

(1990) 08 KAR CK 0014
In the Karnataka High Court
Case No : M.F.A. No. 1449 of 1990

Simpson and Group Companies Workers and Staff Union	APPELLANT
Vs	
Amco Batteries Ltd.	RESPONDENT

Date of Decision : 22-08-1990

Acts Referred:

Trade Unions Act, 1926 — Section 1, 18

Citation : (1991) 61 FLR 708 : (1990) ILR (Kar) 3568 : (1990) 3 KarLJ 222

Hon'ble Judges : G.P. Shivaprakash, J

Bench : Single Bench

Judgement

1. This Miscellaneous First Appeal is presented by the defendant against the ad-interim order of injunction dated August 14, 1990 passed on I.A. No. 1 by XVIII Additional City Civil Judge, Mayo Hall, Bangalore, in O.S. No. 10573 of 1990.

2. The facts of the case, in brief, are as follows : The plaintiff-respondent filed a suit against defendant-appellant seeking the following reliefs :-

".... a decree of permanent injunction restraining the defendant-Union, its members, associates or anybody acting through or for them - (i) from interfering in any manner whatsoever with the free movement of plaintiff's executives, contractors, staff, suppliers and other public from entering into and out of plaintiff's Hebbal plant;

(ii) from interfering or obstructing the free movement of cars/vehicles and lorries carrying raw materials, intermediaries, end products into and of plaintiff's Hebbal plant;

(iii) from endangering the life of persons, contractors, executives, staff of plaintiff and property of plaintiff and allow costs of this suit and grant such other reliefs as this Hon'ble Court may deem fit to grant in the circumstances of the case."

3. The plaintiff is a company engaged in the manufacture and sale of batteries having two plants, one at Bellary Road, Hebbal and another at Mysore Road,

Bangalore City. The defendant is a trade union registered under the provisions of the Trade Unions Act. From the plaint averments, it appears that the defendant-Union submitted a charter of demands to the plaintiff-company on April 15, 1989, the previous settlement between the parties having expired on March 31, 1989. Pursuant to the charter of demands, conciliation was initiated by the State Government, Department of Labour, and the matter is now pending at that stage. The plaintiff-Company avers that the members of the defendant-Union with a view to pressurise the management to concede to its charter of demands, adopted go-slow tactics from 1st June 1990 onwards at the plaintiff's Hebbal factory and consequently the production came down considerably and, therefore, in order to maintain discipline in the factory, the plaintiff-Company initiated disciplinary action for various misconducts against certain workers, who are members of the defendant-Union.

4. It is alleged in the above context that the Union has resorted to prevention of free movement of men and material from the plaintiff's factory at Hebbal causing "irreparable hardship and injury" to the Company. Specifically, the plaintiff avers that on July 4, 1990, the defendant-Union prevented the movement of lorries carrying the components, raw materials, intermediaries etc., which in the normal course the Company has been doing as stock transfers from one factory to another.

5. In the statement of defence filed by the defendant-Union, these allegations that the members of the defendant-Union are preventing free movement of vehicles and that they were blocking ingress and egress have not been denied.

6. Subsequent to the filing of the suit the plaintiff Company declared lock-out and suspended the operation of its Hebbal factory effective from 6. a.m. on July 2, 1990. The plaintiff Company filed an additional affidavit in support of the application for grant of ad-interim order or injunction restraining the members of the defendant-Union from interfering in any manner with the free movement of contractors, staff, suppliers and other members of the public from entering into and out of its Hebbal factory or from interfering or obstructing the free movement of cars, vehicles and lorries carrying raw materials, intermediaries, end products into and out of plaintiff's Hebbal plant and from endangering the life of persons, contractors, executives, staff etc. In the said affidavit it is stated that because of several illegal acts of the workers, the plaintiff-Company suspended the operation of the factory from July 2, 1990 and the workers have been obstructing and not allowing anybody to enter into the factory, creating a grave situation. It is stated in the affidavit that the Company has huge export orders (particulars of which are furnished in the affidavit), which has to be exported before the end of July 1990 in terms of the agreement "with Russian Countries" and certain clauses in the agreement between the parties relating to penalty and liquidated damages are rigorous and any default on the part of the plaintiff-Company in the delivery schedule of its products would give rise to huge claims towards damages. Irreparable hardship would be caused to the plaintiff-

Company if the workers are not prevented by an injunction order from indulging in illegal activities including the obstruction of free movement of vehicles. It is stated in the affidavit that the workers are preventing the plaintiff-Company from removing the finished products, components and intermediaries required for the manufacture of batteries from its Hebbal factory to its Mysore Road Factory. The trial Court on the basis of the above pleadings granted the interim order sought by the plaintiff-Company.

7. The trial Court held that a prima facie case has been made out by the plaintiff and the balance of convenience is in its favour, taking into consideration the irreparable injury and hardship that would be caused to the Company in the event it the end products of the company are not allowed to be taken out of the factory premises.

8. Mr. R. N. Narasimha Murthy, learned Senior Counsel appearing for the defendant Union, submitted that the injunction order granted in favour of the plaintiff-respondent enfeebls the bargaining power of the union to arrive at a settlement regarding its charter of demands and enables the management to become intransigent. He submitted that in a community of wage earners in which most men were dependent upon the sale of their labour for their daily bread and hope of self-advancement, the strike, the boycott and the picket line were the primary weapons of the working class as against the economic might of the employer and, therefore, to enable the working class to bargain collectively and effectively in negotiating agreement with the employers for improved conditions of employment, the Courts should be reluctant to give any assistance to the employer in any manner which would impair the bargaining power of the workers-Union. He submitted that collective bargaining would have little value unless it has sufficient power which would make the employer see reason and yield to the demands of the workmen.

9. The fact that the employees have been obstructing the movement of vehicles in the manner alleged by the Company was not disputed by Mr. Narasimha Murthy. He asserted that their actions enjoy immunity u/s 18 of the Trade Unions Act, 1926. Section 18 reads thus -

"18(1). No suit of other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any officer 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 of 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 proceeding in any Civil Court in respect of any tortious act done in contemplation or in 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."

According to Mr. Narasimha Murthy, the aforesaid provisions afford protection to the workers and so long as their conduct is peaceful and does not turn violent, they enjoy the immunity under the provisions of the said Section. He submitted that there is no allegation of violence against the workmen in the instant case and, therefore, the agitation which includes obstruction to movement of vehicles in and out of the factory premises which is in contemplation or in furtherance of trade dispute fall squarely within the protective ring of Section 18 of the Trade Unions Act. He invited my attention to several decisions bearing on the question at issue. In *Rama Vilas Service Ltd. and Another Vs. Simpson and Group Companies Workers' Union and Another*, a portion of para-7 of the judgment reads thus (P.289) :

"7. xx xx xx

If cessation of work is the result of strike, it is not possible to lend to 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 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. 3362 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 management to seek the reliefs asked for in the present suits, except to the extent rightly conceded to by the learned Counsel for the defendants."

Mr. Narasimha Murthy submitted that though the said observations of Nainar Sundaram, J. of the High Court of Judicature, Madras, were not approved in 1980 II LLJ 402, he tried to impress upon me that the observations in *Rama Vilas Service Ltd. and Another Vs. Simpson and Group Companies Workers' Union and Another*, should prevail as otherwise the management will not come to terms with the employees, who are now facing poverty and privation because of the lockout.

10. Whatever may be the solicitude which one may have for the working class, I hesitate to subscribe to the view that physical interference or duress with the free movement of the executives, contractors, staff, suppliers and other public or

physically obstructing the free movement of cars/vehicles and lorries carrying raw materials, intermediaries, end products into and out of plaintiff's Hebbal Plant, could be justified as a Trade Union right a fundamental right under Article 19 of the Constitution of India.

11. Mr. Narasimha Murthy referred me to certain passages in several decisions to persuade me to accept the view expressed by Nainar Sundaram, J. in the above decision and particularly to the following observations at paras 20, 21 and 22 in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, which reads (pp. 283-284) :

21. Let us examine "conspiracy" in the English Law of Torts to see if even there it is possible to hold that an illegal strike per se spells the wrong. We may state that till recently it could not be said with any certainty that there was any such tort as "conspiracy". Salmond thought that there was not (see Salmond-Law of Torts-page 505, 15th Ed.) It is interesting that in that Edition of Salmond, Mogul 1892 Act 25 is linked up by the learned author with a capitalist economy. Be that as it may, the common law of England today is more or less clear, home rumblings notwithstanding :

"A combination wilfully to do an act causing damage to a man in his trade or other interest is unlawful and if damage in fact is caused is actionable as a conspiracy. To this there is an exception where the defendants' real and predominant purpose is to advance their own lawful interests in a matter in which they honestly believe that those interests would directly suffer if the action against the plaintiff was not taken. In truth, the Crofter case has made Section 1 of the Trade Disputes Act, 1906, largely unnecessary, for there will now be few conspiracies arising out of trade disputes which are not protected at common law." (pages 508-509, 15th Edn. Sweet & Maxwell)

The essence of actionable conspiracy is best brought out by Salmond :

"The tort is unusual because it emphasises the purpose of the defendants rather than the results of their conduct." (Page 513, 15th Edn. Sweet & Maxwell)

22. Even when there are mixed motives, "liability" will depend on ascertaining which is the predominant object or the true motive or the real purpose of the defendant. Mere combination or action, even if it be by illegal strike, may be far away from a "conspiracy" in the sense of the law because in all such cases, except in conceivably exceptional instances, the object or motive is to advance the workers' interests or to steal a march over a rival union, but never or rarely to destroy or damage the industry. It is difficult to fancy workers who live by working in the industry combining to kill goose that lays the golden eggs. The inevitable by-product of combination for cessation of work may be loss to the management but the obvious in-tenement of such a collective bargaining strategy is to force the employer to accept the demand of the workers for betterment of their lot or redressal 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 war, be reluctantly adopted by a people, but such an imputed motives 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."

12. Mr. H. B. Datar, learned Senior Counsel appearing for the plaintiff-respondent, submitted that physical interference or duress in any form is not protected u/s 18 of the Trade Unions Act. He submitted that a line has to be drawn between what is lawful and unlawful and in the instant case the conduct of the workers is nothing short of intimidation and wrongful restraint which is an offence punishable u/s 341 of I.P.C. He relied on a decision of the Division Bench of this Court in Chandrana Bros. & Others v. Venkata Rao & Others 1976 (1) KarLJ 245 in which after considering number of decisions, this court at para No. 18 and 19 laid down the law on the point thus -

"18. The principles which are relevant for the purpose of the present case as can be gathered from the above may be now summarised. A demonstration by the employees is protected under Article 19 of the Constitution of India provided it is peaceful and orderly. Such a demonstration is, therefore protected even apart from Section 18 of the Trade Unions Act, 1926. Section 18 does not afford immunity for an act of deliberate trespass. The members of a trade union may resort to a peaceful agitation by gathering together either outside the industrial establishment or inside within the working hour. provided it is peaceful and no violence, intimidation or molestation is involved and there is no violation of the provisions of law. An act in contemplation or in furtherance of a trade dispute which induces breach of contract on other employees or causes interference with trade, business or employment of some other to dispose of his capital or labour as he wills would not be actionable, but such inducement or interference must be by lawful means and not by means which would be illegal or wrongful. The display of posters within or outside the place of business is permissible. The workers are entitled to the protection of Section 18 of the Trade Unions Act even if the strike is illegal u/s 24(I) of the Industrial Disputes Act.

19. The workers may resort to peaceful picketing i.e., the marching to and fro before the premises of an establishment. They may be accompanied by the carrying and display of sign boards, placards or banners bearing statements in connection with the dispute. They may also request politely the employees not to assist in the running of the business and ask the customers not to patronise that establishment. Such acts would constitute peaceful picketing and are protected u/s 18. The demonstration may cause inconvenience and embarrassment to the employer. It may be intended to bring pressure on the management to concede to the workers" demands. But such demonstration is protected so long as it is peaceful and does not turn violent. The employer can claim that the ingress and egress to their business premises should be protected from obstruction. He is

also entitled to protection if there is imminent danger to life or property. If the picketing ceased to be peaceful or becomes a nuisance or endangers public peace, it ceases to be lawful. If the picketing is carried out in such principles or in such manner as is likely to intimidate or to obstruct or molest the employees or molest the employees or customers against their will, it would be unlawful. Any show or threat of violence or any other unlawful threat likely to create fear in the mind of a reasonable man will render picketing unlawful. Pickets are not entitled to compel people to listen to them or to obstruct deliberately standing in their way or catching hold of their arms, they are also not entitled to obstruct passage of vehicles by lying down in the high-way in front of them or otherwise blocking the high-way. They are not entitled to pester those persons who do not wish to listen to them, and who have requested them to desist. Right to picket is a very tangible one which is closely limited by the equal right of others to go about their lawful affairs free from objection, molestation or intimidation. The methods of persuasion are limited to oral and visual methods i.e., the use of the voice and the exhibition of placards and should not be extended to physical obstruction of a vehicle or a person which would be illegal. Each case must depend very largely upon its attending facts and circumstances as to whether or not particular acts complained of are protected u/s 18 or not. When persons are combining and conspiring together and adopt means calculated to intimidate or to coerce the employees or those who wish to become employees from remaining in or entering his employ, or to prevent employers customers or others who wish to have dealings with him from so doing by means of force, threats, intimidation or violence resulting in serious injuries to plaintiff's business, then such acts would not be protected."

In my view the above decision answers all the points raised by the appellant-defendant though Mr. Narasimha Murthy contended that the said decision is an authority in the context of strike by the employees and not in the context of lock-out declared by the employer. I do not think that protection u/s 18 of the Trade Unions Act to the workers gets enlarged or constricted depending upon "strike" situation or "lock-out" situation. The consideration and the principle are one and the same for both the situations.

13. In *Indian Express Newspapers (Bombay) Pvt. Ltd. Vs. T.M. Nagarajan and Others*, J. of the Delhi High Court has, while construing Section 18 of the Trade Unions Act, held that it does not bar the jurisdiction of Civil Court either to entertain the suit in regard to trade dispute or pass an ad-interim injunction order.

14. Mr. Datar also cited an unreported decision of this Court in *Larsen and Toubro Ltd. v. Bhaktavatsala* RFA No. 216 of 1984 DD 19-3-1987 in which Kulkarni, J. at para 4 observed as follows :

"4. So long as the strike continues to be non-violent, nobody can raise even a little finger against it. If the strike were to result in the disruption of the factory and its working on account of the violent methods, then this Court must step in

and give protection. If the factory is not permitted to take out its finished products, the Court would be causing irreparable loss or damage to the factory, because it would not be able to honour its own commitments to its customers. The business depends upon the integrity and upon the fulfilment of the commitments. If the factory is not able to honour its own commitments, it will have to wind up its business, because nobody would give any respect to the commitment made by the factory. The very life of the workers would become miserable if the factory were to close down, and if the products manufactured by the factory will have no market at all. The finished products will have to be allowed to be taken out by the factory only to see that the commitments made by it already in the business area are honoured. Therefore with all due respect to the Madras decision, I am not inclined to accept the principle laid down in the said ruling, because it would be as good as driving the factory to come to a standstill."

15. Mr. Narasimha Murthy tried to distinguish the said decision on the ground that no reference is made to Section 18 of the Trade Union Act, and therefore, it is no authority on the point in question. He invited my attention to the observations in Deena alias Deen Dayal and Others Vs. Union of India (UOI) and Others, for the proposition that when a particular provision of law was neither raised specifically not considered directly by the Court, the said decision cannot be considered as a binding precedent.

16. Mr. Datar referred me to several other decisions on various legal aspects of collective bargaining and its limits. I do not consider it necessary to refer to all those decisions since Chandrana Brother's case (supra) covers all the points raised. Following the said decision I hold that the conduct of the workmen in the instant case in blocking the passage of men and material of the plaintiff-Company does not enjoy immunity u/s 18 of the Trade Unions Act.

17. The Trial Court while granting the discretionary relief of ad-interim injunction has rightly considered all the aspects - prima facie case, balance of convenience and irreparable injury and, therefore, the same does not call for any interference by this Court.

18. The appeal, therefore, fails and the same is dismissed. No costs.