
(1960) 06 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 67 of 1960

Mill Mazdoor Sabha, Bombay

APPELLANT

Vs

Baxi (J.A.) and Another

RESPONDENT

Date of Decision : 17-06-1960

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 101, 3(36), 97

Citation : (1962) 2 LLJ 326

Hon'ble Judges : H.K. Chainani, C.J;V.M. Tarkunde, J

Bench : Division Bench

Judgement

Chainani, C.J.—The petitioner is a registered union of workmen employed in the Rajkamal Silk Mills, the respondent 2 (hereinafter referred to as the respondents). About July 1958 the weavers employed in this mill were required to clean used weft pirns. They declined to do so as they stated that this was not a part of their regular duties. Subsequently, five workers were proceeded with on the charge of wilful insubordination or disobedience in refusing to clean the pirns. Wilful insubordination or disobedience of any lawful or reasonable order of a superior amounts to misconduct under Clause (a), of standing order 21. After the inquiry was completed the above five workers were dismissed from service. The order of dismissal was challenged before the labour court. The labour court came to the conclusion that the inquiry held was legal and proper, that the workers were not justified in refusing to clean the pirns, that the finding with regard to their misconduct was correct and that the orders of dismissal were legal and proper. The labour court therefore dismissed the applications made by the petitioner. Against this order the petitioner appealed to the industrial court. The industrial court differed from the finding of the labour court and held that the dismissal of the five workers was illegal, as it was in contravention of S. 101 of the Bombay Industrial Relations Act. The industrial court, however, took the view that as the workmen has taken the law into their own hands they were not entitled to the relief of reinstatement. The industrial court therefore directed the respondent to pay each of workers thirteen day"s wages as compensation.

Thereafter, the petitioner approached this Court and prayed that the order made by the industrial court should be modified and that the respondents should be ordered to reinstate the workers who were dismissed.

2. Mr. Phadke, who appears on behalf of the petitioner, has urged that as dismissals have been held by industrial court to be illegal, the industrial court was bound to make an order of reinstatement. We do not think it is necessary for us to go into this question, because it seems to us that the view taken by the industrial court that the orders of dismissal were illegal, is not correct. In this case several weavers had refused to clean the pirns. Wilful stoppages of work by the employees amounts to a strike within the meaning of Clause (36) of S. 3 of the Bombay Industrial Relations Act. The strike in this case was illegal under Clause (a) of S. 97. Clause (g) of Sub-section (1) S. 101 provides :

"No employer shall dismiss, discharge or reduce any employee or punish him in any other manner by reason of the circumstances that the employee -

(g) has gone on or joined a strike which has not been held by labour court or the industrial court to be illegal under the provisions of this Act."

3. In this case the strike had not been declared to be illegal either by the labour court or by the industrial court. The industrial court therefore held that the dismissal of the workers was illegal. That court, however, lost sight of the important requirement of the S. 101 that the workers should be dismissed by reason of the circumstances that they had joined a strike, which had not been declared to be illegal. In this case it was neither the case of the employer, nor the case of the workers, that they had been dismissed because they had taken part in an illegal strike. In fact this point was not raised by the petitioner in the application made to the labour court or even subsequently in the proceedings before the labour court. It was only during the course of arguments before the industrial court that it was urged that there had been a contravention of S. 101. As I have already stated. Clause (a), of standing order 21 makes wilful insubordination or disobedience of a lawful and reasonable order an act of misconduct. Under Clause (b), striking work in contravention of the provisions of the Bombay Industrial Relations Act is also an act of misconduct. Wilful insubordination is therefore a separate offence from striking work in contravention of the provisions of the Industrial Relation Act. The fact that a particular act may fall under both the clauses would not prevent the employer from taking action under either of them. In this case the employer proceeded under Clause (a) of standing order 21. It is not alleged that the employer proceeded under this clause in order to circumvent the provisions of S. 101. In fact, as I have pointed out, it was not even the case of the workers before the labour court that they had been dismissed because they had participated in an illegal strike. The employer was therefore competent to take action under Clause (a) of standing order 21. The orders of dismissal cannot therefore be said to be illegal.

4. In this view no interference with the order made by the industrial court is called for. Rule discharged. No order as to costs.