Sandoz (India) Limited, Bombay Vs Sandoz Employees Union

Court: Bombay High Court

Date of Decision: Feb. 22, 1980

Acts Referred: Industrial Disputes Act, 1947 â€" Section 10(2), 10A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 â€" Section 24(1), 28

Citation: (1981) 1 LLJ 71

Hon'ble Judges: M.S. Deshpande, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

(Dictated in Open Court on 19-2-80)

1. By the present complaint filed by the Complainant-company under S. 28 of the M.R.T.U. & P.U.L.P. Act, 1971, the complaint is that the

respondent which is a union registered under the Trade Unions Act representing some of the employees of the complainant-company is alleged to

have indulged in unfair labour practice under Item 1 of Schedule III of the Act. The relevant item reads :

To advise or actively support or instigate any strike deemed to be illegal under this Act.

2. To have clear picture of the happenings as are alleged to have occurred, optionised version of the statement of facts as it appears in the

complaint would be useful. On 2-7-79 the respondent-union is alleged to have forwarded a charter of demands on behalf of the employees which

charter of demands according to the complainant contained unreasonable and exorbitant demands. This was followed by supplementary charter of

demands dated 3-8-79. On 5-8-79 a notice was given to the complainant purporting to be a notice under S. 24(1) of the Act and since a

reference to the said notice and the subsequent amendments would be highly relevant for the purpose of decision of the present case, the same is

quoted as verbatim :

Dear Sirs,

In accordance with the provisions contained in sub-s. (1) of S. 24 of the M.R.T.U. & P.U.L.P., Act 1971 we, Sandoz Employees" Union (The

respondent in the present case) hereby given you notice that we propose to call a strike of the workmen employed in your undertakings throughout

India from 23rd August, 1979 or from any subsequent day, either token strike, sit down strike, or frequent as deemed necessary or indefinitely for

the reasons explained in the Annexure attached hereto.

The Annexure contains three statement of reasons which read :

(1) For securing the demands of the employees of the company as contained in the charter of demands under cover of our letter dated 2-7-79 and

served on the company on 2-7-79. The company has refused to negotiate and also refused to sign a joint application either under S. 10A or S.

10(2) of the I.D. Act, 1947.

(2) To secure the demands listed in the additional demands placed in our letter dated 3-8-79.

The copy of the said notice was forwarded to the Investigating Officer under N.R.T.U. & P.U.L.P. Act, 1971, the Registrar, Industrial Court, the

Judge, Labour Court and lastly, to the Commissioner of Labour, Bombay.

3. By reply dated 7-8-79 the respondent was informed about the complainant''s intention to carry on negotiations relating to the charter of

demands and there was also a re-question to withdraw the strike notice dated 8-8-79. Then on 13-8-79 a notice was served on the respondent-

union with regard to the changes it desired in the conditions of service of the employees and demanded that the same, be taken up for discussion

along with the demands raised by the respondent. On 9th, 10th, 21st and 22nd of August, 1979 the meeting took place between the parties, when

according to the complainant the desirability of withdrawing the strike notice dated 5-8-79 was impressed upon the respondent in order to create

an healthy atmosphere for meaningful negotiations. However, no hand way could be made in those negotiations and because of what it stated to be

the alleged rigid stand taken by the respondent-union.

4. By letter dated 23-8-79 the strike notice dated 5-8-79 was amended and in place of and place of the date 23-8-79 it was stated that the date

should be read as 11-9-79. On 23-8-79 an additional demand was also made. The Additional Commissioner of Labour by holding the meetings

on 23-8-79, 2-9-79 and 6-9-79 seems to have tried to intervenes in the matter but it proved of no avail. It is the case of the complainant that by

letters dated 30-9-79, 2-10-79, 8-10-79, 15-10-79, 31-10-79, 13-11-79, 27-11-79, 2-12-79, 9-12-79 and 11-12-79 the dates were

amended from time to time and lastly by a letter dated 13-12-79 the dated of the commencement of the strike was purported to be amended as

13-12-79. The complainant complains that on 19-12-79 under the advice, native support and instigation of the respondent-union the employees of

the company resorted to the strike in the Head officer as well as in the Plant at Eolshet, Thane. It is stated that by a letter dated 20-12-79 the

attention of the respondent-union was drawn to the fact that the strike dated 19-12-79 was illegal, unjustified and unprovoked and not proceeded

by a proper notice as required by the Act meaning thereby the N.R.T.U. & P.U.L.P. Act. This was replied by the respondent by their letter dated

21-12-79. It is alleged that again on 27-12-79 the workmen of the company under the advice, active support and instigation of the respondent-

union resorted to a sit down strike and similarly they resorted to a strike on 2-1-80. It is alleged that on the said day, i.e., on 2-1-80 the President

of the respondent-union stepped on the 7th floor of the Head Office of the company at Worli and from the corridor exhorted the employees to join

the strike by calling the individual employee by his name. On 5-1-80 the complainant received a letter from the respondent reiterating that the strike

notice dated 5-8-79 as amended from time to time had come into operation and the strike was in pursuance thereof. Again there was a strike on

14-1-80 which according to the complainant was under the advice, active support and instigation of the respondent-union. It is alleged that all

these strike dated 19-12-79, 27-12-79, 2-1-80 and 14-1-80 were illegal and contrary to the provisions of S. 24 of the Act.

5. The case of the complainant is that the strike notice dated 5-8-79 is not in the prescribed form. That is was essential that the date of the

commencement of the strike must be specifically stated in the strike notice and not left to the vagaries of the union. It is alleged that though the

strike notice dated 5-8-79 stated the date as 28-8-79 as the date of commencement of the strike, it did not actually commenced on the said date.

It is the case of the complainant that under no provision of law a strike notice can be amended from time to time or the date extended

subsequently. It is alleged that the postponement of the commencement date from time to time is patently illegal, void and against the provisions of

the Act defining the valid notice. It is further urged that assuming that the date of commencement of strike can be postponed by subsequent letters,

the amendment could be said to have come into force on 16-12-79 as communicated by the letter of the even date and not on any other date prior

to that and, therefore, the strike which commended on 19-12-79 in pursuance of to said letter, i.e., within 3 days of the amendment is illegal. It is

further urged that the strike notice became operative on 19-12-79 when the employees resorted to a strike and on its withdrawal on 20-12-79 the

strike notice came to an end as a result to which the strike resorted to subsequently would be the strike without any notice and, therefore, illegal. It

is also alleged that there is nothing in the Act or Rules contemplating or permitting intermittent strikes interrupted by spells of normal working

because each strike is a separate cause of action and as such the intermittent strikes resorted to on 27-12-79, 2-1-80 and 14-1-80, purported to

be in pursuance of the notice dated 5-8-79 are illegal and contrary to the provisions of S. 24 of the Act. The complainant, therefore, seeks a

declaration that the respondent has engaged in an unfair labour practice under the relevant item of Schedule III, seeks a direction to be given to the

respondent''s office bearers, etc., to cases and desist from engaging in such unfair labour practice.

6. By the written statement at Ext. U5 initially all these contentions and the statements of fact were refuted by the respondent-union who supported

its action in issuing a strike notice and subsequently amending the same. However, ultimately by a pursuit (sic) at Ext. U6 the respondent-upon

gave up the contest regarding the facts and restricted its arguments to the legal points involved. There are some personal allegations against the

President of the respondent-union in the body of the complaint which have been disputed but for the purpose of the present controversy no

reference may be made to those allegations nor any finding hinges upon the same.

7. As the contest was given up so far as the facts are concerned though there was a prayer for interim injunction, the same was given up and the

matter was heard finally so that the present judgment would dispose of the original complaint.

8. Once it is appreciated that the facts are not very much in dispute it means that the contention of the complainant that the members of the

respondent union who are the employees of the complainant-company had resorted to strike on the dates stated as 19-12-79, 27-12-79, 2-1-80

and lastly on 14-1-80 stands admitted. Its further stands admitted that these strikes were resorted to under the notice dated 5-8-79 as amended

from time to time whereby it was declared that the employees would resort to a strike from 23-8-79 or from any subsequent date, either - token a

strike, or sit down strike, or intermittent strike for a day or for an hour intermittently as frequent as deemed necessary or definitely, the first

question, therefore, which would pose for determination is whether such a notice of strike keeping all the doors open to the respondent union to fix

the date of strike, to resort to a continuous strike or intermittent strike, to resort to a sit-down strike or hourly strike, is legal or hot ? Secondly, it

shall have also to be seen whether once, in pursuance of a notice of strike the employees proceeded on strike, whether because the notice said that

they may proceed on intermittent strike, the right to proceed on strike survived or whether after the withdrawal of such strike a further notice is

essential ? Lastly, it will have also to be determined whether to advise or actively support or instigate the strike would fall within the ambit of Item 1

of Schedule III it reads ""to advise or actively support or instigate any strike deemed to be illegal under this Act."" Great emphasis was laid on the

phraseology ""deemed to be illegal under this Act"" and it was urged on behalf of respondent-upon that unless a strike was declared to be illegal

under the provisions of the Act by the Authority component to do so, no unfair labour practice can be held to have been committed by the

Industrial Court. In other words the argument is that before the Industrial Court proceeds to determine the question falling under Item 1, the party

complaining of such unfair labour practice must resort to an action for declaration of the strike to be illegal and then alone can proceed with the

complaint. Side by side it was urged that if not at any other time when the complaint was lodged at least at time when the final order is pronounced

there must be such only Court empowered to declare the strike to be illegal, relying on which Courts in Conclusions can be drawn, otherwise not.

9. Chapter V deals with the illegal strikes and lock-outs and Section 24(1)(a) speaks - ""illegal strike"" means a strike which is commenced or

continued - (a) without giving to the employer notice of strike in the prescribed form or without fourteen days of the giving of such notice. This is

the relevant provisions so far as the present controversy is concerned because so far as clause (b) to (i) are concerned they are not relevant for the

present proceeding. Section 24(1)(a), therefore, requires that before any strike is called there must be at least 14 day"s notice given by the

employees or union on their behalf to the employer. If, there is no such notice or if the notice falls short due to one reason or the other of the

requirement of the Act any strike which has commenced, there would be no difficulty in holding, shall be illegal.

10. Now under Chapter V of the N.R.T.U. and P.U.L.P. Rules, 1975, it is laid down that the notice of strike under cl. (a) of sub-s. (1) of S. 24

shall be in the Form I and shall be sent by registered post. If we advert to the Form ""I"" we find that the date from which the workers shall resort to

the strike is required to be mentioned for it says stating all other details which are appearing in the notice in question and, therefore, need not be

referred to ""We propose to call a strike of the workmen employed in your undertaking/propose to go on strike along with other workmen

employed in your undertaking from the ..... day of ..... or the reasons explained in the Annexure attached hereto."" No doubt, the Form is

prescribed under the Rules but then when Rule 22 speaks that the notice of strike shall be in Form I and when sub-s. (1)(a) O.S. 24 lays down

that the notice of strike must be in the prescribed form, it is evident that all these formalities must be complied with before a notice of strike would

be said to be legal. The date of commencement of the strike, therefore, and which must be after 14 days" because sub-s. 1(a) requires the notice

of 14 days, must be stated and considering the preamble and the objection of the Act it is clear that the law required the union to state in clear

terms the date so that the management either would negotiate or be ready for the consequences. All of a sudden the union because it has a

following in the particular undertaking will not be allowed to bring to a stand still the wheels of the undertaking which may result in serious waste.

11. When once it is found that the particulars as stated in the Form are essential for making a strike notice legal, the question which is to be

considered is whether any notice which speaks that a strike shall commence on a particular day or from any subsequent day, either token strike, sit

down strike or intermittent strike for a day or for an hour intermittently as frequent as deemed necessary or indefinitely would be said to be

answering the requirements of Law. Certainly the workers are entitled to proceed on strike if the same is found to be legal and all the terms are

complied with because that is a weapon given to them for insisting upon their demands, at the same time when such a weapon is entrusted in their

hands it is also expected that it is used wisely at least recording to the provision of law and not wantonly .To say that they would proceed on strike

indefinitely from a particular day certainly will be within the competence of calling for a strike but to say that they would either resort to a token

strike, sit down strike, or intermittent strike for a day or for an hour intermittently as frequent as deemed necessary or indefinitely means

misinterpreting the provisions of the Act and insisting upon something which was never warranted by any provisions, either of the Act or the Rules,

Otherwise if such a notice is assumed to be correct or legal, everything would be left to the vagaries of the workers of their leaders and it would

not be a strike but clearly a travesty of strike. In may view, therefore, to say that the workers would resort to sit down strike or intermittent strike

for a day or for an hour intermittently as frequent as deemed necessary or indefinitely means misinterpreting the provisions of the Act insisting upon

something which was never warranted by any provision, either of the Act or of the Rules. Otherwise, if such a notice is assumed to be correct or

legal, everything would be left to the vagaries of the workers or their leaders and it would not be a strike but clearly a travesty of strike. In my

view, therefore, to say that the workers would resort to sit down strike or intermittent strike for a day or for an hour intermittently as frequent as

deemed necessary or indefinitely, is nothing but to avoid to state indefinitely terms when the strike is to commence. In other words, not following

the provisions of the form prescribed and the rules made therefore.

12. It may be within the competence of the union to amend the strike notice and say that instead of 23-9-79 as stated in the notice dated 5-6-79

another date should be read but then if in pursuance of any such communication the strike is resorted to, the very purpose of the notice would be

over and if the duties are resumed, and if the workers are still dissatisfied, they would be required to issue a fresh notice. Assuming that the earlier

notice is not brought to an end completely and the date could be substituted even after the commencement or withdrawal of the intervening strike,

still to make it perfectly legal the notice, i.e., the first one on which the reliance is placed in carrying out the amendment must answer the

requirements under the law. We have already seen that the notice dated 5-8-79 has left every door open to the union, all options are given to them

and the management is kept wondering as to at what hour the strike would commence, when it would be over, on what day the strike would be

called and when the same would come to an end. Such a procedure, in my view, was never contemplated by any of the provisions of the Act and

on the contrary, 14 days'' notice was prescribed so that the employers were forewarned to enable them either to recede to the demand or to enter

into negotiations or to take effective steps to meet the proposed strike.

13. Having found that the notice is not legal, the next question which is to be determined is whether the strike resorted to under the advice and

active support of the respondent-union could be termed as deemed to be illegal in the proceeding instituted under S. 28 of the Act or whether any

difference to the Labour Court is necessary for such declaration before any final order is passed. Under S. 28(1) ""where the employees in any

undertaking have proposed to go on strike or have commenced a strike, the State Government or the employer of the undertaking may make a

reference to the Labour Court for a declaration that such strike is illegal"". Sub-section (2) required that ""no declaration shall be made under this

Section, have in the open Court."" While sub-s. (4) makes any such declaration binding and has to be followed in all the proceedings under this Act.

There is then sub-s. (5) of S. 25 which lays down that ""where any strike or lock-out declared to be illegal is withdrawn within forty eight hours of

such declaration, such strike for the purposes of this Act shall not be deemed to be illegal under this Act."" Comparing these words with Item 1 of

Schedule II it was urged that when the Legislature has used the word ""deemed to be illegal"" it has a definite purpose and the strike can only be

termed as deemed to be illegal when it cannot be deemed to be legal under the Act. In other words, it was urged that resort to an act can under

sub-s. (1) of S. 25 was highly essential, may obligatory, and since the complainant admittedly never sought any such finding or declarations from

the Labour Court, whatever may be the conclusions drawn by this Court, no finding that is contravened any of the provisions of the Act or that the

respondent-union advised or actively supported or instigated a strike deemed to be illegal under the Act can be noted.

14. The two phraseologies, one appearing in sub-s. (5) and the other appearing in Item 1 of Schedule III, one in the positive form and the other in

the negative from although contained some of the identical words, the purpose is quite distinct. We have already seen that once the strike is

declared illegal by the Labour Court such a declaration shall be recognised binding and must be followed in all the proceedings under the Act. The

strike, therefore, once declared to be illegal will be illegal strike and not a strike deemed to be illegal. Against this what is required to be seen under

Item 1 is whether the union has resorted to a strike deemed to be illegal. Under sub-s. (5) a provision was made it the strike was withdrawn within

48 hours to neutralize the whole effect otherwise the finding notes was to remain in force for ever. The Legislature, therefore, thought it necessary

to make a provision enabling the party concerned to act within the period stipulated so as to negative the effect of any finding arrived at by the

Labour Court. Had there been no sub-s. (5) on the State Book, once the Labour Court had arrived at the finding regarding the illegality of the

strike, whatever be the notion taken by the union concerned, for the purpose of the proceedings under the Act, the said finding was to bind the

parties and certainly would have proved a hurdle in the path of any party to the proceeding thinking of having corrective action within the stipulated

period. It was, therefore, declared that if steps were taken to withdraw the strike declared to be illegal within 48 hours for the purpose of the Act,

the same shall not be deemed to be illegal, What was, therefore, illegal was declared to be not deemed to be illegal. It does not, however, mean

that even for the purposes of Item 1 any such finding is necessary. Had the Legislature contemplated such a provision of Item 1 any such finding is

necessary. Had the Legislature contemplated such a previous finding before a conclusion under S. 28 of the Act, it would never have used the

words deemed to be illegal but could have very well said any strike illegal under the Act. Had Item No. 1 read accordingly there would have been

considerable force in the contention of the union that before the Industrial Court seems to a conclusion regarding the alleged indulgence in unfair

labour practice under Item 1, the reference to the Labour Court and its finding were obligatory. The words, therefore, are used for the purposes of

obviating any reference to the Labour Court before the decision of the complaint under S. 28.

15. There must be also another purpose in using the terminology as done by the Legislature. To advise, actively support or instigate may strike

deemed to be illegal means that though there may be advice or active support or instigation, if the resultant strike may prove to be illegal, the very

set of such advice, support or instigation would bring the case of the union whether the strike has actually taken place or not, within the frame work

of Item 1. It is not necessary for the complaint to wait until the strike is called but as soon as it is found that the particular union was advising or

actively supporting or instigating the strike which will be deemed to be illegal, an action could be taken and such an action would be a preventive

action which is the very purpose of enacting the Prevention of Unfair Labour Practice Act. It is, therefore, not necessary that the strike should be

illegal and so declared by the Labour Court it can be only done when the strike the has actually taken place but if there is a complaint and if it is

found that the strike which may commence on a particular day would be illegal being in contravention of any of the provisions of the Act, and if

also it is found that it is at the advice or active support of instigation of a union, such a union would be answerable under Item 1 of Schedule III.

16. The words ""deemed to be illegal"" are also to be had in Schedule II Item (4)(b) and Item 6, and also in S. 13 sub-s. (6), S. 13 cl. (5) and lastly,

S. 25 sub-s. (5) to which a reference is already made. In this connection we can also refer to Item 8 in Schedule IV which says that to recruit

employees during a strike which is not an illegal strike. Here the Legislature has purposely dropped the words ""deemed to be"". In other words the

employer would be certainly answerable under Item 8 of Schedule IV if he recruits employees during the strike not declared illegal by the Labour

Court. The words ""it is not an illegal strike"" call for such a finding before an employer is made to answer the charge leveled against him. Taking,

therefore, all the provisions whenever these words appear into account and considering that the very purpose of the Act is to prevent occurrence

of or indulgence in unfair labour practice, in my view the words ""deemed to be illegal"" leave it open for determination of the Court trying a

complaint under S. 28 to decide whether the strike can be deemed to be illegal the case being in contravention of any of the provisions of the Act.

17. It was then urged on behalf of the union that the strike notice being dated 8-8-79, the complaint lodged in the month of January, 1980 is clearly

time barred being not within the period of 90 days as required by sub-s. (1) of S. 28. In this connection my attention was drawn to Regulation No.

101 of Industrial Courts Regulations, 1975 which prescribes a separate application along with the complaint seeking condonation of the delay. It

was urged that since no such application has been filed and since 90 days have lapsed long, back the present complaint can never be entertained.

It is, however, seen that by letter dated 16-12-79 the date of commencement of the strike was purported to have been amended at 18-12-79 and,

therefore, the union which wanted me to hold the notice to be legal because of the subsequent amendments made from time to time, in the same

breach will not be allowed to any whatever may be the amendments subsequently made the cause of action remained the same, viz., 5-8-79. If

there were amendments and if every time the notice of strike stating the date of commencement, the same would be a fresh cause of action and any

complaint lodged within 90 days therefrom can be within the prescribed time.

18. Considering, therefore, the facts as they stand, considering the nature of the notice leaving all the options open to the respondent, at the same

time thereby contravening the various provisions of the Act and considering that the strike which was actively supported, instigated and advised by

the respondent-union must be deemed to be illegal for the reasons stated, all the requirements of unfair labour practice falling under Item 1 of

Schedule III shall be deemed to have been fulfilled and the declaration that the respondent had resorted to such unfair labour practice must be

given. Hence order :

ORDER

19. It is declared that the respondent-union has engaged in an unfair labour practice falling under Item 1 of Schedule III. The respondent-union is

directed to cease and desist from such labour practice as prayed for in prayer cl. 15(b) of the complaint. No order as to costs.