

(1969) 10 BOM CK 0002

In the Bombay High Court

Case No : Spl. Civil Application No. 859 of 1966

The Engineering Mazdoor Sabha

APPELLANT

Vs

S. Taki Bilgrami

RESPONDENT

Date of Decision : 16-10-1969

Acts Referred:

Citation : (1971) 1 LLJ 77 : (1970) MhLj 734

Hon'ble Judges : K.K. Desai, J;G.N. Vaidya, J

Bench : Division Bench

Judgement

K.K. Desai, J.—The question which is raised on behalf of the workmen does not relate, in our view, to the question of the lock-out being illegal but to the question of the company having proved facts which absolved the company from payment of any wages to the workmen for the period of the lock-out. When the Tribunal held that the lock out was justified it was aware that the lock-out was illegal. The word "justified" was used by the Tribunal in connection with the question of relief which the workmen should be entitled to for the period of the lock-out. Now, it is true that, in law, what is illegal can never be held to be justified, but it is true that the consequence of a lock-out being declared illegal must be that, for the period of that illegal lock-out workmen must be entitled to payment of wages. It is true that, ordinarily, when workmen are, against their consent, and desire, not allowed to enter factory premises, it should be held in their favour that, for the period during which, against their consent and desire, they are not allowed to enter the factory, they should be entitled to wages. It is at the same time permissible for an employer prove that an illegal lock-out was the result of such misdemeanour and misconduct of the workmen as left no opinion to the employer but to declare a lock-out. It is permissible for an employer, in connection with claims for wages for the period of an illegal lock-out, to prove misdemeanour and misconduct of employees sufficient to absolve him from the lock-out illegal lock-out. That was the correct question which arose for decision before the Tribunal. In connection with that question, the Tribunal made findings of facts which we have already recited above.

2. The question is whether the contention made by Mr. Singhvi for the workmen that, the Tribunal was not entitled to hold that company was absolved from liability to pay any amount for the period of the illegal lock-out, is correct. It appear to us that the defence by the employees was similar to ordinary defence in claims between employers and employees for payment of wages and specific performance of contracts between two parties to contract Non-performance by one of the promisees always be justified by referring to the failing of the promisor to do the needful for carrying out of the contract. The findings of facts made by the Tribunal were to the effect the because of certain provisions in the Industrial Disputes Act, the lock-out must be held to be illegal; but the lack-out was the result of misdemeanour and misconduct or the workmen, which went to the length of endangering the lives of loyal workmen and officers of the company. It had the effect of destroying the credit of the company with its customers. It had the effect of inflicting heavy financial losses on the company. It these factors were not sufficient to destroy the claim of the workmen for payment of wages the award of the Tribunal of demand can be set aside. In out view, however, the Tribunal was right in negating the first demand made on behalf of the workmen. The first contention, therefore, fails.

3. (The rest of the judgment is not material to this report)