is enrolled in the list prepared under Section 4-D of the Act. Under Section 4-B, the Act confers power on the State Government to establish Industrial Tribunals. A person shall not be qualified for being appointed as the Presiding Officer of a Tribunal unless he is or has been a Judge of a High Court; or he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or he has held the office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, for a period of not less than two years or of any tribunal constituted under the U.P. Industrial Disputes Act, 1947, for a period of not less than five years; or he is enrolled in the list prepared in accordance with Section 4-D of the Act. Section 4-K of the Act provides that 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 the Second Schedule for adjudication. It provides further 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. Section 6 of the Act which is relevant for our purpose reads thus :

> 6. Awards and action to be taken thereon. - (1) Where an industrial dispute has been referred to a Labour Court or Tribunal for adjudication, it shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion thereof, submit its award to the State Government.
>
> (2) The award of a Labour Court or Tribunal shall be in writing and shall be signed by its Presiding Officer.
>
> (2-A) An award in an industrial dispute relating to the discharge or dismissal of a workman may direct the setting aside of the discharge or dismissal and reinstatement of the workman on such terms and conditions if any, as the authority making the award may think fit, or granting such other relief to the workman, including the substitution of any lesser punishment for discharge or dismissal, as the circumstances

of the case may require.

(3) Subject to the provisions of sub-section (4) every arbitration award and the award of a Labour Court or Tribunal, shall, within a period of thirty days from the date of its receipt by the State Government be published in such manner as the State Government thinks fit.

(4) The State Government may before publication of an award of a Labour Court or Tribunal under sub-section (3), remit the award for reconsideration of the adjudicating authority, and that authority shall, after reconsideration, submit its award to the State Government, and the State Government shall publish the award in the manner provided in sub-section (3).

(5) Subject to the provision of Section 6-A, an award published under sub-section (3) shall be final and shall not be called in question in any court in any manner whatsoever.

(6) A Labour Court, Tribunal or Arbitrator may either of its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistakes in the award, or errors arising therein from any accidental slip or omission; whenever any correction is made as aforesaid, a copy of the order shall be sent to the State Government and the provision of this Act; relating to the Publication of an award shall mutatis mutandis apply thereto.

8. On a reference of an industrial dispute to a Labour Court or a Tribunal for adjudication, the Labour Court or Tribunal is directed to conclude its proceedings expeditiously and to submit its award to the State Government. The award of the Labour Court or the Tribunal is required to be in writing and signed by its Presiding Officer. Sub-section (3) of Section 6 of the Act provides that subject to the provisions of sub-section (4) every award of a Labour Court or Tribunal, shall, within a period of thirty days from the date of its receipt by the State Government be published in such manner as the State Government thinks fit. That means that unless the State Government passed an order under Section 6(4) of the Act, the State Government is bound to publish the award of a Labour Court or an Industrial Tribunal as required by sub-section (3) of Section 6 of the Act. Sub-section (4) of Section 6 of the Act, the validity of which is questioned before us empowers the State Government to remit the award for reconsideration of the adjudicating authority before its publication and that authority shall after reconsideration submit its award to the State Government. Thereafter the State Government is required to publish the award in the manner provided in sub-section (3) of Section 6 of the Act. Sub-section (4) of Section 6 of the Act does not require the State Government to hear the parties before passing an order remitting the award for reconsideration of the adjudicating authority. It does not require the State Government to give reasons for remitting the award. It does not also require the State Government to inform the adjudicating authority the specific points on which the adjudicating authority has to reconsider the award. The said sub-section also does not impose any restriction on the scope and nature of the proceeding that has to take place before the Labour Court or the Industrial Tribunal after the award is remitted to it by the State Government. In a given case it may be open to the Labour Court or the Industrial Tribunal to permit the parties to file fresh pleadings and to adduce additional evidence and also to rehear the parties. On such reconsideration it is open to the Labour Court or the Industrial Tribunal to recall the award already passed by it and to pass a fresh award and submit it to the State Government. Thus it is seen that the effect of an order passed by the State Government under Section 6(4) of the Act can be in a

given case a total annulment of the award submitted by the Labour Court or the Industrial Tribunal originally under sub-section (1) of Section 6 of the Act. Sub-section (4) of Section 6 of the Act also does not contain any guidelines regarding the circumstances in which the State Government can exercise its power under that sub-section. Section 6-A(1) of the Act provides that if the State Government is of the opinion that it will be inexpedient on public grounds affecting national or State economy or social justice to give effect to the whole or any part of the award, the State Government may, by notification in the official gazette declare that the award shall not become enforceable on the expiry of the said period of thirty days from the date of its publication under Section 6(3) of the Act. A similar provision is contained in Section 17-A of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) which provides that if the appropriate government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party, the appropriate government may by notification in the official gazette declare that the award shall not become enforceable on the expiry of the said period of thirty days from the date of its publication under Section 17-A of the Central Act. Even those restrictions placed on the exercise of power under Section 6-A (1) of the Act and under Section 17-A of the Central Act are not to be found in Section 6(4) of the Act.

9. In the case before us the questions which were raised before the Labour Court were very simple ones. They had no effect on the national economy. The questions did not in any way interfere with the principles of social justice. No grave consequences would have ensued if the award had been published in the official gazette and the parties had been allowed to question its validity before the High Court under Article 226 of the Constitution of India or before the Supreme Court under Article 136 of the Constitution of India. The parties were not given notice by the State Government to show cause why the award should not be remitted to the Labour Court again for fresh consideration. In fact, the appellant had not been even informed about the contents of the award before the government passed its order under Section 6(4) of the Act. The order of the State Government also does not state why and on what points the State Government was not satisfied with the award and the questions on which the Labour Court was required to reconsider its award.

10. It is urged on behalf of the appellant that the wide and arbitrary power conferred on the State Government under Section 6(4) of the Act without any guidelines is liable to be misused and, therefore, it is liable to be struck down on the ground that it is violative of Article 14 of the Constitution of India. It is further stated that there was no justification to confer such unlimited and uncanalised power on the State Government, particularly, when the award is one passed by the adjudicating authorities presided over by men with judicial experience as provided in sub-section (3) of Section 4-A or sub-section (3) of Section 4-B of the Act and that it is always open to the parties aggrieved by the award to question it before the High Court or the Supreme Court, as the case may be.

11. Reliance is placed on the decision of this Court in Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh (1954 SCR 803 : AIR 1954 SC 224) in which it is stated that a law or order which confers arbitrary or uncontrolled power upon the executive must be held to be unreasonable. In that case the validity of Clause 4(3) of the Uttar Pradesh Coal Control Order, 1953 which conferred absolute power on the licensing authority to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under that Order came up for consideration. Dealing with the said question Mukherjea, J., as he then was, on behalf of the Constitution bench of this Court observed at pages 812-14 thus :

> The more formidable objection has been taken on behalf of the petitioners against

> Clause 4(3) of the Control Order which relates to the granting and refusing of licences. The licensing authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under this Order and the only thing he has to do is to record reasons for the action he takes. Not only so, the power could be exercised by any person to whom the State Coal Controller may choose to delegate the same, and the choice can be made in favour of any and every person. It seems to us that such provision cannot be held to be reasonable. No rules have been framed and no directions given on these matters to regulate or guide the discretion of the licensing officer. Practically the Order commits to the unrestrained will of a single individual the power to grant, without or cancel licences in any way he chooses and there is nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same Mr. Umrigar contends that a sufficient safeguard has been provided against any abuse of power by reason of the fact that the licensing authority has got to record reasons for what he does. This safeguard, in our opinion, is hardly effective; for there is no higher authority prescribed in the Order who could examine the propriety of these reasons and revise or review the decision of the subordinate officer. The reasons, therefore, which are required to be recorded are only for the personal or subjective satisfaction of the licensing authority and not for furnishing any remedy to the aggrieved person. It was pointed out and with perfect propriety by Mr. Justice Mathews in the well known American case of Yick Wo v. Hopkins (118 US 356, 373) that the action or non-action of officers placed in such position may proceed from enmity or prejudice, from partisan zeal or animosity, from favouritism and other improper influences and motives which are easy of concealment and difficult to be detected and exposed, and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to every man, without the necessity of detailed investigation. In our opinion, the provision of Clause 4(3) of the Uttar Pradesh Coal Control Order must be held to be void as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not coming within the protection afforded by clause (6) of the article.

12. It is no doubt true that in the above case the court held that Clause 4(3) of the Uttar Pradesh Coal Control Order, 1953 was invalid and was violative of Article 19(1)(g) of the Constitution of India. The observations made therein also apply with equal force to an objection raised to its validity on the ground that it violated Article 14 of the Constitution of India. In the case before us the State Government is not required to record its reasons for remitting the award to the Labour Court or the Industrial Tribunal and the parties were at a loss to know why the State Government had remitted the award for reconsideration by the Labour Court. The power to remit the award may also be delegated to any other person or authority by the State Government, if it so directs, by a notification issued under Section 11-A of the Act.

13. When once a decision is given by a quasi - judicial authority it would not be safe to confer on any executive authority the power of review or of remission, in respect of the said decision without imposing any limitation on the exercise of such power. Even when a court is conferred the power of review such power can be exercised ordinarily under the well known limitations as are found in Order 47 of the Code of Civil Procedure. Similarly under Section 16 of the Arbitration Act, 1940 the power to remit an award to the Arbitrator can be exercised by a civil court only under the circumstances specified in that connection. Sub-section (4) of Section 6 of the Act with which we

are concerned imposes no such limitations.

14. It is, however, argued on behalf of the State Government that it was open to the State Government to seek necessary guidance from the object and the contents of the Act and that the State Government could remit the award to the Labour Court only for a reason which was germane to the statute in question. It is no doubt true that in some decisions of this Court it has been held that even though a particular provision which confers discretion on the executive does not specifically state the circumstances in which such discretion can be exercised, the executive can seek the necessary guidance while exercising such discretion from the statute under which the discretion is conferred on it. This argument, however, is not of any assistance to the State Government in this case because even though the reason for remitting the award may be a reason connected with industry or labour it can still be used arbitrarily to favour one party or the other. The ground for remitting the award should be one corresponding to a ground mentioned in Section 16 of the Arbitration Act, 1940; otherwise the power it capable of serious mischief. The facts of the case before us themselves serve as a good illustration of the above proposition. As mentioned earlier, there were only two main issues which arose for consideration before the Labour Court; (1) whether the appellant was a workman; and (2) whether his services had been validly terminated. After recording the entire evidence adduced by both the parties, the Labour Court had recorded its findings on both the issues in favour of the appellant. From the prayers made by the Management before the Labour Court after the case was remitted to it, it is seen that the Management wanted to adduce additional evidence before the Labour Court in support of its case. It was not the case of the Management that the Labour Court had unreasonably refused permission to the Management to adduce all its evidence or that it was prevented by any other sufficient cause from adducing all its evidence before the award was passed. This was not even a case where the industrial peace was likely to be disturbed if the award had been implemented as it was. The award would not have also affected prejudicially either the national economy or social justice. In the above circumstances would it be proper for the State Government to make an order remitting the award ? Certainly not. In the instant case the State Government could do so because it had been entrusted with such unguided power under Section 6(4) of the Act.

15. It was urged by the learned counsel for the State Government that sub-section (4) of Section 6 of the Act need not be struck down but the court may, however, direct that the State Government should give a hearing to the parties before an order is passed under Section 6(4) of the Act remitting the award and also require the State Government to give reasons in support of its order. We do not think that this is an appropriate case where the impugned provision can be upheld by reading into it the requirement of issuing notice to the parties and the requirement of giving reasons for its orders. The provision cannot be upheld in the absence of necessary statutory guidelines for the exercise of the power conferred by it having regard to the fact that the proceeding before the Labour Court or the Industrial Tribunal is in the nature of quasi - judicial proceeding where parties have adequate opportunity to state their respective cases, to lead evidence and make all their submissions. It is significant that the corresponding Act which is in force in the other parts of India, i.e., the Industrial Disputes Act, 1947 (Central Act 14 of 1947) does not contain any provision corresponding to Section 6(4) of the Act and the absence of such provision in the Central Act has not led to any serious inconvenience to the general public.

16. At this stage we may refer to the decision of this Court in the State of Bihar v. D. N. Ganguly (1959 SCR 1191 : AIR 1958 SC 1018 : (1958) 2 Lab LJ 634) in which this Court declined to recognise the existence of the power in the appropriate government to cancel or supersede a reference made under the provisions of Section 10(1) of the Industrial Disputes Act, 1947 (Central

Act 14 of 1947) in respect of an industrial dispute pending adjudication by the Tribunal constituted for that purpose notwithstanding Section 21 of the General Clauses Act, 1897. In that case Gajendragadkar, J., as he then was, speaking for the court observed at pages 1204-05 thus :

> Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate government should have an implied power to cancel its own order made under Section 10(1). If on the representation made by the employer or his workmen the appropriate government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference under Section 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question it is important to bear in mind that power to cancel its order made under Section 10(1), which the appellant claims, is an absolute power; it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. If the power claimed by the appellant is conceded to the appropriate government it would be open to the appropriate government to terminate the proceedings before the tribunal at any stage and not to refer the industrial dispute to any other industrial tribunal at all. The discretion given to the appropriate government under Section 10(1) in the matter of referring industrial disputes to industrial tribunals is very wide; but it seems the power to cancel which is claimed is wider still; and it is claimed by implication on the strength of Section 21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by Section 21 of the General Clauses Act insofar as it refers to the powers of rescinding or cancelling the original order cannot be invoked in respect of the provision of Section 10(1) of the Industrial Disputes Act.

17. The Management cannot derive much assistance from the decision of this Court in the Sirsilk Ltd. v. Government of Andhra Pradesh ([1964] 2 SCR 448 : AIR 1964 SC 160 : (1963) 2 Lab LJ 647). The facts of that case were these. Industrial disputes having arisen between the appellants therein and their workmen the disputes were referred for adjudication. After the Tribunal forwarded its award to the government the parties in each dispute came to settlement. Thereafter a letter was sent to the government requesting it to withhold the publication of the awards. The government replied that under Section 17 of the Industrial Disputes Act, 1947 it was mandatory for the government to publish the awards and they would not withhold publication. Thereupon writ petitions were filed before the High Court under Article 226 of the Constitution of India praying that the government might be directed to withhold the publication. The High Court held that since the provisions of Section 17 of the Central Act were mandatory it was not open to the High Court to issue writs as prayed for and rejected the petitions. It is against the said judgment of the High Court the said appeals were filed before this court. This Court held that it was clear from a combined reading of Section 17 and Section 17-A of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) that the intention behind Section 17(1) of the Industrial Disputes Act, 1947 was that a duty was cast on government to publish the award within thirty days of its receipt and the provision for its publication was mandatory not merely directory. When an agreement had been arrived at between the parties, though not in the course of conciliation proceedings, it became a settlement as per the definition under Section 2(p) and Section 18(1) of that Act laid down that such a settlement would be binding on all the parties to it. This Court in order to resolve the conflict between the

effect of Section 2(p) of that Act and of Section 18(1) of that Act held that the only solution was to withhold the award from the publication and that such a course did not in any way affect the mandatory nature of the provisions under Section 17 of that Act. In the case before us there was no settlement arrived at between the appellant and the Management which made the publication of the award unnecessary.

18. There is one other good reason for taking the view that without any guidelines it would not be appropriate to confer power on the State Government to nullify virtually the effect of an award by exercising its power under Section 6(4) of the Act. The Act applies not merely to disputes arising between private managements and labour unions and the workmen employed by them but also to industries owned by the State Government and their workmen. In those case where the government is the owner of the industry it would be inappropriate to confer uncontrolled and unguided power on the State Government itself to remit the award passed on industrial disputes arising in such industries for there is every chance of the power being exercised arbitrarily in such cases.

19. In this connection it is useful to refer to the following observations made by a Constitution Bench of this Court in P. Sambamurthy v. State of Andhra Pradesh ([1987] 1 SCC 362 : (1987) 2 ATC 502) in which the validity of clause (5) of Article 371-D of the Constitution of India which conferred power on the Government of Andhra Pradesh to modify or annual any order passed by the Administrative Tribunal constituted under that article, arose for consideration. While striking down clause (5) of Article 371-D of the Constitution of India, this Court observed thus : [SCC p. 369, para 4]

> It is obvious from what we have stated above that this power of modifying or annulling an order of the Administrative Tribunal conferred on the State Government under the proviso to clause (5) is violative of the rule of law which is clearly a basic and essential feature of the Constitution. It is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High court that the rule of law is maintained and every organ of the State is kept within the limits of the law. Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death-knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it. The proviso to clause (5) of Article 371-D is therefore clearly violative of the basic structure doctrine.

20. Even though the decision of the Labour Court or the Industrial Tribunal in the present case cannot be equated with the decision of the Administrative Tribunal constituted under Article 371-D of the Constitution of India in all respects, the danger of entrusting unguided and uncontrolled power to remit an award for reconsideration of the Labour Court or Industrial Tribunal can very well be perceived particularly where the award has gone against the State Government in a dispute arising out of an industry owned by it.

21. The scope of the jurisdiction and the power of the Labour Court while exercising the power of

reconsideration in respect of an award remitted to it has been interpreted to be equivalent to the jurisdiction and power which it exercises in regard to the adjudication of a referred dispute by a Division Bench of the High Court of Allahabad in Star Paper Mills Mazdoor Sangh v. Star Paper Mills Limited, Saharanpur (1974 All LJ 71). In the said decision the Allahabad High Court has held that the Labour Court is free to adopt such procedure as it thinks fit in the circumstances of the case and if the circumstances of the case are such that the Labour Court is satisfied that further evidence should be adduced it has jurisdiction to record it and that the Labour Court is not confined to the evidence already on record. Sub-section (4) of Section 6 of the Act, which is so widely worded is therefore likely to result in grave injustice to a party in whose favour an award is made as the said provisions can be used to reopen the whole case.

22. Our attention is drawn by the learned counsel for the State Government to another decision of the High Court of Allahabad in V. E. Thamas v. State of Uttar Pradesh (1978 All LJ 1118) in which the validity of sub-section (4) of Section 6 of the Act has been taken the view that Section 6(4) of the Act does not confer unguided and unfettered power on the State Government in the matter of remitting the award for reconsideration. We have gone through that decision carefully. We find that the High Court has not taken into account while upholding Section 6(4) of the Act all the matters which we have taken into consideration in this case. The High Court has proceeded to uphold the validity of Section 6(4) principally on the ground that the provisions of the Act which are designed to ensure social justice to industrial workers supplied the necessary guidance and that the power of remission of award does not have the effect of disturbing the findings recorded by the labour Court or the Industrial Tribunal in the course of the award. We have earlier stated how it is not sufficient to rely merely upon the object of the Act to uphold the provisions of Section 6(4) of the Act. We have also shown that on the case being remitted to the Labour Court it is open to the Labour Court to set aside the findings already recorded by it and to rewrite the award. In the circumstances we do not agree with the view expressed by the High Court of Allahabad on the above question.

23. Taking into consideration all aspects of the case including the object with which the Act is enacted we feel that sub-section (4) of Section 6 of the Act is violative of Article 14 of the Constitution of India as it confers unguided and uncontrolled powers on the State Government. We, therefore, declare sub-section (4) of Section 6 of the Act as unconstitutional. We accordingly strike it down. It follows the order passed by the State Government on December 5, 1984 remitting the case for reconsideration by the Labour Court is also liable to be set aside. It is accordingly set aside. The State Government shall now proceed to publish the award under Section 6(3) of the Act. On the publication of the said award it is open to any of the parties aggrieved by it to resort to such remedies as may be available to in law.

24. The appeal is accordingly allowed. There will be no order as to costs.

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