

(2011) 08 BOM CK 0223

In the Bombay High Court

Case No : O.O.C.J. Writ Petition (I) No. 1472 of 2011 and W.P. (L) No. 1517 of 2011

Bharat Petroleum Corporation Limited

APPELLANT

Vs

Petroleum Workmen's Union and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10(3), 10(3), 2(q), 22

Citation : (2011) 131 FLR 352

Hon'ble Judges : R.Y. Ganoo, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : J.P. Cama, R.S. Pai and Mahesh S. Londha, instructed by Sanjay Udeshi and Co, for the Appellant; Jane Cox, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—Heard Counsel for the parties. By this Writ Petition under Article 226 of the Constitution of India, the petitioner Corporation seeks declaration that the proposed strike of the respondent Unions, pursuant to the strike notices dated 6th July, 2011 and 12th July, 2011, in the respective matters is illegal and unjustified.

Briefly stated, the respondent Unions gave notice of strike on 6th July, 2011 and 12th July, 2011 respectively. As a consequence of strike notice, the matter was discussed before the Conciliation Officer and Deputy Chief Labour Commissioner (Central); Mumbai on 28th July, 2011 and 29th July, 2011 in the pending Conciliation Proceedings. The petitioner Corporation anticipating that the Respondent Unions would take the strike notice forward had already filed Writ Petition in this Court on 22nd July, 2011. However, in view of the stand taken by the concerned Unions before the Conciliation Officer on 28th July, 2011 and 29th July, 2011, that they would not defer the strike proposed on 3rd August, 2011, the petitioner Corporation has moved both the petitions before us today.

Considering the limited issue raised in the present writ petitions of declaring the proposed strike of the respondent Unions as illegal, coupled with the fact that the strike is scheduled to be observed on 3rd August, 2011, i.e. tomorrow, we thought it appropriate to hear the matters immediately.

2. The Counsel appearing for the respondent Unions raised preliminary objection regarding maintainability of the writ petition. The first preliminary point raised by the respondent Unions is that no writ can be issued against the respondent Unions who are private parties. Insofar as this contention is concerned, in our opinion, the same is already answered against the Unions in the decision of this Court in *Bharat Petroleum Corporation Ltd. and Anr Vs. Bharat Petroleum Employees Union and Others*, . Indeed, in that decision the Court expressed prima facie opinion with regard to the issue of maintainability of the writ petition against the Union. Considering the exposition in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , it is well established position that if the private body is discharging public duty, writ of mandamus can be issued against such body. Insofar as the respondent Unions are concerned, they are no doubt private bodies. However, considering the fact that the petitioner industry is a Government Company and already notified under the provisions of Essential Commodities Act, vide Order dated 30th July, 2011, the employees of the petitioner Corporation are under public duty to secure the uninterrupted equitable distribution and availability of the supplies of essential commodities at the sales outlets of the petitioner Corporation. The Union, being representative of the interests of all the employees is equally obliged to ensure that its members discharge their public duty. As observed by the Apex Court in paragraph 21 of the abovesaid decision, the writ of mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The Apex Court observed that the judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartments. Mandamus is very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. Following the dictum in the said decision, we have no hesitation in rejecting the preliminary objection taken by the Counsel for the respondent Unions that no writ under Article 226 can be issued against the Unions who are private parties.

3. The second contention raised by the respondent Unions is that the petitioner has alternative remedy to proceed against the employees who resort to the illegal strike such as by prosecuting them u/s 26 of the Industrial Disputes Act. Moreover, the dispute regarding illegality of the strike is a matter which can be referred u/s 10 of the Industrial Disputes Act, 1947. Moreover, u/s 10(3) of the Industrial Dispute Act, the Government can issue prohibitory orders. Even this objection does not commend to us. Insofar as the remedy of section 26 is concerned, that prosecution can be launched against the Workmen who have indulged in illegal strike, but is not an alternative and efficacious remedy to

prevent such strike. The argument that the Government can issue prohibitory order u/s 10 (3), clearly overlooks that such order can be issued only in a case where the industrial dispute is referred to the concerned forum. That provision cannot be invoked when the conciliation proceedings are pending between the parties. Considering the above, the decisions pressed into service by the Counsel for the Respondent Unions in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, and *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, are of no avail to the respondents.

4. In our opinion, therefore, neither the objection regarding permissibility of issuing Writ against the Unions in the fact situation of the present case or the fact that the petitioner has alternative remedy can be sustained.

5. Reverting to the merits of the controversy, it is indisputable that conciliation proceedings are pending between the parties. During the pendency of the conciliation proceedings the Respondent Unions have issued strike notices on 6th July, 2011 and 12th July, 2011 respectively. The question is whether it is open to the Unions to declare a strike or open to its members to proceed on strike during the pendency of the conciliation proceeding. The answer is an emphatic "No". For, section 22 of the Industrial Dispute Act, which is applicable to the present case, clearly mandates that no person employed in Public Utility Services shall go on strike in breach of contract. Clause (d) of sub-section (1) thereof provides that during the pendency of any conciliation proceedings before the Conciliation Officer and seven days after the conclusion of such proceedings, the employees of the Public Utility Services cannot resort to strike. It necessarily follows that the impugned strike notices given by the respective respondent Unions are contrary to the mandate of section 22(1)(d); and that if the employees were to act upon the said intention it would be a illegal strike. Even going by the general provisions of Strike and Lock Out, as contained in section 23 of the Act, the Workmen of Industries other than the Public Utility Services are also prohibited from going on strike during the pendency of the conciliation proceedings and seven days after the conclusion of such proceeding. Section 24 of the Act clearly provides that the strike or lockout shall be illegal if it is commenced or declared in contravention of section 22 or 23 of the Act. Considering the expansive provision in section 24(1)(i) of the Act, the notice of strike issued by the Respondent Union would be covered by the expression "declaration". It is an intention expressed by the Union and its members to proceed on strike which will be clearly in violation of section 22(1)(d) in the fact situation of the present case. In our view, therefore, the strike notices issues by the respondent Unions on the face of it are illegal and cannot be taken forward.

6. The Counsel appearing for the petitioner has invited our attention to the order passed by the Delhi High Court, issued against the workmen Union in Suit Being C.S. (O.S.) 1743 of 2011 in respect of notice of strike dated 6th July, 2011 given by the Union of the Employees of the Petitioner Corporation referred to therein.

While dealing with similar argument in paragraph 22 of the said decision, the Delhi High Court has referred to the exposition of the Apex Court in the case of Syndicate Bank and another Vs. K. Umesh Nayak, , in particular paragraph 29 thereof which reads thus:

29. The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is a use by the labour of their economic power to bring the employer to see and meet their view-point over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal of work overtime when it is compulsory and a part of the contract of employment, "irritation strike" or staying at work but deliberately doing everything wrong, "running-sore strike", i.e. disobeying the lawful orders, sit-down, stay-in and lie-down strike etc. etc. The cessation of stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lock-out and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lock-out as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

(Emphasis supplied)

7. Applying the exposition in the said decision and in view of the finding reached by us that the impugned strike notices issued by the respondent Unions dated 6th July, 2011 and 12th July, 2011, as the case may be, are illegal, the writ petitions ought to succeed in terms of prayer clause (a).

8. The petitioner has asked for further relief in terms of prayer clause (b) which reads thus:

that this Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction restraining the Respondent Nos. 1 and 2 Unions, its office bears and members from resorting to/commencing/continuing any strike including go slow, work to rule or any other agitational activities on 3rd August, 2011 or on any day thereafter as threatened in strike notices dated 6th July, 2011, being Exhibits "A" and "B" hereto, or disrupting the day-to-day activities of the petitioner at its

operating locations and offices spread over Western Region in any manner whatsoever.

(Note:--In the companion matter Writ Petition (L) No. 1472 of 2011, the Respondent Unions are four in number and have issued strike notices on 12th July, 2011. Rest of the relief is identical.)

9. The Counsel appearing for the Unions submits that atleast this relief should not be granted. According to the learned Counsel for the Union the expression strike has been defined in section 2(q) and the relief which is sought is beyond the intention expressed by the Union in the strike notice dated 6th July, 2011 and 12th July, 2011 respectively. Assuming that we were to accept this contention of the Union, it is unfathomable that the employees of the respondent Unions can be heard to say that they have the right to sit down, stay in, and resort to lie down or go slow during the working hours between 7.45 a.m. of 3rd August, 2011 to 7.45 a.m. of 4th August, 2011. As observed by the Apex Court in paragraph 29 of the case of Syndicate Bank (supra) we have no hesitation in taking the view that even such attempt of the employees of the respondent Union would be illegal and cannot be permitted which will have the same effect of allowing them to go on illegal strike inspite of the contentious issues between the petitioner Corporation and the Union are pending in conciliation proceedings. In the circumstances, we accede to the request of the petitioners in issuing writ even in terms of prayer clause (b) of the respective petitions.

10. Accordingly, writ petitions are allowed. Rule is made absolute in terms of prayer clauses (a) and (b) of the respective petitions with no order as to costs.

11. At this stage, Counsel for the petitioner has made oral request that the order passed today be communicated to the incharge of the police officers of the concerned police stations as was done in the case between same parties in Writ Petition (L) No. 2055 of 2011 by Another Division Bench (Chief Justice Mohit Shah and Dr. D.Y. Chandrachud, J.), which offices in turn will have to enforce the law and order situation in their area of jurisdiction. This prayer is opposed by the Counsel for the respondent Union. We fail to understand as to how the respondent Union can object to communication of this order passed by us today to the concerned police stations who may be responsible for maintaining the law and order situation in their area of jurisdiction. Accordingly, we accede to the request of the petitioner Corporation and permit the petitioner to communicate the order passed today to the following police stations for necessary action:

- (i) RCF Police Station, Chembur,
- (ii) Vashi Naka Police Station, Mumbai.
- (iii) MRA Marg Police Station, Mumbai.
- (iv) Phaltan Road Police Station, Mumbai.
- (v) R.A. Kidwai Marg Police Station, Mumbai.

- (vi) Cuffe Parade Police Station, Mumbai,
- (vii) Wadala Police Station, Mumbai.