

Ramachandra Spinning Mills Vs. State of Madras and anr.

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Court : Chennai

Decided On : Jul-31-1955

Reported in : (1957)ILLJ90Mad

Judge : Balakrishna Ayyar, J.

Appellant : Ramachandra Spinning Mills

Respondent : State of Madras and anr.

Judgement :

Balakrishna Ayyar, J.

1. The plaintiff is a firm of partners called Sri Ramachandra Spinning Mills, Pandalapaka. The first defendant is the State of Madras. The second defendant is one Venkata Reddi who was an employee in the plaintiff's mill. In September 1946 the first defendant appointed Mr. Sherfuddin, the then District Judge of East Godavari, as an adjudicator to report what rates of dearness allowance the plaintiff's mill (as well as another) should be required to pay to its employees.

While Mr. Sherfuddin's enquiry was in progress, Government referred to Mr. Venkataramiah the wider question of the wage structure of the textile mills in the Province. Mr. Venkataramiah made an interim report recommending that the rates of pay should be on a certain basis and on 18 February 1946 Government issued G.O. No. 4637 giving effect to his proposals. Mr. Sherfuddin made his report on 23

December 1946 and Government accepted the recommendations contained in it and directed that this should be given effect to vide G.O. Ms. 39, dated 4 January 1947.

On 19 June 1947 Mr. Venkataramiah gave his final award and in G.O. No. 3080, Development, dated 15 July 1947, Government directed that the rates mentioned in Mr. Venkataramiah's award should be implemented. The order of Government provided that the award should be in operation for a period of one year from 1 April 1947. The plaintiff paid wages and dearness allowance as laid down in the various orders of Government till the end of June 1947.

It is alleged in the plaint that it was then found that the mill was working at a loss and could not any longer carry on its business. Therefore, on 11 June 1947 the management of the plaintiff mill wrote to the Inspector of Factories notifying that they intended to shut down from 1 July 1947 until more favourable conditions appeared. Accordingly the mill was closed on 1 July 1947 and remained closed till 1 April 1948 when it was reopened.

On 10 July 1947 Government issued a Government order bearing Ms. No. 2991 in which it was mentioned that an industrial dispute had arisen between the workers and the management of the plaintiff's mill 'on the question of closure of the mill' and referred 'the said industrial dispute' for adjudication to Mr. Markandeyulu. On 11 July 1947 Government issued a further order G.O. Ms. No. 3031 under Section 10(3) of the Industrial Disputes Act (Act XIV of 1947) prohibiting the continuance of what they called the lockout in the mill.

The plaintiff applied to Government on 28 July 1947 asking that the Government order be recalled, but they declined to do so. In the award which he made on 5 January 1948 Mr. Markandeyulu took the view that the closure of the mill was not justified and recommended that Mr. Venkataramiah's final award might be given effect. The case of the plaintiff is that there was really no industrial dispute at all because the closure of the mill 'could in no sense of the term be treated as an industrial dispute within the meaning of the Act' and as such G.O. No. 2991, dated 10 July 1947, and the reference to the industrial tribunal thereunder was ultra vires, without jurisdiction and void.

The plaintiff states that G.O. No. 3031 based as it was on the previous Government order was equally ultra vires, without jurisdiction and void. However, the second defendant filed a suit, O.S. No. 349 of 1948, on the file of the Court of the District Munsif of Ramachandrapuram against the partners of the plaintiff firm claiming a sum of Rs. 497-14-6 as wages and dearness allowance for the period between July 1947 and March 1948 at the rate fixed in Mr. Venkataramiah's award.

The Collector of East Godavari on behalf of the Government also filed a criminal complaint against the plaintiff under Section 29 of the Industrial Disputes Act. In these circumstances the plaintiff prayed for

(1) a declaration that G. Os. Ms. No. 2991 dated 10 July 1947, and Ms. No. 3031, dated 11 July 1947, issued by the first defendant are ultra vires, without jurisdiction and void:

(2) an injunction against the second defendant restraining him from proceeding with the suit in the Court of the District Munsif of Ramachandrapuram, and

(3) an injunction against the first defendant from proceeding with the criminal complaint instituted in the court of the Additional First Class Magistrate, Kakinada.

2. In the statement which the Government filed they pleaded that on 10 July 1947 on which date G.O. Ms. No. 2991 was issued there was an industrial dispute within the meaning of Sub-clause (k) of Section 2 of the Industrial Disputes Act, 1947, and that in consequence they were acting well within the scope of their authority and power in referring the dispute for adjudication. Government also controverted the suggestion that the award of Mr. Markandeyulu was ineffectual and not binding on the plaintiff.

It was further pleaded that the action of the plaintiff amounted to a lockout and as the lockout had been declared illegal the plaintiff was bound to pay wages and dearness allowance for the period between 1 July 1947 and 31 March 1948. Government took the final point:

This defendant submits that this Court has no jurisdiction to go behind the order of reference and into the existence or otherwise of an industrial dispute and declare the order of reference and the award following it to be bad on that ground.

In the statement which the second defendant filed he took the following points:

(1) He did not admit that the plaintiff is a registered firm.

(2) On 10 July 1947, there was a lockout within the meaning of the Industrial Disputes Act, 1947. The closure of the mill by the plaintiff and the consequent refusal to continue to employ the second defendant and others amounted to a lockout.

(3) The closure of the mill from 1 July 1947 till 31 March 1948 was unjustified and not warranted by the state and volume of business and the income derived therefrom.

3. The following are the issues in the suit:

(1) Are Government orders No. 2291 of 1947 and 3031 of 1947 ultra vires, void and not binding on the plaintiffs for all or any of the reasons mentioned in the plaint?

(2) Are the plaintiffs a registered firm?

(3) Is the suit not maintainable under the provisions of the Industrial Disputes (Madras Amendment) Act, 1949?

(4) Has this Court no jurisdiction to try this suit?

(4A) Does the closure of the mill from 1 July 1947 to 31 March 1948 amount to a 'lockout' or not?

(5) To what reliefs are the plaintiffs entitled?

4. Issue (4A).-Section 2(1) of the Industrial Disputes Act defines the expression 'lockout' in the following manner:

'Lockout' means the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.

As the words of the definition stand, whatever be the circumstances in which he finds himself placed and whatever the strength of the agencies that forced on him the step and however impotent he may be to avoid the result, if an employer closes the place of employment or suspends work on his premises a 'lockout' would come into existence.

A flood may have swept away the factory; a fire may have gutted the premises; a convulsion of nature may have sucked the whole place underground; still if the place of employment is closed or the work is suspended or the employer refuses to continue to employ his previous workers, there would be a lockout and the employer would find himself exposed to the penalties laid down in the Act.

Mr. Markandeyulu was conscious of the difficulty raised by the words used in the definition. So he made a distinction between an act of God and a deliberate act arising from the volition of the employer. I quote his words:

Of course there may be cases where the mills have to be closed for reasons over which the management have no control and for which they cannot justly be blamed, such as an act of God. But the implied prohibition in the award of Mr. Venkataramiah and in the Government order is to the effect that the mills should not be closed for the period that the award is in force and the result of any deliberate act or omission on the part of the management.

I think that Mr. Markandeyulu was in error in not carrying his analysis further. For all purposes that ordinarily matter the antithesis does not lie where Mr. Markandeyulu put it; it does not lie between an act of God and an act of human will. When we bear in mind the scope of the Act it will be realized that the antithesis, to the word 'lockout' is to be found in the word 'strike.'

In the constant tussle between employee and employer the strike is the weapon of the former and the lockout the weapon of the latter. If a number of employees stay

away from work in pursuance of an understanding they have previously come to, there would be a strike; but if they keep away because all of them happen to have been suddenly taken ill by a wave of fever or dysentery, for instance, there would be no strike.

Absence from work even of a considerable number of persons would not become a strike unless there is an understanding behind it, and usually such an understanding is accompanied by a desire to put pressure on the employer. When a number of employees abstain from work, the test as to whether such abstention amounts to a strike or not would be found in the intention behind such abstention. If their intention is to put pressure and if with that intention they agree together to stay away from work, then there would be a strike.

The lockout is the corresponding weapon in the armoury of the employer. If an employer shuts down his place of business as a means of reprisal or as an instrument of coercion or, as a mode of exerting pressure on the employees or, generally speaking, when his act is what may be called an act of belligerency there would be a lockout. If, on the other hand, he shuts down his work because he cannot for instance get the raw materials or the fuel or the power necessary to carry on his undertaking or because he is unable to sell the goods he has made or because his credit is exhausted or because he is losing money, that would not be a lockout.

In order to avoid a shut-down being called a lockout it is not necessary that the shutdown be permanent. A factory or an industry can be 'sick' though not of course in the same manner as a labourer, if it is unable to pay its way. The duration of the inability except as evidence of bona fides is not very relevant. Where an employer suspends work and the question is whether that suspension is a lockout or not, we will have to enquire, why did he shut down? Was it a bona fide business decision or was it a move vis-a-vis the labourers employed!

In a number of cases the answer to this question would present no difficulty. If, for instance, it is seen that profits were being made and profits can still be made but nevertheless the employer shuts down, it would be legitimate to conclude in the absence of another acceptable explanation that the closure was a lockout. If on

the other hand losses have been incurred in the past and are likely to be incurred, the conclusion that it was shut down as the result of a genuine bona fide decision and that it was not lockout would be justified.

Of course, marginal cases may exist which lie on either side of the line. But the difficulty of deciding on which side of the line a particular case falls would not be a valid reason for refusing to recognize the existence of the line.

5. In the present case P.W. 1 explained why the mill was shut down from 1 July 1947. He stated that in the year 1945-46 the firm according to its way of reckoning suffered a loss of Rs. 8,354-2-6. The auditor however considered that certain items which had been charged to revenue account should have been debited to capital account and that if this were done there would have been no loss but a profit of Rs. 1,918-11-3.

But even that figure did not provide or allow for the depreciation of the machinery and buildings. P.W. 1 has stated that the machinery was purchased for a sum of about Rs. 35,000 and that other additions were made to plant and equipment for about Rs. 85,000 making the total Rs. 1,20,000. If reasonable depreciation is allowed on this figure, even the notional profit of Rs. 1,918-11-3 which the auditor discovered would cease to exist. (For more detailed figures see Exs. P. 6 and P. 6-a.) P.W. 1 also stated that for the year 1946-47 the plaintiff suffered a loss of Rs. 15,944-13-2.

He went on to explain that from 1 October 1946 to 30 June 1947 the total amount paid in pursuance of the various awards exceeded Rs. 42,000 and that in a full year the amount would come to Rs. 56,000. The question would naturally arise why in those circumstances the plaintiff reopened on 1 April 1948. P.W. 1 gave the explanation that with effect from 1 April 1948 Government had raised the controlled price of yarn and that as they had on hand stocks of cotton which they had purchased earlier at cheaper rates the position was such that they could begin business again.

Their expectations were realized and in 1948-49 the plaintiff made a small profit. But from 1 April 1949 to 31 March 1950 plaintiff again sustained loss. The

evidence of P.W. 1 appears to me to be true, and if that evidence is accepted it will be difficult to avoid the conclusion that when the plaintiff shut down the mill on 1 July 1947, they were making a bona fide business decision and that they were not enforcing a lockout.

6. Learned Counsel for the second defendant strenuously argued that no loss had been incurred and that therefore the shut-down amounted in reality to a lockout. He supported the view of the auditor of the firm for the year 1945-46 that certain costs of construction should have been debited to the capital account and said that if that had been done there would have been no loss for that year.

Now, as already explained, the notional profit was worked out without allowing anything for the depreciation of the plant and machinery and buildings and if some reasonable provision is made for this purpose there would have been no profit at all.

7. Learned Counsel for the second defendant next said: P.W. 1 admitted that the firm can manufacture 1,200 lb. of yarn per day. They have 280 working days in a year. The controlled price is Rs. 11-2-0 per 10 lb. of yarn, on that basis the value of the yarn which the factory can produce would be about Rs. 3,73,800 per year. At that rate, there was bound to be a profit. This argument merely helps to reveal the falsity involved in averages.

If a man can walk 4 miles an hour, would it be right to conclude therefrom that in a month he can walk 2,880 miles? Counsel for the second defendant advanced a third argument. P.W. 1 admitted that in 1947-48 the value of the mill was about Rs. 1,20,000. In Ex. D. 1 a petition submitted to the Government by the plaintiff it was stated:

The mill is now worth nearly six lakhs of rupees.

Therefore, he said it is wrong to say that the mill made no profits. It will not take long¹ to see the fallacy of this argument. Apart from the circumstance that the allegation in Ex. D. 1 cannot be regarded as a sober statement of fact being more in the nature of a plea in advocacy, the management could not issue a cheque

against this capital gain.

There may have been a genuine addition to the capital value. But that is not currency of the country which can be drawn on to pay wages. It will very often be found that when it is decided to wind up a concern the notional increase in capital value may be wiped out.

8. Learned Counsel for the second defendant put a series of questions to P.W. 1 suggesting how, what is now said to be a loss could be turned into profit. I do not propose analysing these suggestions, because I have no doubt whatsoever that if any businessman adopted these suggestions and made payments on that basis it would not be long before he found himself in the bankruptcy court.

Some of the other Questions put to the witness seemed to reflect on his business acumen, but that is a matter with which I am not concerned. The Court cannot decide whether a business is managed prudently or imprudently. All it can decide when a question of this kind comes before it is whether the shut-down was an honest business decision or whether it was a lockout as it is defined in the Act. After an examination of all the considerations placed before me, I have no doubt whatsoever that it was not a lockout.

9. Issue 1.--When it was reported to Government that there was a dispute between the plaintiff and the workers they employed, Government were no doubt within their rights in directing an enquiry and no one can seriously quarrel about that. An examination of G.O. No. 3031, however, shows that Government proceeded on the assumption that the act of the plaintiff was a lockout.

It has now been found that it was not so. The order of Government, therefore, being based on a misconception of facts and on an assumption which it has been found to be non-existent, it is null and void and of no effect whatsoever.

10. Issue 3.--I am unable to see how the Madras Act XII of 1949 which amends the Industrial Disputes Act, 1947, bars the suit.

11. Issue 4.--I do not find anything in the provisions of either Central Act XIV of 1947 or Madras Act XII of 1949 that deprives this Court of its jurisdiction to try this

suit. The only provision in the Central Act XIV of 1947 that has any bearing on this question is Sub-section (4) of Section 15. That applies only to awards made by tribunals and does not apply to a reference of this kind.

12. Issue 2.--The order registering the firm has been filed as Ex. P. 10 and this issue is therefore found in the affirmative.

13. In view of my conclusion that there has been no lockout it follows that the plaintiff has committed no offence by keeping their place of business shut from 1 July 1947 to 31 March 1948 and that the second defendant is entitled to recover nothing by way of wages or dearness allowance during that period.

There will be a declaration to that effect. I see no reason for departing from the normal rule regarding costs and direct that the defendant should pay the costs of the plaintiff. Time for first defendant to pay costs-three months.

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