2022 LiveLaw (SC) 325

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

AJAY RASTOGI; SANJIV KHANNA, JJ.

CIVIL APPEAL NO. 6794 OF 2010; MARCH 29, 2022

BATA INDIA LIMITED *VERSUS* **WORKMEN OF BATA INDIA LIMITED AND ANOTHER**

Summary: Appeal against Karnataka High Court judgment which held that an employer must give proper opportunity of hearing to the workmen before deducting their wages for "go slow" approach by which they had failed to produce the agreed output - Disposed - The impugned judgment protects the interest of the appellant and the workmen by prescribing the right procedure which should be followed in case the appellant is of the opinion that the workmen, though present on duty, are not working and are not giving the agreed production on the basis of which wages and incentives have been fixed.

For Appellant(s) Mr. J.P. Cama, Sr. Adv. Mr. Neeraj Shekhar, AOR Mr. Anil Bhatt, Adv. Mr. Keshav B., Adv. Mr. Hemant Kumar Sunny, Adv; For Respondent(s) Mr. Sharanagouda Patil, Adv. Ms. Supreeta Sharanagouda, Adv. Mr. Amankant Mishra, Adv. M/S. S-legal Associates, AOR

O R D E R

It is an admitted position that the appellant - Bata India Limited and the first respondent - Workmen of Bata India Limited, an association of the appellant's employees, had entered into the settlements dated 11.03.1998 and 14.12.1998. As per the appellant, by virtue of the settlements, the workmen had agreed to produce a minimum of 1,200 pairs of shoes per shift. The weekly target for production was fixed at 21,600 pairs of shoes in three shifts working per day. The norm for calculation of incentive on production was fixed at 12,960 pairs of shoes per week.

2. It is a case of the appellant that after 01.02.2001, workmen had deliberately adopted "go slow" tactics and did not produce the minimum agreed production as per the settlement. The production was below 50 per cent of the normal production. Despite repeated requests and warnings, the workmen did not pay any heed to increase production. Consequently, the appellant decided to pay pro-rata wages to those not meeting the mutually agreed target. However, the workmen refused payment and resorted to stay-instrike. Apprehending danger to safety, the management declared lockout on 08.03.2000, which was lifted on 03.07.2000.

3. The industrial dispute pertaining to justification of the lockout, strike of the workmen and "go slow" strategy on the part of the workmen was referred by the Government before the Industrial Tribunal, Bangalore. Despite referral, the dispute escalated as the strike continued for a long time resulting in prohibitory order[1] by the Government dated 08.02.2001 over the continuance of the strike. By another order, the Government invoked power under Section 10-B[2] of the Industrial Disputes Act, 1947[3] whereby the workmen were directed to report for duty. Following the order, the workmen resumed work from 12.02.2001.

[1] Section 10(3) of the Industrial Disputes Act, 1947.
[2] "Section 10B. Power to issue order regarding terms and conditions of service pending settlement of dispute" inserted vide Karnataka Act 5 of 1988, sec. 3 (w.e.f. 07-04-1988).
[3] For short, 'the Act'.

4. We need not refer to other details as the issue raised is limited but observe that the respondent association dispute that the workmen had never adopted the "go slow" tactic.

5. The impugned judgment by the High Court of Karnataka at Bangalore dated 11.04.2008 partly allowed the Writ Appeal No. 2256/2006(L) filed by the appellant, inter alia, holding that "go slow" is nothing but sort of intentional refusal to work. In such a situation, the management could be justified in reducing or paying pro-rata wages. The mere presence of the employee at work without the workmen contributing and doing work would not entitle them to wages. The judgment observes that the workmen, 40 in number, had given normal production but significantly large number of workmen had deliberately not given adequate production in view of the call to "go slow". The impugned judgment also records that the authorities could not decide the issue under Section 33-C(1)[4] of the Act as the amounts could not be determined with certainty. Nevertheless, the appellant was at fault as it was required to adhere to the principles of natural justice, especially when the workmen were disputing the factual position that there was fall in production by 50 per cent. The appellant should have heard the Union or the workmen before the management proceeded to deduct the pro-rata wages for "go slow" work. Having held so, the Division Bench took notice of the argument of the appellant that they had put notices on the notice board justifying the deduction of wages on a pro-rata basis. This, the Division Bench observed, was a matter of fact that cannot be gone into while exercising writ jurisdiction. What was required and necessary was giving proper opportunity to the affected person before making any deduction on pro-rata basis. Having observed so, the management was directed to pay the deducted/reduced wages to the employees within one month from the date of receipt of the order passed by the Division Bench. However, liberty was reserved for the appellant to take appropriate steps regarding "go slow" strategy adopted by a large section of the workmen and proceed in accordance with law.

[4] 33-C. Recovery of money due from an employer.—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

6. We do not think that most of the findings recorded in the impugned judgment require any interference or even clarification. The contention of the appellant that the finding in the impugned judgment pertaining to "go slow" strategy nothing sort of misconduct should be set aside does not impress us. The impugned judgment does not hold that any inquiry should have been conducted by the appellant. However, taking holistic and pragmatic view, it is stated that a fair opportunity shall be granted to the Union or workmen, especially when there was a dispute whether or not there was production on the agreed terms. Further the observations as to misconduct have been made in different context to hold that the "go slow" work was similar to or like intentional refusal of work.

7. However, what is highlighted by the appellant before us is the failure of the Division Bench to take notice of the public notices which were put on the notice board to justify the pro rata reduction of wages. The notices are in the form of calculation of the wages actually paid. The workers were not given any opportunity to respond to these notices. Thus, on this aspect, we do not see any reason to disagree with the findings in the impugned judgment.

8. While issuing notice *vide* order dated 24.08.2009 in the present appeal, the operation of the impugned order had been stayed, which order is continuing. In view of the aforesaid findings, we vacate the stay with the direction that the appellant would make payment of the reduced/deducted wages within one month. This means that full wages would be paid. We do not feel it will be appropriate to direct factual investigation or resort to the procedure of issue of notice, reply etc. at this belated stage. Accordingly, we also modify the direction given in the impugned judgment giving liberty to the appellant to take appropriate steps/actions regarding the "go slow" strategy for the period in question.

9. The appellant has raised the grievance that the "go slow" strategy is still in continuation because of which the work and production are affected. The respondent herein has interpreted the impugned judgment as a direction to pay full wages. This is disputed by the counsel for the first respondent. However, the first respondent does not dispute and has accepted the findings in the impugned judgment that pro rata deduction/reduction in wages is permissible if there is a deliberate attempt to not produce or do work by resorting to "go slow" strategy. We perceive and believe that the impugned judgment protects the interest of the appellant and the workmen by prescribing the right procedure which should be followed in case the appellant is of the opinion that the workmen, though present on duty, are not working and are not giving the agreed production on the basis of which wages and incentives have been fixed. This would depend upon the factual matrix and have to be ascertained in case of dispute to render any firm opinion. The procedure prescribed should be followed.

10. Recording the aforesaid, the appeal is disposed of without any order as to cost.