

(1980) 03 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition 331 of 1980

Industrial Tubes Manufacturing Co. Ltd.	APPELLANT
Vs	
S.R. Samant, Judge, Industrial Court and others	RESPONDENT

Date of Decision : 07-03-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 23(c), 24, 24(1)(i), 25
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24(2)(a), 25, 25(5), 27, 30

Citation : (1980) 2 LLJ 444 : (1980) MhLj 713

Hon'ble Judges : D.B. Deshpande, J; A.N. Mody, J

Bench : Division Bench

Judgement

Deshpande, J.—The petitioner is a manufacturing concern. It produce non-ferrous tubes for industrial use. It has about 120 employees including the non-workmen category. Since January, 1979, relations between the employers and a section of the workmen, actual strength of whom is a matter of dispute, have become strained because of their demands for better service conditions. These workmen are alleged to have indulged in, go-slow tactics, threats to the officers and acts of assaults on members of the managerial staff and loyal workmen and other acts of violence since January, 1979. They went on illegal strike with effect from 13th March, 1979.

2. A complaint being Complaint No. 40 was filed by the employers on 11th May, 1979, complaining of unfair about practice on the part of the workmen under Item Nos. 1, 2A and 2B, 5 and 6 of Schedule (III) read with S. 27 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). Several incidents of violence claimed to have been indulged in by the workmen, were cited in the complaint, claiming interim relief by way of injunction in terms of cls. (i) (v) of cl. B of para 10 of the complaint. Ad-interim injunction was granted by the Industrial Court on 11th May, 1979. The same was confirmed by an exhaustive order dated 18th October, 1979 after notice to the workmen.

3. The employer in the meanwhile, initiated reference proceedings No. 45 of 1979 under S. 25 of the Act, on 6-7-1979 for the declaration that the said strike was illegal. The Labour Court tried the reference and declared the strike to be illegal, by its order dated 29-10-1979. The Secretary of the union representing workmen, present in the Court, immediately informed the Court that the union was advising the workman to withdraw this strike. A written note to that effect and advising the workmen to join duties from the next day, was read out by him. The learned Judge endorsed a note thereon directing the employers to take notice of the same. This withdrawal obviously was aimed at getting rid of the illegality as contemplated under S. 25(5) of the Act.

4. The next day, on 30-10-1979, the workmen accordingly reported for duty. There is a dispute if only seven or all the workmen so offered to work and reported for duties. The employers, however, showed reluctance to permit the workmen to join duty unless they executed a bond as a condition precedent, to the following effects :

"I am willing to terminate the strike and resume duties forthwith. Upon resumption of work I am willing to perform my duties sincerely and diligently and continue give normal output, observe normal discipline whilst on duty. I, therefore, request you to permit me to resume work."

The workmen refused to execute any such bond and insisted on joining duty unconditionally. The employers refused and the stalemates continued.

5. The union thereupon, filed a complaint on 26-1-1979 in the Industrial Court, being (ULP) No. 123 of 1979 alleging unfair labour practice on the part of the employers under Item Nos. 1 and 6 of schedule II of the Act. According to the union, the action of the employers in requiring the workmen to execute the bond as condition precedent for joining work amounted to "lock-out". As the employers reported to it without giving 14 days" advance notice in compliance with S. 24(2) (a) of the Act, the same was illegal.

6. The workmen also make an application for interim reliefs under S. 30 of the Act. At the trial of this application for interim reliefs, the workmen relied on the affidavit of one of the workmen Posu Balu Adivasi, while the employers relied on the affidavit of D. T. Shenava, Managing Director of the concern. By his order dated 26th January, 1980, the Industrial Court held that the union made out a prima facie case of there being a "lock-out" and accordingly directed the employers to allow the workmen to resume their duties within 15 days from the receipt of this order pending the hearing and final disposal of the complaint. The validity of this order is challenged in this writ application under Arts. 226 and 227 of the Constitution.

7. Mr. Damania, the learned advocate appearing for the petitioners, contends that the declaration by the Labour Court of the strike being illegal under S. 25 of the Act and withdrawal thereof by the workmen by offering to join the work to get the illegality wiped out under S. 25(5) of the Act, by themselves are not

enough, to restore the industrial peace, so essential for proceeding with production. The situation had deteriorated from January, 1979 itself. The employers cannot allow the workmen to join work unless there is an assurance from them against the repetition of such incidents of violence and go-slow tactics, indulged in by the workmen even before resorting to illegal strike. Reluctance of the employers to accept the workmen without a bond of such assurance, cannot amount to "lock-out" against this back ground. The employers had no desire to stop the work or close their manufacturing concern or effect any lock-out whatsoever as contemplated under the provisions of the Act. But employers find it difficult to allow the workmen to resume duty without necessary assurance. Mr. Damania, therefore, contends that finding of the Industrial Court of a prima facie case of lock-out being made out, and directing the petitioners to unconditionally employ them, is unrealistic and unwarranted.

8. The question is, if preventing the workmen from joining duties without executing almost "good conduct bond" amounts to "lock-out" ? It is unnecessary to decide whether all or only 52 workmen were on strike and whether only seven or all the workmen on strike reported for duty on 30-10-1979 after union's declaration of the withdrawal of strike in the Court on 29-10-1979. Mr. Damania, conceded that even such preventing of seven workmen if held to be unjustified, would amount to "lock-out" against them. Two points arise for consideration. First being, if there is any statutory prohibition against requiring the workmen to execute a good conduct bond. Second being, if there is any justification for insisting on such bond even if there is no such legal-prohibition.

9. Dr. Kulkarni, the learned advocate appearing for the workmen relies on S. 72 read with Item 4 of Schedule IV of the Act. Section 27 prohibits unfair labour practices, both by employers and employees while S. 28 provides for the trial of complaints to that effect and effective reliefs against the same. Schedules II to IV enumerates which acts and omissions amount to unfair labour practices. Item 4 of Schedule IV reads as follows :

"To insist upon individual employees, who were on legal strike, to sign a good conduct bond, as a pre-condition to allowing them to resume work."

Insisting on a good conduct bond is no doubt declared under this clause to be an unfair labour practice prohibited by S. 27 of the Act. Dr. Kulkarni drew out attention to S. 25(5) of the Act under which strike declared to be illegal, is to be deemed to be not so illegal, if withdrawn within forty eight hours of such declaration by the Court. Dr. Kulkarni is right in contending that the withdrawal of the strike cannot be nullified by the employers by disallowing them to join on unjustified conditions. The illegal strike, having become legal on its timely withdrawal, insistence on bond, according to Dr. Kulkarni is hit by Item 4.

10. Mr. Damania's answer to this contention is three fold. He firstly contends that, this Item 4 has no application where workmen indulge in illegal strike. He secondly contends that if the illegality of the strike under the Act is assumed to

have been cured under S. 25(5) by such supposed withdrawal, S. 25(5) cannot cure the illegality created by other enactments. He thirdly contends that insistence on good conduct bonds on account of reasons unconnected with the strike are outside the pale of this item.

11. Mr. Damania's first contention is based on the distinction between a legal strike, and a strike declared to be illegal but deemed not to be so illegal on its timely withdrawal, under S. 25(5) of the Act, both having different incidence and implications. According to Mr. Damania, the act of such withdrawal may save the workmen from penal consequences but cannot relieve the employer from taking steps to avoid repetition of the indiscipline and threats to the persons and the property. This contention is undoubtedly plausible and the true answer depends on the extent and width of the statutory fiction raised under S. 25(5) of the Act and the precise import of the different expressions such as "legal strike" (Item Schedule IV), "strike which is not legal" (Item 8 Schedule IV), "Not being a strike which is deemed to be illegal under this Act" (Item 4(b) of Schedule II) and "the strike not deemed to be illegal" in S. 25(5), used in different clauses in different contexts. The decision of this ticklish point does not appear to us to be necessary in this case, as other two points appear to be well-founded and show how Dr. Kulkarni's reliance on Item 4 above is misplaced.

12. Admittedly a settlement reached between a representative-union and the employer on 16-10-1976 was in operation between 7-3-1979 to 30-10-1979, during which period employees continued to be on strike. Section 23(e) of the Industrial Disputes Act prohibits employees from going on strike during the operation of any such settlement. Such a strike is illegal under S. 24(1)(i) of the Industrial Disputes Act. The commencement of the strike (i) without 14 day's notice and (ii) during the operation of settlement is also illegal under Ss. 24(1) (a) and 24(1)(i) of this Act. Section 25 empowers the Labour Court to declare any such strike to be illegal. It is obvious that the Labour Court can take notice of the illegality arising out of the breach of S. 24(1) of this Act and not the illegality under the Industrial Disputes Act.

13. Section 25(5) of the Act reads as follows :

"Where any strike or lock-out declared to be illegal under this section is withdrawn within forty-eight hours of such declaration, such strike or lock-out shall not, for the purpose of this Act, be deemed to be illegal under this Act."

The concluding words "under the Act" and preceding words "for the purpose of this Act" only go to emphasise that, it is the illegality created by the breach of S. 24(1) of this Act, and not the one created by the breach of S. 24(1) of this Act, and not the one created by or under any other Act, that is contemplated to be wiped out under S. 25(5) of the Act on withdrawal of the strike. Such withdrawal of the strike cannot wipe out the illegality created by S. 24 of the Industrial Disputes Act. The fact that the Act or omission covered by S. 24(1)(i) of this Act and S. 23(c) of the Industrial Disputes Act happens to be the same, is, besides

the point and makes no deference to the illegality under S. 24(1) of the Industrial Disputes Act being beyond the scope of S. 25 of this Act. This continued illegality of the strike, makes Item 4 of Schedule IV, inapplicable to the act of the employers. It is attracted only when strike is illegal.

14. There is also much substance in the third contention of Mr. Damania. Unfair labour practice under this item, consists of insisting on bond from the workmen, who were on legal strike, underlying object in treating it as an unfair labour practice appears to be to extend protection to the workmen against possible humiliation or victimisation for their legitimate trade union activities. The clause has no reference where bond is insisted in a situation dehors of and unconnected with any such "strike". There is no nexus between the reasons for such bond and the strike of the workmen. No such question of humiliation or victimisation can arise when ill-advised workmen are found to be bent on indulging in acts of assaults and violence, intimidation, go-slow tactics and other illegal activities in defiance of legal provisions, standing orders, and rules of conduct implicit in accepting jobs by them. Item 4 of Schedule IV is thus inapplicable to the situation in this case on this ground also.

15. Dr. Kulkarni contends that, making joining the work, conditional on workmen's executing a bond amounts to refusal to employ the workmen on its muster roll and consequently to "lock-out". The Industrial Court has accepted this contention saying that what is sought to be imposed under the said bond is implicit in the terms of service under which any employee accepts the job. The word "lock-out" is not defined under the Act. Section 3(18), however, adopts the definitions set out in the Industrial Disputes Act. The lock-out is defined under S. 2(1) of the Industrial Disputes Act, as follows :

"Lock-out means 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 following classic passage from the Supreme Court judgment in the case of Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, ; Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, , quoted by the Industrial Court itself, is illustrative of the basic concept thereof. The relevant portion of it can be conveniently quoted here for ready reference :

"Even so the essential character of a lock-out continues to be substantially the same. Lock-out can be described as the anti-thesis of a strike. Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the employees, to see his point, of view and to accept his demands."

16. Thus refusal to employ any number of workmen does not amount to lock-out unless, the coercive process involved therein is aimed at persuading the employees to "see his point of view" and "to accept his demands." As seen earlier, the employers insist on execution of this bond and to ensure avoidance of

the "go-slow tactics" and acts of assaults and violence alleged to have been indulged in by the workmen from January, 1979, even as prelude to the commencement of their illegal strike on 13-3-1979 and continued even during the period of the strike. This according to the employer became indispensable due to the attitude of naked displayed by the workmen throughout in addition to resorting to illegal strike. In the events of this being true, the employers cannot but be said to have been justified in insisting on such a bond by way of assurance. By seeking an assurance not to act in defiance of law and the Rules and, to act according to the terms of the employment, the implores cannot be said to be making any "demands" on the workmen nor can they be said to have any "point of view" excepting what is implicit in the terms of the employment. It is difficult to conceive of any employee having any different view on this point. Any dispute about demand and need to resort to coercive processors ordinarily when "the demand" lacks the sanction of contract or law. Insistence on bond as condition, therefore, cannot amount to refusal to employ or "lock-out". That the Legislature should have restricted the prohibition against such bond to workmen going on "legal strike" under the above Item 4, pre-supposes its awareness of the needs thereof in different situations and permissibility thereof to meet the same.

17. Yet another passage from the judgment of Goswami, J., of the Supreme Court in the case of Priya Laxmi Mills Ltd. Vs. Mazdoor Mahajan Mandal, Baroda, , at page 2587, fortified this view of ours :

"It should, however, be made clear that lock-out cannot be declared also for reasons similar to those described in the present notice of lock-out. In that case although, it will be lock-out in another sense, it may not be a lock-out within the meaning of S. 3(24) of the Act. That kind of a lock-out with the avowed object of preventing violence and threat to life and property may even be justified on facts in a given case. In such a situation it may be difficult to prove that it is an illegal lock-out since in an illegal lock-out the sole object is to compel the workmen to accept the terms of the employer which the workers consider as unreasonable and oppressive."

18. Our attention was drawn to a judgment of a Division Bench, of which one of us (i.e., myself) was member in Special Civil Application No. 878 of 1979 with Special Civil Application No. 1512 of 1979 and Civil Application No. 3111 of 1979, dated 24th September, 1979 The Premier Automobiles Ltd. and others v. G. R. Sapre and another. Employers therein justified abrupt suspension of work without any notice, on the apprehension of threats to their property and personnel at the Kalyan plant. The question whether this amounts to lock-out or was kept open, as it was found on evidence, that, though such threat existed at their Kurla plant, there was no evidence of any such threat at the Kalyan plant, stoppage of work at which was the subject-matter in dispute. It was also further found that the stoppage of work was aimed at coercing the union to withdraw its claim for recognition at Kurla plant.

19. The only real question is, if the allegation against the workmen are true or just a pretence to deny work to them. The employers appear to have succeeded in making out a good prima facie case of the same being true and for insisting on the bond of good conduct in this case. Mr. Damania drew our attention to the affidavit filed on behalf of the employers in the Industrial Court in reply to the Union's complaint dated 26th November, 1979. The said affidavit refers to several specific incidents involving acts of assaults and violence on the part of the employers. The affidavit also extensively refers to the "go-slow tactics" indulged in by the employees since January, 1979. Surprisingly enough, no attempt was made on behalf of the complainant-workmen to refute these allegations. Identical specific allegations were made by the employers in their earlier complaint No. 40 of 1979. It is on the strength of these averments that the Industrial Court was constrained to confirm the injunction by its order dated 18th October, 1979. It appears from the said order that even in that complaint, workmen had not cared to refute these allegations by filing any affidavit, though written statement was filed, without swearing to the averments therein on oath. In these circumstances, we shall have to proceed on the basis that allegations made by the workmen in the said complaint as also in the affidavit filed in reply to the present complaint, of the workmen, out of which this writ application arises are prima facie, true. It also appears that even the order of injunction dated 11-5-1979 passed by the Industrial Court in the employer's complaint of unfair labour practice by the employees, could not dissuade the workmen from the illegal strike. The workmen continued in the illegal acts with impunity. This only demonstrates how the implicit assurance in the terms of the employment on which the trial Judge so much relies, has proved to be empty. The employers, in the circumstances, appearing on the record at present, were justified in insisting on such good conduct bond from the employees as condition precedent to joining the work. The conclusion would be different if ultimately at the end of the trial facts turned out to be different.

20. Such insistence by the employees on good conduct bond is not without precedent. It is useful to refer to the judgments in the cases of Engineering Mazdoor Sabha and Others Vs. S. Taki Belgrami and Another, and in the case of Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, . In both these cases, the employers were driven to ask for such bond in view of the continued "go-slow tactics" and obstruction to production. The Court could not find any fault with the employers. Consequently refusal to take them on work was upheld by the Court. Thus employer was justified on insisting on the bond in the circumstances prima facie established.

21. This must, however, be borne in mind that the dividing line between justified and unjustified insistence on such bond is very thin. The Court has to scrupulously guard against the danger of this being abused making it a just a pretext for coercing workmen to give up their just struggle with legitimate means.

22. Dr. Kulkarni contends this Act is a special enactment and has the effect of

repealing the provisions of the Industrial Disputes Act impliedly. We are unable to see any basis for this contention. Schedule I of the Act, to which Dr. Kulkarni drew our attention, only indicates to what extent Industrial Disputes Act stands amended. Plain implication is that provisions of the Industrial Disputes Act remain intact and effective excepting to the extent to which it is amended under Schedule I. There is nothing in the said amendment to modify S. 23 or S. 24 of the Industrial Disputes Act and under which also strike is found to have been illegal. Dr. Kulkarni also contends that the assent of the President to this enactment, has the effect of repealing the Industrial Disputes Act because of Art. 254 of the Constitution. The question of attracting Art. 254 of the Constitution cannot arise unless conditions indicated in the Article are shown to have been fulfilled. We are unable to see the relevance of Art. 254 in this case.

23. The result is that application succeeds, and rule is made absolute. It is necessary to make it clear that any observations in this judgment will not prevent the Industrial Court from disposing of the main complaint on merits in accordance with law.

24. Rule made absolute.

25. In the circumstances of the case, there will be no order as to costs.