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The Commissioner of Income-tax, Hyderabad v. Dewan Bahadur Ramgopal Mills Ltd.

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law validly made and applicable to a case pending in appeal must be considered and given effect to by the Appellate Court. The conclusion we have reached is that the notification of 1956 was validly made and applies to the present case. In view of this conclusion we have considered it unnecessary to examine the notification of 1953 or the reasons for which the High Court held that notification to be bad.

For the reasons given above, we allow this appeal and set aside the judgment and order of the High Court dated February 16, 1954. The question referred to the High Court is answered in favour of the appellant. The appellant has succeeded by reason of the notification of 1956 and taking that circumstance into consideration, we direct that there will be no order for costs for the hearing in this Court.

Appeal allowed.

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November 11.

STATE OF UTTAR PRADESH AND OTHERS

v.

BASTI SUGAR MILLS CO., LTD.

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. SUBBA RAO, K. N. WANCHOO and J. R. MUDHOLKAR, JJ.)

Industrial Dispute—Bonus—Statute empowering Government to direct payment of bonus by notification—Validity of—Whether retrospective—United Provinces Industrial Disputes Act, 1947, (U. P. 28 of 1947), s. 3(b) and (d)—Constitution of India, Art. 19(1)(f).

The Government of U. P. appointed a Court of enquiry under ss. 6 and 10 of the United Provinces Industrial Disputes Act, 1947, and referred to it the present dispute. The Court of enquiry submitted its report to the Government, whereupon the Government issued a notification in July, 1950, directing the various sugar factories to pay bonus to their workmen for the years 1948-49 as well as to pay certain amounts as bonus for the years 1947-48.

The respondents obtained writ of prohibition from the High

Court against the Government, prohibiting it from enforcing the notification. The State Government came up in appeal, urging that the provisions of cl. (b) of s. 3 of the United Provinces Industrial Disputes Act, 1947, were wide enough to permit it to issue such a direction to the employer because by doing so the State Government would be imposing a condition of employment in future.

The respondents, inter alia, contended that (1) clause (b) of s. 3 of the Act does not operate retrospectively; (2) bonus could only be a term of employment by agreement and could not be imposed by statute; (3) where there was an industrial dispute cl. (d) and not cl. (b) of s. 3 of the Act would apply and (4) if cl. (b) was applicable it was *ultra vires* being discriminatory and violative of Art. 14 of the Constitution and also violative of Art. 19(1) of the Constitution as it confers arbitrary powers on the State Government.

Held, that (i) though cl. (b) of s. 3 of the United Provinces Industrial Disputes Act, 1947, could not be given a retrospective effect, yet there was nothing therein which prohibited the State Government from giving a direction with regard to the payment of bonus and by giving such a direction the State Government was not giving retrospective effect to the provisions of that clause nor did it add a new term or a condition for a period which was over, it merely required the employer to pay an additional sum of money to their employees as a term and condition of employment in future;

(ii) though normally wage is a term of contract it can be made a condition of employment by statute, and it was open to the State Government under cl. (b) of s. 3 to make the payment of bonus to workmen a condition of their employment in future;

(iii) where the employees bargained in their collective capacity, the fact that the personnel of the factory when the order for the payment of bonus was made by the Government and in the year to which dispute related were not the same, did not affect the power of the Government as the order would apply only to those employees who had worked during the period in question and not to new employees;

(iv) the normal way of dealing with an industrial dispute would be to have it dealt with judicially and not by resort to executive action, but cl. (b) of s. 3 empowers the Government to act promptly in case of an emergency and arms it with additional powers to deal with such an emergency in the public interest;

(v) when the Government had made an executive order under cl. (b) of s. 3 on the ground that it was in the public interest to do so it was open to the aggrieved party to move the Government to refer the industrial dispute for conciliation or adjudication under cl. (b) of s. 3 of the Act.

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(vi) the provisions of cl. (b) of s. 3 are not in any sense alternative to those of cl. (d) and the former could be availed of by the State Government only in an emergency and as a temporary measure. The right of the employer or the employee to require the dispute to be referred for conciliation or adjudication would still be there and could be exercised by them by taking appropriate steps;

(vii) clause (b) of s. 3 of the Act is not violative of the provisions of Art. 19(1)(g) of the Constitution as it permits action to be taken thereunder by the Government only in an emergency and in the public interest. The restriction placed upon the employer is only a temporary one and having been placed in the public interest falls under cl. (6) of Art. 19 of the Constitution.

Ram Nath Koeri and Anr. v. *Lakshmi Devi Sugar Mills and Ors.*, (1956) II L.L.J. 11, approved.

L. D. Mills v. *U. P. Government*, A.I.R. 1954 All. 705, overruled.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 790 of 1957.

Appeal from the judgment and decree dated February 10, 1954, of the Allahabad High Court in Civil Misc. Writ No. 280 of 1950.

C. B. Aggarwala, G. C. Mathur and *C. P. Lal*, for the appellants.

G. S. Pathak and *D. N. Mukherjee*, for the respondent No. 1.

1960. November 11. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR J.—This is an appeal by the State of Uttar Pradesh against the decision of the Full Bench of the Allahabad High Court in a writ petition. In the writ petition the respondents challenged certain orders made by the Government of Uttar Pradesh under s. 3, cl. (b) of the United Provinces Industrial Disputes Act, 1947, (XXVIII of 1947) requiring the respondents to pay bonus at certain rates for the years 1947-48 and 1948-49 to their workers and also payment of retaining allowances to the skilled seasonal workmen and clerical staff. The circumstances under which the orders were made are briefly these:

The Indian National Sugar Mills Workers' Federation, Lucknow, served notices on various sugar factories in Uttar Pradesh on December 15, 1949, in which they made six demands. We need, however, mention only one of them as that alone is in controversy in this appeal. That demand related to the bonus for the year 1948-49 and to the restoration of the reduction which had been made in the previous year's bonus. By that notice the Federation threatened a strike in the industry with effect from January 16, 1960, if the demands were not met by the sugar factories. Since this situation brought into existence an industrial dispute, the Government of Uttar Pradesh, in exercise of the power conferred by ss. 6 and 10 of the Industrial Disputes Act, 1947, (XIV of 1947) appointed a Court of Inquiry and referred the dispute to it. The notification also stated the points which were referred to the Court of Inquiry. That notification was twice amended but nothing turns on those amendments. A full enquiry was held by the Court of Inquiry at which the representatives of both the employers as well as the employees were represented and material was placed before the Court of Inquiry by both the sides. The Court of Inquiry submitted its report to the Government on April 15, 1950. On receipt of this report the Government of Uttar Pradesh published the report in the Uttar Pradesh gazette on May 8, 1950, as provided for in s. 17 of the Industrial Disputes Act, 1947. On July 5, 1950, the Government of Uttar Pradesh, in exercise of the powers conferred by s. 3(b) of the Uttar Pradesh Industrial Disputes Act, 1947, issued a notification directing the various sugar factories to pay bonus to their workmen for the year 1948-49 as well as to pay certain amounts as bonus for the year 1947-48. A further direction was made in the notification for payment of retaining allowance to the skilled seasonal workmen and clerical staff with effect from the off season in the year 1950. Thereupon the Indian Sugar Millers Association, which is an Association of sugar factories in India and is registered under the Trade Union Act made a petition before the High Court at Allahabad under

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Art. 226 of the Constitution for the issue of a writ against the Government of Uttar Pradesh prohibiting the Government from enforcing the notification. The writ petition was dismissed by the High Court on September 14, 1950, on the ground that the Association had no legal interest in the matter. Thereupon various sugar mills preferred separate writ petitions before the High Court, the respondents before us being one of them. As many as fourteen grounds were taken on their behalf in their writ petition. We are, however, concerned with only three of them to which Mr. G. S. Pathak, who appears for the respondents confined his arguments. Before we refer to those grounds we would complete the narration of facts. The High Court of Allahabad allowed the writ petitions, in so far as the question of payment of bonus was concerned, though Sapru, J., one of the judges constituting the Full Bench, expressed a doubt as to the correctness of the view that the order of the State Government as regards the payment of bonus was invalid. After the decision of the High Court, the State of Uttar Pradesh applied for a certificate under Art. 133(1)(b) and Art. 133(1)(c) of the Constitution. The High Court having granted the certificate, the present appeal has been brought to this Court.

In order to appreciate the points raised by Mr. G. S. Pathak, it is necessary to set out the provisions of s. 3 of the Uttar Pradesh Industrial Disputes Act, 1947. They are as follows:

"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) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally, or a strike or lock-out in connection with any industrial dispute;

(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;

(c) for appointing industrial courts;

(cc) for appointing committees representative both of the employer and workmen for securing amity and good relations between the employer and workmen and for settling industrial disputes by conciliation; for consultation and advice on matters relating to production, organization, welfare and efficiency;

(d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order;

(e) for requiring any public utility service, or any subsidiary undertaking not to close or remain closed and to work or continue to work on such conditions as may be specified in the order;

(f) for exercising control over any public utility service, or any subsidiary undertaking, by authorising any person (hereinafter referred to as an authorised controller) to exercise, with respect to such service, undertaking or part thereof such functions of control as may be specified in the order; and, on the making of such order the service, undertaking or part thereof such functions of control as may be specified in the order; and, on the making of such order the service, undertaking or part, as the case may be, shall so long as the order continues to be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order and every person having any functions of management of such service, undertaking or part thereof shall comply with such directions;

(g) for any incidental or supplementary matters which appear to the State Government necessary or expedient for the purposes of the order: Provided that no order made under clause (b)

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;

(ii) shall, if an industrial dispute is referred for adjudication under clause (d), be enforced after the decision of the adjudicating authority is announced by, or with the consent of, the State Government."

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The view taken by the High Court was that clause (b) of s. 3 of the Uttar Pradesh Industrial Disputes Act, 1947, is prospective in operation in that thereunder it is open to the State Government to ask an employer or an employee to observe a term or a condition of employment in future and that consequently it is not competent thereunder to require an employer to pay bonus to workmen in respect of a period of employment which is already past. The view of the High Court was challenged before us on behalf of the State. According to the State the provisions of the aforesaid clause are wide enough to permit the making of such a direction to the employer because by doing so the State Government would only be imposing a condition of employment in future. In answer to this contention Mr. Pathak has, as already stated, raised three points and they are as follows:

(1) Clause (b) of s. 3 does not operate retrospectively and must be construed as having a prospective operation only.

(2) This clause does not apply at all where an industrial dispute has arisen and that the appropriate provision under which the State Government can take action where an industrial dispute has arisen is cl. (d).

(3) If cl. (b) is susceptible of the interpretation that it is applicable even when an industrial dispute has arisen then it is *ultra vires* in as much as it would enable the State Government to discriminate between an industry and an industry or an industrial unit and another industrial unit or between a workman and a workman by referring some cases for adjudication to an industrial court under cl. (d) and passing executive order itself in respect of others. The provisions of cl. (b), according to him, are violative of Art. 14 of the Constitution. Further, according to him, they are also violative of the provisions of Art. 19(1)(g) of the Constitution in as much as they confer an arbitrary power on the State Government to require an employer to pay whatever it thinks fit to an employee and thus place an unreasonable restriction on the rights of the employer to carry on his business.

We entirely agree with the learned judges of the Allahabad High Court that cl. (b) of s. 3 cannot be given a retrospective effect. But we are unable to agree with them that the State Government in making a direction to the employers to pay bonus for the years in question purported to give a retrospective operation to the provisions of that clause. The order made by the State Government in regard to bonus is to the effect that it shall be paid for the year 1947-48 to those persons who worked during that year and for the year 1948-49 to those persons who worked in that year. This payment was directed to be made within six weeks of the making of the order. By giving this direction the State Government did no more than attach a condition to the employment of workmen in the year 1950-51 in sugar factories affected by the order. That is all that it has done. Mr. Pathak contended that bonus has certain attributes of a wage and wage being a matter of contract can only be a term of employment agreed to between the employer and the employee but could not be a condition of employment which could be imposed by a statute or which could be imposed by a Government acting under a statute. We agree that normally wage is a term of contract but it would be futile to say that it cannot be made a condition of employment. The Minimum Wages Act provides for the fixation of a statutory minimum wage payable to a worker in respect of certain types of employments and is an instance of wage being made a condition of employment. That apart, whether wage or bonus is a term of a contract or a condition of employment it is clear that s. 3 empowers the State Government to require the employers and workmen or both to observe any term or condition of employment for a specified period. Since the law enables the State Government to impose a term it is apparent that the legislature which enacted that law did not import into that word a consensual sense. We cannot, therefore, accept the argument that under cl. (b) it was not open to the State Government to make the payment of bonus to

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workmen a condition of their employment in future and thus augment their past wages.

Mr. Pathak then referred to the following observations in the judgment of Bhargava, J.

"Obviously there can be no question of requiring any one to observe for a future period terms and conditions of employment which have already remained effective and have already been carried out by those persons".

According to Mr. Pathak the effect of the order of the Government is to add a new term or a condition with regard to employment for a period which is already over. We would again point out that this is not the effect of the order of the Government. The effect of that order is merely to require the employer to pay an additional sum of money to his employees as a term and condition of work in future. Mr. Pathak, however, said that this would involve payment of bonus even to new employees, that is, those who had not participated in earning the profits in the past and that this would be contrary to the very conception of bonus. The answer to that is that under the order of the Government such bonus is payable only to those workers who had worked during the years in question and not to new employees. It is further to be borne in mind that in the dispute in question the employees were bargaining in their collective capacity and, therefore, the question whether the personnel forming the employees of the factories in July, 1950, when the order was made by the Government, and in the years 1947-48 and 1948-49 to which the dispute relates was the same is quite immaterial. As has been rightly pointed out by Sapru, J., "The employees might well have taken in the industrial dispute the line that the payment of bonus in respect of the years 1947-48 and 1948-49 to the workmen employed in those years was regarded by those who were employed in future as a preliminary and essential condition for not only the settlement of the industrial dispute in progress but also for carrying on their future work in sugar factories". We also concur with the observations of the learned judge that by coming to the conclusion that the workers' demand should be

conceded the State Government was not passing an order which will have retrospective effect but was passing an order which was to ensure that the workmen to be employed in the year 1950 would work in a contented manner. It must not be forgotten that the dispute was in the present, that is, it existed when the impugned order was made, though its origin was in the past. What the order did was to resolve that dispute and this it could only do by removing its cause.

Mr. Pathak then relied upon the following observations of Bhargava, J., in *L. D. Sugar Mills* v. *U. P. Government* (1):

"The expression 'to observe for such period as may be specified, such terms and conditions of employment as may be determined' gives an indication that clause (b) of s. 3 of the U. P. Industrial Disputes Act, 1947, is meant for the purpose of passing orders by which the Government gives directions about what the terms and conditions of employment should be and not how a particular term and condition of employment already in existence should be acted upon."

Bhargava, J.'s decision was, however, reversed in *Ram Nath Koeri and Another* v. *Lakshmi Devi Sugar Mills and Ors.* (2) by a division bench of the Allahabad High Court in Letters Patent Appeal brought against Bhargava, J.'s decision. We agree with the view taken by the Appellate Bench.

In our opinion, therefore, there is nothing in cl. (b) of s. 3 of the Act which prohibited the State Government from making a direction to the sugar factories with regard to the payment of bonus for the years 1947-48 and 1948-49 in their order of July 7, 1950 and that by making such a direction the State Government was not giving a retrospective effect to the provisions of that clause. In this connection it is relevant to remember that any direction as to payment of bonus must inevitably be based on the available surplus, and such surplus can be determined only at the end of a given year. Therefore, what the impugned

(1) A.I.R. 1954 All. 705, 714. (2) (1956) II L. L. J. 11.

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order purports to do is to require the employers to pay specified amounts in future, though the said amounts are fixed by reference to the profits made in the two preceding years. If a direction as to payment of bonus can be issued under s. 3(b) it cannot, therefore, be said to be retrospective.

The next argument of Mr. Pathak appears, at first sight, to be more formidable. He points out that undoubtedly an industrial dispute had arisen, and indeed it is upon that basis that the State Government proceeded to appoint a Court of Inquiry. Therefore, according to Mr. Pathak resort could be taken by the State Government only to the special provisions of cl. (d) and not to the more general provisions of cl. (b) of s. 3. In other words, where there is an industrial dispute, the appropriate thing for the Government to do is to refer it for conciliation or adjudication under the provisions of cl. (d) and not to deal with the matter by an executive order as it has done in this case. Mr. Pathak then refers to a further passage from the judgment of Bhargava, J., just cited which is as follows:

"It appears from the language that this provision was not meant for the purpose of dealing with individual disputes arising out of the application of a term or condition of employment and no power was granted to the State Government under this provision of law, to sit as an adjudicator to decide a dispute that might have arisen relating to the working and actual application of terms and conditions of employment already in force. The provision was for the purpose of enabling the State Government to vary the agreed terms and conditions of employment for purposes specified in s. 3 of U. P. Industrial Disputes Act, 1947, under the pressing necessities or expediency justifying such course of action."

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 s. 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 s. 3. Under this proviso where an industrial dispute is referred for adjudication under cl. (d) an order made under cl. (b) 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 cl. (b) of s. 3, it is open to the aggrieved party to move the Government to refer the industrial dispute for conciliation or adjudication under cl. (d) of s. 3. Mr. Pathak, however, stated that under this section, the Government has a discretion whether or not to refer a dispute for conciliation or adjudication under cl. (d). But in our opinion where once the Government has acted under cl. (b) on the ground that it was in the public interest to do so, it would not be open to the Government to refuse to refer the dispute under cl. (d) for conciliation or adjudication. Mr. C. B. Agarwal, who appeared for the State of Uttar Pradesh conceded, and we think rightly, that this would be so and added that in case the State Government was recalcitrant it could be forced to do its duty by the issue of a writ of mandamus by the High Court under Art. 226 of the Constitution.

There is a further argument of Mr. Pathak which must be noticed and that argument is that there is

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nothing in cl. (b) which limits its operation to an emergency and that it is, therefore, not open to us to place a construction thereon of the kind we are placing. The opening words of s. 3 themselves indicate that the provisions thereof are to be availed of in an emergency. It is true that even a reference to an arbitrator or a conciliator could be made only if there is an emergency. But then an emergency may be acute. Such an emergency may necessitate the exercise of powers under cl. (b) and a mere resort to those under cl. (d) may be inadequate to meet this situation. Whether to resort to one provision or other must depend upon the subjective satisfaction of the State Government upon which powers to act under s. 3 have been conferred by the legislature. No doubt, this result is arrived at by placing a particular construction on the provisions of that section but we think we are justified in doing so. As Mr. Pathak himself suggested in the course of his arguments, we must try and construe a statute in such a way, where it is possible to so construe it, as to obviate a conflict between its various provisions and also so as to render the statute or any of its provisions constitutional. By limiting the operation of the provisions of cl. (b) to an emergency we do not think that we are doing violence to the language used by the legislature. Further, assuming that the width of the language could not be limited by construction it can be said that after the coming into force of the Constitution the provisions can, by virtue of Art. 13, have only a limited effect as stated above and to the extent that they are inconsistent with the Constitution, they have been rendered void.

In our view, therefore, the provisions of cl. (b) of s. 3 are not in any sense alternative to those of cl. (d) and that the former could be availed of by the State Government only in an emergency and as a temporary measure. The right of the employer or the employee to require the dispute to be referred for conciliation or adjudication would still be there and could be exercised by them by taking appropriate steps. Upon the construction we place on the

provisions of cl. (b) of s. 3 it is clear that no question of discrimination at all arises. Similarly the fact that action was taken by the Government in an emergency in the public interest would be a complete answer to the argument that that action is violative of the provisions of Art. 19(1)(g). The restriction placed upon the employer by such an order is only a temporary one and having been placed in the public interest would fall under cl. (6) of Art. 19 of the Constitution.

Upon this view we hold that the High Court was in error in issuing a writ against the State Government quashing their order in so far as it related to payment of bonus. The appeal is allowed and order of the High Court is set aside. Costs of this appeal will be paid by the respondents.

Appeal allowed.

MANOHAR LAL

v.

THE STATE OF PUNJAB

(JAFER IMAM, J. L. KAPUR, K. C. DAS GUPTA, RAGHUBAR DAYAL and N. RAJAGOPALA AYYANGAR, JJ.)

Trade Employees—Close day—Enactment, if violative of fundamental rights—Workers' Welfare—Protection—Restriction, if unreasonable—Punjab Trade Employees Act, 1940, (Punj. X of 1940) s. 7 (1)

The appellant who was a shopkeeper was convicted for the second time by the Additional District Magistrate for contravening the provisions of s. 7(1) of the Punjab Trade Employees Act, 1940, under which he was required to keep his shop closed on the day which he had himself chosen as a "close day". He raised the plea that the Act did not apply to his shop as he did not employ any stranger but that himself alone worked in it and that the application of s. 7(1) to his shop would be violative of his fundamental rights under Arts. 14, 19(1)(f) and (g) of the Constitution and also that the restriction imposed was not reasonable within Art. 19(6) as it was not in the interest of the general