

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.13941 of 2010

In the matter of an application under Article 226 of the Constitution of India.

M/s Birla Tyres Workers Union,
C/o PACE Computer Centre,
AT: Podhuanpada, Proof Road, Balasore,
represented through its
Président Sri Rajendra Bal

... Petitioner.

-Versus-

State of Orissa & others

... Opp. Parties

For Petitioner : Mr.Debendra Mohanta

For Opp. Parties : Addl. Govt. Advocate
(For Opp. Parties 1 to 3)

M/s. B.N.Rath, J.N.Rath, S.K.Jethy,
S.K.Mishra & B.B.Barik
(For Opp. Party. No.4)

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Heard and disposed of on 24.11.2010

B.N.Mahapatra,J. In the present writ application, the petitioner-M/s. Birla Tyres Workers Union seeks for a direction to quash the letter dated 09.08.2010 and the order dated 30.07.2010 under Annexures 1 & 11 respectively. Annexure-1 is a letter issued by opp.party no.2-Labour Commissioner, Orissa on 9.8.2010 directing the President of petitioner-Union to refrain from the strike situation and to advise the workers to report for

duty by 10.8.2010 and ensure peace and harmony in the industry and in case of failure on the part of the petitioner-Union legal action would be initiated against it under the Industrial Disputes Act, 1947 (for short 'I.D. Act') and Rule 20 of the Verification of Membership and Recognition of Trade Union Rules, 1994 (for short, "Rules 1994") which might also lead to cancellation of recognition of trade union. Under Annexure-11 Government in Labour and Employment Department in exercise of power u/s. 10(3) of the I.D. Act, passed order dated 30.7.2010 prohibiting continuance of the strike/lock out in the premises of M/s Birla Tyres Workers Union.

2. Shorn of unnecessary details, the facts and circumstances leading to filing of the present writ petition are that the petitioner is a trade union registered under the Trade Unions Act, 1926 and operates in the industry of opp. party no.4. On 25.9.2007 the said Union submitted an application for verification of membership and recognition of the trade union under Rules 1994. Since no effective steps were taken on its application, the petitioner-Union approached this Court in W.P.(C) No.5911 of 2005 which was disposed of on 14.9.2005 with a direction to hold the election within four months from the date of the order. Since the said direction of this Court was not carried out, on 07.11.2008 a direction was issued for personal appearance of Labour Commissioner and District Labour Officer. On 21.12.2008 the Labour Commissioner was directed to comply with the direction given in the said writ petition within four weeks. On 12.12.2008 the election under the Rules, 1994 was held and the petitioner-Union came out

successful and opp. party no.4-employer declared the petitioner-Union as the recognized Union. The petitioner's case is that though opp. party no.4 declared the petitioner-Union as a recognized Union, it did not comply with the provisions of Rules 1994. On the other hand, opp. party no.4 entered into an agreement with the other unions. Since certain aspect relating to the service conditions of the workers was not followed, the petitioner-Union submitted a charter of demand of twenty three points in the prescribed manner. Though the labour machinery wanted to settle the issue by way of discussion, the Management of opp. party no.4 did not participate in the discussion. On the other hand, to frustrate the cause, opp. party no.4 started creating unpleasant situation for which opp. party no.3, Assistant Labour Commissioner issued a letter dated 31.12.2009 u/s. 30(b) of the Code of Civil Procedure. On 28.04.2010 the petitioner-Union also sent a memorandum to the Collector, Balasore regarding highhanded action of opp. party no.4. Though the workers and the office bearers of the petitioner-Union submitted application before opp. party no.4 for leave, the latter without considering the same deducted 8 days' wages of the said workers. This very fact having been brought to the notice of the labour machinery, opp. party no.3, issued letter dated 7.5.2010 to opp. party no.4 indicating therein that such deduction of wages is not in accordance with the provisions of Payment of Wages Act, 1936 and requested opp. party no.4 to pay the wages of the workers without any deduction. Since opp. party no.4 did not comply with the above direction of opp. party no.3, opp. party no.3 issued a letter dated 24.5.2010 requiring

the presence of the representative of the petitioner-Union and the representative of the Management on 8.6.2010 in his office to discuss on the issue. Though the representative of opp. party no.4 attended the discussion, on the said day the Management deducted 10% of the wages of the workers and degraded 26 workers as casual workers. This very fact was brought to the notice of opp. party no.2. Since no fruitful result could come out, the petitioner-Union finding no other alternative on 29.06.2010 served a notice of token strike on 16.07.2010 in protest against such high handed action of opp. party no.4. Immediately thereafter, opp. party no.4 suspended one of the protected workmen on some vague grounds. When such action of opp. party no.4 was objected to by the workers, the said workers were allowed to report to their duties. In the meantime, on 16.07.2010 from B-Shift opp. party no.4 declared lock out of the industry. The Management did not participate in the discussion on 17.7.2010. The petitioner came to know from the paper publication made by the Management that 46 workers have been put under suspension pending inquiry. When the matter stood thus, the Government of Orissa passed order dated 30.7.2010(Annexure-11) prohibiting continuance of strike/lock out. The further case of the petitioner is that immediately after receipt of the order prohibiting strike/lock out, the petitioner-Union made statement in general body meeting and informed the workers about the said fact. In furtherance of the same, the petitioner-Union made necessary communication to the district administration, Labour machinery to the effect that the Union had never gone on strike as would be reflected from the

proceedings before opp. parties 2 and 3. When the matter stood thus, opp. party no. 2 issued the letter dated 9th August, 2010 under Annexure-1.

3. Mr. Debendra Mahanta, learned counsel appearing for the petitioner-Union submits that the impugned letter/order passed under Annexure-1 and Annexure-11 are without any basis or material on record. Annexure-1 has been issued on the basis of the allegation made by opp. party no.4. At no point of time the petitioner Union has gone on any strike. The petitioner all along tried to maintain peace and harmony in the industry. Hence, order passed under Annexure-11 is not sustainable in law. Rule 20 of the Rules, 1994 provides the circumstances under which recognition of a Union is to be cancelled. In the absence of any finding to the effect that the Union has ever instigated, aided or assisted in commencement or continuance of any strike proposed action under Rule 20 is illegal. Consequently, the impugned letter under Annexure-1 is not sustainable as it speaks of illegal intention of opp. party no.2. Opp. party no.4 till date is continuing the lock out with a view to avail some ancillary benefits and victimize the office bearers as well as the executive body members of the Union. Opp. party no.2 being swayed away by opp. party no.4, issued Annexure-1 with mala fide intention. Therefore, the same is liable to be quashed.

4. Per contra, Mr. B.N. Rath, learned counsel appearing for opp. party no.4 submits that the petitioner-Union is preventing the workmen of other unions from attending their works for smooth running of the industry.

There are nine unions altogether including the petitioner-Union in the establishment of opp. party No.4. In spite of desire of eight unions to have a bargaining power in all important decisions of the establishment, the petitioner-Union did not agree to the proposal and requested the Labour authority to start with the recognition process under the Verification of Membership of Trade Union (through secret ballot system) Rules, 1994. The last recognition process was conducted in the absence of involvement of the rest of the unions. The Management was constrained to recognize the petitioner-Union. Some of the members of the petitioner-Union are making a sabotaging attempt to cause severe damage to the boiler of the industry by staging an illegal strike commenced from 'A' shift of 15.7.2010 till 'B' shift of 15.7.2010. A large number of workmen members of the petitioner-Union are facing a disciplinary proceeding in connection with the same. The petitioner-Union created all sorts of disturbance to see that the industrial working should come to a halt. Finding no other way out, the Management was constrained to approach the Labour authority to declare the strike at the instance of the petitioner-Union as illegal. Finding no other immediate remedy/solution and apprehending damage to its own property on account of failure of district Administration and Labour authority in tackling the illegal agitation by the petitioner-Union, the Management of opp. party no.4 was constrained to declare lock out of the industry. Keeping the interest of larger section of the workmen, the Labour Department was constrained to declare both the strike as well as lock out as illegal. In spite of declaration of lock out

and strike as illegal by the appropriate authority of the Government, 62% of the workmen resumed their duty in the industry and rest 38% of workmen belonging to the petitioner-Union did not resume their duty by 8th August, 2010. Consequently, the Labour Commissioner passed an order under Annexure-1 directing the petitioner-Union to refrain from the strike situation and advise the workers to resume their duty by 10.8.2010 and ensure peace and harmony in the industry. Thus, there is no illegality in issuance of the order under Annexure-1, which yielded in curbing the illegal strike. The petitioner-Union is in the habit of filing false F.I.R. against the high officials of the Company. The police, in the meantime, after making due investigation has come to hold that the F.I.R. lodged against the high officials of the Company is false. Benefit guaranteed by way of agreement under Annexure-3 is to the benefit of the workmen to mitigate their financial hardship and it is not at all adverse to any of the persons of the Establishment. It is not correct that opp. party no. 4 did not participate in the discussion during the conciliation proceedings. The petitioner having admitted that it has resorted to strike, the submission that the said strike was recalled due to intervention of Labour authority is not correct. Even though the petitioner submitted before the Labour authority to recall the strike, it did not allow its workers to resume their work which ultimately compelled the Labour authority to issue letter under Annexure-1. There is no law prohibiting disciplinary proceedings against the protesting workmen. The petitioner-Union is not correct in saying that it has not resorted to any strike. The letter under Annexure-4 is

concocted and prepared with oblique motive. The issuance of orders under Annexures-1 & 11 is valid and justified. The petitioner Union circulated strike notice under Annexure-7 which contains two disputes and the reference dated 30.7.2010 under Annexure-A/4 clearly discloses about both the issues contained in the strike notice and those issues have already been referred for industrial adjudication. Therefore, there is full compliance of Section 10(3) of the Industrial Disputes Act before issuing the order prohibiting the strike in Annexure-11. Even if there is any lapse in issuing order vide Annexure-11, the same is curable and direction can be issued to the State Government to refer both the strike as well as lock out for industrial adjudication.

5. In the rejoinder to the counter affidavit the petitioner-Union has stated that the other Unions travelling with the opposite party No.4 have no support of the workers which is evident from the report of the State Implementation & Evaluation Officer-Cum-Labour Commissioner, Orissa, Bhubaneswar. The petitioner-Union at no point of time had ever sabotaged anything or ever gone on strike as contended. The allegation of attempt to cause severe damage to the boiler of the industry is also false; the same has been made against the workers when most of them were not on duty on the very day. The petitioner is a recognized Union, but the settlements are being arrived at with the other Unions ignoring the petitioner-Union. The workers were getting employment throughout the year. Now without any notice, the management, after lifting of the lock out, has imposed a condition that no

work shall be provided to the workers in any shift on Sunday. Most of forty-seven employees, who are office bearers of the Union, have been put under suspension during the period of lock out on some flimsy grounds. The president of the Union is not also being allowed to go inside the factory.

6. On the above rival contentions, the questions that fall for consideration by this Court are as follows:-

- (i) Whether order dated 30.07.2010 passed under Annexure-11 in exercise of power under Section 10(3) of the I.D. Act, 1947 by the State Government prohibiting continuance of strike is legally sustainable?
- (ii) Whether the letter under Annexure-1 issued by opposite party No.2-Labour Commissioner on 09.08.2010 directing the President of petitioner-Union to refrain from the strike situation and to advise the workers to report for duty by 10.08.2010 and ensure peace and harmony in the factory premises and in case of failure on the part of the petitioner-Union legal action would be initiated against the petitioner-Union under the I.D. Act, 1947 and Rule 20 of the Rules, 1994 which might also lead to cancellation of recognition of trade union is legally sustainable ?

7. To deal with the first question, it is felt necessary to know what is contemplated in sub-Sections (1) and (3) of Section 10 of the I.D. Act. Those two sub-sections are reproduced below.

“10. Reference of disputes to Boards, Courts or Tribunals.—(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing—

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(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.”

Sub-Section (3) contemplates that two conditions are to be satisfied to ensure the statutory power by the State Government under Section 10(3). Those are – (i) there must be an industrial dispute existing, and (ii) such industrial dispute must have been referred to a Board, Labour Court, Tribunal or National Tribunal under sub-Section (1) of Section 10.

At this juncture, it would be profitable to refer to the judgment of the apex Court in ***Delhi Administration, Delhi Vs. Workmen of Edward Keventers & Anr.***, AIR 1978 SC 976, wherein the apex Court held that before an appropriate Government can pass an order under S. 10 (3) prohibiting a strike two conditions must exist, firstly, there must be an industrial dispute in existence and secondly, such dispute must have been already referred for adjudication. Where several demands are raised by the workmen but some of them only are referred for adjudication, Section 10(3) cannot operate in regard to such disputes which are not referred under Section 10(1) of the I.D. Act. If the Government feels that it should prohibit a strike under S. 10 (3) it must refer the demand for adjudication. A demand which is suppressed by a prohibitory order and is not allowed to be ventilated for adjudication before a Tribunal will explode into industrial unrest and run contrary to the policy of the industrial jurisprudence. There is a distinction between strikes being illegal under other sections of the Act and penalties

being leviable against such illegal strikes on the one hand and strikes being illegal to invoke power by the State Government under Section 10(3) of the I.D. Act and liable to be prohibited thereunder.

8. In the instant case, petitioner's case is that since certain aspect relating to the service conditions of the workers was not followed, the petitioner-Union submitted a charter of demand of twenty-three points in prescribed manner. Various orders/letters of the opposite parties reveal that the management of Birla Tyres did not cooperate in the conciliation proceedings initiated by the Conciliation Officer-cum-District Labour Officer, Balasore in reaching an amicable settlement of dispute for better and harmonious industrial situation. By letter dated 31.12.2009 (Annexure-4) the Conciliation Officer expressed his displeasure on O.P. No.4 in not extending its cooperation in the conciliation proceeding. In the said letter, the Conciliation Officer observed that it was unfortunate that the management misconceived the fact and issued notice to all other trade unions to create an unpleasant situation which might adversely affect the industrial peace and harmony and advised the employer to desist from such practice and take a positive attitude to attend the conciliation proceeding. The Management was further directed to treat the said notice under Annexure-4 as notice under Section 30(b) of the Code of Civil Procedure for attendance and production of registers on 05.01.2010. Out of several disputes, some of the disputes have been referred to under Section 10(1) for adjudication by the civil courts. Thereafter, the management has also initiated various actions against the employees and the members of the petitioner-Union. The

District Labour Officer, Balasore vide his letter No.3446 dated 28.07.2010 intimated the Labour Commissioner, Orissa that the conciliation for three demands of the Union was failed due to non-attendance of the management. The report of the conciliation proceedings has been submitted to Government in Labour and Employment Department by the Labour Commissioner vide letter No.3305(2) dated 19.07.2010. Thereafter, in a tripartite meeting held on 20.07.2010, the Management brought to the notice of the Labour Commissioner that it has suspended forty-seven workmen for their gross misconduct during the period from 14.07.2010 to 16.07.2010. The Union demanded for revocation of said suspension order to which the Management did not agree. Now, it appears that suspension of forty-seven workmen is the main bone of contention of the parties. However, the suspension orders have not been served upon those workmen. Due to continuation of the strike & lock-out, about five thousand workmen both directly and indirectly engaged in the industry have been affected.

On the other hand, the specific stand of the petitioner-Union is that it has never gone on strike at any point of time. Thus, the very fact that the petitioner-Union has gone on strike is itself a dispute which is connected with and relevant to the industrial dispute and the same should have been referred to the appropriate Court/Tribunal for adjudication in terms of Section 10 of the I.D. Act. As could be seen the industrial dispute with regard to whether the workmen had gone on with strike or not and the same was illegal or the opposite party No.4, has illegally declared lockout , has not been referred for adjudication in the order of reference vide Annexure-11. Without referring the above disputes for

adjudication prohibiting the strike is illegal, as the same is contrary to section 10(3) of the I.D. Act and law laid down by the apex Court.

In view of the above, the order passed on 30.07.2010 under Annexure-11 in exercise of power under Section 10(3) of the I.D. Act prohibiting continuance of strike is not sustainable.

9. To deal with second question, it is necessary to know what is contemplated under Section 24(1) of the I.D. Act.

“24. Illegal strikes and lock-outs.—(1) A strike or a lock-out shall be illegal if –

- (i) xx xx xx
- (ii) it is continued in contravention of an order made under sub-section (3) of section 10 or sub-section (4A) of section 10A.”

Section 24(1)(ii) of the I.D. Act provides that a strike or lock-out shall be illegal if it is continued in contravention of an order made under sub-section (3) of section 10 of the I.D. Act.

Since we have held that the order passed by the Government under sub-section (3) of Section 10 of the I.D. Act is not legally sustainable in law in prohibiting strike without referring that dispute to the Labour Court/Tribunal for its adjudication, who alone are competent to declare that strike by the workmen, if any, is illegal or otherwise, the provision of Section 24(1) (ii) has no application to the present case.

10. The proposed initiation of legal action under Rule 20 of the Rules, 1994 for cancellation of recognition of the petitioner-Union on the ground of assisting the continuance of strike, which is deemed to be illegal

under the I.D. Act, is also not legally sustainable in view of our finding that the very fact of existence of strike on the date of reference is in dispute.

11. In the result, the writ petition is allowed and issued Rule and Annexures-1 and 11 are hereby quashed.

No order as to costs.

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B.N.Mahapatra,J

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V.Gopala Gowda, C.J.