
(2000) 08 KL CK 0049
In the High Court Of Kerala
Case No : O.P. No. 16650 of 1996

Kailas Rubber Co.

APPELLANT

Vs

Inspector of Plantations and Others

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 23
Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 — Section 3, 5

Citation : (2001) 88 FLR 555 : (2000) 3 LLJ 205

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—The petitioner is a Public Limited Company owning and managing an estate. The petitioner challenges Exhibit P5 order of the first respondent directing the petitioner to pay wages for the national and festival holidays to the workers. These orders have been passed under Sections 3 and 5 of the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 (hereinafter referred to as "the Festival Holidays Act"). According to Section 3 of the Festival Holidays Act, every employee shall be allowed in each calendar year a holiday of one whole day on January 28, August 15, May 1 and October 2, and 9 other holidays as the first respondent may specify in respect of any industrial establishment in consultation with the employer and the employees. According to Section 5 of the Festival Holidays Act, every employee shall be paid wages for each of these holidays mentioned in Section 3. There are two Provisos to Section 5. According to the 1 Proviso, if such holiday falls during the period of a lay-off, the employee shall be paid fifty per cent of the total of the basic wages and dearness allowance. According to II Proviso, no wages shall be paid to the employee for any of the holidays if such holiday falls during the period of a strike which is illegal u/s 24 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. According to the petitioner, the II Proviso referred to above, is applicable to the case in hand. The employees represented by the second respondent-union were on strike between December 7, 1994 and April 2, 1995. The above strike was illegal u/s 24 of the Act because of the pendency of an industrial dispute referred for adjudication before the Labour Court as per Exhibits P1 and P2. u/s 24 of the Act a strike is illegal if it is commenced or declared in contravention of Section 22 or 23 of the Act. Section 23 of the Act prohibits strike under the following circumstances:

"(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;

(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under Sub-section (3-A) of Section 10-A; or

(c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award."

Therefore, according to the petitioner, u/s 23(b) no workman shall go on strike during the pendency of proceedings before a Labour Court or Tribunal. Exhibit P1 is an order of the third respondent referring a dispute between the petitioner and one worker for adjudication to the Labour Court, Kollam. Exhibit P2 is another order of the third respondent referring a dispute for adjudication between the petitioner and the President, Plantation Labour Congress (H.M.S) to the Labour Court, Ernakulam.

3. Sri Jagan, learned counsel for the petitioner relied on a ruling of the Supreme Court reported in *Chemicals and Fibres of India Ltd. Vs. D.G. Bhoir and Others*, in order to drive home his point that the strike resorted to by the second respondent-union is illegal u/s 23(b) of the Act. There is an elaborate discussion in the above judgment regarding the right of the workers to strike work and the embargo contained in Section 23 of the Act.

4. Paragraph 5 of the above judgment contains the above discussion *Chemicals and Fibres of India Ltd. Vs. D.G. Bhoir and Others*, at 172, 173 :

"5. These provisions bring out the elaborate nature of the proceedings relating to conciliation, arbitration, settlement, inquiry and award. The intention behind all these provisions is to avoid strikes and lock-outs as far as possible not only by bringing the parties together but also by referring points of dispute between them, either voluntarily or otherwise, for decision by Labour Courts, Tribunals and National Tribunals. Strikes are not banned even in the case of public utility services. The ban on strikes is subject to certain limitations. There is no doubt that the Act recognises strikes as a legitimate weapon in the matter of industrial relations. We need not concern ourselves about aberrations like gheraos or go-

slow. The prohibition of strikes during the pendency, of proceedings before a Labour Court, Tribunal or National Tribunal u/s 23 was, in the Act as originally enacted, confined only to disputes between the employer and the general body of employees and not to individual workman. It is in that context that Section 23 should be interpreted. In the case of an industrial dispute between an individual workman and the employer the whole elaborate machinery earlier set forth of the Industrial Disputes Act may not be necessary lest it would be like using a sledge-hammer to kill a fly. While there is justification for preventing a strike when a dispute between the employer and the general body of the workmen is pending adjudication or resolution, it would be too much to expect that the legislature intended that a lid should be put on all strikes just because the case of a single workman was pending. That the general body of labour should be prevented from resorting to strike where they had chosen to espouse the cause of a single workman is understandable and reasonable. It has even been held that if the employer and workmen are parties to a reference the decision therein binds them even though they may have said they were not interested in it (Ballarpur Collieries Co. Vs. The Presiding Officer, C.G.I.T., Dhanbad and Another, . But if strikes are to be prohibited merely because the case of an individual workman was pending, whose case had not been espoused by the general body of the workmen, there can never be any strike even for justifiable ground. A strike is a necessary safety valve in industrial relation when properly resorted to. To accede to the contention of the employer in this case could be in effect acceding to a contention that there should never be a strike. While we realise the importance of the maintenance of industrial peace, it cannot be secured by putting a lid on the legitimate grievances of the general body of labour because the dispute relating to an individual workman u/s 2-A is pending. That might mean that the boiling cauldron might burst. In that case the general body of workmen would be legitimately aggrieved that they are prevented from striking because an individual's case was pending with which they were not concerned. It is not enough in this situation to say that it is always open to the Government to make a reference u/s 10. It may or may not happen. Furthermore, the matters that could be pending before a Labour Court u/s 23 under Second Schedule are:

1. The propriety or legality of an order passed by an employer under the standing order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any Customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

"6. The propriety or legality of an order passed by an employer under the

standing orders very often might refer to an individual workman and that should not be made the reason for preventing labour from giving vent to its legitimate grievances in a legitimate way."

5. The counter affidavit filed by the second respondent reveals the following facts. The petitioner declined to grant 20% of bonus to the workers for the year 1992-93, Therefore, the workers were forced to resort to agitations for their legitimate right of bonus which led to many conciliation talks between the management and the 2nd respondent. The 2nd respondent and its workers started strike only after the failure of the conciliation talks. Exts. P1 and P2 orders of reference relate to the legality of the arbitrary action of the petitioner in dismissing a few workers. The final adjudication on Exts. P1 and P2 was against the management and in favour of the workers. There was no adjudication by any authorities with regard to the illegality of the strike. Therefore, it was contended that the contention of the petitioner is devoid of any merit.

6. Therefore, it has to be considered by this Court whether the pendency of the disputes arising out of Exts. P1 and P2 in the Labour Court will deprive the workers to strike on an issue which has no bearing on the individual rights of the workers. The ruling of the Supreme Court points out that if strikes are to be prohibited merely because the case of an individual workman was pending, whose case had not been espoused by the general body of the workmen, there can never be any strike even for justifiable grounds. A strike is forcible weapon at the hands of the workers in order to press their legitimate demands. It is part of a collective bargaining which has been recognised by the Industrial Law. As held by the Supreme Court a strike is a necessary safety valve in industrial relations. If the contention of the petitioner is accepted, there cannot be any strike while an adjudication is pending before the Labour Court or a conciliation is pending before the labour authorities. It is common knowledge that adjudication of dispute by the Labour Courts will take a long time. Conciliation proceedings are also likely to be protracted. During the pendency of these proceedings the workers are prevented from resorting to strike. If such an extended interpretation is accepted, it will virtually deny the workers of their precious weapon. As can be seen from this case the workers struck work because of the action of the petitioner in not paying the bonus. The above issue had nothing to do with a legality of the dismissal of the workmen. That is why the Supreme Court held in the above ruling that the pendency of a dispute relating to an individual workman u/s 2(a) of the Act cannot put a lid on the legitimate grievances of the general body. The majority of the workers will be at a disadvantage to strike work for a legitimate cause because a dispute with regard to individual workman is pending in a Labour Court.

7. The learned counsel for the petitioner stressed the following sentence in the ruling of the Supreme Court referred to above.

"As we have pointed out, even in respect of Clause (b) some limitation should be read confining it to the parties to the proceedings either actually or

constructively, as in the case of a union espousing the cause of an individual workman."

But the above sentence cannot be read in isolation. The impact of the above sentence must be understood in the general trend of the above ruling. As I understood the above ruling the Supreme Court categorically said that there is no justification for preventing a strike when a dispute between the employer and the general body of workmen is pending adjudication or resolution and it would be too much to expect that the legislature intended that a lid should be put on all strikes just because the case of a single workman was pending. The Supreme Court further held that the propriety or legality of the order passed by an employer under the standing order very often might refer to an individual workman and that should not be made the reason for preventing labour from giving vent to its legitimate grievances in a legitimate way.

8. Therefore, applying the above principles in the proper perspective as laid down by the Supreme Court I do not find any illegality in Ext. P5 order. The Original Petition is, therefore, dismissed.