Modi Industries Ltd vs State Of U.P on 14 October, 1993

Equivalent citations: 1994 AIR 536, 1994 SCC (1) 159, AIR 1994 SUPREME COURT 536, 1994 (1) SCC 159, 1993 AIR SCW 3983, 1993 ALL. L. J. 1372, (1993) 6 JT 103 (SC), (1993) 67 FACLR 1062, (1993) 2 CURLR 1100, (1994) 84 FJR 91, (1993) 5 SERVLR 761, (1994) 1 LABLJ 383, (1994) 1 LAB LN 33, (1994) 1 SCT 393, 1994 SCC (L&S) 286

Author: P.B. Sawant

Bench: P.B. Sawant

PETITIONER:
MODI INDUSTRIES LTD.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT14/10/1993

BENCH:
SAWANT, P.B.
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SAWANT, P.B.
ANAND, A.S. (J)

CITATION:
1994 AIR 536 1994 SCC (1) 159
JT 1993 (6) 103 1993 SCALE (4)155

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SAWANT, J.- Leave granted.

2.The appellant-company runs a unit known as Modi Vanaspati Manufacturing Company at Modinagar, District Ghaziabad. At the relevant time, there were about 350 workmen working in this

unit. On December 19, 1990, there was a dispute between the management and the trade union leaders which resulted in two cross first information reports being lodged by the management and the trade union leaders against each other and suspension of 30 workmen from service. According to the company, from December 21, 1990 the workmen came to the company's premises but did not discharge their duties. On account of this, there was a complete halt in production. According to the respondent- trade unions, however, the workmen reported for duty regularly but the production could not be carried on as the suspended 30 workmen were technicians and in their absence it was not possible to operate the machines. On December 27, 1990 an agreement was arrived at between the management and the trade unions which provided that except the suspended workmen, the other workmen will join work and discharge their duties. It appears that in spite of this agreement, the work could not be carried on. According to the management, it was the non-cooperation of the workmen which was responsible for the situation whereas according to the trade unions, the management did not permit the workmen to work and hence the said stalemate. While the situation continued thus, the District Administration and the Labour Department of the State Government took initiative by making efforts to enable the workmen to work in the company. On February 8, 1991, a meeting was held in the presence of the Additional District Magistrate and the Deputy Labour Commissioner in which the representatives of the management and the leaders of the trade unions participated. In this meeting, the Additional District Magistrate suggested that out of the suspended workmen, those who had no serious charges against them be reinstated and the inquiry be conducted against all the suspended workmen including those so reinstated so that work could be carried on. The representatives of the management, however, did not agree to the said suggestion and requested for postponement of the meeting to enable them to consult their higher officials. The meeting was, therefore, postponed to February 11, 1991. No positive reply was received from the management with the result that work could not be carried on up to and inclusive of March 3, 1991. The work started and the production commenced only on March 4, 1991. The management did not pay wages to the workmen for the period from December 21, 1990 to March 3, 1991.

3.The Additional Labour Commissioner issued a notice dated February 27, 1991 under Section 3 of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 (hereinafter referred to as the 'Act') whereby the appellant-company was called upon to show cause as to why order for payment of wages to the workmen under Section 3 of the Act be not made against it. The hearing of the notice was fixed on March 10, 1991. The appellant-company submitted its representation including the supplementary representation. The company was given personal hearing. After considering the material placed by the company on record, the Additional Labour Commissioner passed an order on April 29, 1991 directing the recovery of Rs 3,67,474 from the company for payment of wages to the workmen for the month of January 1991 only. This order was challenged by the company on various grounds by a writ petition filed in the High Court. The High Court by the impugned order negatived all the contentions and dismissed the petition. The operative part of the order of the High Court is as follows:

> "When order is passed under Section 3 of the Act for recovery of wages and the aggrieved party approaches the Government to refer the dispute under the Industrial Disputes Act, the Government has hardly any option in view of the reasons given above. The Government if required by any party to refer the dispute to the Industrial

Tribunal, it has to pass an appropriate order in connection therewith. The writ petition is accordingly dismissed. There shall be no order as to costs. In case the petitioner approaches the Government for reference under the Industrial Disputes Act to the Industrial Tribunal, Labour Court, the State Government shall pass appropriate order within six weeks from the date of presentation of the application for reference along with the certified copy of this order. After reference is made, the Industrial Tribunal Labour Court will decide the dispute expeditiously in accordance with law."

4.The short question that falls for consideration is whether the order passed by the Labour Commissioner on April 29, 1991 directing the recovery of the amount is valid. Shri Salve, the learned counsel appearing for the appellant- company contends that since in the present case there was a dispute as to whether the workmen were entitled to receive the payment of wages for the period in question, the Labour Commissioner ought to have directed the workmen to raise an industrial dispute or to approach the civil court. He had no jurisdiction to decide the said dispute which he virtually did by passing the impugned order. The learned counsel further contended that assuming that the Labour Commissioner had such power, he ought to have passed a speaking order dealing with the contentions of the parties and since in the present case the Labour Commissioner has merely given a certificate of recovery without giving any reasons, the order is prima facie bad in law. His third submission was that the Labour Commissioner could not have entertained the complaint of non-payment of wages since Section 3 of the Act under which the Labour Commissioner has chosen to exercise his power, confers on him jurisdiction to make an order of payment only when the industrial establishment is in default of the payment of a wage-bill in respect of the entire establishment and not of a few individual workmen. Shri Tarkunde, the learned counsel appearing for the workmen, while not questioning the submission that the Labour Commissioner under the Act cannot go into the disputed questions of law and fact submitted that the disputed question in the present case was only of an incidental nature and the Labour Commissioner has the authority to decide the same in order to give relief to the workmen. He submitted that the power conferred on the Labour Commissioner under Section 3 of the Act is of a summary nature and it has been conferred on him with a view to give a speedy relief to the workmen who are deprived of their wages. He further contended that the order passed by the Commissioner being administrative in nature, he was not bound to give reasons for the same.

5.In order to resolve the controversy between the parties, it is first necessary to examine the provisions of the Act. As the title of the Act itself suggests it has been enacted to secure industrial peace by ensuring timely payment of wages to the workmen. The preamble of the Act states that it is an Act to provide for "in the interest of maintenance of industrial peace, a timely payment of wages in bigger industrial establishments and for matters connected therewith". The Statement of Objects and Reasons of the Act states that delays in payment of wages of workmen lead to simmering discontent among them. Sometimes a grave threat to law and order is also forced on this account. The provisions of the Payment of Wages Act, 1936 have been found to be inadequate to ensure timely payment of wages. The incidence of disturbance of industrial peace being greater in comparatively bigger establishments, it was considered necessary to provide that if the wage-bill in default exceeds Rs 50,000 the amount should be recoverable as arrears of land revenue. Further, in

order to curb the tendency of the employers to keep large amounts of wages in arrears, it was also necessary to make it a penal offence to be in default of a wage-bill exceeding Rs 1 lakh.

6.Section 2(a) of the Act defines "industrial establishment" to mean "any factory, workshop or other establishment in which articles are produced, processed, adopted or manufactured with a view to their use, transport or sale". "Wage-bill" is defined by Section 2(d) to mean "the total amount of wages payable by an industrial establishment to its workmen". Sub-section (1) of Section 3 then states that where the Labour Commissioner is "satisfied" that the occupier of an industrial establishment is in default of payment of wages and that the "wage-bill"

> in respect of which such occupier is in default "exceeds fifty thousand rupees", he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate ... specifying the amount of wages due from the industrial establishment concerned. Sub-section (2) of that section states that upon receipt of "the certificate"

referred to in sub-section (1), the Collector shall proceed to realise from the industrial establishment, the amount specified therein, besides recovery charges at the rate of ten per cent, as if such amount was an arrear of land revenue. Sub-section (3) of that section states that the amount so realised shall be placed at the disposal of the Labour Commissioner and he shall disburse the same among the workmen entitled thereto. Sub-section (4) states that when the amount so realised falls short of the wage-bill in respect of which there has been a default, the Labour Commissioner may arrange for disbursement of such proportion or respective proportions of the wages due to "various categories of workmen", as he may think fit. Subsection (5) then states that the liability of the occupier towards each workman in respect of payment of wages shall to the extent of the amount paid to such workman, stand discharged. Section 4 specifies the powers of the Labour Commissioner when he entertains the complaint of the default of payment of the wage-bill. It states that for the purposes of ascertaining the "wage-bill" of an establishment in respect of which default has been committed, the Labour Commissioner shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of witnesses, examining them on oath and compelling production of documents, and shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Section 5 prescribes penalty. It states that no occupier of an industrial establishment shall at any time be in default of a wage-bill exceeding Rs 1 lakh, and every occupier who is so in default shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to three years and shall also be liable to fine. The Court is given power to impose a sentence of imprisonment for a term of less than three months for adequate and special reasons to be recorded in writing. Section 6 provides,for punishment of persons when the offence is by the company, which includes firms and association of individuals.

7.It will thus be clear from the preamble, the statement of objects and reasons and the provisions of the Act that, firstly, the Act has been placed on the statute book to ensure timely payment of wages by the bigger establishments, the incidence of disturbance of industrial peace being greater in such establishments on account of the default in payment of wages. Secondly, the Act deals with defaults in payment of the wage-bill of all the workmen in the establishment. It is not meant to provide a

remedy for the default in payment of wages of individual workmen. That can be taken care of by the provisions of the Payment of Wages Act, 1936 which provisions are found inadequate to ensure timely payment of wages of the whole complement of workmen in an establishment. Thirdly, it is not in respect of the default in payment of every wage-bill but only of a wage- bill exceeding Rs 50,000 that the Labour Commissioner can be approached under the Act for redressable of the grievance. Fourthly, the Act is not applicable to all establishments but only those establishments which produce, process, adopt or manufacture some articles. It will, therefore, be evident that the Act does not supplant or substitute the Payment of Wages Act, 1936 but supplements the said Act, in the limited area, viz., where the establishment, as stated above, (i) produces, processes, adopts or manufactures some articles, (ii) wherethere is a default in the wage-bill of the entire such establishment and (iii)where such wage-bill exceeds Rs 50,000. The object of the Act as stated aboveis not so much to secure payment of wages to individual workmen but to prevent industrial unrest and disturbance of industrial peace on account of the default on the part of the establishment in making payment of wages to their work force as a whole. It appears that many establishments had a tendency to delay the payment of wages to their workmen and were playing with the lives of the workmen with impunity. This naturally led to a widespread disturbance of industrial peace in the State. Hence the legislature felt the need for enacting the present statute. This being the case, the inquiry by the Labour Commissioner contemplated under Section 3 of the Act is of a very limited nature, viz., whether the establishment has made a default in timely payment of wages to its workmen as a whole when there is no dispute that the workmen are entitled to them.

8.The inquiry under Section 3 being thus limited in its scope, the Labour Commissioner's powers extend only to finding out whether the workmen who have put in the work were paid their wages as per the terms of their employment and within the time stipulated by such terms. If the Labour Commissioner is satisfied that the workmen, though they have worked and are, therefore, entitled to their wages, are not paid the same within time, he has further to satisfy himself that the arrears of wages so due exceed Rs 50,000. It is only if he is satisfied on both counts that he can issue the certificate in question. Under the Act, the Labour Commissioner acts to assist the workmen to recover their wages which are admittedly due to them but are withheld for no fault on their behalf. He does not act as an adjudicator if the entitlement of the workmen to the wages is disputed otherwise than on frivolous or prima facie untenable grounds. When the liability to pay the wages, as in the present case, is under dispute which involves investigation of the questions of fact and/or law, it is not the function of the Labour Commissioner to adjudicate the same. In such cases, he has to refer the parties to the appropriate forum.

9.The powers conferred on the Labour Commissioner under Section 3 of the Act are to prevent apprehended or present breach of industrial peace. That is why the inquiry contemplated is of a summary nature. The exercise of the said powers by the Labour Commissioner does not prevent either party from approaching the regular forum for the redressal of its grievance. Construing a more or less similar provision of Section 3(b) of the U.P. Industrial Disputes Act, 1947 in State of 'U.P. v. Basti Sugar Mills Co. Ltd.' this Court had taken the same view. The provisions of the said Section 3(b) read as follows:

> "3. Power to prevent strikes, lockouts, etc.- If, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision
>
> (a)
>
> (b)for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

10.In that case, the State Government under the above provision had directed the sugar factories to pay bonus to the workmen. Repelling the challenge to the direction of the Government, this Court observed as follows:

> "We entirely agree with Mr Pathak that the normal way of dealing with an industrial dispute under the Act would be to have it dealt with judicially either by conciliation or by adjudication and that judicial process cannot be circumvented by resort to executive action. The proceeding before a conciliator or an adjudicator is, in a sense, a judicial proceeding because therein both the parties to the dispute would have the opportunity of being heard and of placing the relevant material before the conciliator or adjudicator. But there may be an emergency and the Government may have to act promptly 'for securing the public safety or convenience or the maintenance, of public order or supplies and services essential to the life of the community or maintaining employment'. It was, therefore, necessary to arm it with additional powers for dealing with such an emergency. Clause (b) of Section 3 was apparently enacted for this purpose. An order made thereunder would be in the nature of a temporary or interim order as would be clear from the words 'for such period as may be specified' appearing therein and from the second proviso to Section 3. Under this proviso where an industrial dispute is referred for adjudication under clause (d) an order made under clause (b) 1(1961) 2 SCR 330: AIR 1961 SC 420: (1961) 1 LLJ 220 cannot be enforced after the decision of the adjudicating authority is announced by or with the consent of the State Government. It would, therefore, follow from this that where the Government has made an executive order, as it did in this case, under clause (b) of Section 3, it is open to the aggrieved party to move the Government to refer the industrial dispute for conciliation or adjudication under clause (d) of Section 3.....

11.A similar view is expressed in Basti Sugar Mills Co. Ltd. v. State Of U.p.2 This nature of the provisions of Section 3 of the present Act emphasises two aspects which are relevant for our purpose. Firstly, the power conferred on the Labour Commissioner being meant to be used speedily to prevent apprehended or continuing industrial unrest, the procedure to be adopted by him is essentially of a summary nature. It does not contemplate a protracted inquiry. Secondly, the purpose of the inquiry being to redress the, grievance of the non-payment of wages, the authority of

the Labour Commissioner extends only to finding out whether on the admitted fact that the workmen had worked, the grievance of the workmen has a substance in it or not. It does not, however, mean that the employer can defeat the provisions of the Act by raising frivolous pleas to avoid the payment of wages and when the employer does so, the Labour Commissioner has to wash his hands of the complaint of the workmen. While looking into the grievance of the workmen, the Labour Commissioner will undoubtedly have power to find out whether the employer has a plausible defence or not. Hence the Labour Commissioner would have to examine the pleas and to deal with them. He would have, therefore, to give. reasons for accepting or not accepting them. To that extent, he is called upon to give reasons while issuing or refusing to issue the certificate. It must be remembered that Labour Commissioner is not a mere recovery officer. While the recovery officer acts on a claim which is already crystallised in some order, the Labour Commissioner in the present case, has to ascertain himself whether and to what extent, the workmen are entitled to the wages and then issue or refuse to issue the certificate. The inquiry that the Labour Commissioner conducts for the purpose is thus of a quasi-judicial nature. It is the Collector to whom he forwards the certificate who in fact acts as the recovery officer. As is provided in Section 3 itself, on receipt of the claim or complaint of the workmen, the Labour Commissioner has to satisfy himself that the occupier of the industrial establishment concerned is in default of payment of wages and that the wage-bill in respect of which the default is complained of exceeds Rs 50,000. He cannot satisfy himself without hearing the occupier of the industrial establishment on the claim made. That is why under Section 4, he is clothed with the powers of the civil court in the matter of enforcing the attendance of the witnesses, examining them on oath and compelling production of documents. It has further to be home in mind that the consequences to the parties of the issuance or non-issuance of the certificate are grave. When the certificate is not issued, the employees' claim stands deferred to an indefinite period. When, however, it is issued, the 2 (1979) 2 SCC 88: 1979 SCC (L&S) 61: (1979) 1 SCR 590 employer is saddled with a sizeable financial liability and the non-payment of the amount indicated in the certificate visits him with penal consequences of both imprisonment and fine. The decisions of this Court in Mahabir Jute Mills Ltd., Gorakhpur v. Shibban Lal Saxena3; Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi4 and C.B. Gautam v. Union of India5 on which Shri Tarkunde relied in support of his proposition that administrative orders need not contain reasons for the same, according to us, therefore, have only a limited application in the present case. The Labour Commissioner may have to deal with broadly three different situations, viz., (i) where there is no defence whatsoever raised by the employer to the claim of the workmen; (ii) where the employer raises frivolous and untenable pleas to resist the claim; and (iii) where there is a genuine dispute with regard to the entitlement of the workmen to the wages and the said dispute cannot be resolved without investigating the disputed questions of fact or law. In the first case, the Labour Commissioner is not called upon to give any reasons while issuing the certificate. In the second case, the Labour Commissioner has to give reasons as to why according to him, the pleas raised are untenable. In the third situation, the Labour Commissioner when he rejects the claim of the workmen, has to indicate the disputed questions of law or fact which prevent him from exercising his limited jurisdiction. Thus, both for issuing the certificate as well as for rejecting it, the Labour Commissioner may be called upon to give his reasons depending upon the facts in each case. It is well settled by a series of decisions beginning with A.K. Kraipak v. Union of India6 that even administrative decisions must bear reasons for some of them may have more vital consequences on the rights of the parties than even judicial decisions. It is not, therefore,

correct to say that the Labour Commissioner is not required to give reasons for his orders.

12.As stated earlier, whether the certificate is issued or not, the parties' remedy to approach the appropriate forum for the adjudication of their claim is not taken away. They can still approach the regular forum meant for the resolution of the dispute. The provisions of the Act are only of a summary nature meant to deal speedily with situations requiring urgent solution.

13.On the facts of the present case, we are more than satisfied that there did exist a genuine dispute between the parties as to whose acts of omission or commission were responsible for the halting of the production in the factory for the period in question. This was put into issue before the Labour Commissioner by the appellant-company. The Labour Commissioner, in the circumstances, could not have proceeded to issue the certificate. He ought to have referred the parties to industrial adjudication which was the proper forum for the purpose. Under the circumstances, we set aside the impugned certificate dated April 29, 1991 issued by the Labour Commissioner.

3 (1975) 2 SCC 818: 1975 SCC (L&S) 460: (1976) 1 SCR 168 4 (1991) 2 SCC 716 5 (1993) 1 SCC 78 6 (1969) 2 SCC 262: (1970) 1 SCR 457

14.The record shows that this Court, while granting interim stay of the recovery proceedings, directed the appellant-company to pay to the workmen, 50 per cent of the wages as per the certificate issued by the Labour Commissioner. The dispute has been pending since 1990. We, therefore, direct the respondent-State of Uttar Pradesh to refer the dispute between the parties with regard to the entitlement of the workmen to receive the wages and the liability of the appellant-company to pay the same for the period between December 21, 1990 to March 3, 1991, for adjudication to the appropriate authority under the U.P. Industrial Disputes Act, 1947, within four weeks from today. In the meanwhile, with a view to mitigate hardship of the workmen, the appellant-company will pay to the workmen additional 25 per cent of the wages as found due by the Labour Commissioner under his impugned certificate. The payments made shall be subject to the outcome of industrial adjudication. The appeal is allowed accordingly and the order of the High Court is modified in the above terms. In the circumstances of the case, there will be no order as to costs.