

(1994) 12 BOM CK 0063

In the Bombay High Court

Case No : Appeal From Order No. 26 of 1994

Kamgar Sabha and others

APPELLANT

Vs

Hindustan Ciba-geigy Ltd.

RESPONDENT

Date of Decision : 23-12-1994

Acts Referred:

Constitution of India, 1950 — Article 19

Trade Unions Act, 1926 — Section 17, 18, 2

Citation : (1994) 12 BOM CK 0063

Hon'ble Judges : J.K. Chandrashekhara Das, J

Bench : Single Bench

Judgement

T.K. Chandrashekhara Das, J.—Defendants in Special Civil Suit No. 10/94/A on the file of the Civil Judge, Senior Division, Panaji, are the appellants herein. They challenge the order passed by the lower Court on 10th February, 1994 whereby they were restrained from doing certain violent acts alleged to have been committed by them in the plaint and also restrained from demonstrating within a distance of 100 meters of the main gate of the respondent's factory. After filing this appeal by order dated 25th March, 1994 the order under Appeal had been revised to the effect that demonstration had been prohibited within the distance of 30 meters instead of 100 meters.

2. It is alleged in the plaint that the respondent Company is engaged in the manufacture of Pesticides, Pharmaceuticals, Dyes and Chemicals, Additives, etc., at their factory situated at Corlim, Ilhas, Goa, spread over an area of 200 acres. That for this purpose the employer has engaged about 550 employees out of which 115 persons are in the Managerial Cadre. In addition to the factory building the complex at Corlim comprises of various other buildings housing different departments of the respondent and in addition had residential quarters for its officers within the confines of the same complex. The defendants Nos. 1 and 2 in the suit are the Trade Unions of the employees of the employer's factory which is registered under the Trade union Act, 1926. The other defendants are the office bearers of the Goa Unit of the defendants Nos. 1 and 2.

It is also alleged that in the month of May, 1993 the appellants herein submitted a charter of demands. The despite constant negotiations to arrive at a fresh settlement to regulate wages and other allowances of the factory workers from 1-1-1993, between the respondent and the appellants, the attempt of a fresh settlement did not yield any result. However, their charter of demands had not been adhered to by the respondent and by November, 1993 the workers of the respondent started resorting to restrictive practices with a view to compel and/or pressurise the respondent to yield to their demands. It is alleged that they were engaged in a series of unlawful activities of sabotage and thereby resulting in stoppage of production activities. The appellants/workers also refused to continue to work on essential service points in absence of relievers. It is also alleged that the appellants workers were also found clandestinely putting up derogatory posters condemning the Management of the respondent. There are certain incidents of violence also alleged against the appellants. In view of these restrictive practices and go-slow adopted by the appellants/workers the respondent had declared a lock-out by a notice with effect from 00.00 hours on 14-1-1994.

3. As soon as the lock-out was declared the factory workers started threatening the contractors and other contractual labourers engaged by the respondent for doing various other works at the factory site. There were allegations of beating up of the contractors' workers and that about 700 workers engaged by the respondent were not allowed into the factory complex.

4. With these allegations the respondent filed a suit before the lower Court and alongwith the suit they filed an application for interim injunction restraining the appellants and the workers. The lower Court issued an interim order on 21-1-1994 restraining the appellants/workers from doing any act of violence, prohibited from assembling, picketing, etc., within a distance of 100 meters from the main factory gate. The plaintiff/respondent contested the matter by filing a reply. The appellant Trade Union contended the having regard to the provisions of the Trade Unions Act, 1926, Section 18 read with section 2(g) it is immune from any suit of the nature preferred. On merits, it was contended that the workers have been demonstrating peacefully at the entrance of the gate and that regard being had to be topography of the factory location, the restraint order operating over a distance of 100 meters is not reasonable. It is alleged that the factory building is situated about 1 km. away from the main gate. The appellants/defendants also totally denied the acts of violence before the Court below. However, after hearing both sides the lower Court had confirmed the injunction already passed. Paragraph 16 of the order reads as follows :

"The restraint limit put by this court over a distance of 100 mts., vide the order dated 21-1-1994 is reasonable under the circumstances, regard being had to the topography at site".

The lower Court was also satisfied that the plaintiffs have succeeded in making out a prima facie case and, therefore, the order passed by the Court below

restraining the appellants/workers to have the demonstration within a limit beyond 100 mts. is confirmed.

5. Aggrieved by this order the appellants filed this appeal. Though several grounds have been taken in the Appeal, the learned counsel for the Appellants confines his argument only the restrictions imposed by the Court below in conducting the demonstration by the appellants within a distance of 100 meters from the main gate of the respondent Company. It is true that this Court in an interim arrangement modified the restriction of distance of 30 meters. Therefore my limited endeavour in this case is to examine as to how far the Court below is justified in imposing the said restriction of distance in conducting demonstrations by the Appellants. The learned counsel for the appellants submitted that the restriction imposed by the lower Court in conducting peaceful demonstration before the main gate of the respondent Company results serious inroads to the rights of the Trade Union under Sections 17 and 18 of the Trade Unions Act.

6. The learned counsel for the respondent on the other hand, has submitted that the restrictions regarding the distance for conducting the demonstrations from the main gate of the respondent Company was absolutely necessary to avoid untoward incident such as acts of violence, assault, gherao, threat of bodily injury, intimidation and prevention of ingress and egress from or to the Company, etc. Several decisions have been cited by the learned counsel for both sides to fortify their arguments. The Counsel for the appellants has invited my attention to Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others, , Federation of Western India Cine Employees v. Filmalya Pvt. Ltd. II LLJ 393, M/s. Blaze Advertising Private Ltd., Bombay v. Blaze Advertising and Allied Companies Employees" Union & Ors. 1985 LIC 1015, Indian Express Newspapers (Bombay) Pvt. Ltd. v. T. M. Nagarajan & Ors. 1988 LIC 1067 , etc., whereas the learned counsel for the respondent cited the decisions in Kameshwar Prasad and Others Vs. The State of Bihar and Another, , Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, , Association of State Road Transport Undertaking v. Association of State Road Transport Undertaking Employees Union & Ors. 1986 LLN 915 , Wander Ltd. and Another Vs. Antox India P. Ltd., and Syndicate Bank & Anr. v. Shri K. Umesh Nayak, 1994 2 CLR 753 . Out of these decisions, Kameshwar Prasad and Others Vs. The State of Bihar and Another, rendered by a Constitution Bench of the Supreme Court of India consisting of five Judges is worth referring specifically. It was held by the Supreme Court that it is the infallible right of the Trade Union to conduct demonstrations to air their grievances and demands against their employer, a right which emanates from the fundamental right under Article 19(1)(a) and 19(1)(b). In paragraph 13 after examining the scope of the word "demonstration" the Supreme Court has held in that paragraph as under :-

"..... Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas

to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the contents of Articles 19(1)(a) or 19(1) (b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedom guaranteed by Articles 19(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(1)(a) or (b)".

It is clear from the above pronouncement of the Supreme Court on the subject that demonstration of a Trade Union to convey their grievances to their employer is an unimpeachable right so long as they perform the demonstration peacefully and in an orderly manner. Committing an act of violence and assault and the disorderly behaviour by the employees, however is not permitted in the guise of their exercise of this right. This decision has been reiterated by the Supreme Court in its subsequent decisions and it still holds the field now in similar situations. Therefore as long as the demonstration is peaceful and does not create any law and order problem, the restriction imposed by the lower Court on such a demonstration is certainly illegal. Recently the Delhi High Court in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. T. M. Nagarajan & Ors.* 1988 LIC 1067 dealt with more or less a similar situation where the restrictions of distance has been imposed on the demonstration of the employees. In Paragraph 17 of the said judgment reads as follows :

"Coming to the next submission of defendants, that no restrictions can be placed by the Court on the right of defendants to have demonstration etc., at a particular distance. In reply, learned counsel for plaintiff has cited various cases where the Courts have directed the keeping of distance from 20 yards to 200 meters. I am of the view that how much distance should be there it depends upon the facts and circumstances of each case. The object is to prevent any act of violence, assault, gherao, threat of bodily injury, intimidation and prevention of ingress and egress of a willing worker. In the present case, the situation and surroundings on the premises on question have to be taken into consideration while fixing the distance and placing other restrictions on defendants. Restriction should not be such as to render ineffective and unless a peaceful strike or to deprive the workers of their legitimate rights. Restrictions in a given case should be reasonable keeping in view the totality of circumstances".

Therefore the restrictions regarding demonstration by a Trade Union are to be

imposed taking into account the circumstances and situations prevailing in each case. Here though there were allegations of violence in the plaint, the appellants have stoutly denied those allegations. Moreover, after the filing of the suit, not a single incident of violence has been pointed out on behalf of the respondent. Nor they have established that any violent activities have been resorted to by the appellants. Therefore in the circumstances the restrictions imposed by the Court below for conducting their demonstrations by the appellants are not justified taking into account the topography and the location of the factory and office building and other attendant circumstances. Admittedly the office and factory of the respondent are situated about 1 km. away from the main gate. The demonstration is conducted outside the main gate. Therefore the demonstration such as slogan shouting and exhibition of placards, etc. will not however affect the working of the factory or office of the respondent. In these circumstances another restriction with regard to the distance will definitely be unnecessary and it will hamper the right of the appellants. Further, the learned counsel for the appellants has undertaken before me that no violent act or incident will be resorted to by the appellants. He further says that necessary safeguards could be imposed for preventing the happening of any untoward incident.

7. Lastly the learned counsel for the respondent contended that this Court in exercising the appellant jurisdiction cannot interfere in the discretion exercised by the Court below, even if this court feels that the discretion could be exercised by the lower Court in a manner other than that exercised. I have already found the discretion was exercised by the lower Court in such a way unmindful of the valuable rights of the appellants and therefore it cannot be said that the lower Court exercised its discretionary power properly and legally in fixing restrictions on distance.

8. In view of the above discussions, I feel that the lower Court's Order dated 10-2-1994 has to be confirmed except the restrictions imposed on the distance of conducting the demonstrations. These restrictions however, have to be removed. Therefore all injunctions ordered by the Court below will continue. The restrictions regarding the distance of 100 meters ordered by the lower Court have been removed on the following conditions to be observed by the appellants.

(i) The appellants are allowed to conduct peaceful demonstrations near the main gate outside the factory compound peacefully and in orderly manner;

(ii) Such demonstration should be confined only to the narrow strips of land lying between the factory compound and the National Highway spreading on either side of the main gate;

(iii) The appellant and their workers shall not create any hindrance to the public traffic on the National Highway;

(iv) The appellants should always keep open the space leading to the National Highway from the main gate. They should not create any obstruction or block the egress and ingress of the employees of the respondent and the employees of the

contractors of the respondent and also they should not obstruct the vehicular traffic going in and coming out through the main gate;

(v) The number of demonstrators should not exceed 100 at any point of time;

(vi) if any violent activities are resorted to by the appellants, the respondent can move the Trial Court for modification of this order and the trial Court, after hearing the parties can pass such order as is found necessary to maintain peaceful and orderly atmosphere in the premises even by prohibiting any demonstration in the premises;

(vii) No outsider other than the factory workers shall be allowed to participate in the demonstrations.

9. The order under appeal is modified to the extent indicated above. The appeal is disposed of with the above observations.

10. There shall be no order as to costs.