SUPREME COURT OF INDIA

Govt.of A.P.

Vs.

V.S.R.Murthy

(S.Rajendra Babu and D.P. Mohapatra JJ.)

18.09.2001

JUDGEMENT

Rajendra Babu, J.

1. When certain proceedings were pending before the Board of Industrial and Financial Reconstruction (BIFR) a settlement was reached between the employees of Bus Body Division and 1537 employees of M/s Hyderabad Allwyn Ltd. [for short HAL] and their management under Section 12 of the *Industrial Disputes Act, 1947* [hereinafter referred to as the Act]. Memorandum of Understanding [MOU] was also reached on 28.3.1993 with M/s Voltas Lt., Government of Andhra Pradesh and HAL.

2. In that MOU, one of the clauses provided as follows:

3. As regards employees numbering 1486, HAL will enter into satisfactory arrangements with the Government of A.P.for their deployment elsewhere.

4. The Government of Andhra Pradesh thereafter considered the modalities of placement of 1486 employees of the company and a Cabinet Sub-Committee was constituted which considered the recommendations made by a High Power Committee and the operating agency appointed by BIFR. The Managing Director, HAL was asked to identify the 1486 employees and allot them to the various Heads of the Departments as indicated in Annexure II thereto as an interim measure to be effective from 1.4.93. The placement of individuals was to be decided by the Committee of Officers constituted under their order dated 31.3.1993. It was also stated that separate orders will be issued creating supernumerary posts for these employees.

5. Thereafter, the Government accepted recommendations of the Committee of Officers creating supernumerary posts in the Government Departments requiring the Heads of Departments to maintain a separate muster roll and acquittance register for the individuals allotted to them.

6. The Heads of Departments were asked to issue temporary posting orders, which shall be in operation till final orders of allotment were issued in pursuance of decisions of the

Empowered Committee. In the meanwhile, BIFR published a draft scheme on 22.2.1994. Under the scheme, amongst other things, it was provided for the establishment of a new company Auto Company by the Government of Andhra Pradesh to which the employees of the HAL working in its auto division shall be deemed to have been transferred with effect from 28.3.93. It was further stated that the transferor company had identified the number of surplus employees of the transferor company who would be transferred and absorbed by the Government of Andhra Pradesh and the Government of Andhra Pradesh has by its order dated 28.4.1993 completed the modalities for placement of 1486 employees in various Government departments and State level public enterprises. It was also stated that the aforesaid transfer of the Watch undertaking to the Watch Company together with the transfer of the employees engaged in or connected with the Watch undertaking as also the transfer of the employees in the Auto division and the surplus employees so identified would be completed before the sanction of the scheme. On 4.4.1994, BIFR sanctioned the scheme.

7. On 28.7.1994, the High Power Committee submitted its report to the Government advising against absorption of surplus staff of public sector undertakings in Government services for three reasons: [1] the same were creating unrest amongst the Government employees who were already in service; [2] there was no provision in the rules under which surplus employees of the public sector undertakings could be given placement in Government service in any cadre; and [3] such lateral induction of employees of public sector undertakings was bound to lead to endless litigation. The Committee recommended to the Government to take a decision not to absorb or induct surplus staff of public sector undertakings into Government service in future. The Government approved the recommendations of the High Power Committee. On 1.10.1996, the Government issued a notification mentioning the difficulties in the matter of regularisation of the surplus workers and the decision to abolish all the supernumerary posts with effect from 30.11.1996 and to provide for payment of an amount for rehabilitation equal to 1½ months pay including Dearness Allowance for every year of completed service subject to a minimum amount of Rs.30,000/- for each employee in addition to other statutory dues.

8. An ordinance was promulgated which came into effect from 30.11.1996 prohibiting absorption of employees of State Public Sector Undertakings in Government service and cancelling all orders of Government appointing any employee of the state public sector undertakings to any post in a public service on the ground that the undertaking had become sick or was likely to become sick or was closed or was likely to be closed. The ordinance was replaced by the Andhra Pradesh Absorption of Employees of State Government Public Sector Undertakings into Public Service Act, 1997.

9. The validity of the Ordinance and the Act was challenged in a batch of writ petitions before the High Court. A full bench of the High Court allowed the writ petitions and set aside the impugned G.O. while declaring that the impugned ordinance or the Act will not affect the rights of the parties as protected under the BIFR scheme. The High Court found that the surplus employees of the HAL were already absorbed and they are the employees of the State alone and, therefore, the impugned Act or the Ordinance cannot affect their rights. The High Court also found that the BIFR scheme could not be defeated by a legislation to be

made by the State and arbitrariness is writ large in this case and the Government cannot sack the employees drafted by them for no fault of theirs. The argument raised on behalf of the appellants on the economic capacity of the State was also rejected by the High Court. The High Court, however, gave a finding that the surplus employees deployed by the Government will continue to be workmen. It was also found by the High Court that the termination of services of the employees was not on account of any retrenchment following the provisions of the Industrial Disputes Act but on the ground that the industry has become sick. The scheme for absorption of the employees was complete and implemented and if it is not complete, the Government is bound to complete this exercise.

10. Special leave petitions were preferred by the Government before this Court and this Court made an interim order on 24.2.1999 allowing the appellants to place the difficulties in implementing the scheme before the BIFR and directed the BIFR to pass such orders as they deem fit after hearing the parties irrespective of the observations made by the High Court in the judgment under appeal.

11. By an order made on 12.5.1999, the BIFR rejected the application filed by the appellants. M/s Allwyn Watches Ltd., which is also covered by the BIFR scheme, was ordered to be closed down with effect from 29.2.2000 and identical voluntary retirement scheme was accepted by more than 90% of the employees as on that date and out of a total number of 2147 employees of that company, 2135 had been relieved and given benefits under the voluntary retirement scheme and the remaining 12 employees had been retained for winding up operations. The said employees are all stated to be senior to the workmen who are the respondents in the present batch of cases and that scheme was challenged before this Court in Dayakar Reddy vs. MD, Allwyn Auto Ltd. & Ors., 2000 (9) SCC 247, and this Court upheld the scheme implemented by the State Government in respect of the employees of the erstwhile Allwyn Auto Ltd., a company formed by way of implementation of this very BIFR scheme and issued appropriate directions to the company with regard to extension of the benefits of the voluntary retirement scheme to workmen who had not opted for the same.

12. Shri P.P.Rao, learned Senior Advocate appearing for the appellants, contended as follows:

> "1. Section 32 of the *Sick Industrial Companies (Special Provisions) Act, 1985* [hereinafter referred to as the SICA] cannot override the provisions of the A.P.Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Act, 1997 which, in pith and substance, is a law falling within the scope of Entry 41 of List II of Seventh Schedule to the Constitution of India i.e. State Public Services. The overriding effect given by Section 32 of the SICA is limited to laws made by Parliament with respect to the items enumerated in Lists I & III and it cannot extend to laws enacted by the State Legislature with respect to any matter in List II. The finding of the High Court to the contrary is erroneous and unsustainable.

2. Para 9(c) of the BIFR scheme has to be read subject to Section 18(1)(da) of the SICA. Therefore, the scheme cannot be understood to require the Government to permanently absorb the surplus staff in question contrary to the statutory provisions governing recruitment to public services of the State.

3. The State Government did not make any firm commitment to permanently absorb the 1486 employees contrary to the rules governing recruitment to Government departments and other public sector undertakings.

4. Availability of work is a pre-condition for absorption. When the Government found that there were already surplus employees without work, it cannot be forced to absorb the 1486 employees.

5. The finding of the High Court that the workmen have already been permanently absorbed is incorrect. In any event, retrenchment of surplus staff is an inherent right of the Government.

6. The doctrine of promissory estoppel is subject to exceptions.

The Government cannot be compelled to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the authority to make. That doctrine must also yield when the equality so requires.

7. In view of the High Courts finding that the surplus employees deployed by the Government will continue to be workmen only and the termination of their services was not on account of retrenchment under the Act, it will be open to the Government of A.P.to retrench them under the Act in which case the compensation payable under the Act will be far less than the compensation offered by the Government in G.O.Ms.No. 192 dated 1.10.1996. The High Court failed to appreciate this aspect and erred in quashing the G.O. which is more beneficial to the employees as the scale of compensation provided is three times more than what is provided in the Act.

8. Assuming without admitting that the BIFR scheme is binding on the Government notwithstanding the A.P.Act No.14 of 1997, the BIFR ought to have allowed the State Governments request to modify the scheme so as to facilitate a golden handshake in terms of G.O.Ms.No.192 dated 1.10.1996. The reasons given by the BIFR for rejecting the Governments request are unsustainable."

13. In support of the aforesaid propositions, Shri P.P.Rao relied upon the decisions of this Court in *Prafullah Kumar Mukherjee vs. Bank of Commerce*[1], *A.S.Krishna vs. State of Madras*[2], *State of Rajasthan vs. G.Chawla*[3], *State of A.P. vs. McDowell & Co.*[4], *P.N.Krishna Lal vs. Government of Kerala*[5], *Management of Dandakaranya Project v. Workmen*[6], *N.Ramanatha Pillai v. State of Kerala*[7], *K.Rajendran v. State of Tamil Nadu*[8], *Union of India*

vs. Godfrey Philips[9]*, Kasinka Trading v. Union of India*[10]*, Excise Commissioner, U.P. vs. Ram Kumar*[11].

14. Shri M.N.Rao, learned Senior Advocate appearing for the respondents, submitted that the finding of the High Court that the surplus employees of HAL were already absorbed and they are the employees of the State and, therefore, the impugned Act has no application to them should be sustained by us followed by the finding of the High Court that termination is not on account of retrenchment but on the ground that the industry has become sick and the scheme of absorption was complete and having been implemented pursuant to the agreement entered into by the Government of Andhra Pradesh and the various other parties and the Government should not now be allowed to turn back from solemn undertaking given before the BIFR and other authorities and such a question should not be allowed to be agitated in the court and the view expressed by the High Court should be upheld by us.

15. Act No. 14 of 1997 is effective from November 26, 1996. The said Act declares that no employee of a State Government Public Sector Undertaking shall be or shall ever be deemed to be entitled to absorption into public service from the date of the commencement of the Act only on the ground that such undertaking has become sick or is likely to become sick or is closed or is likely to be closed and accordingly. The Act is effective from a date long after the scheme was sanctioned by the BIFR on 4.4.1994. Clauses (c) and (d) of the scheme provides as follows:

> (c) the transferor company has identified the number of surplus employees of the transferor company who would be transferred and absorbed by the Government of A.P.. The Government of A.P. has vide its order G.O.Ms. No.180 dated 28th April, 1993 completed the modalities for placement of 1486 employees in various Government Departments and State level public enterprises.
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> (d) The aforesaid transfer of the Watch undertaking to the Watch Company together with the transfer of the employees engaged in or connected with the Watch undertaking as also the transfer of the employees of the Auto Division and the surplus employees identified as aforesaid would be completed before the sanction of this Scheme.

16. The underlined portion in clause (c) will make it clear that the Government has completed the modalities for placement of 1486 employees in various Government Departments and State level public enterprises. It is also made clear that the transfer of the surplus employees identified as aforesaid would be completed before the sanction of the scheme. The scheme having been already sanctioned by the BIFR, it must be taken that the employees in different establishments have been identified and their placement in the various Government Departments and the public sector undertakings is complete. It is not necessary to look into any other document. The reports of the various Committees and the Government orders issued thereon will have no relevance at all. When the necessary material had been placed before the BIFR and the BIFR had gone into the same and thereafter sanctioned the scheme in the manner stated above, we think the finding recorded by the High Court that the

surplus employees of HAL have been absorbed in the services of the Government and they are employees of the State is justified.

17. The sequiter is that when the Act was made effective from 26.11.1996, the Act cannot have any application to the present employees at all. It may be for the purpose of convenience or for other reasons the Government may have placed them in supernumerary posts or other kinds of posts but it was publicly declared before a competent statutory forum that the modalities for placement of 1486 employees in various Government Departments and State level public enterprises are complete and, therefore, that position cannot now be doubted or disputed.

18. In this background, we do not think it is necessary for us to go into the complex questions of the competence of the State Legislature to enact the Act, effect of the Act, application of doctrine of promissory estoppel, the manner in which the same would operate in spite of the scheme framed under the SICA and whether in the light of Section 32 of the SICA the scheme would override the Act or not. These questions become academic and the correctness of decision on questions of law recorded by the High Court on these aspects is left open to be agitated in appropriate proceedings.

19. The High Court has given a finding that the workmen in question as enumerated in the scheme of the BIFR referred to earlier have been deployed in the Government Departments or the state public sector undertakings and they do not cease to be workmen merely because they are employed in the Government Departments. The view expressed by the High Court in this regard is justified and is not under challenge by respondents before us either. Therefore, it is not necessary for us to examine any further on this aspect of the matter.

20. A contention is raised by the learned Advocate General before the High Court that the respondent-employees being workmen their services could be retrenched under the provisions of Section 25-F of the Industrial Disputes Act as the industries in question from which they are drafted have become sick. The High Court, in our view, rightly rejected that contention by stating when the workmen in question have become employees of the Government the industries becoming sick would be irrelevant. If the services of the workmen in question are terminated for other reasons as provided under the Industrial Disputes Act, the respective parties can work out their respective rights as provided under that Act.

21. Shri P.P.Rao further contended that M/s Allwyn Watches Ltd. to which some of the employees who were senior to the respondent employees were absorbed under the BIFR scheme and which is allowed to be closed down and 2135 have been relieved and given benefits under the Voluntary Retirement Scheme and only 12 employees have been retained for winding up operations and that matter came up before this Court in Dayakar Reddys case [supra] and this Court did not interfere with the implementation of the scheme but on the other hand gave extension of time to claim the benefits arising under such VRS scheme.

22. But this factor does not have any bearing on the present case because even in certain flourishing and prosperous companies many of the employees volunteer to retire on account

of their personal reasons depending upon whether benefits arising therein would be advantageous to them. If such attractive schemes are offered to the employees in the present case also, as to what the employees would do, is not for us to predict. Particularly when the employees have been held to be workmen and we have left open the question as to whether they can invoke the provisions of the Industrial Disputes Act, it is for them to decide as to whether action should be taken or not. Therefore, the fact that the voluntary retirement scheme being applied in M/s Allwyn Watches Ltd. would not influence us to deviate from the approach made by us in the matter.

23. Whether absorption of the employees by the Government would be a drain on the public exchequer was a matter certainly present to the mind of the Government before taking various steps culminating in the scheme sanctioned by the BIFR. In trying to solve various problems, the Government has to balance several interests and devise methods to suit the needs of the situation. In the present case, when certain industries had become sick and a large number of employees were likely to be uprooted and thus a human problem arose, the Government sought to work out certain solutions which resulted in a scheme framed by the BIFR, now to say that such a scheme could not have been framed and that scheme would affect the rights of the other employees of the Government or likely to affect the finance of the Government is only the result of unimaginative narrow thinking on the part of the Government by relying on bureaucracy used to the usual red tapism. To depend upon the reports of the bureaucracy, which cannot take decision of such large magnitude involving human problem, would only indicate that the realities of the matter are ignored. It is only after due deliberation and after considering the financial and administrative implications the previous orders of the Government had been passed leading to a scheme framed by the BIFR has not been duly appreciated in the proper perspective by the Government. Hence, challenge to the order of BIFR made on 12.5.1999 is unsustainable. In that view of the matter, if the Government was merely guided by the reports of the bureaucracy and not on the ground realities and thereafter the Ordinance has been promulgated under a misconception thinking it would be applicable to the present employees, we think, the attempt of the Government has misfired.

24. In the result, we dismiss these appeals subject to the observations made in the course of this order. No costs.

[1]LR 74 IA 23 *[2]1957 SCR 399* *[3]1959 Supp. (1) SCR 904*
[4]1996 (3) SCC 709 *[5]1995 Supp.(2) SCC 187* *[6]1997 (2) SCC 296*
[7]1974 (1) SCR 515 *[8]1982 (3) SCR 628* *[9]1985 Supp. (3) SCR 123*
[10]1995 (1) SCC 274 *[11]1976 Supp. SCR 532*