The Workmen of the Motor Industries Co. Ltd.

Vs

The Management of the Motor Industries Co. Ltd. Bangalore

Civil Appeal No. 2123 of 1968

(J. M. Shelat, V. Bhargava, C. A. Vaidialingam JJ)

15.04.1969

JUDGMENT

SHELAT, J. -

1. This appeal, founded on special leave, arises out of an industrial dispute between the respondent-company and the Motor Industries Company Employees Association which the Government of Mysore referred to the Labour Court, Bangalore, for adjudication under Section 10(1)(c) of the Industrial Disputes Act, 1947. The dispute related to the dismissal by the management of three workmen, Sandhyavoo, G. Prabhakar and M. V. Vasudevan out of the five workmen against whom the management had held a domestic enquiry at which they were found guilty of acts of misconduct charged against them.

2. The facts leading to the said dispute and the reference are as follows :

> On August 24, 1964, the said association handed over to the management a charter of demands. Negotiations between the parties having failed, the demands were taken before the conciliation officer when the parties arrived at a settlement, dated December 23, 1964. On April 29, 1966, the management issued a notice suspending for a day, i.e., May 4, 1966, one B. G. Shenoy as and by way of penalty. In consequence of a protest by the association, the said suspension was postponed and on May 10, 1966, the management served a charge-sheet on Shenoy and suspended him pending an enquiry. On May 11, 1966, the association demanded withdrawal of the said suspension and the said charge-sheet. Discussions took place on that day from 9.45 a.m. to 12.30 p.m. between the association and the management and the parties thereafter adjourned at 1 p.m. for lunch having decided to resume the talks at 2.30 p.m. At 2 p.m. the first shift ended and the workers of the second shift began to come in. The workmen of the first shift, however, stayed on and those of the second shift along with the workmen of the general shift joined them and all of them went on strike. The discussions which were resumed at 2.30 p.m. ended in an agreement at 5 p.m. and the workmen returned to work. On May 18, 1966, the assistant establishment officer submitted a complaint to the chief personnel officer alleging certain acts of misconduct by a crowd of workmen mentioning therein the names of five of them including the said three workmen. On May 25, 1966, charge-sheets alleging stoppage of work, abandoning the place of work, inciting clerks and officers of G. 2 Department to join the said strike, disorderly behaviour including intimidation and assault on one, A. Lakshman Rao, were served upon those five workmen. Correspondence thereafter ensued between the association and the

management wherein the association protested against the management's decision to adopt disciplinary action against the said five workmen despite the agreement arrived at on May 11, 1966. Thereafter, a domestic enquiry was held on June 30, 1966, which was completed on July 27, 1966, when the enquiry officer made his report holding the said three workmen, Sandhyavoo, Prabhakar and Vasudevan, guilty of acts of misconduct under Standing Order 22(2), (3), (13) and (18). He exonerated the other two workmen except on the charge of participating in the strike and loitering about under clauses (2) and (18) of the said Standing Order. On August 12, 1966, the management, agreeing with the report, passed orders of dismissal against the said three workmen which gave rise to the said reference. On March 23, 1968, the Labour Court gave its award holding that the said enquiry was validly held and that the management were justified in passing the said orders of dismissal.

3. Mr. Ramamurthi, appearing for the association, challenged the said award on the following grounds : (1) that the said association not having given a call for the said strike, the said charges were misconceived and the orders of dismissal were consequently not sustainable; (2) that the said strike, which was spontaneously staged by the workmen, was not illegal under Section 24 of the Industrial Disputes Act, nor was it in contravention of any law as required by Standing Order 22(2) and (3); (3) that the said disciplinary proceedings were in contravention of the agreement arrived at on May 11, 1966, and, therefore, the dismissal following such disciplinary proceedings amounted to unfair labour practice; (4) that the orders of dismissal were passed on charges including that of intimidation though the misconduct of intimidation was not found proved by the enquiry officer and hence the said orders, were illegal; (5) that to punish only three workmen when a large number of workmen had taken part in staging the strike and in inciting others to join it constituted victimisation; and (6) that the findings of the enquiry officer were based on no evidence or were perverse in that no reasonable body of persons could have arrived at them on the evidence before him.

4. The argument on which the first contention was based was that the settlement, dated December 23, 1964, was arrived at between three parties, the management, the association and the workmen and that the association being the union registered under the Trade Unions Act was an entity distinct from the workmen. Under Clause 5 of the settlement it was the association which was obliged to give four days' notice if it decided to resort to strike, go-slow tactics or other coercive action. The said clause did not impose any such obligation on the workmen. The workmen thus having no such obligation and the said strike being a spontaneous one, without any call for it from the association, it could not be said to be in breach of the said settlement, and therefore, would not fall under the mischief of Section 23 of the Act, the first condition of which is that to be illegal under Section 24, read with Section 23 it must be in breach of a contract. Standing Order 22 requires that participating in a strike would be misconduct if it is in breach of some provision of law. But as the strike was not in contravention of Section 23, it would not constitute misconduct under that Standing Order. Therefore, the charges against the said three workmen were misconceived and the orders of dismissal passed against them on the basis that they stood established were bad. In our view this argument cannot be sustained. The construction of Clause 5 of the settlement suggested by Mr. Ramamurthi is contrary to (a) the tenor of that settlement, (b) the provisions of the Industrial Disputes Act under which a settlement arrived at between an employer and a union representing the employees during conciliation proceedings is binding not only on such union but also the workmen whom it represents and (c) the principles of collective bargaining recognised by industrial law. The settlement was a package settlement by which the management and the workmen, through their association, arrived at certain terms in the presence of the conciliation officer. The settlement,

besides settling the demands contained in the said charter of demands, sets out the necessity of harmonious relations and of co-operation between the management and the workmen so as to promote higher and better production. It was to achieve this object that direct action on the part of either of them such as a strike by the workmen and a lock-out by the employer without notice was prohibited. Evidently the provision for four days' notice before any direct action was taken by either of them was provided for so that during that period of there was any grievance it could be ironed out by negotiation. Clause 5 of the settlement falls in two parts : (1) the substantive part, and (2) the corollary thereof. The first part inter alia provided that neither the association nor the management would resort to any direct action, such as strike, go-slow tactics or lock-out or any such coercive action without giving to the other a four days' notice. The second part provided an undertaking on the part of the association to co-operate with the management, if there was any strike by workmen without any call therefor from the association, if the management were to take disciplinary action against the workmen. If the construction of Clause 5 suggested by Mr. Ramamurthi were to be accepted it would lead to a surprising result, namely, that though a strike at the instance of the association required four days' notice, a strike by the workmen without any call from the association would not require any such notice and that the settlement left complete liberty to the workmen to launch a sudden strike. Such a construction appears on the very face of it contrary to the object and purpose of the settlement and particularly Clause 5 which envisages a notice period of four days to enable the parties to resolve a dispute before direct action on its account is resorted to by either of them. The suggested construction is also untenable, for, surely the association irrespective of the workmen cannot by itself resort to any direct action. How can, for instance, the association resort to go-slow tactics without giving a call for it to the workmen ? It is obvious, therefore, that Clause 5 does not contemplate any dichotomy between the association and the workmen as suggested by Mr. Ramamurthi, besides being repugnant to the principle that a settlement arrived at by the association must be regarded as one made by it in its representative character, and therefore, binding on the workmen. Therefore, although the settlement mentions in Clause 5 the management, workmen and the association, the expression 'workmen' therein was unnecessary, for, without that expression also it would have been as efficaciously binding on the workmen as on the association. This conclusion is strengthened by the fact that the settlement mentions the management and the association on behalf of the workmen only as the parties thereto and the signatories thereto also are only the representatives of the two bodies. None of the workmen, nor any one separately representing them affixed his signature to it. If a lightening strike without notice is illegal under any provision of law (a question which we shall presently consider), Standing Order 22 would come into operation and starting or joining such a strike and inciting others to join it would amount to misconduct for which disciplinary action by the management would be possible.

5. The next question is whether the management could validly take disciplinary action against the workmen concerned in respect of the said strike. The recitals of the said settlement show that as a result of the association presenting the said charter of demands negotiations between the management and the association took place on the said demands as also on certain proposals made by the management, that on their failure conciliation proceedings took place in the course of which the parties arrived at the said settlement which, as aforesaid, was signed by the representatives of the management and the association in the presence of the conciliation officer. The settlement thus was one under Section 12(3) of the Industrial Disputes Act and Rule 59 of the rules made thereunder by the Government of Mysore. It was to come into force as from January, 1, 1965 and was to remain in force for three years and was thereafter to continue to be in force until its termination by either side. It is clear from Part I thereof that the object with which it was made was to promote harmonious relations and co-operation between the company, the association and the workmen so that the

company may on the one hand be able to achieve increased production and on the other be in a position to afford maximum opportunity for continued employment. To accomplish these aims it was agreed that the company on its part should be managed on sound and progressive lines and the association and the workmen on their part should combat any wasteful practices adversely affecting workmanship and production and assist the management in apprehending persons responsible for acts such as theft, sabotage and other subversive activities. As Clause 5 of the settlement itself states it was "in order to ensure continuation of smooth working" that the company and the association agreed that in no case would either of them resort to direct action such as lock-outs, strike, go-slow and other coercive action without four days' notice and that should one or more workmen resort to any such direct action without the approval of the association, the association would co-operate with the company in any disciplinary action which the company would take against such workmen. Then follows the agreement on the said demands of the workmen, and the proposals made by the management in the details of which it is not necessary to go, and finally, the agreement that the parties would adhere to the code of discipline and the grievance procedure annexed as Annexure IV to the settlement. The said code also inter alia provided that there should be no strike or lock-out without notice, that neither party should resort to coercion intimidation, victimisation or go-slow tactics, that they would avoid litigation, sit-down and stay-in strikes and lock-outs and would not permit demonstrations which are not peaceful or rowdyism. Read in the context of the other provisions of Part I of the settlement of which it is part, Clause 5 was intended to prohibit (a) direct action without notice by or at the instance of the association, and (b) strikes by workmen themselves without the approval of the association. The words "in no case" used in the clause emphasise that direct action by either party without notice should not be resorted to for any reason whatsoever. There can be no doubt that the settlement was one as defined by Section 2(p) of the Industrial Disputes Act and was binding on the workmen under Section 18(3) of the Act until it was validly terminated and was in force when the said strike took place. The strike was a lightening one, was resorted to without notice and was not at the call of the association and was, therefore, in breach of Clause 5.

6. Could the management then take disciplinary action against the concerned workmen in respect of such a strike ? Standing Order 22 enumerates various acts constituting misconduct. Clauses 2, 3, 13 and 18 provide that striking either singly or in combination with others in contravention of the provisions of any Act, inciting any other workmen to strike in contravention of any law, riotous or disorderly behaviour or any act subversive of discipline and loitering within the company's premises while on duty or absence without permission from the appointed place of work constitute misconduct. The point is whether participation in and incitement to Join the said strike were in respect of a strike which was in contravention of any Act or law. Section 23 provides that no workman employed in an industrial establishment shall go on strike in breach of contract and during the period in which a settlement is in operation, in respect of any of the matters covered by such a settlement. The prohibition against a workman going on strike thus envisages two conditions; (a) that it is in breach of a contract and (b) that it is during the period in which a settlement is in operation and is in respect of any of the matters covered by such settlement. The said settlement was a contract between the company and the association representing the workmen and it was in operation on May 11, 1966. But was it in respect of a matter covered by the settlement ? Under Section 24 a strike is illegal if it is commenced in contravention of Section 23. Section 26 inter alia provides that any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under the Act shall be punished with imprisonment for a term extending to one month or with fine which may extend to Rs. 50 or with both. Section 27 provides punishment of a person who instigates or incites others to take part in or otherwise acts in furtherance of an illegal

strike. The strike envisaged by these two sections is clearly the one which is illegal under Section 24, read with Section 23. A strike in breach of a contract during the operation of a settlement and in respect of a matter covered by that settlement falls under Section 23(c). But whereas Section 26 punishes a workman for going on an illegal strike or for any act in furtherance of such a strike, Section 29 lays down the penalty for a person, not necessarily a workman, who commits breach of a term of a settlement which is binding under the Act. It is, therefore, an offence for any person on whom a settlement is binding under the Act to commit a breach thereof and the Legislature has viewed it to be a more serious offence, for, it has a higher punishment of imprisonment extending to six months than the punishment for commencing etc., an illegal strike under Section 26. Thus commencing a strike or acting in furtherance of it in breach of a settlement binding on the person who so commences it or acts in its furtherance is an offence punishable under Section 29.

It is clear that there is a distinction between a strike envisaged by Section 23(c) in respect of a matter covered by a settlement and a strike in breach of a settlement envisaged by Section 29. That position was conceded by Mr. Gokhale for the management. But his argument was that the strike in question was, firstly, in respect of a matter covered by the said settlement, namely, its prohibition without notice while that settlement was in force and secondly that it was in breach of that settlement, and consequently, it was illegal both under Section 24 and Section 29. This contention does not seem correct, firstly, because though an agreement not to resort to a strike without notice would be the subject-matter of a settlement, a strike in contravention of such an agreement is not in respect of any of the matters covered by such settlement. Secondly, such a construction would mean as if Parliament intended to provide two different penalties, one under Section 26 and the other under Section 29, for the very same offence, one higher than the other, an intention difficult to attribute. The strike was in the matter of the suspension of the said Shenoy pending a domestic enquiry against him, a matter which obviously was not one of the matters covered by the said settlement. It was, therefore, not a strike illegal under Section 24, read with Section 23(c). However, the strike was in contravention of Clause 5 of the said settlement and that settlement being binding on the workmen concerned and in operation at the time was punishable under Section 29, and therefore, illegal under that section.

7. The question whether a strike in contravention of a similar clause in a settlement was illegal arose in The Tata Engineering and Locomotive Co. Ltd. v. C. B. Mitter and Another (C.A. No. 633 of 1963, decided on April 2, 1964). As in Clause 5 of the settlement before us, the settlement there also provided that "in no case" would the parties thereto resort to direct action such as lock-outs, strikes, go-slow and other direct action without four days' notice. The strike in question was commenced in respect of a demand by a workman for a pair of gum-boots, a demand not covered by the settlement. It was common ground that the strike would not fall within the ambit of Section 24 but the controversy was whether it was otherwise illegal, the workmen's contention being that it was not, as the said clause against a strike without notice applied only to one declared for enforcing one or the other demands which formed the subject-matter of the settlement and since the strike arose out of a matter not covered by the settlement, that clause was inapplicable. This Court negatived the contention and held that the words "in no case" in that clause meant a strike for whatever reason and though it was conceded that it was not illegal under Section 24, it was, nevertheless, held to be illegal not because it was in respect of a matter covered by the said settlement but because it was in contravention of the settlement which was binding on the concerned workmen, which meant that the Court held the strike to be illegal under Section 29. In our view the decision in the present case must be the same. The strike was illegal not under Section 24 but because it was in contravention of the settlement binding on the workmen concerned. Consequently, Standing Order 22 would apply and participating in or inciting others to join such a strike would amount to misconduct for which the

management were entitled to take disciplinary action.

8. But against that position, the argument was that the agreement, dated May 11, 1966, under which the workmen called off the strike also provided that no disciplinary action would be taken against any workmen in respect of the strike on that day and that therefore the proceedings taken against the three workmen in violation of that agreement amounted to unfair labour practice. The agreement was oral. According to Bernard, Secretary of the association, the agreement was that (a) the charges and the suspension order passed against the said Shenoy should be withdrawn, (b) the company should pay the wages for the 3 1/2 hours period of the strike provided the workmen made good the loss of production during that period, and (c) the management would take no action against any one for going on strike. The evidence of Martin, the company's technical director, on the other hand, was that the company agreed only not to punish the said Shenoy and to consider paying wages for the hours of the strike. The Labour Court on this evidence held that the association failed to prove that the management had agreed not to take action against any of the workmen in connection with the strike though it may be that they might have agreed not to victimise any workman for participating in the strike. In fact, the management did not impose any penalty against any workman for joining the strike, not even against the three concerned workmen. This finding being purely one of fact and the Labour Court having cogent reasons for it we would not interfere with it without the utmost reluctance. We have been taken through the evidence and the correspondence between the parties but we fail to see any error on the part of the Labour Court in reaching that finding.

9. The next contention was that the orders of dismissal were bad as they took into account the charge of intimidation of the company's officers although the enquiry officer had found that, that charge was not proved. The charge-sheets, Exts. M/4-A, M/5-A and M/6-A against the three workmen alleged in express terms disorderly behaviour and intimidation. The report of the enquiry officer against the said Vasudevan clearly stated that the enquiry accepted the evidence of the management's witnesses and that on that evidence all the charges against him stood proved. While summarising those charges, he, no doubt, did not in so many words use the expression "intimidation". But the evidence which he, as aforesaid, accepted, was, that Vasudevan along with other workmen entered the G. 2 Department at about 3 p.m. on that day and thumping his hand on the table of the said Lakshman Rao threatened that officer in the following words : "now I am in the forefront (of the crowd). You cannot do anything. You ask your people to come out and you also come out. Otherwise you can see what we can do for you now". The said Lakshman Rao had also deposed that he was surrounded by the workers who started pushing and pulling him. The evidence of other officers was that as the crowd which forced its way into this department got unruly they were also forced to leave there places of work. The evidence against Prabhakar was that he too was in the forefront of that crowd which squeezed Lakshman Rao and some members thereof inflicted kicks on him. Similarly, there was the evidence of one Raja, the assistant personal officer and others that Sandhyavoo was one of those in the forefront of that crowd. According to Raja, Sandhyavoo tried to lift him from his seat with a view to force him to leave his table and finding that the crowd had become restive he left his place. Acceptance of this evidence by the enquiry officer must necessarily mean acceptance of the version of these officers that they were intimidated by the crowd which forced its way into their department led by these three workmen. Though the enquiry officer has not, in so many words, used the expression 'intimidation' his finding of disorderly behaviour must be held to include acts of intimidation.

10. Lastly, were the orders of dismissal against the three workmen acts of victimisation on the part of the management when admittedly a large number of workmen had staged the strike and also incited others to join that strike ? The orders against the three workmen being identical in terms we

take the order passed against Vasudevan as a specimen. That order sets out four acts of misconduct by him; (1) striking or stopping work, (2) inciting, (3) riotous and disorderly behaviour and (4) loitering about in the company's premises. Though each one of these acts, according to the order, was misconduct punishable with dismissal, the order states that so far as acts 1 and 4 were concerned, the management did not wish to take a serious view of them as a large number of 'misguided' workmen had stopped work and left there places of work without permission. The management, therefore, took action only in respect of acts falling under Clauses 3 and 13 of Standing Order 22 evidently for the reason that they considered incitement, intimidation and riotous and disorderly behaviour as "very grave in nature". We do not think that in taking this view the management discriminated against three workmen concerned as against the rest or that they dismissed them with the object of victimising. The evidence in the enquiry clearly disclosed that when the crowd forced its way into the G. 2 Department it was led by these three workmen, all of whom were in the forefront thereof and two of them had defiantly forced the officers to leave their tables. One of them had threatened as to what he and the others who were behind him in that crowd could do to him if he did not comply and the other had tried even to lift another officer from his chair to compel him to leave his place of work. In these circumstances the management cannot be blamed if they took a serious view of these acts of the three workmen concerned, who had taken up their position in the forefront of that crowd, a position indicative of their having led that crowd into that department and having acted as its leaders. An act of discrimination can only occur if amongst those equally situated an unequal treatment is meted out to one or more of them. Having been found to be the leaders of the crowd, action taken against them cannot on any principle be regarded as discriminatory or unequal. The decision in Burn & Co. Ltd. v. Workmen ((1959) 1 LLJ 450), relied on by Mr. Ramamurthi has no bearing on the facts of this case and cannot assist him. Once a misconduct graver than that of the rest was found proved against these three workmen and for which the punishment is dismissal, victimisation cannot legitimately be attributed to the management. It is relevant in this connection to remember that so far as their participation in the strike and loitering about were concerned, no action was taken against these three workmen on the ground that those acts were common with those of the rest of the workmen. In view of these facts it is not understandable how the impugned orders of dismissal could be characterised as acts of victimisation. It is also not possible to say that the finding of incitement and disorderly behaviour of these three workmen was perverse or such as no reasonable body of persons could come to on the evidence on record on the ground only that the others also were guilty of those acts. For, there would be nothing wrong, if those who misled or misguided other workmen were selected for disciplinary action and not the victims of their persuasion, who in following their precept did similar acts.

11. In our judgment the orders of dismissal, based on the findings in the domestic enquiry which did not suffer from any infirmity, could not be successfully impeached, and therefore, the Labour Court was right in upholding them. The appeal fails and is dismissed. There will be no order as to costs.

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