

(2016) 02 OHC CK 0057
In the Orissa High Court
Case No : W.P.(C) No. 16513 of 2007

Noble Gas Ltd.

APPELLANT

Vs

Noble Gas Worker's Union

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, Section 9
Constitution of India, 1950 — Article 133, Article 19, Article 19(1), Article 227
Industrial Disputes Act, 1947 — Section 2(f), Section 2(k), Section 33C
Trade Unions Act

Citation : (2016) 02 OHC CK 0057

Hon'ble Judges : Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : Ramakanta Mohanty, Sr. Advocate, for the Appellant; D.P. Nanda, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

Akshaya Kumar Rath, J.—1. The instant petition under Article 227 of the Constitution of India is to quash the order dated 11.12.2007 passed by the learned Civil Judge (Jr. Divn.), Jaipur Road in C.S. No. 62 of 2007, whereby and whereunder the learned trial court allowed the application filed by the defendant under Section 151 C.P.C. and held that the dispute comes under the purview of the Industrial Disputes Act, 1947 (hereinafter referred as the "I.D. Act") and as such civil court has no jurisdiction to maintain the civil suit and accordingly dismissed the suit.

2. The petitioner as plaintiff instituted C.S. No. 62 of 2007 in the court of the learned Civil Judge (Jr. Divn.), Jaipur Road for permanent injunction restraining the defendant's union from holding demonstrations, dharanas, blockages, gherao, shouting, slogans, putting up loudspeakers, causing hindrance in the egress and ingress of the materials required for the purpose of production of the industry within a radius of 500 metres of the factory site. The case of the plaintiff is that it is an industry engaged in production of oxygen. The defendant worker's

union is a union of the workers of the plaintiff. They are openly expressing to stop production, man-handling the officers and staffs of the company. Virtually they have stopped production of the company. Their sole intention is to extract money from the Manager. The illegal and unauthorized activities of the defendant worker's union are detrimental to the smooth running of the company. The activities of the union are intended to cause permanent loss of the company. They are determined to obstruct normal functioning of industry. Members of the defendant worker's union including its office bearers are threatening the workers, employee and officers of the plaintiff company. They are threatening to confine the officers of the company. Also they are threatening the customers and transporters. On 12.04.2007, they have forcibly snatched away wage registers of the company for which the workers could not get their wages for the month of March. Regularly they closed the main gate of the unit forcibly and stopped production/transaction of the unit. With this factual scenario, the suit was filed.

3. Pursuant to issuance of summons, the defendant entered appearance and filed a comprehensive written statement denying the assertions made in the plaint. It is stated that the plaintiff-industry is engaged in production of oxygen for industrial purpose. The factory is running well. The Managing Director is getting huge amount of profit in each year. Large numbers of workers have been appointed for production purpose of the factory. The Managing Director has not given minimum wages to the workers for which the workers demanded 14 points chapter of demands on 31.3.2004. The worker's union also demanded to enhance their house rent, medical benefit, etc. But the Managing Director issued notice to retrench the workers and to lay out the factory for repairing purpose. Instead of giving wages to the employees, the Managing Director intended to retrench the workers and appointed fresh contract labourers with low salary in order to get huge profit. They have neither threatened nor confined Directors nor closed the main gate. They have not snatched away the wage register on 12.4.2007. Since the Managing Director has not given the minimum wages to the workers, on a demand being made by the Union Secretary of the Labour Department, the Manager produced the wage register before the Labour Department. The District Labour Officer on 11.5.2007 has given remark that the Managing Director has contravened Rule 21(6) of Orissa Minimum Wages Rule 1954 whereafter show cause was issued to the Managing Director. It is further stated that the workers have not been involved in dharanas, blockages, gherao, shouting, etc. Further the court has no jurisdiction to entertain the case under Section 2(f) of the I.D. Act.

4. While the matter stood thus, the defendant filed an application under Section 151 C.P.C. to dismiss the suit as not maintainable. It is stated that the dispute between the plaintiff and defendant comes under the purview of I.D. Act. It is an industrial dispute. Thus the Labour Court is competent to entertain the matter. The plaintiff filed objection challenging the maintainability of the petition stating therein that the maintainability of the suit can be decided at the final hearing of the suit. Further the suit for permanent injunction is not coming under the

purview of the I.D. Act. There is no prohibition in the I.D. Act for filing of civil suit. Relying on a decision of the apex Court in the case of *The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and others*, , AIR 1975 SC 2238, learned trial court came to hold that the workers of the plaintiff company have raised certain demands, but the management is not interested to fulfill the same. So the dispute arises. The matter is also referred to the Labour Court, which is still pending. Thus the dispute between the employer and employee pertaining to enforcement of right or obligation created under the I.D. Act comes under the purview of Section 2(k) of the I.D. Act and as such the civil court has no jurisdiction. Held so, the learned trial court allowed the application filed by the defendant under Section 151 C.P.C. and dismissed the suit as not maintainable.

5. Heard Mr. R.K. Mohanty, learned Senior Advocate for the petitioner. None appears for the opposite party in spite of valid service of notice. Considering the legal issues involved, this Court appointed Mr. D.P. Nanda, learned Advocate, as *Amicus Curiae*. Mr. Nanda also argued the matter with vehemence.

6. Mr. Mohanty, learned counsel for the petitioner submitted that there is no provision in the I.D. Act to decide the nature of dispute enumerated in the plaint. He further submitted that the suit for permanent injunction is maintainable.

7. Mr. Nanda, learned Advocate, submitted that there is no bar either in the I.D. Act or Trade Union Act to decide the nature of dispute as stated in the plaint. The suit for permanent injunction is maintainable.

8. The sole question that hinges for consideration is whether on the facts and in the circumstances of this case, the civil court has jurisdiction to entertain the suit?

9. To appreciate the contentions of the learned counsels, it is necessary to set out Section 9 C.P.C.

"9. Courts to try all civil suits unless barred - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation - I - A suit in which the right to property or to an office is contested in a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation - II] - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]"

10. The words "civil nature" have not been defined in the C.P.C. What is the meaning of the words? The Supreme Court in the case of *Most. Rev. P.M. Metropolitan and others, etc. v. Moran Mar Marthoma and another etc.*, , AIR 1995 SC 2001. The Supreme Court held thus:-

"xxx xxx xxx

One of the basic principles of law is that every right has a remedy. Ubi jus ibi remedium is the well known maxim. Every civil suit is cognisable unless it is barred, there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue" Smt. Ganga Bai v. Vijay Kumar & Ors., , AIR 1974 SC 1126. The expansive nature of the Section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the Section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the Section brings out unequivocally that all civil suits are cognisable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word "shall" and the expression, "all suits of a civil nature" unless "expressly or impliedly barred".

Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of right. The word "shall" makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of "expression, "all suits of civil nature". The word "civil" according to dictionary means, "relating to the citizen as an individual; civil rights". In Black's Legal Dictionary it is defined as, "relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings". In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc, were added to it later. But they too pertain to the larger family of "civil". There is thus no doubt about the width of the word "civil". Its width has been stretched further by using the word "nature" along with it. That is even those suits are cognisable which are not only civil but are even of civil nature. In Article 133 of the Constitution an appeal lies to this Court against any judgment, decree or order in a "civil proceeding". The expression came up for construction in S.A.L. Narayan Row & Anr. etc. etc. v. Ishwarlal Bhagwandas & Anr. etc. etc. , AIR 1965 SC 1818. The Constitution Bench held "a proceeding for relief against infringement of civil right of a person is a civil proceedings". In Arbind Kumar Singh v. Nand Kishore Prasad & Anr. , AIR 1968 SC 1227 it was held "to extend to all proceedings which directly affect civil rights". The dictionary meaning of the word "proceedings" is the institution of a legal action, "any step taken in a legal action." In Black's Law Dictionary it is explained as, "In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in

an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like". The word "nature" has been defined as, "the fundamental qualities of a person or thing; identity or essential character; sort; kind; character". It is thus wider in content. The word "civil nature" is wider than the word "civil proceeding". The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature."

11. The expression "civil nature" is wider than the expression "civil proceeding". Considering the present case on the anvil of the decisions cited supra, a conclusion is irresistible that the suit is of civil nature.

12. The learned trial court misread and misapplied the ratio in the case of *The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and others*, , AIR 1975 SC 2238. The principles applicable to the jurisdiction of the civil court in relation to an industrial dispute have been succinctly stated in paragraph 23 of the report. The same is quoted hereunder.

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(1) If the dispute is not industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be."

13. The present case has been examined on the principles enunciated in *The Premier Automobiles Ltd.* (supra). Neither the dispute is an industrial dispute nor does it relate to the enforcement of any right under the I.D. Act. The reason assigned by the learned trial court that the present dispute comes under Section 2(k) of the I.D. Act is difficult to fathom. Section 2(k) of the I.D. Act defines the "industrial dispute". Industrial dispute means any dispute or difference between employers and employers 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 labour, of any person. By no strength of imagination, it can be said that the dispute of the present nature is an industrial dispute. Holding demonstrations dharanas, blockages, gherao, shouting, slogans, putting up loudspeakers, causing hindrances in the egress and ingress of materials to the industry are no way

connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

14. Section 18 of the Trade Unions Act, 1926 provides immunity from civil suit in certain cases. The same is quoted hereunder.

"18. Immunity from civil suit in certain cases--(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any [office-bearer] or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union."

Section 2 (g) of the Trade Unions Act, 1926 defines "trade dispute". It means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises. There is no scintilla of doubt that the present dispute is not a trade dispute.

15. The case may be examined from another angle. In *Railway Board, New Delhi and another v. Niranjan Singh*, , AIR 1969 SC 966, the General Manager of Northern Railway had prohibited the railway employees from holding meetings within the railway premises including open grounds forming part of those premises. In violation of the order passed by the General Manager, the respondent, who was one of the employees of the Railway and a trade union worker, held meetings. He was removed from services for disobedience of the order of the General Manager. An argument was advanced that the order of the General Manager has contravened the provisions of Article 19 of the Constitution of India and as such the said order was not binding. The same is not per se a ground to remove the respondent. The Supreme Court held that the General Manager had every right to prohibit holding of meetings in the railway premises. Thus violation of the order entailed punishment. Paragraph 12 and 13 of the report is quoted hereunder.

"12. It was not disputed that the Northern Railway is the owner of the premises in question. The fact that the Indian Railways are State Undertakings does not affect their right to enjoy their properties in the same manner as any private

individual may do subject only to such restrictions as the law or the usage may place on them. Hence unless it is shown that either under law or because of some usage the railway servants have a right to hold their meetings in railway premises, we see no basis for objecting to the direction given by the General Manager. There is no fundamental right for anyone to hold meetings in government premises. If it is otherwise there is bound to be chaos in our offices. The fact that those who work in a public office can go there does not confer on them the right of holding a meeting at that office even if it be the, most convenient place to do so.

13. It is true that the freedoms guaranteed under our Constitution are very valuable freedoms and this Court would resist abridging the ambit of those freedoms except to the extent permitted by the Constitution. The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the "right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights. The validity of that limitation is not to be judged by the tests prescribed by Sub-Arts. (2) and (3) of Article 19. In other words the contents of the freedoms guaranteed under Clauses (a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties belonging to others. If Mr. Garg is right in his contentions then a citizen of this country in the exercise of his right under Clauses (d) and (e) of Article 19(1) could move about freely in a public-office or even reside there unless there exists some law imposing reasonable restrictions on the exercise of those rights."

16. Thus, the fundamental right enshrined in Article 19 of the Constitution of India is not a weapon in the hands of the workers union to hold demonstrations, dharanas, blockages, gherao, shouting, slogans inside the factory premises.

17. In view of the analysis made in the preceding paragraphs, this Court holds that the suit in present form is not maintainable. The civil court has jurisdiction to decide the dispute.

18. Accordingly, the order dated 11.12.2007 passed by the learned Civil Judge (Jr. Divn.), Jaipur Road in C.S. No. 62 of 2007 is quashed. This Court holds that the suit is maintainable in its present form. This Court records its appreciation for the valuable assistance rendered by Mr. D.P. Nanda, learned Advocate.

The petition is allowed.