

**(1958) 04 RAJ CK 0014**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Case No. 121 of 1957**

Sadul Textile Mills Ltd.

APPELLANT

Vs

Workmen of Sadul Textile Mills and Another

RESPONDENT

**Date of Decision :** 01-04-1958

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 22, 24

**Citation :** AIR 1958 Raj 202 : (1958) 2 LLJ 628

**Hon'ble Judges :** K.N. Wanchoo, C.J; I.N. Modi, J

**Bench :** Division Bench

**Advocate :** P.N. Dutt, for the Appellant; Badridas Sharma, for the Appearing Parties

**Final Decision :** Allowed

## Judgement

K.N. Wanchoo, C.J.—This is an application under Article 226 of the Constitution by Shri Sadul Textile Mills Ltd., Sri Ganganagar challenging the order of the Industrial Tribunal, Rajasthan dated the 15-4-1957.

2. The facts which have led to the present petition are these. The applicant is a public limited company having its registered office at Sri Ganganagar and runs a textile mill there. This mill was being supplied electric energy by the Government Power House. In April 1954 the company received a notice from the Collector Sri Ganganagar with respect to certain electric charges due from the company to the Power House for supply of electric energy.

The applicant disputed the correctness of the charges and this matter was fixed before the Collector for decision for the 25-8-1954. But on the 15-8-1954 the company received a telegram from the Government of Rajasthan intimating that if the dues were not paid before the 20-8-1954, electric supply would be cut off from the 20th of August.

Thereupon a representation was made by the company on the 19th of August

protesting against the threatened unjustified disconnection of the power supply and requesting the Government to defer action until the representation of the applicant was decided. The electric supply, however, was cut off on the midnight between the 19th and 20th of August 1954. The result of this was that the applicant had to lay off its workers of the second and third shifts of the mill on the 20-8-1954. In the meantime, efforts were made to make arrangements for supply of power by other means and eventually the major part of the working was restarted within a few days.

Even so, the company had to lay off some workers on account of shortage of power and paid compensation according to the provisions of the Industrial Disputes Act. This led to discontent among the workers and the dispute between the applicant and its workers, who are the first respondent before us, was referred by the Government of Rajasthan for adjudication to the Industrial Tribunal on 1-11-1954. In the meantime, however, there was trouble in the mill. What happened was that some workers, in order to avoid lay off, asked for transfer from one shift to another.

The applicant agreed to their request and in doing so, transferred certain workers who were said to be active in the Labour Union of the Mill from one shift to another, on the 11-10-1954. There was, however, no change in the conditions of service of the workers who were so transferred from one shift to another.

This led to protests and it is said that the Labour Officer intervened. The applicant then promised to retransfer these workers to their original shift as soon as possible; but in spite of this promise, the workers struck work from, the shift beginning at 5 p.m. on 13-10-1954. This strike took place without giving notice of 14 days as provided by standing order No. 23.

The Labour Officer had already intervened in the matter and on the 15th of October, the Labour Commissioner sent a telegram to the Labour Union informing them that the dispute regarding lay off was recommended to be referred to the Industrial Tribunal and advising the Union to call off the strike immediately. In spite of this telegram, the workers continued their strike till a settlement was arrived at through the efforts of the Labour Officer on 22-10-1954 and work was resumed unconditionally on the 22nd of October.

3. The Government referred the dispute as regards lay off to the Industrial Tribunal on 1-11-1954. That matter was decided by the Tribunal in October 1955 and the applicant's stand in the matter of lay off was upheld. In the meantime, another dispute arose between the workers and the applicant about the wages for the strike period from 13th to 22-10-1954. This dispute was referred in turn to the Industrial Tribunal by the Government on 20-1-1955. For some reason which is not clear, this dispute was not decided along with the dispute relating to lay off to which we have already referred. It was eventually decided in April 1957. The two points which were referred to the Tribunal on this occasion were these :

"(1) Whether the strike of the Workmen of Shri Sadul Textile Mills Ltd., Sri Ganganagar from 13-10-1954 to 22-10-1954 was justified.

(2) If the answer be in the affirmative, to what relief the workmen are entitled?"

4. The Industrial Tribunal came to the conclusion on the first issue that the strike was justified up to 16-10-1954 when the Labour Commissioner's telegram must have reached the Union, but that it was unjustified thereafter, as that telegram was ignored by the Union. In consequence, the Industrial Tribunal ordered payment on the second issue of full average wages to the workmen only for the 14th, 15th and 16th of October as compensation, and no more. The present writ is directed against this order of the Industrial Tribunal.

5. The contention of the workmen before the Industrial Tribunal was that they had justification for the strike because of the lay off by the applicant, which was due to its fault in not paying the electric charges in time and that the conduct of the applicant after the lay off including the transfer of active Union workers from one shift to another was such as to exasperate the workers and justified the strike. It may be mentioned that the strike was not an ordinary strike, but a stay in strike.

6. It has been urged on behalf of the workmen before us that the Industrial Tribunal had jurisdiction to decide the matter and we should not in our extraordinary jurisdiction interfere with the decision of the Industrial Tribunal on the question whether the strike was justified or not as this is a question of fact depending on the circumstances of each case.

7. We are of opinion that this contention has no force. The question whether the strike was justified or not is not a mere question of fact. It is a mixed question of fact and law and if there is an apparent error of law in the judgment of the Tribunal in coming to the conclusion that the strike was justified, this Court would interfere in a case like this.

8. The contention on behalf of the applicant in this connection is that there are three errors of law apparent on the record in this case and, therefore, this Court should interfere with the order of the Industrial Tribunal and hold that the strike was not justified.

9. The first error of law which is pointed out is this. According to Standing Order No. 23 (b) of this mill, striking work either singly or with other operatives without giving 14 days previous notice amounts to misconduct. Under Standing Order No. 24 the punishment for misconduct is summary dismissal or suspension. Now it is clear that no previous notice of 14 days was given in this case by the workers before they struck work.

Their action, therefore in striking work without notice amounted to misconduct and each and everyone of them was liable to summary dismissal without notice or compensation in lieu of notice under the standing orders. The question is whether a strike which thus originates in misconduct can ever be justified. This

aspect of the matter was considered by the learned Tribunal, but its bearing on the question of justification of the strike was not appreciated at all. The learned Tribunal has said that no charge of misconduct was framed against the workers on the basis of the strike nor was any inquiry held on such a charge.

That, however, does not in our opinion conclude the matter. What the learned Tribunal should have considered was whether a strike without giving 14 days notice as provided by Standing Order No. 23 (b) of this mill could be justified at all, when every worker taking part in such a strike was guilty of misconduct. We are of opinion that where what is generally known as a lightning strike like this takes place without notice provided by the Standing Orders and each worker striking work is guilty of misconduct in these circumstances under the standing orders, the strike cannot be said to be justified in law at all whatever be the grievances.

The reason why no action was taken for misconduct is that there was a settlement on 22-10-1954 between the applicant and the workers on the intervention of the Labour Officer. After such a settlement no action for misconduct was possible at all. But we are of opinion that where a strike takes place without the notice provided in the standing orders of a mill and the persons striking are guilty of misconduct under the standing orders and liable to summary dismissal, the strike cannot be justified at all.

The matter would have been different if the workers had given the notice provided under the standing orders and had then gone on strike. In that case, the circumstances which led to the strike might have been considered. But under the circumstances which appear in this case, the strike was in our opinion per se unjustified because it originated in the misconduct of all the workers taking part in it. The learned Industrial Tribunal has not considered this aspect of the matter at all and there is an error of law apparent in the circumstances on the face of the record which would justify us in interfering with the order passed.

10. The Second error of law apparent on the face of the record on which learned counsel for the applicant relies is this. We have already mentioned that this was not an ordinary strike, but a stay-in strike. The learned Tribunal was not unconscious of the difference between an ordinary strike and a stay-in strike for in one part of the judgment it has remarked that a stay-in strike is a more serious matter than an ordinary strike and requires much greater discrimination before it is resorted to.

But having said this, the learned Tribunal did not consider the effect of this being a stay-in-strike on its justifiability. Now the nature of stay-in or sit-down strike is described by Ludwig Teller (See the quotation in *Howrah Foundry Works Ltd. v. Their Workmen* 1955 2 Lab LJ 97 as follows:

""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 outlawed the sit-down strike."

"The Fansteel decision has placed a quietus upon further indulgence by labour in the sit-down strike."

11. The Fansteel decision to which reference is made is National Labour Relations Board v. Fansteel Metallurgical Corporation (1939) 306 U S 240: 83 Law Ed. 627 (B). Learned counsel for workers, however, urged that the incidents which happened in the Fansteel case did not happen here and, therefore, though this was a stay-in or sit down strike, it was not very different from an ordinary strike.

It appears that in the Fansteel case when the strikers refused to leave the plant, the employers representatives announced that they were discharged for the seizure and retention of the building. It also appears that the employers had taken the help of the police and a policeman accompanied the employer's representative when the strikers were asked to leave the building.

Learned counsel for the workers submits that in those circumstances, the United States Supreme Court held that participation in a sit- down strike was a good cause for discharge of employees, from which it follows that such a strike can never be justified. Learned counsel, however, urges that in this case the workers were never asked to leave the mill and the police was never called for this purpose and that the workers remained peacefully in the mill all the time.

It is true that there is no evidence on behalf of the applicant that its representative asked the workers to leave the mill or that the police was called in order to support this demand. But we are not prepared to believe that the management invited the strikers to remain in possession of the mill treating it as their own property. It seems to us that if the management did not ask the strikers to leave the mill and did not ask the police to support such a demand, it only shows the weakness of the management; but it does not in our opinion in any way detract from the nature of stay-in strike which has been well defined by Ludwig Teller in the words quoted by us above. We may in this connection refer to certain observations of the United States Supreme Court in the Fansteel case at page 253 (Lawyers Edition P. 634):

"For the unfair labour practices of respondent the Act provided a remedy ..... But reprehensible as was that conduct of the respondent, there is no ground for saying that it made respondent an outlaw 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 ..... The seizure and holding of the buildings 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 a labour dispute or of an unfair labour practice 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 foundations of society."

"As respondent's unfair labour practices afforded no excuse for the seizure and holding of its buildings, respondent had its normal rights of redress. Those rights, in their most obvious scope, included the right to discharge the wrongdoers from its employ."

12. It is clear from these observations with which we respectfully agree that even without violence a stay-in or sit-down strike is an invasion of the rights of the employer in the property of the mill and there can be no justification for such a strike. The reason why in this case there was no violence seems to us due either to the weakness or forbearance of the employer.

We have little doubt that if the employer had insisted on the removal of the striking workers from the mill, there would have been trouble. In any case, by staging a stay-in strike, the workers committed wrong and put themselves out of court, even though they might not have actually committed acts of violence or sabotage. 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. We are, therefore, of opinion that the learned Tribunal made an error of law apparent on the record.

It did not consider this aspect of the matter in its full implications, particularly in the circumstances that the strike was also a lightning strike against the provisions of the standing orders and all the workers taking part in it were guilty of misconduct. We are of opinion that a stay-in strike of this kind can never be justified at all.

13. The last point urged on behalf of the applicant again as an error of law apparent on the face of the record is this. The learned Tribunal has held that the strike was unjustified after the 16th and was only justified for three days for the 14th to the 16th and has ordered payment of full wages for these three days only. It is urged that there is no reason worth the name which justified the learned Tribunal in making this distinction and holding that this strike was justified upto the 16th, but not after the 16th.

It is said that if the strike was unjustified after the 16th, it was equally unjustified upto the 16th. The reason why the learned Tribunal held that the strike was unjustified after the 16th was that the Labour Commissioner sent a telegram to the Union on the 15th in which he informed the Union that he had recommended to the Government that the dispute as to lay off be referred to the adjudication of the Industrial Tribunal. The learned Tribunal has held that as soon as this information reached the Union on the 16th, there was no further justification for the strike.

Now it is in evidence that the Labour Officer had intervened even earlier on the matter of lay-off and had assured the workers on the 10th or 11th of October that their grievance as to lay-off was being referred to the Labour Commissioner with the request to move the Government to refer the matter to the Industrial Tribunal. This is more or less exactly what the Labour Commissioner also said in his telegram of the 15th, namely that the Government was being moved to refer the dispute as to lay-off to the Industrial Tribunal.

The only difference between the two is that when the telegram of the Labour Commissioner was received, the matter had moved a step further inasmuch as the Labour Officer could only move the Labour Commissioner, while the Labour Commissioner could move the Government. But in principle we see no difference between the telegram of the Labour Commissioner of the 15th and the assurance of the Labour Officer of the 11th. If the telegram of the 15 was enough to make the strike illegal, the assurance of the Labour Officer on the 11th to the same effect would equally make the strike illegal from the 13th.

14. It is urged that the Labour Commissioner definitely asked the Union, to stop the strike, while the matter of the strike was not seriously under consideration on the 10th or 11th when the Labour Officer intervened. That also, in our opinion, makes no difference. If the real cause of the strike was the discontent over the lay-off, there was no justification for staging a lightning strike on 13-10-1954 after the Labour Officer had assured the Union that he was moving the Labour Commissioner to move the Government for adjudication of the dispute.

Of course, if anything else happened between the 11th and the 13th of October to justify the strike, that would have been a different matter. All that happened between the 11th and 13th of October of any importance is the transfer of two of the Union workers from one shift to the other. So far as that is concerned, the learned Tribunal has held that mere transfer from one shift to another without any effect on the conditions of service would not amount to punishment and would not justify a strike.

He, however, was of the view that the timing of the transfer and the fact that one of the workmen, who was transferred, happened to be an important office bearer of the Union might have led the workmen to suspect that this was a device to suppress their protest against the lay-off. The further observations of the learned Tribunal in this connection are these.

There is no doubt the immediate cause of the strike was the transfer of these two workmen from shift "C" to shift "B" and, however unreasonable might have been the attitude of the workmen of shift "B" in refusing to work in spite of the admitted promise of the management to re-transfer the workmen to their original shift, it cannot be said that the reasons for the protest and for the strike were absolutely perverse and unsustainable."

We are of opinion that these observations of the learned Tribunal go to show that there was nothing done by the management between the 11th and the 13th which would justify any reasonable body of workers to stage a strike.

Therefore, if the learned Tribunal is correct in its judgment that the strike was unjustified after the telegram of the Labour Commissioner reached the Union on the 16th, there is no escape from the conclusion that the strike was unjustified even on the 13th because the Labour Officer had already assured the workers that he had moved the Labour Commissioner to make a reference to Government for adjudication and nothing had transpired between, the 11th and the 13th which would in any way justify any reasonable body of men to strike on the 13th.

We are, therefore, of opinion that in view of the Tribunal's own finding that the strike became unjustified from the 16th of October which has not been assailed before us, there can be no doubt that this strike was unjustified from the very beginning i. e. from the 13th October.

15. For the reasons given above, we hold that the strike in this case was unjustified from the beginning to the end and the workers are not entitled to any relief. We, therefore, set aside the order of the Labour Tribunal awarding the payment of full average wages to the workmen for the 14th, 15th and 16th October 1954. We are, however, of opinion that in the circumstances of the case, as the management did not take steps to dismiss the workers summarily or to have them removed with the help of the police or to ask them to leave the premises when they started the stay-in strike on 13-10-1954, the parties should bear their own costs. We order accordingly.