

(1966) 11 PAT CK 0024

In the Patna High Court

Tata Iron and Steel Company, Ltd.

APPELLANT

Vs

Its workmen and Others

RESPONDENT

Date of Decision : 16-11-1966

Acts Referred:

Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 — Section 2, 5
Constitution of India, 1950 — Article 19
Industrial Disputes Act, 1947 — Section 10, 19, 2, 22, 24
Mines Act, 1952 — Section 28, 36

Citation : (1967) 1 LLJ 581

Hon'ble Judges : R.L. Narasimham, C.J.;Anwar Ahmad, J

Bench : Division Bench

Judgement

R.L. Narasimham, C.J.—These two writ petitions have been filed by the Tata Iron and Steel Company, Ltd., who are employers of Bhelatand and Sijua Collieries in Dhanbad. Though, according to the recognized usage, Sunday was the weekly day of rest in these two collieries, the employers made a change and gave notice to the effect that in Sijua Colliery the weekly day of rest will be Wednesday and in Bhelatand Colliery the weekly day of rest will be Thursday, The workmen, however, did not accept this arrangement and appeared at the said collieries for work on Wednesday, 25 September and Thursday, 26 September 1963, respectively. But the collieries were closed and thereupon on behalf of the workers, two applications were made before the Regional Labour Commissioner under Sub-para. (1) of Para. 8 of the Coal-mines Bonus Scheme (hereinafter referred to as the scheme) for a declaration that there was an illegal lockout in the said two collieries on those two dates. The two applications were heard together and disposed of by the Labour Commissioner in one order in which he held that there was an illegal lockout in the two collieries. Two appeals were preferred to the Central Government Industrial Tribunal, Dhanbad, under Sub-para. (4) of Para. 8 of the scheme and the learned Industrial tribunal maintained the order of the Regional Labour Commissioner. These two writ petitions have been filed against the order of the Industrial tribunal and they will be disposed of in one judgment.

2. To appreciate the points involved, it is necessary to refer to the following admitted facts. Due to shortage of power the employers decided to stagger the weekly rest-days in their collieries. Hence, by a notice, dated 10 September 1963, a new schedule of rest-days was introduced in accordance with which Sijua Colliery was to have every Wednesday as a rest-day and Bhelatand Colliery was to have every Friday as a rest-day. In the notice it was given out that the change in the weekly days of rest will take effect from 15 September 1963 which was a Sunday. But the workers of the collieries refused to turn up for work on Sunday, 15 September 1963. Then there was some sort of negotiation and agreement between the employers and some of the workmen represented by Colliery Mazdoor Sangh by which it was agreed that the new schedule will take effect from 22 September 1963 but the workers who are respondents in these two petitions are members of another union named the Congress Mazdoor Sangh which was not a party to the agreement. This agreement, however, was not fully given effect to and on Sunday, 22 September 1963, the workers did not turn up for work in the collieries. Thereupon the employers filed two applications under Sub-para. (1) of Para. 8 of the scheme before the Regional Labour Commissioner for a declaration that there was an illegal strike on 22 September 1963. This has been dealt with in Civil Writ Jurisdiction Cases Nos. 346 to 349 of 1965 Tata Iron and Steel Co. Ltd. Vs. Workmen of Tata Iron and Steel Co. Ltd. and Others, in which also judgment is being delivered today.

3. The controversy between the employers and the workmen continued even after Sunday, 22 September 1963. When the workmen went to Sijua Colliery for work on Wednesday, 25 September 1963, the employers refused to give them any work adhering to the weekly days of rest fixed for that colliery and similarly the workers of Bhelatand Colliery were not given any work when they went to the colliery on Thursday, 23 September 1963.

4. The Regional Labour Commissioner and the presiding officer, industrial tribunal, concurrently held that in changing the weekly day of rest the employers contravened Sub-section (4) of Section 36 of the Mines Act and also Section 9A of the Industrial Disputes Act. They further held that the closure of the collieries on 25 and 26 September 1963 amounted to lookout which was illegal inasmuch as the provisions of Section 22 of the Industrial Disputes Act were not complied with.

5. Sri Balbhadra Prasad Singh for the employers raised the following two Important contentions:

(1) There was no lookout in the two collieries on 25 and 26 September 1963 and hence the question as to whether the lockout was illegal or legal did not arise.

(2) Those provisions of Para. 8 of the scheme which confer jurisdiction on the Regional Labour Commissioner to decide whether a lockout was legal or illegal and which conferred power on the presiding officer of the industrial tribunal to hear an appeal from the decision of the Regional Labour Commissioner were ultra

vires being in excess of the power conferred by the Coal-mines Provident Fund and Bonus Schemes Act, 1948 (Act 46 of 1948).

6. As regards the first contention, it was urged that though the expression "lookout" was defined in Clause (1) of Section 2 of the Industrial Disputes Act as meaning

the closing of a place of employment or the suspension of work or the refusal by the employer to continue to employ any number of persons employed by him,

nevertheless mere refusal to give employment will not amount to "lockout." The employers have to stagger the weekly days of rest mainly because of power shortage and this was done after giving due notice. Hence, according to Sri Balbhadra Prasad Singh, there was no lockout.

7. This argument, however, overlooks some of the important admitted facts. It is true that mere refusal to give employment may not amount to "lockout" unless it was done with a view to

persuade by a coercive process the employees to see the employer's point of view and to accept his demand

[see *Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others*, .]

Lockout is the anti-thesis of a strike and it is a weapon in the hands of the employer intended for the purpose of enforcing an industrial demand.

8. In the aforesaid judgment their lordships pointed out that notwithstanding the amendment made in the definition of "lookout" in Section 2(e) of the Trade Disputes Act, 1929, the essential character of a lookout continued to be the same as it was before. Here, however, from the narrative of facts mentioned in the earlier paragraphs there can be no doubt that when the employers closed Sijua Colliery on Wednesday, 25 September 1963, and Bhelatand Colliery on Thursday, 26 September 1963, they were fully aware that a section of the labourers was not willing to accept the change in the weekly days of rest. On Sunday, 22 September 1963, the workmen did not come for work and the employers were constrained to file an application under Para. 8(1) of the scheme for a declaration that there was an illegal strike. Against this background the refusal of the employers to provide employment to the workmen on 25 and 26 September 1963 in the two collieries cannot but be held to be a coercive process made with a view to compel the labourers to accept the change in the weekly day of rest brought about by the employers.

9. It is true that if the change had been brought about validly in exercise of the power conferred on the employers there may be difficulty in accepting the contention of the labourers that there was a lockout. Section 28 of the Mines Act requires that there should be one weekly day of rest. It is true that that section does not say that Sunday must be the weekly day of rest but it is not denied that there was a well-established usage in the collieries to treat Sundays as weekly

days of rest. The two lower authorities thought that if the employers wanted to change the weekly day of rest they should have complied with the provisions of Sub-section (4) of Section 36 of the Mines Act and should have given seven days" notice of the change. Admittedly only five days" notice of the change was given. In my judgment in Civil Writ Jurisdiction Cases Nos. 346 to 349 of 1965 Tata Iron and Steel Co. Ltd. Vs. Workmen of Tata Iron and Steel Co. Ltd. and Others, , I have discussed the applicability of Sub-section (4) of Section 36 of the Mines Act for changing a weekly day of rest and I have expressed] some doubt as to whether that would be appropriate. It is not necessary to decide this question finally here because I am in entire agreement with the two lower authorities that there was contravention of Section 9A of the Industrial Disputes Act. This point also has been fully discussed in Para. 5 of my judgment in those two writs which need not be repeated here in full. Section 9A of the Industrial Disputes Act lays down the procedure for change in the conditions of service of any workman in respect of any matter specified in Schedule IV and item 4 of Schedule IV deals with hours of work and rest intervals. Item 5 deals with leave with wages and holidays and item 8 deals with withdrawal of any customary concession or privilege or change in usage. The change of a weekly holiday from Sunday to Wednesday or Thursday would undoubtedly come within the scops of some if not all the aforesaid three items. If Sunday is taken as a weekly holiday item 5 is attracted. Similarly as there was a usage of keeping Sundays as weekly holidays any change would be a change in usage for the purpose of item 8. As admittedly the provisions of Section 9A of the Industrial Disputes Act were not complied with in making the change the employers were not justified in law in compelling the workmen to accept the change and if for that purpose they refused to give them employment on 25 and 26 September 1963 there can be no doubt that they had declared a lockout on those two dates. Such a lockout would be clearly illegal because coal industry being a public utility service the employers were bound to comply with Sub-section (2) of Section 22 of the Industrial Disputes Act.

10. The second contention of Sri Balbhadra Prasad Singh, however, requires elaborate consideration. Sri Ranen Roy for the workmen raised a preliminary objection against this contention urging that when the employers themselves in Civil Writ Jurisdiction Cases Nos. 346 to 349 of 1965 Tata Iron and Steel Co. Ltd. Vs. Workmen of Tata Iron and Steel Co. Ltd. and Others, , had taken recourse to Sub-para. (1) of Para. 8 of the scheme for a declaration that there was an illegal strike on 23 and 29 September 1963, it was not open to them now to contend that Para. 8 of the scheme was ultra vires. This principle, however, may not be strictly applicable where, as has been urged, there is patent want of Jurisdiction on the part either of the Regional Labour Commissioner or of the industrial tribunal to adjudicate on this question [see Farquharson v. Morgan 1894 1 Q.B. L.R. 552. If as urged by Sri Balbhadra Prasad Singh, Act 46 of 1948 did not confer power on the makers of the scheme to constitute a tribunal to decide whether a lookout or strike was legal or not, the mere consent of the employers

to submit to the jurisdiction of the tribunal for the purpose of deciding whether the strike was legal or Illegal will not deprive them of their right to urge in another application that the tribunal has no such jurisdiction.

11. The Industrial Disputes Act came into force on 11 October 1947. The Act was primarily intended to provide for the investigation and settlement of industrial disputes and for certain other ancillary and collateral purposes. The expression " industrial dispute " was defined in Clause (k) of Section 2 of the Act and " workman " was also defined in Clause (s) of the same section. Labour courts were constituted for decision of industrial disputes and Schedule II described various matters within the jurisdiction of labour courts. Item 6 of that schedule mentions " illegality or otherwise of a strike or lookout." There is thus no doubt that the labour courts constituted under the Industrial Disputes Act have jurisdiction to decide about the legality or otherwise of a strike or lockout. But the labour courts' jurisdiction to decide this Question arises only when a reference is made to the labour court u/s 19(1) of that Act by the appropriate Government.

12. A board of conciliation appointed under that Act in 1947 in connexion with certain disputes in the Bengal and Bihar coal-fields recommended the payment of bonus and establishment of a provident fund for the employees in coal-mines. With a view to implement these recommendations the Government first promulgated the Coal-mines Provident Fund and Bonus Schemes Ordinance, 1948, on 23 April 1948 which was replaced on the statute book as a permanent Act, viz., Act 46 of 1948 with effect from 3 September 1948. The scheme was originally made under the provisions of that Act. In Clause (d) of Section 2 of Act 46 of 1948, the expression " employee " was given a very wide definition as follows:

"Employee" means any person who is employed in any kind of work, manual or otherwise, in or in connexion with a coalmine and who gets his wages directly or indirectly from the employer.

It will be noticed that this definition of " employee " in that Act is very wide whereas the definition of " workman " in Clause (s) of Section 2 of the Industrial Disputes Act is some-what narrow. Section 5 of Act 46 of 1948 conferred power on the Central Government by a notification to frame a scheme for payment of bonus to employees and in that scheme to provide for all or any of the matters specified in Schedule II of that Act. There are seven items in Sch, II. Item 1 is to the following effect:

The payment of bonus dependent on the attendance of an employee during any period.

This item makes it clear that the bonus is essentially attendance bonus of the employees. Item 4 is as follows:

The conditions under which an employee may be debarred from getting the

bonus in whole or in part.

Item 7 may also be quoted:

Any other matter which may be necessary or proper for the purpose of implementing the Coal-mines Bonus Scheme.

It was in exercise of this power that the scheme was made on 3 July 1948, "Illegal strike" and "illegal lockout" were defined in Clauses (d) and (dddd) of Para. 2 of the scheme by reference to Section 24 of the Industrial Disputes Act. The various classes of employees entitled to attendance bonus were described in Para. 3 of the scheme. In Para. 6 it was expressly provided that if there was an illegal lockout, the days of absence from work during the period of the lockout shall count as days of attendance for the purpose of bonus. The amount of bonus was described in Para. 7. The date from which the bonus is payable is described in Para. 9. The other paragraphs of the scheme are of an ancillary nature. Paragraph 8, whose legality is now challenged, constituted the Regional Labour Commissioner as the proper authority before whom either the employer or the employee may apply for a decision that the strike or the lockout was illegal or otherwise. Sub-paragraph (1-A) requires him to dispose of the application within 21 days from the receipt of the same. Sub-paragraph (2) dealt with the consequence of a declaration that the strike was illegal. Sub-paragraph (4) provided for an appeal to the industrial tribunal, Dhanbad, against the decision of the Labour Commissioner and with a view to provide for speedy disposal of the appeal the period of limitation was fixed as thirty days [Sub-para. (5)].

13. From the foregoing narrative it will be clear that Act 46 of 1948 was passed by the Parliament with a view to implement the recommendation of the board of conciliation appointed under the Industrial Disputes Act for the purpose of providing for payment of attendance bonus to employees of collieries. That Act, however, left it to the Central Government to make detailed provisions in the scheme but gave some guidance as to the matters to be provided in the scheme by specifying them in Schedule II of the Act. The bonus is essentially attendance bonus and the scheme dealt with those conditions under which an employee may be debarred from getting the bonus in whole or in part. Item 7 of Schedule II further authorized the Government to provide in the scheme for

any other matters which may be necessary or proper for the purpose of implementing the scheme.

Sri Balbhadra Prasad Singh could find nothing ultra vires in the other paragraphs of the scheme except Para. 8. But he urged that the power to create a forum to decide a dispute as to whether a strike or lockout was legal or otherwise is essentially a legislative power which either should have been expressly provided in Act 46 of 1948 or else express power to create such a forum in the scheme should have been conferred in that Act itself. In the absence of any such provision, according to Sri Singh, the provisions of Para. 8 of the scheme would be in excess of the power conferred. He further urged that inasmuch as the

labour courts have been conferred jurisdiction to decide about the legality or illegality of a strike or lockout (Sch. II of the Industrial Disputes Act) conferring of the same power on the Regional Labour Commissioner by Para. 8 of the scheme would, in substance, amount to creating two parallel jurisdictions to deal with the same matter and such a power cannot be exercised by a subordinate authority, viz., the Government. According to Sri Singh there is inconsistency between the provisions of the Industrial Disputes Act and the provisions of Para. 8 of the scheme so far as the decision of a dispute about the legality or illegality of a strike or lockout is concerned and the provisions of the Industrial Disputes Act must prevail. According to Sri Singh, no provision in a subordinate or subsidiary legislation can prevail over the provisions in an Act of Parliament unless in a subsequent Act express power is conferred to override the provisions of an earlier Act.

14. In my opinion this argument though ingenious is based on a complete misconception of the provisions of Act 46 of 1948 and of the scheme. Here there can be no question of either inconsistency or repugnancy between the provisions of the Industrial Disputes Act and the provisions of the scheme. Act 46 of 1948 and the scheme were both made solely by way of supplementing the provisions of the Industrial Disputes Act in respect of disputes between the employers and employees of collieries as regards attendance bonus. The necessity for making special provision for that class of disputes arose because of the recommendation of the board of conciliation and the framers of the scheme have been very careful to ensure that there is no inconsistency between the provisions of the scheme and the provisions of the Industrial Disputes Act. The definitions of "illegal strike" and "illegal lockout" have been made with reference to Section 24 of the Industrial Disputes Act and though the Regional Labour Commissioner has got the original jurisdiction to decide any dispute about the legality or otherwise of a strike or lockout, an appeal against his decision is provided to the industrial tribunal which is one of the labour courts constituted under the Industrial Disputes Act.

15. Moreover, the provisions of Para. 8 of the scheme make it clear that the decision about the legality or otherwise of a strike or lockout is restricted to a limited purpose, viz., for the purpose of the scheme, that is to say, for the purpose of considering the eligibility of the workmen to attendance bonus during the days of strike or lockout and for no other purpose. It is provided in Para. 6 of the scheme that where there is an illegal lockout the days of idleness caused by such lockout shall be counted as days of attendance of the workman. For the purpose of attendance bonus it becomes necessary to provide a machinery for deciding whether a strike or lockout is legal or not. The provision of such a machinery will, therefore, come within item 7 of Schedule II of Act 46 of 1948 being a matter which is necessary or proper for the purpose of implementing the scheme. I cannot, therefore, accept the contention that the provisions of Para. 8 of the scheme are in excess of the power conferred by Section 5 of Act 46 of 1948 read with the various items in Schedule II.

16. Sri Balbhadra Prasad Singh is also not correct in saying that there is any conflict between the provisions of the scheme and the provisions of the Industrial Disputes Act. The Industrial Disputes Act provides for adjudication only of "industrial disputes" as defined in the Act. It does not provide for adjudication of all classes of disputes between the employees and employers. Moreover, by narrowly defining the expression "workman" it excludes from the scope of the Act disputes between those employees who are not "workmen" and their employers. Then again the jurisdiction of an industrial court to decide an industrial dispute arises only when a reference is made by the appropriate Government u/s 10 of the Industrial Disputes Act. If the Government refuses to make any such reference the labour court will have no jurisdiction to decide whether a strike is legal or illegal. Apparently when the Parliament passed Act 46 of 1948 and authorized the Government to make a scheme, they were aware that the provisions of the Industrial Disputes Act were wholly inadequate for the purpose of eligibility for attendance bonus. Hence the appropriate Government was given full power by Section 5 of Act 46 of 1948 read with Sen. II of that Act to prepare a scheme containing all provisions which are necessary for properly implementing the scheme. This power must necessarily include the power for creating a forum for speedy decision of disputes even though they may be individual disputes between the employees and their employers. The limitation of 21 days in Sub-para. (I-A) of Para. 8 for the decision of the dispute by the Regional Labour Commissioner and the limitation of thirty days for appeal by Sub-para. (5) of Para. 8 shows that the primary aim was to ensure their speedy decision so that there would be no uncertainty as regards the period for which bonus was payable to the workmen. The employees were given the right to directly apply to the Regional Labour Commissioner for decision of the dispute and the Intervention of the Government as in Section 10(1) of the Industrial Disputes Act was avoided. In my opinion, therefore, there is no inconsistency or repugnancy whatsoever between the provisions of the scheme and the provisions of the Industrial Disputes Act. It is nowhere stated in the scheme that the decision given by the authority under Para. 8 of the scheme shall be deemed to be an award of the labour court for the purpose of the Industrial Disputes Act. The decision is restricted merely to the question of liability for bonus and for no other purpose.

17. Sri Balbhadra Prasad Singh referred to *R. and W. Paul, Ltd. v. Wheat Commission* (1937) A.C. (L.R.) 139 in support of his contention that subsidiary legislation such as a bylaw which excluded from its operation the provisions of an Act of Parliament will be ultra vires and invalid. The distinguishing feature between that case and the present one has already been noticed. Not only is there no inconsistency or repugnancy between the scheme and the Industrial Disputes Act but the scheme nowhere says that for "industrial disputes" which may arise in the working of the scheme the provisions of the Industrial Disputes Act do not apply. Sri Balbhadra Prasad Singh also cited several decisions where it was pointed out that a right of appeal is a legislative power which should be

conferred by the statute. These decisions have no application here. If the Act itself had provided for a forum to decide whether a strike or lookout is legal or not, but in a subsidiary piece of legislation like the scheme or rules an appeal is provided against such a decision there may be some room for argument that such an appeal provision may be ultra vires unless express power to provide for an appeal had been conferred in the parent Act itself. Here, however, as already pointed out, the Act conferred wide power on the makers of the scheme and once it is held that the said power includes the power to create a forum for the purpose of deciding about the legality or otherwise of a strike or lookout the further provision in the scheme for an appeal against the decision of the Regional Authority cannot be assailed as ultra vires. Such a provision is very necessary so that neither the employer nor the employee is concluded by one judgment of an officer, such as the Regional Labour Commissioner without any right of appeal. On the other hand, the absence of a provision for appeal may render the scheme vulnerable as amounting to unreasonable restriction for the purpose of Article 19 [see *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, and *Chaturbhai M. Patel Vs. Union of India (UOI) and Others*,].

18. For these reasons these two petitions are dismissed with costs. There will be one consolidated hearing fee of Rs. 200 payable to respondent 1 in both these writ petitions.

Anwar Ahmad, J.

19. I agree.