
(1973) 03 PAT CK 0004
In the Patna High Court

Hari Ram Shah

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 23-03-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144
Industrial Disputes Act, 1947 — Section 25FFA

Citation : (1973) CriLJ 1623

Hon'ble Judges : C.P. Sinha, J

Bench : Single Bench

Judgement

C.P. Sinha, J.—The petitioner Hari Ram Shah, who is one of the Directors of the Britannia Engineering Company Ltd. (hereinafter referred to as the Company) with its Head Office at Calcutta, has filed this application for the quashing of the order dated 14-2-1973 (Annexure 2 to the petition) as passed by the Subdivisional Magistrate, Barb (who has been implicated as opposite party No. 2, the State of Bihar opposite party No. 1) u/s 144 of the Code of Criminal Procedure (hereinafter called the Code). Under this order learned Magistrate has restrained the petitioner as also the other five Directors of the Company, as named therein, from taking any action in respect of the closure of their Wagon Factory at Mokaxneh situated within Barh subdivision. He has also, in exercise of his powers under Sub-section (2) of this section, made this order absolute against those Directors.

2. The said Company established its above Wagon Factory at Mokamah in 1959 for the purpose of manufacturing railway wagons as its principal products. It is said, this Factory, employing about 950 workers, had generally been running in loss which became more pronounced since 1966 as a result of the Railway Board having imposed 33.1/3 per cent, production cut on its railway wagon output. They tried to improve their position but to no substantial effect and in recent past their losses have been exorbitantly high due to substantial idle capacity in the works and the consequent large unabsorbed overheads. Its losses till 1970 have been over 20 lacs and in 1972 it was estimated to be to the tune of 30 lacs.

Being unable to manage the affairs the Company decided to close the Wagon Factory and as required under the Industrial Disputes Act (Sections 25FFA) it sent the required notice dated the 15th December, 1972 (Annexure 1) to the Government of Bihar informing them of their decision to close down this Factory with effect from the 20th February, 1973 setting out in detail the reasons for that closure.

3. On 13th February, 1973 the Officer-in-charge of Mokamah Police Station sent his report u/s 144 of the Code to the Subdivisional Magistrate, Barh. Its copy is enclosed as Annexure 3 to the petitioner's reply to the counter-affidavit of the opposite party. In this report he pointed out that the employees of this Factory had not been paid their salaries from November, 1972 along with bonus for the year 1971. They were, however, putting up with the matter in the hope that the factory would run smoothly in future. The closure notice to close the Factory from 20th February, 1973 was, however, going to prove the last straw on the camel's back which might worsen the law and order situation to the extent beyond the control of the administration and lead to serious breach of the peace. On these facts, the officer-in-charge requested the Magistrate to restrain the Directors of the Company (impleaded as second party in that report) from closing the Factory in the interest of public peace and tranquillity. He further suggested that due to paucity of time there was no time to serve the notices on them, and, accordingly, the order should be made absolute against them ex parte.

4. Learned Subdivisional Magistrate on a perusal and consideration of this police report felt satisfied about the necessity of such an action against those Directors and made the impugned order by means of which, as already observed, he purported to restrain them from closing the factory, making it absolute against them ex parte.

5. On behalf of himself and the State of Bihar the Subdivisional Magistrate, Barh (opposite party No. 2) has filed a counter-affidavit giving the circumstances in which he had felt the necessity for making the impugned orders against the Directors. In this counter-affidavit it has been alleged that the Company has been a chronic defaulter in the payment of wages of its workers and all the efforts of the local administration as also of the State had failed to achieve the desired effect for its smooth running with regular payments to its workers. It has been further said that due to their defaults they were indebted to its employees towards their wages and other allied legal commitments to the tune of about rupees 10 lacs. In the emergent situation, according to the deponent, he had to take this step in the interest of law and order to save the properties of the Factory as also the life of its workers which in case of its closure were bound to be disturbed giving rise to a serious situation against public order. In reply to this counter-affidavit, on behalf of the Company another affidavit has been sworn by its Personnel Officer where he has tried to explain the steps as taken by the Company in the matter to avoid its colossal losses the result of which has been erosion of capital as also the Bank's suspension of operation of their cash credit

account. He has also enclosed therewith copies of the Company's representations to the Chief Minister, Labour Minister and other authorities which they had made to them in that connection.

6. Mr. Nageshwar Prasad appearing for the petitioner has vehemently attacked the propriety and legality of the impugned order urging that it was fully within the power of the Company to take steps for its closure as and when they liked for which there could be no condition precedent, and all that was required of them under law, in view of the provision of new Section 25FFA of the Industrial Disputes Act, was that they were to give notice in the prescribed manner to the appropriate Government, which in this case is the State Government, of at least sixty days before the day on which they intended the closure to be effective stating clearly the reasons for the closure. This formality, according to him, the Company had duly complied by sending the required notice dated 15th December, 1972 (Annexure 1 to the petition) clearly stating that they intended the closure to be effective from 20th February, 1973. According to Mr. Prasad, in this notice they had set out in full details their reasons for their decision of closure and it was manifest from them that to avoid further loss and liability they had no way out from this step. His further submission is that the Magistrate, in initiating this action against these Directors is wholly in the wrong inasmuch as in taking this closure decision they have done nothing illegal and all that they are doing is an exercise of their right as available to them in law, and, as such, if the workers choose to interfere with the enforcement of this legal right of the Directors they are to be taken as the wrongdoers deserving to be restrained from doing so by action u/s 144 for preserving public peace instead of the Directors being proceeded against. He has also urged that in case the Directors are to run the factory which inevitably follows from the Magistrate's order that will necessarily put them to further losses and liability which is never the purpose behind Section 144 and the workers' dues, if any, from the Company can well be realised by resorting to prescribed legal remedies in that behalf and not by the instant means resorted to by the Magistrate.

7. Mr. Tara Kant Jha, learned Standing Counsel representing the opposite party, has contended that the Magistrate is quite justified to take this step which is meant for meeting such emergency, in the interest of maintenance of law and order within his jurisdiction. According to him, as will appear from the police report, the Magistrate was informed that in case of closure the workers were bound to react and that was likely to give rise to serious law and order problem which might be beyond the control of the administration. His argument further is that in a justifiable situation a Magistrate is fully competent to pass such an order even though it may amount to suspension for the limited period of 60 days of the legal right of a private citizen. On these facts, according to him, if the Magistrate has decided upon this step to prevent breach of public peace and tranquillity which is his paramount consideration in such a situation this Court must feel reluctant to interfere with his order in this behalf for the sake of public peace. To support these contentions, Mr. Jha has relied upon several rulings

including Babulal Parate Vs. State of Maharashtra and Others, .

8. Mr. Nageshwar Prasad has fairly conceded that he cannot dispute the position of law that in certain given situation the Magistrate can resort to an action u/s 144 of the Code, though It may tend to curtail to a certain extent the legal rights like freedom of speech or freedom of assembly by certain individual or group of individuals, free exercise of which is normally guaranteed to them. In this view, he has submitted, he has no dispute with the principles of law laid down in the aforesaid authorities referred to by Mr. Jha. His contention however, is that in this case, in the circumstances as they obtain, no breach or public peace can be apprehended at the hands of these Directors because they are all residents of Calcutta and would not come to break law at Mokameh, so that if there is any chance of law breaking that must be from the workers' side which can be prevented only by directing the restraint order against them and not against the Directors.

9. Mr. Jha has also fairly agreed to the position in law that the Directors of a Company have got unfettered rights to take to its closure without any condition precedent, and all that they are required to do about it is to serve the prescribed notice under the aforesaid Section 25FFA to the State Government

10. After having heard learned counsel of both sides I am inclined to think that the impugned order is misconceived and it was not within the competence of the Magistrate to make it in the circumstances of the case. The contention addressed that it was for the Magistrate to decide whether the situation demanded its making for the purpose of preservation of public peace and this Court should not think in terms of interference once he has done so cannot, I think, be accepted without reservation. The Magistrate has to exercise this extraordinary power according to well recognised principles of law and not arbitrary. On an examination of the relevant facts I have no doubt in my mind that he has not taken this step after full and mature consideration of the relevant facts. No doubt, the police had submitted report requesting him to stop the intended closure of the factory on the apprehension that the workers in that case might become violent for their arrears of wages due to them and create a law and order problem. As it has been pointed out by the petitioner, such a contingency is just an apprehension of the police and it may or may not materialise. The possibility of the workers reconciling to the closure after it has come about and adopt means as permissible in law to realise their arrears of wages cannot be wholly ruled out at this stage.

11. As already noticed, the undisputed position is that it is fully within the powers of the Company to close this factory in the way they intend to do. In this position, they cannot in law be deemed to be wrongdoers as to deserve being prevented from doing so which the Magistrate has purported to do in his impugned order. Obviously, the effect of this order of the Magistrate, whereby he has restrained them from taking any action in respect of the intended closure, is that they must continue running the factory. This amounts to his calling upon

them to do a certain positive act and not to abstain from it. Thus sum total of the order is that they must run the factory irrespective of the losses and liability which it may involve to them. I do not think, the purpose behind this provision of law is to achieve any such object in the name of preservation of public peace.

If the Magistrate on account of such closure, which as shown above the Company is entitled in law to do, comes across a situation in which the workers are found disturbing the public peace by resorting to violence the provisions of this law as also other laws as applicable can well be resorted to. to prevent it It cannot be disputed that even in the case of an emergency an order like this is to be directed rather against the wrongdoers than the wronged, and its use should be in the repression of illegal rather than interference with lawful rights. On the mere apprehension that in case the factory is closed as intended, its workers may try to take the law and order in their hands and create problems for realisation of their dues from it, which may or may not happen, I do not think, the Magistrate can be held justified in making this order injuncting the Directors from exercising their guaranteed legal right of closure without any pre-condition. If after actual closure, if any, the Magistrate finds a situation having developed in which both sides are determined to break the law giving rise to threat to public peace and tranquillity it will undoubtedly be open to him to take such measures under this law or other appropriate provisions to stop it. But at this stage I do not think he has rightly done so when he has called upon the Directors not to do anything towards the intended closure.

12. On a consideration of the above facts and position of law, I have no doubt in my mind that this order of the Magistrate, as it has been passed in the given situation, suffers from impropriety and is also against the spirit of law on this point

13. Mr. Prasad has also commented on the counter-affidavit as sworn by the Sub-Divisional Magistrate as, according to him, that counter-affidavit of the Magistrate will show that he has testified to certain facts which are within the special knowledge of the State Government and not his, and his doing so indicates that in passing the impugned order he was not wholly actuated by judicial consideration in deciding the dispute judicially between the two sides but had made it as an instrument of executive policy. In this connection he has further pointed out that he had made this order on a day which was Muharram holiday for Ms Court (14th February, 1973). On these facts, he has characterised this order to be motivated and mala fide which, according to him, is an additional ground for its quashing.

14. In reply Mr. Jha has pointed out that such a counter-affidavit by the Magistrate was felt necessary because in the petition allegations of mala fide besides arbitrariness and capriciousness have been alleged against him with respect to this order and in those circumstances the best person who can refute them is the Magistrate. Moreover, when he was to file his counter-affidavit refuting those allegations against him, for the sake of convenience and to avoid

the necessity of a separate affidavit by the State he, has been made to include in his counter-affidavit certain facts relevant for this case as supplied to him by the State and there was nothing wrong on his part in doing so and it will be too much to use this fact in favour of the alleged mala fide against him in passing this order.

15. After having considered all the facts as available on the record including his counter-affidavit as also petitioner's reply thereto, it will not, I think, be fair to read any mala fide on the Magistrate's part in making this order. I am not prepared to hold that merely because in his affidavit he has incorporated certain facts within the knowledge of Government which he has clearly averred to have come to his knowledge on information supplied to him by it, he can. be thought of passing this order not on applying his judicial mind to the matter but as instrument of executive policy of Government. As the Magistrate has tried to trace the history of the matter in his counter-affidavit it is not unlikely that on those facts he considered such a step at his end to be appropriate to meet the situation. Whether he was justified in doing so in law in that situation or not is, however, a different question. But, from that no mala fide on his part can be read and it cannot, therefore, be used as a ground for quashing it. I have, however, already shown and found that this order of the Magistrate is not strictly proper and in accordance with law and cannot be maintained.

16. For the above reasons, I allow this application and quash the Magistrate's impugned order dated the 14th February 1973, and the subsequent steps, if any, taken on its basis.