

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No.....4977...../ 99

PETITIONER/s : Simolex Engrg. & Foundry Works
Unit-III, Tedesera,
RAJNANDGACN

Vs.

RESPONDENTS : Pragatisheel Engineering
Shramik Sangh and others.

RETURN ON BEHALF OF THE RESPONDENT UNION

That, the answering respondent submits as under :-

1. Preliminary submissions :-

1.1 That, the present petition is connected with 10 other petitions filed by the employers/industries. The Respondent No. 1 in the year 1990-91 raised certain demands against violating labour laws and for up-lifting the condition of services of the employees working in the aforesaid industries. The employers paid no heed to the legitimate demands of the workers and on the contrary, without following the procedure of law terminated approximately 4,000 employees working in various industries. No retrenchment compensation was given, no permission was sought for from the appropriate Government seeking retrenchment of the employees as required u/s 25-N of Industrial Disputes Act, 1947. No. No departmental enquiry was instituted and suddenly all 4,000 employees were terminated by the employers. Needless to say that the sudden termination of 4,000 employees has resulted into great dissatisfaction and heart-burning amongst the employees. The employers showed total disregard to the industrial/labour laws and; therefore, aggrieved workers started agitation in the leadership of their Union, the Respondent No. 1 herein.

1.2 That, during the agitation, on 1st July, 1992 at Bhilai Power House Railway Station, there was police firing on 'Rail Roko Satyagrah' organised by the terminated workers. Sixteen employees were killed in the said police firing. Subsequently, the State Government appointed a one man Enquiry Commission in the Chairmanship of Shri K.S. Shrivastava, the then District & Sessions Judge, Raipur. However, Shri K.S. Shrivastava elevated as Judge of the High Court of Judicature, Andhra Pradesh and; accordingly, by notification dated 14-7-1995, Shri P.C. Agrawal, District & Sessions Judge, Raipur was appointed as Member of the said Enquiry Commission. The Enquiry Commission submitted its report to the State government on 9-3-1998 which was published by the State Government (General Administration Department) by its notification dated 25-7-1998. That, the Enquiry Commission in Paragraph 7.17 of its report has given its opinion and recommendations as under :-

आयोग के मत में द्वितीय पक्ष (उद्योगों) ने भारतीय संविधान के अधीन किए गए संकल्पों, राज्य के नीतिनिदेशक तत्वों, उद्देशिका व राज्य के नीति निर्देशक को मूर्त रूप देने के लिए भारतीय संसद व राज्य की विधायिका द्वारा बनाई गई श्रमिक विधियों के अनुरूप उनके कारखाने में कार्यरत श्रमिकों को उचित वेतन बोनस, स्वास्थ्य व सुरक्षा सुविधाएं सामाजिक सुरक्षा आदि उपलब्ध नहीं कराई, जबकि यह उनका विधिक कर्तव्य था, द्वितीय पक्ष (उद्योग) ने प्रथम पक्ष (श्रमिक) के प्रदर्श 3 पी 180 व प्रदर्श 3 पी 181 के मांगपत्र प्रस्तुत करने पर उन पर गंभीरतापूर्वक विचार कर व उनकी शक्तिभर उन मांगों की पूर्ति करने के स्थान पर यह उचित समझा कि वह उनके श्रमिकों को छत्तीसगढ़ मुक्ति मोर्चा समर्थित श्रमिक संघों की सदस्यता लेने से रोक दें श्रमिकों के असहमत होने पर द्वितीय पक्ष (उद्योग) ने तत्काल बड़ी संख्या में श्रमिकों को काम से बाहर किया व यह भी नहीं सोचा कि बड़ी संख्या में उनके कारखाने में बहुत दिनों से कार्यरत श्रमिकों को उन्होंने बेरोजगारी, अकिंचनता व भूख से लड़ने के लिए छोड़ दिया है, इस तरह के कार्य से द्वितीय पक्ष (उद्योग) ने वास्तव में प्रथम पक्ष (श्रमिक) के श्रमिक आंदोलन को और अधिक बल दिया व उसे उग्र बना दिया व प्रथम पक्ष (श्रमिक) में विद्रोह की भावना को जन्म दिया, द्वितीय पक्ष (उद्योग) ने यह भी विचार नहीं किया कि उनका कार्य अवैध है, अनैतिक है व श्रमिक विधियों के अधीन अपराध भी है वास्तव में द्वितीय पक्ष (उद्योग) को श्रमिक विधियों में कोई आस्था नहीं है और नहीं उन्हें श्रमिक विधियों के विरुद्ध किए गए अपराध के दंड का कोई भय है, द्वितीय पक्ष (उद्योग) ने प्रथम पक्ष (श्रमिक) को कोई महत्व नहीं दिया, न ही उनके अधिकारों को समझा, न उनके प्रति अपने कर्तव्यों को समझा और न यह समझा कि प्रथम पक्ष (श्रमिकों) द्वारा लय आंदोलन का स्वयं उन पर व समाज पर क्या प्रभाव पड़ सकता है. A perusal of the finding of the Commission goes to show that dissatisfaction of the large number of workers was

arising out of adamant, arbitrary and victimising attitude of the employers. A categorical finding was recorded by the Enquiry Commission that the industries had no faith in labour laws, neither they have any fear regarding offences under the Labour Laws. It is also recorded that the industries have not given any heed to the rights of the workers nor they had understood their duties and; accordingly, the same has resulted into outburst and satyagrah dated 1st July, 1992.

1.3 That, the State Government while exercising its power U/s 51 of the Madhya Pradesh Industrial Relations Act (MPIR Act), 1960, ultimately referred the dispute for its lawful adjudication to the Industrial Court, Raipur. In the reference, the Industrial Court was directed to adjudicate upon the questions :-

- (i) " Whether salary and allowances are required to be revised ? If yes, what should be the scheme of revision of wages, dearness allowance and other allowances and what directions should be given to the employer in this respect ?
- (ii) " Whether 15 day's Casual Leave, 10 days Holidays and 30 days Medical Leave's demand is justified and if yes what directions should be given to the employer ? "
- (iii) " Whether the termination of the employees mentioned in the annexure is legal and justified ? If not, what directions should be given to the employer in this respect ?"

That, subsequently, State Government amended the reference order dated 26-2-1993 by inserting another reference :-

- " Whether during the pendency of the dispute the workmen are entitled for interim relief or not ?

1.4 That, upon receiving the aforesaid reference, the Industrial Court, Raipur seized the matter and issued notices to the parties. The employer took an objection before the Industrial Court that the reference itself is bad in law. The Industrial Court, Raipur Bench (Single Judge) referred the matter to a Division Bench

of the Industrial Court to decide the objection of the employer regarding validity of the reference. Accordingly, a Division Bench consisting of Hon'ble Shri Shambhoo Singh, J and Shri S. N. Upadhyaya (Member) decided the objection of the employer by order dated 31.5.1995., thereby the objection of the employer was over-ruled and it was held that the dispute is maintainable and : accordingly, Industrial Court, Raipur was directed to decide the case on merits of the matter.

1.5 That, the employer, feeling aggrieved with the order of the Industrial Court dated 31.5.1995, challenged the same by filing a Writ Petition before the Indore Bench of the High Court. The said Writ Petition was registered as W.P. No. 1231/1995. The Single Bench (Hon'ble Shri N.K. Jain, J') decided the said writ on 27.9.1996. The learned Single Judge while deciding the matter has opined as under :-

" It will be thus seen that the petitioners instead of rushing to this Court at this preliminary stage of hearing before the Industrial Court, ought to have waited for its decision in the matter. Needless to add, the right to life includes the right to livelihood. (see Olga Tellis case AIR 1986 SC 180). The petitioner employers who can certainly afford to wait, cannot be therefore allowed to exploit jurisdiction of this Court u/Article 226 to avoid decision of issues more vital to the employers."

Accordingly, the W.P. No. 1231/95 was dismissed by the Indore Bench of High Court.

1.6 The employer against the W.P. No. 1231/95 filed L.P. As before the Indore Bench which were registered as L.P.A. No. 155/96 and other connected L.P. As. No. 156/96; 162/96 and 163/96. Since, identical references were made by the State Government U/s 51 of the MPIR Act to the Industrial Court, many employers had choosen to file writ petitions and LPAs. to assail order of the Industrial Court aforesaid. The aforesaid LPAs. came up for hearing before the Division Bench of the High Court, but unfortunately the learned Judges of the Division Bench deferred in their opinion. This Division Bench was consisting of Hon'ble Shri J.G. Chitre, J' and

Hon'ble Shri R.D. Shukla, J'. In view of difference of opinion amongst the Judges of Division Bench, the matter was sent for opinion of a third Judge, hon'ble Shri A.R. Tiwari, J. Hon'ble Shri Tiwari, J gave his opinion on 12.5.1997, In Paragraph 43 of the judgment aforesaid, the learned third Judge directed that the LPAs. shall be placed by the office before the same Division Bench i.e. Letters Patent Bench on 12.12.1997, after obtaining orders of Hon'ble the Chief Justice for constitution of Special Bench, for passing final order in conformity with the majority view in these LPAs. According to the majority view and the opinion of the third Judge, the LPAs. were placed before the same LPA Bench. However, while pronouncing the judgment, again learned Judges of the said LPA Bench deferred in opinion regarding disposal of the case and; therefore, a request was made by Hon'ble Shri Justice R.D. Shukla for referring the matter for constitution of a larger Bench by Hon'ble the Chief Justice.

1.7 However, for a considerable long time, no larger Bench was constituted by the hon'ble the Chief Justice and accordingly the Union filed a Special Leave to appeal (Civil Appeal No. 737 to 740/1999) before the Apex Court. The Supreme Court passed its order dated 18.2.1999 deciding the appeal in motion stage itself, requesting the Chief Justice of Madhya Pradesh High Court to constitute a Full Bench, expeditiously.

1.8 This is only pursuant to the order of the Apex Court, a Full Bench was constituted to hear aforesaid LPAs. consisting of Hon'ble Shri Justice B.A. Khan, Hon'ble Shri Justice S.B. Sakrikar and Hon'ble Shri Justice V.K. Agrawal. The Full Bench passed the order dated 6.4.1999 in the said LPAs. Pursuant to the order of Full Bench, the Industrial Court passed its aware dated 16.10.1999 which is under challenge in the present writ petition.

1.9 Needless to say, from date of their respective termination in the year 1991-92, the employees were out of employment and while remaining out of employment, they were made to face series of litigation initiated by the employer in the corridors of the Courts. The poor employees who were terminated in Bhilai, (District Durg) were driven to contest the luxurious litigations filed by the employers before the Indore Bench of the High Court.

1.10 That, it is pertinent to mention here that Hon'ble Shri Justice N. K. Jain, while dismissing the Writ Petition No. 1231/95 filed by the employers, quoted the judgment of Supreme Court in the case of D.P. Maheshwari Vs. Delhi Administration (AIR 1984 S.C. 153) :-

"Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of Supreme Court under Article 136 may be allowed to be exploited by those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues avoiding decision on issue more vital to them. Article 226 and 136 are not meant to be used to break the resistance of workmen in this fashion."

This finding of the learned Single Judge has been upheld by full Bench in its judgment dated 6.4.1999 as mentioned in paragraph 3.

1.11 That, this will be relevant to mention here that Hon'ble Shri Justice V.R. Krishna Aiyer (as he then was while speaking for the Bench in a case reported in 1980 Vol. II LLJ page 124 (SC) observed as under :-

" We cannot sympathize with a party who gambles in a litigation to put off the evil day and his own gamble. The logistics of litigation for indigent workmen is a burden the management tried to use by a covert blackmail during the judicial process. Misplaced sympathy is a mirage justice. "

That, the observations of Hon'ble Apex Court is squarely applicable in the facts and circumstances of this case, where the employers left no stone unturned to break the litigation of flimsy objections from one Court to another to see that the employees are died in starvation during the pendency of the luxuries litigation.

1.12 That, the answering respondent submits a list of concerned workmen and their dependents who died during the pendency of the aforesaid proceedings before the judgment of the Industrial Court dated 16.10.1999. Because of the luxuries litigation of the employers, the workers/their dependents even could not see the day of judgment of the Industrial Court. The said Chart is filed herewith as ANNEXURE R/1 to the return. That, most of the persons mentioned in the chart died because of starvation or due to inadequate means of livelihood and for want of adequate medical facilities and treatment.

1.13 That, the Industrial Court although found that the termination of the employees was illegal, not only denied the back wages in an illegal manner, it has failed to direct re-instatement of the employees and in lieu thereof directed to give a paltry sum of Rs. 20,000/- to the employees by way of compensation. The employees have filed separate writ petitions challenging the said part of the award. However, it appears that employer is not even willing to give Rs. 20,000/- to the terminated employees as compensation and has challenged the same in the present writ petition.

1.14 That, the answering respondents deny all adverse allegations/averments of the writ petition filed by the employers. No averments/pleadings of the writ petitions shall be treated to be admitted unless so specifically admitted in the present reply/return.