RIGHT TO STRIKE

Written by ***Nataraj M R***

Vice President- Human Resources

The scheme of the Industrial Disputes Act, 1947 implies a right to strike in industries. A wide interpretation of the term ‘industry’ by the courts includes hospitals, educational institutions, clubs and government departments etc. Section 2 (q) of the Industrial Disputes Act defines 'strike'. 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". It is thus beyond doubt that the Industrial Disputes Act, 1947 contemplates a right to strike.

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.

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

The Industrial Disputes Act, 1947 refrains generally the Trade Unions from going on strike. Its focal thrust is on more efficient alternative mechanisms for dispute settlement, such as, reference to Industrial Tribunals, compulsory adjudication, conciliation, etc. In fact the very intention behind its enactment as illustrated in the Statement of Objects and Reasons, was to overcome the defect in the Trade Unions Act, 1926, which was, that it imposed restraints on the right to strike but did not provide for alternative settlement of the disputes.

The Statement further reads as under: "The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to

secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strike and lock-out, which must remain inviolate, except where considerations of public interest override such right".

While on the one hand it has to be remembered that a strike is a legitimate and sometime unavoidable weapon in the hands of labour, it is equally important that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that any kind of demand for a 'strike' can be commenced with impunity without exhausting the reasonable avenues for peaceful achievement of the objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect the labour to wait after asking the government to make a reference. In such cases the strike, even before such a request has been made, may very well be justified.

In Kairbitta Estate v. Rajmanickam case (1960 AIR 893, 1960 SCR (3) 371) Justice Gajendragadkar opined: "In the struggle between the capital and labour, the weapon of strike is available to labour 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.

In Syndicate Bank v. K. Umesh Nayak (1995 AIR 319, 1994 SCC (5) 572), Justice Sawant said that the strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, "irritation strike" or staying at work but deliberately doing everything wrong, "running-sore strike", i.e., disobeying the lawful orders, sit-down, stay-in and lie down strike etc. etc. The cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike,

has tried to regulate it along, with the right of the employer to lockout and has also provided machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lockout as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

In the much debated case of T.K. Rangarajan vs Government Of Tamil Nadu & Others decided on 6 August, 2003 Supreme Court of India has held that Government employees have no right to strike . The details of the case are as under.

In an unprecedented action the Government of Tamil Nadu Government terminated the services of about 2 lakh employees who have resorted to strike for their demands. When challenged Single Judge of High Court of Madras by interim order inter alia directed the State Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty.

The interim order was challenged by the State Government and the Division Bench of the High Court set aside the interim order and arrived at the conclusion that without exhausting the alternative remedy of approaching the Administrative Tribunal, writ petitions were not maintainable.

The order of the Division Bench was challenged before the Supreme Court and we will now go into what Supreme Court said in this case.

Referring to L. Chandra Kumar Vs Union of India and others [(1997) 3 SCC 261] case Supreme Court said that it has held in that case that it will not be open to the employees to directly approach the High Court even where the question of vires of the statutory legislation is challenged. However, this ratio is required to be appreciated in context of the question which was decided by this Court wherein it was sought to be contended that once the Tribunals are established under Article 323-A or Article 323-B, jurisdiction of the High Court would be excluded. Negating the said contention, Supreme Court made it clear that jurisdiction conferred

upon the High Court under Article 226 of the Constitution is a part of inviolable basic structure of the Constitution and it cannot be said that such Tribunals are effective substitute of the High Courts in discharging powers of judicial review. It is also established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extra- ordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly approach the High Court even where the question of vires of the statutory legislation is challenged.

In L. Chandra Kumar's case, Supreme Court inter alia referred to and relied upon the case in Bidi Supply Co. Vs. Union of India [1956 SCR 267], wherein Bose, J. made the following observations: — "The heart and core of a democracy lies in the judicial process, and that means independent and fearless Judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there and it is clear to me that uncontrolled powers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi-executive bodies even if they exercise quasi- judicial functions because they are then invested with an authority that even Parliament does not possess. Under the Constitution, Acts of Parliament are subject to judicial review particularly when they are said to infringe fundamental rights, therefore, if under the Constitution Parliament itself has not uncontrolled freedom of action, it is evident that it cannot invest lesser authorities with that power."

Supreme Court further referred to the following observations from the decision in Kesavananda Bharati Vs. State of Kerala [(1973) 4 SCC 225] as under: — *"77. From their conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme."*

The Court further held:

"78. …… We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution..."

Thereafter, the Court to emphasise that Administrative Tribunals are not functioning properly, quoted the observations with regard to the functioning of the Administrative Tribunals from the Malimath Committee's Report (1989-90), which are reproduced hereunder:— *".... Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals…"*

Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decision of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This

has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition.

Finally the Court held thus: — *"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."*

There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.

Now coming to the question of right to strike — whether Fundamental, Statutory or Equitable/Moral Right — in our view, no such right exists with the government employees.

(A) There is no fundamental right to go on strike: Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In Kameshwar Prasad and others Vs State of Bihar and another [(1962) Suppl. 3 SCR 369] this Court (C.B.) held that the rule in so far as it prohibited strikes was valid since there is no fundamental right to resort to strike.

In Radhey Shyam Sharma Vs The Post Master General Central Circle, Nagpur [(1964) 7 SCR 403], the employees of Post and Telegraph Department of the Government went on strike from the midnight of July 11, 1960 throughout India and petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed upon him. That was challenged before this Court. In that context, it was contended that Sections 3, 4 and 5 of the Essential Services Maintenance Ordinance No.1 of 1960 were violative of fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the Constitution. The Court (C.B.) considered the Ordinance and held that Sections 3, 4 and 5 of the said Ordinance did not violate the fundamental rights enshrined in Article 19(1)(a) and (b) of the Constitution. The Court further held that a perusal of Article 19(1)(a) shows that there is no fundamental right to strike and all that the Ordinance provided was with respect to any illegal strike. For this purpose, the Court relied upon the earlier decision in All India Bank Employees' Association Vs National Industrial Tribunal & others [(1962) 3 SCR 269] wherein the Court (C.B.) specifically held that even very liberal interpretation of sub-clause (C) of clause (1) of Article 19 cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. In Ex-Capt. Harish Uppal Vs Union of India and Another [(2003) 2 SCC 45], the Court (C.B.) held that lawyers have no right to go on strike or give a call for boycott and even they cannot go on a token strike.

The Court has specifically observed that for just or unjust cause, strike cannot be justified in the present-day situation. Take strike in any field, it can be easily realised that the weapon does more harm than any justice. Sufferer is the society — public at large. In Communist Party of India (M) Vs Bharat Kumar and others [(1998) 1 SCC

201], a three-Judge Bench of this Court approved the Full Bench decision of the Kerala High Court by holding thus:—

"....There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement."

The relevant paragraph 17 of Kerala High Court judgment reads as under:—

"17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it."

(B) There is no legal / statutory right to go on strike. There is no statutory provision empowering the employees to go on strike.

Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as "the Conduct Rules"). Rule 22 provides that "no Government servant shall engage himself in strike or in incitements thereto or in similar activities." Explanation to the said provision explains the term 'similar activities'. It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes. Rule 22-A provides that "no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any

Government Office or inside any Office premises — (a) during office hours on any working day; and (b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be.

(C) There is no moral or equitable justification to go on strike. Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike enmasse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike. Further…. in a Society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings, strikes cannot be justified on any equitable ground.

In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are Government employees, they are part and parcel of governing body and owe duty to the Society.

We also agree that misconduct by the government employees is required to be dealt with in accordance with law. However, considering the gravity of the situation and the fact that on occasion, even if the employees are not prepared to agree with what is contended by some

leaders who encourage the strikes, they are forced to go on strikes for reasons beyond their control. Therefore, even though the provisions of the Act and the Rules are to be enforced, they are to be enforced after taking into consideration the situation and the capacity of the employees to resist. On occasion, there is tendency or compulsion to blindly follow the others.

Finally, it is made clear that employees who are re-instated in service would take care in future in maintaining discipline as there is no question of having any fundamental, legal or equitable right to go on strike.