1956

October 31.

RAJA BAHADUR MOTILAL POONA MILLS
v.
TUKARAM PIRAJI MASALE.

[BHAGWATI, VENKATARAMA AYYAR, S. K. DAS and GOVINDA MENON JJ.]

Industrial Dispute—Strike—Change in the existing system of working—Workers objecting as illegal change and going on strike—Strike, whether illegal—Bombay Industrial Relations Act, 1946 (Bom. XI of 1947), s. 97(1)(c).

By s. 97(1)(c) of the Bombay Industrial Relations Act, 1946: "A strike shall be illegal if it is commenced or continued only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change".

The management of the appellant Mill desiring to make a change in the existing system of working started making an experiment by asking a few workmen who had volunteered to work at the rate of four looms to a weaver for a period of two months. The other workers objected that this was an illegal change on the ground that the management could not legally introduce any change without first going through the procedure prescribed by the Act, and went on strike. The question was whether the strike was illegal.

Held, that as the workmen had gone on strike only for the reason that the change or experiment made by the appellant was an illegal change, their action came within the express terms of s. 97(1)(c) of the Act and the strike was illegal.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 323 of 1955.

Appeal from the judgment and order dated July 2, 1953 of the Bombay High Court in Special Civil Application No. 159 of 1953.

R. J. Kolah and *A. C. Dave*, for the appellant.

H. R. Gokhale, *K. R. Chaudhury* and *M. R. Rangaswamy*, for respondent No. 2.

1956. October 31. The Judgment of the Court was delivered by

GOVINDA MENON J.—On July 20, 1954, the High Court of Judicature at Bombay granted a certificate of fitness under Art. 133(1)(c) of the Constitution

1956

Raja Bahadur Motilal Poona Mills v. Tukaram Piraji Masale

Govinda Menon J.

that the judgment of that court dated July 2, 1953, passed in Special Civil Application No. 159 of 1953, was a fit one for appeal to the Supreme Court as it involved a substantial question of law, and it is in pursuance of such certification that the above appeal is now before this court. A brief resume of the facts and circumstances, which led to the application for a writ of *certiorari* in the High Court, becomes necessary for a correct appreciation of the question of law involved and may, therefore, be shortly stated.

The appellant which may hereafter, for the purpose of convenience, be called "The Mill", is a limited company owning and possessing a Cotton Textile Spinning and Weaving Mill situated in Poona, employing a large number of workmen who have a union of theirs. The first respondent is a workman employed by the Mill and the second respondent is the Poona Girni Kamagar Union of which the first respondent is a member. Respondents 3 to 5 were formally added as parties in the first instance, but their names were struck off as unnecessary at the time of the hearing.

The appellant was running 580 looms, for working which one weaver had been allotted at the rate of two looms; and when things were in that state on August 29, 1951, the Management issued a notice to the effect that from September 1, 1951, it was desired to carry on an experiment of four looms to a weaver for a period of 2 months, on 16 looms. If at the end of that period or before the expiry of the same it was found that the working was successful, the Management would introduce the scheme after giving the notice of change required under the Act. The object of this notice was ostensibly to introduce rationalization or rather efficiency system of work, if and when the suggested experiment proved successful. As a resut of this notice on September 4, 1951, the Secretary of the Union wrote to the Manager of the appellant Mill intimating that under the Bombay Industrial Relations Act the Management could not legally introduce any change in the existing system of working without first giving notice of the change

in the prescribed form to the representatives of the Union and workers and without going through the other procedure prescribed by the Act; and the Management were further informed that if they insisted in carrying on the change illegally, the workmen would be free to move the proper courts. The notice also stated that the introduction of the new system would affect the workers' wages and cause great hardship; and that if anything untoward happened, the blame would be wholly on the management, as it would be impossible for the Union to control the workers in the matter.

Four workers volunteered to work the experiment and started working accordingly on the 16 looms on September 6, 1951, whereupon the other workmen raised an objection and the four loyal workmen were prevented from continuing with the experimental work. But the Management did not withdraw the notice and none except the 4, was required by the Management to take part in the experiment. The second shift among the workmen also refused to work with the result that there was a complete strike in the Mills between the 6th and the 26th of September, 1951.

On September 10, 1951 the appellant filed an application under sections 78 and 97 of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947), praying that the strike resorted to by the weavers working on both the shifts commencing on September 6, 1951, and continuing till the presentation of the application be declared illegal being in contravention of the provisions of the said Act. On September 16, 1951 the Vice-President of the Mill Mazdoor Sabha filed a written statement in answer to the above complaint stating that the workers did not strike work in contravention of the Bombay Industrial Relations Act and that the weavers never refused to do their proper and usual work but refused only to do the illegal work insisted on them by the employers; in other words, they were agreeable to have two looms per weaver and not to work the attempted experiment. Within three days of the filing of the above written

1956

Raja Bahadur Motilal Poona Mills v. Tukaram Piraji Masale

Govinda Menon J.

statement, two of the workers filed an application under sections 78 and 98 of the Bombay Industrial Relations Act before the same Labour Court against the Management praying for a declaration that the action of the Management had resulted in an illegal lockout in contravention of the Act, and, therefore, the Management should be ordered to withdraw the said illegal change. The appellant filed a written statement countering the allegations contained in the application for the declaration of an illegal lockout and stated that their action was not in contravention of the Bombay Industrial Relations Act, as it did not constitute an illegal change.

The Labour Court at Bombay heard both the applications together and by a combined order dated September 26, 1951, held that since the Management had not compelled any one to accept any work, their action could not be considered an illegal lockout. At the same time, it held that the workers did not create a situation amounting to an illegal strike. The result of these findings was the negation of the grant of the prayers contained in the respective applications, but in addition the court declared that the action of the Management was an illegal change and, therefore, the notice whereby the experiment was attempted to be tried, should be withdrawn.

The workers were content with the outcome of their application but the Management having been aggrieved by the declaration that their action amounted to an 'illegal change' filed an appeal before the Labour Appellate Tribunal at Bombay (Appeal No. 293 of 1951) upon which the learned Judges of the Labour Appellate Tribunal took the view that the strike by the workmen was illegal. They also concluded that there was no lockout on the part of the Management. That being the case, the order of the Labour Court declaring that there was an illegal change was set aside with the declaration that the strike in question was illegal with the necessary consequences.

In order to get the said order of the Labour Appellate Tribunal quashed, an application for a writ

of *certiorari* under Arts. 226 and 227 of the Constitution was filed by the two of the workers before the High Court of Bombay where Chagla C.J. and Dixit J., took the view that since the decision of the Appellate Tribunal was erroneous, the same should be quashed, with the result that the decision of the Labour Court was upheld. It is this judgment that is under appeal before us as a result of the certificate granted by the High Court of Bombay.

A reading of the relevant portions of the statute is necessary to find out whether the order appealed against is justified or not. The Bombay Industrial Relations Act, 1946 was enacted to regulate the relations of employer and employees, to make provisions for the settlement of industrial disputes and to provide for certain other purposes. This statute repealed the Bombay Trade Disputes Conciliation Act, 1934 and the Bombay Industrial Disputes Act, 1938. Section 3(8) defines "change" as meaning an alteration in an industrial matter and sub-s. (15) contains a definition of 'illegal change' as meaning an illegal change within the meaning of sub-ss. (4) & (5) of s. 46 which are in the following terms:—

"(1) .....
(2) .....
(3) .....
(4) Any change made in contravention of the provisions of sub-sections (1), (2) and (3) shall be illegal.

(5) Failure to carry out the terms of any settlement, award (registered agreement or effective order or decision of a Wage Board), (a Labour Court or the Industrial Court affecting industrial matters) shall be deemed to be an illegal change".

Section 42 which speaks of change may also be quoted so far as it is relevant for our purpose:—

"(1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the

1956

Raja Bahadur Motilal Poona Mills v. Tukaram Piraji Masale

Govinda Menon J.

local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case.

....."

'Industrial matter' has also been defined in the Act in s. 3(18) in the following words:

" 'Industrial matter' means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment, and includes:—

(a) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person;

(b) all matters pertaining to the demarcation of functions of any employees or classes of employees;

(c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act;

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole;".

Schedule II, para 4 mentions "rationalization or other efficiency system of work" and therefore when any such rationalization is introduced, it is obligatory upon the employer to give notice of such an intention in the prescribed form to the representatives of the employees. We may also refer to s. 3(35-A) defining 'stoppage' in the following terms:—

" 'Stoppage' means a total or partial cessation of work by the employee in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, whether such cessation or refusal is or is not in consequence of an industrial dispute;".

Sub-section (36) defines 'strike' as follows:—

" 'Strike' means a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute".

Chapter XIV of the statute concerns itself with illegal strikes and lockouts of which s. 97 deals with illegal strikes, whereas s. 98 deals with an illegal lockout. According to s. 97(1)(c), a strike shall be illegal if it is commenced or continued *only* for the reason that the employer has not carried out the provisions of any standing order or made "an illegal change".

In considering whether the strike in question was illegal, the learned Judges of the High Court have expressed the opinion that there is a common law right for an employee to stop work and that it is only by statutory prohibition that certain strikes have been made illegal in the interest of labour relations. In the present case since there had been no 'illegal change" effected by the employer, the High Court took the view that on the very finding of the Appellate Tribunal that the change was a legal change, the strike in question did not come within the ambit of s. 97.

Learned counsel for the appellant has pressed two arguments before us with regard to the construction of s. 97(1)(c) of the Bombay Industrial Relations Act, 1946. His first argument is that the High Court was in error when it held that there was any such right as a common law right of an employee to go on strike and s. 97 constituted an inroad on that right. Learned counsel has submitted that under s. 97(1)(c) a strike shall be illegal if it is commenced or continued only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change; if a strike is illegal when it is commenced or continued only for the reason that the employer has made an illegal change, *a fortiori* it must be illegal when it is commenced or continued for a legal change. The contention of learned counsel is

1956

Raja Bahadur Motilal Poona Mills v. Tukaram Piraji Masale

Govinda Menon J.

that by necessary implication cl. (c) condemns a strike which is commenced or continued for a change which is not illegal. The second argument of learned counsel is that the true scope and effect of cl. (c) is this: the word 'only' occurring in the clause goes with the word 'reason', and if the strike is commenced or continued for the only reason that the employer has made an illegal change, it shall be illegal. The test is not whether there was a legal or illegal change in fact but what was the reason for which the employees went on strike, and if the employees commenced or continued a strike *only for the reason* that the employer had made an illegal change, the strike would be illegal within the express terms of the clause.

In our opinion it is unnecessary to decide in this case whether the first argument of learned counsel for the appellant is correct or not; because we are clearly of the opinion that the second argument with regard to the construction of s. 97(1)(c) is correct and should prevail. In this case the workmen themselves came to court with the plea that the action of the employer amounted to an illegal change. In their application to the Labour Court, they said: "That for the above-mentioned reasons it is prayed that this Honourable Court be pleased to declare the said lock-out by the opponent Mills as illegal being in contravention of the Bombay Industrial Relations Act, and the opponent be ordered to withdraw the said illegal change". It is obvious, therefore, that the workmen in this case struck work *only for the reason* that the change or experiment made by the appellant employer was an illegal change. The action of the workmen, therefore, came within the express terms of s. 97(1)(c) of the Act. The learned Chief Justice did not consider this aspect of the case, and reached a conclusion with regard to the legality of the strike on a reasoning which did not give full effect to the words used in s. 97(1)(c). In our view, the true test was to find out the *reason* for which the strike was commenced or continued, and it was unnecessary to consider or decide whether there was a common law right of the workmen to go on strike or whether the work-

men had the right to go on strike as a means of collective bargaining against a change which they did not like.

Mr. Gokhale appearing for the workmen has taken us through the different provisions of the Bombay Industrial Relations Act, 1946, and has contended that the workmen have the right to go on strike as a means of collective bargaining against any measure adopted by the employer which the workmen may consider to be detrimental to their interests, provided the strike does not come within the prohibited ambit of s. 97. Even assuming that Mr. Gokhale is right in his contention, it is clear to us that if the workmen commence or continue a strike *for the only reason* that the employer has made an illegal change, they come within the express terms of s. 97(1)(c). It is immaterial whether the change is subsequently found by the Labour Court to be a legal change. It is worthy of note that there is a separate provision for imposing a penalty on an employer who makes an illegal change. The relevant consideration, however, with regard to s. 97(1)(c) is the *reason* for which the strike is commenced or continued. That reason in this particular case is clear enough. The workmen themselves said that they commenced and continued the strike because the employer had made an illegal change. That being the position, the strike was illegal within the express terms of s. 97(1)(c) of the Act.

We are, therefore, of the opinion that, on a proper interpretation of s. 97(1)(c) of the Act, the strike which was commenced and continued from September 6, to September 26, 1951, was clearly illegal.

The appeal is, accordingly, allowed and the order of the High Court dated July 2, 1953, is set aside. The result, therefore, is that the order of the Labour Appellate Court dated September 4, 1952, stands, with the declaration that the strike in question was illegal with its usual consequences.

In this case, the appellant had agreed, while asking for a certificate from the Bombay High Court for leave to appeal to the Supreme Court, to pay the taxed costs of the respondents in one set. Learned

1956

Raja Bahadur Motilal Poona Mills
v.
Tukaram Piraji Masale

Govinda Menon J.

counsel for the appellant himself has drawn our attention to the agreement. In view of that it is not necessary for us to decide in this case whether it was open to the Bombay High Court to pass any order about costs in this Court while granting a certificate of fitness under Art. 133(1)(c) of the Constitution, and we direct that the appellant should pay to the respondents the costs of this appeal in one set and bear its own costs thereof.

Appeal allowed.

1956

November 1.

DWARKA DASS BHATIA
v.
THE STATE OF JAMMU AND KASHMIR.

[JAGANNADHADAS, B. P. SINHA and JAFER IMAM JJ]

Preventive Detention—Grounds based on alleged illicit smuggling of three categories of essential goods to Pakistan—Two categories found not to be essential goods—Whether order of detention bad—Jammu and Kashmir Preventive Detention Act, 2011, ss. 3(2) and 12(1).

The petitioner was detained by virtue of an order of detention passed by the District Magistrate, Jammu, under s. 3(2) of the Jammu and Kashmir Preventive Detention Act, 2011 and that order was confirmed and continued by an order passed by the Government of the State of Jammu and Kashmir under s. 12(1) of the Act after taking the opinion of the Advisory Board. The order recited that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community and was based on the ground of alleged illicit smuggling by the petitioner of essential goods such as shaffon cloth, *zari* and mercury to Pakistan. It was found that shaffon cloth and *zari* were not essential goods. It was not established that the smuggling attributed to the petitioner was substantially only of mercury or that the smuggling as regards shaffon cloth and *zari* was of an inconsequential nature.

Held, that the order was bad and must be quashed. The subjective satisfaction of the detaining authority must be properly based on all the reasons on which it purports to be based. If some out of those reasons are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the authority would have been on the exclusion of those reasons. To