

(1989) 02 MAD CK 0010

In the Madras High Court

Case No : Application No. 712/89 in C.S. No. 112/89

Audco India Ltd.

APPELLANT

Vs

The Audco India Employees' Union and Others

RESPONDENT

Date of Decision : 13-02-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(3), 12(1), 12(3), 2

Citation : (1989) 2 LLJ 200

Hon'ble Judges : M. Srinivasan, J

Bench : Single Bench

Judgement

1. The plaintiff/applicant is a registered company engaged in the manufacture of industrial pipeline valves and oilfield equipment and the

manufactured equipments are mostly supplied to public sector undertakings like Oil and Natural Gas Commission, Nuclear Power Corporation,

Thermal Power Plants, Fertilisers and Petrochemical Complexes, Steel Plants Oil Industries, Refineries, Heavy Water Projects, Hydro Electric

Power Stations and other Government projects of national importance. The company is also making supplies to foreign countries earning foreign

exchange. The current annual turn over is stated to be 25 crores of rupees. The manufacture of valves has been declared to be a public utility

service for the purpose of the Industrial Disputes Act, 1947 by the Government of Tamil Nadu till 27th June 1989. A settlement between the

management of the company and the workers expired on 31st March 1988 and the union of employees placed a character of demands on 16th

June 1988. As the could be no agreement by mutual discussions, the plaintiff initiated conciliation proceeding by addressing the Special Deputy

Commissioner of Labour on 2nd December 1988. The latter sent notices dated

12th December 1988 and 19th December 1988 to both parties

go appear before him for conciliation. In the second notice, which is filed as Document No. 3 along with the plaint, he advised the union not to

indulge in any direct action in view of the conciliation proceeding. On 21st December 1988, the employees went on sudden strike without any

notice to the plaintiff. Since then the unionised employees stated to be numbering about 550 are on strike. The above facts are not in dispute.

2. In the last week of December, the plaintiff filed in this Court W.P. No. 16129 of 1988 praying for issue of a writ of mandamus directing the

Superintendent of Police, Chingleput (East) who was the first respondent therein to take appropriate action and afford necessary and adequate

protection to the company in the exercise of its lawful and proprietary rights for the removal of their finished goods from the factory and ensure the

non-commission of any offence by any outsider or stranger or the workmen individually or jointly under the direction of the Employees Union

which was the second respondent therein. There was an application for interim direction in W.M.P. No. 24106 of 1988 for protection to enable

the removal of finished goods as listed in the annexure to the affidavit therein. The annexure contained the description, quantity and the value of the

finished goods which were ready for removal from the factory premises. The main allegation was that the workmen were preventing the dispatch of

the finished goods to the respective customers. After hearing both sides, Venkataswami, J. passed an order on 10th January 1989 directing the

first respondent therein to give the necessary protection to the applicant in the removal of the finished goods set out in the annexure to the affidavit

filed therein subject to the condition that the removal of the goods should be after giving notice to the General Secretary of the Employees Union

and in his presence or in the presence of his nominee. A further condition was imposed that the value of the goods as and when removed should be

deposited in a separate account in the bank in which the petitioner was already having an account to the credit of the writ petition within two days

after such removal and that the amount so deposited shall not be dealt with by the petitioner without obtaining orders of this Court. It is stated that

the plaintiff got the order modified later enabling deposit of the amount after realisation of the price of the goods from the customers. It is also not in

dispute that the plaintiff got an order in the same writ petition granting permission for sending certain materials for display at Indian Engineering Trade Fair at Delhi.

3. Thereafter, the present suit has been filed for a permanent injunction restraining the defendants, the members of the first defendant union, their associates, agents and men (1) from in any way preventing or obstructing casual, temporary and contract workers, apprentices, loyal workmen and staff, candidates for employment, customers, suppliers, inspectors and other visitors who will have ingress to and egress out of the factory premises on business, (ii) from in any way preventing or obstructing movement of vehicles, materials, viz., raw materials bought out or imported or finished or semi-finished goods also to and from its sub-contractors for processing and (iii) from gathering and picketing within a radius of 100 yards from the entrance to the premises of the plaintiff's factory. It is alleged in the plaint that even after the order in the Writ Miscellaneous Petition referred to already, there is no abatement of the obstruction and contempt proceedings are pending against the defendants. It is further alleged that the defendants have erected pandal and shed at the entrance of the factory premises where they gather in large numbers all the time, park therein vehicles and are intimidating, threatening, harassing and preventing all incoming and outgoing personnel blocking the vehicles and indulging in violence. Reference is made to a letter dated 12th January 1989 (produced as Document No. 17 along with the plaint) purporting to have been written by the Manager, Ryder Cheshire Gabriel Rehabilitation Centre, to the plaintiff that the office bearers of the Employees Union and other workers numbering about 50 approached him on 11th January 1989 and advised him not to send the handicapped boys who are the inmates of the Centre to the company for doing work and that he feared violence if he ignored the advice. It is stated in the plaint that by the obstructive tactics adopted by the defendants, the plaintiff has not been able to render essential service by supply of goods to public sector undertakings of national importance. Along with the plaint 24 documents have been filed to support the case of the plaintiff. This application has been filed by the plaintiff praying for an interim order of injunction granting the same reliefs pending disposal of the suit. In the affidavit filed in

support of the application, most of the allegations made in the plaint are repeated.

4. The first defendant in the suit is the Audco India Employees Union represented by its President. The second defendant is the Vice-President and

defendants 3 to 8 are office bearers of the union. The third defendant claiming to be the General Secretary filed an affidavit along with an

application to vacate the interim order of injunction passed by the on 8th February 1989. The application remains unnumbered. Though the cause

title in the affidavit is as if the third defendant is the only applicant in the application, the cause title in the application reads as if all the eight

defendants are applicants. But, the vakalath filed by Mr. Fenn Walter who happens to be the President of the 1st defendant union has been

executed by the third defendant only. Thus, the only defendant who has entered appearance till now is the third defendant, though Mr. Fenn Walter

addressed arguments as if he represents all the defendants. The affidavit filed by the third defendant is treated as counter affidavit in this application

and the counter affidavit filed by Mr. Surendra, Deputy General Manager (Manufacturing) of the plaintiff company in the unnumbered application is

treated as reply affidavit in this application.

5. In the third defendant's affidavit, it is alleged that the management refused to negotiate with the union unless the workmen agreed for 25%

increase in production and for incorporating the same in the settlement to be entered u/s 12(3) of the Industrial Disputes Act, 1987 and the union in

its General Body meeting held on 18th December 1988 unanimously decided to go on strike. It is stated that the Special Deputy Commissioner of

Labour has finalised the hearing in conciliation proceedings and must have sent his failure report and the Government is most likely to refer the

dispute for adjudication to the Industrial Tribunal. Reference is then made to the writ petition filed by the Company and the interlocutory orders

passed by this Court. The management is accused of suppression of material facts. Then it is stated that this Court has no jurisdiction as it is a

labour dispute and that the suit is not maintainable as the proceeding pending before the Labour Department constitutes res judicata. It is also

stated that having already obtained an order in the W.M.P. it is not open to the management to file the suit and get additional reliefs. Then the

management is accused of unfair labour practices as defined in Schedule V to the Industrial Disputes Act, 1947. It is stated that the management

has violated the orders of Venkataswami J. and a contempt petition has been filed by the Union. It is submitted that the workers are engaged only

in their legitimate trade union activities and the interim order of injunction sought is in conflict with the order already passed in the writ proceedings.

6. In the reply affidavit, the allegation that the management refused to negotiate is denied. It is stated that the relief claimed in the writ petition is for

a limited purpose and this suit has been filed comprehensively seeking relief in respect of infringement of civil rights. It is stated that the strike

without notice when conciliation proceedings are pending is illegal as the company is engaged in public utility service. The other allegations and

contentions found in the third defendant's affidavit are denied. It is stated that the company is having inland orders to the tune of Rs. 4 crores and

overseas orders to the tune of Rs. 2.08 crores and supplies have to be made before the end of March 1989. The necessity of a protective

injunction is reiterated.

7. Counsel on both sides argued vehemently emphasising their respective contentions. The short question which emerges for consideration is

whether on the facts and circumstances of the case, the plaintiff/applicant is entitled to interim injunction pending disposal of the suit.

8. The following crucial facts are not disputed before me :- (1) The plaintiff company is engaged in public utility service and the workers are

therefore employed in a public utility service within the meaning of Section 22 of the Industrial Disputes Act, hereinafter referred to as "the Act".

(2) No notice was issued by the defendants before commencement of the strike

(3) Conciliation proceedings were pending before the Special

Deputy Commissioner of Labour, Madras, at the time of commencement of strike and the said official advised the union before commencement of

the strike not to indulge in any direct action.

9. While the right to carry on any occupation, trade or business is a fundamental right recognised by Article 19(g) of the Constitution of India, right

to strike work is not a fundamental right at all. Yet, the latter has attained recognition by Courts of law as a legitimate weapon in the armoury of

Labour. Though the right to strike as a mode of redress of legitimate grievances

of the workmen is recognised in industrial jurisprudence, it is circumscribed by the provisions of the Act. It has to be exercised only after compliance with the requirements is prescribed in the Act. Chapter V

of the Act deals with strikes and lock-outs. Section 10(3) and 10-A(4-A) in Chapter III also contain provisions relating to strikes and lock-outs.

While Chapter V of the Act deals with commencement of strikes, the provisions in Chapter III deal with continuation of strike after references are

made. At present, it is not necessary to advert to Chapter III. Suffice it to indicate that the right to commence strike and continue the same is

regulated and controlled by the provisions of the Act. Any strike in contravention of the provisions of the Act is illegal (vide Section 24) and

penalty therefore is provided in Section 26 of the Act. Section 22 provides additional protection to public utility service by imposing certain

conditions for invoking the right to strike. The relevant part of the Section is as follows :-

Section 22(1) : ""No person employed in a public utility service shall go on strike in breach of contract -

(a) without giving to the employer notice of strike, as hereinafter provided within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) Before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

10. Section 2(n) of the Act defines a "public utility service" to mean ""..... (vi) any industry specified in the First Schedule which the appropriate

Government may, if satisfied that public interest so requires, by notification in the official Gazette, declare to be a public utility service for the

purposes of this Act, for such period as may be specified in the notification."" Once a notification is made under this Section, the provisions of

Sections 10(1), 12(1) and 22 are attracted. It is obvious that the Legislature wanted to provide safeguard to the running of public utility services in

order to obviate the inconvenience to the general public and society at large. The right to strike is not taken away but it should be exercised after

fulfilment of certain conditions. The purpose is to prevent a few workers from

holding the general public at ransom by indulging in lightning strikes.

11. In *Coimbatore Periyar District Motor Transport Munnetra Sangam v. Messrs. Siva Kumar Transport etc.* 99 L.W. 409 a writ petition was

filed for issue of mandamus against two police officials directing them to give police protection for taking out the petitioners buses from the garage

and helping them to run on their respective routes. It was alleged that in violation of a settlement u/s 12(3) of the Act, the workers went to strike

and prevented the petitioners from taking out the buses and plying them on their routes. The writ petition was allowed by a single Judge and an

appeal was filed by the workers' union after obtaining leave to appeal as the union was not a party to the writ petition. The argument advanced on

behalf of the appellant was that the effect of the strike resorted to by the workers would be weakened if the employers were allowed to ply the

vehicle on the respective routes and as there was no allegation of violence or indulgence in unlawful acts, police protection ought not to be given.

Negating the said contention and distinguishing the decisions cited by the appellant's counsel, the Division Bench dismissed the appeal after laying

down the law in the following terms :-

4. The above decisions cannot be taken as laying down any abstract proposition of law without any relation to the facts that in every case of

strike, the workers are entitled to prevent the removal of the goods, or ingress or egress of raw materials or other products, or that the workers

are entitled to gherao and prevent people from entering or coming out of the factory or the industrial premises. The ratio of the Judgments, in our

opinion, is that if the preventing of removal of the goods would involve only the monetary interest of the management and no public interest is

involved, the Court may consider not helping the management and not interfering in the dispute by way of any injunction orders. However, if the

facts and circumstances are such that it is just and necessary to permit the goods to be removed in order to prevent any waste or loss of goods, or

that the acts in relation to which injunction is prayed for will have no effect on public interest, then, injunction against interference with removal of

goods shall not be granted. If not granting an injunction will tantamount to affecting public interest, the court is duty bound to give such protection

as is needed. Therefore, each case will have to depend on facts.

5. There is no dispute that the first respondent in this case is a bus operator and is plying its buses between Tiruppur and Satyamangalam and

between Tirupur Bus stand and Cheyur in Triupur town service. Having regard to the fact that in this case not only the interest of the non-striking

workmen but also the interest of the public are involved, and if the route buses are not permitted to ply on the routes, the public will be

inconvenienced, no injunction against taking buses shall be granted. We are satisfied that the public interest outweighs in this matter. Not permitting

the buses from being taken out from the garage and put on the roads would certainly inconvenience the public. The alternative suggested by the

learned counsel for the appellant that if there is such a great inconvenience and prejudice caused to the public, the Government may step in and

take appropriate action, in our opinion, is not an answer and cannot be a justifiable ground for preventing the buses from being taken out of the

garage and put on the road. ...

12. Applying the above test laid down by the Division Bench to the facts of this case. I am satisfied that this is a fit case in which this Court should

help the applicant to carry on its activities and fulfil its obligations to supply materials to public sector undertakings of national importance.

Cessation of work in the plaintiff's factory causes great hardship and heavy loss not only to the plaintiff company but it has a far-reaching

consequence of causing great inconvenience to other vital industries of the nation which will considerably affect the nation's economy as such. It

will also prevent the earning of foreign exchange and the reputation of the country in the field of international trade and commerce will be at stakes.

The balance of convenience is undoubtedly in favour of the applicant.

13. Learned counsel for the defendants relied on the judgment of Sathiadev, J. in Indian Bank Vs. Federation of Indian Bank Employees Union

and Another, in support of his contention that the provisions of order XXXIX CPC cannot be invoked in cases of this type. He invited my

attention to the following passage in the judgment (pp. 130-131) :-

10. Relief of injunction, to be granted under Order 39, Rule I CPC is a discretionary remedy which Courts would grant, only if the requirements

contemplated therein are made out. Rule 1, of Order 39 CPC envisages granting of temporary injunction, if it is proved by affidavit or otherwise,

that the property in dispute is in danger of being wasted or alienated by any party to the suit, or wrongly sold in execution of a decree, or that the

defendant threatens or intends to remove or dispose of the property with a view to defraud creditors, and or that the defendant threatens to

dispose of the plaintiff or otherwise causes injury to the plaintiff in relation to any property in dispute in the suit.

12. Order 39 Rule 1 of the CPC lays down the circumstances under which temporary injunction can be granted and unless those circumstances

exist, a Court has no jurisdiction to grant interim injunction. Even if some of those circumstances exist, it has been repeatedly held by courts that

they would not compel the Court to grant relief in all cases in as much as the Rules say that only in the circumstances mentioned therein, the Court

may grant interim injunction. Therefore, the granting of an interim injunction pending disposal of the suit is purely within the discretion of the Court,

and this discretion has to be exercised in accordance with reason and on sound judicial principles. Equally, it has been held that grant of an in

junction is a serious matter and Courts should always take great care before grant of an injunction and confine it to cases where such an

injunction is essential. If the affected party can otherwise secure relief or if the nature of relief asked for, is one which could be decided only after

the trial of the suit, the Court should be circumspect before - ever granting temporary injunction. No doubt grant of injunction is an equitable relief,

but the Court has to comprehend to what extent by grant of an order of injunction as prayed for by a plaintiff, it would lead to uncertainty in

enforcing the order of injunction or may prove to be an order in the form but not in substance. The order of injunction does not come to an end by

mere granting of it, but it should be of such a nature that the so called acts likely to be perpetrated, could be granted by enforcement of an order

secured in a civil Court.

14. The passages relied on by learned counsel cannot be taken out of the context or divorced from the other findings arrived at by the learned

Judge in that case. The learned Judge has categorically found in paragraph 28 (p. 135) of the judgment that the plaintiff has come to Court with

unclean hands and therefore not entitled to the equitable relief or injunction. The relevant facts have been discussed in detail in paragraphs 18 to 27

of the judgment (pp. 132-135). Moreover, the attention of the learned Judge does not seem to have been drawn to the provisions of Order

XXXIX, Rule 2, Code of Civil Procedure, which enable the Court to grant an injunction restraining the defendant from causing injury of any kind in

a suit for injunction. The ratio of the judgment is not applicable to the facts of this case particularly in view of the judgment of the Division Bench in

Coimbatore Periyar District Motor Transport Munnetra Sangam case (supra) referred to already.

15. Learned counsel for the defendants relied on the following passage in the judgment of Nainar Sundaram, J. in Rama Vilas Service Ltd. and

Another Vs. Simpson and Group Companies Workers" Union and Another, :-

If cessation of work is the result of strike, it is not possible to lend the support of this Court to stultify the result of such cessation of work resorted

to by the workmen. The very effect of the strike resorted to by the workmen will be watered down if the managements, either by themselves or

through their customers, are permitted to remove the goods, either manufactured by the managements or coming into the custody of the

managements in the course of their trade. If the customers of the managements are to be permitted to remove the goods, by themselves without the

aid of the labour, that would tantamount to rendering the strike inefficacious, and to achieve that purpose, this Court should not lend its hands. It

could only be a matter of conciliation between the managements and their labour. ...

16. That judgment and in particular, the passage relied by learned counsel have been considered and distinguished by the Division Bench in

Coimbatore Periyar District Motor Transport Munnetra Sangam case (supra). The Division Bench has also pointed out that the learned Judge has

granted one of the injunctions prayed for by the plaintiff in that case. Further, the judgment under appeal before the Division Bench was that of the

same learned Judge which they confirmed.

17. Learned counsel invited my attention to the following passage in the judgment of the Supreme Court in Rohtas Industries Ltd. and Another Vs.

Rohtas Industries Staff Union and Others, as extracted by Nainar Sundaram. J. in Rama Vilas Service Ltd. and Another Vs. Simpson and Group

Companies Workers" Union and Another, :

The inevitable by-product of combination for cessation of work may be loss to the management but the obvious intendment of such a collective

bargaining strategy is to force the employer to accept the demand of the workers for betterment of their lot or redressal of injustice, not to inflict

damage on the boss. In short, it is far too recondite for an employer to urge that a strike, albeit illegal, was motivated by destruction of the industry.

A scorched earth policy may, in critical times of a war, be reluctantly adopted by a people, but such an imported motive is largely imaginary in

strike situations. However, we are clear in our minds that if some individuals destroy the plant or damage the machinery wilfully to cause loss to the

employer, such individuals will be liable for the injury so caused. Sabotage is no weapon in workers' legal armoury.

The question which arose before the Supreme Court was entirely different and has no relevance to the facts of this case. Nor does the passage

extracted above help the defendants in contending that under no circumstances this Court should grant an injunction which would have the effect of

whittling down a strike by workers.

18. It was next contended by learned counsel for the defendants that the plaintiff having already invoked the extraordinary jurisdiction of this Court

under Article 226 of the Constitution of India, cannot maintain this suit. The relief sought in the writ proceedings related to particular goods listed in

the annexure to the affidavit filed therein and the present suit is necessitated because of the continuance of the obstruction by the defendants. In

fact, the first defendant has taken a definite stand and warned the plaintiff that goods other than those listed in the said annexure should not be

removed from the factory. There is no substance in this contention.

19 The next argument advanced by learned counsel for the defendants is that the grant of injunction as prayed for by the plaintiff will only aid the

plaintiff to indulge in unfair labour practices set out in the Fifth Schedule to the Act, particularly in clauses 6 and 15 thereof. Clause 6 reads thus :

Clause 6 reads thus :-

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike"".

Clause 15 is as follows :-

15. To refuse to bargain collectively, in good faith with the recognised trade

unions.

Neither of the clauses is applicable in this case. There is no question of abolition of any work. The documents produced with the plaint *prima facie*

prove that the plaintiff never refused to bargain collectively. There is nothing on record at present to show that the plaintiff has indulged in unfair

labour practice. Learned counsel for the plaintiff draws my attention to clause 12 of the Fifth Schedule which reads thus :

To recruit workmen during a strike which is not an illegal strike.

The facts referred to earlier prove that the strike is *prima facie* illegal. In fact, learned counsel for the defendants admitted in so many words in the course of arguments that the strike is illegal. Hence, this argument also fails.

20. What remains to be considered is the relief to be granted to the applicant. Undoubtedly, the applicant is entitled to injunction as prayed for in

clauses (a) and (b) of prayer 2 in the application. As there is no allegation that the plaintiff will not be in a position to meet the demands of the

workers in the event of their charter of demands being accepted ultimately in the appropriate forum, there is no need for imposing any condition as

to deposit of any money. Of course, the plaintiff is bound to comply with the conditions imposed in W.M.P. No. 24106 of 1988 in W.P. No.

16129 of 1988 in so far as the goods listed in the annexure to the order dated 10th January 1989 made therein are concerned. As regards Clause

(c) in prayer 2, the plaintiff will not be entitled to an order as the defendants cannot be prevented from gathering or picketing outside the premises

of the plaintiff's factory. If they indulge in any unlawful acts, the police shall take action. If by gathering and picketing outside the factory premises

the defendants cause obstruction to the entry into and exit from the factory premises to the persons specified in clause (a) of prayer 2 and/or cause

obstruction to the movement of vehicles, materials etc., specified in clause (b) of prayer 2 of the application, then they will be guilty of violating the

order of this Court in this application. Any gathering and picketing by the defendants outside the premises of the plaintiff's factory shall be peaceful

and lawful and without in any manner violating the order of injunction passed in this case.

21. In the result, there will be an injunction as prayed for by the plaintiff/applicant in terms set out in clauses (a) and (b) of prayer 2 of the

application. The application is dismissed in so far as it relates to clause (c) of prayer 2 of the application. There will be no order as to costs.

Clauses (a), (b) and (c) of the prayers were as follows :

Prayer is to pass an Order of interim injunction restraining the Defendants/ Respondents 1 to 8, other members of the first Defendant and 25 their associates, agents and men from, in any way.

(a) preventing or obstructing casuals, temporary and contract workers, apprentices, loyal workmen and staff, candidates for employment,

customers, suppliers, inspectors and other visitors who will have ingress to and egress out of the factory premises on business :

(b) preventing or obstructing movement of vehicles, materials viz. materials bought out or imported or finished or semi-finished goods also to and

from its sub-contractors for processing and

(c) gathering and picketing within a radius of 100 yards from the entrance of the premises of the Plaintiff's factory.