
(1999) 09 MP CK 0065

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3260 of 1999

Mohan Jute Mills Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 3 LLJ 1550 : (2000) 1 MPHT 389

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

S.P. Khare, J.—This is a petition under Articles 226 and 227 of the Constitution of India challenging the order dated May 10, 1999 (Annexure P-18) of the Industrial Court, Raipur, order dated June 1, 1999 (Annexure P-14) of the Labour Commissioner, Indore, Revenue Recovery Certificate dated June 10, 1999 (Annexure P-16) and order dated July 12, 1999 of the Tehsildar, Raigarh (Annexure P-18).

2. The petitioner is running a Jute Mill at Raigarh. It was running into losses. It did not pay the dearness allowance to the workers. The Union of the mill gave a notice dated March 4, 1999 for strike for one day. The petitioner challenged it u/s 31 of the M.P. Industrial Relations Act, 1960. By an interim order dated March 5, 1999, the Labour Court, Bilaspur, restrained the Union from going on strike. The workers did not proceed on strike. By notice dated March 29, 1999 (Annexure P-9), the petitioner declared the "Lockout". In the notice, it was mentioned that the "lockout" is being declared because the workers adopted the step of "go slow" in their work and that amounts to the strike. It was also mentioned that this "go-slow" was causing considerable loss to the petitioner.

3. The respondent No. 4, Deputy Labour Commissioner issued a show-cause notice dated March 30, 1999 to the petitioner for contravening Sub-section (6) of

Section 25P of the Industrial Disputes Act, 1947. According to the respondent No. 4, the declaration of lockout in the notice (Annexure P-9) without specifying the period for which the lockout was to continue amounts to "closing down" of the undertaking and since no permission of the State Government was obtained for the closure, it is illegal. The petitioner contends that it is not closure but lockout in view of the illegal strike by the workers by adopting the "go-slow" tactic.

4. The petitioner submitted an application u/s 31 of the M.P. Industrial Relations Act, 1960, before the Labour Court, Bilaspur challenging the notice of the Deputy Labour Commissioner. The Labour Court granted an interim order against the said notice. This order of the Labour Court was stayed by Industrial Court u/s 67 of the Industrial Relations Act, 1960 by the impugned order dated May 10, 1999. Thereafter, the Labour Commissioner has passed the impugned order dated June 1, 1999 for recovery of the arrears of wages of the workers from March 29, 1999 to June 3, 1999. The amount of arrears for this period is Rs. 1,79,78,688/-. There were 1638 labourers working in this mill. As the petitioner did not pay this amount, the revenue recovery certificate has been issued.

5. The petitioner's case is that the workers proceeded on strike by adopting "go-slow" and this was an illegal strike. Therefore, the lockout declared by the petitioner is legal as provided u/s 24(3) of the Industrial Disputes Act, 1947.

6. The case of the respondents is that the petitioner has unlawfully declared the lockout. There was no strike by the workers. They had not adopted any "go-slow" tactic. The lockout was not for a temporary period. It is still continuing. It amounts to closure of the undertaking.

7. The learned counsel for both the sides were heard. In *Syndicate Bank and another Vs. K. Umesh Nayak*, it has been held that whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Under the Act, the question has to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the Act. Whether the strike is legal or illegal and justified or unjustified, are issues which fell for decision within the exclusive domain of the industrial adjudicator under the Act and it is not primarily for the High Court to give its findings on the said issues. The said issues had to be decided by taking the necessary evidence on the subject. Such an enquiry has to be conducted by the machinery which is primarily invested with the jurisdiction and duty to investigate and resolve the dispute.

8. In the present case, there is a dispute whether the workers adopted "go-slow" tactics amounting to strike. The "go-slow" may be a form of strike but the question whether the workers in the present case adopted that course is a question of fact to be decided by the Labour Court. During the course of the hearing, the learned counsel for the petitioner agreed that he is not calling upon this Court to decide the question whether there was strike by the workers and whether it was legal and justified. His argument is that the Labour Court is seized

of the matter and therefore, there can be no recovery of the wages of the workers by the Deputy Labour Commissioner from the petitioner until that matter is decided. It is further argued that the lockout declared by the petitioner is legal because it is in consequence of an illegal strike. This argument presupposes that the strike is illegal. Therefore, the question whether the lockout is legal or not would depend upon the decision whether there was strike and it was illegal. The question whether the lockout is legal or not would also require to be decided by the Labour Court. In the course of this decision, the contention of the respondents whether the lockout in the present case amounts to closure would also be decided.

9. The question however is whether the workers are entitled to some relief until the points relating to strike, lockout and closure are decided. The administrative authorities of the Labour department have come on the scene to assuage the plight of the workers. The decision of the Labour Court on the points referred above would take sometime. It was admitted during the course of hearing that the lockout which was declared on March 29, 1999 is continuing and the workers are not getting even subsistence wages. It is necessary that the workers must get at least two square meals a day. Their condition on account of the closure of the mill can very well be imagined. Therefore, there has to be some immediate solution of the problem. In *India Marine Service Private Ltd. Vs. Their Workmen*, it has been held that in a case where a strike is unjustified and is followed by a lock-out which has, because of its long duration, become unjustified, it would not be a proper course for an Industrial Tribunal to direct the payment of the whole of the wages for the period of the lock-out. In a case where the strike is unjustified and the lock-out is justified the workmen would not be entitled to any wages at all. Similarly, where the strike is justified and the lock-out is unjustified the workmen would be entitled to the entire wages for the period of strike and lock-out. Where, however, a strike is unjustified and is followed by a lock-out which becomes unjustified, a case for apportionment of blame arises. In that case, the blame was apportioned half and half between the company and its workers and the workmen were allowed to get half of their wages. That course should be followed in the present case also at this stage as it is yet to be established that the workers were on strike and that was illegal to justify the lock-out by the petitioner.

10. In the result, this petition is partly allowed. It is directed that the respondent No. 4, Deputy Labour Commissioner, Raipur, shall recover half of the amount from the petitioner for which he has passed the order and issued the revenue recovery certificate. The petitioner must commence the process to withdraw the lockout as early as possible so that the jute mill may continue to function. That will be both in the interest of the petitioner and the workers. It is also directed that the Labour Court, will decide the dispute on the points mentioned above as early as possible after recording the evidence of both sides. The petitioner will not adopt any delaying tactics in the disposal of this case by the Labour Court. The conciliation steps may also be taken by the authorities concerned in

accordance with law.