SUPREME COURT OF INDIA

Syndicate Bank and another

Vs

K. Umesh Nayak

Civil Appeals Nos. 2689 with 2690-92 of 1989 and 2710 of 1991

(Kuldip Singh, P. B. Sawant, S. Mohan, G. N. Ray, N. P. Singh JJ)

13.09.1994

JUDGEMENT

SAWANT, J.

1. These appeals have been referred to the Constitution Bench in view of the apparent conflict of opinions expressed in three decisions of this Court - a three-Judge Bench decision in Management of Churakulam Tea Estate (P) Ltd. v. The Workmen, (1969) 1 SCR 931 : (AIR 1969 SC 998) and a two-Judge Bench decision in Crompton Greaves Ltd. v. Its Workmen, (1978) 3 SCC 155 : (AIR 1978 SC 1489) on the one hand, and a two-Judge Bench decision in Bank of India v. T. S. Kelawala, (1990) 4 SCC 744 on the other. The question is whether workmen who proceed on strike, whether legal or illegal, are entitled to wages for the period of strike? In the first two caess, viz., Churakulam Tea Estate and Crompton Greaves (supra), the view taken is that the strike must be both legal and justified to entitle the workmen to the wages for the period of strike whereas the latter decision in T.S.Kelawala (supra) has taken the view that whether the strike is legal or illegal, the employees are not entitled to wages for the period of strike. To keep the record straight, it must be mentioned at the very outset that in the latter case, viz., T.S. Kelawala (supra) the question whether the strike was justified or not, was not raised and, therefore, the further question whether is justified, was neither discussed nor answered. Secondly, the first two decisions, viz., Churakulam Tea Estate (AIR 1969 SC 998) and Cromption Greaves (AIR 1978 SC 1489) (supra) were not cited at the Bar while deciding the said case and hence there was no occasion to consider the said decisions there. The decisions were not cited probably because the question of the justifiability or otherwise of the strike did not fall for consideration. It is, however, apparent from the earlier two decisions, viz., Churakulam Tea Estate and

Crompton Greaves (supra) that the view taken there is not that the employees are entitled to wages for the strike-period merely because the strike is legal. The view is that for such entitlement the strike has both to be legal and justified. In other words, if the strike is illegal but justified or if the strike is legal but unjustified, the employees would not be entitled to the wages for the strike-period. Since the question whether the employees are entitled to wages, if the strike is justified, did not fall for consideration in the latter case, viz., in T.S.Kelawala (1990) (4) SCC 744), there is, as stated in the beginning, only an apparent conflict in the decisions.

2. Before we deal with the question, it is necessary to refer to the facts in the individual appeals.

C.A.No. 2710 of 1991

On 10th April, 1989, a memorandum of settlement was signed by the Indian Banks Association and the All India Bank Employees' Unions including the National Confederation of Bank Employees as the fifth bipartite settlement. The appellant-Bank and the respondent-State Bank Staff Union through their respective Federations were bound by the said settlement. In terms of clauses 8(d) and 25 of the memorandum of the said settlement, the appellant-Bank and the respondent-Staff Union had to discuss and settle certain service conditions. Pursuant to these discussions, three settlements were entered into between the parties on 9th June, 1989. These settlements were under S.2 (p) read with S.18(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act.") Under these settlements, the employees of the appellant-Bank were entitled to certain advantages over and above those provided under the All India Bipartite Settlement of 10th April, 1989. The said benefits were to be given to the employees retrospectively with effect from 1st November, 1989. It appears that the appellant-Bank did not immediately implement the said settlement. Hence, the employees, Federation sent telex message to the appellant-Bank on 22nd June, 1989 calling upon it to implement the same without further loss of time. The message also stated that the employees would be compelled to launch agitation for implementation of the settlement as a consequence of which the working of the Bank and the service to the customers would be affected. In response to this, the Bank in its reply dated 27th June, 1989 stated that it was required to obtain the Government's approval for granting the said extra benefits and that it was making efforts to obtain the Government's approval as soon as possible. Hence the employees' Federation should, in the meanwhile, bear it with. On 24th July, 1989, the employees 'Federation' again requested the Bank by telex of even date to implement the said settlement forthwith, this time, warning the Bank that in case of its failure to do so, the employee would observe a day's token strike after 8th August, 1989. The Bank's response to this message was the same as on the earlier occasion. On 18th August, 1989, the employees' Federation wrote to the Bank that

the settlements signed were without any pre-condition that they were to be cleared by the Government and hence the Bank should implement the settlement without awaiting the Government's permission. The Federation also, on the same day, wrote to the Bank calling its attention to the provisions of Rule 58.4 of the Industrial Disputes (Central) Rules, 1957 (the 'Rules') and requesting it to forthwith forward copies of the settlements to the functionaries mentioned in the said Rule. By its reply of 23rd August, 1989, the Bank once again repeated its earlier stand that the Bank is required to obtain Government's approval for granting the said extra benefits and it was vigorously pursuing the matter with the Government for the purpose. It also informed the Federation that the Government was actively considering the proposal and an amicable solution would soon be reached and made a request to the employees' Federation to exercise restraint and bear with it so that their efforts with the Government may not be adversely affected, By another letter of the same date, the Bank informed the Federation that they would forward copies of the agreements in question to the concerned authorities as soon as the Government's approval regarding implementation of the agreement was received. The Federation by the letter of 1st September, 1989 complained to the Bank that the Bank had been indifferent in complying with the requirements of the said Rule 58.4 and hence the Federation itself had sent copies of the settlements to the concerned authorities, as required by the said Rule.

3. On the same day, i.e., 1st September 1989 the Federation issued a notice of strike demanding immediate implementation of all agreements / understandings reached between the parties on 10th April, 1989 and 9th June, 1989 and the payment of arrears of pay and allowances pursuant to them. As per the notice, the strike was proposed to be held on three different days beginning from 18th September, 1989. At this stage, the Deputy Chief Labour Commissioner and Conciliation Officer (Central), Bombay wrote both to the Bank and the Federation stating that he had received information that the workmen in the Bank through the employees' Federation had given a strike call for 18th September 1989. No formal strike notice in terms of S.22 of the Act had, however, been received by him. He further informed that he would be holding conciliation proceedings under Sec. 12 of the Act in the office of the Regional Labour Commissioner, Bombay on 14th September, 1989 and requested both to make it convenient to attend the same along with a statement of the case in terms of Rule 41(a) of the Rules.The conciliation proceedings were held on 14th September, 1989 and thereafter on 23rd September, 1989. On the latter date, the employees' Federation categorically stated that no dispute as such existed. The question was only of implementation of the agreements / understandings reached between the parties on 10 th April, 1989 and 9th June, 1989. However, the Federation agreed to desist from direct action if the Bank would give in writing that

within a fixed time they will implement the agreements/ understandings and pay the arrears of wages etc. under them. The Bank's representatives stated that the Bank had to obtain prior approval of the Government for implementation of the settlements and as they were the matters with the Government for obtaining its concurrence, the employees should not resort to strike in the larger interests of the community. He also pleaded for some more time to examine the feasibility of resolving the matter satisfactorily. The conciliation proceedings were there-after adjourned to 26th September, 1989. On this date, the Bank's representatives informed that the Governments's approval had not till then been obtained, and prayed for time till 15th October, 1989. The next meeting was held on 27th September,1989. The Conciliation Officer found that there was no meeting ground and no settlement could be arrived at. However, he kept the conciliation proceedings alive by stating that in order to explore the possibility of bringing about an understanding in the matter, he would further hold discussions on 6th October, 1989.

4. On 1st October, 1989, the employees' Federation gave another notice of strike stating that the employees would strike work on 16th October, 1989 to protest against the inaction of the Bank in implementing the said agreements / settlements validly arrived at between the parties. In the meeting held on 6th October, 1989, the Conciliation Officer discussed the notice of strike. It appears that in the meanwhile on 3rd October, 1989 the employees' Federation had filed Writ Petition No. 13764 of 1989 in the High Court for a writ of mandamus to the Bank to implement the three settlements dated 9th June, 1989. In that petition, the Federation had obtained an order of interim injunction on 6th October, 1989 restraining the Bank from giving effect to the earlier settlement dated 10th April, 1989 and directing it first to implement the settlements dated 9th June, 1989. It appears, further that the employees had in the meanwhile, disrupted normal work in the Bank and had resorted to gherao. The Bank brought these facts, viz., filing of the writ petition and the interim order passed therein as well as the disruption of the normal work and resort to gheraos by the employees, to the notice of the Conciliation Officer. The meeting before the Conciliation Officer which was fixed on 13th October, 1989 was adjourned to 17th October, 1989 on which date, it was found that there was no progress in the situation. It was on this date that the employees' Federation gave a letter to the Conciliation Officer requesting him to treat the conciliation proceedings as closed. However, even thereafter, the Conciliation Officer decided to keep the conciliation proceedings open to explore the possibility of resolving the matter amicably. On 12th October, 1989, the Bank issued a circular stating therein that if the employees went ahead with the strike on 16th October, 1989, the Management of the Bank would take necessary steps to safeguard the interests of the Bank and would deduct the salary for the days the employees would be on strike, on the

principle of "no work, no pay". Inspite of the circular, the employees went on strike on 16th October, 1989 and filed a writ petition on 7th November, 1989 to quash the circular of 12th October, 1989 and to direct the Bank not to make any deduction of salary for the day of the strike.

The said writ petition was admitted on 8th November, 1989 and an interim injunction was given by the High Court restraining the Bank from deducting the salary of the employees for 16th October, 1989. Before the High Court, it was not disputed that the Bank was a public utility service and as such Section 22 of the Act applied. It was the contention of the Bank that since under the provisions of sub-section (1)(d) of the said Section 22, the employees were prohibited from resorting to strike during the pendency of the conciliation proceedings and for seven days after the conclusion of such proceedings, and since admittedly the conciliation proceedings were pending to resolve an industrial dispute between the parties, the strike in question was illegal. The industrial dispute had arisen because while the Bank was required to take the approval of the Central Government for the settlements in question, the contention of the employees was that no such approval was necessary and there was no such condition incorporated in the settlements. This being an industrial dispute within the meaning of the Act, the conciliation proceedings were validly pending on the date of the strike. As against this, the contention on behalf of the employees was that there could be no valid conciliation proceedings as there was no industrial dispute. The settlements were already arrived at between the parties solemnly and there could be no further industrial dispute with regard to their implementation. Hence, the conciliation proceedings were non est. The provisions of Section 22 (1) (d) did not, therefore, come into play. The learned single Judge upheld the contention of the Bank and held that the strike was illegal, and relying upon the decision of this Court in T.S.Kelawala's case (1990(4) SCC 744) (supra), dismissed the writ petition of the employees upholding the circular under which the deduction of wages for the day of the strike was ordered. Against the said decision, the employees 'Federation preferred Letters Patent Appeal before the Division Bench of the High Court and the Division Bench by its impugned judgment reversed the decision of the learned single Judge by accepting the contention of the employees and negativing that of the Bank. The Division Bench in substance, held that the approval of the Central Government as a condition precedent to their implementation was not incorporated in the settlements nor was such approval necessary. Hence, there was no valid industrial dispute for which the conciliation proceedings could be held. Since the conciliation proceedings were invalid, the provisions of Section 22 (1) (d) did not apply. The Strike was, therefore, not illegal. The Court also held that the strike was, in the circumstances, justified since it was the Bank Management's unjustified attitude in not implementing the settlements, which was responsible for the strike. The Bench then relied upon two

decisions of this court in Churakulam Tea Estate, (AIR 1969 SC 998) and Crompton Greaves (AIR 1978 SC 1489) cases (supra) and held that since the strike was legal and justified, no deduction of wages for the strike day could be made from the salaries of the employees. The Bench thus allowed the appeal and quashed the circular of the 12th October, 1989. Since the matter has been referred to the larger Bench on account of the seeming difference of opinion expressed in T.S. Kelawala, (1990 (4) SCC 744) (supra) and the earlier decisions in Churakulam Tea Estate, (AIR 1969 SC 998) and Crompton Greaves, (AIR 1978 SC 1489) (supra), we will first discuss the facts and the view taken in the earlier two decisions. In Churakulam Tea Estate (supra), which is a decision of three learned Judges, the facts were that the appellant-Tea Estate which was a member of the Planter's Association of Kerala (South India), from time to time since 1946, used to enter into agreements with the representatives of the workmen, for payment of bonus. In respect of the years, 1957, 1958 and 1959, there was a settlement dated 25th January, 1960 between in Managements of the various plantations and their workers relating to payment of bonus. The agreement provided that it would not apply to the appellant-Tea Estate since it had not earned any profit during the said years. On the ground that it was not a party to the agreement in question, the appellant declined to pay any bonus for the said three years. The workmen started agitation claiming bonus. The conciliation proceedings in that regard failed. All 27 workers in the appellant's factory struck work on the afternoon of 30th November, 1961. The management declined to pay wages for the day of the strike to the said factory workers. The management also laid off without compensation all the workers of the estate from 1st December, 1961 to 8th December, 1961. By its order dated 24th May, 1962, the State Government referred to the Industrial Tribunal three questions for adjudication one of which was whether the factory workmen were entitled to wages for the day of the strike. The Tribunal took the view that the strike was both legal and justified and hence directed the appellant to pay wages. This Court noted that at the relevant time, conciliation proceeding relating to the claim for bonus had failed and the question of referring the dispute for adjudication to the Tribunal was under consideration of the Government. The Labour Minister had called for a conference of the representatives of the management and workmen and the conference had been fixed on 23rd November, 1961. The representatives of the workmen attended the conference while the management boycotted the same. It was the case of the workmen that it was to protest against the recalcitrant attituded of the management in not attending the conference that the workers had gone on strike from 1 P.M. on the day in question. On behalf of the management, the provisions of Section 23 (a) of the Act were pressed into service to contend that the strike resorted to by the factory workers was illegal. The said provisions read as follows:

"23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out.

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

x x x x x x x x x x

x x x x

This Court noted that there were no conciliation proceedings pending on 30th November, 1961 when the factory workers resorted to strike and hence the strike was not hit by the aforesaid provision. The Court further observed that if the strike was hit by Section 23(a), it would be illegal under Section 24(1)(i) of the Act. Since, however, it was not so hit, it followed that the strike in this case could not be considered to be illegal. We may quote the exact observations of the Court which are as follows:

"... Admittedly there were no conciliation proceedings pending before such a Board on November 30, 1961, the day on which the factory workers went on strike and hence the strike does not come under S.23(a) No doubt if the strike, in this case, is hit by S. 23 (a), it will be illegal under S.24(1)(i) of the Act; but we have already held that it does not come under S. 23 (a) of the Act, it follows that the strike, in this case, cannot be considered to be illegal."

Alternatively, it was contended on behalf of the management that in any event, the strike in question was thoroughly unjustified. It was the management's case that it had participated in the conciliation proceedings and when those proceedings failed, the question of referring the dispute was pending before the Government. The workmen could have made a request to the Government to refer the dispute for adjudication and, therefore, the strike could not be justified. Support for this was also sought by the management from the observations made by this Court in Management of Chandramalai Estate, Ernakulam v. Its workmen, (1960) 3SCR 451 : (AIR 1960 SC 902). In that case, this Court had deprecated the conduct of workmen going on strike without waiting for a reasonable time to know the result of the report of the Conciliation Officer. This Court held that the said decision did not support the Management since the strike was not directly in connection with the demand for bonus but was as a protest against the unreasonable attitude of the management in boycotting the conference held on 23rd November, 1961 by the Labour Minister of the State. Hence, this Court held that the strike was not unjustified. In view of the fact that there was no breach of Section 23 (a) and in view also of the fact that in the aforesaid circumstances, the strike was not unjustified, the Court held that the factory workers were entitled for wages for that day and the Tribunal's award in that behalf was justified. In Cromption Greaves Ltd., (AIR 1978 SC 1489) (supra), the

facts were that on 27th December, 1967, the appellant-management intimated the workers' Union its decision to reduce the strength of the workmen in its branch at Calcutta on the ground of severe recession in business. Apprehending mass retrenchment of the workmen, the Union sought the intervention of the Minister in charge of Labour and the Labour Commissioner, in the matter. Thereupon, the Assistant Labour Commissioner arranged a joint conference of the representatives of the Union and of the Company in his office, with a view to explore the avenues for an amicable settlement. Two conferences were accordingly held on 5th and 9th January, 1968 in which both the parties participated. As a result of these conferences the Company agreed to hold talks with the representatives of the Union at its Calcutta office on the morning of 10th January, 1968. The talk did take place but no agreement could be arrived at. The Assistant Labour Commissioner continued to use his good offices to bring about an amicable settlement though another joint conference which was scheduled for 12th January, 1968. On the afternoon of 10th January, 1968, the Company without informing the Labour Commissioner that it was proceeding to implement its proposed scheme of retrenchment, put up a notice of retrenching 93 of the workmen in its Calcutta Office. Treating this step as a serious one demanding urgent attention and immediate action, the workmen resorted to strike w.e.f. 11th January, 1968 after giving notice to the appellant and the Labour Directorate and continued the same up to 26th June, 1968. In the meantime, the industrial dispute in relation to the retrenchment of the workmen was referred by the State Government to the Industrial Tribunal on 1st March, 1968. By a subsequent order dated 13th December, 1968, the State Government also referred the issue of the workmen's entitlement to wages for the strike- period, for adjudication to the Industrial Tribunal. The Industrial Tribunal accepted the workmen's demand for wages for the period from 11th January, 1968 to the end of February, 1968 but rejected their demand for the remaining period of the strike observing that "the redress for retrenchment having been sought by the Union itself through the Tribunal, there remained no jurisdiction for the workmen to continue the strike." In the appeal filed by the management against the award of the Tribunal in this Court, the only question that fell for determination was whether the award of the Tribunal granting the striking workmen wages for the period from 11th January, 1968 to 29th February, 1968 was valid. In paragraph 4 of the judgment, this Court observed as follows (AIR 1978 SC 1489):

> "4. It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of

fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitled them to wages for the strike-period."

After observing thus, the Court formulated the following two questions, viz., (1) whether the strike in question was illegal or unjustified? and (2) whether the workmen resorted to force or violence during the said period i.e., 11th January, 1968 to 29th February, 1968? While answering the first question, the Court pointed out that no specific provision of law has been brought to its notice which rendered the strike illegal during the period under consideration. The strike could also not be said to be unjustified as before the conclusion of the talks for conciliation which were going on through the instrumentality of the Assistant Labour Commissioner, the Company had retrenched as many as 93 of its workmen without even intimating the Labour Commissioner that it was carrying out its proposed plan of effecting retrenchment of the workmen. Hence, the Court answered the first question in the negative. In other words, the Court held that the strike was neither illegal nor unjustified. On the second question also, the Court held that there was no cogent and disinterested evidence to substantiate the charge that the striking workmen had resorted to force or violence. That was also the finding of the Tribunal and hence the Court held that the wages for the strike-period could not be denied to the workmen on that ground as well. It will thus be apparent from this decision that on the facts, it was established that there was neither a violation of a provision of any statute to render the strike illegal nor in the circumstances it could be held that the strike was unjustified. On the other hand, it was the management by taking a precipitatory action while the conciliation proceedings were still pending, which had given a cause to the workmen to go on strike.

5. We may now refer to the other relevant decisions on the subject.

In Management of Kairbeta Estate, Kotagiri v. Rajamanickam, (1960) 3 SCR 371: (AIR 1960 SC 893), this Court observed as follows (para 7 of AIR):

" ... Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between capital and labour, the weapon of strike is available to labour and is often used by it, so is the weapon of lock-out available to the employer and can be used by him. The use of both the weapons by the respective parties must, however, be subject to the

relevant provisions of the Act. Chapter V which deals with strikes and lock-outs clearly brings out the antithesis between the two weapons and the limitations subject to which both of them must be exercised."

In Chandramalai Estate, (AIR 1960 SC 902) (supra), the facts were that on 9th August, 1955, the workers' Union submitted to the management a charter of fifteen demands. Though the Management agreed to fulfil some of the demands, the principal demands remained unsatisfied. On 29th August, 1955, the Labour Officer, Trichur, who had in the meantime been apprised of the situation both by the management and the workers' Union, advised mutual negotiations between the representatives of the management and the workers. Ultimately, the matter was recommended by the Labour Officer to the Conciliation Officer, Trichur for conciliation. The Conciliation Officer's efforts proved in vian. The last meeting for conciliation was held on 30th November, 1955. On the following day, the Union gave a strike notice and the workmen went on strike w.e.f. 9th December, 1955. The strike ended on 5th January, 1956. Prior to this, on 5th January, 1956, the Government had referred the dispute with regard to five of the demands for adjudication to the Industrial Trubunal, Trivandrum. Thereafter, by its order dated 11th June, 1956, the dispute was withdrawn from the Trivandrum Tribunal and referred to the Industrial Tribunal, Ernakulam. By its award dated 19th October, 1957, the Tribunal granted all the demands of the workmen. The appeal before this Court was filed by the management on three of the demands. One of the issues was "are the workers entitled to get wages for the period of the strike?" On this issue, before the Tribunal, the workmen had pleaded that the strike was justified while the management contended that strike was both illegal and unjustified. The Tribunal had recorded a finding that both the parties were to blame for the strike and ordered the management to pay the workers 50% of their total emoluments for the strike-period. This Court while dealing with the said question, held that it was clear that on 30th November, 1955, the Union knew that the conciliation attempts had failed and the next step would be the report by the Conciliation Officer to the Government. It would, therefore, have been proper and reasonable for the workers' Union to address the Government and request that a reference be made to the Industrial Tribunal. The Union did not choose to wait and after giving notice to the management on 1st December, 1955 that it had decided to strike work from 9th December, 1955, actually started the strike from that date. The Court also held that there was nothing in the nature of the demands made by the Union to justify the hasty action. The Court then observed as under (AIR 1960 SC 902, para 7):

"... The main demands of the Union were about the cumbly allowance and the price of rice. As regards the cumbly allowance they had said nothing since

1949 when it was first stopped till the Union raised it on August 9, 1995. The grievance for collection of excess price of rice was more recent but even so it was not of such an urgent nature that the interest of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through Industrial Tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand, it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made may well be justified. The present is not however one of such cases. In our opinion, the workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the Government to make a reference. They did not wait at all. The conciliation efforts failed on November 30, 1955, and on the very next day the Union made its decision on strike and sent the notice of the intended strike from the 9th December, 1955, and on the 9th December, 1955, the workmen actually struck work. The Government appear to have acted quickly and referred the dispute on January 3, 1956. It was after this that the strike was called off. We are unable to see how the strike in such circumstances could be held to be justified."

In India General Navigation and Railway Co. Ltd., v. Their Workmen, (1960) 2 SCR 1 : (AIR 1960 SC 219) this Court while dealing with the issues raised there, observed as follows (at pp. 227-28 of AIR) :

"... In the first place, it is a little difficult to understand how a strike in respect of a public utility service, which clearly, illegal, could at the same time be characterized as "perfectly justified". These two conclusions cannot in law co-exist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike, is liable to be dealt with departmentally, of course, subject to

the action of the Department being questioned before an Industrial Tribunal, but it is not permissible to characterize an illegal strike as justifiable. The only question of practical importance which may arise in the case of an illegal strike, would be the kind or quantum of punishment, and that, of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore. the tendency to condone what has been declared to be illegal by statute, must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence."

We may now refer to the decision of this Court in the I.S.Kelawala case (1990(4) SCC 744) (supra) where allegedly a different view has been taken from the one taken in the aforesaid earlier decisions and in particular in Churakulam Tea Estate, (AIR 1969 SC 998) and Crompton Greaves, (AIR 1978 SC 1489) cases (supra). The facts in the case were that some demands for wage revision made by the employees of all the Banks were pending at the relevant time and in support of the said demands, the All India Bank Employees Association, gave a call for a country-wide strike. The appellant-Bank issued a circular on 23rd September, 1977 to all its branch managers and agents to deduct wages of the employees who participate in the strike for the days they go on strike. The employees' Union gave a call for a four-hour-strike on 29th December, 1977. Hence, the Bank on 27th December, 1977 issued a circular warning the employees that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw the salary for the full day if they do so and consequently they need not report for work for the rest of the working hours of that day. Notwithstanding it, the employees went on four hour-strike from the beginning of the working hours on 29th December,1977. There was no dispute that banking hours for the public covered the said four hours. The employees, however resumed work on that day after the strike hours and the Bank did not prevent them from doing so. On 16th January, 1978, the Bank issued a circular directing its managers and agents to deduct the full day's salary of those of the employees who had participated in the strike. The employees' Union filed a writ petition in the High Court for quashing the circular. The petition was allowed. The Bank's Letters Patent Appeal in the High Court also came to be dismissed. The Bank preferred an appeal against the said decision of the High Court. On these facts, the only questions relevant for our present purpose which were raised in the case before the High Court as well as in this Court were whether the Bank was entitled to deduct wages of workmen for the period of strike

and further whether the Bank was entitled to deduct wages for the whole day or pro rata only for the hours for which the employees had struck work. The incidental questions were whether the contract of employment was divisible and whether when the service rules and the regulations did not provide for deduction of wages, the Bank could do so by an administrative circular. We are not concerned with the incidental questions in this case. What is necessary to remember is the question whether the strike was legal or illegal and whether it was justified or unjustified was not raised either before the High Court or in this Court. The only question debated was whether, even assuming that the strike was legal, the Bank was entitled to deduct wages as it purported to do under the circular in question. It is while answering this question that this Court held that the legality or illegality of the strike had nothing to do with the liability for the deduction of the wages. Even if the strike is legal, it does not save the workers from losing the salary for the period of the strike. It only saves them from disciplinary action, since the Act impliedly recognises the right to strike as a legitimate weapon in the hands of the workmen, However, this weapon is circumscribed by the provisions of the Act and the striking of work in contravention of the said provisions makes it illegal. The illegal strike is a misconduct which invites disciplinary action while the legal strike does not do so. However, both legal as well as illegal strike invite deduction of wages on the principle that whoever voluntarily refrains from doing work when it is offered to him, is not entitled for payment for work he has not done. In other words, the Court upheld the dictum 'no work no pay'. Since it was not the case of the employees that the strike was justified, neither arguments were advanced on that basis nor were the aforesaid earlier decisions cited before the Court.

6. There is, therefore, nothing in the decisions of this Court in Churakulam Tea Estate, (AIR 1969 SC 998) and Crompton Greaves (AIR 1978 SC 1489) cases (supra) or the other earlier decisions cited above which is contrary to the view taken in T.S.Kelawala, (1990(4) SCC 744). What is held in the said decisions is that to entitle the workmen to the wages for the strike-period, the strike has both to be legal and justified. In other words, if the strike is only legal but not justified or if the strike is illegal though justified, the workers are not entitled to the wages for the strike-period. In fact, in India General Navigation Case (AIR 1960 SC 219) (supra), the Court has taken the view that a strike which is illegal cannot, at the same time be justifiable. According to that view, in all cases of illegal strike, the employer is entitled to deduct wages for the period of strike and also to take disciplinary action. This is particularly so in public utility services.

7. We, therefore, hold endorsing the view taken in T.S.Kelawala, (1990 (4) SCC 744) that the workers are not entitled to wages for the strike-period even if the strike

is legal. To be entitled to the wages for the strike-period , the strike has to be both legal and justified. Whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Under the Act, the question has to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the Act.

8. In the present case, the High Court relying on Churakulam Tea Estate, (AIR 1969 SC 998) and Crompton Greaves, (AIR 1978 SC 1489) cases, has held that the strike was both legal and justified. It was legal according to the High Court because the reference to the conciliation proceedings was itself illegal and, therefore, in the eye of the law, no conciliation proceedings were pending when the employees struck work. The strike was, further justified according to the High Court because the Bank had taken a recalcitrant attitude and had insisted upon obtaining the approval of the Central Government for the implementation of the agreements in question, when no such approval was either stipulated in the agreements or required by law. We are afraid that the High Court has exceeded its jurisdiction in recording the said findings. It is the industrial adjudicator who had the primary jurisdiction to give its findings on both the said issues. Whether the strike was legal or illegal and justified or unjustified, were issues which fell for decision within the exclusive domain of the industrial adjudicator under the Act and it was not primarily for the High Court to give its findings on the said issues. The said issues had to be decided by taking the necessary evidence on the subject. We find nothing in the decision of the High Court to enlighten us as to whether notwithstanding the fact that the agreements in question had not stipulated that their implementation was dependent upon the approval of the Central Government; in fact, the Bank was not duty bound in law to take such approval. If it was obligatory for the Bank to do so, then it mattered very little whether the agreements in question incorporated such a stipulation or not. If the approval was necessary, then there did exist a valid industrial dispute between the parties and the conciliation proceedings could not be said to be illegal. It must be noted in this connection that the said agreements provided for benefits over and above the benefits which were available to the employees of the other Banks. Admittedly, the employees struck work when the conciliation proceedings were still pending. Further, the question whether the implementation of the said agreements was of such an urgent nature as could not have waited the outcome of the conciliation proceedings and if necessary, of the adjudication proceedings under the Act, was also a matter which had to be decided by the industrial adjudicator to determine the justifiability or unjustifiablility of the strike. It has to be remembered in this connection that a strike may be illegal if it contravenes the provisions of Sections 22.23 or 24 of the Act or of any other law or of the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or

unjustified depending upon several factors such as the service conditions of the work men , the nature of demands of the workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules and regulations etc. An enquiry into these issues is essentially an enquiry into the facts which in some cases may require taking of oral and documentary evidence. Hence such an enquiry has to be conducted by the machinery which is primarily invested with the jurisdiction and duty to investigate and resolve the dispute. The machinery has to come to its finding on the said issue by examining all the pros and cons of the dispute as any other dispute between the employer and the employee. Shri Garg appearing for the employees did not dispute the proposition of law that notwithstanding the fact that the strike is legal, unless it is justified, the employees cannot claim wages for the strike period. However, he contended that on the facts of the present case, the strike was both legal and justified. We do not propose to decide the said issues since the proper forum for the decision on the said issues in the present case is the adjudicator under the Act.

9. The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is a use by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, "irritation strike" or staying at work but deliberately doing everything wrong, "running-sore strike", i.e., disobeying the lawful order, sit-down, stay- in and lie-down strike etc. The cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it alongwith the right of the employer to lock-out and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lock-out as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal. The question whether a strike or lock-out is legal or illegal

does not present much difficulty for resolution since all that is required to be examined to answer the question is whether there has been a breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lock-out is not to be resorted to because the concerned party has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lock-out as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, to compel the other party to dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lock-outs in public utility services. With the emergence of the organised labour, particularly in public undertakings and public utility services, the old balance of economic power between the management and the workmen has undergone a qualitative change in such undertakings. Today, the organised labour in these institutions has acquired even the power of holding the society at large to ransom, by withholding labour and thereby compelling the managements to give in on their demands whether reasonable or unreasonable. What is forgotten many times, is that as against the employment and the service conditions available to the organised labour in these undertakings, there are millions who are either unemployed, underemployed or employed on less than statutorily minimum remuneration. The employment that workmen get and the profits that the employers earn are both generated by the utilisation of the resources of the society in one form or the other whether it is land, water, electricity or money which flows either as share capital, loans from financial institutions or subsidies and exemptions from the Governments. The resources are to be used for the well-being of all by generating more employment and production and ensuring equitable distribution. They are not meant to be used for providing employment, better service conditions and profits only for some. In this task, both the capital and labour are to act as the trustees of the said resources on behalf of the society and use them as such.They are not to be

wasted or frittered away by strikes and lock-outs. Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension, viz., the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector. But more imperatively so in the public sector. The management in the public sector is not a capitalist and the labour an exploited lot. Both are paid employees and owe their existence to the direct investment of public funds. Both are expected to represent public interests directly and have to promote them.

10. We are, therefore, more than satisfied that the High Court in the present case had erred in recording its findings on both the counts, viz., the legality and justifiability, by assuming jurisdiction which was properly vested in the industrial adjudicator. The impugned order of the High Court has, therefore, to be set aside.

11. Hence we allow the appeal since the dispute has been pending since 1989,by exercising our power under Article 142 of the Constitution,we direct the Central Government to refer the dispute with regard to the deduction of wages for adjudication to the appropriate authority under the Act within eight weeks from today. The appeal is allowed accordingly with no order as to costs. C.A.No.2689of 1989 and C.A.Nos.2690-92of1989

12. In these two matters, arising out of a common judgment of the High Court, the question involved was materially different, viz, whether when the employees struck work only for some hours of the day,their salary for the whole day could be deducted.As in the case of T. S. Kelawala, (1990 (4) SCC 744) (supra), in this case also the question whether the strike was justified or not was not raised. No argument has also been advanced on behalf of the employees before us on the said issue. In the circumstances, the law laid down by this Court in T. S. Kelawala, with which we concur, will be applicable. The wages of the employees for the whole day in question, i.e., 29th December, 1977 are liable to be deducted. The appeals are, therefore, allowed and the impugned decision of the High Court is set aside. There will, however, be no order as to costs.
Appeals allowed.