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

Vs

M/s. Sur Iron and Steel Co. (P) Ltd. and Another

Civil Appeal No. 483 of 1966

(J.M. Shelat, V. Bhargava JJ)

03.02.1969

JUDGMENT

BHARGAVA, J. -

1. An industrial dispute relating to the lock-out and closure of a factory arose between respondent No. 1, Messrs, Sur Iron and Steel Co. (Pvt.) Ltd. (hereinafter referred to as 'the Company') and its workmen represented by Sur Iron and Steel Co. Shramik Union (hereinafter referred to as 'the Union) and Sur Iron and 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 April 22, 1962, is justified" ?
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> (2) Whether the closure of the factory from June 22, 1962, is real and bona fide ? Whether the closure is beyond the control of the management and in the circumstances it is justified ? and
>
> (3) To what relief, if any, are the works 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 as beyond the control of the management and, in the circumstances, justified. Consequently, the Tribunal, but its award, held that the workers were not entitles 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 sale of various types of articles, such as Stone-crushers, Granulators, Welding Transformers, Fire Fighting Equipment, etc. The factory was situated at Nos. 8/5 and 9, Canal Street, Calcutta and was employing more that 500 workmen. The factory used to observe every Sunday as the weekly off-day. On April 19, 1962, the Company received a letter from the Calcutta Electric Supply Corporation conveying the information that certain restriction had been imposed on the use of electricity 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 April 20, 1962, informing all the workmen that, with effect from April 21, 1962, Saturday instead of Sunday would be the off-day in the factory until further orders. The notice was circulates amongst the workmen and the original one even bears a number of initials indicating that it had been circulated amongst the staff. It appears that, in pursuance of this notice, the workmen did to attend the factory on Saturday, April 21, 1962. The next day, on April 22, 1962, which was Sunday and which, according to the notice, was to be a working say the workmen against 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 announces that they had decided to go own a strike. As a result of this step taken by the workmen, the factory declared a lock-out the same day on April 22, 1962, because the work in the factory came to a complete stand-still 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 at the Government authorities and indicates that the plea of the Union, which was put forward before the Tribunal that the workmen tried to report for duty on Sunday April 22, 1962, but were prevented from doing work by the officers of the Company, were 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 re-assess 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 was that the change in the weekly off-day from Sunday to Saturday without complying with the requirements of Section 9-A 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, April 22, 1962. On the applicability of Section 9-A of the Act, the position can be examined in two alternative aspects. Section 9-A applies to matters enumerated in the Fourth Schedule to the Act. There does not appear to be any specific entry in that Schedule which would cover a condition of service relating to weekly off-day. In the 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 9-B of the Act laying down that no notice under Section 9-A was required to be served in respect of matters specified in Item 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 April 10, 1962, without complying with the requirements of Section 9-A. Consequently, even if the be held that the alteration of weekly off-day from Sunday to Saturday was one of the conditions of service governed by Section 9-A as falling under Item No. 4 of the Fourth Schedule, compliance with the requirements of Section 9-A 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 9-B of the Act. It is clear that the workmen went to a strike quite illegally and unjustifiably. The Company had not charged the weekly off-day to suit is own convenience. It had been compelled to do so because of the curtailment of electric power on Saturdays by the Calcutta Electric Supply Corporation under the orders of the State Government. On Sunday, April 22, 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 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 June 13, 1962, that the Company lifted the lick-out by a notice, dated June 12, 1962, which was published in the local news-paper. By this notice, all the workmen were directed to join their duties on and from June 18, 1962, excepted those against whom proceedings were pending and whose names were to be notified later. The Company issued a notice on June 13, 1962 and two other notices on June 15, 1962, directing some workmen to join their duties on the dates mentioned in the notices. On June 15, 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 this own hand-writing. 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 has been suspended, will apologies to the management for all that has 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 June 18, 1962. It appears that on June 20, 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 June 21, 1962, about 30 workmen again attended the factory, but they had to remain inside the factory during the nigh as there was some row outside the factory. On June 22, 1962, no workmen turned up for work. The result was that, apart from this small number which could come and do only a little preliminary work for 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 June 20 and 21, 1962 and, on June 22, 1962, there was no possibility left of doing any work at all. Consequently, on June 22, 1962, the management decided to close the factory and a notice of closure was hung up on the gate 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 effect 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 is was manufacturing earlier in this factor, 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 appears 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-make and to sell those articles in the market. In fact, it was because the Company had put its 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 the manufacturing business of the Company was completely closed and remained close throughout. In fact, it was not suggested before us even in the curse 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 reason beyond the control of the management. In the course of arguments before us, learned counsel did not challenged 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 it not carrying on any manufacturing at all since April 22, 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 cloak for lock out or for carrying on the business under some other disguise.

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 this sub-mission. 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 a settlement on June 15, 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 factor 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 25-FFF 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.

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

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