

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**CASE COMMENT ON B.R. SINGH v. UNION OF INDIA**

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ABSTRACT

"When it comes to bargaining with management, trade unions that have a significant membership level are able to do so more successfully than individual workers. If it is not allowed to protest/strike by utilizing agitational means such as work to rule, go-slow, absenteeism, sit-down strike, and strike, then their negotiating power will be decreased significantly. This is something that practically every democratic nation on earth has acknowledged". Strike can be considered similar to an inherent right that defends employees' freedom. The right to strike is not a fundamental right, but rather a legal right. If this right is considered fundamental, it will weaken the nation's socioeconomic framework.

The instant paper seeks to analyze the case of *B.R. Singh v. Union of India*, the details of which are outlined hereinbelow:-

CASE NAME	B.R. SINGH V. UNION OF INDIA
CASE CITATION	AIR 1990 SC 1
PETITIONERS	B.R. Singh &ors.
FOR PETITIONER:	<ol style="list-style-type: none"> 1. M.K. Ramamurthi 2. M.A. Krishnamurthy 3. Indira Sawhney
RESPONDENTS	Union of India &ors.
FOR RESPONDENTS:	<ol style="list-style-type: none"> 1. Ram Panjwani 2. Raj Panjwani 3. Vijay Panjwani
BENCH	<ol style="list-style-type: none"> 1. A.M. Ahmadi, JJ 2. K. Jagannatha Shetty, JJ
RELEVANT SECTIONS	<ol style="list-style-type: none"> 1. Industrial Disputes Act, 1947- Section 10, 10-A, 22, 23, 24 and 2(n) 2. Trade Unions Act, 1926- Section 8

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	3. Constitution of India- Article 19(1)(c)
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INTRODUCTION

*Article 19(1)(c)*² of the *Indian Constitution* stipulates that Indian citizens have the right to freely form associations or unions. *Article 19(1)(c)* might grant the workers the right to form associations and labor unions, but it is sometimes inadequate. Occasionally, the situations necessitate that workers go the extra mile and initiate a strike by halting their work in order to persuade their employer to meet their demands. In a given circumstance, a strike is merely a kind of protest. A strike is one method by which employees demonstrate for their rights. The right to demonstrate, and consequently, the right to strike, is an essential tool in the workers' toolbox. The term "strike" refers to "a cessation of work or a concerted refusal to work by the employees of any industry in order to obtain their demands." Strike rights are not a fundamental right in India. India did not recognize the right to strike as a legal right until 1947, when the Industrial Disputes Act (hereinafter, *the Act*) was passed. In accordance with *Section 22(1)(a)* of *the Act*, workers may go on strike in the event of a violation of contract, so long as the employer is provided a 6 weeks' notice in advance. It will include government workers as well. The statute does not freely grant the aforementioned right. There are a few requirements that must be met before workers can go on a strike.

PROCEDURAL HISTORY AND FACTS

The given case is a one from the batch of writ petitions filed under *Article 32* of the Constitution, all of which challenge the same set of disciplinary measures taken by officials of the *Trade Fair Authority of India* (hereinafter referred to as *TFAI*), measures which have resulted in the termination of the employment of some regular employees and the unemployment of others who are paid on a casual or everyday wage. The Trade Fair Authority Employees' Union demanded 'adequate housing facilities, regularization of at least half of temporary or daily waged employees, and an increase in TFAI workers' salary and benefits.' The Chief General Manager of TFAI and others occasionally addressed these requests, but it did not reach to a solid conclusion. The Union's contention was that the Chief General Manager promised Union officials that while he might not be able to rejigger the services of casual workers to the level of 50%, some roles had previously been selected and the Standing Committee of TFAI, which was concerned with the problem, would arrive at a

²Constitution of India, Art. 19(1)(c)

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decision as soon as possible. Additionally, the management did not respond to a request for comments regarding the possibility of an upward revision. The employees told the management that they would be engaging in a walkout due to the management's indifference to their persistent demands. Owing to the company's refusal to grant approval and the late communication of the refusal, the strike was not called off. It was just days before the intended visit of the President and Foreign Personages to the TFAI that the employees decided to strike, for no apparent reason. Concerned, the administration sacked the employment of a significant number of employees and terminated the Union's President and Vice-President. They also refused to recall the terminated employees.

ISSUE

The following were the primary issues in the instant case:-

- a) Is the company's decision to ignore the union's demands and shut down many posts a good approach?
- b) Whether the workers have the right to go on strike?

PRECEDENTS

The Court in *Komisar Prasad v. State of Bihar*³ opined that “*The rule in so far as it prohibits a strike cannot be struck down since there is no fundamental right to resort to a strike.*”

In *Chandramalai estate, Ernakulam v. Workmen*⁴ the Court held that, “*even when the strike is a legitimate weapon for the workers, it should not be encouraged. Workmen should never think that they can get whatever they want by commencing a strike.*”

In *Mineral Miners' Union v. Kudremukh Iron Co. Ltd.*⁵ it was noted that “*Section 22 and 23 do not prohibit strikes but imposes certain restrictions. Section 22 expressly specifies certain conditions to be followed by the workers in order for their strike to be legal.*”

CONTENTIONS

The legal team for TFAI argued that because the strike was unlawful, the employees are not eligible to get any relief. In addition, they argued that, based on the facts, TFAI had to take action against the Union's office bearers because they had fostered an atmosphere of violence

³ AIR 1962 SC 1166

⁴ (1960) 3 SCR 451

⁵ 1988 SCC OnLine Kar 366

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and paralyzed the organization's operations beginning in November 1986⁶. Officials of TFAI were unable to do their jobs out of fear for their own safety and that of their families as a result of the numerous incidents of disobedience, threats, aggression, and absence of discipline that were reported. Though the Union's request to host a General Body meeting on TFAI grounds was denied, the gathering still went forward, and its members made comments that were both aggressive and controversial. The council also presented excerpts of the comments made by various Union leaders/members to enlighten the court with the circumstances that developed at a time when numerous significant foreign delegations and VIPs attended TFAI's International Fair. Several reports obtained from TFAI officials at various levels also indicated that some crisis was developing and prompt, decisive intervention was required. Hence, when the management realized that the workers had chosen to engage in a strike, it suspended a number of Union members. After the strike went on for longer than expected, TFAI had to create alternative plans, especially security measures, to protect the safety of visiting foreign dignitaries and, more importantly, the Indian President. Throughout the President's visit, picketing personnel stationed themselves beside the President, Vice-President, General Secretary, and Secretary of the Union at the entrance gate. The Delhi high court issued an ex-parte injunction forbidding picketing, slogan chanting, etc. inside seventy-five meters of all gates connecting to the Fair. As a result of this, it has become clear that, as per TFAI, the employees' protest was not a peaceful event, despite what they have claimed. In light of these events, the Board came to the conclusion that it would be appropriate to exercise the authority granted to it by Rule 32 of the rules in order to put an end to the employment of the 12 workers. As a result, TFAI argued that the disciplinary punishment imposed against the twelve insubordinate employees is just, lawful, and fair, and that the Court should refrain from intervening. Regarding the suspended workers, 'TFAI claimed that it has authority under Rule 22 of the Rules to terminate erring miscreants pending investigation'. These suspended workers have the right to a suspension compensation equal to fifty percent of their wages and benefits. There is no evidence that TFAI has employed punishments as a punitive tool. Conversely, 34 workers were suspended. 33 of the 34 employees who were suspended have had their suspensions revoked.

RULING

⁶ Upadhyay S, "Is Right to Strike a Fundamental Right?" (*LexForti* January 17, 2021) <<https://lexforti.com/legal-news/is-right-to-strike-a-fundamental-right/>> accessed October 22, 2022

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TFAI's attorney's argument was deemed without merit by the judges. In light of the interests of the workplace and the financial struggles of the workers, the supreme court resolved the problem without finding who was at fault. The court ordered the reinstatement of the sacked and suspended employees. The court opined that the conditions do not justify the non-inquiry-based suspension of union members' employment. Consequently, termination orders were annulled. 'Even if the right to strike is not a fundamental right, the court ruled that it allows workers to voice their discontent. However, the right to strike is not unlimited; it is restricted by Sections 10(3), 10A(4A), 22 and 23 of the Industrial Disputes Act of 1947.'⁷ Article 19(1)(c) of The Indian Constitution recognizes the right to form associations and unions as a fundamental right. When a trade union meets all of the criteria outlined in Section 8 of the Trade Unions Act, the union can apply for its registration. Clearly, the right to join groups and unions and to allow for their registration was acknowledged in order to grant trade unions particular special rights. Clearly, the formation of unions is necessary for labourers to express their desires and complaints. Union leaders serve as the voice of labor. The size of a labor union determines its power. Thus, labor unions with significant membership strength may negotiate with administration more successfully. This bargaining strength would be significantly diminished if it were prohibited from demonstrating. The court also opined that this right to strike has been acknowledged by the vast majority of modern democracies. Although not elevated to the status of a fundamental right, it is acknowledged as a method for redressing workplace problems. The court also determined that the union's strike did not foster a violent environment, hence Rule 32 shall not be invoked. In order to cover the Union's expenses, the TFAI was instructed to pay a cost payment of 5000 rupees.

ANALYSIS

The court considered the challenges of the labourers. As has been seen throughout many years that the courts have not only been a mechanism of justice, but also an organization that resolved the issues. The court rendered a decision that represented a win - win outcome for each side. Employers and employees are the foundation of an industry. Both of their rights must be safeguarded. They shape the nation's industrial sector. In such a context, the court's participation in such matters is complex and vital. In order to help the

⁷ Tyagi R, "The Supreme Court Pronouncement and the Right to Strike" (*Revolutionary Democracy* 2003) <<https://www.revolutionarydemocracy.org/rdv9n2/strike.htm>> accessed October 21, 2022

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nation at large, they should consider the needs of both the sides and come up with an arrangement that is equally helpful to both parties. The employees also endure the weight of industrialization, liberalization, and privatization, which have resulted in an appalling erosion of employment owing to pervasive industrial illness and the subsequent closure of industrial facilities. Unemployment has reached dangerous levels.⁸ Continual ‘casualization and contractualization’ have led to a decline in job security. Globalization-driven efforts to restructure the industrial sector have led to a dramatic decrease in the organized sector and a meteoric rise in the informal sector, where working circumstances are appalling. In the current instance, employees fought for wage increases and were either suspended or fired. Similar to previous rulings, the court emphasized that there is no fundamental right to strike. The difference in this particular case, however, is that the court did more than just lay out the applicable statutes and calculate the compensation; instead, it asked the authority to restore the workers, effectively ending the problem. The courts set a bad precedent was set in *T.K. Rangarajan v. Government of Tamil Nadu and Ors.*⁹, stating that ‘the government employees have no legal or moral right to go on strike’.

CONCLUSION

The current situation takes place during the evolutionary age, a time when companies and governments did not control every aspect of life. The Supreme Court was there to make sure its mission was carried out to the letter. The objective is of preserving the rights of individuals and preventing their violation. Although not a fundamental right, the right to strike is one that has been won via a great deal of battle. The Supreme court must maintain the integrity of the same. It should ensure that unions do not exploit constraints on the right. The court should not tolerate the arbitrariness of practices employed by the companies. Workers' right to strike is, and should always be, a powerful tool for improving work environment. That right cannot be denied by the Supreme Court or any other court. The judicial system must ensure that this tool does not end up being a double-edged weapon, posing an unnecessary risk to labourers.

⁸ Shah A, “Right to Strike: Proposed Amendment in the Indian Constitution” (*iPleaders* January 2, 2020) <<https://blog.ipleaders.in/right-to-strike-proposed-amendment-in-the-indian-constitution/>> accessed October 22, 2022

⁹(2003) 6 SCC 581

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