

(1967) 06 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 1021 of 1967

Mysore Machinery Manufacturers Ltd.

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 06-06-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Police Act, 1963 — Section 54, 55, 56

Citation : AIR 1969 Kar 51 : (1969) CriLJ 221

Hon'ble Judges : T.K. Tukol, J;M. Santosh, J

Bench : Division Bench

Judgement

Tukol, J.—This is an unusual writ petition under Article 226 of the Constitution of India against the respondents including the Commissioner of Police (respondent No. 2) praying for the issue of a writ of mandamus or other appropriate direction to take steps for the prevention of commission of offences by the dismissed workmen and to remove the dismissed workmen from the premises of the petitioner-factory so as to prevent them from indulging in the commission of further offences and for taking such action as is necessary under the law to maintain law and order.

2. The facts and the circumstances under which the present writ petition has been filed may be briefly summarised as follows:

The petitioner is the Mysore Machinery Manufacturers Ltd. This factory is engaged in the manufacture of plant and machinery for supply to various manufacturing units and to other factories. It has a capital of about Rs. 20 Lakhs in the form of machinery installed within the premises, and the capacity of its workmen attending to the various operations is about 500. On the 1st April 1967, the workmen entered the factory, as usual for work and nothing happened till about 4 P.M. on that day. When the first shift came to an end, 270 workmen refused to leave the premises and the Director in charge of the management an order of dismissal against those workmen. The workmen who were so dismissed

continued to remain within the premises of the factory in spite of the warning that their conduct amounted to misconduct as offending the various Standing Orders of the Company. These workmen had stopped work and a charge-sheet was issued against them on 4th April 1967 asking them to show cause why action should not be taken against them, for acts of misconduct detailed in the charge-sheet. It is pertinent to mention that this charge-sheet and show-cause notice were issued after setting aside the earlier order of dismissal of 1st April 1967. On the 6th April 1967, the workmen filed their statements denying the allegations made against them and contending that there was no strike on their part but that there was illegal lockout on the part of the management. They stated that "overstay inside the factory after doing our work as usual is not a strike, it is an offence as alleged." It is unnecessary for us to narrate the contentions of the workmen in this writ petition for two reasons: Firstly, they are not parties to the present writ petition and secondly the State Government has made a reference u/s 10(1) of the Industrial Disputes Act 1947, to the Additional Industrial Tribunal at Bangalore, on 25th April 1967 requiring the tribunal to decide whether the stoppage of work was a strike or a lock-out and whether the dismissal of 267 workmen was justified or not and whether they were entitled to reinstatement with back wages and continuity of service.

3. Reverting to the material facts of the present case, it may be stated that even before the 4th April 1967, the Director of the petitioner company had addressed a letter to the Sub Inspector of Police (Annexure C-1) on 1st April 1967. It refers to some previous discussion between that officer and the Director, and the requests that were made by the management. On 13th April 1967, the Director addressed two communications (Annexures D and E) respectively to the Deputy Commissioner and District Magistrate and to the Commissioner of Police, Bangalore City and the third, on 4th May 1967 to the Secretary to the Government of Mysore in the Home Department. The communications addressed to the Deputy Commissioner and the Commissioner of Police are identically worded. It is enough to mention that so far as the District Magistrate is concerned, he informed the Commissioner of Police (Annexure "G") on 19th April 1967 requesting him "to look into the alleged disorderly and illegal actions of the workers said to be taking place in the premises of the factory and to take such action as deemed fit in the circumstances." The communication addressed to the Commissioner of Police refers to the order of dismissal passed against 270 workmen (including the office-bearers of the Union) and states as follows:

"The abovesaid 270 workers of the factory still continue to remain unlawfully and unauthorisedly within the precincts of the factory and have, in fact, stayed within the premises of the factory without interruption from 1-4-67 to the time of making this application. Even though no acts of violence excepting stone throwing and damaging the buildings of the Company have occurred up-to-now, we have authentic information that the workmen may indulge in violent activities, especially after receiving the dismissal order.

"Some of our supervisory staff have also reported that threats were made indirectly to them that if they continue to come to the factory and attend to their work, bodily harm may be done to them. We also apprehend danger to the property of the factory. Two sides of the factory are fenced with only barbed wire and the workers who are inside the factory are lifting the barbed wire and going out and coming in during the night time. With our meagre watch and ward staff it is not possible to check their ingress and distress. We are not able to check the finished goods, tools and cutting tools, etc lying inside the factory and we apprehend that thefts might have occurred and we also apprehend that thefts may occur in future.

"There are 205 workers who are peacefully discharging their duty during the shift allotted to them and we apprehend bodily harm to them also. The situation is explosive and breach of peace and the destruction of property is apprehended to be imminent.

"We therefore, pray to take necessary action to see that these disorderly and illegal actions of the said 270 workers be prohibited and the steps be taken to remove them from the factory premises and also to protect the valuable properties lying inside the factory."

It is the case of the petitioner that no effective relief as prayed for by its application to the Commissioner of Police was given to the Management of the factory. The Secretary to the Government, Home Department, sent a communication to the Inspector-General of Police on 27th April, 1967 (Annexure "H") enclosing the communication addressed by the petitioner as per Annexure "F" and requesting him to take necessary action in the matter. It appears that the petitioner had approached the Commissioner of labor on 2-5-1967 (Annexure J) requesting him to direct the workers not to molest them in their usual occupation and to withdraw them from the premises so that the work may go on smoothly. The Commissioner of labor responded on the very next day (Annexure K) intimating that his office could only advise the workers through their Union to withdraw from the premises and that he had no powers beyond giving persuasive advice. The present writ petition came to be filed on 9-5-1967 praying the aforesaid reliefs.

4. In the affidavit accompanying the petition, it has been stated that since no action had been taken by the Commissioner of Police in spite of the representation dated 13th April 1967, the petitioner had thought it fit to approach the Court for immediate relief. It is stated in the affidavit that the dismissed workmen were indulging in unlawful acts from 1st April 1967. It is stated that they were arming themselves with lethal weapons like iron rods, sharp materials and other hardware and threatening the supervisory staff and the other 200 and odd workmen who were prepared to work. It is also stated that the members of the staff and management were being prevented from entering the factory and the materials in the factory were being removed unauthorisedly. Express reference is also made to the workmen meddling with

the plant and machinery unauthorisedly and to throwing of stones and obstructing entry into the premises. Fear is also expressed that damage would be caused to the costly machinery. The affidavit also contains extracts from the relevant Standing Orders which prohibit the workmen going on strike without notice and entering the factory premises before the working hours or remaining within the factory premises after working the hours without permission. Reference is also made to the various clauses of the Standing Order No. 36 which enumerates the types of conduct which amount to misconduct. There is a further reiteration of the fact that the movements and acts of the dismissed workmen were causing or were calculated to cause alarm, danger and harm to the person and property and that reasonable apprehensions were being entertained that offences involving force and violence were likely to be committed.

5. Respondent No. 2 has filed a counter-affidavit. He has stated in the first paragraph that he was filing the counter-affidavit on the basis of the available records. According to him, the petition does not disclose any cause of action for the issue of a writ of mandamus as there was no breach of statutory duty on the part of the respondents. His further contention is that the substantial issues raised in the writ petition are already pending adjudication before the Industrial Tribunal. It is admitted that the 270 workmen said to have been dismissed were carrying on strike in the factory but that the strike was peaceful without any likelihood of danger to any person or property of the petitioner. The Commissioner of Police further states:

"The employees who remained in the factory premises were found to be absolutely peaceful. There was no threat or damage to person and property. As the circumstances did not warrant any further action, the local Police were instructed to be vigilant and to see that no untoward incident happened."

The affidavit also makes reference to some criminal complaints filed against the workmen. There is also denial of the facts alleged in the affidavit of the petitioner as regards the threat to person and property. It has also been stated that necessary police arrangements had been made for keeping watch and for taking care to see that no untoward incident occurred.

In his supplementary counter-affidavit, the second respondent has stated that none of the 9 persons mentioned in his affidavit who had filed affidavits before this Court had lodged any complaint in the jurisdictional police station, either about the alleged threats or about the obstruction to carry on the work. He has also stated that the Sub-Inspector of Police and other higher officers had been frequently visiting the factory and were making esquires about the developments taking place in the factory premises.

6. It is not necessary to refer to the details contained in the affidavit of the Secretary to the Government, since it is confined to certain discussions that are alleged to have taken place between the Director and himself.

7. The first contention that has been urged on behalf of the respondents is that

the complaint filed by the petitioner, disclosed no cognizable offence and that there was no breach of any statutory duty cast on any of the respondents so as to entitle the petitioner to a writ of mandamus.

8. In order to decide this question, it is necessary to refer to the relevant provisions of law in order to ascertain the scope of the obligations and duties cast on a police officer like respondent No. 2. We may first refer to the Mysore Police Act, 1963, which in chapter VI enshrines and enumerates the executive powers and duties of the police. Section 65(b) and (c) lays down that it shall be the duty of every police officer to the best of his ability to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences and to lay such information and to take such other steps consistent with law and with the orders of his superiors, as shall be best calculated to bring offenders to justice. Clause (d) of that section lays down that it shall be the duty of every police officer to prevent the commission of offences, while clause (e) casts identical duty to prevent to the best of his ability the commission of public nuisances. Section 66 refers to the power of the police officer to enter places of public resort while Section 67 refers to his power to search suspected persons in a street, etc. Section 73 lays down that it shall be the duty of the police to see that every regulation and direction made by an authority u/s 42, 54, 55, 56, or 63 is duly obeyed. Section 55, which has a bearing on the point at issue refers to the powers of the Commissioner of Police as regards removal of persons about to commit offences. Clause (b) empowers the Police Commissioner to direct a person in writing to remove himself from any area or part of the area within his local jurisdiction when "there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in apprehension on their part as regards the safety of their person or property." Section 70 makes it obligatory on all persons to conform to the reasonable directions of a Police Officer given in fulfillment of any of his duties under the Act. Section 71 empowers a police officer to restrain or remove any person resisting or refusing or omitting to conform to any direction referred to in section 70. That section also empowers him to take such person before a Magistrate or, in trivial cases, to release him when the occasion is past.

9. Besides these powers, we may refer to some of the provisions contained in Chapter XIV of the Code of Criminal Procedure. Section 154 lays down that "every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under direction, be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf." Section 155(1) refers to the information given to an officer in charge of a

police station in respect of non-cognizable offences. That section makes it obligatory on such police officer to enter in a book to be kept for the purpose the substance of the information given; there is an obligation cast on him to refer the informant to the Magistrate. Section 156 empowers him to investigate into cognizable offence while Section 157 prescribes the procedure to be followed where cognizable offences are suspected and where the police office sees no sufficient ground for entering on an investigation. Under this section, if, from the information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offences upon a police-report and proceed in person, or depute one of his subordinate officers for making investigation.

10. From the aforesaid provisions it is clear that when an officer receives information complaining of the commission of a cognizable offence he has to make a report to the Magistrate and start investigation. If on the other hand, he considers that the information given discloses a non-cognizable offence, he has to enter in a book kept for the purpose the substance of the information and he must direct the informant to approach the Magistrate. The other powers under the Mysore Police Act require him to take preventive steps either by directing the persons about to commit an offence to remove themselves from the premises or by taking necessary action himself to remove them so as to prevent the commission of the offence complained of.

11. What is however seriously urged on behalf of the respondents is that the complaint given by the petitioner to the Commissioner of Police and the other facts placed before him did not disclose the commission of any cognizable offence. In referring to the facts alleged in the petition, it is necessary to mention that none of the respondents has secured the affidavit of that Police Officer who actually visited the factory premises and verified the truth or falsehood of the facts set out in writ petition or in the application filed before the Commissioner of Police. As we have already stated, the Commissioner of Police has sworn from the records before him. In these circumstances, we are inclined to accept the various averments made in the application to the Commissioner of Police supported by various averments contained in the present affidavit as setting out facts which are not controverted. If these facts are accepted, as we are inclined to accept them for the aforesaid reason, we have to hold that the information disclosed that about 270 workmen have been squatting inside the factory day and night since about the 1st of April 1967, have been preventing the supervisory staff of the management from entering that part of the factory which is in their occupation, that they are preventing the other willing workmen from working the factory, that they had armed themselves with deadly weapons threatening the willing workers of the factory, that they had thrown stones and damaged the factory buildings and that they have been committing such acts as are calculated to cause alarm, danger and harm to the person and property of

the management. In our opinion, the facts disclosed by the complaint filed by the petitioner before the Commissioner of Police disclosed reasonable grounds for believing that offences under sections 341 and 447 of the Indian Penal Code were being committed. The former section provides punishment for wrongful restraint while the latter provides punishment for criminal trespass. Section 339 of the Indian Penal Code defines "Wrongful restraint". It reads:

"Whoever voluntarily obstructs any person as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

Exception--The obstruction of a private way over land or water which a person in good faith believed himself to have a lawful right to obstruct, is not an offence within the lawful meaning of the section."

From the facts alleged it appears to us that the complaint and the averments in the affidavit do disclose that some at least of the dismissed workmen were voluntarily obstructing the management from entering into the premises of the factory which they have a right to enter and were also prohibiting the willing workers from proceeding to the place of work which they have a right to proceed and continue their work. Section 441 of the Indian Penal Code defines "criminal trespass". It reads:

"Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit any offence, is said to commit "criminal trespass"."

We may also mention that the offences u/s 341 and 447, I.P.C. are cognizable, bailable and compoundable.

12. It has been urged with sufficient emphasis by the learned Government Pleader that "stay-in-strike" is a weapon sanctioned by law and that it is open to industrial workmen to resort to it whenever necessary for the enforcement of their demands and that such "stay-in-strike" does not amount to criminal trespass.

In support of this argument, reliance has been placed on paragraph 47 of the judgment of the Supreme Court in *The Punjab National Bank Ltd. Vs. Its Workmen*, . That paragraph reads:

"Does the conduct of the strikers as found by the appellate tribunal constitute criminal trespass under S. 441 of the Indian Penal Code? That is the next point which calls for decision. It is argued that the conduct of the employees amounts to criminal trespass which is an offence and as such those who committed criminal trespass would not be entitled to reinstatement. According to the Bank the employees committed criminal trespass inasmuch as they either entered unlawfully or having lawfully entered continue to remain there unlawfully with

intent thereby to insult or annoy their superior officers. It would be noticed that there are two essential ingredients which must be established before criminal trespass can be proved against the employees. Even if we assume that the employees' entry in the premises was unlawful, it is difficult to appreciate the argument that the said entry was made with intent to insult or annoy the superior officers. The sole intention of the strikers obviously was to put pressure on the bank to concede to their demands. Even if the strikers might have known that the strike may annoy or insult the Bank's officers it is difficult to hold that such knowledge would necessarily lead to the inference of the requisite intention. In every case where the impugned entry causes annoyance or insult it cannot be said to be actuated by the intention to cause the said result. The distinction between knowledge and intention is quite clear, and that distinction must be borne in mind in deciding whether or not in the present case the strikers were actuated by the requisite intention. The said intention has always to be gathered from the circumstances of the case and it may be that the necessary or inevitable consequence of the impugned act may be one relevant circumstance. But, it is impossible to accede to the argument that the likely consequence of the act and its possible knowledge must necessarily import a corresponding intention. xx xx xx"

On the strength of this passage, the learned Government Pleader contends that it is not possible to hold that the dismissed workmen had committed criminal trespass.

In that case, their Lordships were dealing with "pen-down strike". The employees had entered the office and were occupying their seats, but were refusing to take pen and continue the work during office hours. The facts of that case are easily distinguishable. In the first instance, the "pen-down strike" was wholly confined to the regular working hours. In the second place, there was neither any order of suspension or any order of dismissal against any of the employees. In the present case, 270 workmen, whose activities are said to be responsible for the present writ petition, have been suspended from work. There was an order of dismissal also. They have been continuing in the factory premises day and night outside office hours. It is alleged that they have been threatening their co-workers and preventing them from working in the factory and have been preventing the supervisory staff of the management from entering that part of the factory where they have been squatting unauthorisedly. It is also alleged that some of them have armed themselves with lethal weapons and have damaged some walls of the factory by throwing stones. In deciding that knowledge and intention can legitimately be attributed to the dismissed workmen, we may refer to the last portion of paragraph 45 of the judgment of the Supreme Court already referred to, wherein their Lordships have stated--

"They entered the premises as employees of the Bank and having taken their seats they exercised their right of striking work. If the Bank has suspended the employees it would have been another matter; but so long as the relationship of

master and servant continued the employees could not be said to have committed civil trespass when they entered the premises at the time."

It can be easily concluded from these observations of their Lordships that where the relationship of master and servant has ceased, any assertive action attended with threats of injury and violence on the part of the labor with a view to prevent the willing workers from entering into the factory premises and the supervisory staff of the management from looking after their property and further, their unauthorised occupation of the premises to the exclusion of the management cannot but be regarded as disclosing an intention to commit offences.

13. The view expressed above by us that the action of the dismissed workmen amounts to a criminal trespass and that the respondent 2 can take action finds support from the views expressed in the two decisions to which we are presently making a reference.

14. In *Sadul Textile Mills Ltd. Vs. Workmen of Sadul Textile Mills and Another*, , their Lordships of the Rajasthan High Court were considering the implications of a stay-in-strike and the nature of the conduct of the workmen with reference to their claim for reinstatement etc. They quoted the following passage from Teller's "labor Dispute and Collective Bargaining" as giving an acceptable definition of a "sit-down strike" and its nature.

"Sit-down strike is defined as occurring whenever a group of employees or others interested in obtaining a certain objective in a particular business forcibly take over possession of the property of such business, establish themselves within the plant, stop its production and refuse access to the owners or to the others desiring to work. Sit-down strike should more accurately be defined as a strike in the traditional sense to which is added the element of trespass by the strikers upon the property of the employer. All the cases have uniformly out-lawed the sit-down strike."

15. The effect on the employer of the position taken up by the employees in a case like the present one was considered by their Lordships and the following passage may be quoted usefully from the judgment of Wanchoo, C. J.:

"By remaining on the property, they practically deprived the employer of his property and also practically stopped him from carrying on his business with the help of others. Further, a great burden is put on the management when the striking workers remain inside the mill and in possession of it, to arrange for the protection of the employer's property. There is at the very least an element of trespass upon the property of the employer in the case of a sit-down or stay-in-strike and such a strike must, therefore, in our opinion, be always unjustified, whatever may be the justification of an ordinary strike in similar circumstances."

16. We have already indicated that as soon as the order of suspension or dismissal was made, the right of the workmen to remain in the premises came to an end and their continuance on the property of the management with the

avowed object of excluding the management from the use of the factory and preventing the supervisory staff and other willing workmen by intimidation and threat of violation from attending to their duties would attract the relevant provisions of the Penal Code relating to a criminal trespass and wrongful restraint.

17. In *National Labor Relations Board v. Fansteel Metallurgical Corporation* (1939) 306 U. S. 240 the employees had resorted to violence and coercion. The Supreme Court of America had to consider what would be the nature of the strike resorted to by such workmen and observed as follows:

"But reprehensible as was that conduct of the respondent, there is no ground for saying that it made the respondent an out-law or deprived it of its legal rights to the possession and protection of its property. The employees had the right to strike but they had no license to commit acts of violence or to seize their employer's plant. We may put on the one side the contested questions as to the circumstances and the extent of injury to the plant and its contents in the efforts of the men to resist eviction. The seizure and holding of the building was itself a wrong apart from any acts of sabotage. But in its legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an employing company or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of labor dispute or of an unfair labor strike would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundation of society." Proceeding further, Hughes, C. J., who delivered the judgment of the majority observed:

"This was not the exercise of 'the right to strike' to which the Act referred. It was not a mere quitting of work and statement of grievances in the exercise of pressure recognised as lawful. It was an illegal seizure of the building in order to prevent their use by the employer in a lawful manner and this acts of force and violence to compel the employer to submit. When the employer resorted to that sort of compulsion they took a position outside the protection of the statute xx xx xx".

18. We are not concerned in this case with the question as to whether the termination of their employment was legal or illegal. what we are concerned with is the conduct of the dismissed workmen in persisting to remain on the property even after the order of dismissal and during day and night. This conduct, in our opinion, as already observed, is not only wholly unjustified but is also illegal bringing the action of such of them as are persisting in such conduct within the four corners of the law.

19. What has been urged on behalf of the respondents is that they had taken all the necessary precautions in order that there should not be any breach of peace or untoward incident. While the management has prayed for a positive action on the part of the police, the respondent has pleaded in defence the passive attitude

adopted by the police to meet the situation. It is further contended that when the dispute between the workmen and the employer is before the Industrial Tribunal, it would not be correct on the part of the Police to take any action against the workmen. We must make it clear that in the action prayed for by the management no question arises for decision as to whether the order of dismissal or suspension is legal or illegal. It is not necessary for the police also under such circumstances to consider such question. What they have to consider in situations of this type is to ascertain from the facts placed before them as to whether those facts give reasonable grounds for believing commission of cognizable offences or threat of commission of such offences being held out by the workmen. If they come to the conclusion, as the present facts have left no doubt in our mind, that there are reasonable grounds for believing that cognizable offences are being committed, they have to act and exercise such of the powers vested in them under the law as would meet the particular situation. It is further stated in the counter-affidavit that no offence was committed by the workmen and that there were no individual complaints from the willing workmen at the hands of the dismissed workmen. The management has prayed the Commissioner of Police by the application dated 13th April 1967 for immediate relief of getting the factory premises cleared from the grip of the dismissed workmen to facilitate their running the factory. It does not appear from the attitude adopted by the Management that they are interested in prosecuting the dismissed workmen. All that they seem to be concerned with is to have such facilities at the hands of the law as would enable them to work out their factory and protect the interests of such of the workmen as are willing to work in the factory. The fact that there are no individual complaints from the willing workmen does not detract the tenability of the action prayed for by the Management. We are therefore unable to appreciate the passive attitude adopted by the respondents in the present case. It may be that certain indiscreet threats held out by the Director of the Company in his letter dated 1st April 1967 to the effect that the Government of Mysore would be held responsible for any damage that they might suffer owing to the denial of the protection by the police, might be somewhat offensive. But, that should not however prevent respondent No. 2 from taking such action as is necessary under the law. It is not unusual that sometimes parties who have suffered use either unparliamentary or harsh language, but that cannot detract a public servant discharging his lawful duties from performing what the law requires him to do.

20. It was lastly contended by the learned Government Pleader that the petitioner should have approached the Magistrate for redress and that as he had not availed himself of that alternative remedy open to him under the law, this Court should not use its discretionary power of issuing a writ of mandamus against the respondents. We do not think that the failure of the petitioner to approach the Magistrate in a particular case either debars him from approaching this Court or debars us from exercising our discretionary power of issuing a writ. The most expeditious remedy contemplated by law and the right of protection

given by law is that of approaching an executive officer like the police; the various provisions of the Code of Criminal Procedure and the Mysore Police Act do indicate bifurcation between the powers and duties of the police and those of a Magistrate. The nature of the remedy sought for by the aggrieved party is also decisive factor, The most expeditious action contemplated by law is an approach to the police, who when they are satisfied that cognizable offences are being committed, can take immediately preventive measures as also punitive measures. In the present case, what has been sought for is a preventive measure, preferably for removal of the dismissed workmen from the premises of the factory to facilitate the working of the factory. Even if a Magistrate were approached by the petitioner, the Magistrate would have to direct the police to make an enquiry and submit a report as to what is required to be done. In other words, the Magistrate himself has got to see that his order is executed through the machinery of the police. That is why in cognizable offences the law requires the police to take action without waiting for the orders of the Magistrate.

21. For the reasons stated above, we have come to the conclusion that a writ as prayed for will have to issue. As we have already indicated, there are various measures the adoption of which can give immediate relief to the petitioner. It is possible to direct the dismissed employees still squatting within the premises of the factory to disperse and remove them from the premises of the factory. It is also possible to remove them bodily from the premises of the factory. It is possible to arrest them and keep them under detention for such time as is necessary or until the order of the Magistrate. It is not for the court to advise as to what is the remedy to be adopted. It is a matter for the decision of the police officer in charge of this particular case to decide what he should do and what course he should adopt in order to give an effective relief to the petitioner.

22. We accordingly direct that a writ of mandamus shall issue against respondent No.2 to remove the dismissed workmen from the premises of the factory and take such other action as is necessary to prevent the commission of the offence by the dismissed workmen so as to enable the petitioner to get exclusive control and possession of his premises. The petitioner shall get his costs from the respondents. Advocate's Fee Rs.100/-

23. Writ issued.