

PETITIONER:
PRIYA LAXMI MILLS LTD.

Vs.

RESPONDENT:
MAZDOOR MAHAJAN MANDAL, BARODA

DATE OF JUDGMENT 23/09/1976

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
CHANDRACHUD, Y.V.
GUPTA, A.C.

CITATION:
1976 AIR 2584 1977 SCR (1) 709
1977 SCC (1) 28

ACT:
Bombay Industrial Relations Act, 1946--S.
98(1)(a)--Schedule III item 6(ii)--Scope of--Workmen laid
off--Lock-out declared later alleging unruly
behaviour--Lockout if illegal.

HEADNOTE:

According to s. 98(1)(a) of the Bombay Industrial Relations Act, 1946 a lock-out shall be illegal if it is commenced. or continued in cases where it relates to any industrial matter specified in Schedule III, Item 6(ii). Item 6(ii) states "employment including unemployment of persons previously employed in the industry concerned".

On account of financial and other difficulties the appellants laid off workers in some departments of the mill. After a few days the management declared a lock out alleging that the workers gheraoed some officers in the mill, started 'dharna' and behaved in an unruly manner.

The Labour Court, to which the dispute was referred, held that there was no evidence of violence or of gheraoes, that the situation in the mills was not of such a grave nature as called for a lock-out and that the management resorted to the lock-out on the slightest opportunity in order to avoid payment of compensation, since it was in continuous financial difficulties heading towards a closure and closure would have put the company under obligation to pay compensation.

Dismissing the appeal,

HELD: (1) A lock-out can be declared for reasons similar to those described in the present notice of lock-out. In that case although it will be lock-out in another sense it may not be a lock-out within the meaning of s. 3(24) of the Act. That kind of lock-out with the avowed object of preventing violence and threat to life and property may be justified on facts in a given case. In such a situation it may be difficult to prove that it is an illegal lock-out since in an illegal lock-out the sole object is to compel the workmen to accept the terms of the employer which the workers consider as unreasonable and oppressive. [713 F--G]

But in the instant case though the views of the Labour Court that threats and gheraoes "are the normal behaviour

when an occasion like this takes place" should be disapproved, the ultimate conclusion after appreciation of the evidence was not such as would call for interference in an application under Art. 136 of the Constitution. [713 H]

(2) Though the Act has not defined 'lay-out', even according to the dictionary meaning, lay-off means to discontinue work or activity; to dismiss or discharge temporarily. When workers are in employment and they are laid off, that immediately results in their unemployment, howsoever temporary. and such an unemployment will clearly come under item 6(ii) in Schedule III of the Act. Since unemployment is an industrial matter under item 6(ii) of Schedule III of the Act, the lock-out which had been found by the Labour Court to have direct connection with lay off is clearly illegal under s. 98(1)(a) of the Act. [715 BC]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 511 of 1976.

(Appeal by Special Leave from the order dated 19-8-1975 of the First Labour Court Ahmedabad in Appln. 493/75).

R.P. Bhatt, D.K. Agarwal, K. K. Jain and Bishamber Lal, for the Appellant.

710

V. M. Tarkunde, K.L. Hathi, P.C. Kapur and Miss M. Tarkunde, for the Respondent.

The Judgment of the Court was delivered by

GOSWAMI, J.--A complaint was made to the Labour Court by the respondent, Mazdoor Mahajan Mandal, Baroda (briefly the union) alleging the lock-out declared by the appellant to be illegal. The appellant, Priya Laxmi Mills Ltd. (briefly the management) resisted the petition. After examining the oral and documentary evidence the Labour Court came to the conclusion that the lock-out was illegal under clauses (a) and (h) of sub-section (1) of section 98 of the Bombay Industrial Relations Act, 1946 (briefly the Act).

A brief reference to the facts will be appropriate at this stage.

The present appellant purchased this textile mill from M/s. Sayaji Mills Ltd. in 1972 when it had about 2500 workmen besides officers. It is said that in 1974 the textile industry suffered adverse market conditions, accumulation of stocks, shortage of raw materials and bank credit squeeze in consequence of which the management started experiencing acute financial difficulties which were aggravated by a spate of litigation between the appellant and the previous owners. The appellant somehow continued to pay the wages of the workmen upto February 1975 although in an irregular manner.

The mill works in three shifts. By a notice of April 13, 1975, the management notified a lay off from the first shift of April 14, 1975, till further notice. The lay off was in the departments of spinning, weaving, grey folding and engineering as per the lists containing the names of the workmen and the members of the staff connected therewith. Other departments, however, were allowed to continue to work as usual. It was mentioned in the notice of lay off that a workman, if eligible, shall be paid lay off compensation as provided under the law. The permanent workmen of laid-off departments who were eligible to get compensation under the law were required to present themselves in the respective departments at the start of their respective shifts and get themselves marked as "laid-off". Naturally, therefore, although, the workmen were laid off they had to

attend the mill premises for being marked present at the time of the commencement of the shift in order to be able to claim lay off compensation. In view of the mounting tension on account of irregular payment of wages for quite some time and the subsequent lay-off, negotiations were also afoot between the management and the union without much headway.

According to the management the workmen refused to accept the decision of lay off and they continued to remain inside the mill premises even after getting their presence marked. Some employees remained in the department while a large number of them collected outside the department and refused to go out of the mill premises. It is said that the workmen started staging a 'dharna' daily in the administrative office of the mills thereby disrupting its normal and smooth working. This state of affairs continued from April 14, 1975, to April 21, 1975. The workmen did not pay any heed to the request of the management to leave the premises after they had been marked present. In this background, on April 21, 1975, at about 4.00 P.M. a section of the workmen forcibly entered the Guest House No. 2, and trespassed into the living room of Shri L. Grover, Establishment Officer of the mills, dragged him out of the room and took him into the administrative office and kept him there under restraint and illegal confinement for about 24 hours. The workmen also removed the personal belongings of Shri Grover. They also gheraoed and kept under restraint and illegal confinement the Deputy Executive Director, Shri V.K. Bagla, the Deputy Chief Executive (Works) Shri S.C. Gandhi and other senior officers in the mill premises with effect from 7.00 P.M. on April 21, 1975. The officers were kept in illegal confinement without food and other basic amenities of life continuously for 21 hours. It is said that the officers were abused and humiliated. The workers also held out threats to their lives. The management also referred to other alleged unruly and undisciplined behaviour of the workmen. The officers were ultimately brought out with the help of the police authorities at about 4.00 P.M. on April 22, 1975. The employees, however, continued 'dharna' inside the mill premises on April 22 and the night between April 22 and April 23. It is, thus, the management's case that under the circumstances mentioned above the company was compelled to declare a lock-out from the first shift of April 23, 1975:

It may be appropriate to set out the lock-out notice dated April 23, 1975:

"We hereby give notice to all concerned that a lock-out is declared with effect from the beginning of 1st shift commencing at 7.00 a.m. on 23-4-1975 in our mills for the following or any of the reasons given below:

(a) On or about 4.30 p.m. on 21-4-1975 a section of the workmen forcibly entered into the mill Guest House No. 2 and trespassed into the room in which Shri L. Grover, the Establishment Officer of the mills resides, dragged him out of the room and took him to the Administrative Office of the mills and kept him there under restraint and illegal confinement for about 24 hours. The workers also removed personal belongings of Shri Grover.

(b) The workers gheraoed, kept in restraint and illegal confinement, our Dy. Executive Director, Shri V.K. Bagla, Dy. Chief Executive (Works) Shri S.C. Gandhi, and other senior officers in the

mill premises with effect from 7.00 p.m. of Monday, the 21st April 75. Those officers were kept in illegal confinement without food and other basic amenities of life continuously for 21 hours.

(c) The workers not only kept the above mentioned officers under wrongful restraint but also abused and humiliat-

712
ed them. Threats were advanced to the life of these officers and to the effect that the mill property will also be damaged.

(d) The workers employed in spinning and weaving departments including their preparatories and partly engineering department have been laid off with effect from 14-4-75. These workmen, instead of leaving the factory premises after lay off attendance staged dharana daily in the administrative office of the mills thereby disrupting its normal and smooth working.

(f) The workers have also arrested the movement of cloth bales from mill godowns thereby disrupting the bales of the finished goods.

The lock-out hereby declared will cover all the departments of the mills except the Watch and Ward and essential service which will continue to function as usual and will not be affected by this notice."

X X X X

The union denied, the various allegations made against the workmen, and stated that the lock-out was carried out with a view to pressurise the union and the workmen to accept the management's terms with regard to the mode of payment of their salary as well as the lay off arrangements introduced by the management.

Both sides produced documentary evidence as well as examined witnesses. The management examined four witnesses whereas the union examined two witnesses on their behalf. After examining the entire evidence the Labour Court came to the conclusion that the lockout was an illegal lock-out. Hence this appeal by special leave.

The question that falls for decision is whether the lock-out in question is illegal under section 98(1)(a) of the Act. We are not required to consider whether it is also illegal under section 98(1)(h) of the Act as referred to by the Labour Court.

According to section 98(1)(a), "a lock-out shall be illegal if it is commenced or continued in cases where it relates to any industrial matter specified in Schedule III or regulated by any standing order for the time being in force". We are not required to consider the second part of section 98(1)(a) which refers to the standing order. Schedule III enumerates seven items out of which we are required to consider only item 6(ii) which reads as follows :-

"Employment including unemployment of persons previously employed in the industry concerned".

Before we proceed further we may take note of the definition of lock-out which is found in section 3 (24) of the Act:

"'Lock-out' means the dosing of a place or part of a place of employment or the total or partial suspension of

713

work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension, or

refusal occurs in consequence of an industrial dispute and is intended for the purpose of---

(a) compelling any of the employees directly affected by such closing, suspension or refusal or any other employees of his, or

(b) aiding any other employer in compelling persons employed by him, to accept any term or condition of or affecting employment."

This definition-is differently worded from what is there in the Industrial Disputes Act. 1947. We, however, find that in the Trade Disputes Act, 1929, lock-out is similarly defined as in the present Act.

By section 2(1) of the Industrial Disputes Act, lock-out

"means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him".

This Court, while interpreting the above definition, in *Management of Kairbetta Estate, Kotesiri v. Rajamanickam and others*, C) observed as follows :--

"Even so, the essential character of a lock-out continues to be substantially the same. Lock-out can be described as the entithesis of a strike. Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands."

It should, however, be made clear that lock-out can be declared also for reasons similar to those described in the present notice of lock-out. In that case although it will be lock-out in another sense, it may not be a lock-out within the meaning of section 3 (24) of the Act. That kind of a lock-out with the avowed object of preventing violence and threat to life and property may even be justified on facts in a given case. In such a situation 'it may be difficult to prove that it is an illegal lock-out since in an illegal lock-out the sole object is to compel the workmen to accept the terms of the employer which the workers consider as unreasonable and oppressive.

In the instant case although we do not approve of the Labour Court's observations in the order to a possible effect that threats and gheraoes "are the normal behaviour when an occasion like this takes place", we cannot say that its ultimate conclusion after appreciation

(1) [1960] 3 S.C.R. 371.

714

of the evidence is such that it may call for interference in an application under Article 136 of the Constitution.

The Labour Court has given a finding at paragraph 15 of the as follows :--

"Coming now to the other important ingredient viz. intention on the part of 'the management to compel the workers directly affected by such closing to accept any term or condition affecting employment, it appears that there was such an intention on the part of the management. The opponent company, because of the financial diffi-

culties which they were facing wanted the workers to agree to accept lay-off and also agree to accept wages not on the specified days as per the existing awards, etc. but as and when the management could pay In my opinion, therefore it could be said that all the ingredients of an illegal 'lock-out' were present in this case".

The Labour Court has taken note of the fact that there was no evidence of any violence being caused to the property of the mill notwithstanding the presence of a huge crowd said to be in a riotous mood. The tribunal also took the view that the officers were not confined in their rooms as such as represented but they themselves did not like to come out perhaps due to apprehension. The Labour Court was of opinion that the situation was not of such a grave nature which called for such a drastic step like a lock-out. The Labour Court seems to be of the further view that since the management has been in continuous financial difficulties heading towards a closure and closure would have put the management under an obligation to pay compensation under section 25 FFF under the Industrial Disputes Act, 1947, opportunity was taken to declare a lock-out on the slightest opportunity. It is not possible for us to reappraise the evidence and come to a different conclusion on the facts in this appeal. We are also unable to hold that the conclusions of the Labour Court are perverse or even against the weight of evidence on record.

The only question, therefore, that survives is whether on the finding of the Labour Court the lock-out is illegal.

It is contended on behalf of the appellant that item 6(ii) in Schedule Iii to the Act which deals with the unemployment of persons previously employed in the industry concerned cannot govern a case of lay off. According to counsel lay off is not unemployment since the relationship of master and servant is not snapped. We are unable to accept this contention. Lay off is not defined in the Act but has been defined in section (KKK) of the Industrial Disputes Act:

"'lay-off' (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials

715

or 'the accumulation, of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched".

X

X

X

X

X

Even according to the dictionary meaning, lay off means to discontinue work or activity; to dismiss or discharge temporarily. When workers are in employment and they are laid off, that immediately results in their unemployment, howsoever temporary, and such an unemployment will clearly come under item 6(ii) in Schedule III of the Act. It is not disputed that "unemployment" is an industrial matter as defined under section 3(18) of the Act. Since unemployment is an industrial matter under item 6(ii) of Schedule III to the Act, the lock-out which has been found by the Labour Court to have direct connection with lay off is clearly illegal under section 98(1)(a) of the Act.

In the result the appeal fails and is dis-

missed with costs.

P.B.R
missed.
--1234SCI/76
716

Appeal dis-

JUDIS