

Delhi Administration, Delhi

Vs

Workmen of Edward Keventers and Another

Civil Appeal No. 891 (L) of 1971

(V. R. Krishna Iyer, D. A. Desai JJ)

31.01.1978

JUDGMENT

KRISHNA IYER, J. -

1. A very short question as to the scope of Section 10(3) of the Industrial Disputes Act, 1947, arises for consideration in this appeal by special leave. The appellant, Delhi Administration, was faced with the question of referring several disputes, 16 in number, for adjudication under Section 10(1) of the Act. The workmen had raised all those disputes although many of them were perhaps covered by an earlier settlement. We are not concerned with the facts of this particular case which have been set out at some length by the High Court in its judgement, but with a narrow issue as to when the power to prohibit a strike with which the State/appropriate Government is armed under Section 10(3) of the Act can be put into operation. This turns on a reasonable construction of the provision itself and the best beginning is to quote the section itself. Section 10(3) runs thus :

Where an industrial dispute has been referred to a Board, (Labour Court, Tribunal or National Tribunal) under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

2. A plain reading of the sub-section leaves no room for doubt in our minds that the High Court has correctly interpreted it. Indeed, the learned Judges have gone into details, although we in this affirming judgement desire to express ourselves only briefly. Two conditions are necessary to make Sections 10(3) applicable. There must be an industrial dispute existing and such existing dispute must have been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, namely, Section 10(1). Section 10 stands as a self-contained code as it were as far as this subject-matter is concerned. The prohibitory power springs into existence only when such dispute has been made the subject of reference under Section 10(1). What then is such dispute ? The suchness of the dispute is abundantly brought out in the preceding portion of the sub-section. Clearly, there must be an industrial dispute in existence. Secondly, such dispute must have been already referred for adjudication. Then, and then alone, the power to prohibit in respect of such referred dispute can be exercised.

3. There is a distinction between strikes being illegal under other sections of the Act and penalties being available against such illegal strikes on the one hand and strikes being contrary to Section 10(3) of the Act and liable to be prohibited thereunder. This distinction once grasped, the baselessness of the submission on behalf of the appellant necessarily follows.

4. Shri Aggarwal pressed before us a ruling reported in *Keventers Karmachari Sangh v. Lt. Governor of Delhi* ((1971) 2 LLJ 375), decided by the Delhi High Court. Although the ratio there is contrary to the same High Courts ruling which is the subject-matter of the present appeal, we are obviously inclined to adopt the reasoning of the judgement under appeal. Imagine twenty good grounds of dispute being raised in a charter of demands by the workmen and the appropriate Government unilaterally and subjectively deciding against the workmen on nineteen of them and referring only one for adjudication. How can this result in the anomalous situation of the workmen being deprived of their basic right to go on strike in support of those nineteen demands. This would be productive not of industrial peace, which is the objective of the industrial Disputes Act, but counter-productive of such a purpose. If Government feels that it should prohibit a strike under Section 10(3) it must give scope for the merits of such a dispute or demand being gone into by some other adjudicatory body by making a reference of all those demands under Section 10(1) as disputes. In regard to such disputes as are not referred under Section 10(1), Section 10(3) cannot operate. This stands to reason and justice and a demand which is suppressed by a prohibitory order and is not allowed to be ventilated for adjudication before a Tribunal will explode into industrial unrest and run contrary to the policy of industrial jurisprudence.

5. Thus, on principle and the text of the law, we are convinced that Section 10(3) comes into play when the basis of the strike is covered by Section 10(1). Reference of a dispute and prohibition of a strike on other demands is impermissible.

6. While we appreciate the strenuous efforts made by Shri Aggarwal to support the judgment and perhaps sympathise with him on the particular facts of this case, we cannot agree that hard cases can be permitted to make bad law. The appeal is dismissed, but since the workmen for obvious reasons have not been able to represent themselves in this Court, the normal penalty of costs against the appellant who loses cannot follow. The appeal is dismissed, but for the reasons above stated, there will be no order as to costs.

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