CALCUTTA HIGH COURT

Provat Kumar Kar

Vs.

William Trevelyan Curties Parkar

Criminal Revn. No. 623 of 1949

(Harries, C.J. and Chatterjee, J.)

12.09.1949

JUDGMENT

Harries, C.J.

1. This is a petition for revision of an order passed by the Chief Presidency Magistrate convicting the ten petitioners of an offence under Section 26, Industrial Disputes Act, 1947, and sentencing each of them to pay a fine of Rs. 25. In default of payment of the fine it was provided that each should undergo a period of seven days' imprisonment.

2. The ten petitioners were employees of Messrs. Lloyd Bank Limited, and were employed at the Head Office and the Chowringhee Office of the Bank. Disputes had arisen between the Bank and its employees and on 17th January 1948, these disputes were referred to the adjudication of a Tribunal under Section 10(1)(c), Industrial Disputes Act (14 of 1947).

3. Before these proceedings had terminated the ten petitioners together with other employees of the Bank went on a one-day strike on 17th August 1948. This one-day strike admittedly had nothing to do with the disputes which had been referred to the adjudication of a Tribunal under the Act. The one-day strike was a strike to express sympathy with certain employees of the Central Bank of India who were themselves on strike.

4. Sanction from the Provincial Government was obtained and a prosecution was instituted against eleven persons for striking contrary to the provisions of Section 26 and further for instigating others to strike. The case came before the learned Chief Presidency Magistrate who held that there was no evidence upon which the eleven persons could be convicted of an offence of instigating others to strike. He, however, held that the eleven persons were guilty of an offence under Section 26, convicted them and sentenced them, as I have indicated. Of those eleven persons ten persons have petitioned this Court in revision.

5. The prosecution was under Section 26(1), Industrial Disputes Act (hereinafter referred to as the Act). The sub-section is in these terms :

> "Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both."

6. Section 24(1) provides : "A strike or a lock-out shall be illegal if - (i) it is commenced or declared in contravention of Section 22 or Section 23; or (ii) it is continued in contravention of an order made under sub-sections (3) of Section 10."

7. It is common ground that if this strike was illegal, it could only be illegal by reason of the provisions of Section 23(b) of the Act.

8. Section 23 is in these terms :

> "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; or (b) during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings; or (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award."

9. It will be seen from this section that no workman employed in any industrial establishment can go on strike in breach of his contract during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings.

10. On behalf of the prosecution it was urged before the learned Chief Presidency Magistrate that on the day this strike took place there were proceedings pending before a Tribunal and therefore the strike was illegal, as being contrary to Section 23(b) of the Act in that it was a strike during the pendency of such proceedings.

11. Mr. Atul Gupta who has appeared on behalf of nine of the petitioners has conceded that if the words of Section 23(b) are taken literally then a case can be made out for the prosecution, He has, however, urged that no offence is committed under Section 23(b) unless the strike in breach of contract is connected with the dispute then pending before the Tribunal. He has urged that if the strike concerns a matter or dispute different from the dispute already submitted to the Tribunal then the strike is not illegal by reason of Section 23(b).

12. On the other hand, the learned Advocate-General on behalf of the opposite party contends that the Legislature where it intended that the cause of the strike should have relation to the dispute before the Tribunal or the award made thereon, it has said so in the clearest terms. Reference is made to Section 23(c). That provides that no workman who is employed in any industrial establishment shall go on strike in breach of contract during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. There is nothing in this section to prevent a workman going on strike daring a period in which an award is in operation, if the strike is connected with matters other than those covered by the award. However, if the strike is in respect of any matters covered by the award then the strike is prohibited. It is to be observed that these words, "In respect of any of the matters covered by the settlement or award", appear only in clause (c) of Section 23, and find no place in either clause (a) or clause (b). The contention of the Advocate-General was that if it was intended to limit the operation of Section 23(a) or (b) to strikes arising out of matters pending before the Tribunal, then words similar to the words found in clause (c) would have been added to clause (a) and clause (b).

13. There is considerable force in this contention : but Mr. Atul Gupta has argued that the words "in respect of any of the matters covered by the settlement or award" have no reference whatsoever to the dispute or disputes which was or were the causes of the strike. He has urged that the words "in respect of any of the matters covered by the settlement or award" govern the terms "settlement or award". His point is that the whole of an award may not be put into operation and in a case where the whole of the award is not put into operation, he urges that these words "in respect of any of the matters covered by the settlement or award" are necessary. Mr. Gupta relied upon Section 15(2) and the proviso to sub-sections (2) which is in these terms :

> "(2) On receipt of such award, the appropriate Government shall by order in writing declare the award to be binding :
> Provided that where the appropriate Government is a party to the dispute and in its opinion it would be inexpedient on public grounds to give effect to the whole or any part of the award, it shall on the first available opportunity lay the award together with the statement of its reasons for not making a declaration as aforesaid before the Legislative Assembly of the Province or where the appropriate Government is the Central Government, before the Central Legislative Assembly, and shall, as soon as may because to be moved therein a resolution for the consideration of the award; and the Legislative Assembly may, by its resolution confirm, modify, or reject the award."

14. Then follows sub-sections (3) which is in these terms :

> "On the passing of a resolution under the proviso to sub-sections (2), unless the award is rejected thereby, the appropriate Government shall by order in writing declare the award as confirmed or modified by the resolution, as the case may be, to be binding."

15. It is clear from these provisions that where the Government is a party to an industrial dispute, the award made by the adjudicator can be modified before an order is made to enforce it. Mr. Gupta's argument is that the words "in respect of any of the matters covered by the settlement or award" in clause (c) of Section 23 of the Act are necessary because the award which is to be enforced may be not the award as made by the Tribunal. It may be an award as modified under the proviso to sub-sections (2) of Section 15 of the Act. In other words, the award which is to be put into operation may only be part of the award as originally made. Mr. Gupta, therefore, argues that it is necessary to insert the words "in respect of any of the matters covered by the settlement or award" in clause (c) of Section 23, because the actual award in operation might be something less or it might not cover matters which the original award dealt with. The contention is that the words "in respect of the matters covered by the settlement or award" would limit the operation of Section 23(c) to the award as modified or altered under the proviso to sub-sections (2) of Section 15.

16. In my judgment the words "in respect of any of the matters covered by the settlement or award" are unnecessary for the purpose suggested by Mr. Gupta. The award which is put in operation is the award as modified and therefore, the opening words of Section 23(c) which are, "during any period in which a settlement or award is in operation", must mean the period in which a settlement or award as modified by the Government concerned is in operation. By reason of the proviso to sub-sections (2) of Section 15 the original award may never be put in operation, but what may be put in operation is an award modified or altered by the Government concerned.

17. In my judgment the words "in respect of any of the matters covered by the settlement or award" have been deliberately inserted in clause (c) of Section 23 to limit its operation. During the period in which a settlement or award is in operation the workman cannot strike or the employers cannot lock-out in respect of any of the matters covered by the settlement or award. Strickes or lock outs in respect of other matters are permissible. Clause (c), therefore, draws a clear distinction between strikes and lock-outs on matters in respect of which an award or settlement has been made and strikes or look-outs connected with matters not covered by any award or settlement. It is to be observed, however, that no such distinction is made in clauses (a) and (b) of Section 23. Clauses (a) and (b) of that section prohibit workmen striking or any employer locking-out his employment during the pendency of conciliation proceedings and seven days after the conclusion of such proceedings, and during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings. There is nothing in these two clauses from which the Court can infer that a strike is permissible or a lock-out is permissible where the subject-matter of the dispute is different from the subject-matter of the dispute pending before a Tribunal or before a conciliation authority. It appears to me that the words of clauses (a) and (b) cover all strikes or lock-outs relating to the industrial establishment which originally gave rise to the dispute which has been referred to a Tribunal or to the

conciliation authorities.

18. Mr. Atul Gupta has urged that words similar to the words "in respect of any of the matters covered by the settlement or award" should be inserted in clauses (a) and (b) of Section 23. For example, clause (b) should read "during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings in respect of any of the matters covered by the disputes submitted to adjudication" or some similar words. He concedes that in construing a section Courts are not at liberty to insert words or sentences, but he has contended that such is absolutely necessary in this case. Further, he has urged that other additions must be made to this section to make it intelligible; for example, he has urged that the opening words of the section as they stand are not intelligible. The words are "No workman who is employed in any industrial establishment shall go on strike in breach of contract....." Mr. Gupta has contended that to make that intelligible the words "of service" should be added to contract. If the words were added it would make the section perhaps a little more artistic, but I think, as the section is drafted, the word "contract" there can only mean contract of service, because it is a section dealing with workmen employed in an industrial establishment who strike in breach of contract. That must mean, therefore, breach of their contract of service with the employer in that particular industrial establishment.

19. Mr. Gupta also contended that unless some other words were added, workmen who were not intimately connected with the industrial dispute might be prevented from striking. For example, he urged that on a literal construction of this section employees of the Lloyds Bank in Bombay or Delhi would be prohibited from striking by reason of this section. That argument however overlooks the words "employed in any industrial establishment." Those words, to my mind, limit the ambit of this section to dispute arising in a particular factory, workshop or other place of business or industry. The section was never intended to cover cases where the same employers employed workmen or employees in various factories situate in different towns.

20. "Employed in an industrial establishment" must mean employed in some particular place, that place being the place used for manufacture or an activity amounting to industry as that term is used in the Act. That, I think, is clear from Section 2(n)(ii) of the Act which is in these terms : " 'public utility service' means

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> (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends."

21. It seems to me quite clear that there the words "industrial establishment" mean the place at which the workmen are employed and the words as used in Section 2(n)(ii) must have the same meaning as when they are used in Section 23. That being so, it is quite clear that Section 23 could not cover a case of workmen in Bombay striking against an employer with whom

employees in Calcutta have a dispute.

22. It appears that an Ordinance (ordinance No. 6 of 1949), was passed by the Central Government and was published in the Gazette of 30th April 1949. Section 4 of that Ordinance provided :

> "Notwithstanding anything contained in any other law, it shall not be competent for a Provincial Government or any officer or authority subordinate to such Government to refer an industrial dispute concerning any banking or insurance company, or any matter relating to such dispute, to any tribunal or other authority for adjudication, inquiry or settlement."

Section 5 of the Ordinance is in these terms :

> "(1) Where under any law any industrial dispute concerning any banking or insurance company or any matter relating to such dispute has, before a commencement of this Ordinance, been referred by a Provincial Government or any officer or authority subordinate to such Government to any tribunal or other authority of adjudication or settlement and any proceedings in respect of or arising out of such reference were immediately before such commencement pending before any tribunal or other authority, then on the date of such commencement such reference shall be deemed to be withdrawan and all such proceedings shall abate.
> (2) The Central Government shall, as soon as may be after the commencement of this Ordinance, by order in writing, refer under Section 10 of the said Act every industrial dispute to which the provisions of sub-section (1) apply to an Industrial Tribunal constituted under the said Act for adjudication."

23. This Ordinance put an end to all proceedings which were being carried on all over India before various Tribunals relating to disputes between banks and their employees, and the purpose of the Ordinance was that all the disputes should be referred to a Tribunal which would deal with all of them. Proceedings which had been commenced on reference of particular disputes abated and these proceedings between the Lloyds Bank in Calcutta arid their employees at the Head Office and the Chowringhee branch abated under this Ordinance. The fact that the proceedings were never brought to a conclusion cannot affect the convictions. There were undoubtedly proceedings pending at that time and the employees went on strike whilst these proceedings were pending. It is in my view wholly immaterial whether the proceedings ever fructified into an award or whether they ultimately proved infructuous. The object of clauses (a) and (b) of Section 23, is to ensure an atmosphere of calm and peace during an adjudication upon an industrial dispute. Whilst the adjudication is proceeding the workmen in that particular factory or establishment cannot strike and further the employers cannot lock-out their employees and it is immaterial whether the strike or lock-out is concerning matters connected with a dispute which is

before the Tribunal or not. All disputes are forbidden in order to ensure a calm atmosphere for the adjudication upon the disputes, which have been referred.

24. Mr. Gupta suggested that these criminal proceedings had abated by reason of the concluding words of Section 5 of this Ordinance. The words are :

> "Any proceedings in respect of or arising out of such reference were immediately before such commencement pending before any tribunal or other authority, then on the date of such commencement such reference shall be deemed to be withdrawn and all such proceedings shall abate."

The suggestion is that this criminal prosecution was a proceeding arising out of or in respect of the reference. But it appears to me that these words only cover such proceedings as are pending for the settlement of disputes. Such proceedings may be before a Tribunal or they may be before the other authorities which are mentioned in Section 3 of the Act. The reference is to those proceedings and in my view the section cannot possibly cover criminal proceedings instituted in a criminal Court for any offences created by this Act. For these reasons I can see no ground for interfering with the order of the learned Chief Presidency Magistrate and accordingly this petition fails and the Rule is discharged.

Chatterjee, J.

25. I agree. The facts have been fully recited by my Lord the Chief Justice, and I need not repeat the same. The learned advocate appearing for the petitioners urged that a strike per se is not illegal and that the workmen should not be deprived of the right to strike unless there are specific words from which such an injunction can be inferred in the statute.

26. The learned Chief Presidency Magistrate has held that there was no substance in the defense contention that Section 23(b) of the Industrial Disputes Act should be given a limited meaning so as to indicate that the proceeding before the Tribunal must be in respect of the issue on which the petitioners went on strike.

27. The sole question before us is this : Is the strike illegal under Section 24, Industrial Disputes Act? Under that section a strike or lock-out shall be illegal if it is commenced or declared in contravention of Section 23. Under Section 23, there is a general prohibition with regard to strikes and lock-outs. The essential ingredients of an offence in such a case are (a) that there must be workmen employed in an industrial establishment, (b) that they shall go on strike in breach of the contract of employment and (c) that there must be the pendency of proceedings before a Tribunal.

28. In my opinion all these ingredients were present in this case. The petitioners urge that the

Magistrate failed to appreciate that the prohibition contained in Section 23(b), referred only to a strike concerning the particular disputes which were pending adjudication before a Tribunal.

29. I cannot accede to this contention. On a proper reading of Sections 23 and 24 and the other relevant sections of this Act, it seems to me that there is a conscious distinction made between the two cases (a) when a matter is pending adjudication and (b) when the adjudication has ripened into an award.

30. In the first case, that is, when proceedings are pending either before a Board or before a Tribunal there is an absolute prohibition on both the employers and the workmen. The employer is directed not to declare a lock-out; that is obviously in the interests of the workmen themselves. Similarly, the workmen are enjoined not to go on strike.

31. After the adjudication is over and an award has been made, the injunction is that there should be no strike or lock-out in respect of any of the matters covered by the settlement or award under Section 23(c).

32. It has been urged by Mr. Gupta that words should be put in clause (b) of Section 23, otherwise the language of the statute in its plain and ordinary meaning would lead to absurdity, hardship or injustice. He has asked us to read clause (b) so as to mean that the injunction against strikes is confined to cases when proceeding are pending before a Tribunal relating to the disputes involved in the strikes. To import these words into clause (b) will be really to amend the statute. Where the main objection and intention of the Act is clear, it should not be reduced to a nullity by inserting words or amending a clause which would be the duty of the Legislature and not of the Court. Parke, B., has pointed out that the grammatical construction should be adhered to, unless it is clearly repugnant to the intention of the Act or unless it leads to some manifest absurdity. *Becke v. Smith*[1], I see no manifest repugnancy or absurdity, nor anything so contrary to the intention of the statute as to force us to depart from the grammatical construction of the Act.

[1](1836) 2 M and W 191 : (150 ER 724)

33. I would have acceded to the contention of Mr. Gupta if the opening words of Section 23 are to be construed in a general sense so as to cover all disputes between workmen and employers in respect of any branch of the Lloyds Bank. It would lead certainly to hardship and inconvenience and in some cases to gross injustice, if we are driven to construe the Act in such a way as to hold that all workmen employed in the different branches of this Bank in the different parts of India are debarred from resorting to any strike, because the workmen involved in a particular establishment in Calcutta are involved in an adjudication pending before a Tribunal. Suppose there is a big corporation which has five hundred branches all over the country and there is a tiny place where there is a local dispute between the manager and the employees; assume that in such a case there is a reference under Section 10 of that particular dispute to an Industrial Tribunal. If the Act is to be construed in such a manner as to say that all the workmen who are working in the other branch organizations throughout the country are debarred from resorting to any strike for

ventilating their just grievances or for the redress of their disabilities, then surely the language of the statute would lead to great hardship and injustice. In my opinion that is not what the Act contemplates. It only puts an embargo on a strike in respect of the workmen employed in the particular industrial establishment, that is, the particular factory or workshop or branch which is involved in the pending proceedings before a Tribunal. In that view there is really no scope for the argument that the statute leads to great hardship or absurdity or injustice. In my view Section 23(c) says that workmen cannot go on strike on any of the matters covered by the award. But the Legislature has made a conscious departure in the case of pending proceedings and in such a case in order to make possible the uninterrupted course of the proceedings before the Tribunal both parties must stay their hands and must not prejudice a fair and impartial settlement or adjudication of the disputes. Therefore, in such a case the prohibition is general and unqualified. If we put that construction on the statute, then obviously there is no substance in the point that clause (b) should have a limited construction. So long as these proceedings are pending before a Tribunal, whatever may be their ultimate fate, and however they may be delayed, the statute says that there shall be no lock-out and no strike. If you allow the women to go on strike during the pendency of these proceedings, obviously the employers also will assert their right to enforce a lock-out, and it may be grossly detrimental to the interests of the unfortunate workmen or employees.

34. I agree with the order proposed by the learned Chief Justice.
Rule discharged.