The Supreme Court on Safeguarding the Interests of the Workers: Gujrat Mazdoor Sabha v. State of Gujrat, A Contemporary Analysis

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Abstract

Right from the onset of the pandemic wave, the one stratum that has been subjected to utmost hardships are the laborers. Whether it was because of the loss of their sources of income or the aftermath of the lockdown due to which they had to migrate to their hometowns, these hard workers have been the most misfortunate ones. The recent amendments in the factories act further fed fuel to the fire and as a result the Gujrat Mazdoor Sabha moved the Supreme Court. Right to livelihood is very well within the ambit of the Right to life as enshrined under Article 21 of the Constitution of India.[1] This right to livelihood safeguards the workers from unnecessary exploitation so when the pandemic brought in a series of struggles for the workers, this basic right of theirs was injured to a great extent. The State of Gujrat invoked its powers under Section 5 of the Factories Act, 1948 and exempted factories in the State from certain obligations towards their workmen. A trade union with a state-wide presence and another with a national presence moved the Apex Court in a writ petition[2] to challenge the validity of the state's notifications dated 17 April 2020 and 20 July 2020.

Keywords: Interests of the Workers, Right to livelihood, Gujrat Mazdoor Sabha, Right to life

1. Introduction

The enactment of the Factories Act was a sort of a reward bestowed upon the workers after a history of a long struggle of worker unions to secure the right to human dignity in

[1] Oliga Tellis v. Bombay Municipal Corporation, (1985) 3 S.C.C. 545.
[2] INDIA CONST. art. 32.

workplaces that ensure their safety and wellbeing. The very first enactment happened in the year 1881 and subsequent amendments were made in 1891, 1911, 1934 and 1941. In the words of Justice Umesh C Banerjee, "Though the Factories Act, 1911 was amended from time to time but it could not meet the required growing activities in the country, especially after the Second World War by reason whereof, the Factories Act, 1948 was engrafted in the statute-book where emphasis had been on the welfare of the workers. Factory Inspectors have been placed with very heavy responsibility on them and provisions have been made in the statute empowering the State Governments to make and frame rules for the purposes of meeting the local exigencies of situation."[3]

Economic activity came to a complete standstill with the imposition of the nationwide lockdown on March 24, 2020. On April 17, 2020, a notification was issued by the Labor and Employment Department of the State of Gujrat that exempted all factories registered under the Factories Act "from various provisions relating to weekly hours, daily hours, intervals for rest etc. for adult workers" under Sections 51, 54, 55 and 56. The stated aim of the notification was to provide "certain relaxations for industrial and commercial activities" from 20 April 2020 till 19 July 2020. The Department issued another notification on July 20,2020 that extended the said exemption till October 19,2020. This became a matter of unrest in the entire worker community.

2. Analysis

2.1 The term 'Public Emergency' explained

The primary issue before the Court was whether the issued notifications fall within the ambit of the power conferred by virtue of Section 5 of the Factories Act. It empowers the State government to '*exempt any factory or class or description of factories from all or any of the provisions of this Act except section 67'* in cases of public emergency.[4] The explanation to this section was inserted by the Factories (Amendment) Act of 1976 that clearly stated that:

[3] S M Datta v. State of Gujarat, (2001) 7 S.C.C. 659.
[4] S. 5, The Factories Act, No. 63 of 1948, INDIA CODE (1948).

> "public emergency" means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance." [5]

An extremely unsound argument given on the government's side was that the COVID-19 pandemic has caused "extreme financial exigencies" in the State. The lockdown caused a slowdown in economic activities, leading to an 'internal disturbance' in the State within the meaning of Section 5. The State argued that such exemptions will help to overcome the present financial crisis and that since the pandemic has disturbed the entire social order of the country, it will fall under the definition of public emergency.

Justice DY Chandrachud very vividly equated the precedents set on 'public emergency' and 'security of the State' with the impugned provision. Since the originating causes of a 'public emergency' in Section 5 of the Factories Act are similar to those which Article 352 of the Constitution embodied, prior to its amendment by the Constitution (Forty-fourth Amendment) Act, 1978, he opined,

> "Pursuant to this amendment, the expression "internal disturbance" was replaced with "armed rebellion". Thus, a proclamation of emergency now cannot be issued on a mere internal disturbance and must reach the threshold of an armed rebellion threatening the security of India. The Parliamentary amendments to Article 352 are the product of experience: experiences gained from the excesses of the emergency, experiences about the violation of human rights and above all, experiential learning that the amalgam of uncontrolled power and unbridled discretion provide fertile conditions for the destruction of liberty. The sobering lessons learnt from our not-too-distant history should warn us against endowing a statute with similar terms of a content which is susceptible of grave misuse."

The Court laid emphasis on the *S R Bommai v. Union of India*[6] verdict wherein the interpretation of Article 352,355 and 356 was discussed at a great length and was observed that, "A mere internal disturbance short of armed rebellion cannot justify a Proclamation of emergency under Article 352 nor such disturbance can justify issuance of Proclamation under Article 356(1), unless it disables or prevents carrying on of the Government of the State in accordance with the provisions of the Constitution." Along with this the bench

[5] *Id.*
[6] S R Bommai v. Union of India, 1994 A.I.R. 1918.

also relied upon the judgement given in *Extra-Judicial Execution Victim Families Association v. Union of India*[7] wherein it was held that since the impact of the proclamation of emergency under 352 is grave and hence must not be exercised on grounds of internal disturbance.

The Bench recognized that "the brunt of the pandemic and of the lockdown has been borne by the working class and by the poorest of the poor. Bereft of social security, they have no fall-back options. The respondent has in exercise of its powers under Section 5 of the Factories Act issued the impugned notifications purportedly to provide a fillip to industrial and commercial activities." The reliance of the Respondent on the examples of internal disturbances as given by the Sarkaria Commission[8] which include a natural calamity such as an epidemic, which paralyses the administration and the security of the State was rejected by the Court. Also, the reliance on the verdict in the case of *Pfizer Private Limited, Bombay v. Workmen*[9] ("Pfizer") was rejected with a sound reasoning that in that case, it was a private dispute and was in no way dealt with the exercise of emergency powers by the State under the Factories Act.

Our Country has witnessed the worst treatment of human rights at the time of emergency imposition in the past and such an opinion coming from the highest judicial authority sets a precedent for years to come. The most striking ratio of the case which will be used for the protection of workers for next many generations is, "Unless the threshold of an economic hardship is so extreme that it leads to disruption of public order and threatens the security of India or of a part of its territory, recourse cannot be taken to such emergency powers which are to be used sparingly under the law. Recourse can be taken to them only when the conditions requisite for a valid exercise of statutory power exist under Section 5."

2.2 Upholding the importance of humane work hours and overtime wages

[7] (2016) 14 S.C.C. 578 2.
[8] Report of the Sarkaria Commission on Centre-State Relations (January 1988).
[9] Pfizer Private Limited, Bombay v. Workmen, 1963 A.I.R. 1103.

The Minimum wages act lays down a provision for overtime wages to be paid at a rate which is twice the rate of ordinary wages.[10] The factories act itself lays down that for the overtime hours, a worker will be paid double the rates for an hour or part of an hour of actual work in excess of nine hours or more than 48 hours in any week.[11]

The impugned notifications have attacked some very important provisions of the factories act like increasing the daily limit of working hours, deviating from the normal rest hours and the worst of all was equating the wages for overtime proportionate to the ordinary rate. The Court recognised all these departures and stated that all this is just indicating the attempt to give up the already burdened workers into the chains of servitude.

The Court upheld the fact that overtime wages are there to ensure that the toiling workers are rewarded for extra hard work they put in. The bench rightly cited the verdict of *Y A Mamarde v. Authority under the Minimum Wages Act*[12] wherein it was opined that,

> "The extra strain on the health of the worker for doing overtime work may well have weighed with the rule-making authority to assure to the worker as minimum wages double the ordinary wage received by him so as to enable him to maintain proper standard of health and stamina."

The Court also cited a Punjab and Haryana High Court judgement[13] that upheld the above dictum of overtime wages being an inseparable part of the Factories Act.

2.3 Recognition of the importance of labour welfare in such difficult times

A highly balanced approach has been reflected in the verdict as the Court laid extreme importance on the fact that the workers have been exposed to innumerable hardships in these trying times. The verdict not only focuses on the validity of the notification but also pointed out the various unjust impositions it sought to burden the workers with, for instance, the Court discussed the importance of overtime payments at a great length.

The Court upheld the transformative view that the Constitution envisioned and said that labor welfare is one of its inseparable aspects. "Employment in a manufacturing process

[10] S. 33, The Minimum Wages Act, No. 11 of 1948, INDIA CODE (1948).
[11] S. 59, The Factories Act, No. 63 of 1948, INDIA CODE (1948).
[12] (1972) 2 S.C.C. 108.
[13] I.T.C. Ltd. v. Regional Provident Fund Commissioner I.L.R. (1988) 1 P&H 73.

was at one time regarded as a matter of contract between the employer and the employee and the State was not concerned to impose any duties upon the employer. It is however now recognised that the State has a vital concern in preventing exploitation of labour and in insisting upon proper safeguards for the health and safety of the workers."[14]

Justice Krishna Iyer while realising the hardship that arises out of sudden unemployment summed up the purpose of Constitution as:

> "Social Justice is the signature tune of the constitution of India and this note is nowhere more vibrant than in Industrial Jurisprudence."[15]

The Court observed that in such times where the workers are risking their health and working in places where at a lot of times, social distancing isn't possible, the state should ensure their welfare and not impose such unjust exemptions. The employees have legitimate expectations of having their dignity protected by the employer. The bench rightly found the notification to be violative of Articles 38,39,42 and 43 which although are directive principles of state policy but form an essential part of the Indian Constitution. The Court also upheld the facet under Article 21 that envisaged right to live with human dignity[16] and will in turn also include just and humane conditions for workers and opined,

> "A workers' right to life cannot be deemed contingent on the mercy of their employer or the State. The notifications, in denying humane working conditions and overtime wages provided by law, are an affront to the workers' right to life and right against forced labour that are secured by Articles 21 and 23 of the Constitution."

This verdict oozed the idea of upholding the rule of law for the deprived and less-fortunate ones. The judgement can be seen to be resting on the spirit of the verdict in the case of *Sanjit Roy v. State of Rajasthan*[17] wherein it was stressed that the State cannot be allowed to extract advantage of the helpless condition of affected persons and these people cannot

[14] Bhikusa Yamasa Kshatriya (P) Ltd. v. Union of India, A.I.R. 1963 S.C. 1591.
[15] Punjab National Bank v. Ghulam Dastagir, A.I.R. 1978 S.C. 481.
[16] Maneka Gandhi v. Union of India, 1978 A.I.R. 597.
[17] Sanjit Roy v. State of Rajasthan, 1983 A.I.R. 328.

be denied advantages of labour legislation. The judgement has been successful in striking a socio-economic balance.

3. Conclusion

In the words of Mahatma Gandhi, "This mad rush for wealth must cease and the labourer must be assured not only of a living wage but a daily task that is not a mere drudgery." These words make more sense than ever in these times of pandemic where such notifications aim at exploitation of the labourers just to make more economic benefits without securing them basic human rights.

Over the years, the Apex Court has evolved as a guardian for safeguarding the interests of workers. The verdict in this present case not only ensures the welfare of the workers but also upholds the importance they possess in building the nation. The Court's recognition of the hardships faced by these people is something that has instilled a ray of hope in their hearts and also set a precedent for ages to come. "The Ideas of 'freedom' and 'liberty' in the Fundamental Rights recognized by the Constitution are but hollow aspirations if the aspiration for a dignified life can be thwarted by the immensity of economic coercion."