

ORDER SHEET
CENTRAL GOVT.INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR(MP)

CASE NO. CGIT/LC/R-5/2017

Union Vs. Prism Cement

Date of order of proceeding	Order or proceeding with signature of Presiding Officer	Signature of parties or pleaders where necessary
16-12-2021	<p>Taken up.</p> <p>Shri Uttam Maheshwari, learned counsel for the workman present.</p> <p>Shri Kuldeep Bhargav, learned counsel for the Management present.</p> <p>Learned counsel for the Management pressed his application for interim protection filed on 7-12-2021 seeking the relief of issuing a prohibitory order against the workman union and its members working in packing department of the Management for loading and unloading work against proceeding on strike. The application is supported with an affidavit. The documents, notice of strike dated 23-11-2021, order dated 29-9-2021 passed by the Court of learned Civil Judge, Senior Division, Satna restraining the workman from indulging in any illegal dharna, damage of property, violence within 1000mts of the area of the factory campus, has also been filed.</p> <p>The workman has filed its reply dated 14-12-2021 with affidavit and eight documents vide list filed with the reply.</p> <p>I have heard arguments of learned counsel for both the sides and have gone through the record as well.</p>	

	<p>It has been submitted by learned counsel for the management that the reference is pending before this Tribunal for award. During the pendency of this reference before this Tribunal, the Union has served a notice to proceed on strike which is illegal under Section 23 and 24 of the Industrial Disputes Act,1947 and if protection is not granted to management and the Union is not restrained from proceeding on strike the factory may be closed and Management will be put to severe loss. According, to the learned Counsel, the application deserves to be allowed accordingly.</p> <p>On the other hand, it has been submitted by learned counsel for the workman Union that the reference is for adjudication as to whether loading and unloading employees working on contract are entitled to wages at par with the regular employees in the light of Cement Wage Board Award dated 11-9-1983, followed by different awards in this respect as mentioned in the reference. During the pendency of the reference , the Cement Wage Board has passed another award on 20-2-2019 for a period of three years. The Management is not awarding the benefits of this award which is not justified . the Union raised a complaint in this respect before the Chief Labour Commissioner Central who has vide his order dated 30-11-2021 asked the management to comply with the Award of year 2019 as referred above. The Management has willfully not complied with the award, hence the Workman Union has served a notice for proceeding on strike . It has been submitted by learned counsel for the workman that the issue on which the workman Union has served the notice for strike is not the same as it is in the reference, hence</p>	
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	<p>Management is not entitled to get protection of Section 23 and 24 of the Industrial Disputes Act,1947. Accordingly, he has prayed that this application be dismissed.</p> <p>Reference of Section 23 and 34 of the Industrial Disputes Act,1947 is necessary, which is being reproduced as follows:-</p> <p><u>23. General prohibition of strikes and lock-outs.</u>—No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—</p> <p>(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;</p> <p>(b) during the pendency of proceedings before 1[a Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings;</p> <p>3[(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or]</p> <p>(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.</p> <p><u>24. Illegal strikes and lock-outs.</u>—(1) A strike or a lock-out shall be illegal if—</p> <p>(i) it is commenced or declared in contravention of section 22 or section 23; or</p> <p>(ii) it is continued in contravention of an order made under sub-section (3) of section 10 1[or sub-section (4A) of section 10A].</p> <p>(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of</p>	
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	<p>the dispute to a Board, 1[an arbitrator, a] 2[Labour Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 1[or sub-section (4A) of section 10A].</p> <p>(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.</p> <p>The point which arises for consideration is that for a strike during the pendency of reference or proceedings before this Tribunal , should be the subject matter and dispute be one and same? In another words, if workman union proceeds on strike on an issue which is not covered in the reference, will such strike be illegal in that case in the light of Section 23 & 24 of the Industrial Disputes Act,1947?.</p> <p>Learned counsel for the Management has submitted that in such case also the workman Union is not permitted to go on strike during the pendency of proceedings.</p> <p>The learned counsel for the workman has opposed this contention with an argument that the provisions do not impose a blanket ban on strike even on matters not connected with the proceedings. Section 23 and Section 24 of the Act do not make any distinction in this respect. It seems illogical to hold that there will be a blanket ban on strike during pendency of proceedings before Tribunal, even on matters not covered in the reference under the proceedings, hence this argument of learned</p>	
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	<p>Counsel for the Management on this point cannot be accepted.</p> <p>Now the question is whether in the case in hand, the matter on which the Union has served notice for strike is covered in the reference or not?. There are certain awards passed by Cement Wage Boards right since 1983 till 2019. When the reference was made in the year 2017,the Award of year 2015 was inforce. During the pendency of the proceedings, Award of year 2019 was passed by Cement Wage Board. The question which remains to be decided is Whether the Cement Wage Board Awards are applicable to the workers of the case in hand, who are engaged in loading/unloading activities. Hence, it is established that the dispute remains one and the same in pith and substance. Hence the Management in this case seems to be entitled to interim protection in the light of Section 23 and 24 of the Industrial Disputes Act,1947.</p> <p>Accordingly, the workman Union is restrained from proceeding on strike till pendency of reference on the ground of implementation of Cement Wage Board Awards to the workers engaged in loading/unloading activities.</p> <p>Before parting, it is to be mentioned here that the reference in the case in hand is purely a matter of interpretation of Awards in the light of the Awards. This is a pure question of law and no question of fact is involved. Learned Counsel for both the sides have agreed to this preposition. Since there are no question</p>	
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	<p>of facts to be settled in the case in hand, after exchange of affidavit by parties, the matter can be heard finally.</p> <p>Accordingly, the matter is listed for final hearing on _____. The parties are at liberty to file the affidavit from their side, if any after serving it to the opposite party before date.</p> <p>Application for interim protection is disposed of accordingly.</p> <p>(PRESIDING OFFICER)</p>	