

PETITIONER:
GOVIND SUGAR MILLS LTD. & ANR

Vs.

RESPONDENT:
HIND MAZDOOR SABHA & ORS.

DATE OF JUDGMENT 05/08/1975

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
ALAGIRISWAMI, A.
GOSWAMI, P.K.

CITATION:
1975 AIR 1735 1976 SCR (1) 251
1976 SCC (1) 60

ACT:
U.P. Industrial Disputes Act (28 of 1947) as amended by
U.P. Act 1 of 1957, s. 3(b) and 4K-If Government call be
directed to refer dispute.

HEADNOTE:

Under s. 3(b) of the U.P. Industrial Disputes Act, 1947, the State Government issued a notification directing that the recommendations of the First Sugar Wage Board were to come into force from November 1, 1960. The appellant refused to implement the provisions of the notification. There was, consequently in industrial dispute but the State Government passed an order refusing to refer the dispute for adjudication under s. 4K of the Act. In a writ petition filed by the respondent, the High Court, following the decision of this Court in State of U.P. v. Basti Sugar Mills Co. Ltd. [1961] 2 S.C.R. 330, issued a writ of certiorari quashing the order of the State Government refusing to make a reference, and also, issued a writ of mandamus directing the State Government and the Labour Commissioner to refer the dispute for, adjudication under s. 4-K.

Allowing the appeal to his Court against the issue of the writ of mandamus:

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HELD: (1) 'The power of the Government under s. 10 of the Industrial Disputes Act, 1947 (Central Act) is discretionary and it is open to the Government, taking into consideration relevant factors, to refuse to make a reference that is, the High Court may, after quashing the order of the Government refuse to make a reference, ask the Government to re-consider the matter but it could not give peremptory directions to make a reference. Section 4-K of the U.P. Act, divorced from the context and setup of s.3 is in pari Materia with and stands on the same footing, as s. 10(1) of the Central Act. [253B]

M/s Mahabir Jute Mills Ltd. Gorakhpore v. Shri Shibban Lal Saxena & Ors. Civil Appeal No. 781 of 1973, followed.

(2) Section 3(d), as it stood in the U.P. Act before 1957, was so interwoven and inter-connected with the exercise of the power in cl. (b) that it led this Court in the Basti Sugar Mills case to opine that a writ of mandamus

could be issued directing the State Government to make a reference. The position, however, has changed after the amendments brought about in 1957 [253B-C)

(3) The observation that, if the Government refuses to make a reference on the basis of irrelevant considerations, the party may move the High Court for a writ of mandamus in the Bombay Union of Journalists case [1964] 6 S.C.R 22. 35 only means that a writ of mandamus could be issued to the Government to re-consider the matter. [253F]

(4) The reference of the dispute made by the Government in pursuance of the direction of the High Court cannot hold good, but the State Government may reconsider the matter and exercise its discretion either to refer the dispute or not within the ambit of well-settled principles of law. [254A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 795 of 1975.

Appeal by special leave from the Judgment and order dated the 7th December, 1973 of the Allahabad High Court (Lucknow Bench) in special appeal No. 189 of 1969.

B. Sen, B. P. Maheshwari and Suresh Sethi, for the appellant.

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J. P. Goyal, D. P. Mukherjee and Reghunath Singh, for respondent.

The Judgment of the Court was delivered by UNTWALIA, J.-This is an appeal by special leave. It is said that by a notification dated 27-4-1961 issued under section 3(b) of the U P Industrial Disputes Act-U.P. Act XXVIII of 1947-herein- after called the Act, the recommendations of the first Sugar Wage Board were directed to come in force with effect from November 1, 1960. Certain Sugar Mills including the appellants are said to have refused to implement the provisions of the notification dated 27-4-1961. This gave rise to an industrial dispute. Eventually the State Government of Uttar Pradesh by its order dated 22-9-1966 refused to make a reference for adjudication of the dispute under section 4K of the Act. Respondent no. 1 filed a writ application in the Allahabad High Court under Article 226 of the Constitution of India asking for a writ of certiorari to quash the order of the government dated 22-6-1966 and a writ of mandamus directing them to make a reference. A learned single Judge of the High Court dismissed the writ application. But the same was allowed in a Special Appeal by a Bench of the High Court. The two appellants approached this Court for grant of special leave. It was granted "limited to the question as to whether the High Court was justified in giving directions to respondents 1 and 2 to refer the dispute of the workmen for adjudication under section 4K or the U.P. Industrial Disputes Act."

In the Special Appeal the High Court has taken the view following the decision of this Court in State of Uttar Pradesh and others v. Basti Sugar Mills Co. Ltd.(1) that when action was taken under section 3(b) of the Act it was obligatory for the State Government to make a reference under section 4K for adjudication of the Industrial dispute raised in relation to the said action. The High Court on a consideration of the entire facts and circumstances of the case allowed the writ petition and quashed the order the State Government dated 22-6-1966 by grant of a writ of certiorari. In this appeal since the special leave was

granted on a limited question we are not called upon to interfere with the said portion of the order of the High Court. But it further directed the State Government and the Labour Commissioner to refer the dispute for adjudication in exercise of their power under section 4K of the Act. It seems to have been so done on the view that it was obligatory for the State Government to do so after the issuance of the notification under section 3(b) of the Act. In our opinion this was not correct.

The decision of this Court in the case of Basti Sugar Mills (supra) was given with reference to clause (d) of section 3 of the Act as it stood prior to the amendment made by U.P. Act I of 1957. By the said amending Act, clause (d) was dropped and substituted by another clause (d) with which we are not concerned and the provision

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of making a reference was made in section 4K. Section 4K of the Act is in pari materia with section 10(1) of the Industrial disputes Act, 1947-central Act XIV of 1947. It has been pointed out by this Court in the case of Bombay Union of Journalists & Ors. v. The State of Bombay & Anr.(1) that the power of the Government under section 10(1) of the Central Act is discretionary and it is open to the Government under certain circumstances by taking into consideration the relevant factors to refuse to make a reference. Section 4K of the Act divorced from the context and set up of section 3 stands on the same footing. Clause (d) of section 3 as it stood in the Act before 1957 was so interwoven and inter-connected with the exercise of the power in clause (b) that it led this Court to opine that a writ mandamus could be issued directing the State Government to make a reference under section 3(d) of the Act as it stood before the 1957 amendment. In our judgment, however, the position has changed after the amendment brought about in the year 1957.

In the judgment of this Court delivered a few days ago, namely M/s Mahabir Jute Mills Ltd. Gorakhpore v. Shri Shibban Lal Saxena & Ors.(2) it has been held on a consideration of the provisions now contained in section 4K of the Act that after quashing the order of the Government refusing to make a reference the High Court could ask the Government to reconsider the matter but it could not give peremptory directions to make a reference. We may, however, take note of a sentence occurring in the judgment of this Court in the case of Bombay Union of Journalists & Ors.(3) which reads thus:

"If the appropriate Government refuses to make a reference for irrelevant considerations, or on extraneous grounds, or acts malafide, that, of course, would be another matter; in such a case a party would be entitled to move the High Court for a writ of mandamus."

We think what was meant to be conveyed by the sentence aforesaid was that the party would be entitled to move the High Court for interfering with the order of the Government and not necessarily for the issuance of a writ of mandamus to direct the Government to make reference. The mandamus would be to reconsider the matter. It does not seem to be quite reasonable to take the view that after the refusal of the Government to make a reference is quashed a writ of mandamus to make a reference must necessarily follow. The matter has still to be left for the exercise of the power by the Government on relevant considerations in the light of the judgment quashing the order of refusal.

For the reasons stated above we allow this appeal only

to the extent that the order of the High Court made in the Special Appeal directing the Government of U.P. and the Labour Commissioner to

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make a reference under section 4K of the Act is not sustainable and is set aside. We were informed at the bar that two references have already been made in pursuance of the said direction. It is plain that the said order made cannot hold good when we have set aside the order of the High Court giving the direction in pursuance of which the references have been made. It will, however, be open to the State Government to reconsider the matter in the light of the judgment of the High Court and within the ambit of well-settled principles of law for exercise of their power of reference and to take such decision in the matter as they may think fit and proper to take in accordance with law. We shall make no order as to costs.

V.P.S.

Appeal allowed.

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