A **BALLARPUR COLLIERIES CO.**

v.

THE PRESIDING OFFICER, C.G.I.T. DHANBAD AND ANR.

March 14, 1972

B [C. A. VAIDIALINGAM AND I. D. DUA, JJ.]

Industrial Disputes Act, 1947—S. 23(b) and S. 23(c)—During pendency of proceedings before Tribunal and during a settlement workers struck—Whether S. 23(b) or S. 23(c) is attracted.

In 1956 the "Majumdar Award" was published and to this Award the appellant was also a party. In January/February, 1960 the workers of the appellant Colliery had gone on strike. The efforts of the management failed to persuade the workers to resume duty. On the intervention of the Regional Labour Commissioner (C), Bombay, the matter was resolved as a result of which the workers resumed their duty and also got their dues etc., from the management. In the report of what had transpired during the negotiations (Ex.D) it was stated, *inter alia*, that the Regional Commissioner had also been assured by the workers that they would see that "such strikes are not resorted to in future and would adopt all constitutional means to get their grievances redressed". Later, due to certain difficulties in interpreting the terms of the Majumdar Award, the Central Government, under s. 36A of the Industrial Disputes Act, 1947, referred to Shri Palit, the Chairman of the Central Government Industrial Tribunal, Dhanbad, the necessary question seeking interpretation of certain provisions of the said Award. This reference is dated May 23, 1960.

In the Award given by Shri Palit it was mentioned that all the parties who were impleaded in the Majumdar Award would be bound by the later Award.

During the pendency of the proceedings before Shri Palit, the workers of the appellant went on strike from October, 4, 1960, the cause for the strike being dismissal of 6 workmen. No notice of the strike, as required by Standing Order no. 32, was given. The appellant, therefore, filed an application before the Regional Labour Commissioner (Central) on October 31, 1960 for a declaration that the strike was illegal. The Regional Commissioner held the strike to be legal and an appeal to the Industrial Tribunal by the appellant also failed. Thereafter, the appellant filed a writ petition before the High Court but it was dismissed. On appeal to this Court, two main points were raised by the appellant: (1) that the strike took place during the pendency of the reference before Shri Palit and therefore under cl. (b) of s. 23 of the Industrial Disputes Act, the strike was illegal; (2) in any case, the strike took place during the pendency of the settlement effected by the Regional Commissioner, Bombay and, therefore, under cl. (c) of s. 23 of the Industrial Disputes Act, the strike was illegal.

Allowing the appeal,

HELD: (i) The legal effect of reference under s. 36A of the Industrial Disputes Act is to reopen the earlier reference terminating in the Majumdar Award, though only for the limited purpose of the interpretation of the provisions of the award in respect of the difficulties or doubts giving rise to the reference. Since the appellant was a party to the Palit Award, its application to withdraw and its non-participation in the proceedings notwithstanding, s. 23(b) of the Industrial Disputes Act was attracted and the strike was illegal. [813 E]

Workmen of the Motor Industries Co. Ltd. v. *Management of Motor Industries Co. Ltd.* [1970] 1 S.C.R. 304 and *Hochtief Gammon* v. *Industrial Tribunal, Bhubaneshwar* [1964] 7 S.C.R. 596, referred to. A

(ii) The assurance of the workers to the Commissioner that they would not resort to such strikes in future and that they would adopt all constitutional means to get their grievances redressed, neither amounted to a contract nor was it a matter covered by the said settlement with the Regional Labour Commissioner. Therefore, s. 23(c) was not attracted B in the facts and circumstances of the present case. In order to be hit by s. 23(c) the strike must be in breach of contract in respect of a matter covered by a settlement which is in operation at the time of the strike. [811 G]

CIVIL APPELLATE JURISDICTION : C.A. No. 876 of 1968.

Appeal by special leave from the judgment and order dated October 28, 1965 of the Patna High Court in M.J.C. No. 721 of 1962. C

M. N. Phadke and *Bhuvnesh Kumari*, for the appellant.

The Judgment of the Court was delivered by

Dua, J. Facts giving rise to this appeal by special leave may briefly be stated : D

On May 18, 1956 an award was made by Shri Majumdar, which is popularly known as the Majumdar Award. On May 23, 1960 the Central Government, in exercise of the power conferred by s. 36A of the Industrial Disputes Act, 14 of 1947 (hereinafter called the Act) referred to Shri G. Palit, Chairman, Central Government Industrial Tribunal, Dhanbad the question E

> "Whether 'traffic' is to be placed in Grade II of the clerical service in terms of the said Award the award being the award of the All India Industrial Tribunal (Colliery Disputes) published in the Gazette of India Extraordinary Part II, Section 3 dated the 26th May, 1956 (S.R.O. No. 1224 dated 18-5-56). F
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> 'Traffics' are a category of clerical staff covered by the award of the All India Industrial Tribunal (Colliery Disputes), popularly known as the 'Majumdar Award', and it appears that in the opinion of the Government a difficulty or doubt had arisen with regard to the interpretation of the provisions of the said award in so far as G it related to the scale of pay etc. for 'Traffics' and accordingly, the question had been referred for interpretation to the Dhanbad Central Government Industrial Tribunal, then presided over by Shri G. Palit. This order of the Central Government gave rise to Reference No. 27 of 1960." H

During the course of the hearing of this reference some colliery owners, including the appellant Ballarpur Collieries Co., which is a private partnership, in whose collieries there were no workmen

A with the designation of 'Traffic', wanted to be excluded from the reference altogether on the ground that they were not interested in the dispute pending before the Tribunal presided over by Shri Palit. The appellant presented an application in August, 1960 stating :

> "So far as the petitioner is concerned this dispute does
> B not concern these collieries because they have not got any traffic in employees coming under this category. As such the presence of the petitioner before this Tribunal is not necessary."

It appears that the Tribunal did not record any express order either permitting the appellant to withdraw from the dispute or declining
C such permission. The Appellant, however, did not take part in the proceedings thereafter and the workers of the appellant's colliery also did not take any steps to participate therein. In the Award given by Shri Palit known as 'Palit's 'Award' which was published in the Gazette of India on November 22, 1960, it is not disputed that the case of these collieries as well, including the appellant's
D colliery at Ballarpur where the workmen described as 'Traffic' did not exist for the time being, was dealt with. Reference to the application presented by the appellant and other colliery owners was made in the Award in the following terms :

> "Then with reference to the contention of some of
> E the collieries that where the workmen designated as 'traffic' do not occur, their names should be omitted from the present reference under section 18(3) of the Industrial Disputes Act, 1947. But this section has been wrongly invoked here. In the present case I have not summoned them in pursuance of the said section. So the question does not arise whether they were so sum-
> F moned without proper cause. They have been summoned in the present case because they were parties to the original award. I have to summon all the parties who were impleaded in the original coal Award. So this contention is over ruled. In an omnibus or industrywise reference it is not necessary that the dispute must relate to each one of them or the cause of action must exist in
> G all cases. Even if the dispute is not there but they are made parties in the reference, all that may be said is that they are under no obligation to implement the Award. But the award will be binding on all of them all the same. So I am unable to exclude them."

H During the pendency of the proceedings before Shri Palit the workers of the appellant's colliery went on strike from October 4, 1960, the cause for the strike being dismissal of six workmen. No notice was given of the strike though, according to the judgment

of the High Court under appeal under standing Order No. 32 of the Standing Orders approved by the Statutory Authority, the workmen were bound to give 14 days' notice before going on strike. The appellant, therefore, filed an application, before the Regional Labour Commissioner (Central), on October 31, 1960, in pursuance of Paragraph 8(1) of the Coal Mines Bonus Scheme for a declaration that the strike was illegal. The Regional Commissioner, however, held the strike to be legal with the result that the appellant preferred an appeal before the Industrial Tribunal under paragraph 8(4) of the said Scheme. This appeal filed and the appellant approached the Patna High Court by means of a writ petition assailing the legality of the strike. The following three points were raised by the appellant in challenging the strike before the High Court :—

(1) The strike took place during the pendency of Reference No. 27 of 1960 before Shri Pali, and consequently clause (b) of section 23 would apply.

(2) The strike took place during the pendency of the settlement effected by the Regional Labour Commissioner, Bombay, while settling the dispute which arose out of the strike in January/February, 1960 and consequently clause (c) of section 23 of the Act would apply.

(3) In any view of the case, as the Labourers resorted to strike without giving due notice as required by Standing Order No. 32, the strike was in breach of a contract between the employer and its workmen and was, therefore, illegal.

The High Court did not agree with the appellant's contentions and dismissed the writ petition.

Before us the same three points were raised by Shri Phadke, learned counsel for the appellant. The third point was very fairly not pressed by Shri Phadke because mere breach of a Standing Order could not render the strike illegal under ss. 23 and 24 of the Act. Only the first two points were pressed. In so far as s. 23(c) is concerned Shri Phadke made a reference to the settlement, a copy of which was annexed with the writ petition in the High Court. It appears that the workers of the appellant's colliery had gone on strike in the months of January/February, 1960 and efforts of the management had failed to persuade the workers to resume duty. The Regional Labour Commissioner(C) Bombay, thereupon wrote a D.O. letter dated February 4, 1960 to Shri Haldulkar, President of the Workers' Union, in reply to the said President's telegram of the same date, in which the Labour Commissioner had stated that he was going to visit Nagpur on February 9, 1960 and would

look into the matter. The Regional Labour Commissioner had in that letter requested Shri Haldulkar to make it convenient to see him at the office of the Conciliation Officer at Nagpur. The Regional Labour Commissioner then used his good offices in getting the matter resolved as a result of which the workers resumed their duty and got their dues etc., from the management. The report of what transpired at the time of the visit of the Regional Labour Commissioner was recorded in 'annexure D' annexed to the writ petition filed in the High Court. It appears from "annexure D" that after discussing the matter with the appellant and the workmen, the Regional Labour Commissioner induced both sides to adopt a reasonable attitude and the strike was called off. The relevant portion of annexure 'D' may here be reproduced :

"

It was on 10th February, 1960, that I visited Chanda and had talks with Shri Zallaram, Vice-President of the Union and other important workers of the Collie y. A representative of the Management Shri S. V. Kanade, Personnel Officer was also present at the time of discussion. I impressed upon the Union Officials and the workers that going on strike would not solve their problems but would on the other hand create complications and bitter relations between the Management and the workers. I also emphasised upon the Management that they should also see that the grievance of the workers were not allowed to accumulate and full justice was given to them. Considerable discussions continued on this issue and I asked the Union Officials that they would withdraw the strike immediately so that the relations between workers and management could be restored to normalcy. . . . . The Union thereupon stated that owing to the strike the workers were likely to lose their bonus and continuity of service for purposes of annual leave. I told them that I would take up the matter with the Management provided they call off the strike first to which they agreed. I was also assured that they would see that such strikes are not resorted to in future and would adopt all constitutional means to get their grievances redressed.

I saw Shri Jamnadas Daga, this morning on my return from Chanda and informed him of the discussion which had transpired at Chanda. He agreed to consider the matter favourably; when I informed him that the workers had already agreed to call off the strike on the 10th

February, 1960 the Management agreed to the following : A

(i) that the 3 suspended workers would be allowed to join their duties within a period of 24 hours to 48 hours and possibly within 24 hours after the resumption of work

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(ii) that the workers will not be deprived of the Annual leave under the Mines Act 52 with wages on account of this stoppage of work if they are otherwise eligible.

(iii) That although the strikers are not entitled to bonus as a special case, which will not form a precedent, the Management has agreed to reduce the qualifying period from 65 to 60 attendances to 50 and 45 attendances in the quarter ending March, 1960 only. As regards the amount of bonus it would be calculated at one-sixth of the earned basic wage instead of one-third normally paid under the Bonus Scheme. C D

(iv) Workers who have left the colliery for their homes, would be allowed to join their duties within a period of 15 days from the resumption of work."

According to Shri Phadke this report embodies a settlement between the appellant and the workmen and the assurance given by the workmen not to resort to strike but to adopt constitutional means for getting their grievances redressed being one of the matters covered by the settlement, s. 23(c) of the Act was attracted rendering the strike illegal. E

Let us see if s. 23 supports this submission. That section reads : F

"23 General prohibition of strikes and lock-outs;

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out— G

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings; H

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(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or

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(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement of award."

In support of his contention Shri Phadke relied upon a recent decision of this Court in *Workmen of the Motor Industries Co. Ltd.* v. *Management of Motor Industries Co. Ltd. Bangalore*(1) specific C reliance being placed on the following passage at pp. 310-311 :

"Read in the context of the other provisions of Part I of the settlement of which it is part, cl. 5 was intended to prohibit (a) direct action without notice by or at the instance of the association, and (b) strikes by workmen themselves without the approval of the association. The D words 'in no case' used in the clause emphasise that direct action by either party without notice should not be resorted to for any reason whatsoever. There can be no doubt that the settlement was one as defined by s. 2(p) of the Industrial Disputes Act and was binding on the workmen under s. 18(3) of the Act until it was validly E terminated and was in force when the said strike took place. The strike was a lightning one, was resorted to without notice and was not at the call of the association and was, therefore, in breach of cl. 5."

In this Judgment reference was also made to an earlier unreported decision of this Court in *Tata Engineering & Locomotive Co. Ltd.* F v. *C. B. Mitter*(2) in support of the conclusion arrived at therein. In our opinion, it is difficult to hold that in the circumstances of the present case the assurance stated to have been given by the workmen to the Regional Labour Commissioner that they (the workmen) would see that they do not resort to such strikes in future and that they adopt all constitutional means to get their grievances G redressed amount to a term of the settlement, breach of which would attract Cl. (c) of s. 23 of the Act. In order to be hit by s. 23(c) the strike must be in breach of contract in respect of a matter covered by the settlement which is in operation at the time of the strike. The assurance referred to in the Regional Labour Commissioner's report neither amounts to a contract nor is it a matter covered by the aforesaid settlement.

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This contention, therefore, must fail.

(1) [1970] 1 S.C.R. 304.

(2) C.A. No. 633 of 1963, d/2.4.1964.

The appellant's learned counsel next submitted that the present case clearly fell within s. 23(b). The High Court decided this point against the appellant principally on the ground that during the pendency of reference No. 27 of 1960 the appellant had applied before Shri Palit in August, 1960 to be discharged from the proceedings on the ground that the dispute pending in that Tribunal did not concern the appellant's collieries. After the application the appellant took no part in the proceedings and as appeared from the judgment of the appellate authority the workmen also had not taken any steps in the said reference. The appellant and the workmen having not taken part in the reference pending before Shri Palit the High Court felt that they were not parties to those proceedings though in the opinion of the High Court the appellant and the workmen were bound by the decision in those proceedings. On this reasoning s. 23(b) was also ruled out by the High Court and the writ petition was dismissed on the ground that there was no error apparent on the face of the record because there was no statutory provision dealing with the circumstances like the present. Reference was made by the High Court to a decision of this Court in *Hochtief Gammon* v. *Industrial Tribunal, Bhubaneshwar*(1) a case in which s. 18(3)(b) of the Act had come up for construction. But that decision was considered to be unhelpful because, according to the High Court. Shri Palit's Tribunal had not summoned the appellant under s. 18(3)(b) but had called the appellant because the Ballarpur Collieries Company was one of the original parties to the award known as Majumdar Award. The High Court, however, inferred from the following observation in the Palit Award :

> "In an omnibus or industrywise reference it is not necessary that the dispute must relate to each one of them or the cause of action must exist in all cases."

that there was no dispute between the appellant and its workmen pending before Shri Palit's Tribunal.

This view of the High Court was seriously assailed before us by Shri Phadke. According to him the reference under s. 36A of the Act requiring consideration of any provision of an earlier award or settlement must relate back to the earlier reference culminating in the award or settlement and, therefore, if the appellant was a party to the original reference which resulted in the 'Majumdar Award', then the appellant must necessarily be considered to be a party to the later reference of which Shri Palit was seized. And if that be so, then, the appellant, in Shri Phadke's submission, must be considered to be a party to the reference under s. 36A, notwithstanding its desire not to take part in those proceedings or even an express application by it to the Tribunal for permission to withdraw therefrom.

(1) [1964] 7 S.C.R 596.

A In our view, there is force in Shri Phadke's submission and the High Court was wrong in holding that s. 23(b) is inapplicable to the present case. Section 36A provides :

"36A Power to remove difficulties :

B (1) If in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such labour Court, Tribunal or National Tribunal as it may think fit.

C (2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties."

Now, quite clearly proceedings for removing difficulties or doubts arising as to the interpretation of any provision of the Majumdar D Award must be construed to have the effect of reviving those earlier proceedings for the limited purpose of considering the removal of such difficulty or doubt. It is only by virtually reopening the proceedings of the earlier reference that the purpose and object of correct interpretation of that Award and of the removal of difficulties or doubts arising therefrom could be achieved. The legal E effect of reference under s. 36 A must, therefore, in our opinion be to reopen the earlier reference procedings which terminated in the Majumdar Award, though only for the limited purpose of the interpretation of the provisions of that Award in respect of such difficulties or doubts as required removal. Now, if that be the scope of s. 36A of the Act then there can be little doubt that all F parties to the original reference which resulted in the Majumdar Award must as a matter of law be deemed necessarily to be parties to the proceedings to the reference under s. 36A as well. This seems to us to be implicit in the very scheme and object of this section as would be clear from the fact that the decision of the question referred under this section has been rendered final and binding on all parties who have been given an opportunity of being G heard. This does not contemplate consideration of the question whether any party was in fact feeling interested in the particular subject matter of difficulty or doubt. In this connection it has to be borne in mind that proceedings or industrial adjudication are not considered as proceedings purely between two private parties having no impact on the industry as such. Such proceedings involve larger H public interest in which the industry as such (including the employer and the labour) is vitally interested. The scheme of the law of industrial adjudication designed to promote industrial peace and harmony so as to increase production and help the growth and

progress of national economy has to be considered in the background of our constitutional set up according to which the State has to strive to secure and effectively protect a social order in which social, economic and political justice must inform all institutions of national life and the material resources of the community are so distributed as best to subserve the common good. The appellant could not, therefore, by merely expressing its desire even if that desire is expressed by presenting a formal application to withdraw from the proceedings, cease to be a party to those proceedings so as to avoid the legal consequences which, according to legislative intendment, flow by reason of the pendency of those proceedings. The appellant, in our opinion, must therefore be held to have continued to remain party to the reference before the Tribunal presided over by Shri Palit, its application to withdraw and its non-participation in the proceedings notwithstanding. Even non-participation of workmen would not change the legal position. Once it is held that the appellant was a party to those proceedings then there can be no difficulty in holding that s. 23(b) would be attracted to those proceedings and if that sub-section is attracted then obviously the strike has to be held to be illegal. The reference (No. 27 of 1960) it may be recalled, was made in May, 1960, and the Award was published on November 22, 1960 : the workmen went on strike on October 4, 1960 which was clearly during the pendency of those proceedings. We are, therefore, of the view that the impugned strike was illegal and the High Court, speaking with respect, was not right in holding to the contrary. The appeal is accordingly allowed and reversing the judgment of the High Court we quash the order of the Central Government Industrial Tribunal dated April 16, 1960 as also the order of the Regional Labour Commissioner (Central) Bombay dated November 19, 1960 which had held the strike of the workmen not to be illegal. Reversing all these orders we hold that the workmen's strike was illegal being in violation of s. 23(b) of the Act. The appeal is accordingly allowed and the workmen's strike held illegal. It is unfortunate that the respondents are not represented before us in spite of service and we, therefore, did not have the benefit of their assistance. As there is no representation on behalf of the respondents there will be no order as to costs.

S.C.

Appeal allowed.