Supreme Court of India
Northern Dooars Tea Co. Ltd. vs Workmen Of Demdima Tea Estate on 13 August, 1963
Equivalent citations: AIR 1967 SC 560, 1963 (7) FLR 469, (1964) ILLJ 436 SC
Author: P Gajendragadkar
Bench: P Gajendragadkar, K Wanchoo, K Dasgupta
JUDGMENT P.B. Gajendragadkar, J.

1. These two appeals Nos. 753 and 754 of 1962 arise out of two Industrial disputes between the appellant, the Northern Dooars Tea Co. Ltd., and the respondents, its workmen. The first reference was in respect of two items of dispute, one was in regard to the lock-out declared by the appellant on September 12, 1957, and the other m regard to the dismissal of six workmen mentioned in the list attached to the reference. The second reference was in regard to the retrenchment of 230 workmen effected by the appellant, while the third related to the lay-off of workmen by the appellant since October 7, 1957 and the claim made by the respondents for compensation for the period of the said lay off. All these three references were heard by the 4th Industrial Tribunal, Calcutta, to which they were referred for adjudication by the West Bengal Government, and a comprehensive award was pronounced by it on April 15, 1961. Civil Appeal No. 753 of 1962 has been brought to this Court by special leave by the appellant against the Award pronounced by the Tribunal in respect of the 1st reference, whereas Civil Appeal No. 754 of 1962 arises from the award filed on the third reference. No appeal has been filed against the award made on the second reference.

2. The appellant is a public limited company incorporated under the English Companies Act and has its registered office in London. At the relevant time, it was the owner of the Demdima Tea Estate consisting of gardens and factories in the district of Jalpaiguri. On or about the 22nd April 1957. certain conciliation proceedings were pending between the appellant and the respondents and they ended in a settlement. By this settlement the appellant's workmen agreed that they would, if so required, work eight hours a day in the off-season as well as in the manufacturing season and in accordance with the provisions of the Factories Act. Notwithstanding this settlement, however, on July 23 1957, nine factory-men did not agree to work for 8 hours and left the factory without completing that quota. These 9 workmen continued to work for the shorter hours for the next few days. The appellant requested the workmen to observe the agreement and work for 8 hours, but, the nine defaulters would not listen, and so, written orders were served on them requiring them to work for 8 hours a day and warning them that if they failed to do so, they would be dealt with in accordance with the Standing Orders. The failure of the said workmen to comply with this order led to the service of charge-sheet on them on July 26, 1957. While paying their wages, the appellant made deductions on a pro-rata basis in respect of the partial work given by the said workmen between July 22 to 25th July 1957. The Minister of Labour, West Bengal, intervened at this stage and at his instance the appellant abandoned the proceedings which it had initiated against the nine workmen and the Union suspended its strike decision which it had in the meanwhile announced.

3. On August 8, 1957, six workmen suddenly left the factory premises without completing their daily work and their fellow-workmen joined them. In the result, a strike began and it lasted till August 19, 1957. Pending this strike, charge-sheets were served on the six workmen who began the strike by leaving their work suddenly and after hearing the explanation given by them, and as a result of the

enquiry which was held in respect of their conduct, an order was passed on August 27, 1957, by which it was decided to dismiss the said six workmen. Since conciliation proceedings were, however, pending between the parties the said order was not given effect to, but the workmen were kept under suspension and an application was made to the Regional Labour Officer for permission to dismiss them. On September 18, 1957, the said six workmen were dismissed as conciliation proceedings had by then concluded.

4. Meanwhile, before the final order of dismissal was served on the said six workmen, the labour situation in the appellant's Tea Estate was very unsatisfactory. On September 12, 1957, the workers again went on strike. This strike was the result of continuous propaganda carried on by the Union against the appellant. Faced with this situation, the appellant declared a lock-out. The appellant put up a notice on September 12, 1957, at 9 A.M. calling upon the workmen to join duty immediately and warning them that if they failed to comply with this notice, the appellant would be compelled to lock them out. Since the workmen did not respond to the notice, the appellant declared a lockout.

5. Conciliation proceedings then followed and on or about October 5, 1957, an agreement was reached between the parties as a result of which the lock-out was lifted and the garden reopened on October 7, 1957. Dispute arose between the parties thereafter in regard to the justification of the closure lock-out effected by the appellant as from September 13, 1957, and that dispute and other disputes became the subject-matter of three orders of reference to which we have already referred.

6. In support of their rival contentions, both parties led evidence before the Tribunal. The Tribunal has held that the strike declared by the respondents on August 8. 1957, was 'rather hasty and was unjustified even though the workers had a grievance". It has also found that the lock-out declared by the appellant was also unjustified, even assuming that the workers were not justified in starting the strike on September 12, 1957. The Tribunal took the view that the workers had given notice to the appellant of their intended token strike between the 12th September to 14th September 1957, and the manner in which the appellant declared the lock-out and the length of time for which said lock-out was continued, show that the appellant was not acting fairly or bona fide. On this basis, the Tribunal has directed the appellant that it should pay to all the workmen who were in service immediately before the lock-out started on September 13, 1957, 8/4th of their full wages for the period from 13th September to 6th October 1957, Mr. Sastri for the appellant contends that this conclusion of the Tribunal is erroneous.

7. Mr. Sastri very strongly relies on the previous conduct of the respondents which was thoroughly inconsistent with the settlement reached between the parties on April 22, 1957. He contends that the respondents acting under the influence of their Union were not in a co-operative mood and always adopted obstructive tactics. Even so, the appellant entered into a settlement with them and parties agreed to co-operate with each other thereafter. Under this agreement, the Union representatives had undertaken to advise the workers employed in the factory to work, if required, for 8 hours a day for the off-season as well as in the manufacturing season in accordance with the provisions of the Factories Act, and as a response to this undertaking, the appellant agreed that the Tea Estate would not be closed down so long as the terms of the agreement were not violated. Mr. Sastri's complaint is that despite this agreement, the workmen showed their unwillingness to work for 8 hours a day and

actually began their strike on the 8th August 1957. This strike which has been found to be unjustified by the Tribunal affords the background in the light of which the conduct of the appellant in declaring the lock-out on September 12, 1957, must be considered. There is no doubt some force in this contention, and in dealing with the question as to whether the Tribunal was right in holding that the lock-out was unjustified, we will no doubt bear this fact in mind.

8. The next question which has to be considered is whether the strike of the 12th September was justified. On this point, the Tribunal has not made any definite finding. It has concluded that the lock-out would be unjustified even if it was assumed that the strike of 12th September was not justified. In considering the question as to whether the strike of the 12th September was justified or not, it is relevant to bear in mind the reasons why the respondents decided to go on a token strike for 3 days. It appears that the action which the appellant proposed to take against six workmen and the haste with which the enquiry against them was conducted, created dissatisfaction in the minds of the respondents, and so, at a meeting held on August 30, 1957, the General Body of the Demdima Primary Unit of West Bengal Cha Shramik Union passed a resolution that they would go on a token strike from 12th to 14th September 1957, unless the appellant refrained from dismissing the said six workmen. Two things are thus clear, that the strike was going to be only in the form of a token strike and that it was to last for only three days. It is true that a token strike need not have extended for such a long period as 3 days and the criticism made by Mr. Sastri against this resolution on that account is well founded. It is also true that if the respondents felt aggrieved by the action which the appellant proposed to take against the six workmen, a token strike was not the only remedy open to them. In fact, they should have adopted the ordinary remedy of making a protest and taking the proceedings before a conciliation officer. Therefore, the token strike which the respondents adopted may be regarded as inappropriate. Even so, the grievance felt by the respondents which led to the strike cannot be dismissed as wholly unsubstantial or unjustified.

9. In regard to this strike, there is, however, another important fact which cannot be ignored. The Tribunal has found that the Union of the respondents served a copy of the resolution on the appellant in due course by a memo, dated September 4, 1957, and yet the appellant took no action in that behalf and merely waited until the 12th September when the strike began. There has been some controversy before us as to whether the finding of the Tribunal on this point is right or not. Apart from the fact that the finding in question being a finding of fact cannot be effectively challenged by the appellant in an appeal under Art. 136 of the Constitution, we are satisfied that the Tribunal was right in recording that finding. It appears that the respondents specifically averred in their written statement before the Tribunal that the notice of this resolution was served on the appellant and this allegation was not expressly denied by the appellant in its written statement. though an allegation that another notice had been served on the appellant by the respondents in respect of another dispute was expressly denied. Besides, we have the testimony of Devan Sarkar who took the oath that the letter containing the resolutions had been sent by him by ordinary post on the 4th September to the Manager according to the usual practice. He was no doubt asked some question about the number of the letter and such other details, but, in our opinion, the evidence given by the witness which appeared to the Tribunal to be satisfactory is not open to any serious criticism. The denial by Mr. Austin in this particular matter appears to us, as it did appear to the Tribunal, to be unsatisfactory. In considering Mr. Austin's statement, it may be useful to refer to a letter written by

Mr. Moore to Mr. Austin on September 16,1957, (Item No. 48). This latter seems to suggest that Mr. Austin knew at least on the 11th September about the threatened strike which was to commence on the 12th September. Therefore, in deciding the question as to the merits of the lock-out declared by the appellant, we must proceed on the basis that the appellant had at least a week's notice that the respondents had decided to go on a token strike for three days from the 8th September.

10. Considered in the light of this fact, the attitude adopted by the appellant is open to serious criticism. If the appellant wanted to avoid a lock-out, it should have immediately intimated to the respondents by writing a letter to their Union or otherwise informing them that if they went oh strike, the appellant would be compelled to declare a lock-out. The appellant might also have invoked the assistance of the Conciliator in that behalf and might in any case have given a sufficient warning to the respondents about its intention to lock them out. Instead, the appellant purported to put a notice on the board at 9 A.M. on the 12th September when the strike had commenced. Having regard to the place where this notice was put up, it would be idle to contend that the appellant genuinely expected that the strikers would come and see the notice on the board and respond to it. In the circumstances, the putting up of the notice at 9 A.M. on the 12th September strikes one as an empty formality and that leads one to the conclusion that the appellant wanted the strike to commence so that it would be open to it to lock the workmen out as a reprisal.

11. Besides, in declaring the lock-out the appellant made it clear to the workmen that if they did not return to work the same day, the lock-out would continue until the appellant was satisfied and received assurance that the workmen would behave in a disciplined manner when they resume work and that naturally meant negotiations which ultimately led to the settlement. In this settlement the respondents' Union no doubt agreed to maintain industrial peace in the garden and said that it had no objection it the Manager required and obtained verbal assurance from every individual worker that he would agree to abide by the Standing Order, by the lawful and* just orders of the Management to work diligently and to refer all disputes in future in the correct and constitutional manner as laid down by the law of the country. As a result of this agreement the appellant promised to reopen the garden w.e.f. October 7, 1957 and provide immediate employment to as many workers as possible and lay-off the remainder in accordance with law, and withdraw the charge-sheets issued to the nine factory workers on July 26, 1957. The Tribunal took the view that in prolonging the period of the lock-out with a view to obtain an oral assurance from each workman of his her good behaviour, the appellant could not be said to have acted fairly and so it held that both in declaring the lock-out and in continuing it until the 6th October the appellant acted vindictively. In our opinion, this conclusion of the Tribunal is well founded. In this connection, it is significant that though the workmen offered to resume work on the 16th September, the appellant did not open the gates and refused permission to the workmen to resume work. That if the effect of the evidence given by Lakhan Das (P. W. 1). His oral statement is corroborated by the communication made" by the Union to the respective authorities on the 19th September 1957 (Ex. IS). Therefore, the grievance made by Mr. Sastri that the Tribunal should not have directed the appellant to pay to the respondents their wages during the period of the lock-out, cannot be sustained. However in deciding the quantum of wages to be paid to the respondents, we cannot together ignore their conduct at the relevant time. That is why we would like to modify the order passed by the Tribunal by directing that the respondents should be paid the 1/2i of their full wages for the period and that too, not from the

13th September to 6th October but from the 16th September to the 6th October. We are making this modification because the token strike lasted for three days and we do not think the respondents are entitled to their wages during these days. 15th September was a holiday.

12. The next question which calls for our decision is about the dismissal of six workmen which was the other item of dispute referred for adjudication under the first reference. Proceedings were taken against these six workmen under Clause 18 (o)(iii) of the Standing Orders, the charge against them being that they left the factory premises and caused wilful damage and loss to the company's goods. It appears that the appellant held an enquiry into these charges and as a result of this enquiry, dismissed the said six workmen. The enquiry officer has not made a proper finding recording his conclusions at the end of the enquiry. He has drawn some notes in that behalf, but they cannot be treated as a finding recorded in the enquiry as such. That is why the Tribunal had to consider the merits of the dispute for itself. It has held that on the evidence adduced at the domestic enquiry, there was nothing to show that any wilful damage had been caused by the six workmen to the property of the appellant. The Tribunal has elaborately considered the work which was assigned to each one of these six workmen and has given satisfactory reasons for holding that the charge of causing wilful damage to the property of the appellant cannot possibly be sustained against any one of them. Besides, it has taken notice of the fact that the appellant was unable to give any reasonable or rational explanation why these six workmen were chosen out of a large number of strikers and proceeded against. If the charge had been framed against them under Clause 14 (c) (12) of the Standing Orders, it might perhaps have been a different matter. So, in the opinion of the Tribunal the action of the appellant in dismissing these six workmen was mala fide inasmuch as it was based on irrational and unreasonable discrimination. In our opinion, this finding cannot be successfully challenged by the appellant in the present appeal. In view of the infirmity in the domestic enquiry resulting from the fact that a proper finding had not been recorded, coupled particularly with the conclusion of the Tribunal that no evidence whatever was led before the domestic enquiry to show wilful damage or loss caused by the six workmen, we do not see how it is possible to contend that the conclusion of the Tribunal about the invalidity of the order of dismissal is not right. Therefore, we must hold that the Tribunal was justified in directing the reinstatement of these six workmen. In this connection, we ought to add that evidence shows that the ownership in respect of the Demdima Tea Estate had changed hands in 1960, and so, the order of reinstatement will be enforced against the transferee of the said Tea Estate who has become the owner of the property pending the present dispute.

13. That takes us to the dispute with which we are concerned in Appeal No. 754 of 62. As we have already seen, this dispute relates to the laying off the workmen by the appellant from October 7, 1957. The appellant has filed a list Ex. 1 showing the details of this laying off and how it was lifted and giving the number of workmen with respect to whom the lay-off operated and the period for which it so operated. In other words, the facts in regard to the . lay-off are not in dispute. The Tribunal has , ordered that the lay-off compensation should be paid by the appellant to its workmen under the provisions of Section 25C of the Industrial Disputes Act. Mr. Sastri attempted to raise two contentions against this award. His first argument was that the appellant was not liable to pay any lay-off compensation because this lay-off was the result of a settlement between the parties reached on October 4, 1957. We have already noticed how this settlement brought the closure or lock-out of

the garden to an end. One of the terms of this settlement was that the management will reopen the garden with effect from October 7, 1957 and provide immediate employment to as many workers as possible and will lay-off the remainder of the labour force in accordance with law. The argument is that since this lay-off was agreed to by the parties, no compensation can be claimed by the respondents. In our opinion, there is no substance in this argument. It is true that the parties contemplated and agreed that some workmen may have to be laid-off and so, the agreement postulated that no dispute would be raised by the workmen in regard to such a lay-off. But the parties also agreed expressly that the lay-off will be in accordance with law and that necessarily involves the payment of compensation as provided by S.

25C.

14. Then Mr. Sastri wanted to suggest that no compensation could be claimed for the lay-off in question under Section 25E(iii) Under this provision, no compensation is payable if laying-off in question is due to a strike or slowing down of production on the part of workmen in another part of the establishment. It is difficult to see how on the material available on the record, provision can be invoked. It is not the appellant's case that the strike in one part or its concern led to the lay-off in another part, and so, Section 25E(iii) is wholly inapplicable.

15. The result is that with the slight modification made by us in regard to the payment of wages for the period of lockout, the awards passed by the Tribunal are confirmed and both the appeals are dismissed. The appellant will pay the costs of the respondents. One hearing fee.