(2014) 3 KHC 429

High Court Of Kerala

Case No: O.P. Nos. 30013, 38410 of 2001

Apollo Tyres Limited		APPELLANT
	Vs	
Industrial Tribunal		RESPONDENT

Date of Decision: April 11, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 227

Citation: (2014) 3 KHC 429

Hon'ble Judges: A.K. Jayasankaran Nambiar, J

Bench: Single Bench

Advocate: M. Pathrose Matthai, (Senior Advocate) and Saji Varghese, Advocate for the Appellant; K.S. Madhusoodanan and C.P. Peethambaran, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.
OP No. 30013/2001 is filed by M/s. Apollo Tyres Limited and OP No. 38410/2001 is filed by the

General Secretary, Apollo Tyres Employees Union & Others. As both the original petitions challenge the findings in the award dated 03/08/2000,

passed by the Industrial Tribunal, Palakkad, (published in the Gazette on 29/09/2000) they are taken up together for disposal. The brief facts

necessary for the disposal of these original petitions are as follows:

M/s. Apollo Tyres Limited 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 - the Electrical and Electronic Section being one among them. During November,

1997 the work of changing of electrical panel boards was being carried out as part of the modernisation works in the factory. Rajesh T. Joseph, a

worker attached to the electrical and electronic Section, refused to carry out the work of panel board revamping that was allotted to him on

28/11/1997 during B Shift. He refused to do this work on 29/11/1997 also. The management therefore, initiated disciplinary action against him and

he was suspended from service. Other workers of the electrical and electronic Section who were issued similar directions as Rajesh T. Joseph also

refused to do the work on the ground that the work allotted to them was not one that they were expected to do in the absence of the required

number of persons for the work. Work in the said Section and, consequently in the factory, came to a standstill from 30/11/1997. The workmen

were on strike from 01/12/1997 to 06/12/1997. There were attempts at conciliation at the instance of the RJLC on 03/12/1997 and thereafter on

07/12/1997 but matters could not be settled. In the meanwhile, with effect from 04.00 a.m. on 06/12/1997, the management declared a lock out

of the factory. The lock out was lifted only on 13/12/1997 after the matter was settled between the management and the unions. In the settlement

dated 12/12/1997, the issue as to the disciplinary action taken against Rajesh T Joseph was settled and the lock out was lifted. It was also agreed

to refer for adjudication the demands of the unions for full incentive for November 1997 and wages for the period from 01/12/1997 to

13/12/1997.

2. The State Government referred the following issues for adjudication by 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 p.m. on 01/12/1997 to 4 a.m. on 06/12/1997, the period for which the

company declared ""no work no pay"" is justifiable?

(iii) Whether the demand for lockout wages for the period from 4 a.m. on 06/12/1997 to 6 a.m. on 13/12/1997 is justifiable?

3. Before the Tribunal, the parties adduced evidence - both oral and documentary. Four witnesses (MW 1 - MW 4) were examined on behalf of

the Management and Ext. M1 to M11 documents were also marked through them. The Union examined one witness (WW 1) but they produced

no documents. The Tribunal, on a consideration of the pleadings, evidence on record and submissions made on behalf of the parties, proceeded to

decide the issues referred to it for adjudication as follows:

(i) For the purposes of calculating the incentive payment for the month of November, 1997, the evidence of WW 1, that was not discredited by

the management, indicated that 30/11/1997 was to be taken as a non-production day and excluded from the total number of days taken for the

purposes of the calculation. It followed that the plant performance, calculated as per the formula for incentive payments, was 101.03% for

November 1997. Accordingly, the workers were held entitled to full incentive payment for the month of November, 1997;

(ii) As regards the claim of the workers for wages for the period from 01/12/1997 to 06/12/1997, it was found that there was no justification on

the part of the workers of the electrical and electronic sections in refusing the work of panel board changing on 28/11/1997 and subsequent days.

As the workers of the electrical and electronic Section were responsible for the stoppage of work on these days, they were not entitled to wages

for the said days. It was also found that insofar as the workers of the other sections passively supported the strike and did not take any steps to

prevent the strike, they too were not entitled to wages for the said period;

(iii) As regards the claim of the workers for wages for the period from 06/12/1997 to 13/12/1997, the period during which the factory was under

a lock out, it was found that the lock out declared by the management was with ulterior motives and hence unjustified. It was found, however, that

on account of their conduct in not expressing their willingness to resume work or call off the strike, the workers of the electrical and electronics

section were not entitled to any wages during the said period. The workers of the other sections, in view of their not taking steps to restore

normalcy to the working of the factory, were found entitled to only 75% of their wages during the said period.

4. The above findings of the Tribunal are assailed both by the management as well as the Unions. I have heard Adv. Sri. K.S. Madhusoodanan

appearing on behalf of the Union and Adv. Sri. Saji Varghese on behalf of the Management. Adv. Sri. Madhusoodanan would contend as follows:

The Tribunal was justified in finding the workers as entitled for full incentive for the month of November 1997. He relies on the deposition of MW

1, MW 2, MW 3 and WW 1 to point out that as per the incentive scheme prevailing in the factory, the entitlement of the workers to incentive

payments is determined based on a formula that takes into account the production achieved during a month vis-a-vis the number of days worked.

It is pointed out that as per the practice in vogue, the days on which no work is done are excluded for the purposes of the formula. It was thus that

the Tribunal excluded the 30th of November from the number of production days for the purposes of the formula. He refers to Ext. M2 Settlement

and points out that the finding of the Tribunal is also in accordance with the terms of Ext. M2 settlement wherein it is clearly specified that actual

working days have to be reckoned for the purposes of the incentive payment.

On the issue of payment of wages for the period from 2 p.m. on 01/12/1997 to 4 a.m. on 06/12/1997, he would point out that the reason for the

workers of the electrical and electronics section refusing to do the work allotted to them, as evident from the depositions of MW 2 and MW 4 in

cross-examination, was that there was a shortage of hands to do the work in the particular shifts. The fact that usually more persons were engaged

to do the work that was allotted was evident from a reading of the terms of Ext. M2 settlement as also Ext. M10 document that showed the details

of the workers who had done work in the 817 and 820 Machines. It followed, therefore, that the workers were justified in refusing the work

allotted and, in this sense, the strike that was called was justified. It is further pointed out that, at any rate, there was no justification whatsoever for

denying wages to the workers of the other departments for the reason that they passively supported the strike and did not take any steps to

prevent the strike. Reliance was placed on the decisions reported in The Commissioner, Karnataka Housing Board Vs. C. Muddaiah, and J.N.

Srivastava Vs. Union of India (UOI) and Another, to contend that while the normal rule in industrial law was that of ""'no work no pay"", the rule

could not be invoked in a situation where the workers had shown their willingness to work and had not refused to do work. The evidence of WW

1 in cross-examination is relied upon to show that the management had not offered work during the period from 01/12/1997 to 06/12/1997.

As regards the payment of wages for the period from 4 a.m. on 06/12/1997 to 6 a.m. on 13/12/1997, it is his contention that the Tribunal was

correct in holding that the management had declared the lock out with ulterior motives and that the said action was unjustified. He would rely on

the depositions of MW 2, MW 4 and WW 1 to contend that it had been established that, on earlier occasions, whenever the factory faced a

problem with respect to power shortage, the Supervisors would step in and remedy the situation. The mere fact that the workers were on strike

did not mean that the Supervisors were prevented from doing their work. In fact, the management had not charge-sheeted anybody on that

ground. In such a situation, and particularly when the Tribunal had found that the lock out declared by the management was not justified, there was

no reason to deny wages to the workers of the electrical and electronic Section during the lock out period. Further, there was no justification to

limit the wages payable to the workers of the other departments to 75% of their wages for the said period.

5. Per contra, learned counsel appearing on behalf of the management Adv. Sri. Saji Varghese would contend as follows:

As per the terms of the incentive scheme, contained in Ext. M2 settlement, an exclusion of production days for the purposes of the scheme can

only be done if it is established that non-production on any day was on account of a scheduled shut down and not on account of any fault on the

part of the workmen. He points out that as per the scheme, 100% performance is 2100 equivalent truck tyres per day and the minimum production

required for eligibility under the scheme is 90% production, which works out to 1890 equivalent truck tyres per day. The working days of the plant

are defined to mean the days on which curing has been scheduled by the Production Planning & Control department as per the existing practice.

This has been corroborated through the evidence of MW 1 also. In the instant case, the non-production was on account of a strike by the workers

of the electrical and electronic section of the factory and not on account of any planned/scheduled shut down. As per the terms of the scheme,

therefore, the exclusion of the day of strike was not warranted. He would also point out that, even in the claim statement of the Union (Ext. P4),

they had admitted that ""if for reasons beyond the control of the workmen, the work could not be carried out in a shift that shift was separated and

the rest treated as constituting 100%"". He therefore, submits that the Tribunal could not have gone beyond the pleadings and the terms of the

incentive scheme and excluded a non-production day for the purposes of determining the entitlement of the workmen for incentive for the month of

November 1997.

On the issue of payment of wages for the period from 2 p.m. on 01/12/1997 to 4 a.m. on 06/12/1997, he would point out that the incident that

triggered the strike was the refusal to work by Sri. Rajesh T. Joseph. In the conciliation settlement subsequently signed between the management

and the unions, it was agreed that Sri. Rajesh T. Joseph would submit an explanation expressing regret to the management and that the

management will impose a punishment on him by awarding the period of suspension undergone by him from 29/11/1997 to 12/12/1997 as

punishment. Thus the fact that the strike was on account of a wrong conduct of the worker and not due to any fault of the management cannot be

disputed. The striking workers of the electrical and electronic department could not, therefore, claim any wages for the period during which they

continued with their strike. He would further submit that, during this period, the workers attached to the other departments also passively

supported the strike and the mere fact that they had punched in and thereby shown their willingness to work cannot take away from the fact that

the management was effectively prevented from giving them any work. The strike by one section of the workers was actively supported by all the

unions and hence the contention that the workers of the other departments were willing to work is factually incorrect. The support of the unions,

representing all the workmen, can also be gauged from the fact that they were justifying the strike of the workers before the Tribunal and also

before this Court. The management cannot be asked to pay wages for the period during which the workers did not work and the Tribunal rightly

found that the workers were not entitled to any wages during the said period.

As regards the payment of wages for the period from 4 a.m. on 06/12/1997 to 6 a.m. on 13/12/1997, he would point out that Tribunal has found

that lock out was not illegal. This was a case where there was no power supply in the factory owing to the strike resorted to by the workmen and

hence the management could not offer any work to the workmen. It was only when the workers persisted with their strike despite repeated

attempts at conciliation that the management was constrained to resort to a lock out. It was impossible for the management to provide work to the

workmen without any power supply. He would further point out that the reasons given by the Tribunal for holding the lock out unjustified and

vitiated by ulterior motives are wholly untenable. The Tribunal proceeded on the assumption that, had the factory not declared a lock out on

06/12/1997, the dispute could have been settled at the conciliation conference scheduled on 07/12/1997. Such a finding was wholly unsupported

by the evidence on record. Further the finding of the Tribunal that as on 06/12/1997 there was no change in the situation that prevailed on

30/11/1997, was also one that was arrived at by misreading M5 lock out notice issued by the Company. The Tribunal had failed to note that the

Company had clearly indicated therein that the management personnel were apprehensive of their safety on account of the threat and intimidation

by the striking workers. It is contended therefore that the finding of the Tribunal that the lock out was not justified and that the workmen of the

other departments were entitled to 75% of their wages during the lock out period is unsustainable. Reliance is placed by Counsel on the decisions

reported in India Marine Service Private Ltd. Vs. Their Workmen, Northern Dooars Tea Co. Ltd. Vs. Workmen of Demdima Tea Estate, The

Statesman Ltd. Vs. Their Workmen, and The Commissioner, Karnataka Housing Board Vs. C. Muddaiah, .

6. I have considered the submissions made by counsel on both sides. In these cases, the award passed by the Industrial Tribunal is under

challenge. As the petitioners seek to assail the findings in the award as being not supported by the evidence adduced before the Tribunal, what is

invoked in these cases is the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The parameters for exercise of this

jurisdiction are well settled. It is trite that this Court will not substitute its judgment for that of the Tribunal, whether on a question of fact or of law,

or interfere with the intra vires exercise of discretionary power, unless it is arbitrary or capricious or unless there was no evidence at all on which

the Tribunal could have come to the conclusion it did, or there was an error of finding on a jurisdictional fact or an error of law apparent on the

face of the record. In other words, this Court will interfere with the findings of the Tribunal only if it finds that they were not based on any evidence

or a misreading of the evidence or were perverse or resulted in manifest injustice or were such that no reasonable person would have come to such

conclusions. I am therefore called upon to ascertain whether any of the above factors exist in the instant case justifying an interference with the

award passed by the Industrial Tribunal.

7. On a consideration of the issue regarding entitlement of the workers of the factory for the benefit of the incentive payment for the month of

November 1997, I find that the terms of the incentive scheme were available before the Tribunal as part of the Memorandum of Settlement dated

16/11/1994 (Ext. M2) entered into between the management and workers. Therein, under the head of ""Production"" it is stated as follows:

The Plant output at 100% performance will be 2100 Equivalent Truck Tyres per day. Minimum eligibility for incentive payment will be 90% of the

above, i.e. 1890 Equivalent Truck Tyres per day.

The working days of the Plant will be the days Curing has been scheduled by Production Planning & Control Department as per the existing

practice.

It is seen, therefore, that as per the incentive scheme under the Settlement, the working days for the purposes of the scheme was to be taken as

those days on which Curing was scheduled by the Production Planning & Control Department of the factory. There is no evidence adduced in this

case that would indicate that the Production Planning & Control Department had not scheduled curing on 30/11/1997. In fact, MW 1 has clearly

stated in his deposition that 30/11/1997 was a scheduled curing day. During cross-examination he has clarified that only days of planned shutdown

are excluded for the purposes of the incentive scheme. As against this, the Tribunal has relied upon the testimony of WW 1, to the effect that the

days of strike, lockout and breakdown are excluded for the purposes of incentive calculation, stating that the management has not discredited this

evidence. The management has a case that the evidence on behalf of the workmen had been postponed many times on account of witnesses not

turning up on the posting dates. Thereafter the Tribunal had recorded that there was no evidence for the workmen. It was much later, and after the

management adduced evidence, that WW 1 was examined pursuant to a petition filed by the unions for re-opening the evidence. It was in these

circumstances that the evidence tendered by WW 1 could not be discredited. On a consideration of the available evidence, I am of the view that,

not withstanding the fact that the management did not discredit the evidence of WW 1, this was an issue that had to be answered in favour of the

management. The terms of Ext. M2 settlement were unambiguous in that all days when curing was scheduled would be treated as working days.

There was also the deposition of MW 1 to the effect that 30/11/1997 was a scheduled curing day and only planned shut down days were

excluded for the purposes of the scheme. In that situation, unless there was reliable evidence to show that 30/11/1997 was not a scheduled curing

day or that the management had planned a shut down on that day, there was no justification for exclusion of 30/11/1997 as a working day for the

purposes of the scheme. The finding of the Tribunal on this issue is therefore liable to be set aside as one not supported by evidence and I do so.

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.

8. Coming now to the issue with regard to wages of the workmen for the period from 2 p.m. on 01/12/1997 to 4 a.m. on 06/12/1997, it is seen

that the Tribunal found that there was no justification on the part of the workers of the electrical and electronic sections in refusing the work of

panel board changing on 28/11/1997 and subsequent days. It therefore found that, insofar as the workers of the electrical and electronic section

were responsible for the stoppage of work on these days, they were not entitled to wages for the said days. The Tribunal also found that even the

workers of the other sections were not entitled to wages for the said period because they had passively supported the strike and did not take any

steps to prevent the strike. While the unions would contend that the workers were justified in resorting to the strike inasmuch as the management

had issued directions that were not capable of being executed owing to shortage of workers in those shifts, I find that the Tribunal has arrived at its

finding regarding the unjustified strike by the workers of the electrical and electronic section and their consequent disentitlement to wages, based on

a correct appreciation of the evidence on record. I find, however, that there was no evidence to support the further finding as regards

disentitlement of the workers in the other sections to their wages for the period. The Tribunal holds them disentitled to wages on the ground that

they had passively supported the strike and did not take any active steps to prevent the strike. This finding of the Tribunal is not supported by any

evidence at all. As a matter of fact, the uncontroverted evidence of WW 1 would clearly indicate that between 01/12/1997 and 06/12/1997, the

workers had assembled for work on all days by punching in at the factory gates. This meant that the workers had presented themselves for work.

In the absence of any evidence regarding their refusal to work, therefore, they were entitled to wages for those days. The finding, that the strike

resorted to by the workers of the electrical and electronic section was unjustified, could only have affected the right to wages of those workers and

not the similar right of the workers of the other sections who had shown their willingness to work. The management also could not rely on the

principle of ""no work no pay"" to deny the said workers their wages for the period because there was no evidence to suggest that the said workers

had, in any manner, contributed to the inability of the management to provide work. I feel, therefore, that the finding of the Tribunal on this issue, to

the extent it holds that the workers of the other sections were not entitled to wages for the said period because they had passively supported the

strike and did not take any steps to prevent the strike, is not legally sustainable. I therefore set aside that portion of the finding of the Tribunal on

this issue and hold that the workers of the other sections i.e. other than the electrical and electronic section, are entitled to their full wages for the

period from 2 p.m. on 01/12/1997 to 4 a.m. on 06/12/1997. Lastly, on the issue of claim of the workers for wages for the period from

06/12/1997 to 13/12/1997, the period during which the factory was under a lock out, the Tribunal has found that the lock out declared by the

management was legal but not justified. Thereafter, the Tribunal proceeded to hold the workers of the electrical and electronic section as disentitled

to claim wages for the period on account of their unjustified strike that led to the lock out. As regards, the workers of the other sections, the

Tribunal found them entitled to 75% of their wages for the said period. On a perusal of the findings of the Tribunal on this issue, it becomes

apparent that the basis of the findings on this issue was flawed. Ext. M5 lock out notice issued by the Company, and extracted fully in paragraph

29 of the award, clearly showed that it was on account of the continued strike by the workmen and the threats and intimidation meted out to

supervisory and managerial staff who were apprehensive of their safety, that the management was forced to declare a lock out with effect from

06/12/1997. The Tribunal, however, considered only the facts stated in the initial portion of the lock out notice and, finding it to be similar to those

stated in Ext. M7 notice by which the management had declared no work no pay with effect from 01/12/1997, proceeded to find that there were

no additional grounds or reasons for declaring the lock out with effect from 06/12/1997. The Tribunal also entered into the realm of speculations

when it observed that if the lock out had not been declared, the matter would have been amicably settled in the conciliation conference scheduled

on 07/12/1997 and normalcy would have been restored on 08/12/1997. As already noted, this was a case where there was no power supply in

the factory owing to the strike resorted to by the workmen and hence the management could not offer any work to the workmen. It was only when

the workers persisted with their strike despite repeated attempts at conciliation that the management was constrained to resort to a lock out. The

depositions of the management witnesses would also indicate that it was virtually impossible for the management to provide work to the workmen

without any power supply. The circumstances would indicate that the decision to declare the lock out was a bona fide one and it was not a move

directed against the workers of the factory. The declaration of lock out in such a situation could not therefore have been found to be unjustified.

The finding of the Tribunal, that holds the lock out declared by the Company to be unjustified, is therefore set aside as not supported by any

evidence. It follows, as observed by the Supreme Court in the case of India Marine Service Private Ltd. Vs. Their Workmen, , that where the

strike is unjustified and the lock out found to be justified, the workmen would not be entitled to any wages at all. It is only when, consequent to an

unjustified strike there is a lockout that becomes unjustified that a case for apportionment of blame arises. I therefore set aside the consequent

finding of the Tribunal on this issue viz. the finding that the workers of the other sections (other than the electrical and electronic section) are entitled

to 75% of their wages for the above period.

As a result of the discussions above, the original petitions are partly allowed and the award of the Industrial Tribunal, Palakkad will stand modified

as follows;

(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.

There will be no order as to costs.