

(1992) 03 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 3656 of 1991

Siemens Ltd. Thane

APPELLANT

Vs

Gajanan Vithal Konde and others

RESPONDENT

Date of Decision : 17-03-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 33C, 33C(2)

Citation : (1992) 3 BomCR 18 : (1992) 94 BOMLR 634 : (1993) 1 LLJ 635 : (1992) 2 MhLj 1129

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : P.K. Rele, for the Appellant; S.J. Deshmukh, J., for the Respondent

Judgement

1. This writ petition, under Article 226 of the Constitution of India, impugns an order dated May 30, 1991, made by the First Labour Court, Thane, in Application (IDA) No. 119 of 1991 under the provisions of Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The petitioner is a limited company incorporated under the provisions of the Companies Act, which carries on business of manufacturing electrical engineering goods at Thane. The respondents 1 to 10 are employed in petitioners' factory at Thane. On December 19, 1990, the petitioner gave a Notice of Lock-out, which was effected in respect of the workmen whose names were mentioned in Annexure-I-A. The said Annexure contained a list of about 534 workmen. The reasons for the lock-out were indicated in Annexure-II. The reasons, inter alia, were that, according to the petitioner, the concerned workmen had indulged in continuous agitation from or about April, 1990, and had resorted to several acts of indiscipline, which had made it impossible for the petitioner to run the factory with a modicum of normalcy or discipline. The lock-out notice, given under the provisions of Section 24(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, became effective from January 5, 1991. A copy of the lock-out notice was sent by the petitioner to each of the

affected workmen, along with a covering letter dated December 19, 1990. After indicating the fact of the lock-out the fact that a copy of the lock-out notice was being forwarded along with the letter and the consequential curtailment of certain normal facility, the letter went on to say :

"Even at this stage if you so desire, you may write to us of your own will of your intention to give normal production and maintain full discipline upon entering the factory to enable us to review lock-out in respect of your individual case."

In reply to the said notice, the workmen addressed letters on January 4, 1991, in which, after making several allegations impeaching the bona fides of the action of lock-out and imputing intention of victimisation to the petitioner, each of the workmen said :

"I give a written undertaking and guarantee as to maintenance of discipline and giving of production as usual."

The undertaking embodied in the letter dated January 4, 1991, was thought of by the petitioner as conditional and insufficient to review its action. By its letter dated January 5, 1991, the petitioner pointed out that it was not possible to accept the conditional and vague undertaking contained in the letter dated January 4, 1991 and that they were left with no alternative but to give effect to the lock-out notice dated December 19, 1990. The petitioner pointed out that the opportunity was till open to the concerned workmen to review their own decision and stand. The lock-out became effective from January 5, 1991. Respondents 1 to 10 were, inter alia, some of the workmen affected by the said lock-out.

3. On February 16, 1991, respondents 1 to 10 made an application (IDA) No. 119 of 1991 before the Labour Court at Thane under the provisions of Section 33C(2) of the Act. By the said application respondents 1 to 10 claimed full wages for the month of January, 1991, which, according to them, was due under the applicable settlement. The main ground on which the claim was pressed was that each of the aforesaid respondents alleged that he was ready and willing to work on all the working days of the factory, but that he had been prevented by the petitioner from carrying out his normal work, and, consequently, it was claimed that each of the respondents 1 to 10 had become entitled to his wages for the month of January, 1991, which had been wrongfully denied to him. The petitioner contested the application, and took up the contention that, on account of the continuing lock-out from January 5, 1991, there was no question of the concerned workmen having earned any wages during the relevant period. They also contended that the application made by the workmen was not for enforcing an existing right but for the grant of a new right which was wholly impermissible under the limited jurisdiction conferred upon the Labour Court u/s 33C(2) of the Act. In addition the petitioner also pleaded its case on merits, with which we are really not concerned in the present petition.

4. By the impugned order, the Labour Court held that it was an admitted fact that there was a lock-out in the petitioner-establishment from January, 1991.

However, inasmuch as respondents 1 to 10 had given an undertaking as part of their letter dated January 4, 1991, there was no reason to continue the lock-out as against them and the continuation of the lock-out could not disentitle them to claim wages. The Labour Court indicated its thinking by observing :

"So the only point before me is that whether the undertaking given by workers which is produced at page 19 along with the list Ex U-3 is the undertaking as required by the Company."

After comparing the language of the undertaking (in Marathi), contained in the letter dated January 4, 1991 written by the respondents 1 to 10, to what was required of them by the notice and the letter dated December 19, 1990 addressed to them by the petitioner-Company, the Labour Court went on to hold that the two undertakings were identical and there could be no dispute or question on the point of undertaking. The Labour Court, in terms, took the view that the petitioner was not justified in treating the undertaking given by the workman as a conditional undertaking. The Labour Court then went on to say :

"..... The documents and the evidence before this Court clearly show that the workers who were permanent workers in the Company who have given undertaking to the Company on January 4, 1991 by which they have existing right for getting their wages for the period beginning from January 5, 1991 to January 31, 1991. Dispute means there should be a real dispute These two things clearly show that there was no dispute at all and thereby the workers have existing rights for the wages beginning from January 5, 1991 to January 31, 1991. The Company has not given work to these workers in spite of the undertaking. That will not give right to the Company in non-payment of wages to these workers. If workers would not have given an undertaking then the position would have been different."

The Labour Court then, placing reliance upon a judgment of the Supreme Court in Bank of India Vs. T.S. Kelawala and Others, took the view that, whether the lock-out was legal or illegal, by analogy, the reasoning of the said judgment would apply and that the workmen would be entitled to wages, inasmuch as they had given unconditional undertaking, albeit not in exact form indicated by the employer. From the fact that the undertakings given were held to be the undertakings as required, the Labour Court deduced that the workmen had established that they had an existing right to claim wages for the period from January 5, 1991 to January 31, 1991. In the result, the application was allowed, and a direction was made to the petitioner to pay the wages for the period in question, after effecting the statutory deductions, if any, on the same footing as done in the previous month.

5. The petitioner impugned the judgment as being wholly without jurisdiction.

6. It is contended by Shri Rele, learned counsel for the petitioner, that the jurisdiction of the Labour Court u/s 33C(2) of the Act is extremely narrow jurisdiction, akin to that of an executing Court, which did not have the

jurisdiction to declare or adjudicate new rights in favour of the workmen. Reliance was placed on the judgment of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, . The Supreme Court indicated in this case that mere denial or disputing of the right claimed by the workmen would not oust the jurisdiction of the Labour Court u/s 33C(2) of the Act, and that it was open to the Labour Court to interpret an existing award or settlement, on which the workmen's right rests. The Supreme Court indicated, by way of illustration, some of the claims which would not fall u/s 33C(2) of the Act, as any order for relief in such cases would require a pre-existing adjudication of the rights of parties.

7. Reliance was also placed on the judgment of the Supreme Court in *U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc.*, . In this case, while interpreting the limits of the Labour Court's jurisdiction u/s 33C(2) of the Act, the Supreme Court pointed out that, if a dispute was, for example, a dispute relating to the retrenchment for workmen and closure of the establishment, falling within the exclusive competence of an Industrial Tribunal by virtue of Section 4B read with Item 10 of Schedule II of the Uttar Pradesh Industrial Disputes Act, it would not fall within the competence of the Labour Court u/s 4A of the said Act. Section 4A of the U.P. Act is *pari materia* with Section 33C(2) of the Act. The Supreme Court pointed out (P.735) :

"Where however the right to retrenchment compensation which is the foundation of the claim is itself the matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon on a reference, it would be straining the language of Section 33C(2) to hold that the question whether there has been retrenchment may be decided by the labour Court. The power of the Labour Court is to compute the compensation claimed to be payable to the workman on the footing that there has been retrenchment of the workman."

8. Finally, the petitioner relied on the judgment of the Supreme Court in *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, , which has become the *locus classicus* on the subject. Analysing the provisions of the said section in the context of claims for closure compensation, the Supreme Court held (vide paragraph 13) as under :-

"13. In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding u/s 33C(2) is in the nature of an execution proceeding it should

follow that an investigation of the nature of determinations (i) and (ii) above is, normally outside its scope. It is true that in a proceeding u/s 33C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely "incidental". To call determinations (i) and (ii) "incidental" to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when claim is made before the Labour Court u/s 33C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions - say, of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as "incidental" to its main business of computation. In such cases determinations (i) and (ii) are not "incidental" to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R. L. Khandelwal*, 1968 I Lab LJ 589 (SC), that a workman cannot put forward a claim in an application u/s 33C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an Industrial Dispute which requires a reference u/s 10 of the Act."

9. Applying the test laid down by the Supreme Court in *C.I.W.T. Corporation case* (supra), I am of the view that the claim for payment of wages during the lock-out period made in the application filed by the respondent-workmen really fell within categories (i) and (ii) indicated in the passage from the judgment extracted hereinbefore. In my view, therefore, the claims were beyond the jurisdiction of the Labour Court u/s 33C(2) of the Act. It is not disputed - indeed, it could not be - that the settled law for over 5 decades has been that, in a situation of strike or lock-out, the right to wages could spring only consequent upon an adjudication being made of the inter se rights and liabilities of the employer and the workmen.

10. In the locus classicus on the subject, the decision of the Supreme Court in *Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others*, a claim was made (incidentally, u/s 33C of the Act) that the workmen were entitled to wages during the period of lock-out on the footing that the refusal to give work to the workmen amounted to a "lay-off" within the meaning of Section 2(kkk) of the Act. The Supreme Court indicated the legal concept of a lay-off as contra-distinguished from the concept of a lock-out, and then pointed out that, in the case of the lock-out, the employer closes the business and locks-out the workmen for reasons which have no relevance to the causes specified in Section 2(kkk) of the Act and that the nature of the two concepts was entirely different and so were their consequences. The Supreme Court then observed (p. 278) :

"..... The liability of the employer in cases of lock-out would depend upon whether the lock-out was justified and legal or not; but whatever the liability, the provisions applicable to the payment of lay-off compensation cannot be applied to the cases of lock-out."

11. In *India Marine Service Private Ltd. Vs. Their Workmen*, , the Supreme Court was concerned with a situation of adjudication of an industrial dispute regarding wages for the period of lock-out, as laid down the law in the following terms (p. 126) :

"..... We would like to make it clear that in a case where the strike is unjustified and the lock-out is justified the workmen would not be entitled to any wages at all. Similarly where the strike is justified and the lock-out is unjustified, the workmen would be entitled to the entire wages for the period of strike and lock-out. Where, however, a strike is unjustified and is followed by a lock-out which becomes unjustified, a case for apportionment of blame arises."

12. In *Management of Pradip Lamp Works Vs. Pradip Lamp Wokers Karamcharya Sangh and Another*, , the Tribunal had adjudicated a demand for payment of wages for the period of lock-out, without applying its mind to apportionment of blame between the two contending parties. After referring to its judgment in *India Marine Service (Private) Ltd.*, (supra), the Supreme Court held (p.542) :

"In our opinion, it was incumbent on the Tribunal to apply its mind to the question of apportionment of blame on the two parties and to its effect on the amount of wages to be awarded to the workmen for the period of the lock-out after February 28, 1964. The order of the Tribunal ignoring this important aspect is infirm and is difficult to sustain...."

The Tribunal's order was, therefore, quashed and set aside by the Supreme Court.

13. Strike has been considered to be the legal antithesis of a lock-out, and, therefore, similar considerations would apply in the case of a demand for payment of wages for the period of strike.

14. In *Crompton Greaves Ltd. Vs. Its Workmen*, the Supreme Court was concerned with a claim for wages during the strike period. The Supreme Court laid down the position in law as under (p. 82) :

"4. It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statue. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period."

15. Again, in *The Statesman Ltd. Vs. Their Workmen*, the Supreme Court was concerned with the issue of wages during the strike period. The law on this was reiterated emphatically, in imitable style, by Krishna Iyer, J., in the following words (p.489) :

"17. If the strike is illegal, wages during the period will ordinarily be negated unless considerate circumstances constrain a different course. Likewise, if the lock-out is illegal full wages for the closure period shall have to be "forked out", if one may use that expression. But in between lies a grey area of twilight law. Strictly speaking, the whole field is left to the judicious discretion of the Tribunal. Where the strike is illegal and the sequel of a lock-out legal, we have to view the whole course of developments and not stop with examining the initial legitimacy. If one side or other behaves unreasonably or the overall interests of good industrial relations warrant the Tribunal making such directions regarding strike period wages as will meet with justice, fair play and pragmatic wisdom, there is no error in doing so. His power is flexible."

16. A conspectus of the authorities, noticed hereinabove, makes it abundantly clear that there can be no right to claim wages for the period of lock-out or strike, unless the inter se rights and liabilities have been declared by an adjudicator process by the competent Industrial Tribunal. Despite the expression "Strike Wages" and "Lock-out Wages", used frequently in industrial adjudication, I am of the view that the amount payable to the workmen during an illegal and/or unjustified strike/lock-out does not amount to "wages" within the meaning of the expression as defined in Section 2(rr) of the Act.

17. Section 2(rr) of the Act defines the expression "wages" as under :-

""Wages" means all remuneration capable of being expressed in terms of money, which could, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes...."

The key-note in the definition is that, in order to be "wages", the remuneration must be payable for fulfillment of the terms of employment or for work done in such employment. It is obvious that, in the situation of a strike or lock-out, neither of these would exist. In my judgment, *stricto sensu*, the demand of the workmen is a demand for compensating them for their inability to earn their wages during the period - in the case of a strike, the inability being voluntary, and, in the case of a lock-out, the inability being involuntary. Thus, what would, really, be paid would be compensatory payment for the wage loss sustained by the workmen during the period of the strike/lock-out. In order to ascertain this compensatory payment, as indicated in the judgments referred to, the Tribunal has to undertake the exercise of apportionment of blame, and decide the just amount that could be awarded towards this compensatory payment, which may be a portion of the wages lost or the entire amount equivalent to the wages lost, depending upon the fact and circumstances of each case. In any event, what is

untenable is that there can be automatic right to such compensatory payment, which must necessarily follow upon an adjudicatory order by the competent Tribunal.

18. It became necessary to trace the position in law in view of the submission made by Mr. Deshmukh that the latest judgment of the Supreme Court in Bank of India's case (supra) has made a radical departure from the established position in law. He contends that the judgment in Bank of India's case, at least, by logical implication, must be taken to have laid down that, even when an employer locks out his workmen, irrespective of the legality or justifiability of the lock-out, the workmen would be entitled to wages for the period of lock-out, inasmuch as the contract of employment would continue to subsist during the said period.

19. In my opinion, a fair reading of the judgment of the Supreme Court in Bank of India's case (supra) does not indicate that the proposition of law, as canvassed by Mr. Deshmukh, was either accepted or laid down. In the first place, the Supreme Court was not dealing with a situation of lock-out at all. The fact of the case are illustrative and indicate the parameters within which the decision was rendered. The Supreme Court therein was concerned with a situation of concerted absence from duty - whether a strike or not - and whether the workmen could, without an order of adjudication, claim wages for such period of absence from duty. In these circumstances, the Supreme Court held that, since no work had been rendered by the workmen, there would be no automatic entitlement to wages/salary for the period of their absence from duty.

As I read it, this judgment nowhere disagrees with, nor differs from, the position established over several decades by the catena of judgments, to which reference has been made earlier. It is not possible to read the judgment in Bank of India's case as running counter to or having overruled the legal position, as indicated in the judgments from Management of Kairbetta Estate to The Statesman. There is no indication of such intention whatsoever in the judgment. Secondly, it is a trite principle of law that a judgment is an authority for what it decides or what is its ratio and not for what may be deducible logically therefrom.

20. I am, therefore, unable to accept the contention of the learned counsel for the petitioner that the judgment of the Supreme Court in Bank of India's case, making a radical departure from the established position in law with regard to the rights for strike/lock-out wages, lays down the proposition canvassed by him. Even assuming that such a proposition is logically deductible from the judgment of the Supreme Court, the authority for such proposition would not be the decision of the Supreme Court, and the proposition would have to be tested on its own merits. Testing it on its own merits, I find the proposition fallacious. I am unable to accede to the submission that, in a situation of a lock-out, irrespective of whether the lock-out is legal, illegal, justified or unjustified, there is ability to make payment of wages, merely because the contract of employment subsists through the lock-out period. As I had indicated earlier, strictly speaking, the

claim for wages during the period of lock-out cannot be a claim for "wages" within the meaning of Section 2(rr) of the Act, but is more in the nature of a claim for compensatory payment, on the express basis that, on account of the employer's supervening act, the workmen, having been deprived of the opportunity to earn their wages, despite subsistence of the contract of employment, are entitled and must be paid compensatory payment. Whether such compensatory payment is due or not, is entirely a matter for adjudication of the legal rights and liabilities inter se. It is not at all a matter of execution or implementation of an existing right, which is, really, the only function of the Labour Court u/s 33C(2) of the Act. Ergo, the Labour Court could not have entertained the claim of the respondent-workmen u/s 33C(2) of the Act, in as much as the claim was not preceded by any adjudicatory order of a competent Court/Tribunal holding that, notwithstanding the continuing lock-out, the workmen were entitled to payment for the period of lockout.

21. The view I am taking is supported by the judgment of the Calcutta High Court in *Algemene Bank Nederland Vs. Central Government Labour Court and Others*, which has been noticed with approval by the Supreme Court in *Bank of India's* case.

22. Though Mr. Deshmukh invited me to go into a number of novel points of law, I have not dwelt upon them, as in my opinion, it is unnecessary to expand the scope of the controversy in the present petition. It is made clear that I have not expressed any opinion on the legality or justifiability of the lock-out in question which will have to be done by the appropriate adjudicatory forum under the relevant applicable statute.

23. In the result, I am of the view that the Labour Court had no jurisdiction to entertain or grant the claim made in the application. The application was not maintainable u/s 33C(2) of the Act. The impugned order of the Labour Court is, therefore, liable to be quashed and set aside. The petition is hereby allowed, the impugned order of the Labour Court is hereby quashed and set aside, and Application (IDA) No. 119 of 1991 before the Labour Court is hereby dismissed. Rule is, accordingly, made absolute. However, there shall be no order as to costs in the circumstances of the case.