

(1987) 08 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1126 of 1982 (R)

M/s. Shriram Bearings Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 27-08-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2(1), 25C

Citation : (1988) PLJR 708

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : N.C. Ganguli and K.D. Chatterjee, for the Appellant; C.B. Mitter and Mrs. Jaya Roy, for the Respondent

Judgement

S.B. Sinha, J.—As in both these writ applications an award dated 29.5.1982 made by the Presiding Officer, Labour Court, Ranchi, in Reference case No. 4 of 1976 is in question, both these writ applications were taken up for hearing together and are being disposed of by this common judgment. The facts of the case, which are not much-in dispute, lie in a very narrow compass.

2. M/s. Shriram Bearing Ltd., Ranchi runs a factory at Ratu, Ranchi, The case as made out in the writ application is that on 7.5.1975 at about 8 A.M. a large number of people belonging to the neighbouring village assembled near the factory gate and prevented the officers and staff from entering the factory premises. In absence of any police assistance it became impossible to carry on work and as the agitation continued till 8.5.1975, the management had to suspend the working of the factory and it was allegedly closed by giving notice to all concerned including the workmen.

It is further admitted that when the factory reopened on 4.8.1975, the workmen demanded wages for the period for which the factory was under closure.

3. As the parties to the dispute failed to come to an amicable settlement, the reference was made by the State Government in exercise of its power conferred

upon it u/s 10 of the Industrial Disputes Act. The Schedule of the said dispute is as follows:--

Whether the lockout from 8th May, 1975 to 4th August, 1975, declared by the Management is proper and justified? If not, whether the wages for that period is payable to the workers?

4. In the said reference an award dated 11.2.80 was made against the management which filed a writ application challenging the said award in C.W.J.C. No. 274 of 1980(R). By an order dated 12.12.1980 this Court quashed the aforementioned award and the reference was sent back for fresh decision on all the questions on which the parties differ and after giving them an opportunity to lead further evidence. The order of the High Court dated 12.12.1980 is contained in Annexure 2 to C.W.J.C. No. 1126 of 1982(R). The impugned award is contained in Annexure 3 to C.W.J.C. No. 1126 of 1982(R) and Annexure 2 to C.W.J.C. No. 84 of 1983 passed by the respondent no. 1.

5. In the said award the respondent no. 1 held that the management did not declare any lock out but proceeded to hold that the action on the part of the management in keeping the factory closed from 7.5.1975 till 3.8.1975 amounts to "lay off" and as such directed that the management would pay "lay off" compensation at the rate of 50% of the basic wages and the dearness allowance to the workman concerned in terms of section 25-C of the Industrial Disputes Act.

Before me the learned counsels for both the parties conceded that in the facts and circumstances of the case the action of the management does not constitute a "lay off" of the workmen.

6. Mr. C.B. Mitter, learned counsel appearing for the petitioner in C.W.J.C. No. 84 of 1983(R), however, contended that in the facts and circumstances of the case a clear case of "lock out" has been made out which being unjustified, the workmen are entitled to their wages.

7. Mr. K.D. Chatterjee, learned counsel appearing on behalf of the management however, submitted that as it does not amount to "lay off" of the workmen, no wages, whatsoever is payable by the management to the workmen.

8. A short question, therefore, that arises for consideration in these applications is as to whether the action on the part of the management amounts to "lock out" or not. The word "lock out" has been defined in section 2(1) of the Industrial Disputes Act (as it then stood) which is as follows:--

Lock out "means the closing of a place of employment or the suspension of the work, or the refusal by an employer to continue to employ any number of persons employed by him.

9. By section 2 of Act No. 46 of 1982 of the Industrial Disputes Act was amended which came into force with effect from 21.8.1984 and thereby the definition of "lock out" was amended so as to mean "the temporary closure of a place of

employment or the suspension of work, or the refusal by an employer to continue the employment of any person employed by him".

10. From the aforementioned definition, it would appear that whereas in the parent Act closing of a place of employment would have itself constituted "lock out" by reason of the amending Act, the same now confined to only temporary closing of a place of employment.

11. In the instant case, the Labour Court after taking into consideration the facts and circumstances of this case came to the conclusion that the management did not close the business permanently as even during the aforementioned period it has been selling its finished product with the help of some of the workmen.

The Labour Court, in view of the decision of the Supreme Court reported in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, came to the conclusion that the action on the part of the management did not amount to a closure of the factory. The Labour Court, however, came to the conclusion that as the agitation launched by the local people took a menacing attitude and as the management was not provided with police protection it had no other alternative but to stop production.

From the various documents which have been referred to in the impugned award, it appears that all concerned including the district authorities conceded the act of management was that of a "lock out".

12. For the purpose of considering as to whether "lock out" can be declared by the management, the same must be as a result of any dispute by and between the management and the workmen or not, in my opinion, is not decisive inasmuch as the definition of "lock out" is a very wide one, the same in effect and substance embraces within its fold any act of the employer for any reason whatsoever, as a result thereof a class of workmen or a section of them are refused employment or are not allowed to continue in employment. The situation in which the management could not continue the production of the factory, in my opinion, amounts to a "lock out".

Further the genesis of the occurrence is also not in dispute. The local people have been agitating not for any other reason but for the purpose of obtaining employment. In this connection, it may be useful to refer to the definition of Industrial Disputes as occurring in section 2(K) of the Industrial Disputes Act which reads as follows:--

"Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of employment or with the conditions of labour, of any person.

13. In the instant case, the management's contention had been that a section of workmen also joined hands with the local people. In Annexure 2 i.e. the order of

this Court dated 12th December, 1980, the paragraph 9 of the written statement filed by the management has been quoted, which reads as follows:--

That from 6. A.M. on 8.5.1975 the local people along with the workers of the company did not allow any workmen, staff and officers to enter into the factory except security personnel.

14. It may further be mentioned that Vijay Ratan Agarwal who examined himself as P.W.2 admitted that in 1973 there had been an agreement with the management and the local people that the management shall give preference to the local people in employment to unskilled posts and he further admitted that there is a provision in the Standing order of the management that preference to local people shall be given in the matter of employment not only in respect of unskilled posts but also in other posts.

15. It has further come in records that there had been an agreement (Ext. B/1) by and between the representatives of the management and representatives of the local people in presence of the Sub divisional Officer (Civil) Ranchi, in which it was agreed that 70% of the vacant posts shall be reserved for the local people.

The learned Labour Court, however, came to the conclusion that as in relation to the said dispute the union did not participate in conciliation proceeding held therefor; therefore there had been no dispute by and between the management and the workmen on that score.

16. In Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, it has been held as follows:--

Lock-out can be described as the antithesis of a strike. Just as a strike is a weapon available to the employees for enforcing their industrial demands a lock-out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and accept his demands. In the struggle between capital and labour the weapon of strike is available to labour and is often used by it, so is the weapon of lock-out available to the employer and can be used by him.

17. However, in a recent decision, in General Labour Union (Red Flag) Bombay Vs. B.V. Chavan and Others, the Supreme Court held that the employer may close down an industrial activity bona fide on such eventualities as suffering continuous loss, no possibility of revival of business or inability for various other reasons to continue the industrial activity. There may be closure for any of these reasons though these reasons are not exhaustive but are merely illustrative. But it cannot be said that closure must always be permanent and irrevocable as that would be ignoring the causes which may have necessitated closure. Change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed.

18. Therefore, in my opinion, existence of any dispute by and between the management and the workmen, for declaration of lock out or closure or laying off

the workmen, is not the only test. It appears that the Labour Court did not apply his mind to the lis from this angle of view.

Further, as noticed hereinbefore, the Labour Court has not applied his mind at all with reference to paragraph 9 of the written statement of the management wherein it has been admitted that the workmen also demonstrated along with the outsiders. Even if a section of the workmen associated themselves with the demand of the local people for obtaining employment by enforcing an agreement entered into by and between the representatives of the management and local residents and in violation of the provisions of the certified Standing Order, the same, in my opinion, would also give rise to an industrial dispute. It may be mentioned herein that for the purpose of construing the word industrial dispute, the Industrial Disputes Act does not require that the dispute or difference should be raised by all the workmen of the industry or every one of them or even majority of them, but it is enough if the controversy by and between the employer on the one side and the workmen on the other is raised by a sizable number of workmen.

19. The learned Labour Court has referred to a case of the Supreme Court reported in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, and held that in the instant case a community of the workmen as a whole had no interest in getting employment of the local people. In my opinion, the Labour Court has not read the said decision in its proper perspective. The Supreme Court in the aforementioned decision clearly stated that the word "any person" in section 2(k) has been used in the sense that a person in respect of whom the employer-employee's relation never existed or can never possibly exist, cannot be the subject matter of a dispute by and between the employer and the workmen.

20. The very fact that there were some prospective employees for whom the agitation was launched clearly brings the matter within the purview of term "industrial dispute". Secondly, it is not necessary that the community of interest should be in respect of the entire body of the workmen, even if the workmen had a substantial interest or even a section of the workmen had a direct or a substantial interest, a dispute would be a real dispute between the parties. The interpretation of word "community of interest" fell for decision in various subsequent cases as for example in the case of *Workmen of Dahingepara Tea Estate Vs. Dahingepara Tea Estate*, , *Kays Constructions Co. (Private) Ltd. Vs. Its Workmen*, . *The Standard-vacuum Refining Co. of India Ltd. Vs. Its Workmen and Others*, and *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, .

In *Kays Construction Co. (P) Ltd's* case (supra), the Supreme Court held that the expression industrial dispute" wide enough to cover a dispute raised by the employer's workmen in regard to non-employment of others also, who may not be his workmen at the material time.

21. Reviewing the jurisprudential rationale the Supreme Court in the *The Workmen Vs. Greaves Cotton and Co. Ltd. and Others*, held that non workman as well as workmen can raise a dispute in respect of the matter affecting their employment, conditions of services etc. where they have a "community of interest" provided they are direct and are not remote.

22. In the instant case, it is now well settled that the word "any person", does not signify only a workmen. It is enough if the workmen are directly or substantially interested or with whom they have a "community of interest" must be a person in whose employment the workmen are interested. The question whether the person concerned satisfies this test is a question of fact in each case.

Therefore, in my opinion, judging the case from this angle on the part of the management in closing down the factory from 7.5.1975 till 3.8.1975 may amount to a "lock out" within the meaning of section 3(1) of the Industrial Disputes Act and then requires a fresh decision of the Labour Court.

23. Mr. C.B. Mitter, in the alternative submitted that the present dispute in respect whereof the reference made by the State Government did not arise as a result of the agitation launched by the local people along with some of workmen but arose when the management refused to pay the wages the concerned workmen. He submitted that the contract of employment by and between the management and the workmen all along continued and such contract of employment never came to an end.

He further submitted that even it cannot be said that the said contract of employment became frustrated by reason of the action on the part of the local people as mentioned herein before.

In this connection he referred to two decisions reported in *Maritime National Fish Ltd. v. Ocean Trawlers Ltd.* (The All England Law Reports, 1935 page 86) and in *Denny Mott and Dickson Ltd. v. James B. Fraser and Co. Ltd.* (The, 1944 1 All England Law reports 678) for the proposition that in order to constitute a frustration in contract, the contract itself must come to an end which cannot be revived.

24. Mr. C.B. Mitter, therefore, submitted that as the contract of employment continued, the workmen are entitled to wages in terms of the provisions of Payment of Wages Act or under the terms of the contract of employment.

25. Mr. K.D. Chatterjee, learned counsel appearing on behalf of the management did not dispute the aforementioned proposition of law; but submitted that the reference made by the appropriate government being absolutely clear and unambiguous, it was not possible for the respondent no. 1 to construe the reference in such a manner so as to allow payment of wages to the concerned workmen without coming to the conclusion that the action on the part of the management in closing down the production of the factory for the aforesaid period amounted to "lock out". He submitted that the Labour Court or Industrial

Tribunal to whom a reference is made is bound by the terms thereof and he has no jurisdiction, power Of authority to travel beyond the reference and decide the purported dispute what the reference does not specify.

26. It is true that the Labour Court or an Industrial Tribunal is bound to decide the dispute as referred to it for adjudication. However, it is also well known that not infrequently the orders of references are far from satisfactory and are not carefully drafted. Reference in this connection may be made to *Indian Paper Pulp Co. Ltd. v. Indian Paper Pulp Worker"s Union* (1949 I L.L.J. 258).

It is also well known that the tribunal must attempt to construe the order of reference not too technically or in a pedantic manner, bat clearly and reasonable. In other words, tribunal has not only a power to a duty as cast upon it to find it what was the real dispute, which was referred to it and decide it and not to throw it out on a mere technicality. Even if philosophy of order of reference is inelegant, the tribunal should look to the substance rather than to the form of the order of reference and for the purpose of construing the terms of the reference; even the pleading of the parties can be looked into. The aforementioned propositions are well known and have been laid down by the Supreme Court of India in a number of decisions.

The Labour Court, it my opinion, has not considered the reference also from this angle of view.

27. Further, it is worth taking note of, that the definition of "lock out" not only imposes within its fold a closure of factory temporarily or otherwise but also a suspension of work or refusal by an employer to continue to employ any under of (sic) person employed by him. Refusal to take work from an employee constitutes suspension.

28. The power of the employer to suspend an employee is well known. Suspension of an employee may take place as an interim measure pending a departmental proceeding against him and further an employee may also be suspended by an employer in exercise of its inherent power so as not to take any job from him.

In the latter case, the order of suspension does not adversely affect the right and privileges upon the suspended employee but merely prohibits him from discharging his official duties of obligations. In such an event the employee would be entitled to full payment of his salary. Reference in this connection may be made to *R.P. Kapur Vs. Union of India (UOI)* and *Another*, and *P.R. Nayak Vs. Union of India (UOI)*, .

Although the aforementioned cases referred to are in relation to the government servant the principle thereof can be brought in vogue also in the case of the industrial employees.

29. Mr. C.B. Mitter has also drawn my attention to a passage from law and morals by Roscoe Pound at page 36 wherein reference has been made to a

passage from "Laws and Jurisprudence of England and America in the following terms:--

Judges and lawyers felt this even at the height of the reign of nineteenth century theory. Thus Judge Dillon, after stating the analytical and historical doctrine of the last entry to which from a scientific juristic position he felt bound to assent, could not but see that his experience as counsel and as judge belied it. He says:

If unblamed I may advert to my own experience, I always felt in the exercise of the judicial office irresistibly drawn to the intrinsic justice of the case, with the inclination, and if possible the determination, to rest the judgment upon the very right of the matter. In the practice of the profession I always feel an abiding confidence that if my case is morally right and just it will succeed, whatever technical difficulties may stand in the way; and the result usually justifies the confidence. Theories that ignore such facts of the administration of justice are as much "in the air" as any philosophical theory ever was.

30. Morality in certain cases may succeed even at the cost of the law, but in India we are bound by the law. In *State of Karnataka Vs. L. Muniswamy and Others*, held that the ends of justice are higher than the ends of mere law though justice has got to be administered according to the laws made by the legislature.

Further, so far as this Court is concerned it is also bound by the law as enunciated by the Supreme Court in terms of Article 141 of the Constitution of India. However, in view of the order proposed by me it is not necessary to dwell upon this subject any further.

From the findings aforementioned, it would appear that the learned Labour Court has not posed right questions unto itself and thus committed a misdirection in law.

31. In *Secretary of State for Education and Science vs. Metropolitan Borough of Tameside* in the, 1976 3 All England Law Reports, 665 at 696, Lord Diplock held that where authority passing an order does not ask itself the right question and take reasonable steps to acquaint itself with the relevant information to enable it to answer it correctly; the same amounts to a misdirection in law.

32. In this view of the matter, I have no other option but to allow both these writ applications and remit the case back to the Labour Court for a fresh decision keeping in view the observations made herein before and in accordance with law. As the matter has been pending for a long time, it is expected that the respondent No. 1 shall give preference to it and dispose of the same as early as possible preferably within a period of three months from the date of the receipt of a copy of this order.