

**(1988) 08 KAR CK 0040**  
**In the Karnataka High Court**  
**Case No : W.A. No. 631 of 1985**

Mineral Miners" Union

APPELLANT

Vs

Kudremukh Iron Ore Co. Ltd.

RESPONDENT

**Date of Decision :** 26-08-1988

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 12 (1), 20 (1), 22, 23 (a)

**Citation :** (1988) ILR (Kar) 2878 : (1988) 3 KarLJ 162 : (1989) 1 LLJ 277

**Hon'ble Judges :** Prem Chand Jain, J;K. Shivashankar Bhat, J

**Bench :** Division Bench

## **Judgement**

Shivashankar Bhat, J.—This appeal is by the writ petitioner, against the dismissal of the writ petition, leaving liberty for the petitioner to raise an industrial dispute or to resort to any other remedy available in law in so far it related to the deduction of eight days wages of the members of the petitioners Union.

2. The facts of the case are as follows :

(i) On 1st September, 1984, the petitioner-Union issued notice of its intention to go on one day token strike any day after 20th September, 1984 (vide Annexure-A in writ petition). On 10th September 1984 the Management replied that the strike was unjustified and the allegations levelled against it in the notice were baseless and advised the Union not to go on strike. On 18th September 1984, the Management cautioned that if the workmen were to go on one day token strike as informed by them, action would be taken against them. Thereafter in terms of Section 20(1) of the Industrial Disputes Act (hereinafter referred to as "the Act"), conciliation proceedings commenced and took place between 19th September 1984 and 1st October 1984, on which date the conciliation failed. A report about the failure of conciliation was sent to the State Government, on 12th October 1984, The State Government, however, informed the parties about the failure of conciliation only on 9th November 1984.

(ii) Thereafter, on 19th 1984, the workmen, who are members of the petitioner-

Union, went on strike. The Management considered that the strike resorted to by the workmen on 10th December 1984, without fresh notice and without informing the date of strike, was illegal. In the circumstances, the management by its notice dated 20/21st December 1984 (Annexure-H) informed the petitioner that on the principle of "no work no pay" basis the workmen were not entitled to the wages for 10th December 1984. The Management also informed that they were deducting 8 days wages, of the workmen having gone on illegal strike, as permitted u/s 9(2) of the Payment of Wages Act. Aggrieved by this notice, the petitioner filed the writ petition.

3. The contentions pleaded by the petitioner in the writ petition were thus :

In terms of Section 22, the petitioner had given notice of strike. The notice of strike given was in compliance with the mandatory requirements of Section 22, namely, that the date of the strike should be within six weeks from the date of notice and after 14th days from the date of notice, and it should not be before the date, if a date had been specified in the notice. As there was prohibition u/s 23(a) and Section 22(d) of the Act for going on strike during the pendency of conciliation and as u/s 20(1) read with Section 12(1) commencement of conciliation proceedings on the issue of strike notice by workmen in a public utility service was mandatory, the workmen could not go on strike within six weeks as notified for the reason, by the time the State Government informed the parties about the failure of conciliation on 12th October 1984, the period of six weeks was already over. Therefore the strike could not be regarded as illegal. Consequently the action of the respondent in deducting the wages was illegal. In any event as the strike was legal, the deduction of wages for 8 days in respect of each of the workmen was contrary to law and particularly in the absence of any rules regulating the deduction, it was unauthorised.

4. The Management contended that requirements of Section 22 read with Rule 71 of the Industrial Disputes (Central) Rules, 1957 ("the Rules", for short) and Form "L" prescribed thereunder, were mandatory; the date on which the workers would go on strike has to be specified in the notice and on failure of conciliation proceedings, the workmen, if desired to go on strike have to issue, once again a notice as provided under the aforesaid provisions of law.

These requirements were essential to protect the interest of the "public utility" service against sudden strikes. The deduction of eight days wages under proviso to Section 9(2) of Payment of Wages Act was perfectly legal in the circumstances of the case, in addition to the non-payment of wages for the day of the illegal strike.

5. The Management (1st respondent) is a public utility service, covered by Section 22 of the Act, is a fact not in dispute.

6. The learned single judge posed the following questions for consideration :

(i) Whether Section 22(1) of the Industrial Disputes Act requires the workmen

employed in a public utility service to issue a fresh notice of strike, though they had issued earlier, a notice of strike in respect of an identical demand under that Section, but could not go on strike, in view of the prohibition of the strike during the pendency of the conciliation proceedings under clause (d) thereof, which automatically commenced with the issue of the notice of strike in view of Section 20(1) of the Act, if the conciliation proceedings resulted in failure and concluded after six weeks from the date on which strike notice was given ?

(ii) Whether in a notice of strike required to be issued u/s 22(1) of the Act the date on which the workmen intend to go on strike should be specified and if so, whether non-specification of the date renders the strike illegal ?

(iii) Whether deduction of wages for the day on which the workmen resorted to a strike, in violation of Section 22(1) of the Act and in addition eight days' wages is illegal ?

7. These questions were answered as follows :

(i) Section 22(1) of the Act requires the workmen employed in a public utility service to issue a fresh notice of strike, though they had issued earlier a notice of strike in respect of an identical demand under the Section, but could not go on strike in view of the pendency of conciliation proceedings, in view of clause (d) thereof, which automatically commenced with the issue of notice of strike in view of Section 20(1) of the Act, if the conciliation proceedings resulted in failure and concluded after six weeks from the date on which strike notice was given. But to such a second notice of strike in respect of an identical demand, the provisions of Sections 20(1) and 12(1) of the Act are not applicable and consequently there would be no commencement of conciliation proceedings and therefore the prohibition of strike incorporated in Sections 23 and 22(1)(d) of the Act would not get attracted.

(ii) In a notice of strike required to be issued u/s 22(1) of the Act, the date on which the workmen intended to go on strike should be specified and its non-specification renders the strike illegal and therefore the strike resorted to by the workmen on 10th December 1984 was illegal for non-issue of notice u/s 22(1) specifying in the notice the date of strike.

(iii) The deduction of a day's wages is concerned, the workmen cannot have any grievance for the reason that they have not worked and, therefore, in terms of the Section 9(2) of the Payment of Wages Act, the management was within its right to deduct a day's wages. The question as to whether the management was justified in effecting the maximum deduction permitted by Section 9(2) proviso, or whether the deduction should have been less, or there was no justification for deduction, has to be decided after recording evidence in support of the respective pleas of the parties and, therefore, a petition under Article 226 of the Constitution should not be entertained, and it is appropriate that a dispute should be raised u/s 10 of the Industrial Disputes Act or an application u/s 15 of the Payment of Wages Act should be made before the Authority under the Act.

8. Mr. Krishnaiah, the learned Counsel for the appellant, reiterated his contentions. The learned Counsel pointed out that it was impossible for the workmen to issue a second notice of the strike, on failure of the conciliation proceedings, having regard to the consequences that flow, from such a notice, if such a notice is held to be a mandatory requirement; according to the learned Counsel specification of the date on which workmen would go on strike was unnecessary and that, the first notice was the only one notice that was contemplated by Section 22 of the Act. The said notice project the demands of workmen, leading to conciliation proceedings. When conciliation fails, the only mode of enforcing the demand will be to strike work and that in case there is delay in completing the conciliation proceedings, the workmen cannot be make to suffer for the failure of the statutory authorities to discharges their duties as prescribed by law. Sri Krishnaiah explained the impossibility of satisfying the requirement of a notice whenever the workmen decide to strike work on failure of conciliation proceedings. It was pointed out that whenever a notice u/s 22 is issued, conciliation proceedings are mandatory, during which period strike was banned. Therefore, by the delay in completing the conciliation proceedings and reporting its failure, the date fixed for the strike under the first notice expires and another notice is called for, then, the process will over again start and this process will be endlessly repeated in a cycle and the workmen will never be able to press their demands by a strike.

9. Sri Prabhakar, learned Counsel for the Management, contended that, Section 22 of the Act is a special provision governing the "public utility services" only and the object behind this provision is to prevent unexpected strikes in such and undertaking. It was essential that date on which workmen would strike should be known to such a Management so that it may make alternate arrangements to maintain services in public interest. The learned Counsel also urged that the strike in a "public utility service" is made almost impossible by virtue of these provisions to safeguard these undertakings and the public interest. Sri Prabhakar referred to us the decision of the Supreme Court in Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery, in support of his contention and pointed out that there is no scope at all to accept that appellant's contentions in view of the said decision of the Supreme Court.

10. As Sri Prabhakar contended there is no scope for us to take any view for which Sri Krishnaiah pleaded, on the interpretation of Section 22 of the I.D. Act. In the said case Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery, the workmen appellants had sent notice of their intention to strike and declined to participate in the conciliation proceedings. The Regional Labour Commissioner sent his report of the failure of conciliation proceedings. There was delay in the receipt of the said report by the Government. In the meanwhile, the workmen struck work. The I.D. Act states that conciliation proceedings are deemed to continue till the report of the conciliation officer reaches the Government and that workmen shall not go on strike till 7 days are over thereafter. The workmen had no occasion, here, to know the date of receipt

of the report by the Government and they believed that the time for receiving the report as prescribed by the I.D. Act was over and therefore there was no impediment to the strike. The strike was held to be illegal, since the strike took place during the deemed period of the conciliation proceedings. This was challenged. The Supreme Court upheld the finding that the strike was illegal. Regarding the contention of the workmen that it was not possible for the workers to know when the report was actually received by the Government and thus their right to strike was taken away, the Supreme Court held that the provisions of the I.D. Act as it stands has to be construed and applied and it was not possible to accept the worker's contention. At page 193 of *Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery*, it was observed by the Supreme Court, that.

"(4)..... The Court can only construe the statute as it finds it and if there is any defect in the law lit is for other authority than this Court to rectify the same."

Thus, a literal interpretation of the very provisions of the Act was given by the Supreme Court.

Again at page 194, some of the observations made are very pertinent to the facts of the present case :

(7)..... The Act requires that the Conciliation Officer must submit his Report within 14 days from the commencement of conciliation proceedings and then on receipt of the Report by the appropriate Government the conciliation proceedings are to be deemed to have concluded. Although factually the conciliation proceedings terminate when a settlement is arrived at before the Conciliation Officer or when it is found that no settlement can be arrived at, the Act, by a legal fiction, prolongs the conciliation proceedings until the actual receipt of the Report by the appropriate Government and goes on to provide that the appropriate Government must have seven days" time to consider what further steps it would take under the Act. Up to the expiry of this period of 7 days the Act permits no strike, but after that period is over the employees are left free to resort to collective action by way of a strike. Indeed, it is on the basis of these provisions that the date of strike has to be carefully selected and specified in the notice of strike to be given by the employees u/s 22(1) of the Act. Thus, even a cursory perusal of the Act makes it clear that time is of the essence of the Act and that the requirements of its relevant provisions must punctually be obeyed and carried out if the Act is to operate harmoniously at all."

Again, after a few sentences, it was held :

"..... It now transpires that the Report had not been actually received by the Central Government and, therefore, on the letter of the law, the strike must be held to be illegal and the employees must face and bear the consequences of an illegal strike and may even be deprived of benefits to which they would otherwise have been entitled. This hardship has been thrown upon the employees for no

fault of their own, but simply because of the callous indifference or utter inefficiency and slackness apparently prevailing in the office of the Chief Labour Commissioner which cannot be too strongly deprecated....."

The date of the strike, therefore, is of utmost importance and the same has to be selected carefully and to be specified in the notice of the strike.

These observations fully support the contention of Sri Prabhakar that provisions of Section 22 read with Rule 71 of the Rules and Form "L" prescribed thereunder, are mandatory in terms. Failure to specify the date (as provided in Form "L") results in the notice itself being illegal.

To the same effect is the decision of Justice Sandhawalia (as he then was) of Punjab and Haryana High Court, in *Municipal Committee Vs. Industrial Tribunal and Others*, At page-55, it was observed :

"6..... Reading the relevant statutory provisions u/s 22(1)(4) in conformity with Rule 71 and the contents of Form "L" it appears to be self evident that the statutory requirements of the notice are of a mandatory nature."

Continuing further, at para-7, His Lordship, observes :

"7. Apart from the language and the contents of the statutory provisions above, the intention of the legislature in enacting the relevant provisions as culled from the scheme of the Industrial Disputes Act does not appear to be in any doubt. The right of the industrial worker to go on strike has now become well-recognized and has been even sometimes termed as fundamental. The Act, however, aims at the blending of this right and the liability of the employers and the employees as best as possible to suit the condition of the Country. The Act as regards strikes and lockouts makes a clear distinction between persons employed in a public utility service and those employed in a ordinary industrial occupations. The enactment of Sections 22 and 24 appears to be with a clear purpose to prevent a handful of public utility service workmen from holding the general public at ransom by indulging in lightning strikes. Such workers are not shorn of their right to go on strike but a qualification is attached thereto requiring them to fulfill certain essential conditions as enumerated in the four different clause (a), (b), (c) and (d) of Section 22(1) of the Act. Obviously, these are with the purpose to provide safeguards in the matter of public utility service as otherwise it would result in great inconvenience to the society and the general public. Equally crucial is the requirement of the statutory Rule 71, read with Form "L" regarding the precise specification of the date on which the strike is to commence. The obvious object is to enable the authorities to make alternative arrangements for running a public utility service vital to the day to day life of the community in the event of a strike. These conditions are essential and have to be fulfilled in order to clothe a strike by public utility service workmen with the mantle of legality. It is idle to contend that the provisions of Section 22 are merely directory and a patent violation of these provisions would entail no legal consequence. Indeed compliance with the provisions of Section 22 is the core of

the matter for determining whether a particular strike would be legal or otherwise."

In the case before us also, the strike notice did not specify the date on which the workmen would go on strike. After the failure of conciliation proceedings, the report was received by the Government on 22nd October 1984. Therefore, u/s 20(2), till the said date the conciliation proceedings is deemed to be pending. It is stated before us that intimation of the failure of conciliation was received by the Union on 9th November 1984. But this date no relevancy u/s 20 of the Act. Therefore, till 29th October 1984 (i.e. 7 days after the date of the receipt of the report by the Government) the strike was prohibited u/s 22(d) of the I.D. Act. The notice of the strike was given on 1st September 1984. If this notice is to be the basis of the strike, then, the workmen could have gone on strike only within 6 weeks of the said date as per Section 22(1)(a), and the date expired on or about 15th October 1984. The strike was held on 10th December 1984 for which no fresh notice was issued. Mr. Krishnaiah's contention is that, after 29th October 1984, the workmen could have gone on strike on any day, because, by the said day, the bar to strike u/s 22(1)(d) ended; till the said date, the statutory bar eclipsed the workers' right to strike and this period under eclipse should be excluded from computation the period of limitation, to go on strike. In other words, between 1st September 1984 to 22nd October 1984, the period of limitation did not operate at all by virtue of Section 22(1)(d) and hence the right to go on strike provided u/s 22(1)(a) gets revived on 29th October 1984, which can be exercised on any day within six weeks thereafter, which would entitle the workmen to strike before 12th December 1984. At any rate, the day of the strike was 10th December 1984, which was within the period of limitation computed in the manner suggested by the learned Counsel for the workmen.

This contention literally goes counter to the ratio of the Supreme Court decision in *Workers of the Industry Colliery's case* (supra). No where it is stated that the period u/s 22(1)(a) read with Section 22(1)(d) has to be computed by excluding the days taken for completion of conciliation proceedings. The language of Section 22(1)(a) and Section 22(1)(d) are simple and preremptory. The upper limit of the period is fixed by Section 22(1)(a), as a period of six weeks from the date of notice. That is why the Supreme Court has stated that the workmen should select the date of the strike carefully. The delay caused by the authorities in concluding the conciliation proceedings cannot be taken advantage of by the workmen. The workmen, if had to strike, and period prescribed u/s 22(1)(a) has lapsed after the notice, a fresh notice will have to be issued. Mr. Krishnaiah's apprehension is that, once again, the process of conciliation would commence u/s 20 of the I.D. Act and again, if there is delay in concluding the conciliation proceedings, workmen would not be able to resort to strike, by virtue of Section 22(1)(a) and Section 22(1)(d). Therefore, the learned Counsel urges that, on failure of conciliation, fresh notice of the strike need not be given.

11. The consequential hardship to go on strike, due to the delay in the action of

the authorities under the Act, was held to be unfortunate, by the Supreme Court; but such a delay would not vest a right in the workmen to ignore the mandatory requirements of the law. The remedy of workmen lies else where. As the Act now stands, it is not possible to entertain the plea put forth by the learned Counsel for the workmen. The one remedy, which we find, is to seek a reference, to have the dispute caused by the demands of the workmen settled by resort to a reference under 2nd proviso to Section 10 of the I.D. Act. There may or may not be other solutions.

12. Consequently, we are constrained to hold that the strike resorted to by the workmen on 10th December 1984 was an illegal strike.

13. It was next contended by Sri Krishnaiah that, the deduction of 8 days wages under proviso to Section 9(2) of the Payment of Wages Act, 1936, was illegal, as no opportunity was given to the workmen to make out a case not to impose such a penalty. The learned Counsel fairly conceded that, if the strike was illegal, non-payment or deduction of one day's wages of the day of strike was valid. But the deduction of wages under proviso to Section 9(2) being in the nature of a penalty, principles of natural justice required, a prior notice to workmen before the Management proceeded to deduct the wages there under, especially, when the Management resorted to deduct the maximum amount of wages provided under the said provision.

14. The learned Counsel for the Management justified this deduction by pointing out that the Management had repeatedly notified in the notice Board that in case workmen resorted to the strike, wages would be deducted under the proviso to Section 9(2) and therefore, the principles of natural justice had been complied with. The learned Counsel further stated that this was the 10th strike in this public utility service, and therefore, stringent action to prevent the repetition of such illegal strike was necessary.

15. The learned single judge has refused to exercise his discretion under Article 226 of the Constitution on this question, as the workmen have effective alternate remedies. Whenever such a statutory forum is resorted, the workmen and management can place their respective contentions and it will be for the said forum to decide the question.

16. Sri Prabhakar cited before us the decision of Andhra Pradesh High Court in D. Baliah and Others Vs. Secretary, Indian Detonators Limited, in support of this contention that a general notice of the intention to deduct wages under proviso to Section 9(2) of Payment of Wages Act satisfies the requirements of natural justice. The learned single Judge has relied on the decision of a Division Bench of Kerala High Court in R. N. Shenoy v. Central Bank of India (1984) Lab.I.C. 1493 for declining to exercise the jurisdiction in this regard. We do not consider it proper for us to interfere with this refusal to exercise the jurisdiction, specially when disputed questions of fact are involved to be considered. Hence, it is unnecessary for us to probe into the matter any further.



17. It is also unnecessary to examine the contention that the appeal stands abated as the appellant-Union is not in existence.

18. No further question survives for consideration.

19. Our conclusions are :-

(i) The provisions of Section 22 of the I.D. Act are mandatory. Date on which the workmen propose to go on strike has to be specified in the notice contemplated by the said provision read with the relevant Rules and the Form prescribed for the notice. If by the time stated in Section 22(1)(d) the date of the strike specified in the notice of strike expires, the workmen have to issue a fresh notice as provided u/s 22 of the Act once again, and all other statutory consequences flowing out of the said statutory notice would follow on issuance of the said notice. We respectfully disagree with the view expressed by the learned single Judge that, to such a second notice, the provisions of Sections 20(1) and 12(1) of the I.D. Act are not applicable. We are of the view that, whenever a notice as provided by Section 22 is issued even though such a notice is necessitated by the failure of conciliation proceedings, provisions such as Sections 20(1), 12(1) read with Section 22 in its entirety will be attracted. The remedy to the hardship that may result from such a view has to be found elsewhere, such as seeking a reference under 2nd proviso to Section 10(1) of the I.D. Act.

(ii) The strike resorted to by the workmen on 10th December 1984 was illegal.

(iii) The deduction of the wages for the day of the strike was justified. The question as to the legality or propriety of the deduction of eight days' wages u/s 9(2) of the Payment of Wages Act is left open for decision in case the workmen invoke any other available remedy, and we decline to interfere with the discretion exercised by the learned single judge on this question.

20. The appeal is dismissed. In the circumstances of the case, there will be no order as to costs.