

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.647 of 2019 (M/S)

Bhagwati Shramik Sangathan
Pant Nagar & others

... Petitioners

vs.

State of Uttarakhand & others

... Respondents

Mr. M. C. Pant, Advocate for the petitioners.

Mr. Yogesh Pandey, Addl. C.S.C. with Mr. M. S. Bisht, Brief Holder for the State of Uttarakhand.

Mr. Mukesh Kaparwan, Advocate holding brief of Mr. Rakesh Thapaliyal, Advocate for the respondent no.7/SIDCUL.

Mr. T. A. Khan, Senior Advocate assisted by Mr. A. K. Arya, Advocate for respondent no.8/factory.

Hon'ble Alok Singh, J.

1. By means of present writ petition, the petitioners seek following reliefs, among others:

“(I) Issue a writ, order or direction in the nature of mandamus directing the respondent no.1 to pass appropriate orders in terms of Section 3(b) of the U.P. I.D. Act by issuing the emergency orders keeping in view the facts highlighted in the application dated 14.01.2019 in respect of illegal retrenchment which amounts to closure and further to pass orders for the security of the machinery and plants of the factory which is being replaced or be removed by the Management under the guise of illegal closure/retrenchment just to frustrate the cause of the workers, keeping in view of the facts highlighted in the body of the petition.

(II) Issue a writ, order or direction in the nature of mandamus by directing the respondent no.1, 2 & 7 to invoke the powers of Act No.XXV of 1966 for the prevention of unemployment and also to consider to grant of subsistence allowance from the Labour Court Fund to the petitioners and other similarly situated

workers who are affected by the illegal retrenchment to survive their livelihood.”

2. Learned counsel for the petitioner submits that the petitioner is a trade union formed by the workmen of the respondent no.8-factory; the workers have decided to form a trade union and applied for registration before the Deputy Registrar, Trade Union on 24.07.2018; the information was sent to the management with regard to the verification of the workers; then, the management has started to harass the workers and in December, 2018 has illegally lockout the factory; the management is shifting the plant and machinery of the factory; the workers had moved an application in December, 2018 before the Labour Commissioner and, vide letter dated 31.12.2018, the matter was reported to the respondent no.1-Principal Secretary, Labour Department, Dehradun; the workers vide application dated 14.01.2019 made a request to the respondent no.1 to issue emergency order under Section 3(b) of the Uttar Pradesh Industrial Disputes Act, 1947 (*hereinafter referred to as the ‘Act’*) for declaring the closure as illegal and restraining the management to shift the plant and machinery, but till date, no action has been taken. Learned counsel for the petitioner further contends that the management is shifting the plant and machinery and is trying to change the nature of the factory, which will cause immense hardship to the workers and if the plant and machinery is completely shifted, the purpose of filing the present petition will be frustrated.

3. Section 3 of the Act confers power on the State Government to issue a general or special order requiring employers, workmen or both to observe for such period as may be specified, such terms and conditions of employment as prescribed in the order. This power is required to be exercised by the State Government,

provided it forms an opinion it was necessary or expedient to do so for securing public safety or convenience or the maintenance of public order or supplies in services essential to the life of the community or for maintaining employment. For facility, the provisions of Section 3 (b) of the Act is quoted hereunder:-

“3. Power to prevent strikes, lock-outs, etc.- If, in the opinion of the State Government, it is necessary or expedient so to do for securing 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)

(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;”

4. From the aforesaid, it is clear that the State Government is vested with extra-ordinary powers under Section 3 (b) of the Act. The opening words clearly indicate that the provisions contained therein is to be exercised only in case of emergency which may be acute and in that situation a mere resort to power under Section 4K of the Act would be inadequate to meet the situation which may be prevailing in the industry. The provision is to enable the State Government to act promptly in case of emergency in order to secure public safety, convenience or maintenance of public order or services essential to the life of the community or for maintaining employment.

5. In the **State of U.P. vs. Basti Sugar Mills 1961 (2) FLR 101 SC**, Hon'ble Supreme Court observed that the powers under Section 3 (b) of the Act could only be exercised in case of

emergency to meet the situation prevailing in the industry/factory at the relevant point of time and a mere resort to power under Section 4-K of the Act would be inadequate. No doubt, adjudication can be done by a labour court in a reference under Section 4-K of the Act, but in an emergency an order under Section 3(b) can also be issued. Therefore, this Court is of the opinion that the application dated 14.01.2019 filed by the petitioners before the respondent no.1 must be decided by the State Government at the earliest and in accordance with law.

6. In view of above, writ petition is disposed of by directing the respondent no.1 to pass a suitable order in the light of aforesaid case law, within a period of forty days from the date of production of a certified copy of this order. However, it is made clear that it is for the State Government to decide whether there exists any emergency for issuing a notification under Section 3(b) of the Act and whether the two conditions contemplated under Section 3 (b) of the Act is specified or not.

(Alok Singh, J.)

Dated 30th April, 2019

Rawat