
(1985) 02 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 20484/84

Mineral Miner's Union

APPELLANT

Vs

Kudremukh Iron Ore Co. Ltd.

RESPONDENT

Date of Decision : 19-02-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 20 (1), 22 (1), 22 (d), 23 (a)
Payment of Wages Act, 1936 — Section 15, 9 (2)

Citation : (1989) 58 FLR 915 : (1985) ILR (Kar) 2833 : (1986) 1 LLJ 204

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. In this Writ Petition presented by the Mineral Miner's Union, a trade union, representing its members, who are workmen of Kudermukh Iron Ore Company Ltd., (the company for short), the following questions of law arise for consideration.

(i) Whether S. 22(1) of the Industrial Disputes Act ("the Act" for short) 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 notice of strike in view of S. 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 under 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 reported to a strike, in violation of S. 22(1) of the Act and in addition eight days wages is illegal ?

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). On 10th September, 1984 the management replied stating that the strike was unjustified and that 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. Therefore in terms of S. 20(1) of 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 submitted 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 10th December, 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 20th/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 of 10th December, 1984. The management also informed that they were deducting 8 days wages, for the workmen having gone on illegal strike, as permitted under S. 9(2) of the Payment of Wages Act. Aggrieved by this notice, the petitioner has presented this Writ Petition.

3. The plea of the petitioner is as follows :

In terms of S. 22, the petitioner had given notice of strike. The notice of strike given was in compliance with the mandatory requirements of S. 22, namely, that the date of the strike should be within six weeks from the date of notice and after 14 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 under Ss. 23(a) and 22(d) of the Act for going on strike during the pendency of conciliation and as under S. 20(1) read with S. 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 a day's 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, was unauthorised.

4. As against the above submission, Sri Prabhakar Learned Counsel for the

Management submitted as follows : Provisions of S. 22 was mandatory. In view of the said provision and Rule 71 of the Industrial Disputes (Central) Rules, 1957 ("the Rules" for short) read with Form-L; it was mandatory that the date on which the workmen propose to go on strike must be incorporated in the notice. If for any reason the period of six weeks after the issue of notice within which the workmen have the liberty to go on strike expires during the pendency of conciliation i.e., before the communication of failure of the conciliation by the State Government, there was no alternative for the workmen either to abandon the strike or to give fresh notice under S. 22 in the prescribed form. As none of these mandatory requirements were complied with in the present case, after the conclusion of conciliation, the management was within its right not only in deducting a day's wages but also in deducting 8 days wages as permitted under the proviso to S. 9(2) of the Act. In the absence of any rules regulating or restricting the deduction permitted under the proviso to S. 9, the respondent was entitled to deduct 8 days' wages as more than ten workmen acting in concert absented themselves. In any event, as regards the deduction of salary for 8 days, the petitioner had an alternative remedy by way of raising an industrial dispute or making an application under S. 15 of the Payment of Wages Act. There the petition should not be entertained.

5. In view of these rival pleas, the question set out first arise for consideration. There is no dispute that the company has been declared as a public utility service in terms of S. 2(n) of the Act. The provisions of the Act which are relevant to the consideration of the questions arising in this case are (1) S. 22(1)(b)(a) and (c) and S. 22(4) which make the issue of a strike notice by the workmen of a public utility service and subject to the conditions specified therein; (2) Section 20 and Section 12 which provide for automatic commencement of conciliation proceedings on the issue of notice of strike under S. 22 and the date of culmination of conciliation; (3) Section 22(1)(d) which prohibits strike during the period of conciliation and seven days after its culmination; and (4) Section 9(2) of the Payment of Wages Act, which provides for deduction of wages of workmen for the days on which they fail to work and in addition upto 8 days wages such a failure is as a result of concerted action on behalf of the workmen whose number is ten or more.

6. In the first instance, I shall analyse the provisions of S. 22 of the Act. The purport of clause (a) to (d) of sub-s (1) is as follows :

- (i) issue of a notice of strike is mandatory.
- (ii) The date of strike must be within six weeks from the date of the issue of strike notice.
- (iii) The day of strike must not be within 14 days from the date of notice;
- (iv) There can be no strike on any day before the date specified in the strike notice; and

(v) There can be no strike during the pendency of the conciliation proceedings and 7 days after the conclusion of said proceedings.

Learned Counsel on both sides also agree, the above are the conditions prescribed by clause (a) to (d) of S. 22(1). The controversy however is on the following two points -

(i) If the conciliation fails and concludes after six weeks from the date of issue of strike notice whether fresh notice is necessary, and

(ii) whether specification of date of strike is mandatory.

7. (i) For answering these two questions, it is necessary to ascertain the scope of the other provisions of the Act and the Rules. The purport of S. 20(1) read with S. 12(1) of the Act is the moment a notice of strike given by the workmen of a public utility service under S. 22, reaches the conciliation Officer, the conciliation proceedings stand automatically commenced. Further by the force of S. 22(1)(d) of the Act, the workmen who have given such notice are prohibited from going on strike not during the pendency of conciliation proceedings, but also during seven days after the conclusion of the conciliation proceedings.

(ii) According to S. 20(2)(b) in case of failure of conciliation, the proceedings stand concluded on the date when the report of the Conciliation Officer is received by the State Government. This provision has been interpreted by the Supreme Court in *Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery*, and according to the ratio of the said judgment, till the date on which the parties are informed by the Government of the failure report, the conciliation proceedings must be deemed to be pending and it is only on the date of such intimation, the conciliation proceedings come to an end.

(iii) In view of the above interpretation, the date on which the conciliation proceedings in the present case can be regarded as having come to an end is 9th November, 1984. By that time the period of six weeks commencing from the date of which the workmen issued notice of strike i.e., on 1st September, 1984 had come to an end. The workmen contend that they having issued a notice of strike in terms of S. 22, had the right to go on strike on any day subsequent to 9th November, 1984, without issuing any fresh notice whereas according to Counsel for the Management, the workmen could not go on strike pursuant to the notice dated 1st September, 1984 after six weeks, and that a fresh notice was necessary. He also submitted that if such fresh notice was issued again a fresh conciliation proceeding would begin and again the prohibition to strike would operate and, therefore, the only course open to the workmen was to abandon the strike or to challenge the legality of the decision of the Government not to refer the dispute for adjudication before the Court.

8. On a harmonious construction of all the relevant provisions of the Act, it appears to me that a fresh notice under S. 22(1) in compliance with clauses (a), (b) and (c) of S. 22(1) and S. 24 is necessary if in a given case, by the date on

which the failure of conciliation proceedings is intimated, six weeks period from the date of notice of strike issued earlier under S. 22(1) of the Act had expired. The reasons for which the conditions contained in clauses (a) (b) and (c) in S. 22 have been imposed are on the fact of it discernible. The reason is that in respect of a public utility service, the workmen cannot go on strike abruptly as it is sure to result in great inconvenience to the public and might result in irreparable loss and damage to the industry and to the State. For these reasons I hold that while the workmen in exercise of their right to go on strike, could go on strike after the expiry of seven days after the date of conclusion of conciliation in failure, if by that date, six weeks had expired from the date of notice of strike issued under S. 22(1), they must issue a fresh notice in terms of S. 22(1)(a) and (c) and S. 22(4) of the Act. Therefore, I agree with the contention of the management that in such a situation a fresh notice in terms of S. 22(1) of the Act is obligatory. But I am unable to agree that on the issue of such notice, once again, the provision of Ss. 20(1) and 12(1) are applicable as contended for the company, even if the demand in respect of which the fresh notice of strike is given is identical with the one which was the subject matter of notice of strike and which was the subject matter of conciliation proceeding which ended in failure. Any such view would lead to incongruous results for, the result would be, commencement of a purposeless conciliation and a continued prohibition of strike, and the same cycle continuing endlessly resulting in total prohibition of strike, though such a result is unintended by S. 22 of the Act. Therefore, it appears to me that while the requirement of issuing a fresh notice of strike in terms of clause (a) (b) and (c) of S. 22 might be mandatory for going on strike after the failure of conciliation, on the issue of such second notice, conciliation cannot be deemed to have commenced or required to be commenced under S. 20(1) and 12(1) of the Act respectively for, the conciliation proceedings would have already taken place and a failure report would have been intimated to the parties by the Government and consequently clause (d) of S. 22 which prohibits strike during the pendency of conciliation, does not get attracted. The only course open under the Act to prevent the strike in a public utility service is to refer the demands for adjudication under S. 10(1) of the Act for, as by such reference the prohibition of the strike incorporated in S. 23(b) gets attracted. Obviously for this reason, the 2nd proviso to S. 10(1) of the Act makes it obligatory for the Government to refer a dispute relating to a public utility service on the issue of a notice under S. 22, unless the demand is found to be frivolous or vexatious or otherwise inexpedient for being referred for adjudication.

9. The next question is whether the workmen are bound to specify the date of strike in a notice given under S. 22(1) of the Act. Learned Counsel for the petitioner submitted that the language of S. 22 did not make the specification of the date of strike in the notice mandatory whereas according to the Learned Counsel for the management it was mandatory. Though there is scope for arguing either way on the language of S. 22 the matter is placed beyond doubt by S. 22(4), Rule 71 and From-L appended to the rules.

10. Section 22(4) of the Act expressly provides that notice of strike shall be given by such number of persons and in such manner as may be prescribed. Rule 71 of the Rules provides that notice of strike by workmen in public utility service shall be given in Form-L. The form reads :

FORM L (See Rule 71)

Form of notice of strike to be given by Union/Workmen in a public utility service.

Name of Union :

(Names of five elected representatives of workmen)

Address :

Dated the day of 19

To

(The name of employer -

Dear Sir/Sirs,

In accordance with the provisions contained in sub-S. (1) of S. 22 of the Industrial Disputes Act, 1947, I/We hereby give you notice that I propose to call a strike/we propose to go on strike on 19 for the reasons explained in the annexure.

Yours faithfully,

Secretary of the Union.

(Five representatives of the workmen duly elected at a meet held on.... (date), vide resolution attached).

ANNEXE

Copy to :

(1) Assistant Labour Commissioner (Central) Here enter office address of the Assistant Labour Commissioner (Central) in the local are concerned.

(2) Regional Labour Commissioner (Central) Zone.

(3) Chief Labour Commissioner (Central), New Delhi.

The form requires the specification of the date of strike. The Judgment of the Supreme Court in Workers, Industry Colliery (supra) on which the Learned Counsel for the management relied also indicates that specification of the date is essential.

11. For these reasons, I answer the first two question 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 S. 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 second notice of strike in respect of an identical demand, the provisions of Ss. 20(1) and 12(1) of the Act are not applicable and consequently there would be no commencement of conciliations proceedings and therefore the prohibition of strike incorporated in Ss. 23 and 22(1)(d) of the Act would not get attracted.

(ii) In a notice of strike required to be issued under 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.

12. In view of my conclusions on Questions 1 and 2, I hold that the strike resorted to by the workmen of on 10th December, 1984 was illegal for non-issue of notice under S. 22(1) specifying in the notice the date of strike.

13. As regards the third question, in view of the answer to Questions 1 and 2, I hold that as far as 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 S. 9(2) of the Payment of Wages Act, the management was within its right to deduct a day's wages. However, about the deduction of wages for 8 days, the proviso to S. 9(2) of the Payment of Wages Act provides that whenever the absence of workmen is concerted one by ten or more workmen, the management could, in addition to the deduction of wages for the days on which the workmen were absent, deduct the wages upto 8 days subject to any rules made in this behalf. No rules have been framed incorporating any restriction on the quantum of deduction. Rule 16 of the Payment of Wages (Mines) Rules, 1956 referred to in the impugned notices do not cover that aspect. Therefore, the question as to whether the management was justified in effecting the maximum deduction permitted by S. 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 Art. 226 of the Constitution should not be entertained. As held by the Kerala High Court in *R. N. Shenoy v. Central Bank of India* (1984 Lab. IC 149) in respect of such a dispute, it is appropriate that a dispute should be raised under S. 10 of the Industrial Disputes Act or through an application under S. 15 of the Payment of Wages Act should be made before the authority under that Act. Learned Counsel for the petitioner submitted that the circumstances that there has been no earlier pronouncement as to the requirement of fresh notice of strike under S. 22(1) was a ground to hold that deduction of 8 days wages was unjustified. That is a relevant circumstances which could be taken into account by the Labour Court or Industrial Tribunal as the case may be.

14. In the result, I make the following order -

(i) The Writ Petition is dismissed leaving liberty for the petitioners to raise an industrial dispute or to reason to any other remedy available in law in so far it relates to the deduction of eight days wages.

(ii) No costs.