Volume : 5 | Issue : 6 | June 2016 • ISSN No 2277 - 8179 | IF : 3.508 | IC Value : 69.48

Research Paper

Right To Strike and The Supreme Court

Law

KEYWORDS : Right to Strike, Strike as legal right, and Strike as Statutory Right

Dr. P.VENKATARAMANA

Post –Doctoral Fellow, PG Department of Legal Studies& Research, Acharya Nagarjuna University, nagrjunanagar-522 510, A.P

ABSTRACT

This paper attempt, an analysis of the every right comes with its own duties. Most powerful rights have more duties attached to them. Today, in each country of globe whether it is democratic, capitalist, socialist, give right to strike to the workers. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry. This would ultimately affect the economy of the country. Today, most of the countries, especially India, are dependent upon foreign investment and under these circumstances it is necessary that countries who seeks foreign investment must keep some safeguard in their respective industrial laws so that there will be no misuse of right of strike. In India, right to protest is a fundamental right under Article 19 of the Constitution of India. But right to strike is not a fundamental right but a legal right and with this right statutory restriction is attached in the Industrial Dispute Act, 1947.

T.K. Rangarajan v. Government of Tamilnadu and Others , Justice M.B. Shah, speaking for a Bench of the Supreme Court consisting of himself and Justice A.R. Lakshmanan, said, "Now coming to the question of right to strike – in our view no such right exists with the government employee".

Introduction

Even as early as 1961, the Supreme Court had held in Kames war Prasad v. State of Bihar[2] that even a very liberal interpretation of Article 19 (1) (c) could not lead to the conclusion that the trade unions have a guaranteed fundamental right to strike. In All India Bank Employees' Association v. National Industrial Tribunal[3] it was contended that the right to form an association guaranteed by Article 19 (1) (c) of the Constitution, also carried with it the concomitant right to strike for otherwise the right to form association would be rendered illusory. The Supreme Court rejected this construction of the Constitution: "to read each guaranteed right as involving the concomitant right necessary to achieve the object which might be supposed to underlie the grant of each of such rights, for such a construction would, by ever expanding circles in the shape of rights concomitant to concomitant right and so on, lead to an almost grotesque result."

It was a culmination of the rations of the Kames war Prasad and the A.I.B.E. cases that resulted in the decision in the highly contentious Rangarajan case. In reliance of these judgments, the Apex court was correct in opining that there exists no fundamental right to strike. But in stating the Government employees have no "legal, moral or equitable right", the Court has evolved a new industrial jurisprudence unsought of earlier. It is true that the judgments mentioned above have rejected the right to strike as a fundamental right, but not as a legal, moral or equitable right. The question of 'strike' not being a statutory or a legal right has never even been considered in the court. Further the expression 'no moral or equitable right' was uncalled for. A court of law is concerned with legal and constitutional issues and not with issues of morality and equity.

The Rangarajan case simply ignores statutory provisions in the Industrial Disputes Act 1947 and the Trade Unions Act, 1926, and an equal number of case laws laid down by larger benches that have recognized the right to strike. It also fails to consider International Covenants that pave the way for this right as a basic tenet of international labor standard

Strike as a legal right

The Working class has indisputable earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognizes it as their implied right.[4] Striking work is integral to the process of wage bargaining in an industrial economy, as classical political economy and post-Keynesian economics demonstrated long ago in the analysis of real wage determination. A worker has no other means of defending his real wage other than seeking an increased money wage. If a capitalist does not grant such an increase, he can be forced to come to a negotiating table by striking workers. This he can do because the earnings of the capitalist are contingent upon the worker continuing to work. The argument is drawn from Circadian and Marxian classical political economy that shows how the employer's income is nothing other than what is alienated from the worker in the process of production. When workers stop working, capitalists stop earning. The same applies to government servants as well. When they strike work, it is not the authorities who suffer a loss of income or disruption of their income generating process but the general public. Here, authorities come to a negotiating table mainly under political pressure or in deference to public opinion.

The right to strike is organically linked with the right to collective bargaining and will continue to remain an inalienable part of various modes of expression by the working people, wherever the employer-employee relationship exists, whether recognized or not. The Apex court failed to comprehend this dynamic of the evolution of the right to strike.

In B.R. Singh v. Union of India[5], Justice Hamada opined that "the Trade Unions with sufficient membership strength are able to bargain more effectively with the management than individual workmen. The bargaining strength would be considerable reduced if it is not permitted to demonstrate by adopting agitational methods such as 'work to rule', 'go slow', 'absenteeism', sit-down strike', and 'strike'. This has been recognized by almost all democratic countries".

In Gujarat Steel Tubes v. Its Mazdoor Sabah,[6] Justice Bhagwati opined that right to strike is integral of collective bargaining. He further stated that this right is a process recognized by industrial jurisprudence and supported by social justice. Gujarat Steel Tubes is a three-judge bench decision and cannot be overruled by the division bench decision of

Rangarajan. In the Rangarajan case the court had no authority to wash out completely the legal right evolved by judicial legislation.

Volume : 5 | Issue : 6 | June 2016 • ISSN No 2277 - 8179 | IF : 3.508 | IC Value : 69.48

Strike as a statutory right

The Industrial Disputes Act, 1947 implies a right to strike[7] in industries. A wide interpretation of the term 'industry'[8] by the courts includes hospitals, educational institutions, clubs and government departments. Section 2 (q) of the Act defines 'strike' means "a cassation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment" Sections 22, 23 and 24 all recognize the right to strike. Section 24 differentiates between a 'legal strike' and an 'illegal strike'. It defines 'Illegal strikes' as those which are in contravention to the procedure of going to strike, as laid down under Sections 22 and 23. The provision thereby implies that all strikes are not illegal and strikes in conformity with the procedure laid down, are legally recognized. Further Justice Krishna Iyer had opined that "a strike could be legal or illegal and even an illegal strike could be a justified one".[9] It is thus beyond doubt that the Industrial

Disputes Act, 1947 contemplates a right to strike

Conclusion

The statutory provisions thus make a distinction between the legality and illegality of strike. It is for the judiciary to examine whether it is legal or illegal. Is the total ban on strikes post-Rangarajan not barring judicial review which itself is a basic structure of the Constitution.

Further, Sections 22, 23 and 24 of the Act imply a right to strike for workers and a right to lock-out for the employers. In Kairbitta Estate v. Rajmanickam[10], Justice Gajendragadkar opined: "In the struggle between the capital and labor, the weapon of strike is available to labor and is often used, as is the weapon of lock-out available to the employer and can be used by him". The workers' right to strike is complemented by the employers' right to lock-out, thus maintaining a balance of powers between the two. However, the Rangarajan judgment, by prohibiting strikes in all forms but leaving the right to lock-out untouched tilts the balance of power in favor of the employer class. The workers' right to strike is complemented by the employers' right to lock-out, thus maintaining a balance of powers between the two. However, the Rangarajan judgment, by prohibiting strikes in all forms but leaving the right to lock-out untouched tilts the balance of power in favor of the employer class.

The Court, in opining that strikes 'hold the society at ransom', should have taken into account that the number of man days lost due to strikes has gone down substantially during the last five years. Whereas there has been a steep rise in the Mondays lost due to lock-outs, due to closures and lay-offs Annual Report of the Union Labor Ministry (2002-03). In 2001, man days lost due to lock-outs were three times more man days than strikes. The Apex court preferred to overlook the recent strike by the business class against the VAT and also the transport companies strike against the judicial directive on usage of non-polluting fuel, both of which created much more chaos and inconvenience to the common people. It is submitted that the court came to a conclusion without looking at the industrial scenario in the present times. Should the apex court not consider banning closures, lock-outs, muscle-flexing by the business class etc., which not only put people to inconvenience but also throw the workers at risk of starvation

Besides the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 also recognizes the right to strike, Sections 18 and 19[11] of the Act confer immunity upon trade unions on strike from civil liability.

REFERANCE

1. 2003(6) SCALES 84
2. 1962 Supp 3SCR 369
3. AIR 1962 SC171
4. Bank of India vs. T.S.kelwala 1990 (4) SCC 744
5. 1990 Limbic 389 sc 391
6. AIR 1980 SC 1896
7. It was held that the right to strike as mode of redress of the legitimate grievance of the workers and employees is expressly recognized under the ID Act labia 1079 (1084) DB Punj
8. Bangalore water Supply &sewerage Board VARajppa AIR.1978 S.C
9. Kari Bitta estate vs Rajamnickam (1960) 11 lljSC275
10. AIR (1980) SC 1896 548
11. Sec 18, Tappan, Right to strike in inalienable, people's democracy vole 1 XXVII No. 35 Aug 31, 2003Sec 18 provides for immunity from legal Proceedings in respect of any act done in contemplation or furtherance of Any trade disputes on the sale ground of inducing person to break Contractor employment Sec 19 Enforceability of agreements not withstanding anything Contained in any other law of the time being in force an agreement Between the members of a registered trade-union shall not be void or Voidable merely by reason of the fact that any of the object of the Agreement is in restraint of trade.