(1996) 08 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10362 of 1992

Modistone Ltd. APPELLANT

Vs

The Presiding Officer, Industrial Tribunal and Another RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:
Industrial Disputes Act, 1947 — Section 10

Citation : (1996) 114 PLR 496

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Raj Birbal and Sanjay Kaushal, for the Appellant; Dinesh Kumar, for the Respondent No. 2, for the Respondent

Judgement

N.K. Sodhi, J.—This order will dispose of two Civil Writ Petitions 10362 and 11281 of 1992 both of which are directed against the award of the Industrial Tribunal, Punjab where by the reference made to it u/s 10 of the Industrial Disputes Act. 1947 (for short, the Act) was decided in favour of the workmen and they were held entitled to 50 per cent wages for the lock-out period. C.W.P. 10362 of 1992 has been filed by the management challenging the findings recorded by the Tribunal whereas the other writ petition has been filed by the workmen claiming full wages for the lock out period.

2. Bombay Tyres International Limited now known as Modistone Limited (hereinafter called the Management) is a company incorporated under the Companies Act having its registered office at Bombay and head office at New Delhi. It carries on business of manufacturing and sale of automotive tyres, tubes, flaps and other repair materials at its factory at Sewree, Bombay. There is a purchase office at Kottayam in Kerala and 21 district sales offices (sales outlets) in different parts of the country including the one at Jalandhar in the State of Punjab. At present, there are about 15 workers employed at the sales office at Jalandhar, The Management has been entering into settlements from time to time with Modistone Employees Union (the Union) representing the

workmen at Bombay. One such settlement was signed on 12.1.1983 with the Union headed by Dr. Datta Samant. This settlement was terminated and a fresh charter of demands dated 23.10.1985 for the revision of the existing terms and conditions of service of the workmen was served on the Management demanding an increase in emoluments. It is stated that the workers demanded an increase of Rs. 5600/- p.m. in their emoluments per worker over and above, their existing emoluments and also demanded payment of bonus at the rate of 20 per cent along with 20 per cent ex gratia payment for the accounting year ending on 31.10.1985. Meanwhile, All India Bombay Tyres International Employees Federation, Bombay (hereinafter referred to as the Federation) to which the Union is said to be affiliated gave a notice dated 18.6.1986 demanding 20 percent bonus and two months'' average total wages as ex gratia payment for the accounting year 1984-85. This notice was given on behalf of all the affiliated unions including the workers employed at Jalandhar. A copy of this notice is Annexure P-3 with the writ petition. Negotiations between the Management and workmen were going on and it is alleged that the workers in the factory at Bombay resorted to various acts of indiscipline, coercion and unfair labour practices such as wilful go slow, strikes, gherao, persistent refusal to work over-time and threats to managerial and supervisory personnel. In spite of requests made to the workmen to desist from the coercive illegal activities, they continued with the same and according to the Management it became impossible for the factory to work. Company''s property including its highly sophisticated plant and machinery is said to have been damaged. The Management sent notices to the unions, copies of which have been attached with the writ petition. The Management then gave a lock-out notice dated 8.10.1986 in respect of its factory and central office at Bombay which became operative from 24.10.1986. Workers Union at Bombay is said to have challenged the lock-out notice under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Labour Court at Bombay and the action of the Management in declaring a lock-out was held to be legal as well as justified. It is alleged that the Management''s factory, central office and sales offices throughout the country including the one at Jalandhar are functionally integrated and inter-dependent for proper working and that the sales offices have no independent existence. It is the case of the Management that these offices exist and survive only if the materials manufactured at the factory are sent to these offices. As a consequence of the lockout declared in the factory at Bombay, the manufacturing process had come to a halt and the Management was forced to declare a lock-out in the district sales offices as well including the one at Jalandhar. A notice in this regard is said to have been sent to the Modistone Employees Union, Jalandhar, and also to the conciliation Officer and the Labour Commissioner.

3. The Labour Court at Jalandhar also challenged the validity of the lock-out and the State of Punjab in exercise of its powers u/s 10(1) of the Act referred the following dispute for adjudication to the Industrial Tribunal Punjab :-

"Whether the action of the management in declaring the lock-out is justified and in order ? If not, what directions are necessary in this behalf."

4. It may be mentioned that since the Management had offices in different States in the country, different State Governments made similar references to their respective Labour Courts wether under the Act or under the provisions of a similar law prevailing in those States and different awards have been made by the Labour Courts, some justifying and upholding the action of the Management while others have taken a contrary view holding that the workmen were entitled to wages for the lock-out period. Different awards have given wages at different rates to the workmen. Learned counsel for the petitioners pointed out during the course of arguments that against one of the awards given by the Labour Court, Cuttak in favour of the Management, the workers filed as writ petition in the Orissa High Court which was dismissed in limine and a SLP filed in the Supreme Court too had been dismissed thereby upholding the action of the Management.

5. On receipt of the reference, the Tribunal respondent issued notices to the parties who appeared through their representatives and filed their respective statements of claim. The case of the workmen was that the disputes raised by the workers at Bombay had not been raised on their behalf and, therefore, the Management was not justified in declaring the lock-out at Jalandahr office merely because a lock-out was declared in the factory at Bombay. The Management, on the other hand, pleaded that the factory and other offices were functionally integrated and inter-dependent on each other and it, therefore, sought to justify its action in declaring the lock-out at Jalandhar. It is also the case of the Management that the demands raised by the Federation pertaining to bonus had been raised on behalf of all the sales offices including the one at Jalandhar. A copy of the demand notice dated 18.6.1986 has been produced as Annexure P-3 with the writ petition. The petitioner in support of its case has also produced a large number of documents as annexures with the writ petition which are said to have been produced on the record of the Tribunal.

6. From the pleadings of the parties, the Tribunal framed the following issues :-

"1. Whether the present reference it untenable and the matter should have been referred to National Tribunal ?

2. Whether the action of the Management in declaring the lock-out is justified and in order ?

3. If issue No.2 is not proved, to what relief are the workmen entitled ? "

7. After recording evidence of the parties and hearing their representatives, the Tribunal respondent without adverting to that evidence or even to their respective pleas came to the conclusion that the action of the Management amounted to closure, Issue No. 2 was decided against the Management and in favour of the workmen. It is pertinent to notice the findings of the Tribunal in its own words which are as under :-

"In other words, this lock-out was declared because the respondent was unable to sell the goods and not because the employer wanted to use as a weapon to persuade by coercive process the employees to see his point of view and to accept his demand. In such a situation, the closing down of the respondent''s office for lack of saleable material cannot be held to be a lock-out. In view of the principle laid down by the Supreme Court, such stoppage of work amounted to closure." and finally it was observed as under: -

"From the above discussions, it becomes clear that due to the non-availability of the goods for sale by the respondent on account of the lock-out in the factory at Bombay, there was no justification to declare lock-out at Jalandhar sales office. There was no Industrial dispute between the respondent and their workmen and so the weapon of lock-out was not available to the respondents as a coercive process to persuade the workmen to accept any demand of the management. In the given circumstances, the respondents may have been justified in closing down the establishment or laying off the workmen, but certainly there was no justification to declare lock-out. This issue is held accordingly."

8. A perusal of the aforesaid observations made by the Tribunal while disposing of the reference makes it abundantly clear that its findings are contradictory in regard to issue No.2. It has found that the action of the Management amounted to closure which may have been justified due to non-availability of the goods for sale but there was no justification for the lockout. There is a clear distinction between closure on the one hand and lockout on the other but the same appears to have escaped the notice of the Tribunal.

9. Moreover, what was referred to the Tribunal for adjudication was as to whether the lockout declared by the Management was justified or not. The terms of the reference proceeded on the assumption that there was a lockout and the Tribunal was called upon to examine its justification. Instead of doing that, the Tribunal recorded a finding that the action of the Management amounted to closure. In my opinion, the Tribunal exceeded its jurisdiction and went beyond the scope and ambit of the reference in recording such a finding. On the terms of the reference, it , was not open to either of the parties to contend nor could the Tribunal allow them to lead evidence to show that there was no lockout. The parties could lead evidence i only to explain their conduct during the lockout period on the basis of which the : Tribunal could examine its justification but the very basis of the reference, namely, the existence of the lockout is not open to challenge. In this view of the matter, the finding recorded by the Tribunal that the action of the Management amounted to: closure cannot be sustained. The view that I have taken finds support from the decisions of the Supreme Court in Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, and Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd. and Anr. AIR 1979 SC 1356.

10. Learned counsel for the petitioner took me through the statements of different witnesses who were examined before the Tribunal to contend that the district sales offices and the Management''s factory and central office at Bombay

are functionally integrated and interdependent upon each other for proper working and that the district offices have no independent existence. He also cited some case law in support of his submissions but since this fact can be determined only after appreciating evidence, it is not for this Court to do the same in the present proceedings. The grievance of the counsel for the parties is that the Tribunal has not adverted to their pleadings and nor to the evidence that was led by them in support of their respective claims. The case, therefore, has to be sent back to the Tribunal for a fresh determination.

11. In the result, the impugned award dated 16.12.1991 is set aside and the case remanded to the Tribunal for deciding the reference afresh in accordance with law after considering all the issues that may arise from the pleadings of the parties.

No costs.

