

PSDJ :
22.10.2019

W.P. No.50002/2019

ORDER

Hindustan Aeronautics Limited ('HAL' for short) has presented this writ petition *inter alia* with a prayer to issue a writ of mandamus to restrain office bearers and workmen of HAL Employees' Association ('Union' for short – respondent No.1) from continuing strike.

2. Heard Shri. Pradeep S. Sawkar, learned Advocate for petitioner and Shri.K. Subba Rao, learned Senior Advocate for Caveator/respondent No.1.

3. Briefly stated the facts of the case are, Union gave a notice on 6th August 2018 proposing to go on 'one day' token strike on 24th August 2018 on the ground that workmen's wage settlement had elapsed in December 2016 and their charter of demands for wage revision for the period 2017-21 was not considered.

4. The Conciliation Officer and Assistant Labour Commissioner (Central) issued a notice on 10th August 2018

fixing conciliation meeting on 20th August 2018. Accordingly, conciliation proceedings were held and minutes drawn. The Conciliation Officer directed the Union to desist from going on strike.

5. On 30th September 2019, Union caused another notice intimating about indefinite strike to be commenced from 14th October 2019. Management replied to the said notice on 3rd October 2019 stating *inter alia* that Management was always open to conclude the wage revision at the earliest with realistic increases.

6. Next conciliation meeting was held on 11th October 2019 with regard to the 'indefinite strike' notice. It was recorded in the proceedings that as per the oral request of the Union, Management had called for meeting with the Union on 12th and 13th October 2019 to resolve the issue. The Conciliation Officer directed the Management to maintain status-quo as per Section 33 of the Industrial Disputes Act ('ID Act' for short) and the Union to desist from the proposed indefinite strike.

7. The next meeting of conciliation was held on 16th October 2019. It is recorded in the proceedings that the Conciliation Officer advised the Union to call-off the strike and the Management to maintain status-quo.

8. HAL has presented this petition on 17th October 2019. Upon a motion made by the learned Advocate for HAL, the case was taken on Board on 18th October 2019.

9. Shri.Subba Rao, learned Senior Advocate appeared and submitted that Union has entered caveat and requested that Union be heard before passing any interim order. Though caveat was not put up, it was considered appropriate to hear Shri.Subba Rao and at his request, case was adjourned to 21st October 2019.

10. Learned Advocates for HAL and the Union were heard at length on 21st October 2019 and today.

11. Shri. Sawkar submitted that the conciliation proceedings commenced as per Section 20 of the ID Act.

The proceedings are in progress. HAL is a defence establishment. It also repairs and services the defence Aircrafts. Due to the strike, HAL has suffered loss of an average of Rs.17 crores for each day between 14th and 16th October 2019.

12. Adverting to Section 22(1)(d) of the ID Act, he argued that no person employed in a public utility service shall go on strike during the pendency of any conciliation proceedings before the Conciliation Officer and 7 days after conclusion of such proceedings. In such circumstances, it is unlawful for the Union to go on strike.

13. Shri. Subba Rao, mainly urged three contentions:

- that a writ petition is not maintainable because a mandamus can be granted only in a case where there is a statutory duty imposed and there is failure to discharge statutory obligation;
- the only remedy available in respect of a strike, is under the ID Act; and

- 'Right to strike' is recognized as a legitimate and important weapon.

14. I have carefully considered rival contentions and perused the records.

15. Undisputed facts of the case are that the Union has given a Charter of demands for wage revision and the parties are before the Conciliation Officer. Conciliation meetings have been held on the dates mentioned hereinabove.

16. It is also not in dispute that HAL is a defence organization and a Public Sector Undertaking. It is submitted that HAL manufactures Aircrafts and also services defence Aircrafts.

17. Pursuant to the notice, workmen have gone on strike from 14th October 2019. The same is sought to be justified on the three principal grounds urged on behalf of the Union recorded hereinabove.

18. In the conspectus of facts of this case, the point that arises for consideration is, *whether any interference is required by exercising power under Article 226 of the Constitution by issuing appropriate writ or direction to restrain the Union from continuing the strike?*

19. Shri.Subba Rao, defending the case cited following authorities in support of his contentions:

(i) *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and others* [AIR 1977 SC 2149]

(ii) *The Praga Tools Corporation Vs. C.A.Imanual and others* [AIR 1969 SC 1306]

(iii) *Rohtas Industries Ltd., and others Vs. Rohtas Industries Staff Union and others* [AIR 1976 SC 425]

(iv) *Syndicate Bank and others Vs. K.Umesh Nayak* [AIR 1995 SC 319]

(v) *Kameshwar Prasad and others Vs. State of Bihar and another* [AIR 1962 SC 1166]

and few other authorities.

20. Shri.Pradeep Sawkar, mainly relied upon ***Bharat Petroleum Corporation Ltd. A Public Limited Vs. Petroleum Workmen's Union and others*** [2011(6) MhLJ 136] and ***Bharat Petroleum Corporation Ltd. Vs. Petroleum Employees' Union and others*** [2004(3) MLJ 456].

21. It is true that strike is a weapon which the workmen can resort to for redressal of their grievances. The Division Bench of Bombay High Court, in *Bharat Petroleum's* case after considering decisions of the Apex Court in ***Anandi Muktha Sadguru Shree Mukthaji Vandaji Swami Suvarna Jayanthi Mahotsava Smarak Trust and Others Vs. Rudani and others*** (1989 SC 1607), ***Syndicate Bank and another Vs. K.Umesh Nayak*** (1994(5) SCC 573), ***Premier Automobiles Ltd., Vs. Kamalekar Shantaram Wadke of Bombay and others*** [(1976)1 SCC 496] has held that it is not open to Unions to declare a strike or open to its members to proceed on strike during the pendency of conciliation proceedings.

22. In *Bharat Petroleum's* case, the Bombay High Court granted both prayers at Clause (a) and (b). The prayer clause (b) sought by the petitioner read as follows:

" That this Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction restraining the Respondent Nos.1 & 2 Unions, its office bears and members from resorting to/commencing/ continuing any strike including go slow, work to rule or any other agitation activities on 3rd August 2011 or on any day thereafter as threatened in strike notices dated 6th July, 2011, being Exhibits A and B hereto, or disrupting the day-to-day activities of the Petitioner at its operating locations and offices spread over Western Region in any manner whatsoever."

23. Similarly, a Division Bench of the Madras High Court after considering judgments of the Apex Court held that respondents 1 and 2 there is were registered bodies under the Trade Union's Act and owed a duty under the statute not to go on strike unless the provisions of Sub-section(1) of Section 22 of the ID Act was complied with by recording thus:

"23. This judgment was referred to by the Supreme Court in VST INDUSTRIES case (cited (iii) supra) and has not been disapproved. Here, the respondents 1 and 2, which are the registered bodies under Trade Unions Act, are legal persons and owe a duty under the statute, the provisions of which have been mentioned supra, not to go on strike unless the provisions of sub-Section (1) of Section 22 of the Act are complied with. The Parliament has properly thought of imposing restrictions on the employees from striking the work enumerating the conditional prohibitions. That apart, Section 22, including Section 24, of the Industrial Disputes Act is still on the statute book and has not been declared ultra vires the Constitution and as the right to strike a work is regulated by the statute and as the statutory duty has not been followed by the respondents 1 and 2 and as the respondents 1 and 2 would have been entitled to challenge if any illegal lock-out has been declared by the employer, equally the appellant Corporation also is entitled to seek enforcement of the statutory prohibition imposed upon the respondents 1 and 2 from striking the work as it is in utter disregard and violation of clause (d) of sub-Section(2) of Section 22 of the Industrial Disputes Act."

24. The facts of this case are identical to the case which was under consideration by the Division Bench of the Bombay High Court. The matter is under active consideration in the conciliation proceedings. Section 22(1)(d) of the Industrial Disputes Act prohibits a public utility service to go on strike during the pendency of conciliation proceedings. In the circumstances, HAL being a Public Sector Undertaking catering to the needs of the defence services in the Country cannot be shut down by means of an illegal strike.

25. However, in view of the submission of Shri.Subba Rao that there are more than 10,000 workmen, it is just and appropriate to direct the Conciliation Officer to continue the conciliation proceedings and the Management to actively participate.

26. In the circumstances, this petition merits consideration. Hence, the following:

ORDER

- (a) Issue Rule.
- (b) Issue Notice to respondents No.2 to 4.
- (c) Learned Advocate for petitioner is also permitted to serve a copy of this petition on the learned Assistant Solicitor General.
- (d) Learned AGA shall accept notice for respondent No.4 – the Commissioner of Police.
- (e) There shall be an interim order as prayed for in prayer clause (a) of the interim prayer in the writ petition.
- (f) The Conciliation Officer shall continue with the proceedings. Petitioner and Union shall participate actively and endeavor to settle the issue at the earliest.

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(P.S.DINESH KUMAR)
JUDGE

SPS