

(1998) 11 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 1922 of 1990 (R)

Badri Narayan Saha and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 02-11-1998

Acts Referred:

Constitution of India, 1950 — Article 19, 19(6), 19(I)
Industrial Disputes Act, 1947 — Section 10, 10(3)

Citation : (1999) 47 BLJR 758 : (1999) 82 FLR 695 : (2001) 3 LLJ 998

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

R.A. Sharma, J.—The petitioners have filed this writ petition challenging the order dated May 29, 1990, passed by the Government of Bihar u/s 10 of the Industrial Disputes Act (hereinafter referred to as the Act) referring the dispute regarding the lock-out declared by them in their industry. The impugned order also contains direction under Sub-section (3) of Section 10 requiring the parties to stop strike/lock-out. There is also a challenge to the validity of Section 10(3) of the Act. On September 20, 1990, when this writ petition was heard for admission, the learned counsel for the petitioners made a statement confining this writ petition to that part of the impugned order by which direction has been issued u/s 10(3) of the Act. As this writ petition was filed in 1990, we enquired from learned counsel about the present state of affairs as regards the dispute which was referred to the Labour Court. The learned counsel stated that in view of the pendency of this writ petition and the interim order passed by this Court, proceedings before the Labour Court has not been concluded so far.

2. The petitioner No. 1 is a business concern carrying on business of Mica Processing and Fabrication. It has two units in one of which Mica Processing is done and in the other, the processed Mica is silvered and electronic components are manufactured out of it. There was labour problem in one of its units. On

February 24, 1989, the workmen of the said unit during the factory hours took out procession, confined officers and staff of the factory and subjected them to inhuman treatment. The petitioner filed a complaint regarding the said acts of the workmen before the Chief Judicial Magistrate, Giridih. The Sub-Divisional Officer and the Assistant Labour Commissioner, Giridih, were also informed about it. The workmen went on strike with effect from February 25, 1989 and the strike continued unabated. The petitioners' case is that on account of the continued strike, they suffered heavy loss on account of which they suspended their business with effect from December 4, 1989 till further order say in exercise of power under the Standing Orders. The Government of Bihar thereafter vide order dated May 29, 1989, has passed the impugned order. Hence, this writ petition.

3. Only the respondent Nos. 2 and 3, namely. State of Bihar and Under-Secretary. Government of Bihar, Department of Labour Employment Training, Bihar, Patna, respectively, filed counter-affidavit and the petitioners filed rejoinder affidavit in reply thereto. No other respondents filed counter-affidavit in spite of service of notice on them. We have heard the learned counsel for the parties.

4. The learned Counsel for the petitioners has made three submissions, namely, (1) Sub-section (3) of Section 10 being violative of Article 19(1)(g) of the Constitution of India is ultra vires, (ii) the impugned order u/s 10(3) was passed without giving any opportunity of being heard to the petitioners and (iii) the Government has no jurisdiction to pass any such order u/s 10(3) of the Act when what is referred is the legality and propriety of the lock-out itself.

5. Section 10(3) of the Act is reproduced below:

"10(3) 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 lock out in connection with such dispute which may be in existence on the date of the reference."

6. The object of the Act is to provide machinery and forum for investigation and settlement of industrial dispute, maintain peace and harmony and prevent industrial tension. Section 10(3) of the Act is one of the provisions which have been enacted to achieve the said object. It does not confer any arbitrary or uncanalised power on the Government. It contains guidelines, namely, to ensure peaceful atmosphere for settlement of industrial disputes. This is a valid provision under which an order can be passed by the Government to meet the emergent situations and the order passed thereunder operates only for a limited period till the dispute is settled by the Labour Court/Industrial Tribunal. The submission of the learned counsel for the petitioners is that Section 10(3) violates fundamental rights of the petitioners conferred by Article 19(1)(g) of the Constitution. He submits that the right to carry on business includes the right to close it down. He placed reliance on *Excel Wear and Others Vs. Union of India (UOI) and Others*, wherein the Apex Court declared the provision of Section

250 of the Act as ultra vires Article 19(1)(g) of the Constitution. u/s 10(3), the Government cannot pass any order effecting the closure of an undertaking. Under the said provision, the Government can pass an order prohibiting continuance of strike or lock-out only. Closure and lock-out are two different concepts under the Act. Section 2(cc) of the Act defines closure as "the permanent closing down of a place of employment or part thereof." Section 2(e) contains the definition of lock out, according to which, it means "temporary closing of a place of employment or the suspension of work or the refusal by an employer to continue any number of persons employed by him". The Supreme Court in *Excel Wear v. Union of India* (supra) was dealing with a case u/s 250 which provided for closure of an undertaking. In the instant case, the petitioners have not closed their business but have merely declared lock-out. The said decision, therefore, cannot be of any assistance. That apart, the order passed u/s 10(3) of the Act is only of temporary duration, i. e., till the matter is settled by the Labour Court/Industrial Tribunal. The restriction placed by an order passed u/s 10(3) is a reasonable restriction which is squarely covered by Clause (6) of Article 19 of the Constitution. The first submission of the learned counsel is accordingly rejected.

7. In support of his second submission, the learned counsel has placed reliance on *Malayalam Plantations (India) Ltd. and Another Vs. Workmen of Kaliyar Estate and Others*, and *Chettiar & Sons v. State of Kerala*, 1970 I LLJ 27. In these two cases, the Kerala High Court has held that before passing an order u/s 10(3) of the Act, the parties to the dispute should be given an opportunity of being heard. The other High Courts have, however taken a different view holding that no such opportunity of hearing is contemplated u/s 10(3) of the Act. In this connection, it is sufficient to refer to *Harish Vijaykumar Khaitan and another Vs. State of Maharashtra and others*, , wherein after noticing the views of the various High Courts on this question, the Division Bench of the Bombay High Court held that it is not incumbent on the Government to issue notice to the parties and give them an opportunity of being heard before passing an order u/s 10(3) of the Act. While holding as above, the Court observed that the purpose of Section 10(3) would be defeated if the Government is to hear the concerned parties before passing any order thereunder because such a process will result in considerable delay in passing the order which would negate the very purpose for which the said provision was enacted.

Section 10(3) has been enacted to meet the emergent situation so as to maintain peace and harmony in the establishment during the pendency of proceedings before the Labour Court/Industrial Tribunal. The order passed thereunder is of limited duration and it lapses after the award has been given by the Labour Court/Industrial Tribunal. If the Government is to hear the parties before passing the order thereunder, the very object of enacting the provision will be frustrated due to delay in passing such order. We respectfully agree with the views expressed by the Bombay High Court in *H.B. Kaitan v. State of Maharashtra* (supra). The second submission of the learned counsel for the

petitioner is accordingly rejected.

8. The third submission of the learned counsel has, however substance. Section 10(3) provides that where an industrial dispute has been referred to a Labour Court, the Government can by order prohibit the continuation of any strike or lock-out connected with such dispute. But the strike or lock-out, the continuance of which can be prohibited under the said provision, must be different from the dispute that has been referred. In the instant case, that is not the position. What has been referred to the Labour Court by the Government is the question about the validity/propriety of the lock-out itself. Lock-out is, therefore, not connected with the dispute that has been referred but it itself is a dispute. In such a case, Section 10(3) cannot be attracted. The Division Bench of Rajasthan High Court in *Maharaja Kishangarh Mills Ltd. Vs. State of Rajasthan*, in this connection, has laid down as under:

"...Where, therefore, a lock-out or a strike has been resorted to by any one of the parties to an industrial dispute and where such strike or lock-out is in connection with such dispute an order u/s 10(3) might be made for prohibiting the continuance of such strike or lock-out. But where the strike or lock-out is not in connection with any dispute but is itself a dispute it cannot be said that an order u/s 10(3) could be made within its meaning.

In order that the strike or lock-out may be in connection with a dispute it is necessary that the strike or lock-out should be something different from the dispute itself. A strike or lock out which is the subject-matter of the dispute itself cannot be termed to be a strike or lock-out in connection with such a dispute within the meaning of Section 10(3). A strike or lock out which is itself a dispute would not justify an order u/s 10(3) for its prohibition because the language of Section 10(3) requires that a strike or lock-out should be in connection with a dispute, in order that an order for its prohibition might be made by the Government. Where the strike is not in connection with a dispute but is itself a dispute the matter is quite different and would not justify an order of prohibition...."

In this connection, reference may also be made to *W. & S.E.N. (Pvt.) Ltd. v. E. W. (Pvt.) Ltd.* AIR 1961 Mad. 331, wherein the Division Bench of the Madras High Court held as follows:

"...Still we do think that the action of Government u/s 10(3) of the Act was misconceived in this peculiar case. Clearly, what the Legislature intended by enacting this sub-section was to clothe the Government, with emergency powers, where the continuance of the strike or lock-out, as the case may be, threatened public safety. Where the very fact of lock-out is in dispute, and the employer claims to have closed down his business for good, the use of this power is clearly improper and erroneous; virtually it amounts to a coercion of the employer to continue in his business, notwithstanding his intention to close down, and that is contrary to law...."

In H.B. Kaitan v. State of Maharashtra (supra), the Bombay High Court has also laid down that "the continuance of strike or lock-out can be barred u/s 10(3) only if the strike or lock out is connected with the dispute that is referred for adjudication."

9. This writ petition is accordingly partly allowed. That part of the impugned order which contains directions u/s 10(3) of the Act is quashed. No costs.