The Maheshwari Devi Jute Mills Ltd., ... vs The Labour Appellate Tribunal on 15 September, 1953

Equivalent citations: AIR1954ALL161, (1954)ILLJ451ALL, AIR 1954 ALLAHABAD 161

ORDER

1. This is a petition under Article 226 of the Constitution. The petitioner is a public limited company which carries on at Kanpur the business of manufacturing and selling jute goods. It paid to its workmen for the year ending 30-9-1951, a bonus of four annas in the rupee of their net basic earnings during the year. The workmen were not however satisfied, and they claimed payment of an additional bonus of the same amount, namely four annas in the rupee, in respect of the same year. As no amicable settlement could be arrived at, the State Government referred the claim to the Additional Regional Conciliation Officer, Kanpur, who by an award dated 29-12-1952, found in favour of the workmen and ordered that they be paid a further sum of four annas in the rupee as bonus. The amount which the company is required to pay under this award was approximately Rs. 1,10,000.

2. The company preferred an appeal to the Labour Appellate Tribunal and at the same time it applied for a stay of the operation of the award. That application was refused on 7-4-1953, and a subsequent application made by the company to the Tribunal on 10th April for a review of its earlier order was summarily rejected.

3. The company's application for stay of the award was made under Section 14, Industrial Disputes (Appellate Tribunal) Act, 1950, which provides that:

> "Where an appeal is preferred, the Appellate Tribunal may, after giving the parties an opportunity of being heard, stay, for reasons to be recorded, the implementation of the award or decision or any part thereof for such period and on such conditions as it thinks fit.
>
> Provided that no such order for stay shall be made unless the Appellate Tribunal is satisfied that the implementation of the award of decision may have serious repercussions on the industry concerned or other industries or on the workmen employed in such industry or industries".

The company contends that the proviso to this section is 'ultra vires' of the Constitution as it contravenes the provisions of Articles 14 and 19; and the reliefs which it seeks by this petition are, first, a writ in the nature of 'certiorari' quashing the order of the Labour Appellate Tribunal made on 7-4-1953, and, secondly, a writ in the nature of mandamus to be issued to the Tribunal directing it to decide the company's application for stay in accordance with law.

4. This Court will not, of course, ordinarily interfere by 'certiorari' or prohibition with an interlocutory order which may be challenged in appeal or revision see -- 'Asiatic Engineering Co. v. Achhru Ram', A. I. R. 1951 All 746 (FB) (A); but that rule does not apply in a case such as the present when the statutory provision under which the interlocutory order is made is itself attacked as being void under the Constitution.

5. The order of the Labour Appellate Tribunal of 7-4-1953, is in the following terms:

> "This is an application for stay of the implementation of an award for bonus. The Company, which is the applicant before us, has voluntarily paid three months' basic wages as bonus for the year under review, that is, 1951. The Adjudicator has awarded further three months' basic wages as bonus, that is, in all the employees have been awarded six months' basic wages as bonus out of which three months' basic wages amounting to Rs. 1,10,000 has already been paid. The present application is for stay of the implementation of the award in so far as bonus for the remaining period of three months' basic wages involving an additional sum of Rs.1,10,000 is concerned. It is strenuously contended on behalf of the applicant that there will be serious repercussions on the industry concerned if stay of implementation of the award is not granted because there js no available fund at present out of which this sum may be paid, and if the Company is compelled to pay the business will have to be closed.
>
> In our opinion we are not concerned with what has happened subsequent to the year for which the bonus has been awarded. In the year under review, an amount of Rs. 5,77,000 was, reserved for replacement and rehabilitation of machinery. This amount is with the Company and if Rs. 1,10,000 is paid out of this amount there cannot be any repercussions because R Section 4,67,000 will still be left in the hands of the management for the replacement and rehabilitation of machinery. We may observe that the minimum basic wage for the unskilled labour in this Company is Rs. 14 per month. The total sum awarded as bonus does not 'prima facie' seem to be unreasonable. Under the circumstances we do not see any reason for stay of the implementation of the award. The application is accordingly dismissed with cost to the opposite party which we assess at Rs. 25".

It is said on behalf of the respondents that this is an order made wholly under the first part of Section 1 of the Act and that the conclusion arrived at by the Labour Appellate Tribunal would not have been different had the section contained no proviso. Under the section the Appellate Tribunal could not order a stay unless it was satisfied that its failure to do so would have "serious repercussions within the meaning of the proviso. We do not think it can be said that had that proviso not existed the Tribunal would not have taken into consideration other circumstances which might have led it to reach a different conclusion; the terms of the order are not such in our view as would exclude the possibility, for example, that if it had been free to do so the Tribunal might have allowed a stay upon payment of the amount of the award into Court. In our opinion the Tribunal made its order under Section 14 as a whole.

6. The company claims that the proviso constitutes an unreasonable restriction on its right to hold property; and discriminates between employers and workmen in a manner which cannot be justified. The challenge to the validity of the sub-section rests primarily upon the contention that whereas Section 20 (1), Industrial Disputes (Appellate Tribunal) Act provides that any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue, no provision is made in the Act or elsewhere for the recovery of any money due under an award from a workman to the company. In particular it is pointed out that the Act contains no provision for restitution such as is to be found in Section 144, Civil P. C. In such circumstances it is argued that unless the company can obtain an order of stay its appeal to the Labour Appellate Tribunal will for all practical purposes be useless, for even should its appeal be successful it will be practically impossible for it to recover the money already paid.

7. It is contended, in the first place that the proviso to Section 14 of the Act contravenes Article 19(5) of the Constitution as it is not a reasonable restriction in the interests of the general public on the petitioner's right to hold property. In support of this argument our attention has been invited to three decisions of the United States Supreme Court, namely -- 'Oklahoma Natural Gas Co. v. Russel', (1923) 67 Law Ed 659 (B), -- Specific Telephone and Telegraph Co. v. Kuykendall', (1924) 68 Law Ed. 975 (C) and -- 'Potter v. Investors Syndicate', (1932) 76 Law Ed 1226 (D). In these cases it was held that a statute which precludes the granting of a stay pending the final decision of a review in Court is invalid as it contravenes the provisions of the "due process clause" of the Fifth Amendment, Now the essence of the "due process clause" as developed in the United States is that by virtue of it the judiciary can declare a law invalid not only on the ground that it is in excess of the express authority conferred on the legislature but also on the ground that it violates certain principles which the Judges deciding the case regard as fundamental. As Field J. said in -- 'Hagar v. Reclamation District NO. 108', (1884) 28 Law Ed. 569 (E).

> "By 'due process' is meant one which, following the forms of law, is appropriate to the case and just to the parties to be effected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justness of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty or property which may result in deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

The position is summarised by Willis in his word on Constitutional Law in the following words:

> "The guarantee of due process of law is so all-inclusive that all the constitutional guarantees could be abolished and there still would be sufficient protection to personal liberty..... Due process of law applies to personal liberty, to social control, to procedure, to jurisdiction, & to substantive law.. No better scheme could have been evolved to permit the Supreme Court to strike the proper balance between personal liberty and social control. Legislatures may have reasons for the enactment of laws, but the United States Supreme Court measures the legislature's reasons by its own

intellectual yardstick". (p. 642).

"In the United States the Judges not only declare statutes invalid if in violation of prohibitions in the written constitution, but if in violation of doctrines read into the Constitution by the United States Supreme Court. Therefore in the United States the role of the written constitution is very insignificant, and the role of the due process clause and the Supreme Court is very significant". (p. 645).

This is not the position in this country; for all that is required here is that a person shall not be deprived of his liberty or property except in accordance with the procedure established by law. Their Lordships of the Supreme Court have held in the well known case of -- 'Gopalan v. State of Madras', AIR 1950 SC 27 (F), that the American doctrine cannot be imported into Indian law. We think it to be the opinion of the Supreme Court that it is not for the Court to question the wisdom and policy of the Constitution; and that by adopting the phrase 'established by law' in preference to 'due process of law' the Constitution gave the legislature the final right to determine a law when acting within the jurisdiction assigned to it.

8. The company's contention in the case before us is based on the assumption that it is by virtue of the proviso to Section 14 that it has beers deprived of its right to retain the sum of Rs. 1,10,000. We do not think that to be correct. The company has lost its right to retain that sum by virtue of the award of the Regional Conciliation. Officer; all that the proviso to Section 14 does (in the circumstances of this case) is to prevent that award being held in abeyance pending the decision of the appeal. An appeal is a creature of the statute and had there been no appeal provided from the order of the Conciliation Officer to the Labour Appellate Tribunal, it could not have been urged that the legislature was incompetent to attach finality to the order of the Conciliation Officer. In our opinion Article 19 has no application to the facts of this case.

9. It is then argued that the proviso contravenes the provisions of Article 14. It is urged that where the law allows an appeal there must be mutuality of remedy, and that the proviso operates so harshly that in substance it is only the workman and not the employer who has an effective right of appeal. The only authority cited in support of this argument is a passage in Vol. I o. 'Nichols on Eminent Domain at page 368' that "if the right of appeal is granted by statute there must be mutuality of remedy", the statement being based on a decision of an American State Court the report of which is not available. It is, it would appear, a further application of the principle embodied in the due process clause. We do not think that the petitioning company's contention is well founded. Section 14 is not on the lace of it discriminatory for its provisions apply with equal force to all parties to the appeal.

It is, we think, true that the proviso is likely to operate harshly against the party who appeals from an award directing him or it to pay a sum of money and that it is not easy to conceive of circumstances in which the payment will be one which will have to be made by a workman to the employer; but the fact that the section operates or may operate harshly against the employer is not, it appears to us, due to the terms of the section itself but is due wholly to another factor, namely the

absence of a provision in the Act of a speedy and effective means of recovering from the workmen the amount of an award in their favour which is subsequently reversed on appeal. We are, therefore, unable to accede to the view that the proviso to Section 14 contravenes the provisions of Article 14 of the Constitution.

10. For these reasons we are of opinion that this petition fails, and must be dismissed with costs, which we assess at Rs. 250/-, of which respondent 4 will be entitled to Rs. 125 /-.