

SUPREME COURT OF INDIA

Workmen of Sur Iron and Steel Co. (P) Ltd.

Vs.

Sur Iron and Steel Co. (P) Ltd.

(J. M. Shelat and Vishishtha Bhargava JJ.)

03.02.1969

JUDGMENT

1. An industrial dispute relating to the lock-out and closure of a factory arose between respondent No. 1, Messrs Sur Iron & Steel Co. Pvt. Ltd. (hereinafter referred to as "the Company"), and its workmen represented by Sur Iron & Steel Co., Shramik Union (hereinafter referred to as "the Union"), and Sur Iron & Steel Employees' Association (hereinafter referred to as "the Association"). Three issues were framed by the Government of West Bengal and referred for adjudication to the Fifth Industrial Tribunal. These issues are as follows:-

1. Whether the lock-out of the factory with effect from 22nd April, 1962 is justified ?
2. Whether the closure of the factory from 22nd June, 1962 is real and bona fide ? Whether the closure is beyond the control of the management and in the circumstances is it justified ? and
3. To what relief, if any, are the workers entitled ?

The Tribunal answered both the first and the second questions against the workmen, holding that the lock-out was justified, that the closure of the factory was real and bona fide, and that it was beyond the control of the management and, in the circumstances, justified. Consequently, the Tribunal, by its award, held that the workers were not entitled to any relief. The Union alone has filed this appeal against this award of the Tribunal by special leave impleading the company and the Association as respondents.

2. The facts relating to the first issue, as found by the Tribunal, are that the company was carrying on business in manufacture and sales of various types of articles, such as stones-crushers, grunulators, welding transformes, fire fighting equipment, etc. The factory was situated at Nos. 8/5 and 9, Canal Street-Calcutta, and was employing more than 500 workmen. The factory used to observe every Sunday as the weekly off-day. On the 19th April, 1962, the company received a letter from the Calcutta Electric Supply Corporation conveying the information that certain restrictions had been imposed on the use of electr(sic) by the State Government, as a result of which the supply of electricity on every Saturday was to be curtailed, so that there would be no supply of electricity for running the factory from 7 a. m. to 10 p. m. on Saturdays. The letter further stated that the company should observe every Saturday as the off-day instead of Sunday. Thereupon, the company issued a notice on 20th April, 1962, informing all the workmen that, with effect from 21st April, 1962, Saturday instead of Sunday would be the off-day in the factory until further orders The notice was circulated amongst the workmen and the original one even bears a number of initials indicating

that it had been calculated(sic) amongst the staff. It appears that, in (sic) issuance of this notice, the workmen did (sic) attend the factory on Saturday, the 21st April, 1962. The next day, on 22nd April, 1962, which was Sunday and which, according to the notice, was to be a working day, the workmen again did not attend the factory to join their duties. Some of them actually collected near the gates, but they refused to do any work, claiming that the factory should be closed on Sunday as before. The management made repeated requests and tried to persuade the workmen to join work. There was partial success in persuading some of the workmen to join work, but the other workmen did not permit their going in to do the work and announced that they had decided to go on a strike. As a result of this step taken by the workmen, the factory declared the lock-out the same day on 22nd April, 1962, because the work in the factory came to a complete standstill on account of the illegal strike resorted to by the workmen. These facts have been found by the Tribunal after a full consideration of the evidence led on behalf of the company and the Union. The Tribunal also took into account subsequent correspondence which was addressed on behalf of the Union to the government authorities and indicated that the plea of the union, which was put forward before the Tribunal that the workmen tried to report for duty on Sunday, the 22nd April, 1962, but were prevented from doing work by the officers of the company, was incorrect. These findings are all findings of fact and nothing has been shown to us on behalf of the Union which would induce us to reassess the evidence and re-examine these findings of the Tribunal in this appeal under Article 136 of the Constitution.

3. On these facts, the only point that was argued before us on behalf of the workmen as that the change in the weekly off-day from Sunday to Saturday without complying with the requirements of Section 9A of the Industrial Disputes Act (hereinafter referred to as "the Act") was illegal, so that the workmen were within their rights in ignoring the notice and in insisting that they should not be made to work on Sunday, the 22nd April, 1962. On the applicability of Section 9A of the Act, the posi-(sic) (sic)ipifican be examined in two alternative aspects. Section 9A applies to matters enumerated Fourth Schedule to the Act. There does appear to be any specific entry in that Schedule which would cover a condition of I service relating to weekly off-day. In the I alternative, we can take notice of the contention put forward by learned counsel for the Union before us that the grant of weekly off-day will fall in item 4 of the Fourth Schedule. Even if this submission be accepted, it does not advance the case of the workmen, because the Tribunal has specifically found that the Government of the State of West Bengal in the Labour Department had issued a notification under Section 9B of the Act laying down that no notice under Section 9A was required to be served in respect of matters specified in items Nos. 4, 6 and 11 of the Fourth Schedule to the Act for a period of 3 months from the date of publication of the notification in the Calcutta Gazette. This notification was published on the 10th April, 1962, without complying with the requirements of Section 9A. Consequently, even if it be held that the alteration of weekly off-day from Sunday to Saturday was one of the conditions of service governed by Section 9A as falling under item No. 4 of the Fourth Schedule, compliance with the requirements of Section 9A was not required to be carried out by the company because of the exemption granted by this notification issued by the State Government under Section 913 of the Act. It is clear that the workmen went to a strike quite illegally and unjustifiably. The company had not changed the weekly off-day to suit its own convenience. It had been compelled to do so because of the curtailment of electric power on Saturdays by the Calcutta Electricity Supply Corporation under the orders of the State Government. On Sunday, the 22nd April, 1962, the workmen not only refrained from doing work and thus went on a strike, but even prevented other workmen, who were persuaded to do the work, from doing their duty. The company, therefore, could not possibly carry on its work and that situation was brought about by the workmen themselves by their illegal acts. In the circumstances, the Tribunal was quite right in

holding that the lock-out was fully justified.

4. The facts relating to the closure, as held proved by the Tribunal, may now be stated, It appears that this lock-out continued until some time in June, 1962, It was on 13th June, 1962 that the company lifted the lock-out by a notice dated 12th June, 1962, which was published in in local newspapers. By this notice, all the workmen were directed to join their duties on and from 18th June, 1962, except those against whom proceedings were pending and whose names were to be notified later. The company issued a notice on 13th June, 1961, and two other notices on 15th June, 1962, directing sonic workmen to join their duties on the dates mentioned in the notices. On 15th June, 1962, it also appears that a meeting was held in the presence of the Deputy Labour Commissioner, Sri N.C. Kandu, at which a settlement was arrived at. A draft of the settlement was prepared by Sri Kandu, in his own handwriting. The parties to this settlement were the company, the Union, and the Association. One of the terms in the settlement was that 11 workmen, who had been suspended, will apologise to the management for all that had happened during the lock-out period. The draft settlement was, however, not subsequently signed by any of the parties. The Tribunal has found that the Union also accepted the correctness of the terms of the settlement as drafted by Mr. Kandu, except this one single term relating to the 11 suspended workmen. The case of the Union was that no such term had been agreed upon and that all the workmen were to be taken back unconditionally. The Tribunal's finding, however, is that such a term was also agreed upon in the settlement, primarily based on the view taken by the Tribunal that there was no reason at all why Mr. Kandu, the Deputy Labour Commissioner, should have included such a term in the draft settlement if it had not, in fact, been agreed upon by all the parties. He was, of course, a totally independent person who was not interested in favouring the company or the workmen. Despite this agreement, the workmen did not join duty on the 18th June, 1962. It appears that, on 20th June, 1962, for the first time, 40 workmen attended the factory, but they had to work under police protection because of the agitation being carried on by the other workmen. On that day. when some of these 40 workmen were going back after duty, they were assaulted and had to be admitted in hospital. Criminal cases were instituted against some of those workmen who had assaulted them. On 21st June, 1962, about 30 workmen again attended the factory, but they had to remain inside the factory during the night as there was some row outside the factory. On 22nd June, 1962, no workmen turned up for work. The result was apart from this small number which could come and do only a little preliminary work starting the factory, the other workmen either did. not turn up to report for duty or were prevented by their fellow-workmen from doing so. The factory could not, therefore, carry on its normal work even on 20th and 21st June, 1962, and, on 22nd June, 1962, there was no possibility left of doing any work at all. Consequently on 22nd June, 1962, the management decided to close the factory and a notice of closure was hung up on the gale of the factory, while, simultaneously, copies of that notice were sent to the different authorities concerned and was also published in some local newspapers. It was the common case of the parties that, therefore, this factory never went into production at all.

5. On behalf of the workmen, a case was put forward and was sought to be supported by the evidence of some witnesses to the effort that the company had set up factories at four different places where it was carrying on the work of manufacture of the same articles which it was manufacturing earlier in this factory.

6. So that there was, in fact, no genuine closure The Tribunal has fully discussed the evidence on this question and has recorded the finding that there is no proof that the company has set up any other manufacturing undertaking It appeals that, after the closure of the factory, the company started

doing another type of business and that was to obtain articles manufactured by other manufacturers of the same type which the company was earlier manufacturing, to stamp them with its own trade-mark and to sell those articles in the market. In fact, it was because the company had put in own trade-mark on some of those articles sold by it subsequently that the witnesses on behalf of the Union stated that the company was manufacturing those very goods at some other places. The Tribunal's finding is that manufacturing business of the company was completely closed and remained closed throughout. In fact, it was not suggested before us even in the course of arguments in this appeal that any manufacturing business had been started by the company up to this time. These facts having been found on the basis of discussion of the evidence before it by the Tribunal, we have to accept their correctness and we see no reason to differ from the view taken by the Tribunal that they had been established to its satisfaction. On these facts, the Tribunal recorded the conclusion that the closure was genuine and bona fide and, further, that the closure was for reasons beyond the control of the management. In the course of arguments before us, learned counsel did not challenge the finding recorded by the Tribunal that the closure of the factory was genuine and bona fide. On the face of it, that finding could not be challenged, because it is very clear that the company is not carrying on any manufacturing business at all since 22nd April, 1962. The closure was bona fide in the sense that the company in fact ceased to carry on that industry and the step taken of the closure was not a cloak for a lock-out or for carrying on the business under some other disguise.

7. Learned counsel tried to challenge the second finding that the closure was brought about for reasons beyond the control of the company; but, on the facts found by the Tribunal, we are unable to find any force in his submission. The main point urged by learned counsel was that the company could have continued to run the business and need not have closed it if the company had properly negotiated the terms with the Union. On the face of it, this argument ignores the circumstances under which the closure was forced upon the company. The company had already negotiated settlement on 15th June, 1962, in the presence of the Deputy Labour Commissioner. It was the Union which resiled from this settlement, refused to sign it and insisted that even the suspended workmen must be taken back in service unconditionally, without even an apology. No employer could be expected to submit to such terms put up by the workmen, particularly after the settlement. The workmen, instead of seeking redress by raising an industrial dispute, conciliation or adjudication, took the step of refusing to work themselves and prevented other workmen who were willing to abide by the settlement and to join duty in order to enable the factory to carry on its work. Not only did they thus start a strike, but they even used force against other workmen to prevent them from working in the factory. If, in these circumstances, the management felt that it was not possible to carry on the work and to run the factory and decided to close it, the closure was quite clearly for reasons beyond their control. In fact, the reasons were within the control of the workmen themselves and primarily the workmen who were members of the Union and were the main agitators at all these stages. The workmen, who were members of the Association, were the persons who were willing to join and do the work. Consequently, the Tribunal was again right in holding that the case of closure of the factory by the company fell within the scope of the proviso to Section 25PH of the Act, and, since compensation in accordance with that provision had already been paid to the workmen, they were not entitled to any relief.

8. The appeal fails and is dismissed, but we make no order as to costs.