

HIGH COURT OF KARNATAKA**Bench: Justice Jyoti Mulimani****Date of Decision: November 29, 2023****WRIT PETITION NO.43642 OF 2012 (L-RES)**

M/S. J.K.Tyres And Industries Ltd.,
Vikrant Tyre Plant, ...Petitioner

Versus

General Secretary, Vikrant Tyres Employees' Union,
...Respondent

Legislation:

Articles 226 and 227 of the Constitution of India

Section 12(3), 18(3), 25E(iii) of the Industrial Disputes Act, 1947

Subject: An industrial dispute involving M/S. J.K. Tyres and Industries Ltd. And Vikrant Tyres Employees' Union, primarily concerning the entitlement to wages during a strike period and the legality of an Industrial Tribunal's award.

Headnotes:

Industrial Disputes Act – Strike by workers – Entitlement to wages during the strike period – Tribunal's award granting 50% wages during an illegal strike challenged – Principles of law regarding payment of wages during work stoppages due to strikes discussed. [Para 8]

Industrial Tribunal's Award – Failure to consider relevant factors – Disregard of financial repercussions on management – Tribunal's award set aside for not taking into account the impact of modernization and the need for higher production. [Para 9]

Certiorari – Writ of Certiorari issued – Industrial Tribunal's award quashed – Writ Petition allowed. [Para 10-11]

Referred Cases: None.

Representing Advocates:

Senior Counsel Sri. S.N. Murthy and Advocate Sri. Somashekar on behalf of the petitioner.

ORDER

Sri.S.N.Murthy., learned Senior counsel on behalf of Sri.Somashekar., for the petitioner has appeared through video conferencing.

2. The emergent notice to respondent was ordered on 11.03.2013. The notice was served to respondent and it was represented by counsel Sri.T.S.Anantharam.

Counsel Sri.T.S.Anantharam., filed a memo for retirement on 08.06.2023 and this Court had permitted him to retire from the case and office was directed to show the name of respondent in the cause list.

Accordingly, the name of respondent is shown in the cause list. So far, the respondent has not made any efforts to engage any counsel nor appeared as a party in person. Hence, this Court proceeds to pass the orders on the merits of the case.

3. The brief facts are these:

The petitioner M/s.J.K.Tyres & Industries Limited had entered into a tripartite settlement dated:18.01.1997 on the Charter of demands submitted by the employees under Section 12(3) R/w Section 18(3) of the Industrial Disputes Act, 1947 before the Assistant Labour Commissioner, Mysore. The settlement was in force for the period commencing from 01.10.1995 to 30.09.1999. The important clause in this settlement is Clause 29 regarding

production norms. It was specifically agreed that whenever new machines are installed, the Management will settle production norms and related issues in consultation with the Union. It was also agreed that changes in production norms will be finalized as and when need arises and they shall not be kept pending till the expiry of the settlement. The petitioner management insisted the workmen to give normal production, the workmen in pocket making, tyre building, bias cutter sections indulged in go-slow and noncooperative movement. Since some of the workmen indulged in acts of misconduct, they were suspended pending enquiry.

In this regard, conciliation proceedings were held and ultimately, a settlement dated 20.09.1998 was signed between the parties. The petitioner management revoked the order of suspension and lay-off and as a gesture of goodwill, agreed to pay wages as a special case without creating any precedent. It was agreed that a time study would be done to assess the workload and thereafter on the basis of the report, it would be decided as to what should be done. It was also agreed, that in the course of work study, if it was found that they have extra time, the same should be put into productive use. The issue regarding the implementation of the proposal by the management was taken in conciliation. The meeting was held on 27.11.1998 and the respondent union opposed the implementation and requested the Assistant Labour Commissioner to visit the factory and make a spot inspection. The Assistant Labour Commissioner, Mysore issued notice dated 14.12.1998 and fixed meeting on 21.12.1998.

The respondent union insisted that the ALC should visit the factory and give a report on the same. Accordingly, the ALC visited the petitioner factory on 28.12.1998 from 12.00 to 12.30 p.m., and 5.00 p.m., to 6.00 p.m., and studied the job work of bias cutter operator. The ALC also discussed with few workers and came to the conclusion that there was about 50% idle time and

therefore, observed that the bias cutter operator should utilize time effectively as agreed in settlement.

As things stood thus, on 04.01.1999, the respondent Union without realizing its responsibility, as agreed in settlement and the report of the ALC, opposed and prevented the workmen from giving production though the workmen had extra spare time of 89.42% as per NIIE report and 50% spare time as per the report of the ALC. On the instructions of the respondent Union, the workmen resisted the request of the petitioner to utilize the idle time and refused to cooperate knowing fully well that scientific report was before them and also production level was far below when compared to many leading tyre manufacturing industries in India. The respondent Union being fully aware of cut-throat competition in respect of pricing and sale in the tyre manufacturing market, did not educate the workmen to give better production in view of the modernization being implemented in phases by installing new machines and new technology. In fact, the report of the NIIE, Mumbai was implemented by the petitioner Management from 04.01.1999 after giving more than two months time to the Union and workmen from 29.10.1998.

On 15.02.1999, a meeting was held before the then Hon'ble Deputy Chief Minister and Hon'ble Deputy Chief Minister directed the Management to conduct a study once again by NPC or NIIE and findings of such study shall be accepted and implemented by both the parties. Till such time, the study report is received the existing practice would continue. There was also a direction to revoke suspension of 11 workers and pay an advance of Rs.4,500/- (Rupees Four Thousand Five hundred only) subject to adjudication of the entitlement of wages for the period from 04.01.1999 to 17.02.1999. Accordingly, a settlement was recorded on 15.02.1999 in the presence of Hon'ble Deputy Chief Minister.

On 21.03.1999, the petitioner appointed NIIE Bombay, a Government of India undertaking to study the work of bias cutting, pocket building and new

banbury. The said institution conducted a thorough study and submitted a report on 21.03.1999. As things stood thus, on 04.06.1999, the dispute regarding the entitlement to wages for the period from 04.01.1999 to 17.02.1999 for a period of 44 days was referred for adjudication by order dated 04.06.1999 by the Government. The dispute was registered as Reference No.44/1999 before the Industrial Tribunal, Mysore. The respondent filed claim petition the petitioner filed counter statement. The Tribunal passed an award on 07.01.2011 (but correct date is 07.01.2012) holding that 900 workmen who struck work from 04.01.1999 to 17.02.1999 are entitled to 50% wages with all consequential benefits. It is this award that is called into question in this Writ Petition on several grounds as set-out in the Memorandum of Writ Petition.

4. Learned counsel for the petitioner has urged several contentions. Heard, the contentions urged on behalf of the petitioner and perused the Writ papers and also the records with utmost care.

5. The point that requires consideration is whether the Tribunal is justified in awarding 50% of the wages.

6. The facts are sufficiently stated and do not require reiteration. The petitioner is a Tyre manufacturing Company. The issue revolves around non-cooperation of the workmen in giving normal production, utilization of idle time more effectively to give more production and the payment of wages. It would be relevant to note the sections that are involved in the tyre manufacturing process from the beginning to the end.

They are:

- i) Rubber compound (Inventory) ii) Bias cutter section
- iii) Pocket making (Band binding) iv) Tyre building v) Tyre curing.

7. It is not in dispute that M/s.J.K Tyres and Industries Limited had drawn up modernization and balancing plan with an outlay of Rs.273 Crores

which was vital for company's long term growth. The scheme involved modernization of plant apart from upgrading Company's truck radial facility. The financial institutions had agreed to provide necessary financial assistance for implementing the modernization and expansion in phases. The completion of the scheme enabled substantial improvement of the quality and upgradation of product, plant efficiency, cost reduction and better productivity of both equipments and man power. The Company also entered into technological collaboration agreement with Continental AG, Germany, world's fourth largest tyre manufacturer. Under the collaboration, the Company received state of art technology which enabled it to manufacture superior quality all steel truck/ bus radial tyres.

It is relevant to note that the workmen of the Management were also informed about the modernization of the bia plant. In view of the modernization of the plant, the petitioner Management insisted the workmen to give normal production. The workmen in pocket making, tyre building, bias cutter sections indulged in go-slow and non-cooperative movement. It is pivotal to note that some of the workmen indulged in acts of misconduct, they were suspended pending inquiry. As already noted above, the Union raised a dispute regarding entitlement of wages for the period from 04.01.1999 to 17.02.1999 i.e., for a period of 44 days. It is not in dispute that in view of the insistence of the Management to give normal production, the respondent Union misled the workmen with malafide intention resulting in workmen of the bias cutter section and pocket making section striking work illegally and for no good reason. Therefore, the entire production of tyres completely came to a grinding halt between 04.01.1999 to 17.02.1999 i.e., for a period of 44 days on account of illegal and unjust strike by about 900 workers. It is pivotal to note that about 900 workers were in fact marking their attendance, but they were not producing any tyres in view of stoppage of work resorted to by the workmen at bias cutter section and pocket making section. Hence, the

workmen in the upstream and downstream sections though did not directly resort to strike, they could not be provided with work in view of stalemate by bias cutter section and pocket making sections. In fact, all the workers in collusion brought out illegal sit-in strike. This was the direct result of the respondent Union being very adamant in implementation of NIEE report and production norms.

8. The Tribunal concluded that the workmen were not performing their required work and they were not giving normal daily production as required, hence concluded that they are not entitled to full wages. However, it went ahead and erroneously awarded 50% wages from 04.01.1999 to 17.12.1999 with consequential benefits. The Tribunal is not justified in according this prayer. The reason is quite simple. It is not in dispute that from 04.01.1999 to 17.02.1999, the entire production of tyres completely came to a grinding halt. The workers were marking their attendance, but were not producing any tyres. The workers in collusion brought out illegal sit-in strike. It is an established principle in Industrial law that the employees are not entitled to wages if no work takes place due to a sit-in strike or slow-down of production on the part of the workmen in another part of the establishment. This is the principle of law laid down in Section 25E(iii) of the Industrial Disputes Act.

In this case, the workers of bias cutter section and pocket making section went on illegal strike. Therefore, the workers in the upstream had no work, further, in the downstream, tyre building and tyre curing sections workers had no work as the work did not come to them from the bias cutter section and pocket making section. Hence, the workmen are not entitled for any relief.

Furthermore, there was a modernization and new imported machines that had been installed at cost of Rs.81.50 Crores. Therefore, the Management had requested for higher production as there was more than 89.42% of idle time due to modernization. The Union misled the workmen, as a result of which, the entire production of the tyres completely came to a grinding halt. I may venture to say that the Union and the workmen failed to understand the

financial repercussions of the Management. I am of the considered opinion that the workers ought to have cooperated with the Management. These aspects of the matter has been overlooked by the Tribunal and has erroneously granted the relief of 50% wages.

9. I may venture to say that the Tribunal has failed to have regard to relevant consideration and disregarded relevant matters. For the reasons stated above, the award of the Industrial Tribunal is liable to be set-aside. Accordingly, it is set-aside.

10. The Writ of Certiorari is ordered. The award dated:07.01.2011 passed by the Industrial Tribunal, Mysore in Reference No.44/1999 vide Annexure-V is quashed.

11. Resultantly, the Writ Petition is ***allowed***.

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