

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 9230 of 2004 (W)

AGAINST ID 64/2000 of INDUSTRIAL TRIBUNAL, KOLLAM

PETITIONER:

**OIL PALM INDIA LTD.,
POST BOX NO.1715, KOTTAYAM SOUTH
REPRESENTED BY ITS MANAGING DIRECTOR.**

**BY ADVS.SRI.E.K.NANDAKUMAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN**

RESPONDENT(S):

- 1. THE GENERAL SECRETARY,
OIL PALM INDIA PLANTATION STAFF ASSOCIATION, (AITUC)
BHARATHIPURAM P.O.**
- 2. THE GENERAL SECRETARY,
OIL PALM EMPLOYEES ASSOCIATION (CITU)
BHARATHIPURAM P.O.**
- 3. THE GENERAL SECRETARY,
OIL PALM PLANTATION STAFF CONGRESS (INTUC)
BHARATHIPURAM P.O.**
- 4. INDUSTRIAL TRIBUNAL, KOLLAM.**

R1 TO R3 BY ADV. SRI.S.HARIKRISHNAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1: COPY OF MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION
- P2: COPY OF GOVERNMENT ORDER DATED 22.02.1990
- P3: COPY OF GOVERNMENT ORDER DATED 05.05.1993
- P4: COPY OF GOVERNMENT ORDER DATED 06.08.1993
- P5: COPY OF GOVERNMENT ORDER DATED 14.10.1993
- P6: COPY OF CIRCULAR DATED 01.10.1997 ISSUED BY THE GOVERNMENT
- P7: COPY OF LETTER DATED 05.06.1997 ISSUED BY THE PETITIONER
- P8: COPY OF NOTICE DATED 27.07.1998 GIVEN BY THE UNIONS
- P9: COPY OF NOTICE DATED 15.01.1999 GIVEN BY THE UNION
- P10: COPY OF LETTER DATED 26.08.1998 ISSUED BY THE PETITIONER
- P11: COPY OF NOTICE DATED 12.01.1999 PUBLISHED BY THE RESPONDENTS
- P12: COPY OF LETTER DATED 20.01.1999 ISSUED BY THE PETITIONER
- P13: COPY OF GOVERNMENT ORDER DATED 12.02.1999
- P14: COPY OF MINUTES DATED 27.02.1999
- P15: COPY OF LETTER DATED 02.03.1999 GIVEN BY THE PETITIONER
- P16: COPY OF STATEMENT DATED 02.01.1999 OF THE PETITIONER
- P17: COPY OF STATEMENT OF THE PETITIONER DATED 12.03.1999
- P18: COPY OF STATEMENT OF THE PETITIONER DATED 01.04.1999
- P19: COPY OF STATEMENT OF THE PETITIONER DATED 06.04.1999
- P20(A): COPY OF PAGE NO.228 OF THE PRODUCTION REGISTER
- P20(B): COPY OF STATEMENT
- P20(C): COPY OF DISPATCH STATEMENT
- P21(A): COPY OF PRODUCTION REGISTER
- P21(B): COPY OF STATEMENT OF DISPATCH

(CTND)

WP(C).No. 9230 of 2004 (W)

P21(C): COPY OF STATEMENT PRODUCTION AND DISPATCH

P22: COPY OF LETTER DATED 10.02.1999 SENT BY THE PETITIONER

P23: COPY OF REPORT SUBMITTED TO THE CHAIRMAN OF the PETITIONER BY THE SENIOR MANAGER OF THE PETITIONER

P24: COPY OF LETTER DATED 01.02.1999 SENT BY THE PETITIONER TO THE SUB-INSPECTOR OF POLICE

P25: COPY OF MINUTES OF MEETING.

P26: COPY OF ORDER DATED 02.09.2000

P27: COPY OF ORDER OF THE PETITIONER COMPANY DATED 28.09.2000

P28: COPY OF LETTER DATED 07.05.1999 GIVEN TO THE PETITIONER BY THE RESPONDENTS

P29: COPY OF LETTER DATED 23.10.2002 GIVEN BY THE PLANTATION CORPORATION OF KERALA TO THE PETITIONER

P30: COPY OF COMPLAINT DATED 08.07.1999 SUBMITTED BY THE RESPONDENTS 1 TO 3 BEFORE THE CONCILIATION OFFICER

P31: COPY OF REFERENCE ORDER DATED 25.05.2000

P32: COPY OF JOINT CLAIM STATEMENT FILED BY THE RESPONDENTS 1 TO 3 BEFORE THE 4TH RESPONDENT DATED 14.11.2000

P33: COPY OF WRITTE STATEMENT FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 18.11.2002

P35: COPY OF AWARD PASSED BY THE 4TH RESPONDENT DATED 04.12.2003.

RESPONDENTS' EXHIBITS:

//TRUE COPY//

P.A. TO JUDGE

JV

K. VINOD CHANDRAN, J.

W.P.(C) No.9230 of 2004

Dated this the 6th day of February, 2015

JUDGMENT

Whether the employees who went on strike for 37 days are entitled to the wages, for the period in which they kept away from their work, was the question referred to the Industrial Tribunal and the question raised herein; to assail the award which granted 50% of such wages to the workmen. The Industrial Tribunal has noticed the decision of the Honourable Supreme Court in **The Statesman Ltd. Vs. Their Workmen [AIR 1976 SC 758]** to find that the discretion is of the Tribunal, to decide as to the payment of wages during the strike period. Normally, a discretion exercised by one authority would not be interfered with, especially under Article 226, where extraordinary powers are invoked to correct patent illegality or blatant perversity.

2. The learned counsel appearing for the Management would seek to distinguish the aforesaid case and would argue that the discretion exercised in the present case is patently

wrong. The respondent would contend that the Industrial Tribunal having found the demands to be justified and having found the strike undertaken by the workmen to be legal, there could be no interference in the discretion exercised.

3. The cause of action for the strike was a dispute with respect to equalization of pay. The workmen claimed that in all other public sector undertakings, there was pay parity with the Central Government employees and the Management Company, which was running at a profit; has not equalised the pay structure, with that of the Central Government employees or with that of the other public sector undertakings. The Management however contented that the Board could not take a decision by itself being a fully owned Government Company with 51% shares held by the State Government and 49% held by the Central Government. Necessary approval of the State Government has to be obtained, for equalizing the pay structure. In any event, there was equalization, but however, by reason of the Scheme of equalization, the workmen were one stage behind the Central Government employees. This was essentially the dispute on which the workmen struck work. Admittedly no conciliation proceedings were initiated by the workmen or the

representative unions.

4. The Industrial Tribunal after examining the issue found that the workmen had been agitating their cause for about two years and the Management did not convene any conciliatory conference with the representative union to settle the issue. It was specifically found that the workmen had resorted to the strike "after exhausting all legal remedies and waiting for more than two years". The strike was found to be one which could not be termed as illegal. The claim for equalization was found to be one justified. On that reasoning, the Industrial Tribunal found that the workmen were entitled to 50% back-wages.

5. A strike to be termed 'legal' or 'illegal', one has to look at the Industrial Disputes Act, 1947. Section 22, prohibits strikes and lock-outs in a Public Utility Service, unless otherwise than provided therein. The Management herein is not a Public Utility Service. Section 23 is a general provision for strikes and lock-outs. Looking at the above mentioned provisions, it cannot be said that the strike itself was illegal. The Industrial Tribunal discussed a number of decisions of the Honourable Supreme Court, in which the proposition that no wages would be payable in the event of an illegal strike was unequivocally declared. The

Industrial Tribunal has distinguished the aforesaid decisions on facts, which is correct, since the present case cannot be said to be one in which an illegal strike was involved.

6. However, the declaration that an illegal strike disentitles the workmen from wages cannot lead to a corollary that a legal strike in all circumstance would require the Management to pay the wages, for the period in which the workmen voluntarily, but however, on a collective bargaining exercise, kept away from employment. While an illegality with respect to the commencement and continuance of a strike could be easily discerned from the provisions of the Industrial Disputes Act applied to the facts of the case, that alone cannot lead to an exercise of discretion when wages are sought for, during the period of strike; which would go against the established principle of 'no work, no pay'.

7. The Industrial Tribunal has infact noticed **Bank of India Vs. T.S.Kelawala and Others [1990 (4) SCC 744]** wherein, pending a demand for wage revision the employees of a Nationalised Bank had called for a country-wide strike. The Bank issued a warning in the form of a circular, specifically indicating that any indulgence in strike would lead to forfeiture

of a day's salary. The employees went on a four hour strike, de hors such warning and eventually the forfeiture of salary for the whole day was upheld by the Honourable Supreme Court. The Industrial Tribunal sought to distinguish the aforesaid judgment on the ground that herein, the demand was pending for the last two years and the Management had dragged its feet in convening a conciliation and the Management also did not issue any warning as indicated in the aforesaid case.

8. It has to be immediately noticed that the consistent stand of the Management as is evident from the award of the Industrial Tribunal and the averments in the writ petition; is that no settlement talks could have been initiated with the representative unions since the Management had already recommended the equivalence to the State Government. The issue was pending approval of the State Government. The specific case put forward was that the Board had recommended grant of the demands raised by the workmen and the same was pending decision at the Government level. It is also pointed out by the learned counsel appearing for the petitioner-Management that the said demand was never approved by the Government and that the workers remained contend with the subsequent pay

revision granted.

9. In the context of what is stated above, though the convening of the strike cannot be said to be one illegal, going by the provisions of the Industrial Disputes Act; it cannot also be said that the workmen were fully justified in resorting to such strike especially when they were aware of the recommendation made by the Board of the Management and the issue was pending decision of the Government.

10. Apposite would be a reference to **Canara Bank and Others Vs. R.Jambunathan and Others [1994 (5) SCC 573]** where, again a strike resorted to by bank employees similar to that in **T.S. Kelawala (supra)** came up for consideration before the Honourable Supreme Court. The Honourable Supreme Court approved the decision in **T.S. Kelavala (supra)** on the principle of “no work no pay”. It cannot be disputed that the said decision was in the case of an establishment which was a public utility service. But however the reasoning, on which the action of the bank was upheld, would be applicable in the present case also.

“29. 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 abuse 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 orders, sit-down, stay-in and lie-down strike etc. 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 a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lockout 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.

30. The question whether a strike or a lockout 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 lockout is not to be resorted to because the party concerned 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 the 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 lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means are failed, to resolve it. It has to be resorted to, to compel the other party to the 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 lockouts in public utility services.”

11. Viewed in this context, one has to look at whether the finding of the Industrial Tribunal that the workmen had exhausted all the legal remedies can be upheld; and also whether there was an urgent, pressing grievance warranting cessation of work for more than a month. If that be so, coupled with the fact that there is no illegality, this Court would not interfere with the discretion exercised by the Tribunal.

12. When a dispute arises between the representative unions or the Management in any industrial establishment; under the Industrial Disputes Act, 1947, the conciliation officer,

on such apprehension; either suo motu or if it is brought to the notice of the conciliation officer that such a dispute exists, initiates a proceeding under Section 12 of the Act. Conciliation hence commences, as is indicated under Section 20 of the Industrial Disputes Act. The representative unions definitely could have initiated a conciliation proceeding before the appropriate officer authorised under the Industrial Disputes Act. True the dispute had been pending for two years. But that alone would not justify the strike called. The finding of the Industrial Tribunal that the Management did nothing in the two years cannot also be sustained. The Management, as is evident from the records, has recommended that the demand of the workmen be granted and the same was pending decision of the Government. There would be no purpose served in initiating a settlement talk with representative unions for the Management could not have implemented equalization sought for by the workmen, unless otherwise sanctioned by the State Government. The Management too was agreeable to such proposal.

13. The legal remedy which the representative unions could have resorted to was initiation of a conciliation proceeding, in the event of failure of which; definitely a reference could have

been made by the appropriate Government. The intimation of an industrial dispute, to the conciliation officer under Section 12 of the Industrial Disputes Act, could very well be done by the Management or the union. Such remedy having been not resorted to, it cannot be said that the strike was justified. As was noticed by the Honourable Supreme Court in the aforesaid decision, the legality or illegality turns on the provisions of the Industrial Disputes Act, but the justifiability would depend on the various factors.

14. An exercise of discretion for deviating from the general rule of 'no work no pay' has to be made on the justifiability and not merely on the legality. The reasoning of the Industrial Tribunal that the workmen had resorted to all legal remedies, as has been found above, cannot be sustained. It is not discernible as to what effect the strike could have brought about, especially since the decision for equalization was not one which the Management could take by itself.

15. The Tribunal has laboured on drawing a distinction between equalization of pay and revision of pay which according to this Court is not at all relevant in considering the issue of justifiability. This Court does not also find any pressing, urgent

cause to be agitated on the extreme platform of a complete cessation of work. The Tribunal has failed to consider the relevant aspects which would regulate the exercise of discretion in the case. The Tribunal has obviously gone on a wrong premise that a legal strike or rather one which cannot be declared as illegal; would in all circumstances lead to exercise of discretion in paying wages; even when the workmen have resorted to strike and voluntarily desisted from working. The strike being one peaceful is irrelevant since it is not the physical violence alone that is a relevant factor. The Honourable Supreme Court in the aforecited cases, categorised cessation of work without reasonable cause, to be a violence perpetrated on the society as such.

16. The discretion exercised by the Tribunal is found to be totally on the basis of extraneous considerations and would definitely lead to a patent illegality. The Tribunal has failed to consider the issue in the proper perspective based on the relevant factors and has misled itself on the specious premise of the strike being a legal one and one which was carried out peacefully. The award of the Tribunal is hence set aside. The reference would be answered against the workmen. The Writ

Petition would stand allowed. Parties are left to suffer their respective costs.

JV

sd/-
K. VINOD CHANDRAN,
JUDGE