

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

W.A.No. 1227 of 2014 () IN OP.38410/2001

AGAINST THE JUDGMENT IN O.P. NO. 38410/2001 of HIGH COURT OF KERALA DATED 11-04-2014.

APPELLANT/1ST RESPONDENT IN O.P.:

APOLLO TYRES LTD.,
PERAMBRA, THRISSUR (DIST.),
REPRESENTED BY ITS HEAD (HR).

BY ADVS. SRI. M. PATHROSE MATTHAI (SR.)
SRI. SAJI VARGHESE

RESPONDENT(S)/2ND RESPONDENT & PETITIONERS IN O.P.:

1. THE INDUSTRIAL TRIBUNAL,
PALAKKAD,
PIN - 678 001.
2. THE GENERAL SECRETARY,
APOLLO TYRES EMPLOYEES UNION,
PERAMBRA, CHALAKKUDY,
PIN - 680 689.
3. THE GENERAL SECRETARY,
APOLLO TYRES WORKERS MOVEMENT,
PERAMBRA, CHALAKKUDY,
PIN 680 689.
4. THE GENERAL SECRETARY,
APOLLO TYRES STAFF AND WORKERS UNION,
PERAMBRA, CHALAKKUDY,
PIN - 680 689.

P.T.O.

5. THE GENERAL SECRETARY,
APOLLO TYRES MAZDOOR SANGH (BMS),
PERAMBRA, CHALAKKUDY,
PIN - 680 689.

R1 BY GOVERNMENT PLEADER, SRI.M.MOHAMMED SHAFI

R2 TO R5 BY ADV. SRI.K.S.MADHUSOODANAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT
ON 16.09.2015 DELIVERED THE FOLLOWING:

P.T.O.

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

W.A. No.1227 of 2014

Dated this the 16th day of September, 2015

JUDGMENT

Shaji P. Chaly, J.

This appeal is preferred by the 1st Respondent against the judgment of the learned Single Judge dated 11.04.2014 in O.P.No.38410 of 2001. By the said judgment, learned Single Judge allowed the original petition filed by Respondents 2 to 5 partly. In fact, Respondents 2 to 5 as well as the appellant herein had filed original petitions challenging the award of the Industrial Tribunal, Palakkad in I.D.No.25 of 1998. The original petitions filed by the Management as well as the Unions were allowed. Respondent Unions have not preferred any appeal against the judgment of the learned Single Judge in O.P.No.30013 of 2001 filed by the Management and therefore it has become final.

2. Brief facts required for the disposal of the appeal are as follows:

The appellant has a factory at Perambra where it is engaged in the manufacture of automobile tyres. There is an Engineering Department in the factory which consists of different sections and Electrical and Electronic Section was one among them. During November, 1997, the work of changing of electrical panel boards were being carried out as part of modernization of the factory. One Rajesh T. Joseph, a worker attached to the Electrical and Electronic Section refused to carry out the work of panel board that was allotted to him on 28.11.1997 during the B-shift period. The said worker refused to do the work on 29.11.1997 also. In such circumstances, the Management initiated disciplinary action against him and consequently he was suspended from service.

3. Thereupon, other workers of the electrical and electronic section who were issued with directions to carry out the work in the said department also refused to do the work on the premise that the works which were allotted to them were not expected to be done by them in the absence of required number of workers to carry out the said work. Since the entire workers in the electrical and electronic section refused to carry out the work, the power supply became absolutely disrupted

and thereupon the functioning of the factory came to a standstill from 30.11.1997.

4. The workers of electrical and electronic section struck work from 01.12.1997 to 06.12.1997. Even though attempts were made to settle the dispute that arose at the instance of the Regional Joint Labour Commissioner on 03.12.1997, the dispute could not be settled. In such circumstances, the Management declared a lock out of the factory on 06.12.1997 with effect from 4.00 a.m. The lock out was lifted only on 13.12.1997 after the matter was settled between the Management and the Unions. As per the settlement dated 12.12.1997, the issue relating to disciplinary action was settled and thereupon the lock out declared by the Management was lifted. As part of the settlement, both the Management and the workers agreed to refer, for adjudication the demands of the Unions for full incentive for November, 1997 and the wages for the period from 01.12.1997 to 13.12.1997.

5. In that circumstances, the State Government referred the following three issues for adjudication of the Industrial Tribunal:

(i) Whether the demand of the union for full incentive for the month of November, 1997 is justifiable?

(ii) Whether the claim of the trade union for wages for the period from 2.00 p.m. on 01.12.1997 to 4.00 a.m. on 06.12.1997, the period for which the company declared "no work no pay" is justifiable?

(iii) Whether the demand for lock out wages for the period from 4.00 a.m. on 06.12.1997 to 6.00 a.m. on 13.12.1997 is justifiable?

6. Before the Industrial Tribunal rival parties adduced evidence. Four witnesses were examined on behalf of the Management as MW1 to MW4 and Exhibits M1 to M11 were marked through them. The Union examined one witness as WW1. The Industrial Tribunal after evaluating the facts, evidence, pleadings and circumstances of the case decided the issues referred to it in the following manner and passed an award accordingly:

"a) The workers are entitled to full incentive for the month of November, 1997.

b) The workers are not entitled to wages for the period from 01.12.1997 to 07.12.1997 and

c) The workers, other than those belonging to Electrical and Electronics Sections and office bearers of Apollo Tyre Staff and Workers Union are entitled to 75% of wages for the period from 08.12.1997 to 13.12.1997."

7. The above findings of the Tribunal were under challenge before the learned Single Judge by the Management as well as the Unions. The learned Single Judge after considering the rival contentions raised by the parties modified the award of the Industrial Tribunal in the following manner:

"(i) The entitlement of the workers for the benefit of the incentive scheme will be determined without excluding the B & C shifts of 30.11.1997 from the number of working days;

(ii) The workers of the sections, other than the electrical and electronic section, in the Perambra factory of the Company, shall be entitled to their full wages for the period from 2 p.m. on 01.12.1997 to 4 a.m. on 06.12.1997.

(iii) The declaration of lock out by the Company is held justified. Consequently, the workers of the factory will not be entitled to any wages for the period from 06.12.1997 to 13.12.1997 when the factory was under lock out."

8. Thereby as per the judgment of the learned Single Judge, the relief granted by the Industrial Tribunal as per its award as Serial Nos.(a) and (c) stated *supra* were set aside and thereby the original petition filed by the appellant was allowed. On the other hand, award of the Industrial Tribunal with regard to relief (b) stated *supra* was set aside by the

learned Single Judge by allowing the original petition filed by Respondents 2 to 5 and held that the workers of the sections other than the electrical and electronic section in the Perambra factory of the Company shall be entitled to their full wages for the period from 2.00 p.m. on 01.12.1997 to 4.00 a.m. on 06.12.1997. It is thus challenging the said modification of the award, the Management has preferred this appeal.

9. Heard the learned counsel for the appellant, Adv. Sri. Saji Varghese and the learned counsel for the Respondents 2 to 5, Adv. Sri. K.S.Madhusoodanan.

10. Learned counsel for the appellant contended that the finding of the learned Single Judge that the workers of the establishment other than the workers of electrical and electronic section are entitled to wages for the period from 01.12.1997 to 06.12.1997 cannot be sustained either factually or legally for the reason that consequent on the strike declared by the electrical and electronic section of the establishment, who are members of a major trade union of the establishment, other workers belonging to other trade unions supported the strike declared by the electrical and electronic section and

therefore the factory had come to a standstill. In such circumstances, the learned counsel contended that the entire workers of the establishment at Perambra struck work and therefore they were not entitled to get wages for the aforesaid period.

11. Learned counsel for the appellant has drawn our attention to Sec.25E of the Industrial Disputes Act and contended that since the workers struck work they were not entitled to get wages on the principle of "no work no pay" and therefore the claim raised by the unions regarding the same was rightly considered by the Industrial Tribunal and same was refused to the workers. Learned counsel further contended that even the learned Single Judge has found that due to the strike the establishment could not function and the strike was illegal and in view of such finding, the learned Single Judge was not correct in holding that the workers of the factory except the workers of electrical and electronic section were entitled to wages from 01.12.1997 to 06.12.1997.

12. Learned counsel for the appellant has specifically invited our attention to clause-(iii) of Sec.25E of the Industrial Disputes Act, which read thus:

"25E. Workmen no entitled to compensation in certain cases.-- No compensation shall be paid to a workman who has been laid-off-

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii) if he does not present himself for work at the est at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of the workmen in another part of the establishment."

13. By relying on the said provision, learned counsel contended that consequent on the strike carried out by the workers of electrical and electronic section, the power was completely disrupted and therefore the Management could not have proceeded with any work in the whole establishment and therefore the appellant was fully justified in declining wages to

the workers for the aforesaid period. Learned counsel further contended that the workers of all the trade unions supported the strike, which is evident from the claim statements filed by the unions before the Labour Court and he has invited our attention to Ext.P3 claim statement filed by the 1st Respondent which was the largest union in the establishment and contended that the nature of assertions made in the claim statements establish that they were fully supporting the strike carried out by the workers of the electrical and electronic section. We have gone through the claim statement and according to us, the recital contained therein are narration of facts explaining the circumstances which led to the strike. On the other hand, we have come across a statement in paragraph 4 that all the workers present in the shift were ready and willing to perform their assigned duties and in the third shift also the workers presented themselves for attending duties, but the Management refused to allot any work. This position continued till 06.12.1997 on which date the Management had published a notice of lock out.

14. Learned counsel for the appellant has brought to our notice the judgment in '**Associated Cement Companies**

Ltd. Chaibasa Cement Works Jhinkpani v. Their Workmen' [AIR 1960 (SC) 56] and contended that since the entire workers have supported the strike put forth by the electrical and electronic section, no work could be carried out in the establishment and therefore the workers are not entitled to wages. We have gone through the said judgment and found that the judgment was rendered by the Hon'ble Apex Court entirely on a different factual situation concerning interpretation in the matter of disqualification for lay off compensation under Sec.25E r/w Sec.25C of the Industrial Disputes Act, 1947 and in which the expression "in another part of the establishment" occurring in clause-(iii) of Sec.25E has come up for authoritative interpretation.

15. Learned counsel also invited our attention to the judgment of the Hon'ble Apex Court in '**Syndicate Bank and Another v. K. Umesh Nayak**' [(1994) 5 SCC 572] and specifically to paragraphs 24 and 25, which read thus:

"24. There is, therefore, nothing in the decisions of this Court in Churakulam Tea Estate and Crompton Greaves cases or the other earlier decisions cited above which is contrary to the view taken in T.S.Kelawala. 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 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.

25. We, therefore, hold endorsing the view taken in T.S.Kelawala 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."

16. Relying on the said judgments, learned counsel canvassed the proposition that the workers were not entitled to wages for the strike period even if the strike was legal. Again, the learned counsel has invited our attention to the judgment in '**Commissioner, Karnataka Housing Board v. C. Muddaiah**' [(2007) 7 SCC 689] and specifically to paragraph 34 of the said judgment, which reads thus:

"34. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected."

Relying on the said judgment, learned counsel canvassed the proposition that even if there is no enabling statutory provision the normal rule is that if there is no work no pay.

17. Learned counsel for the Respondent, on the other hand, contended that the appeal itself was not maintainable since the same is one challenging the judgment of the learned Single Judge entertained under Article 227 of the Constitution of India, from which no appeal is provided. Learned counsel

contended that the Respondents have not preferred any appeal against the judgment of the learned Single Judge in view of that inability for preferring appeal against the judgment rendered under Article 227 of the Constitution. On merits, he contended that except the workers of the electrical and electronic section none of the other establishments of the factory at Perambra declared strike even though they extended allegiance to the striking workers. Learned counsel further contended that even in the memos issued by the Management, it was specifically pointed out that the union leaders of the workers who struck work belonging to the electrical and electronic section obstructed the supervisory workers, which prevented them from making the said section functional. Further, learned counsel pointed out that the Management had directed the other sections of the factory to stop work and apart from the same, the workers including the striking workers were present inside the factory premises all through the period in question. Learned counsel further contended that no work could be carried out by them since there was disruption of complete power supply consequent to the strike carried out by the electrical and electronic section and

therefore they could not do any work even though they were present in the factory premises from 31.11.1997 to 06.12.1997. Therefore, the learned counsel contended that the judgment of the learned Single Judge interfering with the award of the Industrial Tribunal holding that the workers were entitled to wages for the period from 01.12.1997 to 06.12.1997 was justified on well-founded reasons. Therefore, the learned counsel contended that there is no illegality or infirmity in the finding of the learned Single Judge warranting interference in the appeal.

18. We have considered the rival submissions and according to us, the evidence on record shows that the workers who struck work were only the workers of the electrical and electronic section of the establishment and what we could gather from the evidence on record was that the other workers of the establishment only declared allegiance to the strike declared by the workers of the electrical and electronic section and they did not indulge themselves in strike. The workers of other sections, even according to the appellant were present in the establishment through out the period. Even according to the learned counsel for the

appellant, the workers who were present in the establishment could not have carried out the work since there was no power supply in the establishment consequent to the strike carried out by the workers of the electrical and electronic section. In spite of our best efforts, we could not locate any evidence to the contentions advanced by the learned counsel for the appellant that the workers of other sections also struck work having extended allegiance to the striking workers. So also, the Management did not have a case that the workers were laid off at any point of time. If the workers were to be laid off, the procedure contemplated under Secs.25C r/w Sec.25M had to be followed. At no point of time, the Management had such a case. Even the industrial dispute which was referred on this context was whether the workers were entitled to wages from 01.12.1997 to 06.12.1997 on the principle of "no work no pay". Furthermore, the facts in the **'Associated Cement Companies's** case referred *supra* reveal that both the Unions of the establishment gave notice for strike and therefore they were laid off and in that circumstances, interpreting Sec.25E clause-(iii), Hon'ble Apex Court held that the workers who struck work of different establishments were not entitled to

wages.

19. If the contentions advanced by the learned counsel for the appellant that volatile situation remained in the factory premises consequent to which no work could be carried out, the appellant should have adduced evidence before the Labour Court with regard to the intervention of the other workers of the factory and should have proved that those workers were also contributing factors to the standstill situation occurred in the factory. From the records made available, we could not locate any material at all to arrive at such a conclusion. So also, the contention advanced by the learned counsel for the appellant that in view of the support extended by the workers of the other sections to the striking workers, that by itself was a conclusive proof for the involvement of the entire workmen for causing the volatile situation in the factory premises. But, in our view, we do not think that such a presumption either factually or legally could be drawn by us especially when the parties have adduced evidence both oral and documentary before the fact finding body and evidence with regard to the contentions so advanced was absent in the records.

20. We also do not think that reading in between the lines of the oral testimony and documentary evidences was not possible especially when the appellant was at liberty to adduce necessary and required evidence to establish the alleged contributory factors rendered by the workers of other sections to the striking workers in causing disruption to the functioning of the factory.

21. Yet another contention advanced by the learned counsel for the appellant was that as provided under Sec.25M since lay-off was due to shortage of power, the appellant was not liable to pay any wages to the workers during the period in question. As we have said earlier, first of all, the procedure prescribed for lay-off was not followed and apart from the same, the shortage of power supply mentioned under Sec.25M relates to the supply of power to the factory from outside sources and not a situation wherein the power supply could not be provided consequent on the strike declared by the workers of the said section. According to us, merely because the workers of other sections extended allegiance to the striking workers, it did not carry a meaning that they also struck work.

22. Rules 75B and 75BB of Kerala Industrial Disputes Rules contemplate the procedure for lay-off and no such procedures were followed to treat the said period as lay-off period enabling the Management to take the benefit of Sec.25E (iii) of the Industrial Disputes Act. According to us, the said rules are mandatory in nature and therefore in order to make any contentions based on the principle of lay-off, as contemplated under the Act, definitely, the Management should have resorted to the proceedings contemplated thereunder. In the absence of such a procedure, the appellant was not at liberty to advance any contentions relying on Sec.25E(iii) of the Act.

23. So also, in order to appreciate the arguments advanced by the learned counsel for the appellant, the definition of 'strike' defined under Sec.2(q) may be relevant.

It reads as follows:

*"2(q) "**strike**" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment."*

Therefore, according to us, the facts and circumstances involved in the case does not inspire us to arrive at a conclusion that the workers other than the workers of electrical and electronic section struck work.

24. In that context, we are reminded of the judgment of the Hon'ble Apex Court in '**Muddiah**'s case referred supra, wherein it was held that the circumstances and the entire facts will have to be taken into account so as to hold that a person was willing to work but was illegally and unlawfully not allowed to do so. It is always common in the industrial sector that the workers of other trade unions may owe allegiance to the striking workers or sympathise, or declare solidarity to the cause of the striking workers, but at the same time, they may not indulge themselves in strike. Here, the case at hand, we do not find any evidence to arrive at a conclusion that the workers of the other sections of the factory other than the workers of the electrical and electronic division struck work or disrupted the work warranting refusal of wages to them. Therefore, according to us, the learned Single Judge was fully justified in modifying the award of the Industrial Tribunal and allowing the claim of the workers for wages for the period from

01.12.1997 to 06.12.1997.

Resultantly, the appeal fails and accordingly the same is dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

St/-
16.09.2015