

B.B.Rajwanshi vs State Of U.P. & Ors on 8 April, 1988

Equivalent citations: 1988 AIR 1089, 1988 SCR (3) 469, AIR 1988 SUPREME COURT 1089, 1988 (2) SCC 415, 1989 LAB IC 1177, (1988) 2 LAB LN 13, (1988) 2 JT 46 (SC), 1988 SCC (L&S) 559

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, N.D. Ojha

PETITIONER:

B. B. RAJWANSHI

Vs.

RESPONDENT:

STATE OF U.P. & ORS.

DATE OF JUDGMENT 08/04/1988

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

OJHA, N.D. (J)

CITATION:

1988 AIR 1089	1988 SCR (3) 469
1988 SCC (2) 415	JT 1988 (2) 46
1988 SCALE (1) 663	

ACT:

U.P. Industrial Disputes Act, 1947 -Challenging Constitutional validity of sub-section (4) of section 6 of- Also validity of Order of Government of Uttar Pradesh remitting award passed by Labour Court for reconsideration.

HEADNOTE:

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In this appeal, the appellant questioned the constitutional validity of sub-section (4) of section 6 of the U.P. Industrial Disputes Act, 1947 ('The Act') and also the validity of the order passed by the Govt. remitting the award passed by the Labour Court for reconsideration by it.

The appellant was an employee of respondent No. 5. M/s. Electric (India) Ltd., Meerut. The services of the appellant were terminated by the Management of the said respondent.

The termination of services led to an industrial dispute. The State Government of Uttar Pradesh under section 4-K of the Act referred the said dispute for adjudication of the Labour Court, Meerut. The Labour Court passed an award 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 under section 6(4) of the Act, remitting the award for reconsideration. The appellant submitted before the Labour Court that he did not want any re-consideration of the award. On 7.2.1985, the Management filed an application saying that the case might be fixed for hearing after two months. The appellant opposed the application. The case was adjourned to 11.3.85 and on 11.3.85 to 26.3.85 at the further request of the management. In the meanwhile, the management moved the State Government to transfer the case from the Labour Court, Meerut, to another Labour Court or the Industrial Tribunal. The State Government passed an order transferring the case to the Industrial Tribunal Meerut. Aggrieved by the order, remitting the award to the Labour Court and the subsequent order, transferring the case to the Industrial Tribunal, the appellant filed a writ petition in the High Court, challenging the above said two orders. The High Court dismissed the writ petition in respect of the order made under section 6(4) of the Act, but set aside the order of transfer. Aggrieved by the judgment of the High Court, upholding the

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order passed under section 6(4) of the Act, the appellant filed this appeal in this Court for relief by special leave.

Allowing the appeal, the Court,

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HELD: By leave of the Court, the appellant raised an additional ground before the Court, questioning the constitutional validity of sub-section (4) of section 6 of the Act itself, and the Court first took up for consideration the question relating to the constitutional validity of sub-section (4) of section 6 of the Act. [476B-C]

The questions raised before the Labour Court were very simple ones. They had no effect on the national economy. They 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, 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. The parties had not been given notice by the State Government to show cause why the award should not be remitted to the Labour Court for a fresh consideration. The order of the State Government also did 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. [479G-H; 480A-B]

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 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 17 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 imposes no such limitations. [482C-D]

The argument of the State Government that it was open to the State Government to seek necessary guidance from the object and 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, was not of any assistance to the State Government in this case because even though the reason for remitting the award may be a

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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 is capable of serious mischief. The facts in this case themselves serve as a good illustration of the above proposition. There were only two main issues for consideration before the Labour Court: (1) whether the appellant was a workman, and (2) whether his services had been validly terminated. The Labour Court had recorded its findings on both the issues in favour of the appellant. From the prayers made before the Labour Court after the case had been 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 before the award was passed. It was not even a case where 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 national economy or social justice. In the above circumstances, it would not certainly be proper for the State Government to make an order remitting the award. The State Government in this case could do so because it had been entrusted with such unguided power under section 6(4) of the Act. [482E-H; 483A-C]

It was urged by counsel for the State Government that sub-section 4 of section 6 of the Act needed not to be struck down but the Court might direct that the State Government should give a hearing to the parties before an

order was passed under section 6(4), remitting the award, and also require the State Government to give reasons in support of its order. The Court did not think that this was an appropriate case where the impugned provision could be upheld by reading into it the requirement of issuing notice to the parties and the requirement of giving reasons for its orders. The provisions could not 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 quasijudicial 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 Dispute Act, 1947 (Central) Act XIV of 1947) does not contain any provision corresponding to section 6(4) of the Act, and the absence of such a provision in the Central Act has not led to any serious inconvenience to the general public. [483D-F] 472

The Management could not derive much assistance from the decision of this Court in the *Sirsilk Ltd. & Ors v. Government of Andhra Pradesh & Anr.* [1964] 2 SCR 448 as in this case there was no settlement arrived at between the appellant and the Management, which made the publication of the award unnecessary. [484H; 485F]

There was one other good reason for taking the view that without any guidelines it will 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 management and labour unions and the workmen employed by them but also to industries owned by the State Government and their workmen. In the cases 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 the industrial disputes arising in such industries for there is every chance of the power being exercised arbitrarily in such cases. 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. The 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. The Court did not agree with the view expressed by the High Court of Allahabad in *V.E. Thamas & Ors. v. State of Uttar Pradesh & Ors.*, [1978] Allahabad Law Journal 1118, in which the validity of sub-section (4) of section 6 of the Act had been upheld. [485F-H; 486G-H; 487C-D]

Taking into consideration all the aspects of the case, including the object with which the Act was enacted, the Court felt that sub-section (4) of section 6 of the Act was violative of Article 14 of the Constitution of India as it conferred unguided and uncontrolled powers on the State Government. The Court declared sub-section (4) of section 6 of the Act as unconstitutional and struck it down. It followed that the order passed by the State Government, remitting the case for reconsideration by the Labour Court was also liable to be set aside. The State Government was directed to publish the award under section 6(3) of the Act. On publication of the award, it was open to any of the parties aggrieved by the award to resort to such remedies as might be available to it in law. [487H; 488A-C]

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Messrs. Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh and two others, [1954] S.C.R. 803; State of Bihar v. D.N. Ganguly & Ors., [1959] SCR 1191; Sirsilk Ltd. JUDGMENT:

448; P. Sambamurthy & Ors. v. State of Andhra Pradesh & Anr., [1987] 1 S.C.C. 362 and Star Paper Mills Mazdoor Sangh & Ors. v. Star Paper Mills Ltd., Saharanpur & Ors., [1974] Allahabad Law Journal 71, referred to.

V.E. Thamas & Ors. v. State of Uttar Pradesh and Ors., [1978] Allahabad Law Journal 1118, disapproved.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No. 864 of 1987.

From the Judgment and Order dated 23.5.1986 of the Allahabad High Court in C.M.W.P. No. 13975 of 1985.

M.K. Ramamurthi and A.K. Sangal for the Appellant. Anil Dev Singh, G.B. Pai, O.P. Sharma, Mrs. Shobha Dikshit, R.C. Gubrela, K.R. Gupta and R.K. Sharma for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. 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.

The appellant was an employee of the Management, M/s. Electra (India) Ltd., Meerut-Respondent No. 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.P. Rajwanshi by the employers by their Order dated 4.4.1977 is justified and/or legal? If not, to what benefits/damages is the concerned employee entitled to and with what other details?"

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?

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 backwages 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