

(1985) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14021 of 1985

Andhra Pradesh Electrical Equipment Corporation

APPELLANT

Vs

Andhra Pradesh Electrical Equipment Corporation Staff Union
and Others

RESPONDENT

Date of Decision : 26-12-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(3), 10A, 2

Citation : (1987) 1 LLJ 324

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

1. The petitioner is seeking to quash the G.O.Rt. No. 2426, Labour Employment Nutrition & Technical Education (Lab. I) Department, dt. December 11, 1985, issued by the 4th respondent in exercise of the powers u/s. 10(3) of the Industrial Disputes Act, 1947 (Act 14 of 1947), for short, "the Act", prohibiting lockout. The case of the petitioners is that due to financial constraints and patronage by the State Government of the local units; the sale of finished products of the petitioner-Company, viz., energy meters became declined. As a result of it, it was unable to earn huge profits and yet it was paying fabulous salaries to the employees. But the employees are demanding for increasing the wages which the petitioner is unable to meet, yet the petitioner has agreed to increase a sum of Rs. 98/- per month per worker, but the workers did not agree to the suggestion made by the petitioner. The workers have resorted to go slow in the work and they have also resorted to commit irregularities in the work and adopted an attitude of insubordination towards their superiors and they have also been unauthorisedly leaving the factory during working hours. As a result, the Works Manager of the petitioner-factory was constrained to suspend ten workers who resorted to unlawfully gherao the officers and disrupt the functioning of the factory. Therefore, by notice dt. December 5, 1985, the petitioner was constrained to declare lockout. It is also stated in the affidavit that Mr. Mane, Deputy Commissioner of Labour, transparently acting at the behest of the

subversive and turbulent employees and their leaders, went to the extent of trespassing into the premises of Mr. Kabra, Production Manager, exposing him to grave risk of grave consequences and sought to impose his will then and there for pressuring Mr. Kabra to lift the lockout, without at the same time holding out any assurance of the safety and protection of the executives as well as the plant of the establishment which runs into four crores. When his dictates were not acceded to by the petitioner, this order came to be passed as a bolt from the blue. Therefore, the order is not valid order.

2. The State Government filed its counter. It is stated therein that the 2nd respondent/union made a charter of demands dt. January 2, 1985, and thereafter, the incharge Joint Commissioner was directed to take urgent action against the representations made to the Minister of Labour of the unfair practice which the petitioner has resorted to against the workmen. As a result of it, he fixed a joint meeting on November 22, 1985. The petitioner/management, though initially agreed to participate and in fact participated in the meeting, went on postponing the matter on one pretext or the other and in the interregnum, terminated the services of eight workmen without holding any domestic enquiry and unauthorisedly declared the lockout with effect from December 6, 1985. As a result of it, the conciliation efforts of Mr. D. R. Mane, the Deputy Commissioner of Labour were reported to have failed. Thereafter, considering the report, the Government had issued G.O.Rt. No. 2425, dated : December 11, 1985, u/s. 10(1) of the Act, referring for adjudication the dismissal of the eight employees by the Labour Court. With a view to restore industrial peace and harmony, the impugned G.O. was issued, prohibiting the lockout. In the counter-affidavit it is also explained as to under what circumstances Mr. Mane, the Deputy Commissioner/Conciliation Officer had to meet Mr. Kabra, the Production Manager and other officers. Mr. Mane has made his sincere efforts to effect conciliation between the management and the workmen to restore industrial peace, despite the days happened to be holidays. The action taken by Mr. Mane is a bona fide action in the discharge of his official duties as a Conciliation Officer.

3. On behalf of the first respondent and also the 2nd respondent-employee's Unions, respective counter-affidavits have been filed. The substance of their contention is that the petitioner has resorted to unfair labour practices and unlawfully dismissed eight of its workers when the charter of demands had not been conceded to. The management created a farce of disorderliness as an alibi for declaring the lockout. In fact, the first respondent-union has written a letter dated December 8, 1985, declaring its unequivocal assurance that no untowards incident would happen. Therefore, it is not a bona fide action on the part of the petitioner.

4. Mr. Ramachandra Rao, learned counsel for the petitioner, has raised a threefold contention. It is firstly contended that by notice dated : December 5, 1985, the petitioner has stated the circumstances under which the lockout came to be declared. Therefore, this itself is a dispute, unless the legality thereof is

referred to for adjudication and decided, the Government has no power to prohibit the lockout in exercise of the power u/s. 10(3) of the Act. The exercise of the power by the Government is not only illegal, but also in excess thereof. He further contended that the action of the 4th respondent is a mala fide one. The impugned order came to be passed at the behest of one Mr. K. V. Narayana Rao, the Chief Whip of the Government. The third contention raised is that the order prohibiting lockout u/s. 10(3) visits with penal consequences u/s. 24 of the Act. Therefore, unless a prior notice and an opportunity of hearing is given to the petitioner, the Government cannot exercise the power u/s. 10. In this case, in fact, no notice has been given. Therefore, it is violative of the principles of natural justice.

5. In support of its contentions, the petitioner relied upon Eenadu Press Workers Union and Another Vs. Government of Andhra Pradesh and Another, , A.K. Kallappa Chettiar and Sons Vs. State of Kerala and Others, and Alcobex Metal Workers Union Vs. State of Rajasthan ILR (1981) (Raj) 556. These contentions have been resisted by the learned counsel for the first respondent, Mr. Rama Rao, Mr. M. Panduranga Rao for the 2nd respondent and the learned Government Pleader.

6. The first question that arises for consideration is : Whether it is incumbent upon the Government first to make a reference u/s. 10(1) of the legality of the lockout and then to make a prohibition thereof.

7. It is necessary in this context to refer to S. 10(3) of the Act which reads thus :

Where an industrial dispute has been referred to a Board (Labour Court) Tribunal or National Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on the date of the reference."

Section 2(1) defines "lockout" as under :

"Lockout" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him."

Section 2(k) defines "industrial dispute" as under :

"Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

8. A reading of these two clauses disclosed that the exercise of the power by the management u/s. 2(1) is unilateral and volitional, but with regard to industrial dispute it is only bilateral as a result of the dispute between the workmen and the management etc. in connection with employment or non-employment, etc. Only in the latter case, when there is a reconciliation and the report is submitted

by the Conciliation Officer of his failure of the reconciliation or otherwise, the appropriate Government is seized of the dispute, the exercise of the power under S. 10(1) would arise, but not otherwise. But whereas in the case of the exercise of the right of declaration of lockout, it is the unilateral act of the management and it is open to the management always at its convenience to exercise that right. It is well settled that the exercise of the right of lockout is an instrument of coercion or a weapon of oppression or means or reprisal or a pressure valve to revolve the workmen round the management to coerce them to come to the terms with the management. Therefore, the possibility to create artificial circumstance as a justification for declaration of lockout cannot be ruled out. Considered from this perspective, it cannot be said that lockout is an industrial dispute. In *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, their Lordships of the Supreme Court while considering the scope of S. 10(1) have held that S. 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative Act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the ken of judicial scrutiny. It is the subjective satisfaction. It is the province of the Government to decide upon whether there exist an industrial dispute or is apprehended. The claim of the petitioner is that in view of the law and order situation created by the workmen themselves, the petitioner is constrained to declare the lockout by notice dated December 5, 1985 and, therefore, unless its legality is decided by a competent authority, the prohibition thereof is without jurisdiction and illegal and in view of the fact that no such reference has been made, the impugned order is without jurisdiction.

9. It is already stated that the Conciliation Officer reported to the Government that the petitioner has dismissed eight of its workmen and that the dismissal was claimed by the first respondent-Union to be without conducting any domestic enquiry and that the conciliation proceedings initiated by him became unsuccessful due to non-co-operation by the petitioner. Accordingly, a failure report was submitted. Admittedly on consideration thereof, the 4th respondent-Government initiated action u/s. 10(1) and referred the dispute to the Labour Court for adjudication. The fact that the petitioner dismissed eight of its workmen is not disputed. The question whether the dismissal is legal or illegal, is the subject matter of the reference in G.O.Rt. No. 2425. The legality of the reference has not been questioned. Therefore, it is not necessary to go into the legality of the reference made u/s. 10(1) of the Act.

10. It is not in dispute that the lockout has been declared by the petitioner. The question is whether the declaration of the lockout also can be the subject-matter of the reference for adjudication. Sub-section (3) of S. 10 posits that where an industrial dispute has been referred to Labour Court, etc. under this section the

State Government is given discretion by employing the language "may" to pass an order prohibiting the continuance of the strike or lockout in connection with such dispute which may exist on the date of the reference. Mr. Ramachandra Rao, the learned counsel for the petitioner, relying upon the word "such", vehemently contends that such dispute is referable to the declaration and continuance of the lockout and therefore, unless it is the subject-matter of reference, the Government has no powers u/s. 10(3) to prohibit the continuance of the lockout. The adjective such means "of that kind, the like kind or same kind (often followed as or by a clause beginning with that)" (Vide Chamber's 20th Mid Century Dictionary, page 1102). The adjective "such" referred to in S. 10(3) is industrial dispute defined in S. 2(k). But lockout being an unilateral act of the management, it does not appear to have been intended to be an industrial dispute within the meaning of S. 2(k). The Legislature having separately defined them, would not have omitted to declare so in S. 2(k). It can be looked at from the background material. The object of S. 10(3) is to maintain an atmosphere of peace and calm when the dispute is referred for adjudication by the Tribunal or the Labour Court. It will not be conducive to industrial peace to subsist strike or lockout and the adjudication of industrial dispute to proceed. In other words, the object is that there should not be simultaneous truce and a war. Under those circumstances, the Government has been clothed with power to prohibit, in an appropriate case, the continuance of strike or lockout in connection with such referred dispute. Admittedly there is an existing dispute regarding dismissal of the workmen and in exercise of the power u/s. 10(1), the reference was made to the Labour Court. The Government felt it expedient to restore an atmosphere of peace and calm in the petitioner's undertaking or unit or factory, prohibiting the continuance of the lockout declared by the petitioner. A fair reading of sub-ss. (1) and (3) of S. 10 posits that the Government gets power to make a reference when there is an industrial dispute, obviously a dispute between the management and the workmen in regard to the conditions of the work or conditions of the service of the workmen, etc. and exercise of power u/s. 10(3) arises in such connection. In my considered view, the lockout cannot be said to be an industrial dispute within the meaning of S. 2(k). The learned counsel for the petitioner did not place before me any decision in support of his contention. Therefore, I do not find any justification for the contention raised by the petitioner. It is accordingly rejected.

11. The next contention raised is that the order of the 4th respondent is vitiated by mala fides. The basis for the mala fides is two-fold. Firstly, that Mr. Narayana Rao, the Chief Whip of the Ruling Party is the Legal Adviser of the 1st respondent-Union. Therefore, he prevailed upon the 4th respondent Government to pass the impugned order. As a fact, there is no such plea raised in the writ petition. In fact it is admitted by the learned counsel for the petitioner that for the first time in the second reply-affidavit, this contention has been raised. A contention not raised in the writ petition, but raised in the reply affidavit for the first time can (not) be given countenance since the respondent is denied of the opportunity to

defend the charge. It is well settled that plea of mala fides is a serious charge and it must be pleaded and proved. Without such a plea the party cannot be permitted to raise it whenever he likes at will. Therefore, it must be treated to be an after-thought and it cannot be given any credence.

12. It is next contended that Mr. Mane, the Deputy Commissioner of Labour (Conciliation Officer) is bent upon to thwart the action of the petitioner at the behest of the first respondent to see that the lockout is prohibited. In the counter-affidavit, the circumstances under which Mr. Mane has to go to Mr. Kabra, Production Manager, has been elaborately stated. It is common knowledge that it is the endeavour of a Conciliation Officer to see that conciliation is effected when there is an industrial unrest and to submit his report to the appropriate Government in that regard at the earliest. A reading of the records placed before me gives me an impression that in his sincere efforts to reconcile the management and workmen, the Conciliation Officer spared no pains to persuade both the groups to come to a settlement and in that process, he appears to have gone to the house of Mr. Kabra. Moreover, the State Government is the competent authority u/s. 10(3) to take action. It is too much to project that a subordinate Officer prevailed upon the State Government to pass this order, It is further to note that Mr. Mane, eonomine has not been impleaded as party-respondent. He has no opportunity to controvert the allegations made against him. Mr. Ramachandra Rao stated that the Supreme Court held that Mr. Sanjeeva Reddy, the then Chief Minister of the State failed to file the counter-affidavit in the nationalisation scheme and on that basis the nationalisation was nullified though he was not personally impleaded. It could not be taken as a precedent in this case.

The Chief Minister is the head of the State Executive and when an allegation is made that he is instrumental due to political vendetta to issue the notification though not an eonominee party to the action, it is his duty to rebut the same by filing a counter-affidavit and under those circumstances, their Lordships did not insist upon the Chief Minister being impleaded as a party eonominee. But it is now well settled that when an allegation is made against a person, that person must be impleaded, he must have an opportunity to rebut the same and then adjudication is to be made in his presence, after giving an opportunity. In this case, such a course has not been adopted. Therefore, it cannot be gone into. Even otherwise, on the facts, I am satisfied that Mr. Mane appears to have made sincere efforts in reconciling the parties in the discharge of his duties as a Conciliation Officer. Therefore, I find no merit in the contention of the mala fides made against Mr. Mane.

13. Yeat another contention is that the order is vitiated by non-observation of audi alteram partem before passing the impugned order. When similar contention was raised in *Vijaya Spinning Mills Ltd. vs. Government of A. P.* W. P. No. 13128/85, dated : 9th December, 1985. I had an occasion to consider this question thus :

"It is too late in the day to contend that the principles of natural justice can be projected in any field. The very object of lockout is to quench industrial unrest and positively to restore peace, calm and order. If protected proceedings of hearing is extended, it would be self-defeating and time-consuming and an aggravating factor escalating industrial unrest. The doctrine of audi alteram partem is uncalled for, for invocation."

Sri Ramachandra Rao, relying upon para 16 in Eenadu Press Workers Union case, (supra), contended that a Division Bench of this Court had held that the declaration of lockout is a fundamental right of the petitioner and the fundamental right cannot be set at naught without giving a prior notice and an opportunity of hearing and this decision was not brought to the notice of this Court. Therefore, my previous decision requires reconsideration, though expressly the learned counsel did not, in fairness, say so. The question is whether the petitioner is entitled to audi alteram partem before passing the impugned order. It is already seen that the object of prohibiting continuance of lockout or strike is to restore industrial peace and harmony pending adjudication of an industrial dispute by the Labour Court, etc. There cannot be a truce and war at the same time. It is now well-settled that the principles of natural justice are not an unruly horse, and cannot be put in a strait jacket formula. It is to be moulded, attuned to the situation and the nature of the injury which the party would be affected thereby. A passage in De"Smith"s Judicial Review of Administration Action is to the following effect :

"In administrative law a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature."

This principle has been uniformly followed by the highest Court of this land. Even in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , it was held that post-opportunity of hearing may be extended in an appropriate case, even the application of the principles of natural justice would be excluded. That decision was followed in a number of cases and the latest of which is Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, . The learned Judges in Eenadu Press Workers Union case, (supra), have held in para 19 at p. 398.

"We are not inclined to accept the contention that before prohibiting a strike or lockout u/s. 10(3) of the Act, it is necessary to give an opportunity to the parties concerned to show cause against such action."

The contention of Mr. Ramchandran Rao is that the ratio decidendi is para 16 of the judgment in the above case. The learned Judges have held in paragraph 16 at 397.

"We fail to see why it should be held that an opportunity should be given at the time when an order u/s. 10(3) is passed prohibiting a strike or lockout, especially when such an order is to be made expeditiously in the interest of industrial

peace."

When the decision of the Kerala High Court in A. K. Kalliappa Chettiar's case (supra), was relied upon in that case the learned Judges have expressly dissented with the view taken by the Kerala High Court. However, while distinguishing that judgment, the learned judges have held that the right to closure of business is a fundamental right. Relying upon S. 2(1), Mr. Ramachandra Rao has contended that the learned Judges obviously had in view this definition when it was held that it is a fundamental right. But on a reading of the entire judgment, I am unable to agree with the contention of the learned counsel. It goes without saying that the right to lockout is now controlled by Ss. 10-A, (4-A) and 22 and 23 of the Act and the penal action is engrafted for disobedience of the prohibition of lockout u/s. 24. If it is held that the petitioner has a fundamental right to declare lockout, then naturally the provisions referred to earlier would be rendered otiose. Therefore, I have no hesitation to hold that the right to lockout is an statutory right controlled by the relevant provisions of the Act and must be exercised in conformity therewith. The learned Judges are perfectly well aware of this legal position, and therefore, the learned Judges, in my respectful view, do not appear to have intended to lay down that lockout is a fundamental right of the petitioner. What the learned Judges seem to have held was that while distinguishing the Kerala High Court decision referred to above, it was pointed out that there is a distinction between strike and lockout. Right to closing an industry is a part of the right to trade or business under Art. 19(1)(g) of the Constitution but it is not an absolute right and it can be restricted and controlled by the law in the interest of the general public. Right to lay off u/s. 250 is not an absolute right. The learned Judges have also noticed that the workmen have no fundamental right to strike and equally, therefore the learned Judges do not appear to have intended to say that the petitioners too have fundamental right to lockout. Under those circumstances, I am of the view that the learned Judges did not intend to lay down that the petitioners has fundamental right to lockout as defined u/s 2(1) of the Act. No doubt, as contended by Sri Ramachandra Rao, disobedience of the order u/s 10(3) will be visited with penal consequences of prosecution u/s 24(1)(ii) of the Act. But the question is when merely the petitioner is exposed to prosecution, does he become entitled to a prior notice and an opportunity of representation and hearing before passing the impugned order. As seen, the very object of prohibiting continuance of lockout is to restore industrial peace, calm and harmony, while industrial adjudication is in progress pursuant to a reference made u/s 10(1) of the Act. The action u/s 10(3) is only preventive one. If prior opportunity and hearing is given before invoking S. 10(1), the very object of restoring industrial peace and harmony would be jeopardised and a self defeating one. Under those circumstances, though disobedience thereof visits with penal consequences, no prior notice need be given to the petitioner. However, if the petitioner is so desirous of placing the facts and persuading the authority, as stated in my earlier judgment in WP No. 13128/85, dated 9th December, 1985, it

is open to the petitioner even after the order is passed, to seek an opportunity and the appropriate Government may consider his case, but that is not a ground to hold that the order is per se illegal. Even the decision of the Rajasthan High Court in Alcobex Metal Workers Union case, (supra), is of little assistance to the petitioner. There also the learned Judge did not agree that a prior notice is to be given before an order is passed u/s 10(3). Though Mr. Ramachandra Rao relied on A. K. Kaliappa Chettiar's case, (supra) a case of lockout with great respect, I express my inability to agree with the ratio for the reasons already set out. Accordingly, I hold that the petitioner is not entitled to any prior notice before issuing the impugned order.

14. It is next contended that unless the State Government gives protection to maintain the law and order, the petitioner will be unable to run the factory and the petitioner placed before me a letter written by the Chief Security and Vigilance Officer of the factory stating that the Police wanted to withdraw its force. I need not go into that question. It is open to the petitioner to approach the appropriate authority if the petitioner so feels that proper protection is necessary. In fact, the 1st respondent, in its letter dated : 8th December, 1985, has stated that they would co-operate with the management in maintaining the law and order. I have no doubt that the workmen would co-operate with the management in maintaining law and order.

15. No other contention has been raised.

16. Accordingly, I dismiss the writ petition with costs. Advocate fee : Rs. 300/-.

17. Petition dismissed.