

Andheri Marol Kurla Bus Service & Another

Vs

The State of Bombay

Criminal Appeal No. 46 of 1957

(Syed Jafar Imam, J. L. Kapur JJ)

21.04.1959

JUDGMENT

KAPUR, J. -

This is an appeal by special leave against the judgment and order of the High Court of Bombay reversing the judgment of the Chief Presidency Magistrate, Bombay, and thus convicting accused Nos. 1 & 5 under s. 31(1) read with s. 33(1) of the Industrial Disputes Act (XIV of 1947) (hereinafter called Act) and sentencing accused No. 1 to a fine of Rs. 250 and accused No. 5 to a fine of Rs. 50.

The appellants are the Andheri Marol Kurla Bus Service who was accused No. 1 (now appellant No. 1) and its Manager H. M. Khan who was accused No. 5 (now appellant No. 2). Some disputes arose between the appellant No. 1 and its workmen. On December 13, 1951, the Conciliation Officer wrote to the appellant No. 1 and enclosed the demands of the Union which were dated August 9, 1951. On December 31, 1951, the appellant No. 1 was asked to appear before the Conciliation Officer on January 9, 1952, and after getting one adjournment the appellant No. 1 appeared before the Conciliation Officer on January 17, 1952, and filed its Written Statement and raised various objections. The next date of hearing was January 31, 1952, and the proceedings went on till June 2, 1952, when the appellant No. 1 wrote to the Conciliation Officer saying that no useful purpose would be served by holding any further meetings. On May 9, 1952, the Union had also indicated to the Conciliation Officer that the negotiations had failed. On March 18, 1952, the appellant dismissed Louis Pereira, a bus conductor and proceedings were taken on a complaint by Assistant Commissioner of Labour under s. 33 read with s. 31 of the Act against 5 accused persons the two appellants and the partners of appellant No. 1. The Chief Presidency Magistrate acquitted all the accused including the appellants and held that as the conciliation proceedings had continued for a period of more than 14 days as from January 17, 1952, further proceedings for conciliation were illegal and therefore the accused persons could not be convicted under s. 31(1) of the Act. The State took an appeal to the High Court and the judgment of acquittal was reversed and of the accused persons the two appellants were convicted and the others were acquitted. The two appellants have appealed by special leave.

The question for decision is whether the conciliation proceedings could be said to be pending when Louis Pereira was dismissed. If the answer is in the affirmative then the appellants have been properly convicted and if not the conviction must be set aside. Section 31(1) makes the contravention of the provision of s. 33 of the Act an offence punishable with imprisonment for a period which may extend to six months or with fine or with both. Section 33(1) provides :

S. 33(1) "During the pendency of any conciliation proceedings before a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall :-

(a) in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending".

Therefore the question reduces itself to the meaning of the words "pendency of any conciliation proceedings before a conciliation officer".

The argument raised on behalf of the appellant is that the object of conciliation is to get a settlement made with expedition and therefore under s. 12 the Conciliation Officer was bound to make his report within 14 days of the commencement of the conciliation proceedings or within such shorter period fixed by the appropriate Government. From this it was submitted that as 14 days had expired before March 18, 1952, the dismissal could not be said to be one within the words "pendency of conciliation proceedings". The Act provides for commencement and conclusion of conciliation proceedings under s. 20 but the first sub-section of s. 20 deals with what are called utility services and sub-s. 2 of that section provides as to when the conciliation proceedings conclude. That sub-section is as follows :-

#S. 20(1) ".....##

(2) A conciliation proceeding shall be deemed to have concluded -

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under s. 17, as the case may be; or

(c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal under section 10 during the pendency of conciliation proceedings".

The provisions of sub-section 2 apply to all conciliation proceedings whether in regard to utility services or otherwise. All conciliation proceedings under this sub-section shall be deemed to have concluded in the case where no settlement is reached, when the report of the Conciliation Officer is received by the appropriate Government. The conciliation proceedings therefore do not end when the report under s. 12(6) is made by the Conciliation Officer but when that report is received by the appropriate Government. It was contended that the conciliation proceedings should be held to terminate when the Conciliation Officer is required under s. 12(6) of the Act to submit his report but the provisions of the Act above quoted do not support this contention as the termination of the conciliation proceedings is deemed to take place when the report is received by the appropriate

Government. This is how s. 20(2)(b) was interpreted in *Workers of the Industry Colliery, Dhanbad v. Management of the Industry Colliery* [[1953] S.C.R. 428.].

It was next contended that on this interpretation the conciliation proceedings could be prolonged much beyond what was contemplated by the Act and the termination would depend upon how soon a report is received by the appropriate Government. It is true that s. 12(6) of the Act contemplates the submission of the report by the Conciliation Officer within 14 days but that does not affect the pendency of the conciliation proceedings and if or some reason the Conciliation Officer delays the submission of his report his action may be reprehensible but that will not affect the interpretation to be put on s. 20(2)(b) of the Act. Section 12 lays down the duties of the Conciliation Officer. He is required to bring about settlement between the parties and must begin his investigation without delay and if no settlement is arrived at he is to submit his report to the appropriate Government. No doubt s. 12 contemplates that the report should be made and the proceedings closed within a fortnight and if proceedings are not closed but are carried on, as they were in the present case, or if the Conciliation Officer does not make his report within 14 days he may be guilty of a breach of duty but in law the proceedings do not automatically come to an end after 14 days but only terminate as provided in s. 20(2)(b) of the Act. *Colliery Mazdoor Congress, Asansol v. New Beerbhoom Coal Co., Ltd.* [[1952] L.A.C. 219, 222.]. As the conciliation proceedings were pending at the time when Louis Pereira was dismissed the appellants were rightly convicted under s. 31(1) read with s. 33 of the Act.

The appeal is therefore dismissed.

Appeal dismissed.

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