

(1960) 01 PAT CK 0007
In the Patna High Court
Case No : Misc. Judicial Case No. 250 of 1958

Sita Ram Sah

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-01-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(I), 2, 2(K)

Citation : AIR 1960 Patna 288 : (1960) 1 FLR 145

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : A.B.N. Sinha and Shanker Kumar, for the Appellant; G.P. Shahi, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner carried on the business of manufacture of bidis at Deoghar until 29-5-1957. On that day the petitioner gave a notice of closure to his employees, and the reason for the closure was that on 23-3-1957, the workers surrounded the factory where the business of bidi manufacture was carried on and kept all the family members of the petitioner in wrongful confinement for 3 to 4 hours. Later on the members of the petitioner's family were rescued with the help of the police by the Subdivisional Officer of Deoghar, and a criminal case u/s 147/342 of the Indian Penal Code was initiated against several workmen. It is also alleged in paragraph 4 of the affidavit that the workmen attempted to destroy and damage the stock of bidi leaves and the production of bidi manufacture consequently suffered.

In view of the attitude of the workmen the petitioner thought that it was no longer possible to carry on the manufacture of bidis and decided to close down the factory. It appears that the workmen subsequently made an application u/s 33-C of the Industrial Disputes Act for recovery of the money due to them from the petitioner under Chapter VA of the Industrial Disputes Act. The application

was made to the Deputy Commissioner of Labour, who issued notice to show cause upon the petitioner why the payment should not be made. On 16-12-1957, the petitioner showed cause before the Deputy Commissioner of Labour. Meanwhile the State Government issued a notification on 15-1-1958, u/s 10(1) of the Industrial Disputes Act, purporting to make a reference of an industrial dispute between the petitioner and the workmen. The notification is annexure D to the application and reads as follows :

"Government of Bihar Labour Department. Notification

Patna, the 25 Paush, 1879 S 15 January, 1958

No. III/D1-I709/57L-904. Whereas the Governor of Bihar is of opinion that an industrial dispute exists or is apprehended between the management of Sitaram Sah Bidi Factory, Deoghar, San-thal Parganas and their workmen represented by Santhal Pargana Bidi Labour Union, Jansagarhi, Deoghar, regarding the matters specified in Annexure "A",

And, whereas the dispute is not likely to affect more than one hundred workmen,

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor of Bihar is pleased to refer the said dispute to the Labour Court, Ranchi, constituted in State Government Notification No. III/D1-12047/57 L-13149 dated 26-7-1957.

Annexure "A"

Whether the closure of the factory is justified; if not, whether the workmen should be reinstated and compensated and what should be the quantum of compensation,

By order of the Governor of Bihar S/d. C. L. Raza 15/1 Under Secretary to Government"

The submission made on behalf of the petitioner is that this notification is ultra vires and without jurisdiction because there could be no industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act after a real and bona fide closure of the factory by the petitioner. It is prayed on behalf of the petitioner that there should be a writ in the nature of mandamus commanding respondent No. 2, namely, the Presiding Officer of the Labour Court at Ranchi, not to take further proceedings under the Government notification.

2. There is no counter-affidavit on behalf of the respondents. There is no appearance on behalf of respondent No. 3, namely, the workmen represented by the Santhal Parganas Bidi Labour Union, Deoghar, and the allegation of the petitioner that the closure of the business was real and bona fide has not been controverted.

3. The main submission made by learned counsel On behalf of the petitioner is that the notification of the State Government made u/s 10(1) of the Industrial

Disputes Act is ultra vires and without jurisdiction, because there was a real and bona fide closure of the factory on 30-5-1957, and there could be no industrial dispute in the eye of law on 15-1-1958, when the State Government made the notification u/s 10(1) of the Industrial Disputes Act. In our opinion the argument addressed on behalf of the petitioner is well founded and must prevail. It is true that the expression "Industrial dispute" has been widely defined in Section 2(k) of the Industrial Disputes Act, but the definition in Section 2(k) must be construed in the context of other provisions of the Industrial Disputes Act, which, taken as a whole, assumed the continued existence of an industry.

If, therefore, there was a real and bona fide closure of the business by the petitioner on 30-5- 1957, there was no industry in existence on 15-1- 1958, and the State Government had no jurisdiction to make a reference of any industrial dispute on that date. That is the view expressed by a Bench of the Madras High Court consisting of Rajamannar, C. J. and Venkatarama Ayer J. in *Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another*, . An identical view has been expressed by the Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, . It was pointed out by the Supreme Court in that case that the object of all labour legislation was firstly to ensure fair terms to the workmen, and secondly to prevent disputes between employers and employees, so that production might not be adversely affected and the larger interests of the public might not suffer.

Both these objects can have their fulfilment only in an existing and not a dead industry, and, therefore, the industrial dispute as defined in Section 2(k) of the Industrial Disputes Act must refer to a dispute which arises out of an existing industry. Therefore, where the business has been closed and it is either admitted or found that the closure of the business is real and bona fide, any dispute arising with reference thereto will fall outside the ambit and purview of the Industrial Disputes Act. The principle of that decision applies to the present case and we hold, therefore, that the notification made by the State Government u/s 10(1) of the Industrial Disputes Act on 15-1-1958, which is enclosure D to the application, is ultra vires and illegal and must be quashed by a writ in the nature of certiorari. We further hold that a writ in the nature of mandamus should be issued commanding respondents 1 and 2 not to take further action in pursuance of the notification dated 15-1-1958, which is annexure D to the application. We, however, wish to make it clear that our decision will not affect the application made by the workmen to the Commissioner of Labour and the State Government u/s 33C of the Industrial Disputes Act. That application must be dealt with and disposed of by the State Government in accordance with law.

4. We accordingly allow this application. There will be no order as to costs.