

(2001) 03 BOM CK 0128
In the Bombay High Court
Case No : Writ Petition No. 557 of 1997

Bharatiya Arogya Nidhi

APPELLANT

Vs

Bombay Labour Union and Another

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 101, 101(1)
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 12, 22

Citation : (2001) 4 ALLMR 118 : (2001) 3 BOMLR 809 : (2001) 2 LLJ 292 :
(2001) 4 MhLj 64

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mr. A.V. Bukhari, for the Appellant; Mr. Mihir Desai and Mr. B.V. Phadnis, for the Respondent

Final Decision : Allowed

Judgement

R.J. Kochar, J.—Ailing patients cannot be left ailing and unattended. Hospital beds are not the lifeless rattling machines in a factory which can be deserted by the striking workmen. To strike work in a hospital is to strike at the patients to deepen their unhealed wounds. This would apply to all - doctors, nurses or ward boys. Following this philosophy the Legislature did a wise thing to exclude "hospitals" from the net of "industry" and to take them out of the clutches of the Industrial Disputes Act, 1947. What was legislatively conceived was however administratively aborted. The 1982 amendment has not been yet brought in force even after 18 long years. The new century has dawned but the Executive is still groping in dark in search of courage to enforce the legislative mandate.

2. It is clear from the Union's letter dated 29.12.1986 that the strike was not for any economic demands. Needless to mention that the Petitioners have severely suffered as a hospital at the hands of their striking workmen who left the bed-ridden patients in lurch to pressurise the management to accede to their

otherwise unjustified demand to withdraw dismissal order passed against the employees. To protect the erring employees who were dismissed for their acts of misconducts after holding domestic enquiries against them. A general and vague mention of harassment was made in the letter dated 29.12.1986 and a threat of strike was also given if both those workmen were not reinstated. The Union could have challenged the impugned dismissal orders under the Law and could not have struck work in the hospital. It is also pertinent to note that finally it has given up the claim of reinstatement of one workman who was found guilty of assault on a Matron in her room.

3. If the Petitioners were wrong, their action could have been challenged before the Court of Law and it was not at all proper and justified for them to strike work. According to the Petitioners, the strike was not only Illegal and unjustified but was contrary to the prohibitory orders Issued by the State Government u/s 22 of the Industrial Disputes Act, as the Hospitals have been declared as a "public utility service" by its Notification dated 14.8.1986 u/s 22 all strikes in any public utility services are banned without a strike notice. According to the Petitioners the strike was commenced and continued by 85 workmen from 2.1.1987 to 16.2.1987 without any notice either under the 1. D. Act or under the M.R.T.U. and P.U.L.P. Act. 1971, It is their case that the strike in contravention of these provisions is per se Illegal and that there is no necessity of getting it declared illegal for the purpose of disciplinary action to be taken under the Standing Orders.

4. It is the case of the Petitioners that on and from 2.1.1987 all the Class IV employees and technicians working in the X-Ray & Pathological Laboratories resorted to an illegal lightening sit-in-strike. The Petitioners had informed the Union and the employees that their strike was in contravention of the provisions of law and was an illegal strike. On 4.1.1987 the Petitioners gave an opportunity to the workmen to withdraw the strike and Join their duties on giving an undertaking of working after entering the hospital. The Union and the workmen did not budge and no undertaking was given by any workmen and they continued to remain on the hospital premises giving abusive slogans against the management. On 9.1.1987 the Petitioners' Administrative Shri S. H. Parekh was gheraoed and abused and was not allowed to leave the hospital premises until the Police intervened. The Petitioners had approached the Industrial Court against the Union and the workmen for a declaration that they had engaged and were engaging in an unfair labour practice within the meaning of Items 1, 5 of Schedule III of the M.R.T.U. & P.U.L.P. Act and obtained an ad interim injunction against them. On 16.2.1987 the Respondent Union filed a Petition in Complaint (U.L.P.) No. 123 of 1987 withdrawing their strike.

5. Meanwhile the Petitioners had resorted to disciplinary proceedings against the 13 striking employees and against the two others for other acts of misconducts committed by them. All were served with charge-sheets whereby it was alleged against them that they had resorted to an illegal strike with effect from 2.1.1987

and that they had instigated other workmen to join the said illegal strike and that they were indulging in the acts of intimidating, threatening and coercing other employees to join the said strike and refrain from carrying out their duties. It was further alleged against them that on 9.1.1987 at 8.45 hours Shri S. H. Parekh, the Administrator, who was reporting for work in the hospital was abused and at 12.30 hours when he was leaving the hospital he was gheraoed and was prevented from going out of the premises and that he was abused in filthy language and in this manner he was prevented from doing his official work. The charges were more or less common. The abuses used by the striking workmen need not be reproduced here. I can only say that the abuses cannot be tolerated by any civilised decent person. Even a workman, if he is abused in that language would not tolerate. All the 13 charge-sheeted striking workmen were called upon to furnish their explanations. The management instituted domestic enquiries against the charge-sheeted workmen who had participated in the enquiry. After receiving the findings of the Enquiry Officer the Petitioners issued dismissal orders dated 20.8.1987 against all the 15 workmen dismissing them from employment.

6. Aggrieved by the said dismissal orders the Respondent Union raised an industrial dispute and prayed for the relief of reinstatement with full back wages and continuity of service. The said industrial dispute of all the 15 workmen was referred for adjudication to the Labour Court u/s 10(1) read with Section 12 of the Act. Both the parties completed their pleadings and adduced their documentary and oral evidence before the Labour Court. The Labour Court after hearing the parties on the preliminary issue of fairness and propriety of the enquiry and the findings of the Enquiry Officer gave its Part-I Award as far as the common charge of going on an illegal strike is concerned the Labour Court has taken a view that since there was no judicial pronouncement by any Court of Law that the strike was illegal, the misconduct of going on an illegal strike was held not to be proved. According to the Labour Court before holding a workman guilty of going on an Illegal strike the employer must get such strike declared illegal before taking any disciplinary action on that ground. The Labour Court however has agreed with the findings of the Enquiry Officer in respect of other charges such as abusing, riotous behaviour or commission of act subversive of discipline, wilful insubordination etc. The Labour Court therefore has concluded that "the findings of the Enquiry Officer are perverse in respect of enquiries except enquiry No. 1 and 6 on the point of going on an Illegal strike". He therefore gave an opportunity to the Petitioners and the Union to adduce evidence, if any.

7. The Labour Court gave its final Award on 14.10.1996 allowing the reference partly. It directed the Petitioners to reinstate 13 striking workmen with full back wages and continuity of service. The Labour Court also ordered reinstatement of Mrs. Mariamma J. Chako, with 75% back wages and continuity of service with effect from 21.8.1987. The Labour Court however rejected the reference of Shri Krishna J. Raikar.

8. The Petitioners have challenged the aforesaid awards before this Court under Article 226 of the Constitution of India. At this stage Itself it requires to be mentioned that Shri Bukhari the learned Counsel for the Petitioners has fairly made a statement that the Petitioners are not challenging order of reinstatement with 75% backwages awarded to Mrs. Mariamma J. Chako. It needs to be clarified that the said Mrs. Chacko was not one of the striking workmen but she was charged of some other misconduct not connected with the strike. It appears that there was some lapse on her part in her duty and her explanation was that she had also to look after her nine months old Baby. In these circumstances I agree with the findings of the Labour Court in quashing and setting aside the Order of dismissal of Mrs. Chacko and directing the Petitioners to reinstate her with 75% backwages. I fail to understand the logic of the Labour Court in granting full backwages to all the 13 workmen who were found guilty of several misconducts such as abusing, gherao etc. while Mrs. Chacko who had not indulged any of such serious acts still she was denied 25% backwages byway of punishment for her minor lapse. It appears that Mrs. Chacko has accepted the punishment of 25% backwages. According to me, even this punishment is very harsh considering her explanation. The Management should take kind and lenient view towards her and gracefully pay her full backwages in its discretion. It may however, "issue an order of warning by way of punishment for the lapse committed by Mrs. Chacko. I must place on record the sense of grace displayed by the Petitioners at the instance of the learned Counsel Shri Bukhari, who appears to have prevailed over the management to accept the verdict of the Labour Court in respect of Mrs. Chacko. I hope the management to extend its grace further by granting her balance of 25% backwages. Mrs. Chacko however can be and should be issued a letter of warning for the lapse committed by her.

9. It is not the management alone which has displayed a sense of grace in this matter. It is also the Respondent Union which has behaved gracefully as far as the dismissed workman Shri Krishna J. Raikar is concerned. Though he was also not one of the striking workmen but the charges leveled against him were far more serious and heinous i.e. physical assault on the hospital's Matron in her room. The Labour Court has rightly rejected his reference and the Union has rightly not espoused his cause in this Petition. It appears that even Shri Raikar has accepted his fate in the final Award of the Labour Court and has not carried the matter further.

10. Now I deal with the charges against the 13 striking workmen, who have been reinstated by the Labour Court with full back wages and continuity of service w.e.f. 20/21/22.8.1987.

11. Shri Bukhari the learned Counsel for the Petitioners-Hospital has strenuously submitted that the Labour Court has committed a serious error of law in holding that the act of misconduct of illegal strike cannot be leveled against the workmen as there was no judicial pronouncement of legality of the alleged strike and therefore the workmen had not committed such misconduct. This view of the

Labour Court has been seriously assailed by the learned Counsel. In my opinion it is not at all necessary for the employer to get first declaration of a strike as illegal and then to initiate a disciplinary action against the striking workmen. The misconduct of going on an illegal strike or abusing, instigating and acting in furtherance thereof is to be decided by the employer. It is for the employer to assess whether the workmen had resorted to a strike legal or illegal. It is not at all necessary to get a declaration from a Court of Law about the legality or otherwise of the strike. If we take this view that the all legal or illegal strikes should be proceeded by a judicial enquiry in that case it will be almost impossible for any employer to charge the striking workmen for going on an illegal strike or any acts in furtherance of such illegal strike. If the Labour Court which is the Court of first instance pronounces holding the strike illegal, such verdict would be challenged in appeal/revision before the Industrial Court or before the High Court and finally before the Supreme Court. In this process not less than two decades would be over. By that time many of the striking workmen would have retired and no action of any nature against them would be feasible or even desirable after such a lapse of time. The Clause 24(B) of the Model Standing Order is as under :

"Going on an illegal strike or abating, Inciting, instigating or acting in furtherance thereof."

There is another clause 24(d) which reads as under :

"theft, fraud or dishonesty in connection with the employers" business or property or the theft of property of another workman within the premises of the establishment :"

Had the Legislature Intended that the strike should have been first declared illegal by a competent Court in that case the language would have been, as used by the Legislature in the Bombay Industrial Relations Act, 1946 in the similar circumstances. Section 101 of the said Act provides for penalties and prohibits employer from dismissing or punishing an employee in the circumstances prescribed therein with which we are not presently concerned. Section 101(1)(g) reads as under :

"101(1) No employer shall dismiss, discharge or reduce any employee or punish him any other manner by reason or the circumstances that the employee.

(g) has gone on [or joined or instigated] a strike which has not been held by a Labour Court or the Industrial Court to be illegal under the provisions of this Act."

12. The Legislature has specifically intended that If any employee is to be punished for his participation in an Illegal strike in that case such a strike should have been first judicially pronounced as illegal under the above provisions. The employer cannot dismiss or punish an employee unless and until the strike is held by a Labour Court or Industrial Court to be illegal under the provisions of that Act. We cannot read the aforesaid language when it has not been

deliberately used in the Standing Orders. The language under the Standing Orders is simple as mentioned above that an act of going on an illegal strike would amount to a misconduct. In my opinion it is for the employer himself to bona fide come to a conclusion whether the strike is legal or illegal. He need not first go to a Court of Law and get a decision about the legality or illegality of such a strike. He can merely consider the provisions of the law in respect of strike whether it is legal or illegal. By and large It is well known that a strike which is not preceded by 14 days or 21 days notice is illegal. If the employees go on a strike without such notice would be per se an illegal strike. Testing the argument of the Union and the conclusion of the Labour Court there should be a judicial declaration about the legality of the strike before charging the workmen of the misconduct that they had gone on an Illegal strike the same logic will have to be applied to the other misconduct viz. 24(d) in respect of theft, fraud etc. Theft and fraud or dishonesty have definite legal connotation and ingredients as prescribed under the Indian Penal Code. Can it therefore be said that the employer cannot take any action against a workman for an act of theft, fraud or dishonesty unless and until he is held guilty by a competent Criminal Court under the criminal law? It would be impossible to take any disciplinary action against such workmen who commit theft, fraud or dishonesty until they are held guilty of such offences by the Criminal Courts. This certainly is not the intention of the disciplinary proceedings contemplated under the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. Similarly if a workman is found drunk on the premises, extending the same logic of the Union and the Labour Court that such a workman should be first subjected to medical test in any public hospital and then only he can be charged of the act of drunkenness while on duty, it would lead to absurd results. We therefore cannot construe the Standing Orders in this manner which would lead to absurd results and would make the disciplinary proceedings totally unworkable. I therefore hold that resort to the disciplinary proceedings against the workmen who have gone on a strike would be wholly legal and fully justified if the employer bona fide believes and decides that the strike resorted to by the workman is an Illegal strike and he need not go to a Court of law to get it declared Illegal. I therefore, hold that the view taken by the Labour Court is totally erroneous and is required to be quashed and set aside. The Labour Court has held that since the strike was not declared illegal the act of misconduct of going on an illegal strike etc. was not proved before the Enquiry Officer and therefore, the findings of the Enquiry Officer have been held perverse by the Labour Court. I therefore, hold that the findings of the Enquiry Officer are not perverse and are fully justified in the given circumstances. The act of misconduct of going on an illegal strike from 2.1.1987 to 16.2.1987 in the Petitioners Hospital stands fully proved. There is another very important and crucial aspect and that is that the State Government has declared the Hospital as public utility services u/s 22 of the Industrial Disputes Act, 1947 and a strike in any such public utility services in contravention of Section 22 of the Industrial Disputes Act would be per se illegal. The strike has been totally prohibited in public utility service by the notification Issued by the

State Government. The strike resorted to by the workmen of the Petitioners Hospital is in contravention of the said prohibitory orders of the State Government issued u/s 22 of the I.D. Act and therefore, this strike is per se illegal as it violates the said notification and the prohibition orders.

13. A strike in a hospital is to be treated entirely different from a strike in a factory. A strike in a public utility service such as public transport also is to be treated differently as the hardship caused to the public at large is tremendous. The employees in the hospital as well as in any public utility services cannot resort to the weapons of strike lightly. There has to be a very serious cause for use of such extreme weapon of strike. In the present case I do not find any such extreme or death necessity for the workmen to have resorted to a lightening strike leaving patients in the hospital unattended in their awful conditions. According to me, any strike in a hospital, nursing or maternity home has to be condemned as anti society. Even if technically it might be legal after 14 days notice there can be no justification for such a strike or any strike in any hospital, nursing or maternity home. The patients do not come to hospital or maternity homes voluntarily; they are constrained to get themselves admitted for reliefs. Whatever may be the demands, even Justified. I cannot justify the use of the extreme weapon of strike by the employees of a hospital. They must approach the adjudicating machinery and according to me, even adjudicating machinery must deal with their grievances as quickly as possible and give them relief in accordance with law expeditiously. Similarly I would also condemn a management or administration of a hospital which does not pay immediate attention to the grievances of the hospital employees and adopt a cavalier or callous attitude. I would also exert all such socially conscious trade unions not to lead the hospital employees to any strike, a legal or even justified. They must lead the life showing the workmen the path of adjudication for their demands. In the present case the 13 workmen amongst 85 who have been charge-sheeted and dismissed for their acts of misconduct of going on an illegal strike, which according to me, would be enough to impose the punishment of dismissal. In paragraph 30 of the final Award of the Labour Court the charges against the individual 13 workmen have been analysed. All the 13 employees are held guilty of going on an illegal strike from 2.1.1987 to 16.2.1987 and also guilty of abusing, riotous and disorderly behaviour, commission of acts subversive of discipline, wilful subordination. Some of them are also held guilty of Inciting and instigating the workmen to go on an illegal strike and the remaining have not been held guilty of inciting, instigating, drunkenness, manhandling assault and insubordination. In my opinion the charges proved against the 13 workmen would I be enough to impose on them the extreme penalty of dismissal in the present case. I am not able to agree with the submission of Shri Desai for the Union that they have been picked and chosen by the management as from 85 who were on strike only 13 have been picked up. Shri Desai has submitted that to choose and pick up 13 shows the discrimination without any reason or justification. I would look from another angle that the management has picked

up only those who were in the forefront and were active in leading the workmen for an illegal strike and other acts of misconducts. The Management has left and spared those who were "dumb followers". It shows the sense of responsibility of the hospital management. I therefore do not find any substance in the contention of Shri Desai that the Management had acted vindictively by discriminating 13 out of 85 to punish. I do not find any element of victimisation of an attitude of vindictiveness or mala fides in the orders of dismissal passed against the 13 strike workmen. The Management had offered on the very 3rd/4th day that the workmen should join the duties after giving an ordinary undertaking that they would work after entering the hospital. Had the management been vindictive against the striking workmen in that case no such offer would have been made. According to me, the Petitioners Management had acted rightly, legally and bona fide in dealing with 13 workmen who were found guilty of going on illegal strike coupled with overt acts alleged and proved against them. A strike in any factory would cause loss of production which can be compensated but a strike in a hospital might cause loss of life of an innocent patient who might be an only bread winner in a family which would be left destitute and the children who would compensate for such a loss if it were to result from the irresponsible action of a strike legal and even justified?

14. In the view which I have taken I need not reproduce the various Judgments cited by the learned Counsel for both sides. I have gone through the said Judgments and I do not find any of them which goes against the view which I have taken in this judgment.

15. In the aforesaid circumstances I quash and set aside the Award Part-I to the extent it had held that the findings of the Enquiry Officer as perverse on the ground that there was no declaration of the strike as illegal. I also quash and set aside the final Award to the extent it has directed the 13 workmen to be reinstated with full backwages and continuity of service. I confirm the award to the extent of granting relief of reinstatement with 75% backwages to Mrs. Chacko and confirm the Award to the extent it rejects the reference of Shri Rajkar. The writ petition is allowed and the rule is made absolute in terms of prayer clause (a) with no order as to costs.

16. Last but not least, I wish to draw the pointed attention of the Government towards the amendments enacted in the Industrial Disputes Act in the year 1982, particularly in the definition of "Industry" whereby the Hospitals have been excluded in particular from the declaration of "Industry" and from the purview of the Industrial Disputes Act, 1947. It is high time that all these amendments of 1982 are brought in force. I would also recommend that a separate Tribunal to adjudicate the demands and grievances of the Hospitals, Nursing and Maternity Homes should be set up so that their demands and grievances are also looked into by the Special Hospital Tribunal and they are not compelled and misled to go on the path of a strike.

17. All parties to act on an ordinary copy of this order duly authenticated by the

Associate of this Court.