T.k. Rangarajan verses government of tamil nadu

(there is no fundamental, legal/statutory, moral or equitable right to go on strike by government employees.)

Facts

The tamil nadu government terminated the services of all the employees 1, 70,241 who have resorted to strike for their demands. Out of 1, 70,241 employees and teachers 1, 56,106 were reinstated before this judgement.

Issue

Whether the government employee has fundamental, statutory or equitable/ moral right to strike?

Decision the supreme court

The supreme court held that government employees don't have fundamental, statutory or equitable/moral right to strike.

The court said:

"law on this subject is well settled and it has been repeatedly held by this court that the employees have no fundamental right to strike. In *kameshwar prasad verses state of bihar* this court (c.b.) Held that the rule is so far as it prohibited *strikes was valid since there is no fundamental right to resort to strike"*

In all india bank employees, association verses national industrial tribunal, wherein the constitution bench of the supreme court held that even very liberal interpretation of sub-clause (c) of clause (1) of article 19 "cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike either as part of the collective bargaining or otherwise."

Law on the subject is well settled and it has been repeatedly held by the supreme court that the employees have no fundamental right to resort to strike. "take strike in any field, it can be easily realized that the weapon does more harm than any justice. Sufferer is the society-—the public at large."

The court further said that there is prohibition to go on strike under the tamil nadu government servants conduct rules, 1973. Rule 22 provides that "no government servant shall engage himself in strike or in incitements thereto in similar activities." thus it was held that there is no statutory provision empowering the employees to go on strike.

It was further held there is no moral or equitable justification to go on strike. Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by some employees, in a democratic welfare state, they have to resort to machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse the entire administration comes to grinding halt in the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by doctors, innocent patients suffer in case of strike by employees of transport services, entire movement of the society comes to a standstill; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasion public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

The court further held that in a society where there is large seals unemployment and number of qualified persons eagerly waiting for employment in government departments or in public sector undertakings, strikes cannot be justified on any equitable ground. In the prevailing situation apart from being conscious of rights, there has to be full awareness of duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees were to do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but by the people at large. The reason being, in a democracy even though they are government employees, they are part and parcel of the governing body and owe duty to the society.

Out of 14, 135 employees and teachers, the court ordered the reinstatement of 8063 on their tendering unconditional apology for resorting to strike and also an undertaking to abide by rule 22 of conduct rules in future. Remaining 6072 employees and teachers could not be reinstated. They were as follows:

(a) government servants arrested. 2,211

(b) secretariat staff for certain specified reasons. 2,215

(c) officers holding higher position. 534

(d) government servants (other than the secretariat staff) involved in offences under section 5 or section 5 read with section 4 of tesma 1,112

Total number of person who could claim a right to be reinstead 6,072

The court said:

"finally, it is made clear the employees who are re-instead in service would take care in future in maintaining discipline as there is no question of having any fundamental, legal or equitable right to go on strike. The employees have to adopt other alternative methods for redressal of their grievances. For those employees who are not reinstated in service on the ground that firs are lodged against them or after holding any departmental enquiry penalty is imposed^ it would be open to them to challenge the same before the administrative tribunal and the tribunal would pass appropriate order including interim order within a period of two weeks from the date of filing of such application before it. It is unfortunate that the concerned authorities are not making the administrative tribunals under the administrative tribunal, act, 1985, functional and effective by appointing men of caliber. It is for the high court to see that if the administrative tribunals are not functioning, justice should not be denied to the affected persons. In case, if the administrative tribunal is not functioning, it would be open to the employees to approach the high court."

B.r. Singh verses union of india

(the right to strike is not a fundamental right.)

facts

Workers, without any oblique motive, resorted to strike to press long outstanding demands for revision of wages, regularization and housing facilities shortly before scheduled visit of the president and foreign dignitaries to the trade fair authority of india (tfai). Management worried and terminated services of large number of workmen and denying reinstatement to one of the suspended workmen.

Decision of the supreme court

In the circumstances, keeping in view the interest of the employer-institution as well as economic hardship of the labour the supreme court, instead of determining the faults of the parties, proceeded to resolve the crisis. The court directed that the terminated workmen and suspended workmen be reinstated. Termination of services of union representatives without enquiry held, not warranted by the circumstances. Hence termination orders were quashed tfa1 does not fall within the expression 'public utility service'.

The court further held that right to strike though not a fundamental of grievances of workers. But the right to strike is not absolute and restrictions have been placed on it under sections 10(3), 10-a (4-a), 22 and 23 of the id act.

The court further held that the right to form associations or unions is a fundamental right under article 19(l)(c) of the constitution. Section 8 of the trade union act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions is obviously for voicing the demands of and grievances of labour. Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with managements. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstrations. There are different modes of demonstration, e.g., go-slow, sit-in, work-to-rule, absenteeism etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though the right to strike is not a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not

Rangaswami verses registrar of trade unions

(the order of the registrar of trade unions refusing to register the union of employees of the madras raj bhawan as a trade union under the a ct was upheld.)

Facts

A number of persons were employed at madras raj bhawan at guindy in various capacities. There were two categories of employees, viz., (a) those whose services were more or less of a domestic nature and (b) those who formed part of work charge establishment consisting of maistries and gardners. The number of first category was 102 and that of the second 33. The persons were employed for doing domestic and other services and for the maintenance of the governor's household and to attend to the needs of the governor, the members of his family, staff and state guests. In 1959 the employees formed themselves into a union and seven of them applied to the registrar of trade unions, madras, for registration of their union as a trade union under the trade unions act, 1926. The registrar refused to register the union on the ground that, its member were not connected with a trade or industry or business of the employer. The employees appealed to the high court for setting aside the order of the registrar.

Issue

Whether the union of employees was entitled to get itself registered under the trade unions act, 1962?

Decision of the high court

The madras high court held that the order of the registrar of trade unions rejecting the application was correct. The court said: "even apart from the circumstances that a large section of employees at raj bhawan are government servants who could not form themselves in a trade union it cannot be stated that the workers are employed in a trade or business carried on by the employer. The services rendered by them are purely of a personal nature. The union of such workers would not come within the scope of the act as to entitle it to registration there under".

Section 4 of the trade unions act which deals with the mode of registration of a trade union provides, *inter alia,* that any seven or more members of a trade union may apply for registration of the trade union. Therefore, it is necessary to consider what would be trade union. Section 2 (h) of the trade unions act defines a trade union. It says: "trade union means any combination whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions." the term "workmen" is defined in the latter part of s. 2 (g) of the trade unions act. It says: "workmen means all persons employed in *trade or industry* whether or not in the employment of the employer with whom the trade dispute arises."

After specifying the above provision the court observed that the trade unions act contemplates the existence of the employer and the employees engaged in the conduct of a trade or business. The court said although the definition of the term "workmen" in s. 2(g) *primafacie* indicates that it was intended only for interpreting the term "trade dispute" and even after assuming that the definition could be used for interpreting the meaning and scope of the term "trade union" in s. 2(h) it is obvious that the industry should be one as would amount to a trade or business, i.e., a commercial undertaking.

The definition of "industry" in the industrial disputes act is of wider significance. It includes an undertaking which is not of a commercial nature. The court had doubts on the question of the definition of industry as given in the industrial disputes act for interpreting the term "workmen" and "trade union" in the trade unions act. And even after assuming that the definition of the term industry in s. 2(j) of the industrial disputes act will

apply to the trade unions act the court came to the conclusion that authorities of the raj bhawan could not be held to be employers engaged with the workmen in an undertaking within the meaning of the term "industry" in the industrial disputes act as the services rendered by the employers were purely of a personal nature.

The tamil nad non-gazetted government officers' union verses. The registrar of trade union

(government servants engaged in sovereign activities of the government cannot be permitted trade dispute and thus form a trade union.)

facts the tamil nad non-gazetted government officers' union is a service association which has been recognised by the government and membership is open as per its constitution to all non-gazetted government officers employed under the government of madras (now tamil nadu) except the executive officers of the police and prisons department and the last grade government servants. The associations was formed for promoting the welfare of its members in multiple directions. The association represented by ten of its members applied on 23.12.1957 to the registrar of trade unions, madras, for registration as a trade union, madras, for registration as a trade union under s. 5 of the trade union act, 1926. The registrar rejected the application after a reference to the definition of "trade dispute" and "trade union" of the act. An appeal was duly preferred but the learned judge held against the appellant union. Therefore, the appeal was made to the division bench of the madras high court.

issue

Whether the decision of the registration of trade unions refusing to register the association as the trade unions was correct?

Decision of the high court

The high court held that the very terms of s. 8 are that the registrar has to register the union "on being satisfied that the trade union has complied with all the requirements of this act"; this shows that where the definitions under sections 2(g) and 2(h) are themselves inapplicable to the so-called union, the registrar has every power to decline the registration. It is for the specified purpose of granting redress against the erroneous exercise of such power that the appeal is provided for under section 11.

The court said: "we think it is clear that there are two broad grounds upon which the claim of the appellant union to registration as trade union could be properly resisted. The first ground. Is inherent to the very constitution of the union, and the admitted facts of its structure, in relation to a basic principle stressed by the supreme court; we do not see how this ground of objection can in any manner be negatived. The second ground is more open to controversy, but even here we are inclined to the view that at least as relative to the core of the civil services entrusted with the implementation of the essential and sovereign function of government, the ground of objection is valid. But the first ground alone is really sufficient to dispose of the present appeal."

The question before the court was whether such persons as sub-magistrate in the judiciary, tahsildars, officers of the treasuries and home department of government, who were all members of the appellant union according to its constitution, could, by any stretch of imagination, be regarded as "workmen employed" in "trade" or "industry". The court said: "however wide the term "trade" might be, in all the authorities cited before us, the supreme court has approved of the dictum that those activities of the government which should be properly described as regal or sovereign activities were outside the scope of "industry". The supreme court in *state of bombay verses hospital mazdoor sabha,* air 1960 sc 610, quoted with approval the dicta of issacs, j., in *federated state school teachers' association of australia verses state of victoria,* (1929) 41 clr 569, namely. "regal functions are inescapable, and inalienable. Such are the legislative power, the administration of laws, the exercise of judicial power."

The supreme court added—

"it could not have been, therefore, in the contemplation of the legislature to bring in the legal functions of the state within the definition of "industry" and thus confer jurisdiction on industrial courts to decide disputes in respect thereof."

The high court said: "the appellant union purports to include among its members sub-magistrates of the judiciary, tahsildars entrusted with the powers of enforcement of the tax-machinery (revenue recovery act etc.), officers in charge of treasuries and sub-tereasurey officers of civil court establishment, and of the home department of government. It is impossible to contend that these are not civil servants engaged in the tasks of the sovereign and legal aspect of the government, which are its inalienable functions; they cannot be included in the definition of "workmen" in an "industry" to whom either section 2(g) or 2(h) of the trade unions act can apply." the persons who are not "workman" in an "industry" cannot form a trade union.

The high court further held that "collective bargaining" is a right conceded to labour organisations within the contractual field of the employer and employee relationship. It would become a grotesque anomaly that if civil services, for instance, % were permitted to raise a "trade dispute" with regard to the dismissal of a civil servant it may be for activities against the state itself, and at the same breath to claim that the constitutional safeguards under article 311, which are wholly irrelevant to the field to contract and to the employer-labour nexus, should be maintained intact for the benefit of the civil services.

Thus the appeal was dismissed.

Registrar of trade unions verses government press employees union

(workmen employed in the government press, pondicherry are entitled to the benefits of the trade unions act, 1926.)

Facts

The employees of the pondicherry government press constituted themselves into the government press employees union and under section 5 of the trade union act, applied to the registrar of trade unions. Pondicherry for registration of the registrar of trade unions sent a communication to the secretary of the government press employees union on 1.7.91 regarding his inability to register the trade union under trade unions act, 1926. The ground given by the registrar for refusing to register the application was "the present functions of the government press pondicherry do not come within the meaning of trade or business." aggrieved by this order, the secretary of the government press employees trade union filed an appeal with the district judge, pondicherry in c.m.a. 45 of 1971, impugning the order of the registrar. It was argued before the learned district judge that the government press had been printing challans, gazettes and calendars, which were being sold to the public for a price and that the government press was also printing budget papers and papers for the various departments of the government thereby rendering service either to the public or at least to a section of the public. The description of the functions of the government press, pondicherry was not disputed by the counsel appearing for the registrar of trade unions. But, it was contended on the basis of certain decisions that the employees in the government press being government servants were disentitled to form a trade union and therefore, their association was ineligible for registration under the trade unions act. The learned district judge, upon a consideration of the provisions of the trade unions act, came to the conclusion, having regard to the nature of the activities of the government press, that it partook of the character of business and industry and that the workers employed in this industry were entitled to have their union registered under the trade unions act, 1926. Consequently, the learned district judge set aside the order of the registrar of trade unions and allowed the appeal with cost. It is against this judgement that the registrar of trade unions, pondicherry has preferred this petition. The trade union act, 1926, as can be gathered from the preamble thereto, was intended to provide for the registration of trade unions and in certain respects, to define the law relating to registered trade unions. Under the pondicherry laws regulation, 1963, this act was extended to pondicherry with effect from 1.10.1963t issue

Whether the workmen represented by the government press employees union, pondicherry, are persons employed in "trade" or "industry"? Decision of the high court

Mahajan, j. Said:

"the trade unions act was passed in 1926 and i think it rather artificial and unrealistic to give to the word used in an act of 1926 the extremely wide ranging meaning, which parliament has chosen to assign to the word 'industry[1] in the industrial disputes act, which was passed 21 years later in 1947. No doubt, in section 2(j) of the industrial disputes act, "industry' has been defined to mean 'any business, trade, undertaking, manufacture, or calling of employees and includes any calling, service, employment, handicraft, or industrial occupation and avocation of workmen.' but then, this sweeping definition which it was open to parliament to adopt for the specific purpose of the industrial disputes act. I think it; therefore, wrong to interpret the word 'industry', this is a definition which it was open to parliament to adopt for the specific purposes of the industrial disputes act. I think it, therefore, wrong to interpret the word 'industry' used in the act of 1926 in the light of the widely extended

meaning given to it by a statute of 1947. What, then does the word 'industry[1] under the act of 1926 connote? According to the concise oxford dictionary, 'industry' means — (1) diligence, (2) habitual employment in useful works; (3) branch of trade or 'manufacture'. 'Manufacture' according to the same dictionary means 'making of articles by physical labour or machinery especially on large scales; branch of such industry as woolen etc." it would be clear from this dictionary meaning of the words 'industry' and 'manufacture' that no profit motive is necessarily involved in an industry. There can be little doubt that the government press has been manufacturing with the aid of the printing press, as well as by physical labour, and on a large scale, such articles as challans, gazettes and calendars, budget papers, etc. It would therefore, undoubtedly be an 'industry' within the meaning of the trade union act and the respondents, being persons employed in such an industry must be rightly regarded as 'workmen' within the meaning of clause (h) of section 2 of the act."

His lordship further held that "the only reasonable construction to put upon the several provisions of the trade unions act 1926 is that all workmen employed in any trade or industry, regardless of the fact whether the trade or industry is being conducted by a government or by a private agency are entitled to combine themselves into a trade union and to get their trade union registered under section 6 of the act. This conclusion, which can be independently arrived at, is reinforced by the amending act of 1947." [it may be noted that indian trade unions amendment act, 1947 was passed by the parliament, which received the assent of the governor-general on 20.12.1947. However, this amendment has not come into force as the central government has not since 1947 made any notification in the official gazette in this respect. In section 3 of the amending act, the word 'employer' has been defined to mean—"in relation to the industry carried on by or under the authority of any department of the central government or a provincial government the authority prescribed in this behalf or where no authority is prescribed the head of the department." this amendment reflects the undoubted intention of parliament to bring an industry carried on by or under the authority of the central government or provincial government within the provisions of the trade unions act, 1926].

His lordship concluded: "i am clear in my mind that the workmen employed in an industrial undertaking like the government press, pondicherry, are 'workmen' entitled to the benefits of the trade union act, 1926."

Registration and cancellation of registration

Triumala tirpuati devasthanam verses commissioner of labour

(registration of union of employees working in power and water wings of devasthanam could not be cancelled at the devasthanam's instance.)

Facts

The employees working in power and water works wings of the appellant-devasthanam had applied for registration of their association under the trade union act, 1926 (hereinafter referred to as the 'act') which application was allowed. However, the appellant-devasthanam thereafter made an application under section 10 of the act for cancellation of the registration of the said union. The registrar rejected the application. In appeal, the high court went into the question as to whether the two wings, viz., the water and power wings of the appellant-devasthanam were an 'industry' and came to the conclusion that they were an 'industry[7], and therefore, held that the certificate granted to the union was not liable to be cancelled. Aggrieved by the decision of the high court, the appellant has come in appeal before us.

Issue

Whether the workmen concerned are entitled to get their association registered under the trade union act, 1926?

Decision of the supreme court

Registration of union of employees working in power and water wings of devasthanam instance could not be cancelled merely on the ground that its said wings were not an industry. The question as to whether the said wings were or were not an industry, left open.

Rejecting the appellant-devasthanarms contention that since its water and power wings were not an industry no union of its employees working in the said wings could be registered under the trade unions act, the court held that none of the ground mentioned in sub-section (a) or (b) of section 10 of the trade union act was available to the appellant-devasthanam. It cannot be disputed that the relationship between the appellant and the workmen in question is that of employer and employee. The registration of the association of the said workmen as a trade union under the act has nothing to do with industry or not. The high court went into the said issue, although the same had not arisen before it. Since the findings recorded by the high court on the said issue, were not germane to the question that fell for consideration in the instant case the question as to whether the said wings are in industry or not was left open. It was further held that the workmen concerned were entitled to get their association registered under the act.

In *re inland* steam navigation workers' union

(it *is the duty of the registrar to register the union if all requirements of the act are satisfied.)*

facts

A union named as r.s.n. And i.g.n. And ry. Workers union was formed and registered in 1934 but was soon declared an unlawful association under s. 16 criminal law (amendment) act by the government of bengal. A new union under the name of inland steam navigation workers union was formed and an application was filed to the registrar of trade union in 1935 for registration of inland steam navigation worker's union. The registrar refused to register the union on the ground that the application was an attempt to have the r.s.n. And i.g.n. And ry. Workers union which was declared an unlawful association registered under a new name. While passing the order the registrar relied upon a letter written by the general secretary of the inland steam navigation workers union to the government of bengal, wherein it was stated that he had been directed by the general body of the r.s.n. And i.g.n. And ry. Workers' union to approach the government and request that the notification under s. 16, criminal law (amendment) act, declaring the r.s.n. And i.g.n. And ry. Workers'. Union as unlawful association be withdrawn.

The registrar seemed to have acted on the basis of that letter without bringing it to the notice of the union or without giving an opportunity to the union or expressing its views on the contents of the letter. An appeal was made under s. 11 of the trade unions act for setting aside the order of the registrar. Decision of the high court

The calcutta high court held that attitude of the registrar was wrong. The functions of the registrar are prescribed in s. 8 of the trade unions act. 1926. According to this section the registrar on being satisfied that the trade union has complied with all the requirements of the trade unions act in regard to registration must register the trade union.

In the course of his judgement derbyshire, c.j., said:

"the new union may or may not be a continuation of the other union or its successor. Whether the new union is or is not the same as, or successor to the old union, depends upon evidence. Until further evidence is forthcoming in my view it is impossible to say whether the new union is or is not the same as the old union or the successor of the old union. In my view, the duties of the registrar were to examine the application and to look at the objects for which the union was formed. If those objects were objects set out in the act and if these objects did not go outside the objects prescribed in the act and if all the requirements of the act and regulations made there under had been complied with, it was his duty to register the union. The registrar was not at that stage entitled to go into the question whether the union was another trade union which was registered and which was seeking the registration under a different name. The registrar when he relied on the letter to the bengal government ought to have brought it to the notice of union before he acted on it and given it an opportunity to say anything that it had to say with regard to it."

Chairman, state bank of india verses all orissa state bank officers association

(section 8 and 2(e)—an unrecognized union is not a superfluous entity.)

facts

All orissa state bank officers association (a non-recognised association but registered association—respondent 1) represented through its general secretary, filed the writ petition raising grievances against unjust, unfair and hostel treatment at par with office-bearers of the recognised association, and prayed that the norms for guidance in matters relating to a non-recognized association may be laid down by the court, ft did not appear to have been disputed before the high court and it was also not disputed in the supreme court that a non-recognized association is a registered association under the trade union act. The association does not satisfy the criteria laid down by the verification of membership and recognition of trade unions rules, 1994 framed by the government of orissa. The non-recognized association pleaded that in 1982 the association submitted a list of its members and claimed recognition, but in spite of recommendation of the office-in-charge of the local head office, the central office at bombay did not take any decision and started adopting unfair labour practice to encourage defection from the petitioner's association to the recognized association. The non-recognized association also alleged that members of the recognized association are being shown illegal and undue favour in the matter of posting, transfer, entertainment or representations whereas systematic and calculated manner. Certain instances were stated in the writ application in support of the allegation of hostile discrimination and unfair treatment.

The chief general manager in the local head office at bhubaneswar respondent no. 2 herein, in his counter affidavit denied the allegations of discrimination, arbitrary treatment and unfair practice. However he referred to certain rights and privileges allowed to members of recognized association and asserted that only such rights and privileges were not being extended to the office-bearers of the non-recognized association. He refuted the claim of the non-recognized association for parity of treatment with members and office bearers of the recognized association.

Issue

Whether the respondent association has the right to espouse the case of the officers of the bank with the management of the bank or the rights are vested only in a recognised association, the all india state bank officers federation/ association?

Decision of the supreme court

The supreme court held that an unrecognized union is not a superfluous entity. It is entitled to meet and discuss with the management/employer about grievances of any individual member relating to his service conditions and to represent an individual member in domestic or departmental inquiry and proceedings before conciliation officer or labour court or industrial tribunal. The management/employer cannot out rightly refuse to have such discussions with an unrecognized trade union. However, whether in certain matters concerning individual workmen discussion and negotiation with the unrecognized union, of which they were members would be useful has to be decided by the management or its representatives at the spot. Hence, provision in state bank of india circular restraining its

functionaries from entering into any dialogue or accepting any representation from the office-bearers of an unrecognized association, rightly set aside by the high court.

The supreme court said:

"with growth of industrialization in the country and progress made in the field of trade union activities the necessity for having multiple unions in an industry has been felt very often. Taking note of this position power has been vested in the management to recognize one of the trade unions for the purpose of having discussion and negotiations in labour related matters. This arrangement is in recognition of the right of collective bargaining of workmen/employees in an industry. To avoid arbitrariness', bias and favoritism in the matter of recognition of a trade union rules have been framed laying down the procedure for ascertaining which of the trade unions commands support of majority of workmen/employees. Such procedure is for the benefit of the workmen/employees as well as the management/employer since collective barganing with a trade union having the support of majority of workmen will help in maintaining industrial peace and will help smooth functioning of the establishment. Taking note of the possibility of multiple trade unions coining into existence in the industry, provisions have been made in the rules conceding certain rights to non-recognized unions. Though such non-recognized union may not have the right to participate in the process of collective bargaining with the management/employer over issues concerning the workmen in general. They have the right to meet and discuss with the employer or any person appointed by him on issues relating>to grievances of any individual member regarding of his service conditions and to appear on behalf of the members in any domestic or departmental enquiry held by the employer or before the conciliation officer or labour court or industrial tribunal. *In essence, the distinction between the two categories of trade unions is that while the recognized union has the right to participate in the discussions/negotiations regarding general issues affecting all workmen/employees and settlement if any arrived at as a result of such discussion/negotiations is binding on all workmen/employees. Whereas a non-recognized union cannot claim such a right. But it has the right to meet and discuss with the management/employer about the grievances of any individual member relating to his service conditions and to represent and individual member in domestic inquiry or departmental inquiry and proceedings before the conciliation officer and adjudicator. The very fact that certain rights are vested in a non-recognized union shows that the trade union act and the rules framed there under acknowledge the existence of a non-recognized union. Such a union is not superfluous entity and it has relevance in specific matter relating to administration of the establishment. It follows, therefore, that the management/employer cannot out rightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto. It is relevant to note here that the right of the citizens of this country to form an association or union is recognized under tl constitution in article i9(l)(c).* It is also to be kept in mind that for the sake 01 industrial peace and proper administration of the industry it is necessary for the management to seek cooperation of the entire work force. The management by its conduct should not give an impression as if it favours a certain sections of its employees to the exclusion of others which, to say the least, will not be conducive to industrial peace and smooth management. Whether negotiation relating to a particular issue is necessary to be made with representatives of the recognized union alone or relating to certain matters concerning individual workmen it will be fruitful to have discussion/negotiations with a non-recognized union of which those individual workmen/employees are members it is for the management or its representative at the spot to decide. At the cost of repetition we may state that it has to be kept in mind that the arrangement is intended to help in resolving the issue raised on behalf of the workmen and will assist the management in avoiding industrial unrest. The management should act in manner which helps in uniting its workmen-employees and not give an impression of divisive force out to create differences and distrust amongst workmen and employees. Judged in this light the contents of paragraph 2 of the staff circular no. 91 of 1987 clearly give an impression that the management has decided at the threshold raised that its representation should have no discussion at all with office bearers of the non-recognized association. Such a circular is not contrary to the express provision in rule 24 also runs counter to the scheme of the trade union act and rules."

Right to go on strike and place of demonstration

R.s. Ruikar verses emperor

(trade union is not liable criminally for conspiracy to do certain acts in furtherance of trade dispute.)

Facts

The nagpur textile union of which the appellant was the president called for a strike of textile workers in nagpur on the ground that certain terms of the settlement had not been honored by the empress mills in nagpur. The strike was not a success in the beginning. The union decided on picketing and the president of the union accordingly made speeches asking the workers to do picketing. This too did not produce the desired results as the police had driven away the workmen picketers. At last the president of the union brought his wife to one of the mill gates and posted her there with instructions to beat with her slippers anyone who interfered with her. The president of the union was arrested, prosecuted and convicted for abetment of picketing under s. 7 of the criminal law amendment act, 1932. The main contention of the appellant was that on the facts found against him no offence has been committed as s. 7 of the criminal law amendment act can have no application to purely industrial disputes. It was contended that the valuable. Right given to trade unions to declare a strike and their immunity from liability for criminal conspiracy or to civil suits in connection with furtherance of a strike is taken away if s. 7 of the criminal law amendment act is held to be applicable to trade disputes.

Decision of the high court

The nagpur high court rejected the arguments of the appellant. It held that trade unions have the right to declare strikes and to do certain acts in furtherance of trade disputes. They are not liable civilly for such acts or criminally for conspiracy in the furtherance of such acts as trade unions act permits; but there is nothing in that act which apart from immunity from criminal conspiracy allows immunity from any criminal offences. Indeed any agreement to commit an offence would under s. 17 of the trade unions acts make them liable for criminal conspiracy. Section 7 of the criminal law amendment act as part of the criminal law of the land and an offence committed as defined in that section is an offence to which the concluding sentence of s. 1 of the trade unions act applies as much as it would do to an agreement to commit murder.

Immunity from civil suits in certain case

Rohtas industries limited and another verses rohtas industries staff union and others

(workers cannot be asked to make good the loss suffered by the employer because of the illegal strike.)

Facts

The employers had a running industrial dispute with their workers who were represented by two rival trade unions enjoying recognition. There was a strike in the industry due to inter-union rivalry. The strike came to end by virtue of a memorandum of agreement between the management and the trade unions. The agreement provided *inter alia* that workers' claim for wages and salaries for the period of strike and the company's claim for compensation for losses due to strike shall be submitted to arbitration. Consequently the dispute was referred for adjudication to a board of arbitrators. The arbitrators held that the workmen participating in the strike were not entitled to wages and salaries for the period of the strike as the strike was illegal. The arbitrators also awarded damages to the management payable by the workmen to the tune of rs. 6,90,000 in one case and rs. 80,000 in other for the loss of profits suffered by the management. On appeal the high court quashed that part of the award which directed payment of compensation by the* workers to the management. The management challenged the decision of the high court.

Issue

Whether the industrial workers who had gone on strike could be asked to make good the loss suffered by the employer because of the illegal strike?

Decision of the supreme court

The supreme court held that the workers could not be asked to make good the loss suffered by the employer because of the illegal strike in the instant base, the court said the although the strike was illegal under s. 24 of the industrial disputes act, the object of the strike was inter-union rivalry and not to inflict damage or destruction on the employers. In case of illegal strike the only remedy is prosecution under s. 26 of the industrial disputes act.

In the course of its judgment krishna iyer. J., said:

"it is absolutely plain that the tort of conspiracy necessarily involves advertence to and affirmation of the object of the combination being the infliction of damage or destruction on the plaintiff."

Standard chartered bank verses chartered bank employees union

(*workers cannot have demonstration, dharnas or sticking of posters and tying of banners within the premises of the employer.)*

facts

Defendant no. 1, standard chartered bank employees union is the union of the employees of the plaintiff bank whereas defendants 2 to 5 are its office-bearers. Out of these office-bearers defendant no. 4 was working in the loan centre unit of the plaintiff's branch at 17, parliament street, new delhi and by letter dated 1.11.1995 he has been transferred to darya ganj branch and the said order was served on the defendant no. 4 on 2.11.1995. It is the case of the plaintiff that on 3.11.1995 the defendants and its members started shouting pitched slogans against the management using filthy language for its officers and created unruly scenes, thumped the tables and caused hindrance to the officers in discharging their duties and also obstructing the customers. Plaintiff further alleged that the defendants have also extended threats of physical violence to the officers of the plaintiff bank and they have resorted to illegal strike. They had also made it known to the plaintiff that they would intensify and would instigate and resort to more violent activities and hold demonstrations, gheraos, dharnas, strike and obstruct ingress and egress of the plaintiff officers, willing employees as well as the customers. All these things were being committed in order to put pressure on the plaintiff and to coerce the plaintiff to withdraw the transfer order. Plaintiff, therefore, filed the present suit to get a decree of perpetual injunction to restrain defendants and its employees from instigating and abetting other employees and to resort to strike, holding of demonstrations, shouting slogans, resorting to dharnas, gheraos and putting up loudspeakers within the radius of 500 metres on all sides of the plaintiff's branch at 17, parliament street, new delhi.

Along with the suit plaintiff has filed interim application seeking *ad interim* injunction and the court passed *ex-parte* order of *ad-interim* injunction with a show-cause notice as to why the *ad-interim* injunction issued against them should not be made absolute.

In pursuance of the said show-cause notice the defendants have put in appearance. They filed their objections to the interim application. They also filed written statement to the main suit and they have filed another application under order xxxix rule 4 to vacate the order *of ad-interim* injunction.

It was contended by the defendants that the transfer of defendant no. 4 by the plaintiff was contrary to the provisions of sastri award, which was binding against the plaintiff. They farther contended that they have never given any threats of causing physical violence and they had only done peaceful demonstration and that too out of the bank building. They contended that the plaintiff has misled the court by making false allegations against them and has obtained *ex-parte* order *of ad-interim* injunction. They further contended that it is their fundamental right to go on strike and that there cannot be any order of injunction against them from proceeding on strike. They contended that

they never intended to obstruct the working of the plaintiff bank when they themselves are the employees of the same. They had never tried to instigate any worker or had threatened any officer of the plaintiff or had obstructed any customer coming to the bank. Therefore, in these circumstances, they seek the vacation of the *ex-parte* order *of ad-interim* injunction.

Defendants relied on the following observations of the sastry award:

"(1) every registered bank employees union from time-to-time, shall furnish the bank with the names of the president, vice-president and the secretaries of the union;

(2) except in very special cases, whenever the transfer of any of the above-mentioned office-bearer is contemplated, at least five clear working days' notice should be put up on the notice boards of the bank of such contemplated action;

(3) any representations, written or oral, made by the union shall be considered by the bank;

(4) if any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank's reasons for regarding them as inadequate; and

(5) the decision shall be communicated to the union as well as to employee concerned."

Issue

Whether the defendants have got the right to go on strike and whether there could be any order of injunction against the defendants?

Decision

The court allowed the appeal partly modifying the *ad-interim* injunction and said:

"section 22 of the industrial disputes act, 1947 lays down that no person employed in public utility service shall go on strike in breach of contract without giving the employer a notice within six weeks before striking and within 14 days of gh ing of such notice. The central government had issued a notification under section 2(nxvi) by which the banking institutes are mentioned as one of the specified industries of public utility.

Apart from this, even assuming that they are entitled to go on strike they cannot exercise the said right so as to cause nuisance to the employer. Their right to go on strike is not unlimited. As the indian citizens when they want to exercise the fundamental right to form a union and to have demonstrations for the redressal of their grievances, they have got to remember that they have also got a reciprocal duty so as not to cause nuisance or mental or physical danger to their employers and others. As the employer can move the government and the government can refer the disputes to the industrial court, it is equally open for defendant no. 4 to approach the labour court to challenge his transfer. He as well as defendant no. 1, cannot take the law in their hands and behave and act in such a manner so as to cause nuisance to others. No doubt it is their contention that the transfer of defendant no. 4 is illegal and, therefore, they are entitled to go on strike but for that purpose they must follow the procedure laid down by section 22 of the industrial disputes act and after following the said procedure they can exercise their right to go on strike by bearing in mind that they cannot cause nuisance to the plaintiff or others."

The court further said:

"but they cannot have the demonstrations, dharnas or sticking of posters and tying of banners within the premises of their employer. They can have peaceful demonstrations out of the premises of the employer. They can, after following the procedure under section 22 of the industrial disputes act, use black strips or other modes

of showing their displeasure and for being on strike. They can put up banners or posters which are not obscene or obnoxious but that too not within the building of their employer."

It has been observed by the supreme court in *b.r. Singh verses union of india,* 1989 supp 1 scr 257, that strike is a form of demonstration against the activities of the employer and go-slow, sit-in, work-to-rule, absentism are the modes of demonstrations and the workers have got the right to make demonstrations.

The court, in the instant case, did not allow the claim made by the plaintiff absolutely. The prayer of the plaintiff to restrain the defendants, its employees, members, office-bearers or cards on their clothes or wearing cap was rejected. Notes

In *b.r. Singh verses union of india,* the supreme court held as follows:

"the right to form associations or unions is a fundamental right under article 19(l) (c) of the constitution. Section 8 of the trade unions act provides for registration of a trade union if all the requirements or the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognised obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act is mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the managements. This bargaining power would be considered reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit-in, work-to-rule, absentism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. *Though not raised to the high pedestal of fundamental rights, it is recognised as a mode of redress for resolving the grievances of workers"*

In *tk. Rangarajan verses government of tamil nadu,* 2, the supreme court held that "the employees have no fundamental right to resort to strike". In this case the tamil nadu government terminated the services of all employees who have resorted to strike for their demands. This unprecedented action of the tamil nadu government was challenged. Their lordships of the apex court held: "now coming to the question of right to strike-whether fundamental, statutory or equitable/moral right—in our view, no such right exists with the government employees."

In ***common cause verses union of india & others,*** national consumer disputes redressal commission, new delhi, a complaint was filed by the well known consumer organisation common cause seeking redressal of the grievance of air passengers who were put to great amount of inconvenience and hardship on account of disruption of large number of flights of air india caused by reason of a sudden strike resorted to by members of the indian flight engineers association (respondent no. 3) in february, 1993. It was stated in the petition that nearly 200 flights normally operated by air india (respondent no. 2) had to be cancelled due to the strike by the flight engineers who are members of the indian flight engineers association and as a result thereof many persons who had booked their journeys by air india flights were put to great hardship and loss and the image of the airline which the national flag carrier of this country had severally suffered within the country as well as abroad. In addition, huge loss had been caused by reason of the strike to air india which is public sector enterprise and such loss is ultimately loss to be general public. The government of india, ministry of labour had by its order dated april 6, 1993 declared the strike to be illegal and prohibited its continuance in public interest. The flight engineers did not resume work in spite of this fact. The loss suffered by the passengers due to the strike was estimated by the appellant to be rs. 30 crores. The purpose of the instant petition was to establish the accountability of both air india and the members of the association under the consumer protection act, 1986 for deficiency of service and prayed for the nominal compensation of rs. 10 lakhs to be paid by air india and rs. 5 lakhs by the association.

It was held that the provisions of s. 18 of the trade unions act do not operate as a bar to the filing of a complaint against a trade union under the consumer protection act, 1986. It was found by the commission that the strike launched by the indian flight engineer's association was illegal and therefore, the commission held that it could not be regarded as legitimate trade union activity. The third respondent and its members were responsible for causing disruption of flights resulting in great inconvenience hardship and loss to the passengers who had booked their journeys by air-india flights during the period of disruption caused by the strike. The commission issued a direction to air india [OD the terms similar to what was issued by the commission to the indian banks association in the case of *consumer unity and trust society, calcutta verses chairman and managing director, bank of baroda,* that henceforth whenever a strike notice is served by any section of employees or their trade union on air india (equally applicable to airlines similarly situated) and the strike appears to be imminent, the airlines should insert a publication in the leading newspapers of the country informing the public about the possibility of there being a strike so that consumer may not be taken by surprise by the strike but may be enabled to make such alternative arrangements as are possible so as to mitigate the hardship that is otherwise bound to be caused to them.

In *western india cine employees verses filmalaya private limited,* , it was held that a trade union is entitled to carry out its legitimate trade union activities peacefully and, therefore, *per se* slogan shouting or demonstrations cannot be termed unlawful and a blanket injunction cannot be granted. It was further held that the acts of a trade union such a using abusive language towards the employers, their staff and visitors are subject to other laws of the land. In *ahmadabad textile research association verses a.t.lr.a. Employees union and another,*

(gujarat), it was held that *dharnas* and demonstrations, though they may cause inconvenience to the management, are permissible even inside the industrial establishment within the working hours so long as they do not turn out to be unlawful, tortious or violent. In *standard chartered bank verses hindustan engineering and general mazdoor union and others,* , the defendant union was restrained from holding demonstrations etc. Within a radius of 100 metres from the bank building. It was further observed that the freedom of speech and right to form associations granted by the constitution did not confer a right to hold meetings and shout slogans at premises, legally occupied by another.

In banglore water supply and sewerage board *verses* a. Rajappa, (1978) a seven judge bench of the supreme court exhaustively considered the scope of industry. The supreme court in this case by a majority of five with two dissenting overruled *safdarjung solicitors'* case , *gymkhana* , *delhi university* , *dhanrajgiri hospital* and *cricket club of india* . It rehabilitated *hospital mazdoor shabha* and affirmed *indian standards institution* . The court followed *banerji* and *corporation of city of nagpur* cases.

There are four judgements: one by krishna lyer, j for himself, bhagwati and desai, jj; the second by the former chief justice beg; the third by chief justice chandrachud and the fourth by jaswant singh. J., for himself and tulzapurkar, j.

The following is the summary of the majority view in the words of krishna lyer, j., who gave the leading judgement:

"i. Industry as defined in s. 2(j) and explained in *banerji* has a wide import.

(a) where (1) systematic activity, (2) organised by co-operation between employer and employee (the direct and substantial element is chimerical), (3) for production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geard to celestial bliss, i.e., making on a large scale prasad or food), *primafacie,* there is "industry" in that enterprise.

(b) absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) if the organisation is the trade or business it does not cease to be one because of philanthrophy animating the undertaking.

Ii. Although section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) 'undertaking' must suffer a contextual and associational shrinkage as explained in *benerji* and in this judgement; so also service, calling and the like. This yields the inference that all organised activity possessing the triple elements in i *(supra)* although not trade or business, may still be 'industry' provided the nature of the activity viz., the employer-employee basis, bears resemblance to