

(1982) 10 BOM CK 0035

In the Bombay High Court

Case No : Misc. Petition No. 840 of 1979

Indian Hume Pipe Co. Ltd.

APPELLANT

Vs

Industrial Court and another

RESPONDENT

Date of Decision : 05-10-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(1)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24(2), 28

Citation : (1984) 1 LLJ 46

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. The petitioners are a Public Limited Company. They manufacture cement concrete and steel pipes. They have factories all over India. One such factory is situated at Wadala, Bombay. It is distinct for the purposes of employment and service conditions. The petitioner employees at this factory some 547 operatives or daily-rated workmen and 80 monthly-rated staff. This petition is concerned with the latter.

2. On 30th October, 1978 the petitioner issued a notice of lock-out in accordance with the provisions of S. 24(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices act, 1971 (hereinafter called "the Act"). The notice expressed the petitioner's intention to effect a lock-out in all departments of its Wadala factory with effect from 3rd November, 1978 for the reasons stated in the statement annexed to it. This statement of reasons explained that from 28th July, 1978 welders, assistant welders, machine welders and gas cutters of the Wadala factory had started an agitation in respect of certain grievances. The statement of reasons set out what had happened from day to day. It set out incidents of disruption of the petitioner's work, of intimidation of its workmen and officers and of assaults thereon. The statement of reasons explained that in spite of the interim prohibitory orders restraining the

workers from indulging in such illegal activities, they had continued to do so. Reduction in production had also been caused by go-slow tactics in the concrete department. The petitioner was incurring a loss of Rupees thirty to thirty-five thousand per day. The petitioner was left with no alternative but to close down the entire operations. It had therefore declared a lock-out at its Wadala factory with effect from 3rd November, 1978.

3. On 3rd November, 1978 the second respondent, a trade union representing the monthly-rated staff of the petitioner filed a complaint before the Industrial Court, Bombay under S. 28(i), read with item 6 of Schedule II and item 9 of Schedule IV of the Act. The complaint stated that the said statement of reasons contained no allegations against the second respondent's members. The complaint submitted that the lock-out, in so far as it affected the 2nd respondent's members, was illegal. The complaint prayed that it should be declared that the notice dated 30th November, 1978 was bad insofar as it related to the members of second respondent and that the petitioners were bound to pay them their wages. In the written statement filed on behalf of the petitioner the averments of the complaint were denied. The written statement submitted that the complainant sought to raise and agitate an industrial dispute regarding the justifiability of the lock-out. It submitted that the court was not entitled to sit over the decision of the petitioner in effecting the lock-out. In the written-statement, the petitioner gave reasons why it suspected that some members of the second respondent had been parties to the disturbances at the Wadala factory.

4. The complaint was heard by the first respondent, a member of the Industrial Court, Bombay. By his order dated 19th February, 1979 he declared that the petitioner was engaged in unfair labour practices. It was directed to cease therefrom and to pay all the wages due to the second respondent's members.

5. The 1st respondent's judgment stated that all the averments in the said statement of reasons were assumed to be true. No fault could be found with the petitioners for closing down those sections where in daily-rated staff had indulged in violence. Yet when none of the members of the monthly-rated staff had been proved to have stated given any reason, assuming that there was no work, still they should be paid their monthly salary. Although there was no written argument subsisting between the petitioner and the members of the second respondent, admittedly, their relationship was governed by the "Industrial Employment Standing Orders Act" and there shall be deemed to be an agreement between the parties on the terms of the Standing Orders. Therefore, the absence of any written agreement or contract would not take the case of the complainant's members out of item 9 of Schedule IV of the Act." In the absence of any foundation the petitioner could not say that it could not have separated the case of one work from the other. The petitioner had indulged in unfair labour practices falling within the ambit of Schedule II, item 6 of Schedule IV, item 9 of the Act.

6. It was contended by Mr. Ramaswami, learned advocate for the petitioner, that there was no agreement between the petitioner and the members of the second respondent, and no question could therefore arise of the petitioner's failure to implement an agreement under Schedule IV, item 9. He also submitted that the lock-out could be illegal only if found to be so under S. 24(2) of the Act. This was not the finding. The petitioner could not then be found guilty of an unfair labour practice under item 6 of Schedule II, that is to say of proposing or continuing a lock-out deemed to be illegal under the Act.

7. Mr. Shetye, learned counsel for the second respondent, placed reliance upon a judgment of a Division Bench of this Court in *Premier Automobiles Ltd., Bombay v. Engineering Mazdoor Sabha, Bombay*, (in Misc. Petition No. 1 of 1975 with Special Civil Application No. 9 of 1976, decided by V. S. Deshpande and P. R. Mrudul, JJ, on 16th January, 1976). The court observed that the word "agreement" in item 9 of Schedule IV seemed to have been used in a broad sense to include the terms of service agreements, expressed or implied, Standing Orders could not be excluded from the word "agreement". This interpretation appeared to the court to be in keeping with the object of the Act. Mr. Shetye submitted that the Industrial Court was, therefore, right in holding that the relationship between the petitioner and the members of the second respondent being governed by Standing Orders, there was an agreement between them. The Standing Orders did not provide for a lock-out. Consequently, in declaring the lock-out the petitioner had failed to implement the agreement.

8. Following the aforesaid judgment, I will assume that an agreement in terms of the Standing Orders regulated the relationship of the petitioners and the second respondent's members. But it cannot be held that the petitioner had failed to implement the agreement because it does not provide for a lock-out. Nothing prevents the petitioner from declaring a lock-out if it is not illegal under the applicable statute. I do not agree with the Industrial Court that the petitioner was guilty of the unfair labour practice covered by Schedule IV, item 9 of the Act.

9. Mr. Shetye cited the judgment of the Supreme Court in *Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others*, The court reproduced the definition of lock-out in S. 2(1) of the Industrial Disputes Act, viz. The closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him. The Court observed that a lock-out could be described as the antithesis of a strike. Just as a strike was a weapon available to employees for enforcing their industrial demands, a lock-out was a weapon available to the employer to persuade by a coercive process the employees to see his point of view and accepts his demands. Mr. Shetye concluded from these observations that a lock-out was available as a weapon only against those employees who was required to be persuaded by a coercive process. In the instant case, the members of the second respondent had not been to the agitation and did not require to be persuaded by the coercive process of a lock-out. The lock-out was as against

them illegal and covered by the provisions of S. 24(2)(a) of the Act.

10. Section 24(2)(a) says that an illegal lock-out is a lock-out which is commenced or continued without giving to the employees a notice of lock-out in the prescribed form or within fourteen days of the giving of such notice. There is nothing in the phraseology used to warrant giving to the word "employees" therein a meaning as restricted as that suggested by Mr. Shetye. It is open to an employer to lock-out his employees if his intention is to persuade by that coercive process not all but a number of them.

11. Ultimately, it was submitted by Mr. Shetye that this court should not interfere in this matter in the exercise of writ jurisdiction because substantial justice had been done. Mr. Shetye placed weight upon the judgment of the Supreme Court reported in the *The Hindustan Construction Co. Ltd. Vs. Shri G.K. Patankar and Another*, under a settlement between the appellant company and its workers in its branches, the appellant paid to these workers ex-gratia sums quantified upon a stated basis in addition to bonus. The workmen employed at its head office contended that they should be paid an equal amount on the ground that the ex-gratia sum was nothing but additional bonus. The Industrial Tribunal which adjudicated the matter upheld their contention. The appellant challenged the award by filing a writ petition in this Court. The writ petition was summarily rejected on the ground that substantial justice has been done in accordance with the application of the principle of uniformity. The appellant went to the Supreme Court by way of special leave. The Supreme Court declined to interfere having regard to the circumstances. Mr. Shetye also cited the judgment in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . The court there held that the jurisdiction under Art. 226 of the Constitution was limited to seeing that judicial or quasi-judicial tribunals or administrative bodies exercising quasi-judicial powers did not exercise their powers in excess of their statutory jurisdiction, but correctly administered the law within the ambit of the statute creating them or entrusting those functions to them. So long as those authorities functioned within the letter and spirit of law, the High Court had no concern with the manner in which those powers had been exercised. Mr. Shetye submitted that since the members of the second respondent were innocent of any agitation, it was but right that they should receive their wages even if no work could be carried out in the factory at Wadala and the court should not intervene.

12. There can be no quarrel with what is enunciated in the judgment in *Nagendra Nath Bora's* case (*supra*) nor can it be disputed that in the appropriate case the court may not exercise its writ jurisdiction. It is also true that the second respondent's members are innocent of what which has led the petitioner to impose a lock-out. But I do not think it can be said that substantial justice has been done and the court should not interfere. The petitioner, who is as innocent, is required by the impugned order to make payment of wages to the second respondent's members during the period of the lock-out. The petitioner's right

must also be considered and the case must be decided on its legal merits. Upon such consideration the petition must succeed.

13. The petition is made absolute in terms of prayer (a). There shall be no order as to the costs.

14. The petitioner has furnished to the court a bank guarantee in the sum of Rs. 3,50,000/- pursuant to the interim order dated 25th June, 1979. The Bank Guarantee shall now stand discharged.