
(1998) 08 AP CK 0107
In the Andhra Pradesh High Court
Case No : WP. No. 20522 of 1998

K. Koteswararao

APPELLANT

Vs

APSRTC National Mazdoor Union and Others

RESPONDENT

Date of Decision : 04-08-1998

Acts Referred:

Constitution of India, 1950 — Article 19

Industrial Disputes Act, 1947 — Section 10(1), 10(3), 12(3), 22, 23

Citation : (1998) 6 ALD 440

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : Mr. M.P. Chandramouli, for the Appellant; Mr. A.K. Jayaprakash Rao and Mr. Y.V. Swamy, SC for APSRTC, for the Respondent

Judgement

1. The petitioner, an advocate clerk, purportedly imbued with public spirit, has moved this Court for a writ of mandamus to declare the strike called by the 1st respondent-Union as illegal. Further directions are also sought to direct the 1st respondent to call off the strike forthwith and to the A.P. State Road Transport Corporation (for short "the Corporation") to take immediate steps to prevent on going strike forthwith.

2. The facts are in short compass:

The passenger traffic in the State has been taken over by the State and handed over to the 2nd respondent Corporation. The 1st respondent is the recognised employee Union. The Union and the Management arrived at a settlement u/s 12(3) of (he Industrial Disputes Act on 21-10-1997 and the agreement is valid for a period of four years from 1st April, 1997 to 31st March, 2001. During the pendency of the agreement the employees are not permitted to raise any demand with financial implications. However, a fresh cliapter of Demands dated 19-6-1998 was presented demanding, inter alia, payinent of performance incentive to all the employees of the Corporation, consideration of the cases of the Drivers who were removed from service on the ground of producing fake

driving licences and certain other demands. The Management negotiated with the 1st respondent-Union and it is the case of the petitioner that the Corporation had agreed to certain demands leaving aside certain other demands involving huge financial implications. The Union, not satisfied, issued a strike notice. The Government issued G.O.Ms.No. 112 Transport, Roads & Buildings (Tr.III) Department, dated 25-6-1998, declaring the services under the Corporation as "essential service" within the meaning of the A.P. Essential Services Maintenance Act, 1971 (Act 20 of 1971), (for short "the Act") and prohibiting strike under the services of the Corporation. Despite the same the 1st respondent declared strike from the mid-night of 18-7-1998. The Government referred certain disputes to the Industrial Tribunal under G.O. Rt. No.139, dated 18-7-1998 issued u/s 10(1) of the I.D. Act. The Government also issued G.O. Rt. No. 1240, Labour, Employment, Training & Factories (Lab.I) Department, dated 18-7-1998, in exercise of powers under sub-section (3) of Section 10 of the I.D. Act, prohibiting the continuance of strike by the Union with immediate effect. The writ petition is filed for a direction to declare the strike as illegal and to issue consequential directions.

3. The case of the petitioner in this case is that as the strike was prohibited by issuing G.O.Ms.No.112, dated 25-6-1998 and G.O.Rt.No.1240, dated 18-7-1998, the strike is illegal. Hence the petitioner requests to declare the strike as illegal. The 1st respondent-Union presented a Charter of Demands as stated supra, and not satisfied with the negotiations with the Management, issued strike notice. Exercising the powers conferred by the Act the Government prohibited the strike in any services in the Corporation as early as on 25-6-1998 in G.O.Ms.No.112 dated 25-6-1998, declaring the services in the Corporation as "essential services" under the Act. The 1st respondent-Union has not chosen to question the validity of the G.Os prohibiting the strike. However, the members struck the work throughout the State with effect from midnight of 18-7-1998. Thereafter, as seen supra, exercising the powers under sub-section (3) of Section 10 of the I.D. Act the Government prohibited the continuance of the strike by the Union. This, again, was not challenged by the Union. But the Union continued the strike. Thus, both the G.Os. the first G.O. prohibiting strike and the second, prohibited continuance of the strike, remain unchallenged.

4. Now, coming to the effect of the prohibition of strike, Under sub-section (4) of Section 3 of the Act, the strike declared or commenced whether before or after the issue of the G.O.Ms.No.112 dated 25-6-1998 by the Government is illegal. Again it is illegal under sub-section (1) of Section 24 of the I.D. Act if the strike is continued after the issuance of G.O.Rt.No.1240, dated 18-7-1998. Thus, the law is clear that the strike declared and continued by the 1st respondent-Union is per se, illegal.

5. It should be mentioned at this stage, that the Union did not dispute the legality of the strike. It is also significant to notice that the Union did not question any action that was taken by the Corporation against the employees

who indulged in the illegal strike. In fact, it was brought to light that some of the members of the Union have been demoted and prosecuted in participating in the illegal strike and arrests are also made. But the Union or the members affected, did not so far question such action. Thus, the illegality of the strike remains unchallenged in this writ petition.

6. It is, of course, during the course of arguments, the learned Counsel for the Union justified the action of the Union to go on strike. It is argued that the strike is the weapon in the hands of the weaker sections of the people for collective bargaining rather than the stronger Management and the Industrial Disputes Act has also recognised such right. Neither the Counsel for the petitioner nor the learned Advocate-General appearing for the respondents 3 to 5, disputed this widely recognised right of the workers. This question, in fact, is no longer *res Integra*. Krishna Iyer, J., in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, , in his characteristic and forthright manner, observed that:

"The right to unionise, the right to strike as part of collective bargaining and subject to the legality and humanity of the situation, the right of the weaker group viz., labour to pressure the stronger party, viz., capital to negotiate and render justice, are processes recognised by the industrial jurisprudence and supported by Social Justice. While society itself, in its basic needs of existence, may not be held to ransom in the name of the right to bargain and strikers must obey the civilised norms in the battle and not the vulgar or violent hoodlums. Industry represented by intransigent Managements may well be made to red into reason by the strike weapon and cannot then squeal or wail and complain of loss of profits or other ill-effects but must negotiate or get a reference made. The broad basis is that workers are weaker although they are the producers and their struggle to better their lot has the sanction of the rule of law. Unions and strikes are no more conspiracies than professions and political parties are, and, being far weaker, need succour, Part IV of the Constitution, read with Article 19, sows the seeds of this burgeoning jurisprudence. The Gandhian quote at the beginning of this judgment sets the tone of economic equity in Industry. Of course, adventurist, extremist, extraneously inspired and puerile strikes, absurdly insane persistence and violent or scorched earth policies boomerang and are anathema for the law. Within these parameters the right to strike is integral to collective bargaining."

Section 22 of the I.D. Act recognised the right of employees to go on strike. But Section 24 declares that a strike would be illegal if it violates the conditions stipulated in Sections 22 or 23 and sub-section (3) of the Section 10 of the I.D. Act. The grievance of the learned Counsel for the Union also is that all the disputes have not been referred to the industrial Tribunal and that the conditions already agreed have not been fulfilled by the Management, which was, however, refuted by the learned Advocate-General. Learned Advocate-General submits that all the disputes would be referred to the Industrial Tribunal and pleaded to

call off the strike in view of the inconvenience and hardship caused to the general public. It is no doubt true that the public transport in State, having been monopolised by the State and" entrusted the same to the 2nd respondent-Corporation, with the sole aim of providing efficient, adequate, economical and properly coordinated road transport service, to the exclusion of other persons, the general public are wholly dependent for their conveyance upon the plying of the buses by the Corporation. The hardship and inconvenience to the general public due to the strike can easily be imagined, particularly when the strike is for a prolonged period. It is not disputed that the loss to the Corporation runs into crores of rupees. Krishna Iyer, J. in the decision (supra) has also warned that the Union should keep in mind that "the society itself, in its basic needs of existence, may not be held to ransom in the name of the strike to bargain." But in the instant case, the strike, as seen supra, has been prohibited and is held to be illegal.

7. However, as the validity of the G.Os is not under challenge in the writ petition and in view of the provisions of the I.D. Act and the Essential Services Maintenance Act, it has to be held that the strike is illegal. The strike is, therefore, declared as illegal. The writ petition to this extent is allowed.

8. The petitioner further seeks directions to the 1st respondent-Union to call off the strike forthwith and to the Corporation to take immediate steps to prevent the on-going strike. The petitioner's primary interest appears to be only to see that the strike is called off. I am afraid this Court will not grant such a direction. The Government having prohibited the strike, is empowered to take preventive and punitive action under the provisions of Industrial Disputes Act and Essential Services Maintenance Act, if the Union continued the strike. It is not the case of the petitioner that the Government is guilty of inaction in such direction. Further in view of the calling off the strike this question will no longer survive.

9. The writ petition is accordingly allowed to the extent indicated above. No order as to costs.