

(1989) 06 CAL CK 0012
In the Calcutta High Court

Govrepore Co. Ltd.

APPELLANT

Vs

Nuddea Mills Co. Ltd.

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(3)

Citation : (1990) 2 LLJ 245

Hon'ble Judges : M.K. Mukherjee, J

Bench : Single Bench

Advocate : B.N. Sen, Bhaskar Sen and A.P. Chatterjee S. Ukil, for the Appellant;

Final Decision : Dismissed

Judgement

M.K. Mukherjee, J.—This writ petition has been filed by Govrepore Company Ltd. ("Company" for short), which runs a jute mill at Naihati, and one of its directors challenging the legality and validity of an order dated June 12, 1989 made by the Government of West Bengal u/s 10(3) of the Industrial Disputes Act, 1947 ("Act" for short) prohibiting the continuance of the lockout declared by the Company in its mill with effect from April 7, 1989. The above order has been made in the wake of an order made u/s 10(1) of the Act on June 9, 1989 referring an industrial dispute, existing between the Company and its workmen on the following issues

"(1) Whether the management is justified in alleging low production and productivity by a section of workmen?

(2) What wages are the workmen entitled to for the period of layoff commencing from April 5, 1989

to the First Industrial Tribunal, Calcutta for adjudication.

2. Mr. B.N. Sen, the learned Advocate appearing for the writ petitioners, has assailed the order on the following three grounds:

(i) since the Company has a fundamental right not to carry on its business and the right in the instant case has been exercised bona fide to avoid heavy recurring losses, the Government cannot by a fiat compel it to run the business;

(ii) since all the demands raised by the Company have not been referred to the Tribunal, Section 10(3) cannot be allowed to operate in respect of all; and

(iii) as no opportunity was given to the Company to state and establish its case before the order was passed, it is violative of the principles of natural justice.

3. Mr. A.P. Chatterjee appearing for the workmen and Mr. S. Ukil appearing for the State, have joined issue on all the contentions raised by Mr. Sen. Mr. Chatterjee has further contended that even if all the contentions of Mr. Sen were to be accepted still then, the discretionary powers of this Court in the writ jurisdiction should not be exercised in favour of the petitioners, as they are guilty of declaring an illegal lockout.

4. Law is now well-settled that remedy under Article 226 of the Constitution of India being discretionary, the High Court may decline to exercise its judicial discretion in favour of a person who makes a claim which is prima facie unjust or whose hands are unclean and conduct (sic). In other words, a person may by his own conduct preclude himself from availing of the discretionary relief, *ex debito justitiae* no matter whether the proceeding which he seeks to quash is void or voidable. If the facts of the instant case are judged, in the light of the above principles, the threshold submission of Mr. Chatterjee has got to be accepted.

5. It appears from record that in the public interest, the State Government, by a notification dated 28th March 1988, declared the jute industry as a "public utility service" within the meaning of Section 2(n)(vi) of the Act for a period of six months commencing from 4th April 1988 and by a subsequent notification dated 28th September 1988 issued under the proviso thereof extended its period upto 3rd April 1989. By another notification issued on 29th March 1989, the period has been extended for a further six months commencing from 4th April 1989. Since the lockout in the instant case was declared with effect from April 7, 1989, the Company being engaged in public utility service, was, therefore, obligated to give a notice as required u/s 22(2)(a) of the Act. As the record does not indicate that any such notice was given nor does it indicate that the lockout was declared in consequence of an illegal strike, the lockout appears to be illegal within the meaning of Section 24(1)(i) of the Act for which the employer may be punished u/s 26(2). While on this point it may also be mentioned out that it is not the case of the writ petitioners even that notice u/s 22(2)(a) was given before declaring the lockout or that the lockout was declared in consequence of an illegal strike. In the backdrop of the above facts even if this Court finds that the writ petition must succeed on merits and quashes the impugned order by exercising its discretionary power, it will, by so doing, be giving its judicial imprimatur to an illegal act committed on 7th April 1989, and continued since then, and unwittingly abetting the commission of an offence punishable u/s 26(2) of the

Act.

6. The above discussion is sufficient to hold that this is not a fit case where the Court should exercise its judicial discretion in favour of the petitioners by entertaining their writ petition, but then as on merits also the petition must fail, I proceed to consider the same.

7. To bring home his first contention Mr. Sen, by referring to the various averments made in the writ petition, the balance sheets of the Company of the last few years and a public notice dated May 12, 1989 issued by the Board for Industrial & Financial Reconstruction constituted under the Sick Industrial Companies (Special Provisions) Act, 1985 seeking objection/suggestions to the proposed winding-up of the Company, has submitted that the Company has/had been incurring huge losses for the last few years and it is no more possible for it to run the mill, far less viably. According to Mr. Sen, as a person has a fundamental right to carry on his business he has a corresponding right not to carry on his business and the Government cannot compel him to act otherwise, unless of course he acts *ma/a fide*. In support of his contention, Mr. Sen relied upon the judgment of the Rajasthan High Court in the case of Shamsheer Vs. Rustam and Others, and that of the Supreme Court in the case of Excel Wear and Others Vs. Union of India (UOI) and Others, .

8. Even if it is assumed that the factual matrix of Mr. Sen's argument is correct, still then the conclusion drawn by Mr. Sen mere found cannot be accepted in this case, for the simple reason that "closure" cannot be equated with "lockout". While in the case of the former the employer does not merely close down the place of business but finally closes the business itself, in the case of the latter the employer closes the place of business only. Just as a "strike" is a weapon in the armory of labour in the process of collective bargaining to compel the employer to accept their demands, the "lockout" is its counterpart in the hands of the employer. The two judgments relied upon by Mr. Sen, are authorities for the proposition that every employer has a fundamental right to closedown his business and if he acts *bona fide*, no one can interfere with his such right. There cannot be any quarrel with the above proposition. But, if on same set of facts, instead of effecting closure, the employer takes recourse to lockout, to avoid the statutory liabilities including payment of compensation or for bargaining, he cannot claim such a right nor can his action be said to be *bona fide*. On this score alone, the first contention of Mr. Sen must be overruled.

9. As regards the second contention of Mr. Sen, I find from the notice of lockout (Annexure "A" to the writ petition) that the principal reasons which weighed with the Company to take recourse to the lockout was that inspite of assurances given by the representatives of workmen in the several meetings held with them, and notices issued by the Company asking the workmen to retrace their steps, they did not bring any improvement in production and productivity and the position in regard to the discipline and wasteful practices continued to be at its lowest ebb. Since the issue No. 1 as appearing in the order of reference takes care of the

whole grievance of the Company and since the Tribunal has been entrusted with the job of redressal of such grievance, if found genuine, the Government can legitimately ask the Company to lift the lockout. Incidentally, it may also be mentioned that in the notice of lockout no plea of financial discomfort or difficulty has been raised. In view of the above discussion, I must hold that the principle laid down by the Supreme Court in the case of Delhi Administration, Delhi Vs. Workmen of Edward Keventers and Another, on which Mr. Sen relied, has no application here because in that case out of twenty demands raised by the workmen only one was referred to the Tribunal and the order u/s 10(3) was issued pursuant thereto. The second contention of Mr. Sen must, therefore, also fail.

10. Drawing inspiration from the judgment of a Single Judge of the Kerala High Court in the case of A.K. Kallappa Chettiar and Sons Vs. State of Kerala and Others, Mr. Sen has lastly argued that as violation of an order made u/s 10(3) of the Act entails criminal prosecution, the person to be bound by the order can legitimately claim a reasonable opportunity of stating and establishing his case, before the order is made. As no such opportunity was given the order must be struck down being violative of the principles of natural justice, argued Mr. Sen.

11. In the case of " The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, , it has been observed by the Supreme Court that if fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential procedural propriety, being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. According to the Supreme Court, unnatural expansion of natural justice, without reference to the administrative realities of a given case, can be exasperating. The Supreme Court has next observed that the Court can neither be cynical nor fanatical but should be flexible, yet firm, in this jurisdiction. According to it, no man should be hit below the belt, that is the conscience of the matter. It has lastly observed that if the totality of the circumstances satisfy the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice are sacred scriptures. Considering the materials appearing on record in the light of the above principle, I do not find any substance in the third contention of Mr. Sen.

12. From the records of the present case, produced by the learned Advocate for the State, I find that after declaring the lockout on 7th April 1989, the Company served a copy of the notice of lockout upon the State on April 10, 1989. Thereafter discussions were called at various levels of the Labour Directorate of the Government including one by the Secretary of the Labour Department, but no competent representative from the management attended the discussions and no settlement could be reached because of lack of effective negotiation. The representative of the Company who attended the meeting before the Secretary, Labour Department, claimed himself to be the director of the Company and when

asked to reopen the mill he pleaded his inability to reopen unless the workmen accepted a wage deferment for a period of three years. He further wanted the existing wages to be kept frozen for that period. As the workmen's representatives refused to accept the above proposal, a report was sent u/s 12(4) of the Act. Thereafter the reference was made. The impugned order was then made as the Government felt that after the issues were referred for adjudication there would not remain any justification for the management to continue the lockout. The Government further felt that the continuance of the lockout was likely to bring economic hardship to large section of the community of the area and to disturb public tranquillity. The other reason which has weighed with the Government in issuing the impugned order is that as the jute industry had been declared a public utility service, public interest will suffer to a great extent if the lockout is allowed to continue.

13. The above materials appearing on record not only indicate that adequate opportunity was given to the Company to state and establish its case, but also indicate that the Government has acted fairly and reasonably while passing the impugned order and that the order is based on valid and cogent grounds.

14. On the discussions as aforesaid, the writ petition fails and it is hereby rejected. There will be no order as to costs.

15. In re: Nuddea Mills Co. Ltd.:

Since this writ petition is based on similar facts it is rejected for the reasons given above. There will be no order as to costs.