
(1984) 10 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 10308 of 1982

K.S.R.T.C. Employees Association Trivandrum and Another	APPELLANT
Vs	
General Manager K.S.R.T. C.	RESPONDENT

Date of Decision : 16-10-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Wages Act, 1936 — Section 9

Citation : (1985) KLJ 140

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : M.M. Cherian, for the Appellant; S. Sankara Subban, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran J.

1. Sometime by the end of 1982, the Kerala State Road Transport Corporation, the respondent herein, felt concerned about the general tendency among its employees "to strike work even on very minor matters without observing due formalities resulting in undue hardship and inconvenience to the travelling public." It felt that the tendency had to be curbed. Ext. P1 communication dated 14-12-1982 was the result of such thinking. That warned the workers that strike even for a portion of a day "may entail declaration of the whole day as dies-non", and lead to initiation of disciplinary action against the erring employees. The General Manager wanted this matter to be brought to the notice of the members of the unions including the petitioner-Union. Soon thereafter, on 18-12-1982, Ext. P2 intimation was given by the General Manager to all its employees. That communication noted with concern the increasing tendency on the part of its employees to be involved in illegal strikes and to be unauthorisedly absent from duty. The Corporation felt that taking into consideration the untold hardship and misery that will be caused to the public and to those who travel by

its buses, the situation should not be permitted to continue. The liability of employees who strike work without notice as required under law and absent themselves from duty without sufficient reason, to be proceeded against for misconduct, and even for the deduction of 8 days wages under the proviso to Section 9 of the Payment of Wages Act, 1936, (illegally and unauthorisedly absenting from duty would incur that liability as indicated in Section 9 of the Payment of wages Act, 1936) was also referred to. The date 1-1-1983 was indicated as the date from which the Corporation intended to enforce strictly the above decisions.

2. These orders were challenged by the 1st petitioner-Union and the 2nd petitioner-employee. Among other things, it was contended that the circulars were without jurisdiction, that deduction of wages disproportionate to the actual time of absence was unjustified, that an employee who had worked for a portion of the day but had struck work later should not be declined of the fruits of the labour for the time he had actually worked, and that Ext. P2 was particularly violative of Section 9 of the Payment of Wages Act.

3. A situation where the circulars had to be implemented was to arise on 25-8-1984. Apparently anticipating the events, a memorandum Ext. P3 dated 24-8-1984 was issued by the Corporation. Clause 1 thereof reads:

1. Absence of employees on 25-8-1984 will be treated as dies-non and wages for 8 days (eight) will be deducted from their salary.

Other clauses are not of direct relevance in relation to the points urged in the writ petition.

4. There appears to have been a strike on 25-8-1984. The petitioners apprehended action on the lines indicated in Ext. P3. A challenge against Ext. P3, was added by C. M. P. 24122 of 1984. This court, by order dated 5-9-1984, granted interim stay against the implementation of Ext. P3.

5. I am not satisfied that this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution and grant any discretionary reliefs to the petitioners herein.

6. The excruciating agony to which the public will be exposed by a sudden strike in transport service cannot be over emphasised. It is the poorer sections of the society who have necessary to avail of the public utilities including transport; and it is those sections who are exposed to such merciless treatment at the hands of those who walk away from the buses, whatever be the time or place at which the travellers be stranded. Imagine the plight of those who go on an urgent errand, or for emergent medical treatment, or to very distant places which could be reached only by resort to other connecting travelling facilities. All those persons would get stranded for indefinite periods, by the strike launched without any warning. If action is taken by the Corporation to protect the public from such unjustifiable actions on the part of its employees, it cannot be termed as

arbitrary or unconstitutional.

7. Whether there has not been a clash between the trade union rights and convenience of the public in recent times had been a matter of acute academic and legal controversy. Referring to the situation in England, Lord Denning observed:

All over England in recent years the prayer has gone up: "let justice be done between the trade unions and the public

(See "The Closing Chapter" by lord Denning, Page 159)

After referring to the early period where the trade union did require the protection of the law and of the courts, he observed:

But latterly the trade unions appear to many to have taken undue advantage of this immunity. It has been used to enforce excessive demands, such as to increase wages beyond those which the industry can afford, especially in regard to nationalised undertakings. In the course of this the trade unions have inflicted immeasurable hardship and injury on thousands and thousands of innocent people. They have stopped services essential to the life of the community. So much so that everywhere the cry went up, with Shakespeare:

"O". it is excellent To have a giant's strength, but it is tyrannous To use it like a giant.

(Page 160)

In a developing democracy, neither the employer nor the employee should behave like a tyrant. If a nationalised undertaking like the Corporation herein takes steps to checkmate unjustified and tyrannous acts on the part of its employees, courts should not put spokes in the wheel.

8. The circulars do not totally prohibit collective bargaining, on which counsel for the petitioner rightly stressed. Collective bargaining does not justify inhuman or cruel acts even on the part of the trade unions and their officials. Norms of civilised functioning have to be observed by them too. Only the special situations where irresponsible and illegal action of the employees visits the travelling public with untold hardship had been dealt with under Exts. P1 to P3. Viewed that way, the circulars do not spell a negation of trade union rights nor impair the legitimate rights of the workers.

9. It is not possible for this Court to evaluate situations yet to arise hereafter. If and when similar situations arise, appropriate action may be necessary. Even in such situations, it is not necessary that this court should rush to decide controversial factual questions. For example, a Union or an employee may have a case that its strike is not without notice and that it is fully supported by a just cause. The Management may with vehemence dispute it. Should this Court go into those details? I am clearly of the view that this Court should not enquire into such matters at this stage.

10. If the employee is proceeded against in disciplinary proceedings, It is not the end of the matter. If the ultimate punishment is not unjustified, the employee is not without remedy. The action of the management can be challenged in diverse proceedings, including those under the Industrial Disputes Act. If disciplinary proceedings are unwarranted or even if punishment awarded is unduly harsh, the employee does have, under our system, a fairly effective legal remedy. Resort to the Tribunal is one of them.

11. If instead of taking disciplinary action, the management deducts the wages as indicated in Exts. P1 and P3, that action also is not without remedy, In case the deduction is unwarranted, the employee can ventilate his grievances by approaching the authorities under the Payment of Wages Act. Remedy failing therein, he can appeal to the Appellate Authority. Even thereafter, subject to the well-known restrictions, resort to Article 226 proceedings before this Court can also be had. Thus even when the Management takes action by way of deduction for any unauthorised action or unjustified strike, the employee is not exposed to undue hardship or unjustified oppression. In such situations, it would be better to leave the workers and the employer to the forum where the respective parties will have ample opportunities to put forward their respective cases.

12. A very attractive argument which had been indicated by counsel for the petitioners relates to the unjustifiability of deducting the wages even for the time an employee had actually worked. After having parted with his labour and his time, is it just or legal or fair to deny the employee, the just equivalent of that labour, if for the remaining period of the day he had absented himself from the duty? The answer, according to me, should be in the affirmative. Such has been the approach of this Court in *Shenoy v. Central Bank of India*, 1983 K. L. T. 381, where Khalid, J. spoke for the Bench, while dealing with the officers of a Nationalised Bank, in the following terms:

An Officer cannot be said to earn his salary by hours or minutes. The minimum unit for purpose of remuneration of an officer should be taken as a day. They absented from duty though for portion of the day, despite being warned about the consequences.....On our finding that in case of officers the day should be deemed to be the unit of the contract of employment, the order deducting a day's salary for what they did, cannot be invalidated in proceedings under Article 226.

(emphasis supplied)

The day is the day for which he is to work. I do not think that a different approach should be made in the case of those in a public utility like transport service. If at all the employees in transport service have to evince a greater sense of responsibility towards the travelling public. It is not, however, necessary to foreclose a consideration of the question, here and now, as the matter will have to be ultimately decided on the basis of concrete facts and evidence and applying the relevant rules or terms of employment and the statutory provisions

by the appropriate authorities. In 1983 K. L. T. 381 supra, this Court directed the consideration of such questions to be made by statutory authorities and declined jurisdiction under Article 226 of the Constitution (vide paragraph 24 of the judgment). In the light of the above discussion, I am disinclined to grant reliefs to the petitioner. The writ petition is dismissed. There will be no order as to costs.