

(2005) 08 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No's. 5357, 5358, 22539 and 22540 of 2000

Management of Oriental Transport Limited

APPELLANT

Vs

Mr. B.T. Ramakrishna and Others

RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (3), 10 A (4A), 33 (1) (b), 33 (2) (b)

Citation : (2006) 108 FLR 126 : (2005) ILR (Kar) 5168 : (2006) 1 KCCR 7 SN : (2006) 1 LLJ 564

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : K. Kasturi for Kasturi Associates, for the Appellant; T.S. Anantharam, for R1, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—As the facts are almost identical, common question of law is involved, in all these four writ petitions, they are taken up for consideration together and disposed of by this common order.

2. Respondents in all these writ petitions are workmen employed by the petitioner/industrial establishment. The workers of the petitioner went on strike on 19.11.98. At the intervention of the authorities, a dispute regarding validity of strike was referred to Industrial Tribunal for adjudication in I.D. No. 97/99, Accusing these respondents of having committed certain acts during the period of strike, they were served with charge sheet. Respondents gave a reply denying the charges. Not being satisfied with the said reply, departmental enquiry was initiated against these four workmen. Both parties adduced evidence. On consideration of the material on record, the enquiry officer held that the misconduct alleged against these respondents is proved and submitted a report to the disciplinary authority. After going through the report, disciplinary authority found one of the charges levelled against these workmen is in respect of, going on strike, which was the subject matter of Industrial Dispute in I.D. No. 97/99.

Therefore in the second show cause notice issues to these four workmen enclosing a copy of the report of the enquiry officer, they called upon the workmen to have their say against the finding except with regard to the charge/misconduct falling under standing order Clause 18.1(8). These workmen gave their reply. The disciplinary authority on consideration of the report of the enquiry officer, the representation made by the workmen and other material on record, passed an order of dismissal in respect of the four workmen by separate orders. In the said order of dismissal it was made clear that they have not taken into account the material pertaining to charge regarding strike i.e., Clause 18.1(8).

3. As the industrial dispute was pending before the Industrial Tribunal, they made an application u/s 33(2)(b) of the Industrial Disputes Act 1947 (for short hereinafter referred as the "Act") seeking for approval of the action taken by them. In the said application also, petitioner made it clear, that the order of dismissal is not passed in respect of misconduct under clause 18.1(8) and the order of dismissal is passed only in respect of other misconduct which is unconnected with the dispute pending before the Tribunal. The said application was opposed by these workmen. They contended that the domestic enquiry conducted is not fair and proper, the order of dismissal passed without express permission of the Tribunal is hit by Section 33(1)(b) as it is connected with the dispute pending before the Tribunal. On merits also they contended that the material on record do not establish the misconduct alleged against them.

4. The workmen requested the Tribunal to decide the question of maintainability of this application as preliminary point. Accordingly the Labour Court framed a preliminary point, heard the parties on the said point. On consideration of the rival contentions, it held, that the misconduct alleged against these workmen is directly connected with the dispute which is pending before the Tribunal for adjudication and the case falls u/s 33(1)(b) and not u/s 33(2)(b). Therefore, the Tribunal rejected all the four applications filed, by separate orders, but with the same reasoning. Aggrieved by these orders the petitioner has preferred these writ petitions.

5. Learned Senior Counsel Sri. Kasturi, appearing for the petitioner contends, that the subject matter of the industrial dispute pending before the Tribunal is whether the workmen, are justified in going on strike with effect from 19.11.98. The charges levelled against these workmen are not matter connected with the pending dispute. It is outside the scope of the said dispute and therefore there was no obligation cast upon the management to obtain prior permission before dismissal as contained in Section 33(1)(b) and what applies to the instant case is Section 33(2)(b). Therefore the impugned order passed by the Tribunal requires to be quashed.

6. Per contra, learned counsel appearing for the respondents submit, a reading of the charge sheet makes it very clear, that the misconduct alleged against these workmen is on 19.11.98, the date on which the strike began and it is directly and

closely connected with the said strike and therefore it is a matter connected with the dispute which was pending before the Industrial Tribunal and the Tribunal was justified in rejecting the application filed by the petitioner as not maintainable.

7. In order to appreciate these rival contentions it is necessary to find out what was the dispute which was pending before the Industrial Tribunal in I.D. No. 24/99. The point of dispute which was referred for adjudication to the Industrial Tribunal reads as under:

"whether the workmen of M/s. Oriental Transport Limited, Bangalore, are justified in going on strike with effect from 19.11.98".

8. It is in this context we have to see what are the charges levelled against these four workmen. The charge sheet issued to the three workmen except Sri. T. Kataiah are identical which are extracted hereunder:

"That on 19-11-1998 at above 6.30 A.M. you went on illegal strike and instigated about 30 of your co-workers to also go on illegal strike without giving valid notice as required under Clause 16.1 of the Certified Standing Orders of the Company. When the supervisors Mr. Subramanya K. & Mr. Muthappa instructed you and other co-workers to come in to the Yard for duty, you did not. You also instigated other workers not to come in for duty. Again on 20-11-1998 at about 5.15 P.M. whilst you were on illegal strike you have abused using vulgar words against the Company Officials Mr. Cariappa, Mr. George Thomas and other employees of the Company as under:-

"Cariappa SuleMaga, Cariappa Bholimaga, Cariappa Chor, George Thomas Chor Subramanya Chor etc.,"

Further on 24-11-1998 at about 9.20 A.M. you have threatened the Management of the Company by telling Mr. A. T. Shivakumar, D.M. (HRM) that if required you would not hesitate to do anything including "Murder".

The above acts of yours, if proved would constitute serious acts of misconduct as per the provisions of Certified Standing orders of the Company as mentioned below:-

Clause 18.1(8) Striking work or inciting others to strike work.

Clause 18.1 (16) Disorderly or indecent behaviour, threatening, intimidating, coercing other workmen, interfering with the work of other workmen.

Clause 18.1(42) Commission of any act subversive of discipline of the Company.

You are hereby called upon to show cause in writing why disciplinary action should not be taken against you for the above acts of misconduct alleged against you. Your explanation in writing should reach the undersigned within 48 hours from the receipt of this charge sheet cum suspension order. In case we do not receive the written explanation within the stipulated time or explanation

furnished by you is not satisfactory, further action would be taken against you in accordance with law.

The conduct displayed by you as above is serious and grave in nature. You are therefore placed under suspension. Since you continue to be outside, this suspension will take effect on your resumption of duty".

9. In so far as Kataiah is concerned, in addition to what is contained in the aforesaid charge sheet, he has been accused of acts on 20.11.98 and 24.11.98 which are as hereunder:

"That on 19-11-1998 you went on illegal strike and instigated about 30 of your co-workers to also go on illegal strike without giving valid notice as required under Clause 16.1 of the Certified Standing Orders of the Company. On the same day at about 5.45 AM you had attempted to stop Supervisor Mr. Venkateshwaralu from attending duty outside near the Main gate of the Company and misbehaved and shouted at him as under.

"You should not send any vehicle for duty. We the drivers are going on strike and we will not allow any other drivers to take vehicles outside for duty."

In spite of your Supervisors Mr. Subramanya K. Mr. Venkateshwaralu, and Mr. Ramachandran instructing you and other co-workers to come into the Yard for duty, you did not. Subsequently on the same day at about 06.15 AM whilst you were on illegal strike you along with Mr. Kataiah, Indresh etc., abused against the Supervisors of the Company Mr. Subramanya and others as under:

"Down Down Subramanya, Down, Down Management, Subramanya Kaun hai, Ek number chor hai, Venkateshwaralu down, down, Muthappa down down, Venkateshwaralu kaun hai, Ek number chor hai."

The above acts of yours, if proved would constitute serious acts of misconduct as per the provisions of Certified Standing orders of the Company.

The conduct displayed by you as above is serious and grave in nature. You are therefore placed under suspension. Since you continue to be outside, this suspension will take effect on your resumption of duty. "

10. The word "strike" is defined u/s 2(q) of the Act which reads as under:

"Strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment."

11. The Supreme Court in the case of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, dealing with the right to strike has held as under:

A selective study of the case-law is proper at this place. Before we do this, a few words on the basis of the right to strike and progressive legal thinking led by

constitutional guidelines is necessitous. The right to union, 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 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 civilized norms in the battle and not be vulgar or violent hoodlums, industry, represented by intransigent managements, may well be made to reel into reason by the strike weapon and cannot then squeal or well 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 strikers are no more conspiracies than professions and political parties are, and being for weaker, need succour. Part IV of the Constitution, read with Article 19 sows the need of this burgeoning jurisprudence. The Gandhian quote at the beginning of this judgment sets the tone of economic equity in industry. Of course, adventurite, extremist, extraneously inspired and puerile strike, absurdly insan persistence and violent or scorched earth policies boomerang and are snathema for the law. Within the parameters to the right to strike is integral to collective bargaining.

12. The Supreme Court in the case of . B.R. Singh and others Vs. Union of India and others, has held as under:

"The field of operation of Sections 22 and 23 is different. While Section 10(3) and Section 10A(4A) confer power to prohibit continuance of strike which is in progress. Section 22 and 23 seek to prohibit strike at the threshold. Section 22 provides that no person employed in a public utility service shall proceed on strike unless the requirements of Clauses (a) to (d) of Sub-section (1) thereof are fulfilled. Section 23 next imposes a general restriction on declaring strikes in breach of contract during pendency of (i) conciliation proceedings, (ii) proceedings before Labour Court, Tribunal or National Tribunal, (iii) arbitration proceedings & (iv) during the period of operation of any settlement or award. u/s 24 a strike will be illegal only if it is commenced or declared in contravention of Section 22 or 23 or is continued in contravention of an order made u/s 10(3) or 10A(4A) of the I.D. Act. Except the above provisions, no other provision was brought to our attention to support the contention that the strike was illegal."

13. Therefore, strike means a cessation of work, refusal to work or accept employment. It is a legal weapon in the hands of the workers and the union to force the management to accept their just demands. A right to strike is part of collective bargaining which is recognized in law. Unless the strike is commenced or declared in contravention of Section 22 or 23 or is continued in contravention of Section 10(3) or 10A(4A) of the Industrial Disputes Act it cannot be termed illegal. Therefore when a question arises whether the strike is legal or illegal, even that dispute has to be resolved by industrial adjudication, by getting the

matter referred to a tribunal or Labour Court. The strike ought to be peaceful. There is no scope for violence, workman cannot take law into their own hands. Strikers must obey the civilized norms in the battle; not use vulgar language; indulge in violent acts, and acts which are subversive of the discipline of the company. They cannot indulge in abusing the officials with vulgar words and threaten them with bodily injury. All these acts are not part of strike, nor they are connected with the strike. In law there is a distinction between persons who participate in a strike out of compulsion as dumb-driven cattle and those while participating in such strike, take an active part in fomenting trouble and indulge in violence. Fomenting trouble and indulging violent acts are not matters connected with a strike, whether the strike is legal or illegal.

14. Section 33 bars alterations in the conditions of service, prejudicial to the workman concerned in the dispute. Sub-clause (1) requires the employer to take express permission in writing of the authority before which the proceeding is pending before altering the conditions of service of the workman to his prejudice in regard to any matter connected with the dispute or for discharging or punishing him by dismissed or otherwise for any misconduct connected with the dispute. But under Sub-section (2) the employer may alter the conditions of service of the workman concerned in the pending dispute in regard to any matter not connected with the dispute. However, for discharging or punishing such workman for any misconduct not connected with the pending dispute, the employer has to comply with the provisions of the proviso to Sub-section (2) and then obtain approval of the authority. Thus the ban of Sub-sections (1) and (2) is only in regard to action proposed to be taken or already taken for an act of misconduct whether connected or unconnected with the dispute.

15. There is a distinction between matters connected with the industrial dispute and those unconnected with it. The protection to the workmen in regard to discharge or dismissal for misconduct connected with the pending disputes has been provided u/s 33(1), but the stringency of the provision is sought to be softened by permitting the employer to take action against the workmen in accordance with the standing orders applicable to them during the pendency of the proceedings in regard to any matter unconnected with the dispute by Section 33(2). In cases falling u/s 33(1) no action can be taken by the employer, unless he has obtained previously the express permission of the appropriate authority in writing. In cases falling under sub-Section (2) the employer is required to satisfy the specified conditions but he need not necessarily obtain the previous consent in writing before he takes any action. The requirement that he must obtain approval as distinguished from the requirement that he must obtain previous permission indicates that the ban imposed by Section 33(2) is not as rigid or rigorous as that imposed by Section 33(1).

16. When once legality of the strike is referred to an Industrial Tribunal for adjudication, the management cannot take any disciplinary action against such workers who participated in the said strike. Even if they take any action without

prior permission of the Industrial Tribunal, no punishment could be imposed on these workmen so as to alter the service conditions. That is the protection law has given to the workers. But if the acts complained of are unconnected with the dispute pending before the Tribunal for adjudication, no such prior permission is necessary. Even then law has taken care to protect their interest, by insisting, if action is to be taken it ought to be approved by the Industrial Tribunal.

17. A reading of these charge sheets makes it clear, that these workmen were also charged of going on an illegal strike. The said charge falls within Clause 18.1(8) viz., striking work or inciting others to strike work which is subject matter of Industrial dispute before the Industrial Tribunal. Realizing this mistake, the disciplinary authority after going through the report of the enquiry officer, in the second show cause notice issued to the workmen, made it very clear that the workmen need not offer their explanation/representation in respect of that charge and that they should confine their representation to only other charges. While passing the order of dismissal, the disciplinary authority made it clear that the order of dismissal is not passed in respect of this misconduct, which is subject matter before the Industrial Tribunal. Accordingly no action was taken by the petitioner against the respondents for the charge of striking work or inciting others to strike work as found in Clause 18.1 (8).

18. However the other allegations of misconduct against these four workmen, namely, abusing the officials by using vulgar words, threatening bodily injury, stopping workers from attending to duty, shouting at officials, do not fall within the phrase "any matter connected with the dispute". Labour Court has wrongly held that the aforesaid misconduct alleged against these workmen is a matter connected with the dispute and has rejected the applications at the threshold itself. It is contrary to law and settled legal position set out above. In that view of the matter the impugned order passed by the Labour Court cannot be sustained. Therefore, the entire matter has to be remitted back to the Industrial Tribunal to consider the applications filed by the petitioners u/s 33(2)(b) and dispose of the same in accordance with law after hearing both parties, without in any way being influenced by any of the observations in this order. Hence, I pass the following order.

(a) Writ Petitions are allowed.

(b) The impugned order passed by the Industrial Tribunal is hereby quashed.

(c) The entire matter is remitted back to the Industrial Tribunal with a direction to restore S.A. Nos. 97/99, 96/99, 75/99 to its original file and hear and dispose of the said applications on merits and in accordance with law expeditiously.

(d) No costs.