MANAGEMENT OF DANDAKARANYA PROJECT, KOREPUT

v.

WORKMEN THROUGH REHABILITATION EMPLOYEES' UNION AND ANR.

JANUARY, 7, 1997

[S.C. AGRAWAL AND G.B. PATTANAIK, JJ.]

Labour Law:—Industrial Disputes Act, 1947 : Sections 2(j) and 10(1)(d) & (2-A) and 25-FFF.

"Industry"—Scope of—Dandakaranya Project—Disputes of employees —Reference of—Held : the said project was industry—Hence, reference of disputes, not incompetent.

Retrenchment—Closure of Undertaking—Dandakaranya Project— Rehabilitated refugees and wound up after completion of work—Its assets and liabilities transferred to concerned States—No employment facilities existed for regular absorption of N.M.R. workers—Project authority and Central Government, despite their best efforts could not absorb N.M.R. workers in any Government job or Public Sector Undertaking—However, Industrial Tribunal directed not to retrench the said N.M.R. workers—Held : In such circumstances, the said direction of Industrial Tribunal was illegal—The said N.M.R. workers entitled only to compensation S. 25-FFF of I.D. Act.

Retrenchment—Closure of Undertaking—Issuance of mandamus—By Tribunal—Not to retrench workers and to find out work for them—Held : Issuance of mandamus illegal.

Words and Phrases :

"Industry"—Meaning of—In the context of S. 2(j) of the Industrial Disputes Act, 1947.

The Central Government in exercise of its powers under Sections 10(1)d) and 10(2-A) of the Industrial Disputes Act, 1947 referred certain disputes, arising out of the demands raised by the respondents to the Industrial Tribunal for adjudication. The Industrial Tribunal directed the appellant-management not to retrench the N.M.R. workers after the project was wound up and to find out through the Central Government

ways and means to regularise these N.M.R. workers either under the Central Government of the concerned State Governments or under Public Sector Undertakings of the Central Government. The High Court refused to interfere with the award of the Tribunal. Hence this appeal.

On behalf of the appellant it was contended that the project was undertaken by the Central Government in discharge of its sovereign function to rehabilitate the refugees from Pakistan and, therefore, the project was not an 'industry' and consequently the reference was incompetent; and that the project itself having been wound up and its assets and liabilities having been transferred to the concerned States there did not exist regular posts and, therefore, the question of regularisation of the N.M.R. workers did not arise.

Allowing the appeal, this Court

Held : 1.1. Bearing in mind the dominant nature of the activities of the project and the nature of duties discharged by the workers in the project it has to be held that the Dandakaranya Project is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and the conclusion of the Tribunal in this respect is unassailable. [59-F]

Banglore Water Supply & Sewerage Board v. *A. Rajappa,* [1978] 2 SCC 213, followed.

1.2. Steps have been taken duly and *bona fide* by the authorities of the project as well as the competent authority of the Central Government and inspite of their best efforts and persuasion it has not been possible to absorb the N.M.R. workers in any of the department of the Government or in any Public Sector Undertakings, in view of the relevant rules and regulations and in view of the situation prevailing in those organisations. In such circumstances, the Industrial Tribunal's direction to the project authorities not to retrench the said N.M.R. workers and to find out through the Central Government ways and means to regularise them is illegal. The said N.M.R. workers are entitled only to compensation under Section 25-FFF of the Act. [60-F-G]

2. Even after coming to the conclusion that the project has been wound up and there are no employment facilities for these N.M.R. workers for regular absorption, yet the Tribunal issued the direction requiring the

project authorities to find out work for the N.M.R. workers who have been working in the project continuously for more than 240 days. It is no doubt true that in the interest of these N.M.R. workers who have spent a considerable period with the project authorities, possibility of their absorption on regular basis should be explored. But even after exploring such possibility if the concerned authorities failed in their attempt, it would not be appropriate for a Court to issue mandamus in that regard and thus the Tribunal was wholly in error in issuing the impugned direction. Pursuant to the interim direction of this Court the concerned authorities explored the possibility of absorption of NMRs in any Public Sector Undertaking or in the respective State Governments, and the attempt was *bona fide* made and yet the authorities have failed to get these N.M.R. workers absorbed on regular basis. In such circumstances, it has to be held that the direction issued by the Tribunal to regularise these N.M.R. workers was wholly unsustainable in law. [61-E, F-H, 62-A-B]

G. Govinda Rajulu **v.** *A.P. State Construction Corporation Ltd. & Anr.,* **[1986] Supp. SCC 651, held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 22-23 of 1997.

From the Judgment and Order dated 2.2.95 of the Orissa High Court in O.J.C. Nos. 2502/90 and 82 of 1991.

V.R. Reddy, Additional Solicitor General, Tara Chandra Sharma, and P. Parmeswaran for the Appellant.

Ms. Indira Jai Singh, Raj Kumar Gupta, Rajesh, H.P. Sharma and B.B. Das for the Respondents.

The Judgment of the Court was delivered by

PATTANAIK, J. Leave granted.

This appeal by special leave is directed against the award passed by the Industrial Tribunal, Bhubaneshwar in Industrial Disputes Case No. 13 of 1988 and the judgment of the Orissa High Court in O.J.C. No. 2502 of 1990, whereunder the Orissa High Court refused to interfere with the award of the Industrial Tribunal in exercise of power under Article 226 of the Constitution. Though the award relates to different items of demand

but in this appeal Mr. Reddy, the Additional Solicitor General restricted his submission to the direction of the Tribunal to regularise 425 N.M.R. workers which were Item Nos. 1 and 3 of the workers union.

The Government of India in the Ministry of Labour in exercise of the powers conferred upon them under Clause (d) of sub-section (1) and sub-section (2)(a) of Section 10 of the Industrial Disputes Act referred the dispute for adjudication by the Industrial Tribunal to the following effect:

> "Whether the following demands raised by Rehabilitation Employees' Union of the management of Dandakaranya Project, Koraput, are justified, if so, to what relief the concerned workmen are entitled to and from what date."

Demands No. 1 and 3 with which we are concerned are as under :

"1. Regularisation of all muster roll workers who have been working from 1958 onwards after completion of 240 days with all consequential benefits of such regularisation.

3. Stoppage of retrenchment of all workers of Dandakaranya Project and absorption of all muster roll workers after their regularisation in other Central Government organisation through Central Government Surplus Cell as is done in case of regular employees of Dandakaranya Project."

The appellant management took the stand before the Tribunal that the reference itself was incompetent as the Dandakaranya Project is not an industry. So far as the demands of the N.M.R. workers are concerned, the management took the stand that the project itself having been wound up and there being no necessity for further continuance of the project which had been taken up by the Government of India on humanitarian consideration for rehabilitation of the refugees from Pakistan the question of regularisation of the N.M.R. workers does not arise. The Union on the other hand took the stand that the plea of the management that no work is available for the N.M.R. workers is not correct and as such, N.M.R. workers are being employed in several construction and irrigation works and, therefore, the project authorities have the obligation of regularising the service who have been working since 1950. The Industrial Tribunal negatived both the contentions raised on behalf of the management and came to hold that the project is an Industry. It further came to hold that

the claim for regularisation of 425 N.M.R. employees is justified and they would not be retrenched and the project authorities through the Government of India should find out the ways and means to regularise them either under the Central Government or the concerned State Governments or under Public Sector Undertakings of the Central Government. When the award of the Tribunal was assailed in the High Court by moving an application under Article 226 of the Constitution, the High Court came to the conclusion that the award does not contain any error of law which could be corrected by issuance of writ of certiorari in exercise of power under Article 226 of the Constitution and accordingly the Writ Petition filed by the Management stood dismissed.

Mr. V.R. Reddy, learned Additional Solicitor General appearing for the appellant contends that the rehabilitation project undertaken by the Government of India to rehabilitate the refugees from Pakistan was in discharge of the sovereign function of the Government and, therefore, cannot be held to be an industry and consequently neither the reference was competent nor the Tribunal had any jurisdiction to examine the demands raised by the employees union. Having examined the aforesaid contention of Mr. Reddy, learned Additional Solicitor General and having scrutinised the materials on record and the nature of duties discharged by the workers and in view of the decision of this Court in Bangalore Water Supply case it is difficult for us to accept the contention raised by learned Additional Solicitor General. Bearing in mind the dominant nature of the activities of the project and the nature of duties discharged by the workers in the project we are of the considered opinion that the Dandakaranya Project is an industry within the meaning of Section 2(j) of the Industrial Disputes Act and the conclusion of the Tribunal in this respect is unassailable.

Mr. Reddy, learned Additional Solicitor General then contended that the project was for the limited purpose of rehabilitating the refugees from Pakistan and the said purpose having been achieved and the project itself having been wound up and its assets and liabilities having been passed on to the State of Orissa and State of Madhya Pradesh there do not exist regular posts with the project authorities so as to consider the question of regularisation of 425 N.M.R. workers and therefore, the ultimate conclusion of the Tribunal on this score is wholly unsustainable in law.

Ms. Indira Jaisingh, learned senior counsel appearing for the respondent workers, on the other hand argued with vehemence that these N.M.R. workers having spent their major part of life in serving under the project, it is the constitutional obligation of the project authorities or the Government of India to get these workers absorbed in some departments of the Government of India or in any Public Sector Undertakings and, therefore, the impugned direction of the Tribunal is wholly justified. The learned senior counsel further urged that even in the project itself there exist sufficient vacancies against which these N.M.R. workers could be regularised and the appellant therefore, is not justified in contending that there do not exist any vacancies for considering the regularisation of these N.M.R. workers.

Before we examine the correctness of the rival submissions it would be appropriate to notice that when this matter came up before this Court on 18.9.95 the Court had called upon the appellant to explore the possibility of the 425 N.M.R. employees being adjusted in any other project of the Government of India or in the concerned State Governments. The aforesaid direction had been given bearing in mind the nature of direction given by the Tribunal. Pursuant to the aforesaid direction of this Court the appellant as well as the Government of India took certain steps for exploring the possibilities of regularising the N.M.R. workers in any other projects and a detailed affidavit has been filed indicating in inability of the Union Government to absorb these N.M.R. workers on regular basis in any other department of Government of India or in any Public Sector Undertakings. After going through the affidavits filed on behalf of the appellant as well as the Government of India we are satisfied that steps have been taken duly and *bona fide* by the authorities of the project as well as the competent authority of the Government of India and inspite of their best efforts and persuasion its has not been possible to absorb 425 N.M.R. workers in any of the department of the Government or in any Public Sector Undertakings, in view of the relevant rules and regulations and in view of the situation prevailing in those organisations. In this view of the matter the only question which requires consideration by this Court is whether the impugned direction of the Tribunal in the circumstances as found by it are at all sustainable in law.

The Tribunal after elaborately discussing the evidence on record came to the conclusion as under :

"(a) At present there are 425 N.M.R employees in the employment of the D.D.A. for whom there is no sufficient work for absorption as regulars.

(b) The Dandakaranya Development Authority is in the process of being wound up since it has competed its work of rehabilitating displaced persons in the project area.

(c) The assets of the Project have been transferred by the D.D.A. to the concerned States, namely, the State Governments of Madhya Pradesh and Orissa.

(d) The 425 employees have been working in the project since many years and most of them would not be eligible to secure fresh employment elsewhere.

(e) All the work charged employees after an agitation made by them were regularised while the N.M.R. employees were not regularised.

(f) The bulk of the N.M.R. employees do not have any work in the project though the works in which they had been engaged are continuing under the respective State Government by the State Governments did not take them along with the works."

Even after coming to the conclusion that the project has been wound up and there are no employment facilities for these N.M.R. workers for regular absorption yet the Tribunal issued the direction requiring the project authorities to find out work for the N.M.R. workers who have been working in the project continuously for more than 240 days. It may be stated that even though the project has been wound up and its assets and liabilities have been transferred to the State of Orissa and State of Madhya Pradesh yet on account of an interim order passed by this Court the 425 NMR workers are sitting idle and getting wages to the tune of Rs. 1.50 lacs per month which is undoubtedly an unnecessary financial strain on the public exchequer. It is no doubt true that in the interest of these N.M.R. workers who have spent a considerable period with the project authorities, possibility of their absorption on regular basis should be explored but even after exploring such possibility if the concerned authorities failed in their attempt, in our considered opinion it would not be appropriate for a Court to issue mandamus in that regard and thus the Tribunal was wholly in error

in issuing the impugned direction. As has been stated earlier, while the matter was pending in this Court pursuant to the interim direction of this Court the concerned authorities explored the possibility of absorption of these N.M.R. workers either under the Central Government or under any Public Sector Undertakings or in the respective State Governments of Orissa and Madhya Pradesh but affidavit has been filed indicating how they failed in their attempt to get these N.M.R. workers absorbed on regular basis and we have already held that the attempt was *bona fide* made and yet the authorities have failed to get these N.M.R. workers absorbed on regular basis.

Ms. Indira Jaisingh, the learned senior counsel, however, in course of her argument relied upon a decision of this Court in the case of *G. Govinda Rajulu* v. *Andhra Pradesh State Construction Corporation Limited and Another,* (1986) Supp Supreme Court Cases 651 wherein this Court had issued direction to the State of Andhra Pradesh to absorb the employees of the Andhra Pradesh State Construction Corporation Limited whose services stood terminated on account of closure of the Corporation. But in the aforesaid case neither there has been any discussion on any question of law nor any circumstances have been indicated under which the direction was given. This being the position the aforesaid decision cannot be of universal application in all cases where there has been a closure of the Project which resulted in termination of the employees. Under the Industrial Disputes Act if an industry is closed the employees thereof are entitled to compensation as provided under Section 25(fff) of the Industrial Disputes Act. During the pendency of this appeal on behalf of the Union a Scheme has been framed seeking 100 months' full pay as compensation, the Scheme being called the Golden Handshake Scheme, but even the said Scheme was found to be unworkable and the concerned Ministry filed an affidavit indicating the reasons for not implementing the said Scheme. On the admitted position that the Dandakaranya Project has been completely wound up since 1990 and these N.M.R. workers would have been otherwise retrenched but for the interim order of this Court in consequence of which the project authorities have been paying every month to these workers to the tune of Rs. 1.50 lacs without getting them engaged in any work, we think that any direction to pay compensation in terms of the Scheme will not be in the interest of justice. But, however, the workers would be entitled to their rightful dues on account of closure of the project as envisaged under Section 25(fff) of the Industrial Disputes Act.

In the circumstances we hold that the direction issued by the Tribunal to regularise 425 N.M.R. workers is wholly unsustainable in law and we accordingly set aside the same. The High Court committed an error in not interfering with the aforesaid direction of the Tribunal. The award of the Industrial Tribunal, so far as it relates to 425 N.M.R. workers is accordingly set aside and we hold that these N.M.R. workers should be entitled to compensation as provided under Section 25(fff) of the Industrial Disputes Act. The interim order passed by this court in relation to these N.M.R. workers stands vacated. The appeal is accordingly allowed. But in the circumstances there will be no orders as to costs.

Appeals are allowed.