(1998) 01 PAT CK 0031

In the Patna High Court

Case No : C.W.J.C. No. 1065 of 1987

Pradeep Lamp Workers Union — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 08-01-1998

Acts Referred:
Industrial Disputes Act, 1947 — Section 10(1), 2

Citation : (1998) 46 BLJR 512 : (1998) 79 FLR 107 : (1998) 2 LLJ 492 : (1998) 1 PLJR 373

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : C.M. Saxena, B.K. Sinha and G.K. Agrawal, for the Appellant; L.K. Bajla, S.R. Tiwari, N.K. Sinha and R.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Mishra, J.—In this writ application the petitioner M/s. Pradeep Lamp Workers Union through its General Secretary has questioned the award of the Industrial Tribunal, Patna, dated May 12, 1986, whereby it has been held that the petitioner Management is not an industry and, as such, the Engineering Wage Board is not applicable to its employees.

2. Admittedly, there are two Unions in the Management, one is the petitioner and other is Karamchari Sangh, which is the recognised union of the Management. A dispute arose regarding the payment of wages some time in the year 1982. There was a lock-out in the factory from September 8, 1991 to November 9, 1981. The State Government by its Notification No. IV/D2-230/33/81 L & E-513 dated March 23, 1982 has made a reference of the entire dispute between the Management of M/s. Pradeep Lamp Works (hereinafter referred to as the Management) and its employees u/s 10(1)(d) of the Industrial Disputes Act, 1947 in die following terms:

(1) What wages, allowance and other facilities, the workmen of M/s.Pradeep

Lamps Works, Patna city are entitled to and from since when?

(2) What relief those workmen who have not been taken in work during the lock-out from Septembers, 1981 toNovember9,1981 and even after that are entitled to?

3. The said reference was registered as Reference No. 15 of 1982. During the pendency of-the reference before the Presiding Officer, Industrial Tribunal, the General Secretary of the petitioners'' Union filed a petition before the Tribunal for adding party to the said Reference. All the parties, namely, petitioners'' Union as well as Karamchari Sangh, the recognised union of the management, filed their written statement. The case of the union as made out in their written statement was that Fourth Grade employees of the Management are getting Rs. 4/- to 5.50 per day which is quite inadequate and they are entitled to get Rs. 16 to 20 per day. It is further alleged that the new wages should be given with effect from January 1, 1990. Their further demand was implementation of the Engineering Wage Board awarded to the employees of the Management as well. It is further alleged that in order to victimise the workmen the Management declared lock-out on September 8, 1991 and the said lock-out remained continuous up to November 9, 1981. According to the Union, the said lock-out was illegal and, as such, they are entitled for their wages during the period of the said lock-out. They have also alleged that the workmen are entitled for their wages even after the lock-out was lifted since the management has not allowed them to join their respective post on account of not signing the Bond, as desired by the Management and for that the employees cannot be held responsible. Similarly, other recognised union, namely, Karamchari Sangh has filed their written statement regarding the revision of the wages according to the recommendation of the Wage Board and other facilities regarding leave etc. to the employees of the Management. They have also prayed for a direction to the Management for implementation of Engineering Wage Board award. They have also alleged that the period of lock-out should be treated as in continuous service. The case of the Management, however, is that the wages are being paid to the employees according to the Bi-partite settlement arrived at between the Management and its Union. It is further alleged that the Management is facing acute financial crisis since 1976, According to the Management the factory is a sick industry as has been declared by the Government by letter dated July 21, 1982. Regarding implementation of the Engineering Wage Board is concerned, it is alleged that the management is manufacturing electric bulbs and, as such, it does not come within the scope and ambit of the Engineering Industry, as defined in the Wage Board. According to the Management, the workmen are enjoying all the facilities which are being given to the employees of other industries, i.e. bonus, gratuity etc. As regard the second item of dispute, it is stated that on account of serious law and order problem created in the unit by the employees and continuous threat by the workmen to the assets of the factory, the Management had no alternative but to declare the lock-out. It is alleged that the said lock-out has not been declared illegal by the competent authority. The Management, because of

the attitude adopted by the employees prior to declaring lock-out, has no alternative but to close the factory. However, the lock-out was lifted much prior to the dispute being referred to the Industrial Tribunal. It is alleged that after the lockout was lifted the employees were directed to join their duties but the employees remained absent from duty for no fault of the Management and, as such, they are not entitled for any wages for the period in which they have not worked. Though the written statement was filed by the Karamchari Sangh, which is a recognised union of the management yet they did not contest the case before the Tribunal. However, the petitioners'' union contested the case and in support of their case examined as many as 10 witnesses. The Management has also in support of its case has filed several documents and examined witnesses in support of its case. The Tribunal on consideration of the materials both oral and documentary has held firstly that the recommendation of the Engineering Wage Board is not applicable so far as M/s.Pradeep Lamp is concerned and, as such, the employees of the Management are not entitled for the wages as recommended by the Engineering Wage Board. The Tribunal has further held that payment of wages to the employees is being governed by the Bi-partite agreement arrived at between the recognised union and the Management. As regards the payment of wages for the period of: lock-out, i.e. from September 8, 1981 to November 9, 1981 and even thereafter the Tribunal has held that the employees had absented themselves in spite of the fact that the Management has lifted the lock-out and directed the employees to join their duties and, as such, they are not entitled for the wages during the period in question. The second reason assigned by the Tribunal is that the financial position of the Management is so deplorable that it cannot be: possible for the management to pay such wages to its employees even for the period for which they have not worked and, accordingly, answered the reference.

4. Learned counsel for the petitioner has challenged the award mainly on the ground that the petitioners'' union are entitled for the wages as recommended by the Engineering Wage Board since they are performing the same duty which are necessary for implementing the recommendation of the Engineering Wage Board.

5. In opposition, Mr.Bajla learned counsel for the Management has submitted that the Management is only manufacturing glass cells and the raw materials are being purchased from outside and, as such, the recommendation of the Engineering Wage Board is not at all applicable in the instant industry.

6. In order to appreciate the rival contention of the learned counsel for the parties, it is necessary to examine as to what is the Engineering Industry. The Engineering Industry has been defined in the aforesaid Engineering Wage Board recommendation in the following terms:

"What is Engineering Industry?

One of the earliest questions which had to be considered by the Wage Board was as to what constituted Engineering Industry. The Board took the view that the units engaged in the production and/or shaping of ferrous and non-ferrous metals by turning, fabrication, processing, moulding, joining etc. are the units in the Engineering Industry, with which the Board is concerned."

In the light of the definition, as quoted above, the only industries which are engaged in production and/or shaping of ferrous and non-ferrous metals by processing, as mentioned above, are said to be the Engineering Industries. In the instant case, as stated above, the Management is manufacturing glass cells and the raw materials are being purchased from outside and the said materials are assembled in order to prepare the electric bulb. Admittedly, in the instant case, the factory is not engaged in manufacturing and shaping of ferrous and non-ferrous metals. The Tribunal on consideration of the entire materials on record has recorded the findings in the following term:

"It logically follows that if an industry is not so engaged, it is not an Engineering Industry, Pradeep Lamp Works is engaged in manufacturing bulbs for which it gets finished materials and Pradeep Lamp Works only assemble them. There is absolutely no question of manufacturing ferrous or non-ferrous or any metals by the Pradeep Lamp Works. The learned counsel for the workmen could not controvert it by any material on the record. I hold that the Pradeep Lamp Works is not an Engineering Industry and the recommendations of the Engineering Wage Board do not apply to it."

7. As regards the second question regarding payment of wages for the period of lock-out and thereafter, as has been stated above that in spite of the direction of the Management after the lock- out was lifted, to join their respective posts the employees had refused to do so. As stated above, the Management declared lockout on September 8, 1981 which was withdrawn on November 9, 1981. The lock-out was declared by the Management on account of the situation created by the employees and because of the serious law and order problem arose due to indifferent attitude adopted by the employees the Management had to declare the lock-out. The said lock-out has not been declared illegal by the competent authority, as stated above. It further appears that after lifting the lock-out the Management directed their employees to join their respective posts even then they remained absent and could not join their posts. The Tribunal has considered the evidence both oral and documentary and has recorded findings in paragraph 16 of the award, which reads as follows:

"It has been found that the workmen by their acts and conduct forced the management to declare lock-out. Lock-out has not been found to be illegal. They cannot have the cake and eat it too. They cannot take advantage of their own wrong. The Management, in the circumstances cannot be forced to pay them for the period of the lock-out."

After having heard the learned counsel for the parties and going through the materials on record including the award under challenge, I do not find any illegality in the award. Accordingly, this writ application is dismissed but in the facts and circumstances, there shall be no order as to costs.

