

Emperor Vs. A.A. Alwe

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Court : Mumbai

Decided On : Aug-28-1935

Reported in : AIR1936Bom5; (1935)37BOMLR892

Judge : John Beaumont, Kt., C.J. and ;N.J. Wadia, J.

Appeal No. : Criminal Appeal No. 592 of 1934

Appellant : Emperor

Respondent : A.A. Alwe

Disposition : Appeal dismissed

Judgement :

John Beaumont, Kt., C.J.

1. This is an appeal by the Government of Bombay against the acquittal of the accused by the Chief Presidency Magistrate. The accused were charged with committing an offence under Section 17 of the Trade Disputes Act of 1929, in that they instigated and declared an illegal strike. The strike in question was a strike of the textile industry throughout the whole of India, and it was declared on April 23, 1934, as a result of a resolution passed by a body called the All-India Textile Workers' Conference, on January 28, 1934. The conference was called by a body called the Bombay Girni Kamgar Union, in which all the accused were interested.

2. The conference formulated twenty demands, which they proposed and hoped to secure as a result of the strike. The resolution of the conference and the twenty demands are contained in exhibit A. Four of those demands, namely, those numbered 3, 17, 19 and 20, were demands of a political character, which could only be granted by Government, or as a result of legislation.

3. Section 17 of the Trade Disputes Act provides that ' if any person declares, instigates, incites others to take part in or otherwise acts in furtherance of, a strike or lock-out which is illegal under the provisions of section 16, he shall be punishable' as therein provided.

4. 'Strike' is defined in Section 2, Sub-section (i), as meaning 'a cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.'

5. Section 16 defines a strike, which is illegal. A strike is illegal, which, under Sub-section (l) (a), ' has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are engaged ' ; and, under Sub-section (1) (ff), ' is designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action.'

6. The sub-sections are connected by the copulative ' and,' so that a strike rendered illegal is one which falls within the terms of both sub-sections, The class of strike, therefore, which is rendered illegal, is one, which has objects beyond the furtherance of a particular trade dispute, and which is designed or calculated to coerce Government by inflicting severe, general and prolonged hardship upon the community.

7. The Chief Presidency Magistrate held that, in this case, the conditions of sub-cl. (a) were complied with, because the strike had objects other than the furtherance of a trade dispute within the textile trade ; and, with that decision, I entirely agree. It was argued on behalf of the accused that if the strike had both objects in

furtherance of a trade dispute within the particular trade and other objects, the sub-section did not apply. But, in my opinion, that is not the meaning of the sub-section. As the strike in this case had objects beyond the furtherance of the trade dispute in the particular trade, I think that the case fell within Sub-section (1) (a).

8. The real question is, whether the strike also fell within Sub-section (i) (b), and that sub-section presents certain difficulties of construction.

9. In the first place, having regard to the General Clauses Act, I think the 'Government' referred to in the section may be either the Government of India or the local Government, and the meaning of the expression 'community' must depend on what Government is referred to. If the Government referred to be the Government of India, the 'community' must mean the general public in British India. If, on the other hand, the Government referred to is the local Government, then the 'community' would mean the general public in the territory over which the local Government exercises sway. Whether it would be sufficient to bring the case within the sub-section to prove that the general public in a particular locality was subjected to severe, general and prolonged hardship, it is not necessary, in this case, to determine. At any rate, the 'community' must, in my opinion, mean the general public as distinct from any section, and particularly as distinct from the persons engaged in the particular trade to which the strike relates.

10. The next question, which arises on the construction of the section, is as to the meaning of the words 'designed or calculated.' That the words were intended to bear distinct meanings, seems to me clear from the fact that Sub-section (4) deals only with the word 'calculated' and provides that a strike 'shall not be deemed to be calculated to compel the Government unless such compulsion might reasonably be expected as a consequence thereof.' As the words are connected by the disjunctive 'or,' it is sufficient to prove either design or calculation.

11. In my opinion, the word 'designed' is equivalent to 'planned.' The section does not say by whom the design is to be formed ; but, I take it, that it must be by the persons responsible for the strike. I think, therefore, that the Court has to determine whether the persons responsible for the strike designed or planned to inflict severe, general and prolonged hardship upon the community and thereby to

compel the Government to take or abstain from taking any particular course of action. Difficulties may no doubt sometimes arise, because the persons responsible for a strike may not all have the same design or plan. Some of them may design that the strike should have objects which would render it illegal under Section 16, whilst others may be in favour of confining the strike entirely to the furtherance of a particular trade dispute. But, whatever the difficulties may be, the Court has to determine what the design of those responsible for the strike was at the time when they instigated it or did the other acts specified in Section 17.

12. On the other hand, the word 'calculated' seems to me to be directed to probable consequences which may be expected to follow from the strike, apart from what was in the minds of those responsible. In order to show that the strike was calculated to have the effect referred to in Sub-section (1) (b), I think the Court must hold, having regard to the nature of the strike and the circumstances prevailing at the date of the instigation or other acts specified in Section 17, that the natural and probable consequences of the strike will be to inflict such severe, general and prolonged hardship upon the community that either the Government of India or the Local Government may reasonably be expected in consequence thereof to be compelled to take or abstain from taking any particular course of action.

13. The Chief Presidency Magistrate held that all the accused, except accused No. 8, instigated this strike, and I see no reason to differ from him in that finding. But he held that, although the strike fell within Sub-section (1)(a) of Section 16, it was not proved that it was designed or calculated to inflict severe, general and prolonged hardship upon the community as distinct from those engaged in the textile industry ; and the question in this appeal really is, whether that part of the decision is right.

14. The Advocate General relies mainly on the word 'designed'. His argument is that the accused are intelligent and sincere labour leaders, that the objects of the strike included obtaining political concessions from Government which the accused, if they were really in earnest, must have intended to compel Government to grant, that the only possible means of compulsion would be by the infliction of

severe, general and prolonged hardship upon the community, and that we ought to hold therefore, that that was the design of the accused.

15. It is true that the accused in their speeches and also in their statements to the Court attached great importance to,-what I may call,-the political part of their demands, and, further, expressed the belief that the strike would have serious consequences. Some of the accused, particularly accused Nos. 2, 5 and 6, expressed in some of their speeches the hope and belief that other industries would join in the strike. But there is no evidence that any attempt was made to induce other industries to join in the strike. It is true also that one cannot divide the community into water-tight economical departments, and that severe loss suffered by those engaged in the textile trade would be bound to occasion loss, direct or indirect, to persons engaged in other industries.. But, pecuniary losses occasioned to individuals or industries cannot be said to amount to severe, general and prolonged hardship to the community. In my opinion, in the absence of any evidence of any attempt to induce those engaged in other industries to take part in the strike, we cannot say that the accused designed or planned to inflict severe, general and prolonged hardship upon the community. They may have thought that, if they could organise a general and prolonged strike in the textile industry, Government would be-likely to grant some of their demands in order to save the industry from ruin and in order to avoid loss of revenue. The accused, I think, can hardly have supposed that their more extreme demands would be likely to be granted by Government, whatever the result of the strike.

16. In my view, therefore, the evidence is not sufficient to show that the accused designed to bring compulsion to bear on Government by inflicting, upon the community, severe, general and prolonged hardship. Nor, in my opinion, can it be said on the evidence that the strike was calculated to produce such a result. The textile industry is not an industry, like the transport industry, in which one might say, from the nature of the case, that any prolonged stoppage would be bound to occasion severe hardship to the community. There is no evidence at all as to the position which the textile trade occupies in the general economic life of the country. There is no evidence as to what the probable effect of a prolonged stoppage in that trade would be on the price, of clothing, or on the price obtainable

for cotton grown in India. There is really no evidence which would justify us in holding that a strike in the textile trade, however prolonged, would necessarily or probably cause severe, general and prolonged hardship to the community as opposed to those engaged in the textile trade.

17. That being so, I think the decision of the learned Chief Presidency Magistrate was right, and the appeal must be dismissed.

N.J. Wadia, J.

18. The facts in this appeal are not disputed. All the eight accused were members of the Council of Action appointed at the Conference of All-India Textile Workers, held in Bombay, on January 28, 1934, and of the Joint Strike Committee, which was subsequently appointed. The strike, which began in Bombay, on April 24, 1934, was in pursuance of a resolution moved by accused No. 7 (Nimbkar) and passed by the conference to organise an All-India Textile Strike. Within the first seven days of the strike, thirty-eight out of the fifty-two mills in Bombay had to be closed, and about 80,000 men employed in the mill industry in Bombay went out. The strike ended on June 23.

19. Under Section 16(2) of the Trade Disputes Act, 1929, a strike is illegal if it has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers are engaged, and is designed or calculated to inflict severe, general and prolonged hardship upon the community and there by to compel the Government to take or abstain from taking any particular course of action.

20. It is not denied by the prosecution that in this case there was a genuine trade dispute in the textile industry in Bombay in connection with the wage cut, the rationalisation scheme and unemployment benefits. Sixteen out of the twenty demands put forward by the strikers related to this dispute. With regard to the other four demands, namely, (3) unemployment benefit and maternity insurance at the expense of Government and owners ; (17) right of organisation, speech, assembly, etc. ; (19) trade union legislation and right of trade union organisation within Native States ; and (20) withdrawal of all repressive laws and anti-working class legislation and release of all political prisoners, there can, in my opinion, be

no doubt that these demands were not in furtherance of a trade dispute within the textile industry, that is, a dispute between employers and workmen, or between workmen and workmen, which was connected with the employment or non-employment or the terms of employment, or with the conditions of labour, of persons in the textile industry.

21. The question of the grant of unemployment benefits by Government from public funds could not be a matter of dispute between mill-workers and employers, and trade union legislation in the Indian States is a question entirely beyond the control of employers or even of Governments in British India.

22. It is argued, however, that these four demands were included in the resolution and in the speeches of the accused and in the letter sent to the Home Member, on May 9, 1934, only as part of the general demands of textile workers, and as mere labour propaganda, and were not meant to be regarded as equally important with the other sixteen or as the irreducible minimum. In support of this, we have been referred to the evidence of Mr. Joshi, a member of the Girni Kamgar Union and one of the Joint Secretaries of the Joint Strike Committee, that the Joint Strike Committee was prepared to call off the strike if sixty per cent, of the dear food allowance were restored and the trade unions recognised by the Millowners' Association, and that the twenty demands were merely matter of labour propaganda and many of them had nothing to do with the strike. This statement, however, is not borne out by other evidence. In fact, it is contradicted by the speeches and statements made by seven out of the eight accused. From these speeches and statements it is clear that the four demands, which admittedly were not directly connected with any trade dispute, were considered as important as any of the other sixteen, and it was the clear intention of those responsible for the strike that it should not be called off until all the twenty demands were granted. The view of the learned Magistrate, therefore, that these four objects of the strike were not in furtherance of a trade dispute within the textile trade, must be considered as correct.

23. The next question is, whether the strike was designed or calculated to inflict severe, general and prolonged hardship upon the community as a whole, and

thereby to compel Government to take or abstain from taking any particular course of action.

24. The strike lasted two months. Evidence has been led to show that it caused a considerable loss to the mill industry but there is no evidence to show that the public as a whole, other than that section of it which was concerned with the mill industry, suffered hardship or inconvenience which could properly be called severe and prolonged.

25. It is argued by the prosecution that the word 'designed' in Section 16 means no more than 'intended,' or 'planned,' and that the question must be judged not by the actual results of the strike but by what the accused and those who were prime movers in it intended it to produce.

26. I am not prepared to say that the word 'designed' in the section means no more than 'intended' or 'planned'. If it did, a strike in some very minor industry, which could not by any possibility cause any serious hardship to anybody outside that particular industry, could be brought within the scope of this section, if the promoters of it, out of some exaggerated notion of their own importance or for purposes of propaganda, announced their intention or hope that the strike would seriously inconvenience the whole community. Where no actual hardship of the nature referred to in the section has been caused, it must, I think, be shown that the nature of the strike; or the means which those responsible for it took to start or continue it were such that severe, general and prolonged hardship to the community as a whole must reasonably be expected.

27. In the present case, it seems to me that the evidence is not sufficient to show that such severe, general and prolonged hardship to the community as a whole was either intended, so far as the intentions of the accused can be gathered from their speeches and acts, or was likely in the natural course of things to result. Although some of the accused in their speeches referred to, the possibility or desirability of workers in other industries joining the strike, no actual attempt is proved to have been made by any of them, at any time before or during the continuance of the strike, to bring about a sympathetic general strike in other industries, and no such sympathetic strike actually occurred in any industry.

28. The learned Magistrate has held,-and, I think, rightly,--that the accused intended the struggle to be a long and severe one and that the strike was calculated to cause severe and prolonged hardship to those concerned in the mill industry.

29. From the fact that the accused had deliberately included the four more or less political demands among their declared objects, demands which they knew could only be obtained from Government and not from the millowners,-it must, I think, be presumed that the accused hoped and intended that, as a result of the hardship which the strike would cause to the mill industry, they would be able to force Government to concede some or all of the four demands. But the mere fact that they hoped to bring pressure upon Government in this way, by inflicting hardship upon a very important industry, would not bring their actions within the purview of Section 16(1) (b). The section re-, quires that the intention must have been to bring pressure upon Government by causing severe, general and prolonged hardship to the community as a whole, not upon some particular section or sections of it.

30. In my opinion, the evidence in this case is not sufficient to show that the strike was designed or calculated to cause hardship to persons other than those concerned in the mill industry. On that view, the strike cannot be considered illegal within the meaning of Section 16.

31. The acquittal of the accused was, therefore, correct, and the appeal must fail.