



Strikes - Justified and Unjustified

Law

Dr.P Venkataramana Pg. Department Of Legal Studies And Research Achray Nagarujuna University
Nagarujuna Nagar

ABSTRACT

A strike may be technically perfectly legal in that it may not have been resorted to in contravention of the provisions of Section 22 and 23 of the Industrial Disputes Act, 1947, but still the conduct of the striking workmen may be highly reprehensible, disorderly and violent whereas the attitude of the employer may have all along shown complete reasonableness and a desire for conciliation. Similarly, a strike may have been illegal in that it may have been resorted to without due regard to the compulsory compliance of the mandatory requirements of the relevant section of the Act such as, service of notice in the case of public utility service or violation or prohibition of strike during the pendency of adjudication proceedings, but the demands of the striking workmen may be quite legitimate, lawful and justifiable whereas the attitude of the employer may have shown malafides, unreasonableness and motive of exploitation. These peculiar features of the strike situation prompted those responsible for the administration of industrial law to try to classify strikes which are otherwise legal into categories of justified strike and unjustified strikes.

KEYWORDS

Strike - When Justified:

Although strike is a legitimate and sometimes unavoidable weapon in the hands of workers and may be resorted to for securing their demands to improve their conditions, yet the justifiability of a strike has to be viewed from the standpoint of fairness and reasonableness of the demands made by workmen and not merely from the standpoint of their exhausting all other legitimate means open to them for getting the demands fulfilled. However, in Gandhiji's view, a strike of inevitable, has to be called out after negotiations for the settlement of workers' just demands have collapsed and the demand for arbitration has been turned down or the arbitration has been turned down or the arbitration has failed should pass the below mentioned test:

1. The cause of the strike must be just;
2. There should be practical unanimity among strikers;
3. No violence should be used against non-strikers;
4. Strikers should be able to maintain themselves during the strike period without falling back upon union funds and should therefore occupy themselves in some useful and productive temporary occupation¹⁴.

In Chandramalai Estate, Ernakulum v. its workmen¹⁵ K.C. Gupta J. stated that while on the one hand it has to be remembered that strikes is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demands a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request had been made, may well be justified.

In this country, the question of payment of wages during periods of strike is not covered by legislation nor is there an accepted code of jurisprudence in this regard. The points generally considered by adjudicator in awarding a strike pay is whether the strike was legal or whether the strike was in consequence to an unfair labour practice on the part of the employer. Sections 22 to 24 of the Industrial Disputes Act, 1947 describe the circumstances under which a strike or lock-out is illegal and fifth schedule section 2 of the act gives a list of unfair labour practices on the part of the employer as well as the employees.

From trend of general arguments advanced by adjudicators it would appear that only in exceptional cases, should the workers be awarded wages during the periods of strike. The board determining principle is no work - no wage. When a strike has been occasioned by the employment of an unfair labour practice by the management or where the employees had been always willing to submit to arbitration which the management has not agreed to, it would be open to an Industrial court to award strike pay if the strike had been legal and had been

conducted peacefully. The first and foremost important consideration taken into account by the Adjudicators, Industrial Tribunals in deciding the issue of payment of wages during a period of strike. The legality concept has to be determined taking into view the relevant provisions of the Industrial Disputes Act 1947. If the strike is found to be illegal, the strikers would have no claim for pay during the period of strike. The next consideration is was the strike Justified. There will be circumstances in which a strike may be justified and a concerned action alone might bring about the redress of a genuine grievance and in such cases the strikers are entitled, to wages during the strike period. The another consideration taken by the adjudicators while adjudicating the strike pay is was the strike occasioned by an unfair labour practice by the employer. If the employer commits an unfair labour practice, the workers are entitled to strike pay. Technical reasons also come into play in rejecting the workers claim for pay during the periods of strike. There had also been instances where the question of strike pay was amicably settled by agreement between the employers and workers. In determining the amount of pay to be awarded during a period of strike the Adjudicators, Industrial Tribunals have often followed the method of apportioning blame and awarding strike pay in accordance with the extent of blame attached to the parties.

P.C. Roy & Co. (India) Pvt. Ltd. v. Raycom Forests Labour Union,¹⁶ the employer failed to pay work men wages on the due dates, although he did pay the same after some time. The workmen went on strike, and continued even after the wages have been paid. The Calcutta High Court held that the strike was unjustified only up to the date of payment and accordingly allowed worker claim for wages for the period of strike only up to such date.

Where during the strike period and even prior to that, several of the workmen resorted to violence and other acts of indecency and the workmen continued the strike even after the notification issued prohibiting the strike and requiring the workers to report for duty and the circumstances clearly showed that the demand of the union regarding ex-gratia bonus could not be considered to be of an urgent and serious nature, the launching of the strike was held to be unjustified. Hence, the workmen were held to be not entitled to any wages for the period of strike.¹⁷

In The case of Life Insurance Corporation of India v. Amlendu Gupta¹⁸ a Division Bench of the Calcutta High Court held that the "strike being legal and justified, the employees were entitled to salaries for the period of the strike". On the question whether the High Court in its constitutional writ jurisdiction could mandate LIC to pay the employees their salaries for the period of strike, the court held that it was within its powers to do so.

In the case of Statesman Ltd. v. their Workmen¹⁹ the Supreme Court held that even in the case of an illegal strike, the industrial adjudicators are empowered to grant wages, in cases where circumstances warrant grant of wages. Relying on the above judgment the Bombay High

Court in *Balmer Lawrie & Co. Ltd., Bombay v. Balmer Lawrie Employees Union* and another²⁰ upheld the award of 35 percent wages to the workmen during the strike period not withstanding the fact that the strike was illegal under the Industrial Disputes Act.

In the case of *Indian General Navigation & Railway Co., Ltd. v. Their Workmen*,²¹ the Supreme Court has held that there can be no question of an illegal strike being justified and the workmen are not entitled for strike pay. In the case of *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*,²² the Supreme Court has held that although the strike is illegal, it does not parse spell unjustifiability and the workmen are entitled for wages.

A perusal of the above mentioned case law goes to show that the strikers are entitled to strike pay depending upon the legality and justifiability of the strike. But in the year 1990 there came an important pronouncement by a Division Bench of the Supreme Court keeping aside the earlier judgments and a complete departure from earlier precedents on the workers' right to wages during the strike period. It almost choose to rewrite the law and even its attention was not drawn to its earlier pronouncements. It was in the case of *Bank of India v. T.S.Kelawala*²³ that a new dimension was created relating to the wages during the strike period.

Strikes - When Unjustified:

It is to be noted that a strike may be perfectly legal and yet be unjustified, for examples a strike commenced not to secure improvement on matters of basic industrial interest to labour, but to embarrass the management could not be justified²⁴ In *West Bangal Flour Mills Mazdoor Congress v. Hooghly Flour Mills Co. Ltd.*²⁵, the Labour Appellate Tribunal held that, where a strike was resorted to, by workmen in spite of the conciliatory attitude of the management and without trying all other available means of settlement of the dispute according to law, the strike would be unjustified and the workmen would not be entitled to claim wages for the strike period.

Thus, a strike may be held to be unjustified for various reasons, they are :

1. the demands may be pitched unreasonably high, or
2. the employer may have adopted a reasonable attitude by taking steps to have the alleged grievance redressed through negotiation or conciliation; or
3. the demands were not made bonafide, but with other extraneous motives, that is, for the specific purpose of embarrassing the employer.²⁶

In case it is found that the strike lacks bona fide, the employer has the right to take action against the workmen who have joined the strike. There would be no bonafide if:

- (a) the strike is resorted to under the pretence of backing a current demand but with the real object of compelling the employer to reopen a demand which has already been adjudicated upon or
- (b) when it is resorted to frivolously or frequently with a view to ruin the factory or where it is resorted to extraneous considerations.

Where the workmen resorted to a strike as a result of a hot-waded decisions without giving their grievances redressed by conciliation proceedings it was held that the strike was unjustified.²⁷ Right to strike, is to be exercised after fulfilling certain conditions regarding service of notice and also after exhausting intermediate and salutary remedy of conciliation proceeding. Whether the strike is justified or unjustified²⁸ is a question of fact to be determined on the fact and circumstances of each case.

Justifiability of a strike would depend upon several factors such as:

- (i) Were the demands of the workmen genuine or were reasonable or inspired by an oblique motive
- (ii) Were the demands fair and reasonable
- (iii) Did the workers try a less drastic method before going on a strike etc.²⁹

The conduct of the employer is also a relevant and important factor in resolving the question of justification or otherwise of a strike. A strike may be held to be justified if it was occasioned by the employment of unfair practices by the employer or may be held to be unjustified if it resorted to despite employer's willingness to settle the dispute through conciliation, unjustified where the employer decided to closed down the undertaking and sell its assets but with the assurance of the new

company with continuity of service.³⁰ The Supreme Court in *Management of the Fertilizer Corporation of India Ltd. v. The Workmen*³¹ was emphatic that the launching of the tike was unjustified with inspite of the fact that the management was prepared to pay bonus as per the Bonus Act, had announced a production bonus scheme and had made some proposals in the course of conciliation with the workmen and yet the workmen were not prepared to put off the strike even by one day and decided to go on strike. On the other hand, when workmen went on strike as a protest against the recalcitrant attitude of the managements, in boycotting the conference called by the labour minister or failure or conciliation, the strike was held to be not unjustified.³²

Strikes - When Illegal:

Every strike is not illegal. It may be mentioned that the field of industrial law, so far as country is concerned,³³ it is not the objects which make the strike illegal but it is the breach of the statutory provisions, which refers the industrial strikes illegal. Section 24 of the Industrial Disputes Act, 1947, declares that strikes would be illegal only when they have been resorted to in contravention of the mandatory provisions of Section 22 and those of Section 23 of Act or when they are in defiance of the order made under sub-Section (3) of Section 10 or (4A) of Section 10A of the Act.

The provisions of Sections 22 of the Act apply to establishments which fall in the category of 'public utility service' as defined in Section 2(n) of the Act. According to Section 2(n) of the Industrial Disputes Act, 1947, public utility service means:

- a) any railway service or any transport service for the carriage of passengers or goods by air,
- b) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- c) any postal, telegraph or telephone service,
- d) any industry which supplies power, light or water to the public,
- e) any system of public conservancy or sanitation;
- f) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the official Gazette declare to be public utility service for the purpose of this Act for such period as may be specified in the notification provided that the period so specified shall not in the first instance, exceed six months but may by a like notification be extended from time to time by any period not exceeding six months at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension.

Before provisions of Section 22 of the Act can be attracted, two things must be first proved i.e:

1. The 'industry' concerned is a Public Utility Service within the meaning of Section 2(n) of the Act and
2. That the workmen concerned-are employed in it. It has been emphatically stated in the case of *Swadeshi Industries Ltd.*
3. Its Workmen³⁴ that where the establishment is consisting of public utility as well as non-public utility service, the bonus is upon the employer to show that concerned workmen who launched strike worked in public utility section.

Following conditions relating to a valid notice of strike are prescribed in Section 22(1) of the Act which requires compliance by, the workers in a public utility service intending to go on strike:

- (1) notice of strike within six weeks before striking, i.e. the notice should have been given not earlier than six weeks before the date on which the strike is resorted, and
- (2) the strike should not be resorted to unless and until a period of 14 days has expired from the date of the notice of strike.
- (3) before the expiry of the date of strike specified in the notice of strike.

It can thus, succinctly be stated that, any strike started:

- (a) without giving notice within six weeks before the strike;
- (b) without giving notice of 14 days;
- (c) before the date specified in the notice; and
- (d) during the pendency of any conciliation proceedings and within seven days after its conclusion would be an illegal strike.
- (e) that where machinery for the settlement of disputes by conciliation and arbitration exists, resort to strikes is unnecessary

strikes victoria are illegal strikes in essential service unless there has been affirmative vote at a secret ballot. New South Wales Legislation also makes certain strikes illegal which take place before 14 days notice to the government of an intention to strike.

Section 23 of the Industrial Disputes Act, 1947, as earlier mentioned, is a general provision prohibiting strikes and lockout in all industrial and commercial establishment irrespective of whether they are falling in the category of public utility service or in other category. Under this Section, the workmen are prohibited from resorting to strike under the following circumstances:

- (1) during the pendency of conciliation proceedings before a board and seven days after its conciliation.
- (2) during the pendency of proceedings before
 - i) a Labour Court;
 - ii) Tribunal; or
 - iii) National Tribunal It further and down that no strike shall be declared even after two months of the conclusion of such proceedings;
- (3) during pendency of proceedings before an Arbitrator appointed under section 10(3-A) and two months after conclusion of such proceedings;
- (4) during the operation of settlement or award in respect of matters covered by them.

A comparison of the provisions of Section 22 and 23 would exhibit that in matters concerning non-public utility services. Section 23 does not prohibit strike during conciliation proceedings before a conciliation officer. However, it prohibits strike where the proceedings are pending before a Board. Arbitrator, Labour Court, of Tribunal of National Tribunal. Section 22, on the other hand, makes provision for the compulsory service of notice of strikes, whereas Section 23 makes no such provision, and therefore, the notice of strike which is mandatory in the case of public utility services, is not at all imperative in the case of those establishments which are not public utility services. Whereas in any essential service declared under the Essential Service Maintenance Act, 1981, the strike declared or commenced shall be illegal ipso facto it may be stressed here that in the Essential Services Maintenance Act, 1981, that there is no provision such as notice of strike etc. which is required under Section 22 of the IDA.

Sudden or lightening i.e. wild cat or quickie strikes are not prohibited by Section 23 IDA so far as the industries which are not fall in the category of public utility services as defined in Section 2(n) of the Industrial Disputes Act are concerned, provided they do not flout or contravene the requirements of Section 23 of the Act.

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12. Management of the Fertilizer Corporation of India v. Their Workmen, AIR (1970) SC. 867.
15. (1989) Lab. ICJ. 484
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17. (1989) 11LLJ.97
18. SC (1960) 11LLJ 13
19. SC (1980) 11LLJ 137
20. (1990) 4 SCC 744
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22. 10 F.J.R. 240(L.A.T).
23. Ramakrishna Iron Foundry, Howrah v. their workers (1954)(II) LLJ 372 at p.374.
24. Union Factories in Bihar v. Their Workmen 13 FJR 150
25. Dharam Singh Rajput v. Bank of India Bombay (1979) Lab.IC 1079 (DB)(Punj).
26. Andhra Pradesh State Road Transport Corporation, Employees Union v. Andhra Pradesh State Transport Corporation, Hyderabad, 1970 L.L.C. 1225.
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28. AIR 1970 SC 867.
29. Eamakulum Tea State v. Its Workmen, (1969)(II) LLJ. 407.
In Australia and England, there are certain object which renders the strike illegal. In Dorsey v. Kansas (71 L.Ed.248) speaking for the Supreme Court of United States, Brandeis J. Said "A strike may be illegal because of its purpose, however orderly the manner in which it is carried".
(1960) (II) LLJ. 78.
31. Section 22(1) of Industrial Disputes Act. 1947.
32. The World "or" between clauses (a) & (b) of Section 22(1) is used, but in the context in which it is used actually means "and" because both the conditions mentioned in these two clauses should be fulfilled.

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23. Rama Krishna iron Foundry Howerh vs Their Worker (1954) II LLJ 372 at 374
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