Caltex (India) Ltd. vs Their Workmen on 11 February, 1960

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Bench: P.B. Gajendragadkar, K. Subba Rao

JUDGMENT

P.B. Gajendragadkar, J.

1. This appeal by special leave arises from an application made by M/s. Caltex (India) Ltd., (hereinafter called the appellant) under Section 33 of the Industrial Disputes Act, 1947 (hereinafter called the Act) against its 23 workmen represented by the Madras Kerosene Oil Workers' Union (hereinafter called the respondent) for permission to dismiss them from their service. It would be convenient to set out very briefly the material facts leading to this application. It appears that the Govt. of Madras had referred a dispute concerning workmen and managements of the three Oil Companies, viz., The Burmah-Shell Oil Storage and Distribution Co. Ltd., the Standard Vacuum Oil Co. Ltd., and the appellant, operating in that area. The issue which was thus referred for adjudication related to the payment of bonus for the years 1951-52. The workmen had applied for interim relief and interim relief was awarded by the tribunal to the workmen of the first two companies but not to the respondent. However, on the intervention of the Labour Commissioner, and as a result of representations made by the respondent, the appellant agreed to a full and final settlement of the 1951 bonus by the payment of an additional bonus of three months' basic wages over and above one month's basic wage already paid in that behalf. The agreed amount was in fact disbursed to the workmen on March 25, 1954. On April 9, 1954, the appellant's workmen demanded that they should be paid an advance of Rs. 5 to Rs. 7 for the ensuing Tamil New Year day Festival which fell on April 13, 1954. Having regard to the fact that the appellant had already paid additional bonus to its workmen and their pay for March had been disbursed on April 6, 1954, the demand for the advance made by the workmen was rejected by the appellant, and that led to trouble between the parties. On Monday, April 12, 1954, the workmen came to the installation as usual but suddenly staged a stay-in-strike and refused to obey the reasonable orders of the management of the appellant either to resume work or to leave the premises in the interest of the safety of the installation which carries on business in the storage and distribution of inflammable products. This conduct on the part of the workers amounted to wilful insubordination and disobedience which is punishable with dismissal under the standing orders of the appellant. Though repeated demands were made by the appellant's management either to leave the premises or begin their work they were not heeded by the workmen and they continued to stay inside the premises till the end of the day. As a result the management declared a lockout in the afternoon of April 12, 1954, and it was

made clear that the workmen would be locked-out until they gave an assurance that they would work peacefully and resort only to constitutional methods for the redress of their grievance. As a result of the insubordinate conduct of its workmen the appellant framed charge-sheets against 23 workmen who were guilty of specific acts of insubordination and other misconduct. A regular and fullfledged enquiry into the charges thus framed against the 23 workmen was held by Mr." Wallace, the newly appointed Terminal Superintendent at Ton-diarpet, and, as a result of the findings recorded in the said enquiry, of the 23 workmen charge-sheeted two were exonerated and taken back to work while another who was found guilty of minor offences was also reinstated but the appellant wanted to suspend him for four days under Order 24 of the appellant's standing orders. Thus, by the application made under Section 33 the appellant applied for permission to suspend one workman for four days and dismiss 21. One of the workmen had died in the meanwhile. That in brief is the nature of the proceedings from which the present appeal arises.

2. The Industrial Tribunal found that the strike was illegal and that the lock-out declared by the appellant was legal and justified. It, however, refused permission to the appellant to dismiss 19 workmen and suspend one. The appellant's application to dismiss one workman was, however, allowed on the ground that he had committed overt acts of misdemeanour during the period of the strike. On appeal the Labour Appellate Tribunal confirmed the findings and conclusion of the original tribunal. The appellate tribunal has held that the strike was illegal, the lock-out was legal but that the punishment sought to be meted out to the workmen was unduly severe and so no permission should be granted to the appellant as asked for by it. It is' on these findings that the dismissal of the appeal preferred by the appellant is based. In the present appeal the appellant challenges the correctness and the propriety of the final order passed by the tribunals below.

3. It is true that the conduct of the appellant in refusing to give the usual advance of Rs. 5 to Rs. 7 to its workmen on the Tamil New Year's Day was tactless and showed a lack of human and sympathetic approach; but even so, the tribunals have held and rightly that the srike was illegal and that the refusal of the respondents to obey the reasonable and legal orders issued by the appellant's officers amounted to insubordination and misconduct under the appellant's standing orders have been duly certified & they are binding between the parties so long as they stand. It is also found that a proper enquiry was held and charges framed against the respondents have been duly proved in the opinion of the enquiring officer. No mala fide is suggested nor is victimisation alleged. It is on these facts that the learned Attorney-General has relied in support of his argument that the tribunals below have acted illegally and without jurisdiction in refusing to grant permission to the appellant. In our opinion this contention is well-founded and must be upheld.

4. The question about the limits of the jurisdiction of an industrial tribunal in dealing with applications made under Section 33 has been considered by this Court on several occasions. It has been consistently held that in exercising its jurisdiction under Section 33 the tribunal has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee and if it does not appear that the proposed dismissal amounts to victimisation or an unfair labour practice the tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In such proceedings it is not open to the tribunal to substitute its

judgment in the matter of punishment. It cannot, for instance, enquire whether the dismissal for which permission is asked is unduly severe, (Vide : Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation, C. A. Nos. 519, 520 and 521 of 1958, DA 24-9-1959: and Automobile Products of India, Ltd. v. Rukmaji Bala, . Even where an industrial dispute has been raised on the ground of dismissal and it is referred to the tribunal for adjudication there are obvious limitations on the jurisdiction of the tribunal as held by this Court in Indian Iron and and Steel Co. Ltd. v. Their Workmen. This position has been fairly conceded by Mr. Sharma who appears for the respondents.

5. The Labour Appellate Tribunal appears to have been influenced by the consideration that mere participation in an illegal strike may not always and in every case deserve dismissal. That no doubt is true; but this question has hardly any relevance when the tribunal is considering an application under Section 33 of the Act. Besides, in the present case a detailed statement has been filed by me appellant showing several acts of misconduct alleged and proved against each one of the workmen sought to be dismissed. As we have already pointed out there was no complaint made against the regularity or the validity of the inquiry proceedings or of the conclusions reached therein. If, therefore, it has been shown in the inquiry to the satisfaction of the inquiring officer that the workmen concerned were guilty not merely of participation in an illegal strike but also of several other acts of gross indiscipline for which dismissal has been provided as a punishment under the standing orders it is difficult to see how an industrial tribunal can refuse to grant the application made by the appellant under Section 33.

6. The result is that the view taken by the tribunals below must be reversed and it must be held that the appellant has made out a case for granting it permission to dismiss 20 workmen and suspend one as set out by it in its application. However, we ought to add that the appellant has adopted a very fair attitude at the hearing of the appeal. We have been told that all the workmen in question continue to be in the employment of the appellant and that the appellant is prepared to continue them in its employment if it is allowed to suspend them for three days without pay as token or symbolical punishment. The appellant has also agreed not to treat the illegal strike as a break in service for the specific purposes only of gratuity or retrenchment compensation whichever is applicable. The appellant has made these concessions on condition that the Union undertakes not to raise an industrial dispute with regard to other matters. These terms have been duly signed by the learned advocates appearing for the appellant and the respondents respectively and have been put on the file of this case. In view of this joint statement the only order which we propose to make is that the appellant is granted permission to suspend the respondents for three days without pay as token or symbolical punishment on condition that the said suspension will not be treated as a break in their service for the purposes only of gratuity or retrenchment compensation whichever is applicable. In the circumstances of this case there would be no order as to costs.