

(1992) 12 GUJ CK 0022
In the Gujarat High Court
Case No : L.P.A. No. 426 of 1992

Ahmedabad Textile Research Association	APPELLANT
Vs	
ATIRA Employees Union and Another	RESPONDENT

Date of Decision : 01-12-1992

Acts Referred:

Trade Unions Act, 1926 — Section 18

Citation : (1994) 2 LLJ 912

Hon'ble Judges : S. Nainar Sundaram, C.J; R.K. Abichandani, J

Bench : Division Bench

Advocate : K.S. Nanavati, for the Appellant; Girish Patel, for the Respondent

Final Decision : Dismissed

Judgement

S. Nainar Sundaram, C.J.—The respondents herein preferred Special Civil Application No. 5284 of 1992 seeking to quash the order of the City Civil Court, Ahmedabad, made in Civil Suit No. 3801 of 1992 on July 31, 1992. In this Special Civil Application, the appellant herein was the respondent. The suit was one laid by the appellant. In this Letters Patent Appeal, we need not go into the merits of the suit at all since the attack in the Special Civil Application was only on the interim order pending the suit; and it is sufficient if we examine that aspect alone. Pending the suit, the appellant, who shall be hereinafter referred to as the "plaintiff, wanted a temporary injunction against the respondents, who shall hereinafter to be referred to as the "defendants", in the following terms:

"The Hon'ble Court may be pleased to grant ad interim injunction in favour of the "plaintiff and against defendants, restraining defendant No. 1 - Union, defendant No. 2 - all members of defendant No. 1 - Union, their associates from entering into the campus of plaintiff Institution in procession, in mob or individually, restraining them from raising slogans and restraining them from causing disturbances in the campus and besieging the staff and officers of the plaintiff."

2. The City Civil Court, Ahmedabad, deemed fit to grant injunction as per the order impugned in the Special Civil Application in the following terms:

"In view of the aforesaid discussion, the defendants are directed not to shout slogans, hold demonstrations, to display placards and to hold dharnas within the 100 meters from the main building of the plaintiffs institution. They are further restrained from causing any damage to the property of the plaintiffs institution and not to obstruct the egress from and the ingress into the plaintiffs institution."

3. The defendants by preferring the Special Civil Application took exception to the impugned order of the City Civil Court mainly on two grounds. The first is that the impugned order has come to be passed by the City Civil Court arrogating to it the jurisdiction to decide an industrial dispute and hence the impugned order has got to be struck down. The second is, that the impugned order by of the City Civil Court also comes within the mischief of Section 18 of the Trade Unions Act 16 of 1926, hereinafter referred to as "the Act" and hence it has got to be frowned upon. The learned Single Judge upheld both the contentions and as a result quashed the order of the City Civil Court impugned before him. This Letters Patent Appeal is directed against order of the learned Single Judge.

4. Mr. K.S. Nanavati, learned counsel for the plaintiff, submits that the first ground based on the industrial dispute aspect and sustained by the learned Single Judge is not tenable because what is sought to be justiciated before the City Civil Court is not an industrial dispute as such and equally so it does not relate to enforcement of any right under the Industrial Disputes Act, 1947, and on the other hand, the plaintiff was obliged to seek the interim order of injunction to have protection against unlawful, tortuous and violent activities of the members of the first defendant, who are employees of the plaintiff. Learned counsel for the plaintiff would also submit that the provisions of Section 18 of the Act are not attracted to the interim reliefs asked for by the plaintiff pending the suit before the City Civil Court and granted by it, because here again what the plaintiff wants to prevent are the unlawful, tortious and violent activities of the members of the first defendant, who are the employees of the plaintiff. As against this Mr. Girish Patel, learned counsel for the defendants, would submit that, nowhere in the application taken out by the plaintiff for obtaining the order of temporary injunction, a case of unlawful, tortious or violent activities, is made out and what the members of the first defendant were indulging would only fall within the ambit of acts done in contemplation and in furtherance of a trade dispute within the meaning of Section 18 of the Act. Learned counsel for the defendants would also submit that the question would fall within the ambit of an industrial dispute and hence there should be an adjudication over it by the City Civil Court and from this angle also the interim reliefs asked for before the City Civil Court and the order obtained in this behalf and impugned in the Special Civil Application deserve to be struck down.

5. First we propose to examine the contentions and the counter- contentions put

forth by the learned counsel appearing for the parties from the angle of Section 18 of the Act. Section 18(1) of the Act reads follows.

"18 (1). No suit or other legal proceeding shall be maintainable in any City Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital labour as he wills."

As to the scope of Section 18 of the Act and further as to what type of legal proceedings will be barred when the implications of the said provision are looked into and analysed have been subject-matter of scrutiny in pronouncements of various High Courts. We do not propose to refer to the discussion aspect in each of the pronouncements and it would suffice the purpose if the sum and substance of the principles taken note of in the pronouncements is set down as follows:

6. It is not within the purview of the Civil Court to prevent or interfere with the legitimate rights of the workmen to pursue their demands by means of strikes or agitations or other lawful activities so long as they do not indulge in acts unlawful, tortuous and violent. For the sake of reference we enumerate below the decisions which have gone on the above line of thinking:

1. AIR 1993 Pat 170.

2. Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others,

3. 1975 I LLJ 33 (Kerala)

4. 1981 LI C 1220. (Bombay)

5. 1988 LI C 1067. (Delhi)

6. 1990 61 FLR 708 (Karnataka).

7. Any agitation by the workmen must be peaceful and not violent. Any concerted movement by workmen to achieve their objectives is certainly permissible even inside the industrial establishment within the working hours, so long it does not prove to be unlawful, tortuous or violent. Demonstrations and dharnas peaceful when they are, have now come to be accepted as falling within the permissible sphere of agitations by labour. Demonstrations and dharnas may cause inconvenience to the management. But they are weapons, as strike is, in the armoury of the labour to pressurise the management to accede to their demands. Such demonstrations and dharnas, when they do not turn unlawful, violent and tortuous, cannot be curbed by orders of Civil Court and would come within the purview of Section 18 of the Act. Therefore, when these trade union activities will go out of the protected sphere will depend upon the facts and circumstances of each case. That there is trade dispute within the meaning of the Act in the present case cannot be put in issue. Equally so the workmen of the

plaintiff are in the field of agitation to secure the demands is not in dispute. It is also the admitted case that the workmen indulged in demonstrations, dharnas, shouting of slogans and displaying placards only during the lunch recess.

8. Now it becomes our duty to find out as to whether the pleadings put forth by the plaintiff for getting the interim reliefs take the case outside the mischief of Section 18 of the Act. We must find out as to whether a case of acts or omissions on the part of the workmen which could be termed as unlawful, tortuous or violent has been made out. We have been furnished with a copy of the English translation of the application taken by the plaintiff for obtaining the temporary injunction. The relevant averments are found in paragraphs 9 and 10 thereof and they run as follows:

"The plaintiff further states that when 176th meeting of the counsel of Administration of the Institution was held on July 18, 1992 in the main building of the plaintiff institution, the members of the defendant union had collected together in front of the main building and had formed an unlawful assembly and had raised (spoken) slogans against the institution and the officers and had also raised shouts. The plaintiff says that the plaintiff institution receives Government grant and Scientists are doing research work in the plaintiff institution and they are highly disturbed by slogans. As the plaintiff institution is working in the interest of the nation, there is a wide effect of this agitation on it and it is very likely that by taking law into their hands, the defendants are likely to sabotage and, therefore, the plaintiff institution by issuing a circular dated July 21, 1992 has given a clear order not to raise any slogans, gherao within the campus of the plaintiff - institution, to which the General Secretary of the defendant - union has replied to the effect that the notice of the plaintiff is not proper and has also informed to satisfy the demands of the union and has clearly informed the plaintiff that they are constrained to resort to agitation and have informed about the agitation to the plaintiff. The plaintiff says that the intention of the defendant No. 1 and its members is to administer threats, cause disturbances and besiege and thereby to cause fear and apprehension and if the defendants are not restrained from doing so, then it is very much possible that they will take law into their hands, raise slogans, besiege, cause disturbances and sabotage and in such circumstances, the plaintiff apprehends that there is a likelihood of breach of peace and causing damage to the property. The plaintiff says that the defendants have no legal right or authority to take law into their hands, by such acts and, therefore, it has become necessary to file the present suit for restraining the defendants from doing such acts."

"The plaintiff further submits that the plaintiff has filed the said suit for a permanent injunction. But if during the pendency and disposal of this suit, the defendants continue their such acts, then the suit of the plaintiff is likely to become infructuous and the plaintiff will be caused irreparable loss which cannot be compensated in terms of money or in any manner. In such circumstances, if such acts of the defendants are allowed to continue, there will be multiplicity of

proceedings and there will be breach of peace and there is a possibility of causing damage to the property of the plaintiff. Therefore, the plaintiff has prima facie case in their favour and balance of convenience is also in a favour of the plaintiff. If the defendants are restrained from their acts, they are not likely to suffer any loss. Therefore, pending the hearing of this suit, this application is filed for obtaining interim injunction."

9. We find that there are general and broad allegations of formation of an unlawful assembly; disturbance by slogans; apprehensions of sabotage, besiege and disturbances. However much we may strain, we are not able to spell out from the above averments a positive case of acts and omissions on the part of the workmen, which could be characterised as unlawful, tortuous or violent. There is no specific allegation of any unlawful or tortuous or violent act committed by the members of the first defendant. All the allegations are in the sphere of speculation. Even these allegations do not take the case outside the sphere of permissible agitational activities. Further these activities happened during lunch recess. It is not possible to disassociate the holding of demonstrations or shouting of slogans, displaying of placards or holding of dharnas from the legitimate and permissible activities of the labour, so long they do not turn unlawful, tortuous or violent. These three crucial elements have not been made out at all in respect of these activities for the Court to hold that these activities are reprehensible and hence should not have the protection which they would otherwise have within the ambit of Section 18 of the Act as acts done in furtherance of a trade dispute. However, with regard to causing damage to the property of and obstructing ingress into and egress from the plaintiffs institution, we heard the learned counsel for the defendants saying that the defendants shall not indulge in these activities. We record his statement and, in our view, so recording the statement, there is no necessity to maintain and we are deleting that portion of the impugned order of the City Civil Court, when it enjoined these activities. These activities if indulged in would be unlawful and tortuous and could not be protected. But the undertaking by the learned counsel for the defendants has assuaged even any apprehension over indulgence of such activities. On the question of holding demonstrations, dharnas, shouting slogans and displaying placards, the allegations put forth do of per se taint them with any illegality or violence or turn them tortuous. This being the position borne out by the very pleadings, we are of the view that the learned Single Judge was perfectly in order when he struck down the impugned order of the City Civil Court of the above extent as violative of Section 18 of the Act. The order of the learned Single Judge does not call for interference at our hands, except for the clarification that we have deleted that portion of the impugned order of the City Civil Court, concerning damage to property of and obstruction of ingress into and egress from, the plaintiffs institution, recording the statement of undertaking of the learned counsel for the defendants, as noted above.

10. In the above view, which we have taken, of the question, there is no need to examine the same from the angle as to whether the proceedings for interim

reliefs initiated and the impugned order obtained by the plaintiff at the hands of the City Civil Court, will have to be also frowned upon, on the ground that what has been decided is nothing but an industrial dispute. Of the two grounds of attack, sustaining one ground has served the purpose of the defendants and there is no warrant to go to other ground and the reasonings of the learned Single Judge from the angle of the law relating to industrial dispute need not stand as they are unnecessary. Accordingly these reasonings of the learned Single Judge stand vacated.

11. There are observations in the order of the learned Single Judge, expressing views on the non-maintainability of the very suit. This Court in the Special Civil Application is not called upon to directly adjudicate this question. Whatever view the learned Single Judge expressed over the question is only *prima facie* and for the purpose of testing the propriety of the order to interim reliefs made by the City Civil Court. These views of the learned Single Judge will not preclude the City Civil Court from deciding the question of jurisdiction and maintainability in the suit itself, taking note of the law governing it.

12. We must record that Mr. Girish Patel, learned counsel for the defendants, raised a preliminary objection with regard to the very maintainability of the Letters Patent Appeal, on the ground that the order of the learned Single Judge is one under Article 227 of the Constitution of India. But when he became wiser of our view on the merits of the case, learned counsel for the defendants did not pursue this preliminary objection. Hence we have not gone into this question.

13. For the reasons expressed above, we dismiss this Letters Patent Appeal subject to the clarification indicated above. We make no order as to costs.