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Chairman of the Bankura Municipality v. Lalji Raja & Sons

Shah J.

order destruction of articles seized in pursuance of a warrant issued under s. 430.

The argument advanced by counsel for the Municipality that the seizure was in exercise of the powers under s. 428 and not under s. 430 has, in our judgment, no force. The report of the Chairman of the Municipality dated March 10, 1950, makes it abundantly clear that the search warrant was issued by the Sub-Divisional Officer in exercise of his authority under s. 430 of the Bengal Municipal Act. Any admission by the respondents that the seizure was under s. 428 of the Act in proceedings for resisting the order which the Municipality claimed to obtain against them can have no value.

Section 428 does not contemplate a seizure of articles of food which are unwholesome, under the authority of a Magistrate, and s. 430 is expressly the provision which authorises a Magistrate to issue a warrant, for such seizure. The powers under s. 431(2) are expressly directed to be exercised by the Magistrate in respect of articles seized under s. 428, and there is nothing in the former provision which may justify the view that those powers can also be exercised in respect of articles seized under a warrant issued under s. 430. In our opinion, the High Court was right in its conclusion.

The appeal therefore fails and is dismissed.

Appeal dismissed.

M/S. NORTH BROOK JUTE CO. LTD. AND ANOTHER

v.

THEIR WORKMEN

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March 23.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Industrial Dispute—Rationalisation scheme objected to by workmen—Scheme put into operation pending reference to Tribunal—Workmen's refusal to work—Lock-out—Claim for wages for the period of lock-out—Industrial Disputes Act, 1947 (14 of 1947), ss. 3(2), 9A, 33, 33A.

A rationalisation scheme in the mills of the appellant companies was agreed to by the Works Committee and a notice under s. 9A of the Industrial Disputes Act, 1947, was given to the

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Union of their workmen. The workmen, however, objected to the introduction of the scheme and the dispute was referred by the Government to the Tribunal on December 13, 1957. On December 16, the management of the companies put the rationalisation scheme into operation but the workmen refused to do the additional work placed on them by the scheme. Later, the same day, the mills declared a lock-out. Work was, however, resumed a few days later as a result of a settlement, and a dispute arose as to whether the workmen were entitled to the payment of wages for the period during which the mills were closed:

Held, (1) that the workmen's representatives on the Works Committee represented the workmen only for the purpose of the functions of the Works Committee and that the approval of the scheme of rationalisation by the Works Committee was not binding on the workmen or their Union.

Kemp and Company Ltd. v. *Their Workmen*, [1955] 1 L.L.J. 48, approved.

(2) that the introduction of a rationalisation scheme was an alteration of conditions of service to the prejudice of the workmen.

(3) that the alteration of conditions of service was made not when notice under s. 9A of the Industrial Disputes Act was given but on December 16, when the rationalisation scheme was put into operation, and that as it was done when the reference was pending before the Tribunal, it was a contravention of s. 33 of the Act.

(4) that the closure of the mills in the circumstances of this case by the employer amounted to an illegal lock-out and that the workmen unable to work in consequence of the lock-out were entitled to wages for the period of absence caused by such lock-out.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 141 of 1959.

Appeal by special leave from the Award dated July 19, 1958, of the Fourth Industrial Tribunal, West Bengal, in Case No. VIII-240 (166)/57.

C. K. Daphtary, Solicitor-General of India, Vidya Sagar and *B. N. Ghosh*, for the appellants.

P. K. Sanyal and *P. K. Chakravarty* for *R. C. Datta*, for the respondents.

1960. March 23. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA, J.—On December 13, 1957, the Government of West Bengal referred under s. 10 of the Industrial Disputes Act the following dispute between M/s. Northbrook Jute Co., Ltd., and Dalhousie Jute Mills who are appellants before us and their workmen:—

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"Do the proposals of rationalisation in the above two mills involve any increase in workload? If so, what relief the workmen are entitled to?"

Almost a month before this the proposal of introducing a rationalisation scheme in the mills of these companies had been considered at an extraordinary meeting of the Works Committee and the Committee had agreed to the proposal. A notice under s. 9A of the Industrial Disputes Act was then given by the companies to the Unions of their workmen and it was because the workmen objected to the introduction of the rationalisation scheme that the dispute arose and was referred by the Government to the Tribunal. On December 16 when the above reference was pending before the Tribunal the management of these mills put the rationalisation scheme into operation but the workmen refused to do the additional work placed on them by the scheme. Later the same day the mills declared a lock-out. Work was however resumed again in all departments excepting the weaving and finishing departments on December 20, and in these two departments on December 21, as a result of a settlement arrived at between the workmen represented by their Unions and the Mills as regards the introduction of the rationalisation scheme. But a dispute arose as regards the payment of wages to workmen for their dues during the period when the mills were closed, viz., 16th December to 20th December in the weaving and finishing departments and 16th December to 19th December in all other departments. This dispute was also referred to the Tribunal by an order of the Government dated February 1, 1958. The earlier issue as regards the proposed introduction of the rationalisation scheme was also amended in view of what had happened in the meantime by substituting therefor:—"Have the rationalisation effected, in the above two mills since 16th December, 1957, involved any increase in the workload? To what relief the workers are entitled to?" We are no longer concerned with this issue as the decision of the Tribunal thereon which is against the workmen is no longer disputed. As regards the other two disputes the Tribunal has made an award in favour of the

workmen that they are entitled to wages for the period of absence above-mentioned.

On this question the workmen's case before the Tribunal was that the reason that workmen could not do any work on the days in question was the illegal lock-out by the employers; the employer's case was that the workmen had struck work illegally, and so, the closure of the mills on the 16th of December after such strike was not illegal or unjustified. The Tribunal was of opinion that the employer's attempt to put the rationalisation scheme into effect on the 16th December was a contravention of s. 33 of the Industrial Disputes Act, and so, the workmen's refusal to work in accordance with that scheme was not an illegal strike and the employer's closure of the mills was illegal.

Learned counsel for the employer-mills has tried to convince us that they had acted in accordance with law, in introducing the rationalisation scheme on the 16th December. He pointed out that the Works Committee duly constituted under the Act had considered the scheme and approved of it, and argued that as the workmen's representatives on the Works Committee had agreed to the scheme, the workmen themselves should be taken to have agreed to it. That the workmen's representatives on the Works Committee agreed to the introduction of the scheme by the companies "whenever they desired" is established by a copy of the resolution of the Works Committee. It has to be noticed however that the workmen's representatives on the Works Committee do not represent the workmen for all purposes, but only for the purpose of the functions of the Works Committee. Section 3(2) of the Act sets out the functions of the Works Committee in these words:

> "It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters."

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The language used by the Legislature makes it clear that the Works Committee was not intended to supplant or supersede the Unions for the purpose of collective bargaining; they are not authorised to consider real or substantial changes in the conditions of service; their task is only to smooth away frictions that might arise between the workmen and the management in day-to-day work. By no stretch of imagination can it be said that the duties and functions of the Works Committee included the decision on such an important matter as the alteration in the conditions of service by rationalisation. "To promote measures for securing and preserving amity and good relations between the employer and workmen" is their real function and to that end they are authorised to "comment upon matters of their common concern or interest and endeavour to compose any material difference of opinion in respect of such matters." The question of introduction of rationalisation scheme may be said to be a matter of common interest between the employers and workmen; but the duty and authority of the Works Committee could not extend to anything more than making comments thereupon and to endeavour to compose any material difference of opinion in respect of such matters. Neither "comments" nor the "endeavour" could be held to extend to decide the question on which differences have arisen or are likely one way or the other. It was rightly pointed out by the Labour Appellate Tribunal in *Kemp and Company Ltd.* v. *Their Workmen* (1) that:

> "the Works Committees are normally concerned with problems arising in the day to day working of the concern and the functions of the Works Committee are to ascertain the grievances of the employees and when occasion arises to arrive at some agreement also. But the function and the responsibility of the works committee as their very nomenclature indicates cannot go beyond recommendation and as such they are more or less bodies who in the first instance endeavour to compose the differences and the final decision rests with the union as a whole."

The fact that the workmen's representatives on the Works Committee agreed to the introduction of the

(1) [1955] 1 L.L.J. 48.

rationalisation scheme is therefore in no way binding on the workmen or their Union.

The next argument was that whatever alteration was effected in the conditions of service, was made, on the date when notice under s. 9A was given and that being before the 13th December there was no contravention of s. 33. There is in our opinion no substance in this contention. Section 9A in accordance with which the notice was given provides that "No employer who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule, shall effect such change—

(a) without giving to the workmen likely to be affected by such a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice;". With the proviso to the section we are not concerned. What is important to notice is that in making this provision for notice the Legislature was clearly contemplating three stages. The first stage is the proposal by the employer to effect a change; the next stage is when he gives a notice and the last stage is when he effects the change in the conditions of service on the expiry of 21 days from the date of the notice. The conditions of service do not stand changed, either when the proposal is made or the notice is given but only when the change is actually effected. That actual change takes place when the new conditions of service are actually introduced.

It necessarily follows that in deciding for the purpose of s. 33 of the Act, at what point of time the employer "alters" any conditions of service, we have to ascertain the time when the change of which notice under s. 9A is given is actually effected. If at the time the change is effected, a proceeding is pending before a Tribunal, s. 33 is attracted and not otherwise. The point of time when the employer proposes to change the conditions of service and the point of time when the notice is given are equally irrelevant.

It was further contended that in any case, the alteration was not to the prejudice of the workmen. How such a contention can be seriously made is difficult to

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understand. The whole basis of the scheme was so to allocate the machines to workmen, as to enable fewer workmen to work the machines than the number previously required so that surplus workmen could be discharged. The object was to decrease the cost of production. The method adopted for attaining the object was to obtain more work from the workmen for approximately the same wages. However laudable the object be, it cannot be doubted for a moment that the scheme prejudiced the workmen seriously. Mr. Fraser, the company's witness, stated in his evidence that while previously for every machine in the batching department, there were two hands, now there are two hands for two machines. In giving the reasons for the introduction of the scheme, he said "we had surplus labour in both the mills. The company was losing heavily. Till then we depended on natural wastage and did not think of rationalisation; in November last year, the decision was taken to take action on rationalisation."

Rationalisation which was introduced had therefore two effects—first that some workers would become surplus and would face discharge; and secondly, the other workmen would have to carry more workload. The introduction of the rationalisation scheme was therefore clearly an alteration of conditions of service to the prejudice of the workmen.

The alteration was made on the 16th December, when reference as regards the scheme had already been made and was pending before the Industrial Tribunal. The Tribunal has therefore rightly held that this introduction was a contravention of s. 33.

Lastly it was contended that even if the introduction of the rationalisation scheme was a contravention of s. 33 the workmen's remedy lay in applying under s. 33A, and that they were not entitled to strike work. Section 33A no doubt gives the workmen aggrieved by the contravention by the employer of s. 33 to apply to the Tribunal for relief; but the existence of this remedy does not mean that the workmen were bound to work under the altered conditions of service, even though these were in clear contravention of law. When they refused to do the additional work which the

rationalisation scheme required them to do, they refused to do work, which the employer had no right in law to ask them to do. It is difficult to say that this amounted to a "strike" by the workmen; but even if it could be said to be a "strike" such strike was certainly not illegal or unjustified.

Our conclusion therefore is that the Tribunal was right in its opinion that the closure of the mills by the employer amounted to an illegal lock-out, and the workmen, unable to work in consequence of the lock-out, are entitled to wages for the period of absence, caused by such lock-out.

The appeal is therefore dismissed with costs.

Appeal dismissed.

MANAGEMENT OF KAIRBETTA ESTATE, KOTAGIRI

v.

RAJAMANICKAM AND OTHERS.

1960

March 24.

(P. B. GAJENDRAGADKAR and K. C. DAS GUPTA, JJ.)

Industrial Dispute—Lay-off compensation—Closure of division due to disturbances by workers—Lock-out—Subsequent reopening of division—Claim for lay-off compensation—Lock-out and lay-off, Distinction—Industrial Disputes Act, 1947—(14 of 1947), ss. 2(l), 2 (kkk), 25C, 25E(iii), 33C.

The appellant's manager was violently attacked by its workmen as a result of which he sustained serious injuries. The workers in the lower division also threatened the appellant's staff working in that division that they would murder them if they worked there. The appellant was therefore compelled to notify that the division would be closed until further notice. Subsequently as a result of conciliation before the labour officer, the division was opened again. The workers made a claim for lay-off compensation under s. 25C of the Industrial Disputes Act, 1947, for the period during which the lower division was closed on the footing that the management for their own reasons did not choose to run the division during that period. The appellant's answer was, inter alia, that the closure of the division amounted to a lock-out which under the circumstances was perfectly justified and as such the workers were not entitled to claim any lay-off compensation :

Held; (1) that the concept of a lock-out is essentially different from that of a lay-off and where the closure of business amounts to a lock-out under s. 2(l) of the Industrial Disputes Act,