

(1972) 08 BOM CK 0006

In the Bombay High Court

Case No : Miscellaneous Petition No. 702 of 1967

Shakti Electro Mechanical Industries Pvt. Ltd.

APPELLANT

Vs

F.N. Lala

RESPONDENT

Date of Decision : 30-08-1972

Acts Referred:

Factories Act, 1948 — Section 51

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 33, 33A, 9A

Citation : (1974) 76 BOMLR 42 : (1974) 29 FLR 180 : (1974) 2 LLJ 1

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Judgement

1. In this petition under Art. 226 of the Constitution, the petitioner-company has challenged the legality and correctness of the award dated August 21, 1967, made by the Industrial Tribunal in Reference (IT) No. 377 of 1966.

2. The relevant facts are as follows :

The petitioner-company carries on business of manufacturing electrical and mechanical articles and appliances at its factory at Kalina, Santacruz (East), Bombay. Prior to May 22, 1966, the petitioner-company employed 110 permanent and 21 temporary workmen in its factory. The factory timings for all the workmen were then 8-30 A.M. to 5-30 P.M., with a lunch break from 12-30 P.M. to 1-00 P.M. on week days. By a letter dated May 17, 1966 addressed to the Chief Inspector of Factories the petitioner-company proposed alteration of the above working hours from 7-00 A.M. to 3-00 P.M., with a lunch break from 11-00 A.M. to 11-30 A.M. The petitioner-company made this proposal so as to begin working two shifts instead of one shift which was operative till May 22, 1966. The petitioner-company desired to bring into effect the above alterations in working hours with effect from May 23, 1966. The above letter of proposal dated May 17, 1966 was displayed on the notice board for the workmen to comply with the change. Respondent No. 2 union of workmen expressed its protest against the proposed change by a letter dated May 21, 1966. The petitioner-company

brought into effect the alteration of the working hours as from May 23, 1966. The workmen, however, insisted that the working hours should continue to remain from 8-30 A.M. to 5-30 P.M. with a lunch break between 12-30 P.M. and 1-00 P.M. On May 23, 1966 the workmen came to join duty at 8-30 A.M. The workmen having not been furnished with work, according to the petitioner-company, staged forthwith a sit-down strike contending that unless the original timings were reverted to they would not resume work. Certain discussions then took place. Ultimately, the petitioner-company put up its first notice dated May 23, 1966, at 1-30 P.M., there by intimating to the workmen that their stay-in-strike was unjustified and that unless they resumed work within 30 minutes, i.e., by 2-00 P.M., the petitioner-company would be constrained to take further action against the striking workmen. This notice proved to be of no effect. The petitioner-company thereupon put up a second notice dated May 23, 1966, at 4-00 P.M. intimating to the workmen that they had no right to remain in the works, as they did not commence to operate and work and that thereafter the workmen would not be allowed to enter the factory, unless they gave a written undertaking that they desired to enter into the factory for carrying out the work peacefully.

3. The workmen refused to give the undertaking as above and were accordingly as from May 24, 1966, not allowed to enter into the factory. The workmen thereupon expressed their protest by carrying red banners and shouting slogans and remaining outside the factory. According to the petitioner-company, certain acts of violence took place after expiry of three or four days when some of the workmen intended to join work after giving the undertaking as demanded. It appears that thereafter 32 workmen out of the total of 131 commenced to work in the factory. Sixty-eight of the workmen, however, continued to protest against the conduct of the petitioner-company and refused to give the undertaking demanded. In the result, by a notice of termination of service dated June 25, 1966, the petitioner-company terminated services of sixty-eight workmen as from June 25, 1966. These workmen are all mentioned in the above notice at serial Nos. 1 to 68 by their personal names. These workmen were requested to collect their legal dues from the office of the factory on Monday June 27, 1966 or thereafter during the working hours. Copies of the above notice terminating the services of sixty-eight workmen were forwarded to the Chief Inspector of Factories, the Government Labour Officer, Secretary to the Industries and Labour Department, Deputy Commissioner of Labour and the Inspector of Police.

4. It appears that the workmen then made a demand for lifting the lock-out and reinstatement of the workmen in service with full back wages immediately. The matter of this demand was taken into conciliation on July 26, 1966. After the Conciliation Officer made a Failure Report, by an Order of Reference dated November 23, 1966, made under clause (d) of Sub-s. (1) of S. 10 and Sub-s. (5) of S. 12 of the Industrial Disputes Act, 1947, the State Government referred the demand mentioned in the Schedule to the order for adjudication to the Industrial Tribunal. The demand mentioned in the Schedule reads as follows :

"Reinstatement of workmen :

The management should lift the lock-out and take back all the workers with full back wages immediately."

5. Respondent No. 2 union thereupon filed a statement of claim before the Tribunal. On behalf of the petitioner-company written statement of defence was filed. After giving hearing to both sides in the normal manner, the Tribunal by the impugned award dated August 21, 1967, ordered that "the management shall lift the lock-out and take back all the workers that have been in its employment at present and shall pay them half of the total emoluments from May 23, 1966 till their reinstatement."

6. By the written statement of defence the petitioner-company had raised the following contentions :

(1) That it never locked out the workmen;

(2) That the notice for the change of the working hours and rest period was not illegal;

(3) That the workmen themselves had gone on a strike and had not reported for duty at 7-00 A.M. as per the notice;

(4) That the services of the 68 workmen on whose behalf the reference was made have by the notice dated June 25, 1966, been terminated. The lock-out, if any, therefore, ceased to continue and exist. The employment of these 68 workmen was duly terminated and thereafter lock-out could not continue. The termination was, therefore, sufficient defence to all the claims made on behalf of the workmen.

7. The Tribunal held that the workmen were entitled to refuse to work in pursuance of the notice put up in the factory as the notice was illegal and not binding on the workmen. The workmen had attended for work at the factory at 8-30 A.M. on May 23, 1966. It was natural for the workmen to report for work at 8-30 A.M. as usual because they had not accepted the change in the working hours and had not agreed to attend for work at and from 7-00 A.M. The finding on the above footing was that for the failure of the workmen to join work at 7-00 A.M. the petitioner-company had no right to lock them out merely on the ground that the workers had resorted to an illegal strike, The Tribunal found that the strike was not illegal. The petitioner-company had illegally locked out the workmen and thereafter refused to take them back in employment. On the defence that the services had been terminated and the workmen had not continued in employment after June 25, 1966, the Tribunal observed;

"... that question will have to be considered in all its aspects when and if it is duly raised. At this stage it cannot be said that the services of the 68 workmen or any of them were or were not terminated. I have not decided whether the 68 workmen or any of them have or have not been duly retrenched by it".

In connection with the above findings, Mr. Bhatkal for the petitioner-company has made the following contentions :

(1) That the notice for change of working hours was legal and binding and the finding that the notice was illegal is altogether unjustified.

(2) That the workmen had in fact gone on a strike. The petitioner-company had not brought into effect a lock-out, as found by the Tribunal. The lock-out, if any, was not illegal as found by the Tribunal. In any event, upon termination of the services of all the 68 workmen as from June 25, 1966, relationship of employee and employer between these workmen and the petitioner-company ceased to exist. If this relationship ended, the alleged lock-out could not continue. The termination of services was good defence to the whole of the claim from and after June 25, 1966."

8. Mr. Nair for respondent No. 2 union emphatically denied these submissions made by Mr. Bhatkal. Mr. Nair relied upon item No. 4 in the Fourth Schedule and S. 9-A of the Industrial Disputes Act and also on the scheme relating to the working hours and rest intervals contained in Ss. 51 to 61 of the Factories Act, 1948, for the contention that the notice for change of working hours and rest period given by the petitioner-company was illegal. In that connection he relied upon the observations of the Supreme Court in the case of North Brook Jute Co. Ltd. and Another Vs. Their Workmen, , and the observations of the High Court of Andhra Pradesh in the case of Workmen of Hindustan Shipyard (Private), Ltd. [By their President Sankara Rao (M.V.)] Vs. Industrial Tribunal and Others, . He submitted that since the notice of change of hours of work and rests interval was not given in accordance with S. 9-A, the workmen were entitled to agitate the question. The petitioner-company had refused to give employment and work to the workmen who offered their services continuously from day to day. The evidence of the lock-out was in the second notice dated May 23, 1966, whereby the petitioner-company demanded a written undertaking from the workmen not to enter the factory except for working. This demand was made to prevent the workmen from attending duty at 8-30 A.M. in the usual manner. He submitted that the termination of services by the notice dated June 25, 1966, did not put a stop to the lock-out which had been commenced by the petitioner-company by refusal to employ and give work to the sixty-eight concerned workmen. In his submission the notice of termination of services was entirely irrelevant on the question of lifting up of the lock-out.

9. There is no dispute that the petitioner-company brought into effect as from May 23, 1966, change in the hours of work and rest intervals by directing that as from that date the workmen should join duty from 7-00 A.M. to 3-30 P.M. with a lunch break from 11-00 A.M. to 11-30 A.M. instead of from 8-30 A.M. to 5-30 P.M. with a lunch break from 12-30 P.M. to 1-00 P.M. as used to prevail upto May 22, 1966. Section 9-A provides that no employer shall effect any change in the conditions of service applicable to any workmen in respect of any of the matters specified in the Fourth Schedule without giving to the workmen a notice in the

prescribed manner and without expiry of 21 days after giving such notice. Item 4 in the Fourth Schedule reads : "Hours of work and rest intervals." All the items in this Schedule relate to conditions of service for change of which notice is to be given. It is clear on a reading of the Fourth Schedule that the hours of work and rest intervals must be held to be part and parcel of conditions of service. Mr. Batkal submitted that this provision relates to the total quantity of hours of work and rest intervals. In his submission this item does not relate to the timings of the daily hours of work and rest intervals. He, therefore, submitted that the total period of working hours and rest intervals was not altered by the petitioner-company by bringing into effect change in timings of the hours of work and rest intervals. It was, therefore, unnecessary for the petitioner-company to comply with the provisions in S. 9-A and give notice under that section in the manner prescribed. Now, there appears to be no substance in this submission. The matter of the quantity of hours of work and rest intervals as regards industrial factories is in detailed particulars covered by the provisions in Ss. 51 to 61 of the Factories Act. This very matter is as regards shops and establishments covered by S. 13 and other sections of the Bombay Shops and Establishments Act, 1948. The timings of the hours of work and rest intervals would be a matter of great consequence to the workmen employed in a factory. The timings could not be altered in an obnoxious manner so that the workmen could never approve of the same. The timings could thus be very unreasonably fixed only with ulterior motives. This could be done without changing the quantity of hours of work and rest intervals. To avoid such consequences, in the Fourth Schedule item 4 relating to hours of work and rest intervals is included under the heading "Conditions of service for change of which notice is to be given" under S. 9-A of the Act.

10. In the case of *Workmen of Hindustan Shipyard Ltd. v. Industrial Tribunal* (supra) the Andhra Pradesh High Court referred to the sections of the Factories Act and the Madras Shops and Establishments Act and observed :

"From a reading of S. 9A of the Industrial Disputes Act along with item 4, Sch. IV to the Act, it is clear that a change in the working hours could only be effected by giving 21 days" notice in the prescribed manner in Form E made under Rule 34 of the Industrial Disputes Rules of 1957."

11. In the case of *North Brook Jute Co. v. Their Workmen* (supra) the Supreme Court observed :

"..... Section 33A no doubt gives the workmen aggrieved by the contravention by the employer of S. 33 the right to apply to the Tribunal for relief; but the existence of this remedy does not mean that the workmen were bound to work under the altered conditions of service, even though these were in clear contravention of law. When they refused to do the additional work which the rationalisation scheme required them to do, they refused to do work, which the employer had no right in law to ask them to do. It is difficult to say that this amounted to a "strike" by the workmen; but even if it could be said to be a

"strike" such strike was certainly not illegal and unjustified."

12. In the present case the change in the prevailing hours of work and rest intervals was sought to be brought about without giving any notice in the prescribed manner. But this question does not arise for final decision as I am remanding the matter of the above reference to the Industrial Tribunal on the grounds which I will presently discuss.

13. "Lock-out" is defined in S. 2(1) of the Industrial Disputes Act, 1947, to mean "the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;"

14. It is now well-established that having regard to the above definition conditions of lock-out can continue in existence only when the relationship of employer and employee continues to exist between the concerned employers and workmen. Accordingly when the contract of employment is (rightly or wrongly) terminated by an employer, the conditions of lock-out cannot continue to exist. This is, however, not to state that if the termination is found to be illegal and not binding on the workmen the Tribunal may come to the conclusion that the termination being illegal was of no consequence and that, therefore, lock-out had continued by failure of the employer to continue to employ the concerned workmen. In cases in which in connection with the question of lifting of lock-out an employer relies upon termination of service, it would be necessary for the adjudicating Tribunal to investigate the facts relating to the termination of service and decide whether the termination was binding and legal. In cases in which the termination of service is found to be binding and legal, it would be impossible for the adjudicating Tribunal to hold that the lock-out had continued and required to be lifted. This is the direct result of the legal position that lock-out can exist only during the continuance of employer and employee relationship between the concerned parties.

15. Now it appears to me that the Industrial Tribunal in the present case failed to notice the above legal position and that the defence of termination of services raised on behalf of the petitioner-company was directly relevant on the question of the lifting of lock-out that was referred to the Tribunal. The above failure led the Tribunal to avoid deciding the question whether the petitioner-company had duly terminated the services of the 68 workmen concerned and to decide the legality of such termination. The Tribunal kept the question open in spite of it having directed that the management should lift the lock-out. Before such a direction could be given, the Tribunal should have noticed that the condition of lock-out if any, whether legal or illegal, had come to an end when the services of the 68 concerned workmen were terminated by the petitioner-company. The above defect in the findings made by the Industrial Tribunal in the present case renders the award defective. The award, therefore, requires to be set aside.

16. The result of the above discussion is that the award dated August 21, 1967, is set aside. Reference (IT) No. 377 of 1966 is remanded back to the Industrial

Tribunal for once again deciding all questions arising between the parties and making an award, bearing in mind the above observations. There will be no order as to costs.