

(1979) 07 MAD CK 0032
In the Madras High Court

Rama Vilas Service Ltd. and Another	APPELLANT
Vs	
Simpson and Group Companies Workers' Union and Another	RESPONDENT

Date of Decision : 31-07-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 24
Trade Unions Act, 1926 — Section 17, 18

Citation : (1979) 2 LLJ 284

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—There are two suits. The defendants are same in both the suits. The Management of an industrial concern is the plaintiff in each suit. Admittedly, there is a trade dispute prevailing as between the management and its workmen in each of the suits pursuant to certain character of demands made by the workmen through their unions, the defendants in the suits. The defendants resorted to "stay-in-strike". As a result, there is cessation of work in the concerns of the plaintiffs in the two suits. Apprehensive of the position, the plaintiffs have filed the suits, praying for a permanent injunction. In C.S. No. 340 of 1979, the main reliefs asked for run as follows:

The plaintiff accordingly prays for judgment and decree restraining the defendant, its members, office bearers, servants, agents and other representatives by an injunction from ;

(a) in any manner preventing any of the customers and plaintiff from removing the goods and other properties belonging to the said customers from the premises of the plaintiffs at No. 73/76, Mount Road, Madras-2.

(b) from in any manner preventing the customers of the plaintiff from entering into or leaving the premises of the plaintiff at No. 73/76, Mount Road, Madras.

(c) from holding out threats, intimidation, gherao or wrongful confinement of the plaintiff's customers and officers, managerial staff and other members of the

public in the plaintiff's premises at No. 73-76, Mount Road, Madras.

(d) in any manner preventing officers, managerial staff and non-striking employees from entering into and leaving the premises of the plaintiff at Mount Road, Madras.

In C.S. No. 362 of 1979, the main reliefs asked for run as follows;

Restraining the defendants, its office bearers, its members employed in the plaintiff's factory, and in the other companies, its servants, their men, agents any and others by means of a permanent injunction-

(a) from interfering in any manner peacefully or otherwise, in the removal of finished goods/semi-finished goods from plaintiff's factory;

(b) from preventing in any manner peacefully or otherwise, the conveyance of goods, supplies, orders and raw materials into the plaintiff's factory.

(c) from in any manner, directly or indirectly, peacefully or otherwise, preventing the Management, staff and Officers and any person-persons desirous of entering or leaving the plaintiff's factory from doing so.

In the applications, which are one for temporary injunctions pending the suits, the reliefs of the nature similar to the reliefs asked for in the suits, but pending the suits, have been prayed for.

2. These applications have been contested by the defendants on the ground that Section 18 of the Trade Unions Act, 1926 (hereinafter referred to as the Act) will afford an immunity to the defendants and the reliefs prayed for in the present proceedings cannot be granted in view of the said provisions. Section 18 of the Act reads as follows:

Immunity from civil suit in certain cases.-

(1) No suit or other legal proceedings 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 in 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 proceedings 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.

3. Mr. Section Govind Swaminathan, learned Counsel appearing for the managements, the plaintiffs, in the two suits, advanced an argument to get out

of the implications of Section 18 of the Act by pointing out that where the acts indulged upon by the defendants and their members are unlawful or tortious, the immunity u/s 18 of the Act cannot be availed of by them and this Court can come to the rescue of the management and avert the commission of unlawful acts sought to be perpetrated by the defendants and their members under the guise of trade dispute.

4. As to when the exemption u/s 18 of the Act can be availed of came up for consideration before a Special Bench of the Calcutta High Court in *Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others*, and *Sinha, C.J.* succinctly sums up the position as follows:

The net result of the decision set out above is that Sections 17 and 18 of the Indian Trade Unions Act grant certain exemption to members of a trade union, but there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence, where they amount to an offence. Members of a trade union may resort to a peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. Such strikes must be peaceful and not violent and there is no exemption where an offence is committed. Therefore, a concerted movement by workmen by gathering together either outside the industrial establishment or inside, within the working hours is permissible when it is peaceful and does not violate the provisions of law. But when such a gathering is unlawful or commits an offence then the exemption is lost. Thus, where it resorts to unlawful confinement of persons, criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed.

5. In *Rohtas Industries Staff Union and Others Vs. State of Bihar and Others*, , a Division Bench of the Patna High Court was concerned with a case where the arbitrators under the Industrial Disputes Act awarded compensation for loss caused by strike, which was characterised as illegal and the arbitrators also opined that the provisions regarding immunity u/s 18 of the Act are not attracted to the facts and circumstances of that case when the strike was found to be illegal and not in furtherance of a trade dispute. The Division Bench of the Patna High Court held that the arbitrators misdirected themselves in law in holding that the workmen cannot claim immunity u/s 18 of the Act because the strike was illegal u/s 24(1) of the Industrial Disputes Act. On appeal, the Supreme Court, in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, , sustained the judgment of the Division Bench of the Patna High Court on the first ground that the claim for compensation and the award thereof in arbitration proceedings are invalid and such compensation for loss of business is not a dispute or difference between the employers and the workmen which is connected with the employment or non-employment or with the conditions of labour of any person. The Supreme Court found itself not obliged to go into the question as to whether the Patna High Court was right in relying on Section 18 of

the Act to rebuff the claim for compensation because the learned Judges of the Supreme Court did not wish to rest their judgment on that ground. It will be useful to note the following observations of Krishna Iyer, J., who delivered the judgment in the above case:

The inevitable by-product of combination for cessation of work may be loss to the management but the obvious intendment of such a collective bargaining strategy is to force the employer to accept the demand of the workers for betterment of their lot or redressed of injustice, not to inflict damage on the boss. In short, it is far too recondite for an employer to urge that a strike, albeit illegal, was motivated by destruction of the industry. A scorched earth policy may, in critical times of a war, be reluctantly adopted by a people, but such an imputed motive is largely imaginary in strike situations. However, we are clear in our minds that if some individuals destroy the plant or damage the machinery wilfully to cause loss to the employer, such individuals will be liable for the injury so caused. Sabotage is no weapon in workers' legal armoury.

6. The principle that emerges from the decisions referred to above is that it is not within the purview of this Court to prevent or interfere with the legitimate rights of the labour to pursue their agitation by means of a strike, so long as it does not indulge in acts unlawful and tortious. Coming to the facts projected by the plaintiffs in the present suits, the material averments have been made in paragraphs 12 and 13 of the plaint in C.S. No. 340 of 1979 and they are extracted hereunder:

12. The defendants-unions, in pursuance of their attempt to pressurise the management into accepting their points of view notwithstanding the economic difficulties pointed out by the plaintiff-company, have started stay-in-strike of their members with effect from 9.7.79. Not content with this, from 10.7.79 the defendants and its members have resorted to the following illegal acts

(1) Obstructing the movement of goods coming into the company and going out of the company.

(2) Obstruction of the entry into and going out of the customers, their servants, agents and the materials and properties belonging to such customers.

(3) Obstruction of the coming into the company and place of work the managerial staff including non-workmen, customers and others who have no intention of joining the strike.

(4) Slogans shouting.

(5) Intimidation and abuse of the management staff.

13. From 10.7.79 the members of the defendants resorted to the above mentioned acts. Everyday the members of the defendants assemble at the entrance to the premises of the company and shout provocative slogans and see to it that the entrance is completely blocked in such a manner that it is not

possible for anybody to enter or leave the premises without the consent or permission of the members of the defendants. On 10.7.79 and thereafter everyday several customers who have left their goods with the plaintiff in its warehouse have approached the plaintiff to remove their goods with the help of their own men. However, the customers are stopped at the very gate itself and are not allowed to proceed inside in spite of their repeated requests. These customers have repeatedly pointed out to the members of the defendants that they would themselves remove their goods which are left in the plaintiff's warehouse. They have also reminded the members of the defendants that having regard to the value of the goods or for other reasons, unless the goods are cleared immediately, the customers would even lose their business as well. A few examples of the activities done by the members of the defendants would throw light on this aspect.

In the affidavit filed in support of Application No. 2550 of 1979 in C.S. No. 340 of 1979, the plaint allegations are referred to and in paragraph 4 of the said affidavit, the position has been further expatiated as follows:

On account of paucity of time details have not been mentioned herein. Several goods belonging to the public are lying with the plaintiffs in their warehouse at Mount Road. Several of these goods are perishables. Some of the goods have been cleared from railheads and are lying with the plaintiff at its establishment at Mount Road. These goods belong to several customers of the plaintiffs including several Government Departments, concerns and establishments. Several clients have attempted to remove their own goods but the striking workmen did not even allow them to enter the premises of the plaintiff at Madras. In spite of all requests by the customers to give permission to remove the goods by themselves or with the aid of customer's men the striking workmen did not relent, even though they were informed that unless the goods were cleared away immediately the customers who were third parties would lose heavily but striking workmen did not pay any heed. As a matter of fact several customers have informed the plaintiff that unless the goods are delivered immediately they would stand to lose heavily and in many cases would have to be put out of business on account of their business being cancelled. Several requests by the management and the customers have fallen on deaf ears. Needless to say grave losses will be caused to the customers and the public in general.

In C.S. No. 362 of 1979, what has been complained of has been summed up in paragraph 8 of the plaint as follows:

(1) Obstructing the movement of goods such as scarce raw materials, sophisticated machinery/spares coming into the factory and finished and semi-finished goods going out of the factory and the Sembiam Estate main gate and main gate of the factory and estate.

(2) Obstruction of managerial staff and officers from coming into the factory and place of work (including non-workmen and others, vendors, visitors, etc.) who

have no intention of joining the strike.

(3) Assembling in large numbers at the estate main gate and factory gate with a view to intimidate and create a scene of fear in the minds of the management staff.

The affidavit filed in support of Application No. 2720 of 1979 in C.S. No. 362 of 1979 refers to the complaint set out in the plaint for the purpose of obtaining the relief of temporary injunction as prayed for in that application.

7. Mr. B.R. Doha, learned Counsel appearing for the defendants in the suits, conceded that the defendants and their members shall not prevent the managements, their managerial staff and officers and any person or persons desirous of entering or leaving the concerns of the plaintiffs and they shall not hold out threats, intimidation or indulge in gherao or wrongful confinement of the officers or the managerial staff, of the plaintiff's or other members of the public in the premises of the plaintiffs. If this is taken into consideration, I am unable to see as to how the other acts complained of by the plaintiffs would amount to unlawful or tortious activities, so as to take the present suits outside the immunity of Section 18 of the Act. If cessation of work is the result of strike, it is not possible to lend the support of this Court to stultify the result of such cessation of work resorted to by the workmen. The very effect of the strike resorted to by the workmen will be watered down if the managements, either by themselves or through their customers, are permitted to remove the goods, either manufactured by the managements or coming into the custody of the managements in the course of their trade. If the customers of the managements are to be permitted to remove the goods, by themselves, without the aid of the labour, that would tantamount to rendering the strike inefficacious, and to achieve that purpose, this Court should not lend its hands. It could only be a matter of conciliation between the managements and their labour. Equally so, the other reliefs asked for by the management with reference to conveyance of goods, supplies, orders and raw materials into their factory in C.S. No. 362 of 1979 could make the strike now resorted to by the workmen a futile weapon. The acts complained of in the main by the managements cannot, in my opinion, be said to be violent or tortious, so as to demolish the immunity u/s 18 of the Act and to facilitate the managements to seek the reliefs asked for in the present suits, except to the extent rightly conceded to by the learned Counsel for the defendants.

8. It will not be out of place to refer to a letter by the plaintiff in C.S. No. 340 of 1979 dated 12.7.1979 and addressed to the defendants in the said suit, a copy of which has been marked as Ext. P1. What has been complained of is set out in the following terms:

We wish to point out that whatever may be the merits of the strike the workers have no right to interfere with the normal functions of the company and prevent the management from carrying on its normal activities by persons who are not

on strike. It need no saying that such conduct will completely drive out the goodwill built up by the company with the business relationship will be completely threatened and which is not in the long run in the interest of the workers themselves.

We are writing this to you so that you may suitably instruct your office bearers and members to desist from such unlawful acts and thus enable us to carry out our statutory and other commitments and contractual obligations to our several customers. Failure to do so will not only result in huge claims made against the company but also require the management to take such steps as may be necessary to establish their rights.

In reply thereto, the defendants, by their letter dated 12.7.1979, state as follows:

"Strike" means paralyzing the normal functions of the organization, and, under these circumstances, any attempt by the management to restore normal functions during the period of strike by resorting to unestablished and unethical methods will, naturally, be resisted by the workers.

The plaintiffs, by seeking the reliefs asked for in the present proceedings, practically want to function normally, thereby nullifying the effect of the strike. Learned Counsel for the defendants also brings to my notice that there are proceedings dated 15.7.1979 and 24.7.1979 of the Commissioner of Police, Madras, whereby staging of demonstrations by the defendants have been regulated and the said proceedings are also filed before me. In the said circumstances, it is not possible to countenance and grant the reliefs prayed for in to in these applications.

9. In the result, there will be a temporary injunction in each of the suits and pending the same, restraining the defendants--the respondents in these applications--from preventing the officers and managerial staff of the plaintiffs or any member or members of the public entering or leaving the premises of the plaintiffs and from hoi ding out threats or intimidation, or indulging in gherao or wrongful confinement of the officers and managerial staff of the plaintiffs and other members or members of the public in the premises of the plaintiffs. In other respects, the two applications will stand dismissed. There will, however, be no order as to costs.