

(2004) 10 CAL CK 0049
In the Calcutta High Court
Case No : Writ Petition No. 1511 of 2004

Rajab Ali Mondal and Another

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226
General Clauses Act, 1897 — Section 2(42)
Trade Unions Act, 1926 — Section 18, 28(1A)

Citation : (2005) 3 CHN 106 : (2005) 3 LLJ 562

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya and Sudip Sarkar, for the Appellant; Kalyan Bandopadhyay and B. Biswas for the respondent No. 4, Probal Kumar Mukherjee and Rajat Dutta for the respondent No. 5 and A.K. Das, for the Respondent

Judgement

Amitava Lala, J.—This writ petition is made by one driver and conductor of a bus No. WB/25A/0908 plying in the bus route No. 211 from two parts of the city of Calcutta (Kolkata). Petitioners are earning their, livelihood by plying such bus regularly for last six years. On 2nd August, 2004 one political party called "Bandh". The petitioners wanted to resume their respective duties on the day of "Bandh" when the respondent owner refused to allow them to ply the bus on the ground that in case of casualty no compensation will be given by the respective Insurance Company since according to them "Bandh" is illegal. However, after causing certain repairing works they placed the bus on the route on 4th August, 2004 when the concerned Registered Trade Union through their leader restrained them from plying the same. According to them, they should not be deployed in the duty for violation of their dictate on the "Bandh" day. They further recommended other driver and conductor for the purpose of rendering the service of the bus. The owner of the vehicle refused them to allow the bus to run. A police complaint was made by him but no action had been taken by the police as against the Trade Union activists. Then the writ jurisdiction of this High

Court was invoked. According to the petitioners, they invoked writ jurisdiction of the High Court taking motor vehicles matters when it was advised that the dispute cannot fall under such category. Again they tried to invoke Writ Bench of this High Court taking miscellaneous matters when it was advised that the dispute falls under the category of labour and industrial dispute. Hence, according to them, this is the proper Bench for adjudication of the matter. This Court at first applied its mind towards the allocation of business of this Bench to find out whether this Bench is appropriate or not for the purpose of entertaining the application. Under the Rules of the High Court at Calcutta relating to the applications under Article 226 of the Constitution I find that the dispute effectively falls under the category of labour and industrial legislation. Although police has been informed for taking appropriate steps but the grievance is against the registered trade union i.e. one of the respondents herein, for their illegal and/or wrongful restrain to the petitioners in discharging their duties in violation of Article 19(1)(g) of the Constitution of India. Article 21 of the Constitution of India also says no person shall be deprived of his life and personal liberty except according to procedure established by law. The union says that it has been done to discipline the petitioners. They have every right to do so. The State appeared through the Secretary of the Labour Department and contended that firstly alternative forum is available for the purpose of redressal of grievance. Secondly it is not a labour dispute. The State and the union, in chorus, contended that no industrial dispute lies in between the owner of the vehicle and the petitioners since no employer-employee relationship exists in between themselves. Normally there is no fixed driver or conductor of a bus. They are working by rotation. The owners have their own association when the employees have their own union. Owners' association is known as a syndicate. Virtually this dispute is in the nature of a police in action. Neither there is any grievance against the owner nor against the union.

2. I have my reservation in accepting such submission. Grievance against the union is very much there. The union is not keen to test the situation whether any alternative remedy available against the petitioners or not. They have affirmatively said in merit that by virtue of the Trade Union Act a registered trade union has every right to make the members disciplined and by doing so they have not committed any mistake. Therefore, only on the high hope of the learned Counsel for the State, the grievance of the writ petitioners can not be ignored particularly when infringement of public law element is available. In U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, the Supreme Court categorically held that it may not be necessary to examine any further the question if Article 226 makes a division between public law and private law. Prima facie from the language of the Article 226 there does not appear to exist such a division. To understand the explicit language of the Article it is not necessary to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does not appear that Article 226 while empowering the High Court for issue of orders or directions to any authority or

person does not make any such difference between public functions and private functions. It is not necessary to go into the question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate cases, any Government. "Person" u/s 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is fountain head of all the statutes. When the language of Article 226 is clear, Supreme Court cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, the Supreme Court has laid down certain guidelines and self-imposed limitations have been put there subject to the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available and where there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial "bull in china shop" in the exercise of the jurisdiction under Article 226.

3. u/s 18 of the Trade Union Act, 1926 no suit or other legal proceeding shall be maintainable either against it or against the office bearers or members. In the contemplation of trade dispute a Trade Union can not interfere with the livelihood of its members. It is applicable both towards organised sectors and non-organised sectors. It is to be remembered people connected with the non-organised sectors are mostly suffered by the callers of "Bandh". Under Article 19(1)(g) meaning of rendering service also applicable to practise any professions, or to carry on any occupation, trade or business. Those cannot be wrongly interfered with. This is not a question of "Bandh" but a question of suffering out of "Bandh". In further no criminal action has been provided under the Act to be taken against office bearer of a registered Trade Union in case of disallowing its member from discharging his duty. Therefore, neither any civil action nor any criminal action can be taken against the registered Trade Union and/or its office bearers in spite of their nature of duty. On the otherhand, police is a silent spectator of the complaint.

4. Fact is unique hereunder. On a particular "Bandh" day when the driver and conductor of a vehicle belong to members of one union partially rendered their services and partially not, other union affiliated under the rival political group

opposing such "Bandh", disallowed them from carrying out occupation. Learned Counsel appearing for the owner of the vehicle supported the cause of filing the writ petition by his driver and conductor. He stated that owner's right of carrying out the business has also been seriously infringed by the action of the union. Normally the owner is deploying one driver and one conductor of his confidence for the purpose of plying the bus. According to him as well as learned Counsel appearing for the petitioners, the driver and the conductor are working for about six years in the self-same vehicle. Therefore, even there is no formal contract but clear understanding about their rendering service is available there. In any event neither the union can interfere with the right to carry out business by the owner nor can interfere with the right of occupation by the driver and conductor. Therefore, the right of the persons under Article 19(1)(g) is interfered with. Similarly, the question of personal liberty under Article 21 is also interfered with. In *Sreekumar Vs. State of Kerala*, a Bench of Kerala High Court held that while recognizing the right of the Trade union to carry on peaceful demonstration, it must be noted that the right has to be exercised in such way as not to interfere with the rights of others to carry on the lawful business. The fact that citizens have the right to stage demonstration/satyagraha do not mean that they can do so at the place of their choice. The exercise of the right will stand terminated the moment it interferes with the right of someone else to enjoy property or to carry on business. There the activities of the Secretary of the Union to stage satyagraha in front of a shop was declared wrongful as resulted financial loss by causing an obstruction to the peaceful conduct of business of the employer. In *C.V. Jayachandran Vs. State of Kerala and Others*, it was held that a group of individuals possess no higher right than a citizen and what would be wrong on the part of a citizen would certainly be wrong on the part of a group. It is dangerous, to create privileged groups. Beyond a point it is bound to create resistance. Those who feel exposed and unprotected, would devise means of protecting themselves and their interests. They look for agencies to protect them and enforce their rights. A corn of today will mature into an oak of tomorrow. That in the long run would not prove congenial to rule of law. Obedience to law must be enforced at all costs. Where a group of persons obstructed petitioners from carrying out a lawful business, police authorities were directed to remove such obstruction by use of such force as was necessary.

5. Therefore, what we get principally from the above two judgments are necessary to discuss. The ratio is that no one has any unfettered right to interfere with the others directly or indirectly in carrying out their lawful activities. The right vis-a-vis reasonable restriction is the foundation of the Constitution. Might is not the right. If the State exists both the duty and right of the people will exist. Therefore, the interest of the people who want to discharge the respective duties for the purpose of benefit of the State should be protected. If one opposes "Bandh" on the fateful day but use the same force directly or indirectly on the other day the same principle will be applicable. In association with Full Bench judgment of the Kerala High Court reported in *Bharat Kumar K.*

Palicha and Another Vs. State of Kerala and Others, I say that the concept of the "Bandh" by the political parties or organizations can be understood as one where people are expected not to attend their work or to travel for any purpose not to carry on their trades with a threat held out either express or implied that any attempt to go against the call for the "Bandh" would result in danger to life and property. Even if there is no express or implied threat of physical violence to those who are not in sympathy with the "Bandh", there is clearly menacing psychological fear installed into the citizen by a call for a "Bandh" which precludes him from enjoying his fundamental freedom or exercising his fundamental rights. Therefore, it cannot be said that calling for a "Bandh" does not involve the holding out of any threat express or implied to the citizen not to carry on his activities or to practise his avocation on the day of the "Bandh". The call for a "Bandh" implies a threat to the citizen that any failure on his part to honour the call, would result in either injury to person or injury to property and involves preventing a citizen by installing into him the psychological fear that if he defies the call for the "Bandh" he will be dealt with by those who are allegedly supporters of the "Bandh".

6. The factual sequences hereunder is much more serious in nature. In the instant case, the owner did not want to run his business due to fear of damage to the property particularly when it has not been protected under the insurance law. Yet these petitioners wanted to keep the vehicle in run but at the middle of the day garaged the same and did not render service any more. Immediately after the "Bandh" is over the union which is backed by a rival political party opposing the "Bandh" came forward to resist the petitioners from discharging their normal duties in the garb of disciplining them. In the instant case, such action or counter action was not restricted for the "Bandh" day alone but spread out even thereafter and it is glaring that the Trade Union turns around to become vindictive and in the name of disciplining them took their right of occupation and personal liberty as because they did not obey their dictate on the day of the "Bandh". It is good for the people to work on the "Bandh" day. It is also good for the political parties and organizations to allow them to work. But it is not expected that the rival political parties or organizations being opposer of "Bandh" will become revengeful to anybody on the following days in rendering their duties without any sanction of law.

7. In a recent judgment reported in James Martin Vs. State of Kerala, the Supreme Court categorically held as follows :

"Before we part with the case, it needs to be noted that in the name of hartal or bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty and property of any citizen or destruction of life and property, and the least to any Government or public property. It is high time that the authorities concerned take serious notice of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. Those who at times may

have even genuine demands to make should not lose sight of the overall situation eluding control and reaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all-around destruction with counterproductive results at the expense of public order and public peace. No person has any right to destroy another's property in the guise of hartal or bandh or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. The case at hand is one which led to the destruction of property and loss of lives, because of irresponsible and illegal acts of some in the name of hartal or bandh or strike. Unless those who organize can be confident of enforcing effecting control over any possible turn of events, they should think twice to hazard themselves into such risk-prone ventures endangering public peace and public order. The question whether hartal or bandh or strike has any legal sanctity is of little consequence in such matters. All the more so when the days are such where even law-enforcing authorities/those in power also precipitate to gain political advantage at the risk and cost of their opponents. Unless such acts are controlled with an iron hand, innocent citizens are bound to suffer and they shall be the victims of the high-handed acts of some fanatics with queer notions of democracy and freedom of speech or association. That provides for no licence to take law into their own hands. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace."

8. Such observation has a binding effect on this Court. Apart from the same, there is a process of ascertaining the position in respect of disciplining the members by a Trade Union. The union will serve a show-cause notice at first asking the defaulting members to give reply to the show-cause and in case the union is not satisfied with the reply of the defaulting members then a decision will be taken giving fullest opportunity of hearing but the union can not be allowed to take away the livelihood of the members by a unilateral action. It is to be remembered that the right of Trade Union is restricted in respect of Trade Union activities under the Act which is different from the right of livelihood of the individual member of such union. Trade Union may have the control over its members in respect of the Trade Union activities but that does not necessarily mean that Trade Union has a right to interfere with the livelihood of the workmen is rendering their respective service. The Trade Union Act, 1926 does not prescribe anything in this regard as such invocation of the writ jurisdiction for their protection cannot be debarred. Public law element is available in every corner of such activities. Learned Counsel appearing for the union cited a decision reported in 2001(1) SCC 350 (Borosil Glass Works Ltd. Employees' Union v. D.D. Bamode and Ors.) which is basically in respect of Maharashtra amendment of Section 28(1A) of the Trade Union Act, 1926. Since such Maharashtra amendment cannot be applicable here the ratio as regards the applicability of that amendment cannot have any binding effect herein.

9. Hence, the logical conclusion is when the jurisdiction of the Civil and Criminal

Courts about any action of office bearers is barred Writ Court having jurisdiction of industrial legislation is the proper forum. It is a dispute as regards wrongful trade union activities in the name of disciplining the members which obviously be adjudicated by the Writ Court if no remedy is prescribed by the Trade Union Act, 1926. Moreover, the union directly obstructed the petitioners in rendering their services and indirectly, obstructed the owner in carrying out his business. Therefore, the union is to be restrained for both and accordingly such order is passed hereunder. Police cannot withhold themselves from rendering service.

10. Therefore, disallowing the petitioners from earning their livelihood the Trade Union has caused grave injustice towards the members. I have no manner of doubt that they have taken the law in their own hands. It also appears that police has behaved like a silent spectator in spite of the intimation given to them. All elements of public law have been violated.

11. Therefore, this Court has no other alternative but to dispose of the writ petition restraining the union from interfering with the livelihood of the petitioners in any manner whatsoever. The police will render all possible assistance to the owner as well as the driver and conductor of the vehicle in earning their livelihood whenever they are intimated to them. Since the question of law is called upon to discuss nobody has exchanged their affidavits. This order will have a binding effect upon the matter of W.P. No. 13332(W) of 2004 (Naresh Mukherjee v. State of W.B. and Ors.). Parties are entitled to take the gist of the order and communicate to whom it is communicated, will act on such communication.

12. Thus, the writ petition stands disposed of.

13. However, no order is passed as to costs.

14. This judgment and order which has been passed hereunder will cover the subject-matter of W.P. No. 13332(W) of 2004(Naresh Mukherjee v. State of West Bengal and Ors.). Parties will be entitled to take the gist of the operative part of the order and whosoever will be communicated, they will act upon such communication.

15. Xeroxed certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and certified copy of this judgment.