
(2005) 12 DEL CK 0036
In the Delhi High Court
Case No : LPA No. 658 of 2004

D.D. Gears Ltd.

APPELLANT

Vs

Secretary (labour) and Others

RESPONDENT

Date of Decision : 19-12-2005

Acts Referred:

Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 10(3)
Industrial Disputes Act, 1947 — Section 10(1), 10(3), 12(5), 23, 25N

Citation : (2006) 129 DLT 166 : (2006) 87 DRJ 66 : (2006) 110 FLR 42

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Chetan Sharma and Vidhu Upadhyay, for the Appellant; Umesh Sharma, for the Respondent

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the Judgment of the learned Single Judge dated 24.02.2004 of this Court by which he has dismissed the Writ Petition.

2. We have heard the learned counsel for the parties and perused the record.

3. The facts of the case are not being repeated, except where necessary, as the same are already set out in the impugned judgment.

4. This Writ Petition was filed by the petitioner/appellant praying for an appropriate writ, order direction quashing the impugned reference order dated 10.02.2000 u/s 10(1)(d) and 12(5) of the Industrial Disputes Act and the impugned order dated 10.02.2000 prohibiting the continuance of a lockout passed by the Secretary (Labour) u/s 10(3) of the Industrial Disputes Act .

5. The petitioner has alleged that it was having an era of industrial peace and harmony till 1997. However, it is alleged that since 1997 the respondent no.4/ Union and some of the misguided employees indulged in illegal activities against the interest of the workers and the Management. Since 1997 they have been holding demonstrations, gherao, assault, tool down strike, declaring holidays etc.

thereby crippling the functioning of the factory of petitioner company. As a result of this alleged indiscipline and insubordination, the company has suffered huge losses. The respondent/Union and the workers resorted to illegal and unjustified strike from 23.04.1997 to 22.08.1997.

6. It is alleged that some irresponsible workers violated the discipline of the factory by indulging in slogan shouting, insubordination etc in spite of their statement before the authorities that they will not indulge in such activities. The petitioner company wrote a letter dated 30.09.1997 to the Assistant Labour Commissioner in this regard, a copy of which is Annexure P-4 to the writ petition. The petitioner also wrote a letter dated 16.10.1997 to the respondent/Union asking it to constructively impart their responsibilities of Union Leaders and help the company in maintaining discipline amongst workers, a copy of which is Annexure P-5 to the writ petition. The said letter reads as under:-

D.D. GEARS LIMITED A-34, G.T.K. Road Ind. Area, Delhi-55. Regd. Office: 28, Motia Khan, Jhandewalan Road, New Delhi-110 055. Dated : 16.10.1997 The General Secretary, DD Gear Employees Union (Regd.) Delhi. Sir,

The managers have themselves noted that the representatives of the workers have taken over the control of the company in their hands and the work in the company is being done as per their wishes. There is nothing like discipline in the company. On 21.9.1997 at 2.00 P.M. when the workers of the first shift were ready to go out, the workers of the second shift forcibly entered inside the gate five minutes earlier and on the asking of the union representatives, all gathered near the Time Office and pressurized the management for acceding to their illegal demands. After that again on 7.10.1997 and 14.10.1997 at the time mentioned above, the workers representatives Shri Digamber Singh Rawat, Shri Vimal Kumar and Shri Ravinder Singh again stopped the workers at the gate and put pressure on the management and to show their strength. As a result of this, not only the discipline of the company has been affected, but also on these days the production was totally stopped for 1/2 and 3/4 hours. It is clear from the above that the representatives of the workers in collusion with some irresponsible workers have taken over the control over the management of the company which is detrimental to the interest of the workers and the company. Keeping in view the above facts, the management wishes to advise, you the union representatives to fulfill your duties with responsibility and the workers to maintain the discipline, otherwise on repetition of the above acts, the management will be bound to take disciplinary action against the concerned workers.

Thanking you, For D.D. Gears Ltd. FACTORY in charge

Copy to:

1. Office of the Labour Commissioner,
2. Notice Board.

However, instead of following the advice, the respondent/Union and its misguided members indulged in gherao of the Directors of the company, stone pelting, breaking glasses of factory, cars, scooters, machinery of the company etc. The petitioner lodged an FIR dated 28.10.1997 with the Police. In this regard, the petitioner also wrote a letter dated 03.11.1997 to the Labour Commissioner, a copy of which is Annexure P-6 to the writ petition.

7. It is also alleged in para 13 of the Writ Petition that the workmen of petitioner company under the misguidance of respondent/Union resorted to illegal tool down strike with effect 17.03.1998. The petitioner wrote a letter dated 17.03.1998 to the Labour Commissioner requesting him to prohibit their illegal and unjustified tool down strike, a copy of which is Annexure P-7 to the writ petition. Again the respondent/Union without taking permission from the management held a gate meeting on 09.07.98 and gave provocative speeches against the Management and shouted slogans. The workmen of the Factory under the misguidance of respondent/Union went on a tool down strike without notice from 21.07.98 to 31.07.98. They resorted to coercive tactics, intimidation, shouting slogans, physical force, and threat to life. The petitioner wrote various letters to the Labour Commissioner in this regard, a copy of which is Annexure P-8 to the writ petition.

8. The respondent/Union put a notice on the notice board that Janamastami shall be observed as a holiday on 14.08.98 and as a result the workers did not come for duty. The petitioner wrote a letter dated 14.08.98 to the Labour Commissioner in this regard, a copy of which is Annexure P-9 to the writ petition. Also the workers observed a strike on the basis of a call given by C.I.T.U. to observe strike on 21.08.98. The action of the respondent/Union was informed to the Labour Commissioner vide letter dated 24.08.98, copy of which is Annexure P-10 to the writ petition. The workmen resorted to tool down strike on 08.11.98 without any notice. The petitioner again wrote a letter dated 09.11.98 to the Labour Commissioner about this, copy of which is Annexure P-11 to the writ petition.

9. It has been alleged by the petitioner that due to the total lack of discipline and insubordination by the workmen under the misguidance of respondent/Union the production in the Factory showed a sharp decline and petitioner suffered huge losses. As a result, the petitioner company was forced to seek retrenchment permission from the Labour Department. Hence, the petitioner wrote a letter dated 02.04.99 to the Labour Commissioner requesting him to intervene in the matter and grant permission to retrench the workmen, a copy of which is Annexure P-12 to the writ petition.

10. The petitioner company then received a notice dated 27.10.93 from the Assistant Labour Commissioner regarding the demand by the respondent/Union. The petitioner gave a reply to the notice of the Assistant Labour Commissioner on 01.11.99 wherein it was stated that it was facing a big financial crisis and as such the demands raised by respondent/Union be dismissed, a copy of reply is

Annexure P-13 to the writ petition.

11. It is alleged that the workmen went on an illegal strike without any notice to the petitioner with effect from 13.12.99. They also assaulted the officers of the company and indulged in gherao. The petitioner wrote a letter to the S.H.O., Labour Commissioner in this regard, a copy of which is Annexure P-14 to the writ petition. On 18.12.99 the petitioner company wrote another letter to the Labour Commissioner informing him that the workers had disturbed the industrial peace and harmony and had been indulging in illegal strike, gherao of the executives etc. daily since 13.12.99. On 16.12.99 they had beaten the Factory In-charge ruthlessly with fists and blows, and had torn his clothes. The petitioner again wrote to the Labour Commissioner informing him that the workers were on illegal and unjustified strike since 13.12.99 and the production in the factory was nil. There was perpetual danger to the life and property in the factory and the workers were also indulging in activities like terrorizing the executives, customers and the visitors who were coming to the Factory. All efforts to advise the workers from not indulging in such activities were of no effect. The Labour Commissioner was requested to advise the workers as well as the respondent/ Union not to indulge in illegal and unjustified activities and start normal production. The petitioner company wrote another letter to the Labour Commissioner informing that the respondent/Union and the workers continued to be on illegal strike since 13.12.99 and had indulged in various activities of slogan shouting, abusing and even threatening visit to the residence of Directors and holding demonstration. The petitioner company again requested the Labour Commissioner to advise the workers not to indulge in illegal activities and unjustified strike and start normal production. The petitioner company gave several letters to the Labour Commissioner requesting him to advise the workmen to give up their illegal and unjustified strike, copy of which is Annexure P-15 to the writ petition.

12. Due to the illegal and unjustified strike of the workmen since 13.12.99 and in view of immense danger to life and property, the petitioner company decided to declare lockout in its factory from 13.01.2000. The petitioner informed the Labour Commissioner about its declaration of lockout vide its letters dated 13.01.2000, 14.01.2000 and 15.1.2000, copies of which are Annexure P-16 to the writ petition. A notice was received by the petitioner company and the petitioner gave a reply denying the allegations made by the respondents and again requested them to advise the workmen not to indulge in the activities which were prejudicial to the interest of the company and maintain industrial peace. The petitioner wrote another letter dated 17.01.2000 to the Labour Commissioner informing him that the company had declared lockout from 13.01.2000 but the workers continued with their acts of shouting slogans, abusing and assaulting the factory staff and supervisors. There had been no improvement in the situation and the workers continued with their illegal activities. The petitioner requested the Labour Commissioner to intervene and initiate necessary steps to meet the situation, a copy of which is Annexure P-17

to the writ petition. The petitioner thereafter received a show cause notice dated 17.01.2000 from the Labour Conciliation Officer wherein it was stated that a complaint had been received from the respondent/Union on 13.01.2000 against declaration of lockout by the company. A true copy of the show cause notice is Annexure P-18 to the writ petition. The petitioner wrote a letter dated 18.01.2000 to the Labour Commissioner informing him that the company had declared lockout from 13.1.2000 since the workers continued with their acts of shouting slogans, abusing and assaulting the factory staff and supervisors and there had been no improvement in the situation. The petitioner again by way of its reply to the Labour Commissioner requested him to intervene and initiate necessary steps to meet the situation, copies of which are Annexures P-19 and P-20 to the writ petition.

13. Thereafter, the Secretary, Labour passed two orders under subsections (1) and (3) of Section 10 of the Industrial Act dated 10.02.2000 vide Annexures P-1 and P-2 to the writ petition, making a reference to the Tribunal, and prohibiting the continuance of lockout.

14. The petitioner contended that the order u/s 10(3) prohibiting the lockout was illegal.

15. Counter affidavit on behalf of respondent no.4/D.D. Gears Employees Union Front has been filed and we have perused the same.

16. It is alleged in para 12 of the counter affidavit that the petitioner management has declared the lockout in violation of Section 23 of the Industrial Disputes Act. It is alleged that the lockout dated 13.1.2000 was declared when the conciliation proceedings regarding the general demands of the workers was pending. Another adjudication proceedings before the Industrial Tribunal No.3 by way of I.D. No.5/2000 was also pending when the lockout was declared.

17. In para 6 of the counter affidavit, the respondent no.4 has alleged that since April, 1999, the petitioner was trying to remove around 156 workmen under the garb of retrenchment. The petitioner filed an application u/s 25N of the Industrial Disputes Act which was contested by the respondent/Union and the said application was dismissed by the labour authorities. Thereafter, another application under 25-N was filed by the petitioner which was again dismissed. The petitioner thereafter filed a review application and that was also dismissed in January, 2000. The petitioner did not appear in the conciliation proceedings despite repeated notices by the labour authorities and its plea that it did not participate in the conciliation proceedings due to fear of violence by the workmen is false.

18. It is alleged in para 8 of the counter affidavit that the plea of strike is an afterthought. No conciliation proceedings regarding strike was initiated by the petitioner management neither any claim regarding the dispute of strike by the workmen with effect from 13.12.99 was filed by the petitioner management before the labour authorities. In fact, the petitioner has concealed that it

withdrew the earned wages of the workers w.e.f. 01.01.2000 to 13.01.2000. It is alleged that the real intention of the petitioner is to tire out the workmen as the petitioner has effected a closure under the garb of lockout and has handed over the entire work to contractors. It is alleged that the petitioner had fabricated several documents. It is alleged that some of the letters allegedly claimed as notices and letters to the Labour Commissioner were neither sent to the Labour Commissioner nor sent to the union and are fabricated documents. It is alleged that the lockout was declared when the conciliation proceedings regarding the general demands of the workers was pending before the Industrial Tribunal No.3. It is also denied that the respondent/Union has been holding demonstration etc. or indulging in the activities alleged by the petitioner.

19. The learned Single Judge rejected the Writ Petition, and hence this appeal.

20. In our opinion, we cannot interfere with the reference order u/s 10 of the Industrial Disputes Act because that order does not affect the rights of the parties. Hence the Writ Petition against that order is liable to be dismissed.

21. It is well settled that a Writ Petition lies only when the rights of some party has been adversely affected. A mere reference u/s 10 of the Industrial Tribunals Act does not affect anyone rights, and hence no Writ Petition should ordinarily be entertained against a mere reference u/s 10, as such a petition is premature.

22. It is only when an award is given by the Labour Court or Tribunal that a writ petition should be entertained.

23. We may now deal with the order prohibiting the continuance of lockout u/s 10(3) of the Industrial Tribunal Act.

24. In paragraph 9 of the judgment, the learned Single Judge has observed unless and until the petitioner succeeds in his challenge to the order of the reference of the demands raised by respondent No.4 for adjudication as per the order of reference made by respondent no.1, the consequential order u/s 10(3) of the Act cannot be challenged.

25. With due respect we cannot agree with this observation. The reference u/s 10(1) is totally different from an order u/s 10(3) prohibiting the continuance of lockout.

26. The learned Single Judge has also observed that since the Industrial Dispute No.5 of 2000 was pending before the Industrial Tribunal, Delhi, prior to the declaration of the lock out dated 13th January, 2000 consequently such lock out is illegal. He has observed that since the petitioner seeks a reference of the legality/existence of the strike in its establishment he cannot seek reliance on the judgment of this Court in Cimmco Birla Limited Vs. The State of Delhi and Ors. reported as 2002(II) AD (Delhi)580. He further observed that the petitioner did not participate in the conciliation proceedings and unilaterally resorted to lock out. With these observations, the learned Single Judge dismissed the Writ Petition.

27. Before dealing with the submissions of the learned counsel for the parties, we may refer to Section 10(3) of the Industrial Tribunal Act, which states:

(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.

28. It may be noted that the strike or lockout which can be prohibited must be in connection with the dispute which has been referred to the Labour Court or Tribunal.

29. The lockout in the present case was not in connection with the dispute which had been referred to the Tribunal. The lockout was in connection with the alleged indiscipline and unjustified activities of the workmen of resorting to assault on the officials, gherao, shouting slogans, abusing , strike etc. These acts were not the matters connected with the reference to the Tribunal. Hence, in our opinion, Section 10(3) of the Industrial Disputes Act was not all attracted.

30. It may be mentioned that the reference u/s 10 dated 10.02.2000 was regarding wages, annual increment, house rent, conveyance allowance, winter uniforms, one pant, coat and two pairs of shoes vide Annexure P-2 to the writ petition. Thus, the Terms of Reference referred to the Tribunal was not regarding the validity and justification of the conduct of the workmen in indulging in strike, gherao, abusing, assaulting, slogan shouting and other alleged acts of misconducts. Hence, in our opinion, Section 10(3) has no application at all.

31. In Workmen of Edward Keventers Vs. Delhi Administration reported as 1969 Delhi 767 an order prohibiting a strike was held illegal by this Court. Although that case was not one in which an order prohibiting a lockout was challenged, in our opinion, the principle of law laid down in that decision will squarely apply to this case also. That is because it is not any kind of strike or lockout which can be prohibited u/s 10 of the Industrial Disputes Act but only a strike or lockout connected with the dispute referred u/s 10. If the reference is regarding some other matter then an order u/s 10(3) cannot validly be passed.

32. In our opinion, the order u/s 10(3) of the Industrial Disputes Act in this case has nothing to do with the matters referred to the Tribunal, and it is not connected with the dispute referred.

33. It may be noted that conciliation proceedings has nothing to do with the validity of an order u/s 10(3) prohibiting continuance of a strike or a lockout. Hence, we fail to see what relevance the pendency of the conciliation proceedings has to do with the matter before us. In our opinion, the learned Single Judge wrongly emphasized that the petitioner lack of suitable response shows that the petitioner had decided not to participate in the conciliation proceedings. Of course, the Management contended that it did not participate in the conciliation proceedings because of the threat and indiscipline of the

petitioner. However, that has nothing to do with the question of validity of the impugned order u/s 10.

34. In view of the above, we are of the opinion that the impugned judgment so far as it upholds the order u/s 10(3) is not sustainable and is hereby set aside. This appeal is disposed of with the direction that the reference order u/s 10(1) is valid, while the order u/s 10 prohibiting the lockout is illegal.

35. Before parting with this case we may mention that a lockout is the anti-thesis of a strike. While a strike is a weapon in the hands of the workers, a lockout is a weapon in the hands of the employers, vide *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, In our opinion, if the version of the employer that the members of the respondent/union had committed grave misconducts, e.g. illegal strike, abuses, gherao, assault on the officials, slogan shouting etc, then prima facie it seems to us that the lockout was certainly justified because lock out can be used as a retaliatory weapon by the employer, as held by the Supreme Court in *Express Newspaper case* (supra). However, we are not expressing our final opinion on the validity of lockout since that can be decided in a reference u/s 10(1) of the Industrial Disputes Act. Appeal disposed off.