

(2017) 03 AP CK 0023
In the Andhra Pradesh High Court
Case No : 4686 of 2006

The Chief General Manager	Vs	APPELLANT
The General Secretary		RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Industrial Disputes Act, 1947, Section 11
A -
Payment of Wages A

Citation : (2017) 03 AP CK 0023

Hon'ble Judges : M.Seetharama Murti

Bench : SINGLE BENCH

Advocate : P.B.Vijaya Kumar, A.Satya Prasad, Prakash Buddarapu

Judgement

1. This writ petition, under Article 226 of the Constitution of India, by the Chief General Manager, HPCL, Visakha Refinery (hereinafter, writ petitioner) filed against the General Secretary, HPCL Employees Union (Visakha Refinery) (CITU) (hereinafter, respondent) is directed against the Award, dated 09.05.2005, of the learned Chairman, Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, passed in I.D.No.170 of 2002.

2. I have heard the submissions of Sri Dr.P.B.Vijay Kumar, learned counsel appearing for the writ petitioner and of Sri A.Satya Prasad, learned senior counsel representing Sri Prakash Buddarapu, learned counsel appearing for the respondent.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: A major fire accident took place in the premises of HPCL, Visakha Refinery, on 14.9.1997. In the said accident, many lives were lost and extensive damage in crores of rupees occurred to the units of the Refinery and its buildings. Houses in the vicinity were also damaged due to explosions. The unit

was shut down, for disaster management, i.e., for repairs, restructuring and installation of new machinery in place of the damaged ones etcetera. Production in the refinery was halted upto February, 1998. About 189 employees approached the writ petitioner, on 01.12.1997, and asked for provision of basic amenities such as toilets, water, canteen, shelter etcetera. According to the said employees instead of listening to their grievances and providing the amenities, the management of the Refinery displayed, a letter, dated 01.12.1997, on the Notice Board, deducting the wages of the said employees for 9 days (1+8 days). According to the writ petitioner, the said workmen of the Refinery proceeded to the Project office instead of reporting to duty at their respective work places and that they crowded at the reception and corridor restricting the inward and outward movements of the officers and also held in confinement, the Executive Director, Visakha Refinery, General Manager (Projects), General Manager (Operations) and other officials and that they interrupted the works to be attended to by the officers and other staff of the Refinery and they resorted to certain sudden illegal acts by not attending at their respective work places and that their concerted acts amounted to illegal strike. Thus, both parties justify their respective stands and actions. The respondent Union approached the Assistant Commissioner of Labour (C) and submitted the grievances of the said employees. Conciliation proceedings were called for. The management of the writ petitioner did not attend the conciliation proceedings. On failure of the conciliation, the matter was referred to the Ministry of Labour, Government of India. The respondent filed a claim application. The same was resisted by the writ petitioner. The learned Chairman of the Tribunal answered the reference as follows: Accordingly, the reference is answered as follows:

The deduction of one-day wage of 109 employees is legal and justified. However, the 109 workmen are entitled for 8 days wages which was deducted. In the circumstances the Respondent is directed to pay the 109 workmen 8 days wages out of the 9 days wages deducted within 30 days from the date of publication of this award failing which they are entitled for the said amount with 6 percent simple interest per annum. Aggrieved thereof, the writ petitioner is before this Court.

4. The case of the writ petitioner and the submissions made on its behalf, in brief, are as follows: On 14.09.1997, a fire holocaust occurred in the premises of the Refinery. Seventeen buildings including Administrative building, Canteen, Dispensary, Laboratory, Yard Office, Training Institute, LPG Control Room, Workshop, CISF building at the main entrance and some other non- production buildings were destroyed. No production unit building was destroyed in the fire accident. Therefore, the services of all the employees were required for utilization and they were required to be present every day as per revised production schedule. The writ petitioner did not lay-off its workmen. A letter, dated 17.9.1997, was addressed to the General Secretary of Petroleum Workers Union, the recognized Union. The writ petitioner notified the reporting hours and place etcetera, with effect from 18.9.1997. The said notification was issued after

due discussions with the said recognized union. All the employees were paid salaries during the said period as if they were present and worked. The respondent Union was registered only on 02.07.1998 and the said union was not in existence when the fire broke out destroying the buildings etcetera. On 01.12.1997, around 150 workmen of the Refinery gathered at the gate of the Additional Tankage Project area of the Refinery and they were addressed by the President of the Petroleum Workers Union; and thereafter, they proceeded to the Project office instead of reporting to duty at their respective work places. They crowded at the reception and corridor restricting the inward and outward movements of the officers and also held in confinement, the Executive Director, Visakha Refinery, General Manager (Projects), General Manager (Operations) and other officials. They interrupted the works to be attended to by the officers and other staff of the Refinery. Thus, they resorted to sudden illegal acts by not attending to work at their respective work places. Their concerted acts amounted to illegal strike. By a letter, dated 01.12.1997, it was brought to the notice of the employees that petroleum industry is a controlled industry and comes under the Essential Services Maintenance Act (ESMA) and they were advised to report to duties immediately and were informed that failing which appropriate action besides deduction of days wages and penal deduction of 8 days wages will be made. The employees did not call off the illegal strike. As there was no proper cause shown by the employees for resorting to strike, the management of the writ petitioner ordered for deduction of 9 days wages from the salaries of all the employees, who were involved in it. Against the said order, the respondent Union, which came into existence on 02.07.1998, made an application before the Assistant Commissioner of Labour (Central), Visakhapatnam, on 25.11.1999 after a lapse of almost two years. A detailed counter was filed by the writ petitioner. After the conciliation failed, by the Award impugned, the Labour Court erroneously held that deduction of one day wage of 109 employees is legal and justified and that the workmen are entitled for 8 days wages which were deducted, and further directed the writ petitioner to pay to the 109 workmen, 8 days wages out of the 9 days wages deducted within 30 days from the date of publication of the award and failing which the workmen are entitled for the said amount with interest at 6% per annum simple. The said Award is illegal, arbitrary and unsustainable. The (109) employees involved in the illegal strike do not hail from the affected areas. They caused inconvenience to superiors and other co-workers in performing their duties. The Tribunal also held that the workers behaved indecently and used abusive language against the superiors. The Tribunal ought to have noted that the respondent union has no proper cause for calling for a strike and that the industrial dispute raised by the union is devoid of merit. When the Tribunal itself recorded findings favourable to the writ petitioner, it ought to have held that the punishment imposed on the employees is correct and ought not to have interfered with the penalty imposed and ought not to have passed the impugned award and ought to have dismissed the I.D., by passing a Nil award.

5. Per contra, the case of the respondent-Union and the submissions made on its behalf, in brief, are as follows: A fire holocaust occurred in Visakha Refinery is true. A large number of buildings, that is, seventeen buildings and some other non-production buildings were destroyed in the fire as stated by the petitioner is correct. No production unit was destroyed in the fire accident is incorrect. Fluidized Catalytic Cracking Unit, Power Plant-I, De-mineralized Water Plant and LPG spheres were also destroyed. The said units are production units. The respondent union was registered on 02.07.1998 is true. Only hundred (100) workmen gathered on that day at Additional Tankage Project Area and thereafter proceeded to the Project Office to represent their grievance. They proceeded to the Project Office instead of reporting to duty at their respective work places is incorrect, because there is no specific job assigned to the workmen during that period. The allegations that the said workmen restricted inward and outward movements of the officers and also held in confinement, the Executive Director, Visakha Refinery, General Manager (Projects), General Manager (Operations) and interrupted the works to be attended to by the said officers and other staff are absolutely incorrect. The workmen never resorted to any illegal strike. The writ petitioner placed a letter, dated 01.12.1997, on the Notice Board, at the evening hours, stating that the Petroleum Industry is a controlled industry and also falls under the Essential Services Maintenance Act and advised the employees to report to duties immediately and that appropriate action will be taken besides deduction of days wages and penal deduction of eight days wages will be made on failure to attend to duties. This action of the writ petitioner is totally uncalled for, as the workmen did not abstain from work and did not call for or participated in any strike. The allegations that the employees did not call off the illegal strike and there is no proper cause shown by the employees for resorting to strike and, therefore, the petitioner management has rightly ordered deduction of nine days wages from the salaries of the employees, who were involved in such strike, are absolutely false. There is no strike either legal or illegal in which the employees participated. In the affidavit, it is stated that about 150 workmen gathered, whereas action was initiated against 189 employees. Thus, the averments in the case of the petitioner are self contradictory and show that there is no basis for the action taken by the management of the Refinery. Such action cannot be taken without following due process of law. A representation, dated 07.10.1998, was made to pay the wages. As there was no response from the management, inspite of persuasions, an application was submitted to the Assistant Commissioner of Labour (Central), Visakhapatnam. Instead of implementing the award, the writ petition is filed with untenable grounds. The writ petition may be dismissed.

6. I have noted the pleadings and the submissions made in line with the pleadings of the parties. I have perused the material record.

7. Coming to the first contention that the reference is bad, the learned counsel for the writ petitioner fairly conceded that in view of the settled legal position, the said contention is not pressed and need not be decided.

8. Now, the simple questions that fall for determination are: (i) Whether the action of the management of the writ petitioner/Refinery against 109 workmen in deducting 9 (1+8) days wages in the wage period of December 1997 is legal or justified?

(ii) To what relief?

9. In the light of the facts and submissions, I have examined, in detail, the factual matrix and the evidence borne out by the record. A major fire incident/accident occurred in the Refinery, on 14.9.1997, and that many lives were lost and extensive damage in crores of rupees occurred to the units of the Refinery and its buildings; and, that houses in the vicinity were also damaged due to explosions is undisputed and admitted. The unit was shut down, for disaster management. Production in the refinery was halted upto February, 1998. The writ petitioner did not lay-off its workmen and paid full salary for the period, even though there is no production for six months on account of shut-down. As admittedly some of the production units were not affected and as the services of all the employees were required for utilization, they were required to be present every day as per revised production schedule. The writ petitioner notified the reporting hours and place of reporting etcetera with effect from 18.9.1997. The said notification was issued after due discussions with the recognized union. There is a recognized Visakha Refinery Workers Union and in that union there are 750 to 800 workers, is not in dispute. The respondent Union was not in existence as on the date of the fire accident, that is, 14.9.1997, and it was registered on 02.07.1998. On 01.12.1997, a number of employees/workmen gathered at the gate of Additional Tankage Project area of the Refinery and later, they proceeded to the Project Office is not in dispute. 9.1 The workmen of the respondent Union say that they went there to express their grievances and that they demanded basic amenities such as toilets, water, canteen, shelter etcetera, which the management failed to provide, and that the officers of the management of the Refinery refused to listen to their grievances and harassed the employees/workmen who gathered there and who resorted to peaceful protest and that the management illegally and unjustly deducted nine days wages. They also contend that the allegation of the management that they resorted to illegal strike and that they proceeded to project office without attending to the respective works at the respective workplaces in the unaffected areas is incorrect and that in-fact no jobs were assigned to the said workmen.

9.2 Per contra, the writ petitioner submits that the employees, whose wages were deducted, crowded at the reception and corridor and restricted the inward and outward movements of the officers and also held in confinement, the Executive Director, Visakha Refinery, General Manager (Projects), General Manager (Operations) and other officials and that the workmen interrupted the works to be attended to by the officers and other staff of the Refinery and that the said workmen resorted to sudden illegal acts by not attending to works at their respective work places, which were unaffected, and that their concerted

acts amounted to illegal strike. It is undisputed that by a letter, dated 01.12.1997, it was brought to the notice of the employees that petroleum industry is a controlled industry and comes under the Essential Services Maintenance Act and that they were advised to report to duties immediately and that they were also informed that on failure to attend to work, appropriate action will be taken and that penal deduction of 8 days wages will be made besides deduction of days wages. It is the further case of the writ petitioner that the said employees did not call off the illegal strike and that as no proper cause was shown by the employees for resorting to strike, the management of the writ petitioner ordered for deduction of 9 days wages from the salaries of all the employees, who were involved in it.

10. It is an admitted fact and is borne out by the evidence brought on record before the Tribunal that 109 workers, whose wages were deducted were working in the unaffected units and that in those units there are Dining Halls, drinking water and toilet facilities. There was no canteen facility as the canteen was completely destroyed. It is also undisputed that a contract was given to an outsider to supply food inside the refinery premises to the willing workers; and a sum of Rs.30/- was originally fixed to be paid to those workers who are not using the said facility. The said amount was later increased to Rs.40/-. It is also brought out in the evidence of the witness examined on behalf of the Union that, on 01.12.1997, many workers went to the office of the Executive Director and they were informed that the meeting should not be disturbed and that they have not taken permission. But, the said witness stated that he does not know as to what had happened as he did not accompany the other workmen. Another witness who was examined as WW2 stated that the workers went to demand shelter, water, toilets and canteen facilities; but, the officers of the petitioner Refinery refused to listen to their grievances. But, he agreed that there are drinking water and toilet facilities in the unaffected areas. He admitted that about 100 employees went to the office of the Executive Director and they all gathered at the office of the Executive Director during the working hours. The witnesses examined on behalf of the management supported the case of the management. The learned Chairman of the Tribunal also refereed to the evidence of MW3, Md. Moiz Ali Tankiwala, which reflects the following aspects: All the amenities were provided to the workers working in the unaffected areas. Despite the said fact, on 01.12.1997, when he was sitting in a meeting with the other officers, the workmen gheraoed the office for 5 hours preventing exit and entry including his exit. They used abusive language, raised slogans and threatened for about 5 hours. Immediately thereafter, Ex.M12, notice dated 01.12.1997, was displayed. Hence, 9 days wages of these 109 workmen were deducted. In the cross examination, he denied that his office was not gheraoed nor any offensive language was used. He denied that under the standing orders, they are not supposed to deduct the wages of the workmen. He admitted that it is correct to say that they had not issued individual notices to the workers and that a general notice was put on all notice boards and that it is true that 8 days wages were

deducted as penalty and that it is not correct to say that under Standing Orders 25, no penalty can be imposed.

11. The learned Chairman of the Tribunal also observed in the Award as follows: It is quite possible that for some grievances or apprehending grievances the mob shouted and misbehaved. I am of the opinion that the deduction of one-day wage is amply justified but deducting days wages of 109 workmen could not have been done without giving them any opportunity to explain. Thus, not only the evidence brought on record but also the findings recorded by the Chairman of the Tribunal, would lay bare that 109 employees gathered at the Project Office instead of reporting to duty though they are not working in affected areas and their units are provided with all facilities like water and toilet facilities except canteen facility. It is also borne out by record that as the canteen was destroyed, food was outsourced from an outside supplier for being supplied in the refinery premises and that workers, who were not availing that facility were initially paid Rs.30/- and later the same was increased to Rs.40/-. The evidence also lays bare that despite the said facts and the fact that large number of members of the recognized union did not raise any dispute, these (109) workmen gheraoed the office and prevented exit and entry including that of MW3 and used abusive language, shouted slogans and misbehaved with superiors. Even though the Refinery was largely affected by a major fire accident, many lives were lost and properties not only of the refinery but also that of the others were gutted in fire and were damaged due to explosions, the Management did not layoff its workmen and paid full wages for the period during which the refinery was shut down for disaster management. The writ petitioner indeed informed the workers that they were required to be present every day as per revised production schedule and also notified the places of work, as some of the production units were unaffected. The recognized Union with large number of workers as its members, very rightly, did not raise any objection and acted in a responsible manner. However, these 109 workmen were not mindful of the grave situation, which the refinery in which they are working was facing. Ignoring the welfare of the Refinery, which is providing them an opportunity to work & serve and eke out livelihood, they resorted to, to say the least, irresponsible acts at a time when they were expected to extend utmost co-operation to the management. The workmen gheraoed the office and threatened and used abusive language against the officers and behaved indecently at the project office, being quite aware that all the facilities are available in the unaffected areas and that an alternate canteen facility was also provided by outsourcing, since the canteen was destroyed in fire. In the scenario of changed organizational culture from the traditional pattern of hierarchical structure to participative management and empowerment, the workers are required to be responsible and mindful of the fact that the health of the Industry/Factory, which contributes to National Wealth and provides their bread and butter, is paramount and that the workers cannot adopt an attitude like come what may we want our pound of flesh. In the facts and circumstances of the case there is no justification for illegal acts and the

concerted acts of striking work at a crucial period when the refinery's position was precarious. In fact the Tribunal also found that the acts indulged in and the strike resorted to by the workmen deserved wage cut, but, held that the deduction of one-day wage of 109 employees is legal and justified, but, assigned no reasons for coming to a conclusion that penalty of 8 day wage cut need not be imposed. Having regard to the grim and gloomy situation in the refinery and the untimely unwarranted acts of the workmen, this Court finds that there is no place for mercy or generosity. On the above analysis, this Court is of the considered view that the management was justified in imposing penalty of deducting (1+8) days wages.

12. Before concluding, it is necessary to refer to the facts and ratios in the following decisions: Singareni Collieries Works Union, Kothagudem, Khammam District v. Singareni Collieries Co. Ltd, Kothagudem, Khammam District was relied upon by the learned counsel for the respondent Union. The facts of the case show that a recognized Trade Union issued a notice for one day token strike along with employees of Public Sector Undertakings, Banks etc., for redressal of demands of working classes in the entire Country. The main ground of attack was that the authority who issued the order has no jurisdiction to invoke Section 9(2) of Payment of Wages Act, 1936, which deals with deduction of wages for absence from duty. This Court held that the said Section has no application to the facts of that case as the employees were admittedly drawing wages more than Rs.6,500/- per month. In the case on hand, no such contentions are raised on behalf of the workman. Further, to meet this contention, the learned counsel for the writ petitioner-refinery relied upon the decision in Divisional Secretary, APSRTC, National Mazdoor Union, Sangareddy v. APSRTC . In this decision, the facts show that 69 conductors and 71 drivers who are members of the Union went on strike for two days in protest against an assault of employees of a Depot by some antisocial elements and, therefore, an order was passed for recovering eight days wages from the said conductors and drivers as their explanation was found unsatisfactory. This Court, while holding that the Corporation was justified in imposing penal wage cut for 8 days, as stoppage of work caused great inconvenience to the public, held inter alia that even if provisions of Payments of Wages Act have no application to the members of the petitioners-Union, still the authority, who passed the order, imposing penal wage cut has got right and jurisdiction to impose such penalty. Turning to the decision in D.Balaiah v. The Secretary, Indian Detonators Ltd, Kukatpalli, Hyderabad relied upon by learned counsel for both the sides, it is to be noted that the issue is as to whether a notice ought to have been given to each individual employee before the penal wage cut was imposed. In this cited decision, the facts disclose that a general notice was displayed on the notice board but, individual notices were not given to the workmen. This Court held that while it is true that notice should be given, it is not necessary it should be given in any particular form nor is it necessary that it should be sent individually. This Court also held that a general notice is sufficient so long as the workers concerned were made aware of the proposed

deduction. In the case on hand, a general notice was displayed on all the notice boards is undisputed. The decision in *The Depot Manager, APSRTC, Khammam v. The Addl. Industrial Tribunal-cum-Addl. Labour Court, Hyderabad & Another* is relied upon by the learned counsel for the petitioner in support of the contention that in a case of this nature where the issue is not one of termination or dismissal or removal of the employee, the Tribunal has no jurisdiction under Section 11-A to alter the penal wage cut as Section 11-A of the I.D. Act, 1947, has no application. The decision in *Zonal Manager, Bank of India, Chennai v. General Secretary, Bank of India Staff Union, Chennai & Another* is relied upon in support of the contention that when once the Tribunal found that the acts of the workmen are illegal and that their acts striking work are also illegal, the Tribunal ought to have held that the management is justified in imposing penal wage cut for 8 days also besides deduction of wage for one day, in view of the facts and circumstances peculiar to the case.

13. On careful analysis of the legal position obtaining and the finding supported by reasons recorded supra, this Court finds that the Tribunal ought not to have interfered with the penalty of 8 days penal wage cut, as such imposition is just and fair in the facts and circumstances of the case and as the management of the writ petitioner-refinery company cannot be faulted for doing so. Viewed thus, this Court finds that the writ petition shall succeed.

14. In the result, the Writ Petition is allowed and the Award impugned of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad in I.D.No.170 of 2002 insofar as it set aside the penal wage cut of eight days and directed the management to refund the same to the workmen with interest, if not paid within the stipulated time, is set aside and the said penalty is restored. No costs.

Pending miscellaneous petitions, if any, shall stand closed.