
(1999) 07 DEL CK 0079
In the Delhi High Court
Case No : C.W. No. 1310/98

Modistone Limited

APPELLANT

Vs

Secretary (Labour) and Another

RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(3), 23, 24

Citation : (1999) 4 AD 872 : (1999) 80 DLT 803 : (1999) 50 DRJ 788 : (2000) 1 LLJ 90

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Lalit Bhasin and Ms. Ratna D. Dhingra, for the Appellant; Mr. Jitendra Sharma and Mr. B.K. Pal, for the Respondent

Judgement

Mukul Mudgal, J.—This writ petition challenges the Order dated 11.3.1998 issued by Secretary (Labour), Delhi Administration prohibiting the continuance of lockout in respect of the concerned workmen at 3434, Nicholson Road, Kashmere Gate, New Delhi - 110 006 as well as Corporate Office at 4-7C, DDA Shopping Centre, New Friends Colony, New Delhi - 110 065 of M/s Modistone Ltd., the petitioner herein.

2. The writ petitioner submitted that due to disruptive activities by the union at the Central Factory, Mumbai, the business and distribution in Delhi was affected. On 22nd September, 1997, a lock-out was declared in Bombay Unit after issuing the notice dated 22.9.97.

3. It is the case of the petitioner-Company that subsequent to the lockout at Bombay Unit, the work activities were severely affected in the Delhi Unit and the management was thus compelled to declare a lockout on 29.9.1997.

4. On 11.3.1998, the respondent No. 1 passed the impugned order which reads as follows :

"Whereas an Industrial dispute between the management of M/s Modistone Limited, 3434, Nicholson Road, Kashmere Gate, Delhi-6 with its corporate office at 4-7C, DDA Shopping Centre, New Friends Colony, New Delhi-65 and its workmen as represented by Employee Union Firestone Tyre & Rubber Co. of India Pvt. Ltd., H.No. 1685, Bhagirath Palace, Delhi-6 has been referred for adjudication to Industrial Tribunal No. 1 presided over by Shri V.P. Kalra vide order No. F.24 (1753)/98-Lab./7182-87 dated 11.3.98.

And whereas I am satisfied a lock-out has been resorted to by the management in respect of its District Office and Godown at Hassan Building, Nicholson Road, Kashmere Gate, Delhi-6 w.e.f. 3.10.97 in respect of S/Shri J.K. Rehan, H.K. Bhambani, B.G. Krishan, P.S. Soni, Darban Singh, Surinder Singh, Madan Lal, Baldev Singh and Jagdish Chander and which is still and continued and Therefore in exercise of the powers conferred by the sub-section 3 of the Section 10 of the Industrial Disputes Act, 1947, I, Chaman Lal, Secretary (Labour), Govt. of the National Capital Territory of Delhi prohibit the continuance of lock-out forthwith in respect of the above workmen of M/s Modistone Limited, 3434, Nicholson Road, Kashmere Gate, New Delhi-6 with corporate office at 4-7C, DDA Shopping Centre, New Friends Colony, New Delhi-65"

5. It is the order dated 11.3.98 to the extent it prohibits the lock-out which is under challenge in the present writ petition. This is clear from the pleas advanced before the court as well as the perusal of the written submissions that the challenge in the writ petition is only to the prohibition of lock-out. The main case of the petitioner in this writ petition is that the management was compelled to declare a lock-out in the Delhi establishment owing to lock-out declared in the factory of the petitioner-Company at Bombay. The lockout in Bombay was legal because it was declared subsequent to a legal notice as per the provisions of Section 24(3) of the Industrial Disputes Act, 1947. The Bombay Factory being the nucleus of the operations of the petitioner-Company, the various district establishments of the petitioner's company have to declare a lock-out in pursuance of the lock-out declared by Bombay Factory, since there was no activity to be performed at these establishments such as the Delhi establishment.

6. Reliance has been placed by the learned counsel for the petitioner, Shri Lalit Bhasin, on the number of reported decisions such as The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, ; S.G. Chemicals and Dyes Trading Employees' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, ; The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co., ; Keventers Karamchari Sangh Vs. Lt. Governor, Delhi & Anr. (1971) 2 Lab. LJ 375 Workmen of Edward Keventer (Successors) Pvt. Ltd. Vs. Delhi Admn: etc. (1969) Delhi 767 for contending that various establishments of the company spread in different parts constitute one unit in view of their interdependence and functional integrality.

7. The petitioner also submitted that a writ petition No. 894/91 is pending before the Division Bench and the present petition may also be heard by the Division

Bench. In reply to that plea of the petitioner, the stand taken by the respondent No. 2/Union in its written statement reads as follows:

"It is submitted that in the writ petition No. 1310 of 1998 of pending before the Hon"ble Court, the issue is the award of full back wages to the workmen for the period of lock out from 29.11.1986 as per award dated 16th November, 1990. In the said Writ petition the question of legality on validity of exercise of power u/s 10(3) of the Act, prohibiting the lock out, is not in issue. Thus the subject matter of that petition has no relevance to the present petition. The documents concerning this are annexed with the counter affidavit of the Respondent No. 2 as Annexure R-5 to R-8."

8. The respondent No. 2/Employees Union of the petitioner-Company in reply has submitted that an Order u/s 10(3) of the Industrial Disputes Act, 1947 prohibiting the continuance of strike/lock-out is not justiciable by virtue of the law laid down in the judgment of this Court which is reported as *Keventers Karamchari Sangh Vs. The Lt. Governor, Delhi and Others*, . It is further submitted by the respondent No. 2 that the declaration of the lock-out on 3.10.97, when the industrial disputes by Order of Reference dated 1st July, 1992 and an Order of Reference dated 17th February, 1994 relating to the workmen employed in the lock-out establishment, were pending adjudication before the Industrial Tribunal, Delhi, has not been disputed by the petitioner. The petitioner-Company/Modistone Ltd. is a successor in Delhi to Firestone & Rubber Tyre Company of India Ltd. and of Bombay Tyres International Ltd. The lock-out during the pendency of the industrial dispute is thus forbidden under the provisions of Section 23(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act). The relevant extract of the above provisions of Section 23(b) reads as follows:

"S. 23 General prohibition of strikes and lock-outs. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out _

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;"

9. It is also submitted that as the disputes were pending on 3.10.97 on the date the lock-out was effected such lock-out is per se illegal as per the provisions of the Section 24 of the said Act which reads as follows:

"S. 24. Illegal strikes and lock-outs-

(1) A strike or a lock-out shall be illegal if-

(i) it is commenced or declared in contravention of Section 22 or Section 23; or

(ii) it is continued in contravention of an order made under subsection (3) of Section 10 or sub-section (4-A) of Section 10-A.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already

commenced and it is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of Section 10 or sub-section 4-A of Section 10-A.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal."

10. It is also submitted that the issue whether the Delhi establishment is a separate independent establishment of the petitioner-Company as contradistinguished from the Bombay establishment has been dealt with and concluded in the workmen's favor by the Hon'ble Supreme Court in the judgment reported as *The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co.*, by holding that the 2 units at Bombay & Delhi are independent entities.

11. It also submitted by the respondent No. 2 that in the writ petition (C.W. 1310/98) pending before this Court, the issue is merely the award of full back wages to the workmen for the period of lock-out from 29.11.86 as per the Award dated 16th November, 1990 and the question of legality or validity of exercise of power u/s 10(3) of the Act prohibiting the lock-out is not an issue and the subject-matter of that petition has Therefore no relevance with the present writ petition. Finally, it is also denied that workmen in Delhi Office due to its independent functionality are in any way connected with or have any knowledge of the alleged illegal activity said to be carried on by the employees at Bombay Unit.

12. In so far as the pendency of the petition before the Division Bench is concerned the respondent No. 2 is right in contending that the issue before it being payment of wages for the lock-out period as per the Award dated 16.11.1990, it is not necessary to send this petition to the Division Bench.

13. Thus the main issue involved in this writ petition is whether the lock-out in the premises of the Bombay factory can be the basis for declaring a lock-out in the Delhi establishment and the effect of S. 23 & S. 24 of the Industrial Disputes Act.

14. The learned counsel for the petitioner has relied upon a judgment of the Supreme Court which is reported as *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, where the Hon'ble Supreme Court held that a cement factory and lime stone quarry situated nearby under one ownership & management when the quarry was feeder to the factory were both part of one establishment. The ratio of this case would not come to the aid of the petitioner-Company simply for the reason that it is not in dispute that in the Associated Cement Co's decision (Supra) the factory & the quarry were situated nearby and the lime stone quarry provided the raw-material for the

cement factory. The Hon"ble Supreme Court held :

"If the statute does not, however, say what constitutes one establishment, then the usual tests have to be applied to determine the true relation between the parts, branches etc., namely whether they constitute one integrated whole or not. No particular test can be adopted as an absolute test in all cases of this type and the word "establishment" is not to be given the sweeping definition of one organisation of which it is capable, but rather is to be construed in the ordinary business or commercial sense."

15. The Hon"ble Supreme Court held that the word "establishment" is to be construed in the ordinary sense or commercial sense and it further held no particular test can be adopted and the term "establishment" is not to be given the sweeping definition of one organization. The aforesaid finding of the Supreme Court of not adopting a sweeping definition of establishment" is clearly against the view propounded by the petitioner and accordingly for this reason too the said judgment does not help the petitioner.

16. The learned counsel for the petitioner has also cited the judgment of the Hon"ble Supreme Court in S.G. Chemicals & Dyes Trading Employees" Union Vs. S.G. Chemicals & Dyes Trading Ltd. & Anr. (1986) SCC 624 to contend that the various establishments of the company spread in different parts constitute one unit in view of the interdependence and in view of their functional integrality. In this case, the Hon"ble Supreme found that the Trombay factory & Churchgate Division, both situated in Bombay, constituted one establishment. The Churchgate Division also inter-alia marketed the goods manufactured in the Trombay factory. However, there were clear pleadings before and findings by the Court regarding the functional integrality between the Trombay factory and the Churchgate Division. In the present case there are no pleadings which even purport to give details of functional integrality of the Delhi Office and the Bombay factory. The only averment in the writ petition pertaining to functional integrality are to the following effect:

"As a result of the abovementioned disruptive activities by the workmen at the factory at Sewree, Mumbai and the Central Office, the production of tyres at the factory came to a stand still. It is also submitted that because of the disruptive activity by the workmen even the finished goods could not be taken out of the factory. As a consequence the business of the Petitioner was severely affected. As a result Godowns at various places are without any stocks and the employees without any work. There is no stock at the Godowns at Delhi and no business activity left at the District Office at Delhi. It is further submitted that there is functional integrality among the Central Office and factory at Mumbai and the various other offices. The above stated facts compelled the management at Delhi to issue a notice for lockout at the District Office and Godown at Hassan Building, Nicholson Road, Kashmere Gate, Delhi-110 006 w.e.f. 9.30 a.m. on Friday the 3rd day of October, 1997 and a notice to the effect for lock-out was issued on 29th September, 1997. Copy of the Notice Along with the statement of reason is

marked Annexure "D".

17. These averments even if taken as correct are not sufficient to establish functional integrality. Thus the above judgment is S.G. Chemicals case (supra) was based upon the findings of functional integrality between the two units and the findings were based inter-alia on the fact that the Trombay and Churchgate Divisions were situated in the same city. Accordingly, the said judgment cannot come to the aid of the petitioner particularly in view of the fact that functional integrality has not sufficiently been pleaded or established by the petitioner in the present case except to aver that the goods come from Bombay factory and the cessation of production has led to a situation when there are no stocks in the Delhi unit. It is very clear that the petitioner's case is that its Bombay factory being the manufacturing unit is the nucleus of the operations of the petitioner Company as the tyres manufactured in the factory at Bombay are sent to various district establishments of the petitioner-Company in different parts of the country. It is also averred that in fact these district establishments are like depots of the manufactured products. These in my view are not sufficient to establish functional integrality. I am unable to agree with this plea of the petitioner as the petitioner is unable to establish the functional integrality of the Bombay factory & the Delhi Office.

18. Learned Senior Counsel for the respondent No. 2, Shri Jitendra Sharma, has relied upon a judgment of this Court which is reported as Keventers Karamchari Sangh Vs. The Lt. Governor, Delhi and Others, to contend that the discretion exercised u/s 10(3) of the Industrial Dispute Act, 1947 is not justiciable. However, the learned Counsel is not right in relying upon the judgment because the Hon'ble Supreme Court in a judgment reported as Delhi Administration, Delhi Vs. Workmen of Edward Keventers and Another, in appeal from the judgment of Workmen of Edward Keventer (Successors) Pvt. Ltd. Vs. Delhi Administration etc., had held as follows:

"...Shri Aggarwal pressed before us a ruling reported in Keventers Karamchari Sangh Vs. Lt. Governor of Delhi (1971) 2 Lab. LJ. 375 decided by the Delhi High Court. Although the ratio there is contrary to the same High Court's ruling which is the subject matter of the present appeal, we are obviously inclined to adopt the reasoning of the judgment under appeal...."

19. The above judgment of the Supreme Court has proceeded on the premise that the orders u/s 10 of the Industrial Disputes Act are justiciable.

20. Therefore in view of the decision of the Supreme Court in the Delhi Administration, Delhi Vs. Workmen of Edward Keventers and Another, , the Order passed u/s 10(3) of the Act is clearly justiciable.

21. The learned counsel for respondent No. 2 is also not right in contending that the M/s Fire Stone Tyre & Rubber Company of India Private Ltd.'s judgment (Supra) concludes the issue that the Delhi Office is distinct from the Bombay factory. There is no such finding in the Firestone Co's case as is sought to be

urged by the learned counsel for the respondent No. 2.

22. In addition in view of the mandate of Sections 23 & 24, the lock-out cannot be sustained. Section 23 forbids the declaration of a lock-out during the pendency of the proceedings before a Labour Court. On 3.10.97 two industrial disputes by Orders of Reference dated 1st July, 1991 & 17th February, 1994 which related to the workmen employed in the establishment at Delhi, were pending adjudication before the Industrial Tribunal, Delhi, a fact which is not disputed by the petitioner. Thus Section 23(b) clearly forbids the declaration of a lock-out pending proceedings before a Tribunal and two months after the conclusion thereof and Section 24(1) mandates that a strike or a lock-out shall be illegal if commenced or declared in contravention of Sections 21, 22 & 23.

23. In this view of the matter the lock-out declared by the petitioner cannot be said to be lawful and the impugned order under challenge is, Therefore, sustainable in accordance with law.

24. Accordingly, the writ petition has no merits and is dismissed with no orders as to costs. Interim orders stand vacated.