

(1994) 09 MAD CK 0006

In the Madras High Court

Case No : Application No's. 792 and 4751 of 1994 in C.S. No. 1053 of 1994

The Enfield India Limited

APPELLANT

Vs

Enfield Employees' Union

RESPONDENT

Date of Decision : 15-09-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Industrial Disputes Act, 1947 — Section 18, 2(g), 23, 23(c), 24
Trade Unions Act, 1926 — Section 18

Citation : (1994) 09 MAD CK 0006

Hon'ble Judges : Jayasimha Babu, J

Bench : Single Bench

Advocate : G. Subramanyan, for T.S. Gopalan, for the Appellant; Predrick Castro Walter, Counsel, for the Respondent

Judgement

Jayasimha Babu, J.—The applicant who is the plaintiff in this suit for permanent injunction, has applied for interim injunction restraining the

respondent/defendant its office bearers, members, servants or any one acting on their behalf from, in any manner, obstructing or preventing ingress

or egress of officers, supervisors, staff members, apprentices, trainees, temporaries, casuals, contract workmen of essential services and

permanent workmen, staff and supervisors who are willing to report for work, movement of finished goods, raw materials, finished components,

materials which are meant for carrying out other job works through outside contracts and also from assembling or carrying out any demonstration

shouting slogans, etc. within a radius of 100 meters from the petitioner's factory premises at Thruvottiyur, Madras-19, pending disposal of this suit.

Applicant has also sought the help and protection of the police force in implementing (he order) . The applications are supported by the affidavit of

Vijay Sachdev, Executive Director of the plaintiff who has also signed and verified the plaint.

2. The petitioner is the manufacturer of "Bullet" Motor Cycles having its factory at Thiruvottiyur. It employs about 900 workmen. The defendant is

a recognised bargaining agent to negotiate on behalf of the workmen, whose wages and other service conditions have always been governed by

settlements and awards made under the provisions of the Industrial Disputes Act from time to time.

3. It is the case of the plaintiff that prior to December, 1993 the workmen of the plaintiff were paid, apart from wages, incentive bonus which was

linked to production. The payment of such incentives would start for production above the norms fixed under the scheme. This system, according

to the plaintiff, proved unsatisfactory. The fixation of production norms for payment of incentive was a source of irritation to both parties in the

sense that when, on account of market conditions, the plaintiff was not required to maintain the level of production to reach the norms, the

workmen were not getting incentive earnings and thereby they were feeling aggrieved. When the settlement dated 3.4.1989 came to an end,

pursuant to the charter of demands submitted by the respondent/Union on 6.11.92 several bilateral discussions took place after the intervention of

the Joint Commissioner of Labour, the issues were amicably settled and a settlement was arrived at in the course of conciliation on 8.12.1993.

Clause, 3, 28 (b) (c), 30 and 32 of that settlement being material, they are set out below:

(3) Role of the Union and Workmen.- In order to achieve the objectives spelt out in clause 1 above, the Union and the Workmen commit as

follows:

a. The Workmen will accept and adopt improved technology, process changes, modernisation and shall not make any monetary demand for

increase in production productivity arising therefrom.

b. The Workmen will willingly co-operate with the management in their efforts to develop and manufacture new models and variations in the

existing models, produce adequate spare parts there of without, in anyway, affecting production and quality, so as to increase the market share of

our products and spare parts at home and abroad.

28. Flexibility in operations:- In order to provide for flexibility in operations, it is agreed to by both parties that:

(b) employees will extend whole hearted support for introduction of new manufacturing systems and technological changes and help to attain

optimum utilisation of machines, reduction of wastages etc.

(d) Employees will undertake multi machine operations, multi-shilling and shall also accept inter-department deputations based on his skills and

suitability wherever required.

30. Period of Settlement:- This agreement is in full and final settlement of all the demands made by the Union on behalf of the employees and will

come into effect from 1.12.93 and will remain force up to 31.12.96 and thereafter until duly terminated as per statute and replaced by a new

settlement.

(32). Payment of Settlement Benefit:- It is clearly agreed by both the parties that the settlement benefit is a package deal and employees hereby

agree to exceed existing norms of production/productivity and will increase production/productivity as required by the Management, based on the

capability to produce within the eight hours working shift time. The system of groups and norms stands cancelled. The production output of the

plant will be governed by the market demand and by the capability of the manufacturing resources, including man power, machines, etc. Within the

stipulated hours of work. Therefore, if at any point of time, the employees fail to increase production/productivity as required in this settlement,

appropriate action under the Standing Orders will be instituted.

4-A. On the same day, two other settlements in the Court of conciliation between the parties were signed - one providing for payment of bonus for

the years 1993 to 1996 in accordance with the formula set out in the agreement, and the other providing for a New Vehicle incentive scheme

applicable from 1.12.93 which superseded the incentive/bonus scheme in operation prior to that date. The scheme is to be in force till 31.12.96

4. It is the case of the plaintiff that there was stoppage of work on 30.5.1994 in the Engine assembly department and following the stoppage of

work, there was a discussion between the plaintiff and the defendant and an understanding was reached on 8.7.1994, which is also signed by the

present Secretary of the defendant union. By the minutes of the meeting held on

8.7.94 under the heading "agreement" it is set out in Clauses A, B and C that the executives and officers were required to supervise the production at times; that the defendant union recognised that the plaintiff shall be within its rights in supplementing its efforts to produce components, sub assemblies and main assemblies with the direct involvement of the executives/officers in production wherever necessary; and that it will be necessary for officers to personally do production activities to demonstrate the plant capabilities for achieving the production at the required level and such activities will be useful to demonstrate the correct process and practices which are to be observed for achieving higher level for production.

5. The plaintiff has averred that on 5.8.1994 one of the workmen in the machine shop was asked to do boring on gear box cases at a minimum rate of 14 pieces per hour i.e., a total of 100 pieces in a shift. The workmen challenged that it would not be possible to complete 14 pieces in a hour and, therefore, the officer of the production Department worked on the machine for more than 4 hours to demonstrate that it was possible to produce 14 pieces per hour. Thereafter the Secretary of the Union came on the scene and told the plaintiff that the officers could operate the machines and the workmen need not operate the machines at the levels required of them. It is stated that on 8.8.1994 that workmen did not even start the machine for the first one hour from 3:45 p.m. to 4:45 p.m. and even after commencing the operation, he continued to operate the machine at a much lower pace and did not maintain the production of 14 pieces per hour. On 8.8.1994 a warning letter was issued to the workman, Sri Vadivelu referring to his slowing down the normal production and cautioning him that if he indulged in such act of misconduct, he will be dealt with under the standing orders. When the workmen Vadivelu refused to receive the warning memo, a show cause notice was issued to him charging him with the misconduct under Clause 15 (22) of the Standing orders.

6. Another workman by name Lakshmi Narayanan, as averred by the plaintiff, produced only 66 pieces in the entire shift on 9.8.1994 which is against the norms. Again on 10.8.94, also he failed to give the normal output. Accordingly, on 10.8.94 when a warning letter was served on him he refused to receive the same. Following the incident, the General Secretary of the defendant Union went from shop to shop and forced the

workmen to stop work. The workmen of the night shift on 10.8.94 struck work from 9:00 p.m. All the workmen except those in the heat treatment shop resorted to work stoppage. From 11.8.94, workmen in all the shifts joined the strike. The striking workmen were coming to the factory, making their attendance and squatting inside the premises. The striking workmen threatened the apprentices and temporary workmen also from attending to any work. Ever since the commencement of the strike i.e. 9:00 p.m. on 10.8.94, the office bearers of the petitioner Union forced the apprentices, trainees casuals and temporary workmen also from attending their work. By reason of the threat held out by the office bearers of the union, the apprentices, trainees casuals and temporaries, though they were willing to work, have been prevented from attending to their work.

7. The plaintiff has asserted that the conduct of the defendant union and its members in obstructing/preventing the movement of men, materials and vehicles into or out of the plaintiffs factory is illegal and that the plaintiff is entitled to carry on its legitimate business activities without in any manner interfering with the right of the workmen to go on strike and similarly the defendant union cannot interfere with the legitimate function of the plaintiff even while the workmen are on strike.

8. The defendant Union has filed a written statement signed by the President of the Union Mr. T. Fenn Walter contending inter alia that the suit is not maintainable, as it is an industrial dispute; that strike is a weapon in the hands of the workmen for pressing home their demands and that the relief sought for by the plaintiff in this suit cannot be granted. It is the case of the defendant that the workmen have not indulged in any violent activities. It is however not disputed that they are preventing the movement of materials goods into and out of the premises of the plaintiffs factory, and that they have advised persons having business/work in the factory such as trainees not to go to the factory; According to the defendant, the apprentices, trainees and casuals have stopped coming to the factory on their own accord and not on account of any interference by the defendant.

It is also the case of the defendant that they have not prevented the officers from entering into the premises of the plaintiff factory.

9. The settlement dated 8.12.93 is characterised by the very Union which entered into that settlement after negotiations spread over one year as an

"immoral" settlement, and Cl. 32 of the settlement is now sought to be disowned by the defendant Union. Though it is claimed that the strike is not

related to any matter covered by the settlement dt. 8.12.1993, it is admitted that the worker on have struck work on account of show-cause

notices issued to the two workmen, who had failed to maintain the level of production required of them in accordance with Cl. 32 of the settlement.

According to the workmen, Cl. 32 vests on arbitrary power in the management to decide the hours of production.

10. The Joint Labour Commissioner's advice to the workmen not to commence any direct action or to indulge in any illegal activities apparently

has not been accepted to the Union. The advice so given in the letter dated 10.8.94 was followed by a further letter of 30.8.1994 whereby the

workmen were requested to call off their strike and restore cordial working relations as only such a situation would pave the way for fruitful talks.

This request also did not elicit any positive response from the defendant and the strike continues.

11. The defendant has contended that this suit and the application are not maintainable on the ground that the dispute is an industrial dispute and

therefore this Court does not have jurisdiction to entertain a suit for permanent injunction in relation to such a dispute. The Supreme Court in the

case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, has laid down the principles governing the

jurisdiction of the Civil Court in relation to an industrial dispute. The principles so laid down are (1) If the dispute is not an industrial dispute nor

does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court. (2) If the dispute is an industrial dispute

arising out of a right of liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to

the election of the suitor concerned to choose his remedy for the relief. (3) If the Industrial dispute relates to the enforcement of a right or an

obligation created under the Act, then the only remedy available to the suitor is to get the adjudication under the Act (4) If the right which is sought

to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either under Sec. 33C or the rising of an

industrial dispute, as the case may be.

12. In this case, the plaintiff is not seeking to enforce any right created by the Industrial Disputes Act. The relief sought is one of injunction to prevent the employees from interfering with the plaintiff's legal rights, under the general or common law in relation to the movement of men, materials and vehicles into and out of the plaintiffs factory. The relief so sought is not one which can be granted by the authorities constitute under Industrial Dispute Act. The plaintiff has not questioned the right of the defendant to go an strike and that right is not sought to be interfered with by the suit. I therefore hold that the present suit is maintainable and the same is not barred expressly or impliedly by any of the provisions of the Industrial Disputes Act or Trade Unions Act.

13. The case of the workmen is that strike being the collective weapon of the workmen in their process of bargaining with the employer with regard to their terms and conditions on their services, there should be no interference with the exercise of that right. Strike is defined u/s 2(g) of the Industrial Disputes Act as follows-

Strike"" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal or a refusal under common understanding, of any number of persons who are or have been - so employed to continue to work or to accept employment.

Thus strike means a cessation of work by the employees acting in combination, or a concerted refusal to continue to work or to accept employment. None of the provisions of the Trade Unions Act or of the Industrial Disputes Act confer a right on the striking workmen to obstruct the ingress and egress to the premises of the employer or interfere with the movement of men, materials and vehicles into or out of the premises of the employer. The right of the workmen are protected in the manner and to the extent provided in the Trade Unions Act, Industrial Disputes Act and other enactments governing labour and industry.

14. In this context, it is useful to refer the following observations by a Division Bench of Karnataka High Court in the case of Chandrana Brothers v. Venkata Rao (1976) 1. Kant L.J. 245.

The workers may resort to peaceful picketing i.e., the marching to and from 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 ass it 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 docs 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 be comes 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 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 by deliberately standing in their way or catching hold of their arms, they arc also not entitled to obstruct passage of vehicles by lying clown in the highway in front of them or otherwise blocking the highway. 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 intangible 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 plaintiffs business, then such acts would not be

protected.

15. Learned Counsel for the defendant, however, placed reliance on the following observations made by a learned Single Judge of this Court in the

decision reported in Rama Vilas Service Ltd. and Another Vs. Simpson and Group Companies Workers' Union and Another,

If the cessation of work is the result of strike, it is not possible to lend the 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 management in the course of their trade.

16. Mr. G. Subramaniam, Learned Senior Counsel for the plaintiff submitted that these observations having been vacated by the Division Bench of

this Court by the judgment rendered in appeal against that judgment, no reliance can be placed on these observations. Counsel invited attention to

the Judgment of the Division Bench reported in 1980 II LLW 402 Sri Rama Vilas Service Ltd. and Another v. Simpson Group Company Union

and Another wherein it has been observed at para 3:

Under these circumstances, we are of the opinion that the interpretation of S. 18 of the Trade Unions Act, 1926, as well as the scope and

jurisdiction of the Civil Court to interfere with the strike or any particular activity on the part of the workers are all matters which can be considered

in appropriate cases, and, having regard to the subsequent development, it is not necessary to express any opinion on any of these matters in the

present case, and in view of the very reason, we vacate the observations as well as the conclusion of the learned Judge on this aspect of the matter.

17. Learned Counsel for the plaintiff further submitted that this Court has in circumstances which were similar, granted interim injunctions

restraining striking workmen from interfering with the movement of men, materials and vehicles into and out of the employer's premises and had

directed the police to ensure the implementation of the orders so granted. Learned Counsel referred to the decision of this Court in K.C.P. Ltd. Vs.

Inspector of Police, Tiruvottiyur and others, Audco India Ltd. Vs. The Audco India Employees' Union and Others, Indian Organic Chemicals

Limited v. Superintendent of Police, 1980 II LLN 404. Counsel also relied on the decisions of the other High Courts granting similar interim

injunctions in the case of Simpson (sic) Group Companies Workers and Staff Union Andco Batteries Limited 1992 Lab. I.C. 414, Balakrishna

Transports v. Superintendent of Police, 1990 I LLN 907, Indian Express Newspapers v. T.M. Nagarajan 1988 II LLN 220 All India Export

Promotion Council v. All India Export Promotion Council Employees Union 1988 II LLN 894.

18. Counsel also relied on the decision of the Division Bench of this Court in the case of Sri-la-Sri Sivasubramanyananda Swami Vs. Sri-la-Sri

Arunachalasamy Chidambaram and Another, in support of his submission that the Civil Courts, in exercise of their inherent powers under S. 151 of

the C.P.C. may issue directions to the police to extend their aid in execution of decrees or orders or to implement orders of injunction passed by

Civil Court.

19. The view taken in the decisions relied on by the counsel for the plaintiff is that while the workmen undoubtedly have a right to strike, and may

exercise that right by lawful and peaceful means, the right to strike does not extend to stop ping of movement of men and materials into or out of

the premises of the employer and that in appropriate cases, the police may be directed to ensure the implementation of the order.

20. The defendant union after having entered into a long term settlements with the plaintiff, in the course of conciliation, has commenced and is

continuing a strike apparently for the purpose of re- negotiating a clause which the Union now regards as arbitrary and immoral. It is not in dispute

that the settlements were reached with a view to maintain industrial peace for the duration of the settlement and to enable the company to

modernise and adopt a manufacturing system which can react quickly to the demands of the market for higher volumes or change in models of the

two wheelers manufactured by the plaintiff company. The settlements provide for payment of bonus, incentives and other benefits. The settlement

provides for flexibility in operation and the payment of settlement benefits is ""as a package deal"". The workmen on their part have agreed to

increase production and productivity ""based on the capability to produce within eight hours working shift time"", and the workmen have agreed that

in the event of failure to increase production/productivity in terms of the settlement, the employer may institute action under the Standing Orders.

21. The on going strike is thus prima facie one which is in respect of a matter covered by a settlement which is in operation and attracts the

statutory prohibition under S. 23 (c) and is thus rendered illegal under S. 24 (i) of the Industrial Disputes Act. The strike continues despite advice

of the Joint Labour Commissioner not to resort to direct action, and his further request to call off the strike and restore cordial working conditions

in order to pave the way for fruitful results.

22. The plaintiff has placed before Court copies of the export orders and the orders from the Law enforcing agencies of several states for the

"Bullet" motor cycles. It is submitted that apart from the financial loss and damage caused to the plaintiff, the national interest in maximising exports

and the public interest in meeting the essential requirements of the Border Security Force and of the Police Force in Assam, Delhi, Bombay,

Bhopal, Karnataka, is being adversely affected by reason of the actions of the defendant union and its members.

23. The plaintiff has also produced letters from its officers as also the letter of the defendant union to the Industrial Training Institute to show prima

facie, that the defendant and their members are threatening, and preventing the movement of men and materials into and out of the plaintiff factory.

24. At the hearing of these applications, though it was submitted that defendant has not resorted to any violence, it was nevertheless asserted that

the defendant has a right to prevent the movement of the materials and goods as also that of the contract workmen, into or out of the plaintiffs

factory.

25. The plaintiff, has made out a prima facie case for grant of temporary injunction, and the balance of convenience is in favour of the plaintiff. The

strike is prima facie one which is in contravention of Ss. 23 and 24 of the Industrial Disputes Act, and the actions as also the stand of the defendant

clearly shows that quite apart of engaging in the strike, defendant and its members are obstructing and preventing the movement of materials and

goods, as also of apprentices and workmen of the contractors. National and Public interest are adversely affected by reason of the vehicles not

being exported in fulfillment of export orders, and the vehicles not being supplied

to the police force in several parts of the country who have placed orders for these vehicles. The interim injunction will not in any way interfere the defendants right to strike or with the exercise of any other rights conferred by the Industrial Disputes Act or the Trade Unions Act.

26. The workmen, even if their strike be illegal, have a right to carry on peaceful picketing. They may do so without blocking the ingress and egress

to the plaintiffs factory and at a distance 100 to meters away from the factory. As rightly contended by the counsel for the defendant the workmen

would be driven to picket before the factories of others if the picketing is to be beyond 100 meters. In the result, there shall be an interim injunction

restraining the respondent/defendant, its office-bearers, members, servants, agents or any one acting on their behalf from in any manner obstructing

or preventing ingress or egress of officers, supervisors, staff members, apprentices, trainees, temporaries, casuals, contract workmen of essential

services and permanent workmen, staff and supervisors who are willing to report for work, movement of finished goods, raw materials, finished

components, materials which are meant for carrying out other job works through outside contracts and also from assembling carrying out any

demonstration, shouting slogans etc., within a radius of 10 meters from the petitioner's factory premises at Thiruvottiyur Madras-19. The police

authorities shall provide such assistance as may be essential for implementing this order.