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Court : Supreme Court of India

Decided On : Jan-22-1976

Reported in : AIR1976SC758; [1976(32)FLR202]; 1976LabIC568; (1976)ILLJ484SC; (1976)2SCC223; [1976]3SCR228

Judge : A.C. Gupta,; N.L. Untwalia and; V.R. Krishna Iyer, JJ.

Appeal No. : Civil Appeal No. 232 of 1970

Appellant : The Statesman Ltd.

Respondent : their Workmen

Advocate for Def. : Kapil Sibbal, Adv.

Advocate for Pet/Ap. : S. Chaudhury and; D.N. Gupta, Advs

Prior history : Appeal by special leave from the Award dated the 2-9-1969 of the 5th Industrial Tribunal, West Bengal, in Case No. 321 of 1967 published in the Calcutta Gazette dated the 16-10-1969

Judgement :

v. R. Krishna Iyer, J.

1. There is a tragic touch in processual protraction as this little lis lasting a whole decade pathetically illustrates. Such lingering legal machinery is by-passed by

both sides in practice largely because, by sheer slow motion, it denies relief when needed and drives parties to seek remedies by direct action or political intervention. What elegant alibi can there be for the routine charter of demands put forward in the middle of 1966, ripening into an industrial reference in November 1966 after a flare-up of illegal strike and failure of conciliation, taking around 3 years for rendering a short award and a little over five years for reviewing it in this Court? Law-makers whose vocal concern for industrial peace and constitutional promises for the working class is being put to the test by failure in the field will, we hope, alert themselves. Labour litigation can be a, curse or dread where one side is weak, as here, and has not been able to hire legal services but has been made good by amicus curiae, and the other side, regardless of cost, is anxious to settle some principle, as counsel for the appellant impressed on us. We now move into the area of facts which wears a jural apparel.

2. The narrative of necessary facts starts naturally with a bonus dispute in the Statesman Ltd. (a newspaper with editions published in Calcutta and Delhi) which was referred to adjudication in September 1966 and was, admittedly, pending at a time when the Calcutta workers reportedly resorted to rude tactics to press an earlier charter of demands presented to the management. On September 20, 1966, events reached a crescendo of illegal and disorderly strike at mid-day with a reprisal of lock-out at mid-night so soon as the administrative officer, with police assistance, gained his freedom. Even in human affairs a storm is followed by a calm, may be. For, the two Unions, sobered, perhaps by this sudden action of the management, wrote the very next day (21st September) to the employer requesting for lifting the lock-out, proferring peaceful resumption of work and requiring at least an interim relief on the 'economic' demands. The letter speaks for itself and may be read presently. The employer was not ready to accept this assurance. The lock-out dragged on, despite the seeming offer of the olive branch by Labour.

3. Mistrust on both sides is inevitable when estrangement vitiates relations and language is suspect when bitterness is the rule of interpretation. Right or wrong, the management took the view that the offer of good behavior by the workers was conditional and not convincing, so that the lock-out was not lifted for several days.

The Deputy Commissioner of Labour, who had interceded to conciliate, had unavailingly requested the Management to lift the lock-out and had found Labour insisting on some interim 'economic' relief as a ground for withdrawal of the strike. At certain stages of conflict in this world, face saving becomes more important than heart-searching. Life is not logic and prestige amends propriety.

4. The cold-war correspondence continued for a little while more, each blaming the other, till at last the State, on November 4, 1966, referred six points of dispute to the Fifth Industrial Tribunal, Calcutta, before whom the bonus dispute was already pending. Better sense on both sides resulted in the termination of the strike and the closure, and work was resumed from November 8, 1966. The award that followed upon the dispute was rendered on September 2, 1969, nearly three years after the reference of the dispute.

5. One is led to wonder why there should have been so much delay, but the blame, if any, has to be shared between the State Government and the Tribunal. For, after the Fifth Tribunal started the enquiry and examined a few witnesses, the State Government ordered transfer of the industrial dispute to another Tribunal and, not surprisingly, omitted to communicate promptly the factum of such transfer to the affected Tribunal. Thus, although the order of transfer was made on March 31, 1967 the enquiry continued upto April 22, 1967. When actual notice of the transfer was received by the Fifth Tribunal on April 24, representation was made by it about the enquiry having commenced and, naturally, Government re-transferred the dispute to the same Tribunal. After this minor episode of transfer and re-transfer, the enquiry was continued and the award made.

6. We are now concerned only with three disputes. Of the three issues, two deal with petty items like warm coats for the subordinate staff and canteen allowance for the employees' canteen staff financially too negligible to engage the attention of this Court. The other item, which is meaty enough to merit our verdict, relates to the wages during the period of work stoppage from September 20, 1966 to November 8, 1966. The Tribunal, considering, in its totality, the facts and circumstances of the case, the share of blame on the part of each party, the role of broad justice in producing industrial peace and advertence to the relevant

materials on record, held 'that the Company should pay half the wages to the employees during the period from September 20 to November 7, 1966.

7. The Management, disappointed by this direction, as well as the orders regarding warm coats and canteen allowance, has come directly to this Court securing special leave under Article 136.

8. Even though leave has been granted by this Court, the very width of its power under Article 136 is a warning against its free wheeling exercise save in grave situations. In Bengal Chemical : : (1959)ILLJ413SC Subba Rao J. (as he then was) pointed out that

The same principle should, therefore, be applied in exercising the power of interference with the awards of tribunals irrespective of the fact that the question arises at the time of granting special leave or at the time the appeal is disposed of. It would be illogical to apply two different standards at two different stages of the same case. The same view was expressed by this Court in Pritam Singh v. State of Madras : 1950 CriLJ1270 , Hem Raj v. State of Ajmer : 1954 CriLJ1313 and Sadhu Singh v. State of Pepsu : AIR 1954 SC271 .

From this it follows that when awards of Industrial Tribunals are challenged in this Court, we have to apply those severe tests which have become part of the self-imposed restraints on its special jurisdiction.

9. What are these self-created trammels upon the exercise of this Court's power? The answer is furnished by this Court in the Associated Cement Companies Ltd., : (1972)IILLJ40SC Mathew J. followed Bengal Chemical, : (1959)ILLJ413SC (both these cases related to industrial awards challenged in appeal under Article 136 of the Constitution), where this Court had observed:

Though Article 136 is couched in widest terms, it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice causing substantial and grave injustice to parties or raising an important principle of industrial law requiring elucidation and final decision by this Court or disclosing such other exceptional or special

circumstances which merit the consideration of this Court.

The learned Judge endorsed the view in these words:

The portion of the award with which we are concerned does not raise any important principle of law requiring elucidation and final decision by this Court. Nor does it disclose any exceptional or special circumstances which merit decision by this Court. On a question like this, where the Tribunal, on a consideration of all the materials placed before it and having regard to the overall picture came to a conclusion, we do not think this Court should interfere.

10. Circumspection and circumscription must therefore induce us to interfere with the award under challenge only if extraordinary flaws or grave injustice or other recognised grounds are made out. This perspective is sufficient in itself to dispose of the two tiny items of dispute bearing on warm coats and canteen allowance. Even so, we will briefly refer to them.

11. The canteen staff claimed allowance of 50 paise per working day. There are two canteens, one for officers and the other for the subordinate staff. While the staff of the Officers' canteen are drawing the dietary allowance of 50 paise, the employees of the staff canteen are denied' this paltry sum. There is no reasonable basis for this invidious treatment and we find no ground to interfere with the Tribunal's direction that 'the Company should pay tiffin allowance at the rate of 50 paise on working days to the employees in the staff canteen.' Of course, if they take free food from the canteen they will be ineligible for the allowance since they cannot have both.

12. Equally untenable is the grievance against warm coats supplied to the subordinate staff. It is common case that the management does supply warm coats to jamadars, gate-darwans and inspectors but does not extend this warm facility to darwans and delivery peons. Calcutta cold does not spare either category and therefore no climatic distinction can be made between the two. True it is that in the charter of demands warm coats were claimed only for those employees who delivered newspapers. Even so the dispute referred to the Tribunal is in wider terms and we are satisfied that the award calls for no

interference when it states 'that all the members of the subordinate staff should be supplied with warm coats'. Of course, it need hardly be said that these employees cannot claim warm jerseys over and above coats.

13. The bone of contention between the parties bears upon the wages during the strike period. We have already indicated that the award crystallizes a discretionary conclusion reached after a survey of all the facts and animated by a sense of broad justice. The Tribunal had something to say against the workers and the management and felt impelled to state:

I find that both the parties were at fault. That being the position I am of opinion that both the parties should be held responsible for the delay in the matter of the withdrawing of the lock-out. In these circumstances, I am of opinion that the Company should pay half the wages to the employees during the period from 20th September 1966 to 7th November 1966.

Captious criticisms apart, the conspectus of relevant circumstances more or less bears out the propriety of this direction.

14. The crucial issue is as to whether we have any material to castigate this conclusion as unconscionable or injuistice, involving gross injustice, violating a well-established rule of law or otherwise attracting our special responsibility to declare the law in a twilit area of public importance to industrial life. We will examine the pertinent circum stances from this angle and it will be evident that the more we ponder the subject the more we are satisfied about the legal soundness and practical wisdom of the award, having in mind industrial peace as the goal.

15. The smouldering dispute between the Management and the workers apparently burst into flame on September 20, 1966. Going by the Tribunal's reading of the situation there was a strike that day. The pendency of certain types of proceedings before a Tribunal stamps a strike or lock-out with illegality (Section 24). While Section 23 prohibits strikes and lock-outs when proceedings mentioned there are under way, Section 24(3) absolves a lock-out of illegality if it is caused by an illegal strike. There surely was a pending industrial dispute when the Unions sprang the strike. Being therefore illegal, the lock-out that followed became a legal,

defensive measure. So far is smooth sailing. But the management cannot behave unreasonably merely because the lock-out is born lawfully. If by subsequent conduct, imaginatively interpreted, the Unions have shown readiness to resume work peacefully, the refusal to restart the industry is not right and the initial legitimacy of the lock-out loses its virtue by this blemished sequel. Nor can any management expect, as feelings run high, charge-sheets in criminal courts are laid against workers and they are otherwise afflicted by the pinch of unemployment, to get proof of good behavior beyond their written word. Nor can they realistically insist that they abandon their demands for better benefits before the lockout is lifted. In this hungry world the weaker many cannot afford the luxury of finery in speech which the happier few can afford. In the rough and tumble of industrial disputes conciliation is a necessary grace the stronger party, the socially conscious management, must cultivate and huff a flaw it must eschew. In the realistic temper of bargaining between two wings of an industry both managements and workers belong equally to the industry, for if one owns the other produces a feeling of partnership must prevail to persuade the two sides to trust each other rather than rush to find flaws in the language used. Such is the spirit of give and take which must inform industrial negotiation if peace and production are the bona fide end and national development the great concern. This broad philosophical approach amply vindicates the justice of the Tribunal's impugned award.

16. To appreciate this view, a flashback into the events around and after September 20, 1966 is helpful. The backdrop of law may be briefly recapitulated before going into factual details.

17. If the strike is illegal, wages during the period will ordinarily be negatived unless considerate circumstances constrain a different course. Likewise, if the lock-out is illegal full wages for the closure period shall have to be 'forked out', if one may use that expression. But in between lies a grey area of twilit law. Strictly speaking, the whole field is left to the judicious discretion of the Tribunal. Where the strike is illegal and the sequel of a lock-out legal, we have to view the whole course of developments and not stop with examining the initial legitimacy. If one side or other behaves unreasonably or the over-all interests of good industrial

relations warrant the Tribunal making such directions regarding strike period wages as will meet with justice, fair play and pragmatic wisdom, there is no error in doing so. His power is flexible.

18. We are heartened and strengthened in our approach by the decision in India Marine Service : : (1963)ILLJ122SC . There the Court noted that 'the attitude of the Company was a reasonable one and that it even proposed to the union and through it to its workmen that work should go on, that the dispute should be taken before the Conciliation Officer for conciliation and that in the meanwhile they were prepared to grant some interim relief to the workmen. 'In our opinion,' added the Court while the strike was unjustifiable, the lockout when it was ordered on November 13, 1958, was justified. It seems to us, however, that though the lock-out was justified at its commencement its continuance for 53 days was wholly unreasonable and, therefore, unjustified. In a case where a strike is unjustified and is followed by a lock-out which has, because of its long duration, become unjustified it would not be a proper course for an industrial tribunal to direct the payment of the whole of the wages for the period of the lock-out. We would like to make it clear that in a case where the strike is unjustified and the lock-out is justified the workmen would not be entitled to any wages at all. Similarly where the strike is justified and the lockout is unjustified the workmen would be entitled to the entire wages for the period of strike and lock-out. Where, however, a strike is unjustified and is followed by a lock-out which becomes unjustified a case for apportionment of blame arises. In our opinion in the case before us the blame for the situation which resulted after the strike and the lockout can be apportioned roughly half and half between the Company and its workers. In the circumstances we therefore direct that the workmen should get half their wages from November 14, 1958 to January 3, 1959 (both days inclusive).

The stay in strike resorted to by the workmen is unjustified and illegal in view of the pendency of the proceedings before the Fifth Industrial Tribunal and also violates the Code of Discipline. The representatives of the Unions were made aware of this fact when the management met them to discuss their demands today.

In the circumstances, the management has no option but to keep the establishment closed until such time as the workmen assure the management of normal and peaceful resumption of work

(emphasis, added)

While we deny the various allegations contained in your said Notice and hold you wholly liable for the development on 20-9-66 in suddenly advising your supervisory staff to stop all processes of work from 12.30. p.m. and creating a confusion amongst the workmen who were working all the time till then, presumably to prepare a ground for the illegal Lockout since some days past as peaceful and constitutional movement of the Unions was there to your dislike, we should tell you here and now that no useful purpose will be served by such black mailing Notice far less the cause of the industrial peace and progress of a reputable concern like 'The States man.' ...

X X X X X

You know more than anybody else that your workmen are all peace loving people and have co-operated with you all along with respect and affection. You had never any occasion to find fault with them for any indisciplined conduct. Our Unions have also a long tradition of faithful co-operation with the management in every hour of crisis and we are proud of our said lofty tradition. There was no obstruction in the movement of anybody at any stage on 20-9-66 as alleged or at all and the police ought not to have been invited in the office. Considering everything we are of the opinion that no interest of the management or of the workmen will be served by such acrimonious correspondence and any delay in the settlement of the outstanding disputes will make the situation more complex.

You are therefore requested to withdraw your aforesaid Notice, Arrange an immediate sitting with us and meet the genuine grievances of the employees, if not in-full at least as an interim arrangement and note in this context if any assurance is necessary that all along in the past the workmen will maintain peace and work normally and peacefully unless they are sufficiently provoked from your and.

(emphasis, added)

20. It is obvious that the tone of this reply is conciliatory and literally conforms to the demand for the assurance from the workmen of peaceful and normal resumption of work. It is fair to infer that the receipt of this letter should have persuaded the Management, in a spirit of goodwill, to lift the lock-out and give a trial to the workers' willingness. Is not a worker's word, until the contrary is proved, as good as his bond? Moreover, a strike is called off when the strikers agree to come back to work. Curiously enough, the management struck a discordant note in their letter two days later. Instead of a favourable response, the appellant recited the old facts and concluded:

We have no intention of keeping the office closed longer than is necessary, and as soon as the Management is reasonably convinced that discipline and normal production will be maintained and that there will be no recurrence of the acts of indiscipline which led to the illegal strike and closure, we shall take steps to open the office.

The shift in stand is obvious. The first letter merely demanded of the workmen an assurance of normal and peaceful resumption of work. When this was given the Management quietly tilted its stance and demanded that it should be 'reasonably convinced that discipline and normal production will be maintained and that there will be no recurrence of the acts of indiscipline...'. The further letter of October 31, 1966 by the Union highlights the anxiety of the workers for resumption of work. Of course, the staying power of the workers is limited and wanes after a time Naturally, they press the Management to withdraw the closure. The language of the letter Exhibit E-7 is tellingly temperate.

October 31, 1966

Assuming, though not conceding even by any stretch of imagination that there was an illegal strike as alleged by you and the lock-out for 41 days till date after the Unions' unequivocal assurance of peace and co-operation given to you on behalf of the workmen in their letter dated 21-9-66 in reply to your notice dated 20-9-66 where you asked for such an assurance. So far as the Unions' demands are

concerned, they are only of incidental nature because of the suffering thrust upon the workers on account of the unproved lock-out. We want peace and a climate where lock-out and strike will be a matter of the past. In that spirit we have selected the least controversial 11 items out of all the items of demands for immediate settlement. Hope you will appreciate the same by entering into a negotiated settlement and we assure you that if necessary we shall not even fight the Bonus case before the Tribunal if on that item also you agree to settle.

21. It was mentioned by Shri Sibbal that there were charge-sheets against the workers at the instance of the Management which embittered relations. There is also the reference in the evidence of the Deputy Commissioner of Labour that the Management was unwilling to lift the lock-out when requested and the workers were unwilling to withdraw the strike without settlement of disputes. In an escalating situation of conflict, developments lead to deterioration of industrial quiet and we have to look at the whole picture with realism.

22. There was a minor ripple of disputation as to whether the evidence recorded by the Fifth Industrial Tribunal between the date when the transfer order was passed by the government and the re-transfer order was made could be read as evidence. The Tribunal has come to the same conclusion both by excluding and by including such evidence in his verdict. Shri Kapil Sibbal has fairly taken us through these materials to convince us that the verdict cannot be deflected by eliminating or reading the disputed testimony. We feel satisfied that there is much to be said in favour of the ultimate view taken by the Tribunal that blameworthiness may be equally apportioned between the parties; Had the Management reacted with goodwill when the workers the very next day offered to be peaceful and resume work, the prolonged situation of cessation of work could have been saved. It is therefore a case which attracts Indian Marine Service, : (1963)ILLJ122SC . In that case also this Court found it fair to direct that the workmen should get half the wages during the strike period. The Tribunal's view is certainly not unreasonable. Maybe, it is a just solution. We hope that both sides, after these long years, will bury the hatched and work for the better efficiency and greater status of a leading newspaper of India.

23. Having regard to the circumstances of the case, it is proper to direct that the appeal be dismissed but the parties will bear their respective costs. Before parting with this case we deem it our duty to record our appreciation of the thoroughness of preparation of Shri Kapil Sibbal, a young advocate of promise, who has assisted the Court as amicus curiae with presidential industry and persuasive felicity.

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