
(2009) 08 P&H CK 0071
In the Punjab And Haryana At Chandigarh

Adarsh Gupta

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 32, 34

Citation : (2010) 124 FLR 844 : (2010) 2 LLJ 751 : (2010) 157 PLR 43 : (2010) 1 RCR(Civil) 107

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.

I Scope:

1. The above writ petition and a batch of 70 other cases involve a common question, namely, the validity of the notices issued by the Government of Haryana through the Secretary to Government, Labour Department to two named individuals purporting to represent the Management as liable for prosecution u/s 25-U for violation of Section 25-T of the I.D. Act. The prosecution notices which are impugned in the writ petitions germinated from individual complaints of about 70 workmen against the Management when they were served with orders of transfer from the place where, the factory was situate, namely, at Gharaunda District Karaal to Phusgarh Road where, according to the workmen, no unit of factory had been as yet established. Mala fides of the action, according to the workmen were seen from the fact that they were deliberately transferred after their plea to the government to close down some units was turned down, to a place where there was not even a manufacturing unit and the orders issued by the Management to constituted "unfair labour practice".

2. The Government had issued show cause notices to one Adesh Gupta, who was

shown as "occupier" of the factory in relation to certain manufacturing units of the factory. Another person was Adarsh Gupta who had not been issued with any notice at all but the impugned orders had been issued against the above named two individuals as "occupiers" of the manufacturing units. The Government received objections only from Adesh Gupta but still proceeded to issue the impugned orders. The impugned orders could be seen as stereo typed in that they say that in exercise of the powers conferred u/s 32 and 34 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act")., the Governor of Haryana authorized the Labour Commissioner to lodge a complaint against the two named private individuals referred to above u/s 25-T read with Section 25-U of the Act in the Court of the Magistrate Ist class, Karnal.

II Grounds of Challenge:

3. The notices are challenged in this batch of 70 writ petitions on common grounds viz. (i) The Government did not have any power to determine whether the particular act complained of constituted "unfair labour practice". Without adjudication and finding by the Labour Court that the action complained of by the workmen against the Management constitute unfair labour practice, the Government itself cannot arrive at such a conclusion and launch a proceeding; (ii) Adesh Gupta who is petitioner in several petitions had no doubt been served with show cause notices but the action taken by the Government deciding to launch a prosecution without considering the objections given by him that he was not an "occupier" of the Units from where some workmen had been transferred and without considering his objection that he had not transferred any workmen at all, was the result of a complete non application of mind of the Government and hence vitiated. (iii) As regards Adarsh Gupta though he was a Director of the Company, no notice at all had been issued to him personally and the order without any proper notice constituted violation of principles of natural justice and hence not justified. (iv) The attempt to prosecute was an extraordinary power which could not be exercised in a cavalier fashion for alleged wrongs committed by the Company without ascertaining the actual personnel who was responsible for the decision made on behalf of the Company.

III Text of impugned order (s)

The impugned order reads as thus:

Whereas the management submitted the reply to the above said show cause notice but the same was found to be evasive as they did not explain the existence of condition of work in any standing order or appointment letter of any worker which provided for transferability of any worker to any other location. Besides the management also did not prove and explain the existence of factory registered under the Factories Act, 1948 of a place to which the concerned worker was transferred. The management was also afforded hearing on different dates but they failed to supplement the submission already made in their written reply. Whereas Sh. Adarsh Gupta is responsible person being Occupier of the

factory from which the concerned workman was transferred and he has committed unfair labour practice within the meaning of entry 7 of Vth Schedule to the Industrial Disputes Act, 1947 and is liable to be prosecuted u/s 25-U for violation of Section 25-T of the above said Act.

Note: (The respective orders in each one of the writ petitions incorporate respective name of the petitioners only and they are left out.)

4. It should be noted that the impugned orders themselves did not impose any penalty. It is the first stage taking a decision for setting criminal process in motion. At this stage, no one is found guilty. The details of the wrong attributed to the respective private individuals, though form the basis for the complaint, are not put on record. The trial has not commenced nor is any charge sheet levied. It is at this stage that all the petitioners have resorted to the writ petitions that the batch of writ petitions have been filed at the instance of the two named individuals.

IV Non-maintainability of writ petition, as perceived by State.

5. To the argument of the learned Counsel on behalf of the petitioners that the Government itself does not have power to take action or decide that the acts complained of constituted unfair labour practice, learned Counsel for the State points out that the unfair labour practice is defined u/s 2 (ra) as meaning any practice specified in the 5th Schedule and the 5th Schedule includes, the acts, inter alia, in entry 7 "to transfer a workman mala fide from one place to another, under the guise of following management policy". According to learned Counsel appearing for the State submits that the Government could not have referred the matter for adjudication u/s 10 in view of the fact that the transfer per se would not qualify for reference since only matters pertaining to 3rd Schedule could be adjudicated u/s 10(i) proviso, of the Act. He would submit that an "Industrial dispute" u/s 2-K could not to be adjudicated since all the complaints have originated not through the union but by individual workmen whose right to seek for adjudication stems only u/s 2-A and it applies only to issues of discharge, dismissal and retrenchment etc. and it would not be possible even for the individual workman to seek for adjudication on a subject mentioned in Schedule v. An individual workman.

6. In my view, the fact that individuals cannot seek for references for any matter other than issues of discharge/dismissal as found u/s 2-A itself contains an answer to the query whether the issue of "unfair labour practice" could be decided only by a Court and whether it would be incompetent for the Government to make such a prima facie inference before deciding to take action for prosecution. In a similar fashion if we must see that the definition of "Industrial dispute" u/s 2-K contains a larger scope for an enquiry relating to a dispute between employees and hence confined only to a dispute espoused through a Union, it would lead to an absurd consequence of a complaint of unfair labour practice being unavailable to an individual workman. Sections 25-T and U

could not be seen in a restrictive sense as enabling only the union to seek for adjudication through reference and disabling any individual workman to complain of unfair trade practice.

VI Prima Facie finding of unfair labour practice is the only pre-requisite - No final proof necessary at the stage of complaint.

7. The power exercises u/s 32 and 34 is after coming to a prima facie conclusion that there is "unfair labour practice" The respective Sections do not stipulate any one authority to be exclusive for determining this question, as it does not state anywhere that this finding could be rendered by the Labour Court on a reference from the Government. If the Section 25-T itself prohibits "unfair labour practice" and Section 32 provides that if an offence is committed by a Company, every Director, Manager, Secretary or other Officer concerned with the Management shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence. It means that power of adjudication does not reside even with the Government any more than obtaining relevant information in order to take further proceedings provided u/s 34 of the Act. Section 34 of the Act provides thus:

34. Cognizance of offences: (1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2)" No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act." The cognizance of the offence itself shall not be made either by the Government or by the Labour Court. Such a power resides in a Magistrate of the Ist Class who shall try any offence punishable under the Act. It is this Section which gives a clue to who determines the commission of the offence which the law interdicts u/s 25-T and prescribes the penalty u/s 25-U of the Act. In Management of M/s Mysore Structural Ltd. and Others Vs. State of Karnataka and Another, the Hon''ble Supreme Court referred to Section 34 and 29 of the Act to hold that Section 34 is in the nature of a limitation on the entitlement of a workman or a trade union or an employer to complain about the offences under the Act and the object behind the said limitation is to restrain the complainant from making frivolous, vexatious or otherwise patently untenable complaints. VII Power to initiate action with appropriate government, effect.

8. Again, the Section places the power not on any private individual but leaves it to the appropriate Government. The Hon''ble Supreme Court held in Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, that a power which is entrusted to the Government u/s 25-N is of such a nature that it was always expected that a responsible decision is taken and it noted that the power vested in the Government itself to be an inherent check against arbitrary exercise of such power. As is Section 25-N, so with Section 34 of the Act. In Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, the Hon''ble Supreme

Court dealt with distinction in the procedure contained in the Maharashtra Recognition of Trade Unions and Prevention Act, 1971 and the provisions that were contained under the Act. While detailing the differences the Hon''ble Supreme Court held that Section 25-T of the Industrial Disputes Act prohibits an employee or Union or workman from committing any unfair labour practice, while the Maharashtra Act prohibited any employer or Union or employee from engaging in any unfair labour practice, which was a more comprehensive term. Section 25H makes a direct prosecution possible while the Maharashtra Act requires the prosecution to be preceded by an adjudication by a competent Court regarding such engagement. This distinction in my view is very significant. Unlike the Maharashtra Act, the Industrial Disputes Act puts the adjudication for the purpose of applying the penal provision to unfair labour practice only in the hands of a Ist class Magistrate. The High Court, in my view, shall not cause an impediment for the legal action to ensue at such a preliminary stage, when the government forms opinion about commission of the offence and decides to lodge a complaint.

VIII. Premature interference by High Court, undesirable

9. The Industrial Disputes Act being a welfare legislation, its provisions should be so interpreted as to effectuate the intendment of the Act. The Hon''ble Supreme Court cautioned in People''s Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, that violation of labour laws must be strictly followed and appropriate and adequate punishment must be imposed. Adverting to the provisions of various labour laws in relation of the workman employed in the construction connected with the Asian Games, the Hon''ble Supreme Court observed that labour laws are enacted for improving the conditions of workers and the employers can not be allowed to buy off immunity against violations of labour laws.... All this is only to state that a violation of the provisions of the Act or the enforcement of the prohibition of commission of unfair labour practice are serious enough that the High Court in its exercise of writ jurisdiction, shall not interfere in lackadaisical fashion for an action proposed by the Government to give effect to some of the penal provisions of the Act.

IX Inherent safeguards u/s 34 of Industrial Disputes Act.

10. The persons against whom the proceedings are sought to be taken have come to no harm to this date. I have already outlined scope of the impugned orders. The proceedings contemplated u/s 34 are not a warrant procedure. In a summons procedure, a complaint has to contain all the necessary details and the trial could proceed only on the basis of facts revealed in the complaint against persons who are sought to be proceeded against for alleged commission of the prohibited offence. The sufficiency of details in the complaint before a Magistrate can issue summons to the persons against whom the action is proposed is the first safeguard against the frivolous complaint. The fact that the complaint should be lodged only by the Government which is a responsible body is the second safeguard against the irreverent use of the provisions. Per chance, if the basic

safeguards are flouted and a complaint is made with no details sufficient to hold the persons responsible such persons against whom complaint is made, they shall always have opportunity to resort to the relevant provisions of the Criminal Procedure Code to have the complaint quashed. If the complaint passes the stage and summons are issued the workman shall still have opportunity to allow the case to go through trial and require the prosecution to establish its case. If the Government cannot show that any of the persons against whom the prosecution is attempted is not in any way responsible for the transfer, on that day comes the sure exit for the petitioners. Again, if it is not shown by the prosecuting agency that the persons against whom the action was proposed had not been guilty of any mala fide exercise of the power of transfer that should also be possible at the stage of trial to establish that they were not owners or occupiers of the manufacturing units from where the particular workmen were ordered to be transferred, or that they had no role to play at all in the orders of transfers will be matters that could be established only at the trial. In other words, every one of the contentions which is sought to be now raised to throw a cloud of doubt to prosecute the named individuals could be appropriately taken at the stage when the case is filed and when summons are issued. This is not certainly an occasion propitious to intervene under Article 226.

11. The Delhi High Court held through its decision in *Tarlok Chand v. National Industrial Development Corporation Ltd.* 1994(4) S.C.T. 745 that a relief under Article 226 of the Constitution cannot be availed to consider whether the Management had been guilty of unfair labour practice. The Delhi High Court was dealing with a case of a workman's complaint against the Management that it was guilty of unfair labour practice and the Court had held that the appropriate remedy would be to seek a reference. In this case, a reference is not sought by either the workman or the Management and the Government had taken a prima facie decision that there had been an offence committed. Most importantly, the Government, at this stage when it proposes to take the action, does not itself have the power to impose any penalty, it is always left in the hands of the judiciary. In this case, it shall be the Judicial Magistrate who shall decide whether it is a fit case to take cognizance of the case and issue summons and if it chooses to issue summons to decide whether the offence has been committed against the persons who are accused.

X Conclusion:

12. The complaint of want of notices or solid proof against the persons against whom the orders are issued are quite unnecessary at this stage. The intervention as sought for through writ is impermissible and unwarranted. The writ petitions are dismissed. No costs.