SUPREME COURT OF INDIA

A.P. Foods

Vs

S. Samuel and Others

Appeal (Civil) 4330 of 2000

(Arijit Pasayat and Tarun Chatterjee, JJ)

04.07.2006

JUDGMENT

ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by learned Single Judge of the Andhra Pradesh High Court which was affirmed by a Division Bench in Writ Appeal by the impugned judgment.

Background facts in a nutshell are as follows:

Appellant is run by Andhra Pradesh Nutrition Council and is owned and controlled by the Government of Andhra Pradesh. The Nutrition Council is registered under the Andhra Pradesh (Telengana Area) Public Societies Registration Act, 1350 (Act 1 of 1350 Fasli). The principal object is to provide and supply nutritious foods to school and pre-school children, pregnant women and lactating mothers and such other categories of beneficiaries as the Government from time to time decide within the general framework of the Government social welfare programmes. It is claimed to be a non-profit motive establishment. It does not sell or distribute its product either in public or to outsiders except those selected by the Government of Andhra Pradesh under its programmes. In April, 1982 a question arose regarding demand of payment of bonus under the Payment of Bonus Act, 1965 (in short the 'Act') to the employees of the appellant, and it approached the Commissioner

of Labour, inter alia, stating that the (a) regular production of the factory was handed over to the State Government by the CARE Organisation (b) that the factory is a non-commercial venture and (c) that, therefore, it falls outside the ambit of the Act. By order dated 21.1.1983 the Commissioner of Labour, Andhra Pradesh held that the provisions of the Act have no application to the factory of the appellant. In November 1984 appellants sanctioned ex-gratia payment to the workers as per GOMs.319 for the year 1983-84 in view of the fact that the Act is not applicable to the appellant and eligibility for the ex-gratia was on the lines being given in some other public sector undertakings. In January, 1986, the Executive Committee of the Nutrition Council decided to sanction ex-gratia of one month's salary each year in lieu of bonus to the employees. On the basis of this decision, ex-gratia payment of one month's salary from the year 1984-85 was given on the lines of certain other public sector undertakings. GOMs. No. 366 dated 29.10.1993 was issued by the Government of Andhra Pradesh, Finance and Planning Department, pending final decision by the Government directing its various Organisations not to pay ex- gratia until further orders. Appellant issued directions by its Circular dated 24.11.1993 that payment of ex-gratia to the employees shall stand withdrawn until further orders. Employees of the appellant-establishment sent representations to the Minister of Labour regarding stoppage of ex-gratia payment. Ministry of Labour by communication in December, 1995 indicated that employees are not entitled to ex-gratia with effect from November, 1993 onwards in view of the guidelines issued by the Government. A Writ Petition was filed by 243 employees making grievance that the stoppage of ex- gratia/bonus was unauthorized and contrary to law. Said writ Petition was allowed by a learned Single Judge. It was submitted that the question whether the employees were entitled to bonus is an industrial dispute and the writ petition should not be entertained. Learned Single Judge turned down the contentions of the present appellant that the Act does not apply to it in view of Section 20 and Section 22 of the Act. With reference to certain documents he came to the conclusion that the stand of the appellant that it was working without profit motive is factually wrong. In any event, Section 22 of the Act would not stand in the way of entertaining the writ petition. The appellant filed a writ appeal before the High Court which maintained the order of learned Single Judge by the impugned judgment.

Learned counsel for the appellant submitted that on a combined reading of Sections 20, 22 and 32(v)(c) of the Act, the inevitable conclusion is that the writ petition should not have been entertained. Further Section 22 clearly stipulates that the dispute raised is an industrial dispute under the Industrial Disputes Act, 1947 (in short the 'ID Act'). Since disputed questions of fact were involved, the writ petition should not have been entertained.

In response, learned counsel for the writ petitioners- respondents submitted that in view of the established factual position, the High Court was justified in entertaining the writ petition and deciding in favour of the writ petitioners.

Sections 20, 22 and 32(v)(c) read as follows :

"Section 20: Application of Act to establishments in Public Sector in certain cases:

(1) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector

and the income from such sale or services or both is not less than twenty per cent of the gross income of the establishment in public sector for that year, the, the provisions of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) save as otherwise provided in sub-section

(1), nothing in this Act shall apply to the employees employed by any establishment in public sector.

Section 22: Reference of disputes under the Act

Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

Sector 32: Act not to be applied to certain classes of employees:

(v) Employees employed by

(c) Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;"

In a catena of decisions it has been held that writ petition under Article 226 of the Constitution of India, 1950 (in short 'the Constitution') should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

In U.P. State Bridge Corporation Ltd. and Ors. v. U.P. Rajya Setu Nigam S. Karamchari Sangh , it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To same effect are the decisions in Premier Automobiles Ltd. v. Kamlekar Shantarum Wadke , Rajasthan SRTC v. Krishna Kant , Chandrakant Tukaram Nikam v. Muncipal Corporation of Ahmedabad and Anr. and Scooters India and Ors. v. Vijai V. Eldred 4.

In Rajasthan SRTC case (Supra) it was observed as follows:

"A speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedure followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlement, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them".

In Basant Kumar Sarkar and Ors. v. Eagle Rolling Mills Ltd. and Ors. 1964 (6) SCR 913 the Constitution Bench of this Court observed as follows:

"It is true that the powers conferred on the High Courts under Art. 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to s. 10 of the Industrial Disputes Act, or seek relief, if possible, under sections 74 and 75 of the Act."

The inevitable conclusion, therefore, is that both learned Single Judge and the Division Bench have failed to consider the basic issues. In the normal course we would have left it to the respondent to avail appropriate remedy under the Act.

The above aspects were highlighted in Hindustan Steel Works Construction Ltd. and Anr. v. Hindustan Steel Works Construction Ltd. Employees Union .

A bare reading of Section 22 of the Act makes the position clear that where the dispute arises between an employer and employees with respect to the bonus payable under the Act or with respect to the application of the Act in public sector then such dispute shall be deemed to be an industrial dispute within the meaning of ID Act.

As disputed questions of fact were involved, and alternative remedy is available under the ID Act,

the High Court should not have entertained the writ petition, and should have directed the writ-petitioners to avail the statutory remedy.

However, because of the long passage of time (the writ petition was filed in 1996), the attendant circumstances of the case in the background noted above and in view of the agreement that this is a matter which requires to be referred to the Tribunal, we direct that the appropriate Government shall refer the following question for adjudication by the appropriate Tribunal:

(1) Whether there was violation of Section 9-A of the Industrial Disputes Act, 1947 as claimed by the employees?

(2) Whether the withdrawal of the construction allowance amounted to the change in the conditions of service?

Question:

Whether the A.P. Foods was liable to pay bonus under the Act to its employees?

The parties shall jointly move the appropriate Government with a copy of our judgment.

Normally, it is for the State Government to take a decision in the matter of reference when a dispute is raised, the direction as noted above has been given in the circumstances indicated above.

In some cases, this Court after noticing that refusal by appropriate Government to refer the matter for adjudication was prima facie not proper, directed reference instead of directing reconsideration. (See Nirmal Singh v. State of Punjab , Sankari Cement Alai Thozhilalar Munnetra Sangam v. Management of India Cement Ltd. , V. Veerarajan and others v. Government of Tamil Nadu and Ors. , Sharad Kumar v. Govt. of N.C.T. of Delhi 1.

The parties shall be permitted to place materials in support of their respective stands. We make it clear that we have not expressed any opinion on the merits of the case. The Tribunal shall make an effort to dispose of the reference within four months of the receipt of the reference from the State Government, which shall be done within three months from today.

The appeal is allowed to the aforesaid extent with no order as to costs.

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