(1986) 01 BOM CK 0043

Bombay High Court

Case No: Writ Petition No''s. 1954, 1968 of 1984

Bennett, Coleman and Co. Ltd.	APPELLANT
Vs	
State of Maharashtra and Others	RESPONDENT

Date of Decision: Jan. 10, 1986

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25O, 25R

Citation: (1994) 3 LLJ 140

Hon'ble Judges: Pendse, J

Bench: Single Bench

Advocate: Ashok H. Desai and F.D. Damania and S.S. Kapadia, instructed by Kanga and Co, for the Appellant; S.M. Shah, R.J. Kochar and ; N.H. Gurusahani, for the Respondent

Final Decision: Allowed

Judgement

Pendse, J.
Both these petitions filed under Article 226 of the Constitution of India can be conveniently disposed of by a common judgment as the disputes involved in both the petitions arise out of the same set of fact''s. The facts giving rise to filing of these two petitions are as follows.

2. Bennett, Coleman & Co. Ltd. are the proprietors and publishers of newspapers, such as Times of India, Nav Bharat Times, Maharashtra Times, Economic Times, etc. The Company employs 822 clerks, 421 employees designated as Working Journalists and 1146 workers. In June 1984 the employees owing allegiance to Kamgar Utkarsha Sabha, a trade Union (respondent No. 4 in Petition No. 1954 of 1984) resorted to unfair labour practice, like go-slow, illegal strike etc. The members of the Union also put up placards and posters. As a result of the action of respondent No. 4, the newspapers could not be published on June 12, 1984. On the same day the Company put up a notice requesting the workers to call-off the illegal strike and other illegal practices and come back to work. The second notice was put on June 13,

1984, but the workers persisted in the illegal strike. On June 14, 1984 the notice was given by the Company : under Standing Order No. 19 applicable to the workmen. The Company also filed complaint (ULP) No. 963 of 1984 in the Industrial Court for a declaration that respondent No. 4 Union, as also the workmen of the petitioner Company be declared guilty under Item 6 of Schedule II and Item 9 of Schedule IV of the Unfair Labour Practices Act, 1971 (hereinafter referred to as the ''U.L.P. Act''). The Industrial Court granted an interim injunction restraining the workmen from resorting to unfair labour practices. The various publications of the Company could not be published inspite of the injunction order between June 12, 1984 and July 4, 1984.

On June 16, 1984 the third notice was issued by the Company informing the workers of the injunction and advising to give up the illegal activities. In answer to this third notice, respondent No. 4 Union filed a complaint before the Industrial Court seeking a declaration that the Company is guilty of unfair labour practices, and secured an ex-parte ad-interim injunction. The ad-interim injunction was subsequently vacated. On August 11, 1984 the Company, realising that it has suffered a loss of Rs. 1.65 crores due to non-publication of various daily news-papers and the weeklies, issued notice reciting that the strike resorted to by the workers is illegal and the workers would not receive their wages. The Company made it clear that the strike was in violation of Section 24(1)(a) of the U.L.P. Act. The Company also instituted Suit No. 2009 of 1984 in this Court seeking an injunction restraining the workers from indulging in incidents of violence and assault on managerial and loyal workers and the injunction was accordingly granted.

3. On August 21, 1984, the Deputy Commissioner of Labour, served show-cause notice on the Company to explain why the Company should not be prosecuted under Sections 25-O and 25-R of the Industrial Disputes Act for closing of the establishment without taking prior permission of the Government. The Company filed a detailed reply on August 28, 1984 pointing out that the Company had not closed the establishment but had merely temporarily suspended the work because of the illegal activities of the workers. The Company further pointed out that the work will be resumed provided the workers give an undertaking that they would give normal work, observe discipline and give normal production. Inspite of the reply, the State Government threatened to proceed with the hearing of the show-cause notice and thereafter Writ Petition No. 1954 of 1984 was filed in this Court on September 17, 1984. By this petition the Company seeks writ of mandamus directing the State Government and the Commissioner of Labour to withdraw and cancel the impugned notice dated August 21, 1984.

4. Petition No. 1954 of 1984 came up for admission before me on September 24, 1984 and at that time counsel appearing for the Government made a statement that the petitioners would be heard by the Secretary on October 8, 1984 and the orders would be passed by October 10, 1984, and thereupon the petition was adjourned to

October 12, 1984. The parties appeared before the Secretary on October 8, 1984, but the Secretary declined to proceed with the hearing on the ground that he was not authorised. In view of this position, the petition was admitted on October 12, 1984 and the hearing of the show-cause notice issued by the State Government was stayed.

5. in the meanwhile, on September 18, 1984, two workmen journalists, M.J. Kamalakar and Tyrone C.D'' souza and the two Unions, Bombay Union of Journalists and Maharashtra union of Working Journalists, filed Writ petition No. 1968 of 1984 claiming a declaration that the closure of the Company was in contravention of Section 25-O of the Industrial Disputes Act. The working Journalists and their Unions also sought a direction to the State Government that civil and criminal action should be adopted against the Company and the Company should be directed to pay the wages of the working journalists for the period of wrongful closure. The petition was also admitted and was directed to be heard with the petition filed by the Company, and that is how both the petitions are placed before me for hearing.

6. Shri Desai, learned counsel appearing on behalf of the Company, submitted that subsequent to filing of the petition the members of respondent No. 4 Union had realised their mistake and had given undertaking sought by the Company and have resumed the work. The workers had undertaken to do normal work, to given normal production and observe discipline, and as all the workers, including the workers of respondent No. 4. Union, had given undertaking that the Management had commenced publication. Shri Desai points out that in view of these subsequent developments, the dispute between Company and the workers has come to an end. The learned counsel urged that the show-cause notice issued by respondent No. 3 was on a misconception that the company has proceeded to permanently close its establishment and thereby violated provisions of Section 25-O of the Industrial Disputes Act. Section 25-O of the Industrial Disputes Act prescribes that the employer, who intends to close down an undertaking, shall submit for permission at least 90 days before the date of intended closure is to be effected, an application to the appropriate Government stating therein the reasons intended for closure of the undertaking. Section 25-O then thereafter sets out the steps to be taken by the State Government for disposal of that application. The show-cause notice was issued to the Company on the footing that the Company had closed down the undertaking or an industrial establishment, and Shri Desai seriously disputes this assumption of respondents 1 to 3. The learned counsel points out that the notice dated August 11, 1984, copy of which is annexed as Exhibit ''L'' to Petition No. 1954 of 1984, was issued in exercise of powers under Standing Order No. 19 as far as the workmen were concerned, Standing Order No. 11 (d) as far as the Journalists were concerned and Standing Order Nos. 22(1) and 25 as far as the clerks were concerned. The learned counsel invited my attention to this notice and the bare perusal of the same makes it clear that the Company had decided to temporarily suspend its work because of the violence and the illegal activities resorted by the workers belonging

to respondent No. 4 Union. The notice clearly recites that intimidation, threats of physical assault and being removed from the work forcibly by activists of Kamgar Utkarsha Sabha had made it impossible for the loyal employees to perform their duty. What is stated thereafter is required to be set out:

"With a view to prevent any sabotage or any other incidents, it has been decided that only those employees who are prepared to work and to give an undertaking to the Company in the form kept in the security office at the main gate will be permitted to come inside the premises. Even in their case if they are not doing any work and/or their presence does not ensure production of the Company''s publications, they will be asked to go out, besides their being entitled to wages.

The notices above will be withdrawn partially or otherwise depending upon the willingness of the employees to resume production. It is hereby made clear that this is not a Notice of lock-out and this is only a closure under the company''s standing orders. During the closure, however, no employees affected by the closure will be entitled to wages.

The company reserves the right to exempt individual employees or class of employees from the effect of the closure. The company hereby exempts for the time being the security staff, watch and ward and fire brigade personnel. The company will also in individual cases on their personal application exempt them from the closure provided their services are considered essential".

The plain reading of this notice makes it clear that the assumption of respondent No. 3 and the State Government that the Company intended to permanently close down the undertaking was wholly untenable. The submission of Shri Desai that what the Company intended to do was to temporarily suspend the work deserves acceptance. It is, therefore, obvious that the provisions of Section 25-O of the Industrial Disputes Act are not at all attracted and the action of the State Government in issuing the show-cause notice is wholly untenable. I have perused the Standing Order No. 19 and bare reading of it makes it clear that it provides for temporary suspension of work of establishment and not its permanent closure. Shri Kochar, learned counsel appearing on behalf of respondent No. 4 Union, accepted that all the workers have given an undertaking and have rejoined the duties and the dispute between the employees and the Company no longer survives. In these circumstances, in my judgment, it is necessary to quash the show cause notice served by respondent No. 3 on the Company.

7. Shri Gurusahani, learned counsel appearing on behalf of the Working Journalists and the two Unions of the Journalists, submitted at the outset that the two Unions are no longer supporting the two individual working journalists who are petitioners Nos.1 and 2 in Writ petition No. 1968 of 1984. Shri Gurusahani in fact has taken out Chamber Summons No. 100 of 1985 for deleting the names of petitioners Nos.3 and 4, that is the two Unions of Working Journalists. The Chamber Summons was taken

out as the two unions have filed ULP Complaint No. 7 of 1985 u/s 28(i) of the U.L.P. Act before the Industrial Court and in that complaint it is claimed that the Company had declared a lockout and had not closed the establishment Shri Gurusahani submits that the two individual journalists do not accept this claim and therefore the two unions should be deleted from the array of petitioners. It is not possible to grant the relief sought in Chamber Summons No. 100 of 1985 as the two individual journalists have not served the copy of the Chamber Summons on the two Unions. Shri Gurusahani submits that the closure of the establishment, so far as the working journalists were concerned, was clearly in contravention of the Standing Orders. The learned counsel relied upon Standing Order No. 6(5) of the Standing Orders for Working Journalists published in 1966. This Standing Order prescribes that the management may close clown any department or departments or section or sections of a department after giving one month''s general notice to the working journalists concerned. The learned counsel urged that as the Standing Order clearly provides for service of one month''s general notice, it was not open for the Company to close down the establishment without any such notice to the working journalists, and therefore, provisions of Section 25-O of the Industrial Disputes Act are violated. It is not possible to accede to the submission of the learned counsel. What is contemplated by Standing Order No. 6(5) is the permanent closure of the department or section. As found hereinabove, the Company had not closed down any department or section but has merely suspended the work thereof for a short duration and that too because of the violence and the illegal activities adopted by the workmen. Shri Gurusahani very strenuously urged that the working journalists had not indulged in violence or illegal activities, and therefore, the Company should not have punished them. The submission overlooks that the management cannot run the establishment unless the workmen give up the illegal activities and in such circumstances normally innocent people, who had nothing to do with violence or illegal activities also suffer. The management could not permit the working journalists to attend to the work when the Company was unable to publish any newspaper. Shri Gurusahani also submitted that as the working journalists had not indulged in any unfair labour practice the management was wrong in refusing to pay wages to the working journalists. I am afraid this question cannot be agitated in the present proceedings, as the working journalists'' Unions have already instituted proceedings before the Industrial Court in that respect.

8. Finally, Shri Gurusahani submitted that the management was clearly wrong in compelling the working journalists to give the undertaking. The learned counsel urged that there is no provision, either under the Standing Orders or under any Labour Laws, which demands that the working journalists should furnish undertaking before joining the duty. I am not inclined to investigate this aspect in the present case as it is not in dispute that all the 400 and odd working journalists have given the undertaking and have joined back the duty long before. Shri Gurusahani submitted that the two working journalists, who have filed Petition No.

1968 of 1984, have given the undertaking without prejudice to their rights, and therefore, the question should be determined. I am not inclined to do so in the present proceedings, in the facts and circumstances of the case which have transpired subsequent to filing of the petitions. In my judgment, the two working journalists are not entitled to any relief and their petition must fail.

9. Accordingly, Writ Petition No. 1954 of 1984 succeeds and the rule is made absolute in terms of prayer (a). In the circumstances of the case there will be no order as to costs.

Writ Petition No. 1968 of 1984 fails and the rule is discharged, but without any order as to costs.

Chamber Summons No. 100 of 1985 taken out in Writ Petition No. 1968 of 1985 does not survive and is dismissed without any order as to costs.