
(1989) 09 PAT CK 0030

In the Patna High Court

Case No : Criminal Miscellaneous No. 149 of 1986 (R)

Sarosh J. Gandhi and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-09-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 20, 22, 31, 33, 34

Citation : (1990) 38 BLJR 1323 : (1990) 2 PLJR 361

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In this application, the petitioners have prayed for quashing of a criminal proceeding for which cognizance for an offence u/s 33(2) of the Industrial Disputes Act, 1947 has been taken as against the petitioner by an order dated 23-12-1985 passed by Sri O.P. Sinha, A.C.J.M., Jamshedpur, in case on 2528 of 1985.

2. The facts of the case He in a very narrow compass.

3. A departmental proceeding was initiated by the Management of M/s. Tata Engineering and Locomotive Company as against one Sri P. Thakur. In the said departmental proceeding, the aforementioned Sri C.P. Thakur was found guilty. The Management of Tata Engineering and Locomotive Company, thereafter, dismissed the said Sri C. P. Thakur. Thereafter, a complaint petition was lodged by Sri Subodh Thakur, Labour Commissioner, Jamshedpur before the Additional Chief Judicial Magistrate, Jamshedpur alleging, inter alia therein as follows, as stated in the application itself.

(i) The General Secretary of Telco Workers Union under its letter dated 9-8-1985 submitted 47 points list of demand with the management of Telco, a copy where of was also forwarded to the Deputy Labour Commissioner.

(ii) The Secretary of the Union under its letter dated 14-8-1985 addressed to the Deputy Labour Commissioner has requested him to interfere in the matter of the aforesaid list of demand.

(iii) The Deputy Commissioner Labour under its letter No. 6663, dated 17-8-1985 invited both the Management and the Union to attend his office on 6-9-1985 for discussion over the matters with relevant papers.

(iv) In the meantime, one of the employee of Telco namely Sri C. P. Thakur, Assistant Secretary of Telco Union was dismissed from the service with effect from 31-8-1985 under the letter dated 30-8-1985 issued by the Management of the Telco.

(v) The General Secretary of the Union under his letter dated 4-9-1985 addressed to the Deputy Labour Commissioner informed him about the said fact and requested him to interfere in the matter. The Union In the aforesaid letter had stated that the dismissal of Sri C. P. Thakur was illegal because Sri Thakur is a protected employee and a conciliation proceeding has commenced and during conciliation proceeding, Sri Thakur could not have dismissed.

(vi) In view of the letter of the Union in relation to dismissal of Sri Thakur, the Deputy Labour Commissioner, under its letter No. 7182 dated 5-9-1985 fixed 28-9-1985 as the date for conciliation. In the meantime, on 23-9-1985, the General Secretary of Telco Union informed the Deputy Labour Commissioner, that Sri Thakur is a "protected workman" and during the conciliation proceeding he has been dismissed from the service without due observation of Section 33 of the Industrial Dispute Act (hereinafter referred to as "the Act"; which is irregular and illegal.

(vii) In the conciliation meeting held on 6-9-1985, the Union maintained that the list of demand placed by the Union under its letter dated 9-8-1985 the conciliation meeting was to be held on 6-9-1985 which was communicated under the letter dated 17-8-1985 of the Deputy Labour Commissioner while conciliation was still pending, the management of Telco in contravention of Section 33(2) of the Act. The management of the other hand, submitted before him that the letter dated 17-8-1985 asking the representatives of both sides to attend the office of Deputy Labour Commissioner on 6-9-1985 was convened for the purpose of discussion in relation to list of demand submitted by the union and it was not convened for conciliation nor the said order was passed by the Deputy Commissioner Labour in the capacity of conciliation officer but the same was passed in the capacity of Deputy Commissioner and it can not be treated under the law that a conciliation proceeding had commenced. Further under the letter the Deputy Labour Commissioner has not acted as conciliation officer nor has initiated any conciliation proceeding.

(viii) It has been further stated that in the meeting held on 28-9-1985 the Deputy Labour Commissioner had expressed his views that the date fixed for discussion under his letter dated 17-8-1985 would be deemed to be a date fixed

for conciliation because it was called to consider the list of demand submitted by the Telco Union with relation to general nature of demand and, therefore, according to him while conciliation proceeding was pending before him, dismissal of Sri Thakur will be deemed to be in violation of Section 33 of the Act. The Management of Telco urged that It is not correct approach nor such view is sustainable under the law.

(ix) Concluding from the aforesaid fact the complainant has alleged that while a conciliation proceeding was pending Sri Thakur was dismissed from the service In violation of Section 33(2) of the Act and he was not paid the salary for month as also no prior order was obtained by the management hence the same Act Is punishable u/s 31(1) of the Act.

(x) The complainant has further stated that having obtained the authority of the appropriate Government u/s 34 of the Act, the complainant is filing the complaint for taking cognizance u/s 31(1) of the Act.

4. From a perusal of the aforementioned complaint petition which is contained in Annexure-1 to the application, it is evident that the aforementioned complaint petition was filed as against the petitioners for alleged violation of the provisions of Section 33 of the said Act.

5. Section 33(2)(b) or Section 33(3) of the said Act reads as follows:

Section 33(2)(b):

During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, "or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman.

(a) alter in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding ; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise that workman:

Provided that no such workman shall be discharged, or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

Section 33(3)

Notwithstanding anything contained in Sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute:

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding ; or

(b) by discharging or punishing, whether by dismiss or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation:-For the purposes of this Sub-section, a "protected workman", in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

6. From a perusal of the aforementioned provision it will be absolutely clear that the sine qua non for obtaining approval of the authority either on the ground that the concerned workman, who is sought to be dismissed from service is concerned with the Industrial Dispute which is pending conciliation or was a protected workman during such proceedings.

7. Section 20 of the Industrial Disputes Act, provides as to when a conciliation proceeding would be deemed to have been commenced, which reads as follows:

Commencement and conclusion of proceedings.-(1) A conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike or lock out u/s 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

8. It is thus clear that Section 20 of the said Act creates a legal fiction as to how and from which date the conciliation proceeding would be deemed to commence.

9. From a perusal of the letter of Telco Union dated 9th August, 1985 as contained in Annexure-2 to the application and reference whereof had been made in the petition of complaint as contained in Annexure-1 to the petition, it will be absolutely clear that thereby no notice of strike or lock out was served.

10. By reason of the aforementioned letter of the Union, merely certain demands were raised with the Management and the said matter was brought to the notice of the authorities concerned.

11. It further appears that the conciliation officer did not refer the said purported dispute to the Board but merely fixed 6-9-1985 for discussion. From the records, it appears that even prior to the aforementioned date i.e. on 31-8-1985, the concerned workman was dismissed.

12. On a plain reading of the provisions contained in Section 20 of the Industrial Disputes Act, it will be absolutely clear that on the date of which Sri C. P. Thakur was dismissed from services, no conciliation proceeding was pending.

13. Reference in this connection may be in India General Navigation and Railway Co. Ltd. and Another Vs. Their Workmen, , wherein the Supreme Court has laid

down law in the following terms:

Having dealt with the orders of dismissal in respect of the incidents before the strike of 11-8-1955, we now turn to the strike itself. The first question that arises in this connection, is whether the strike was illegal, as alleged by the appellants and as found by the Tribunal. The learned Counsel for the respondents sought to reopen the finding about the illegality of the strike, basing his submissions mainly on the contentions that there were no conciliation proceedings pending either in fact or in law on the date of the strike, and that, therefore, the finding of the Tribunal was not correct. It was not disputed on behalf of the respondent that the notices of the strike given by the workman on 21-7-1955, had been duly received by the Conciliation Officer on 26-7-1955, and that the conciliation proceedings were commenced on 6-8-1955. What was contended on their behalf was that the proceedings had to be stopped, as it appears from the record of those proceedings, without any settlement of the dispute as the "workers" representatives expressed their inability to take further part in the proceedings on a question of leave to their other representatives.¹ We shall examine the question later as to which party was to blame for the break down of the conciliation proceedings at the very outset. It is enough to observe that u/s 20 of the Act, the conciliation proceedings must be deemed to have commenced on 26-7-1955 when the notice of the strike was received by the Conciliation Officer, and those proceedings shall be deemed to have concluded when the report of the Conciliation Officer is received by the Government. In this case, the report to the Government was made by the Conciliation Officer on 8-8-1955. It is not absolutely clear as to when this report of the Conciliation Officer was actually received by the Government. It is clear, therefore, that the conciliation proceedings certainly lasted between July 26 and August 8, 1955. The strike having commenced on August 11 was clearly illegal, in view of the provisions of Section 22 of the Act. We must, therefore, hold, in agreement with the Tribunal, that the strike was clearly illegal.

14. It is not the case of the complainant opposite party that the Tata Engineering and Locomotive Company is a public utility service. So far as a case of non-public utility service is concerned, the conciliation proceeding would be deemed to be commenced on that date when the order referring the dispute to the Board is made.

15. From the complaint petition itself it is evident that such a stage was yet to reach.

16. In this view of the matter, there is absolutely no doubt in my mind that condition precedent for the initiation of a criminal proceedings for violation of the provisions of Section 33(2)(b) and Section 33(3) of the Act were not fulfilled, and in that view of the matter, the question of violation of the said provision by the petitioner did not arise.

17. In these circumstances, I have no other option but to hold that the complaint

petition, even if given face value and taken to be correct in its entirety, does not disclose that the petitioner has committed an offence.

18. In the result, this application is allowed and the order taking cognizance as against the petitioners dated 23-12-1985 passed by Sri O.P. Sinha, Additional Chief Judicial Magistrate, Jamshedpur is quashed.