

(2002) 03 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1265 and 1275 of 1998 and Writ Petition No's. 21365 and 24711 of 1998

APSRTC., National Mazdoor Union

APPELLANT

Vs

K. Koteswara Rao and Others

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Andhra Pradesh Essential Services Maintenance Act, 1971 — Section 2(1), 3(1), 3(4)
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(3)

Citation : (2002) 03 AP CK 0035

Hon'ble Judges : S.R.K. Prasad, J; S.R. Nayak, J

Bench : Division Bench

Advocate : A.K. Jaya Prakash Rao, for the Appellant; M.P. Chandra Mouli, for the Respondent

Judgement

S.R. Nayak, J.—Writ Appeal No. 1265 of 1998 is directed against the order of the learned single Judge dated 4.8.1998 in W.P.No. 20522 of 1998. The said writ petition was filed as Public Interest Litigation to espouse the cause of public interest. The prayer in the writ petition is as follows:

"Petition under Art. 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ of Mandamus declaring the striking of the work by the members of APSRTC National Mazdoor Union Regd. No. 3108 Hyderabad as illegal and void and consequently direct the 1st respondent to call off the strike forthwith and also direct the authorities i.e., the State of A.P., and the APSRTC including the law enforcing agencies to take immediate steps to prevent the on-going strike forthwith."

2. Writ Appeal No. 1275 of 1998 is directed against the Judgment of the learned single Judge dated 4.8.1998 made in W.P. No. 20572 of 1998. The said writ petition was also filed as Public Interest Litigation. The prayer in the writ petition

is as under:

"Petition under Art. 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ or direction more particularly one in the nature of writ of Mandamus declaring the inaction of the respondents in failing to resolve their disputes thereby causing inconvenience and untold misery to the general public and also issuance of G.O. Rt. No. 1240, L.E.T & F (Lab.I) Department dated 18.7.1998 prohibiting the strike in the 4th respondent-Corporation as arbitrary and illegal and consequently direct the respondents to resolve the strike amicably forthwith."

3. W.P. No. 21365 of 1998 is filed by the General Secretary, Andhra Pradesh State Road Transport Corporation National Mazdoor Union, Hyderabad. The prayer in the writ petition reads as follows:

"For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon"ble Court may be pleased to issue a writ of Mandamus and declare section 3(4)(b) of the A.P. Essential Service Maintenance Act, 1971 as arbitrary and unconstitutional and to declare the impugned G.O. Ms. No. 112, Transport, Roads and Buildings (Tr. III) Department, dated 25.6.1998 as illegal, arbitrary, wholly without jurisdiction and ultra-vires and powers of Andhra Pradesh Legislature and to pass such other order or orders as deem fit and proper in the circumstances of the case."

4. W.P. No.24711 of 1998 is also filed by the General Secretary, APSRTC National Mazdoor Union, Hyderabad. The prayer in the writ petition reads as follows:

"For the reasons set out in the accompanying affidavit, it is prayed that this Hon"ble Court may be pleased to call for the records from the respondent No.2 and issue an appropriate writ, order or direction, particularly one in the nature of writ of Mandamus declaring that the G.O. Rt. No. 1240, Labour, Employment, Training and Factories (Lab. I) Department dated 18.7.1998 issued by the 2nd respondent in prohibiting the strike without referring all the demands for adjudication as illegal, unjust and contrary to the law laid down by the Apex Court; and grant all consequential benefits; and pass such other order or orders as deemed fit and proper under the circumstances of the case."

5. The learned single Judge by the orders under appeal has opined that the strike resorted to by the workmen of the APSRTC is illegal, because the workmen resorted to strike despite the issuance of the Notification by the State Government u/s 2(1)(a)(vi) of the A.P. Essential Services Maintenance Act, 1971 (for short, the Act) declaring the services under the APSRTC as "essential service" within the meaning of the Act and G.O. Rt. No. 1240, Labour, Employment, Training & Factories (Lab.I) Department dated 18.7.1998 under sub-section (3) of Section 10 of the Industrial Disputes Act, 1947 (for short, I.D. Act) prohibiting the continuance of strike by the Union with immediate effect.

6. In the writ petitions filed by the Trade Union and their workmen, they have

assailed the validity of the notification issued by the State Government under sub-section (1) of section (3) of the Act only and not the notification issued u/s 2(1)(a)(vi) of the Act and the notification issued u/s 10(3) of the I.D. Act.

7. It is trite that the Trade Unions and their member workmen cannot have any grievance in law against the notification issued u/s 3(1) of the Act, unless the notification issued by the Government u/s 2(1)(a)(vi) of the Act declaring that the service under the APSRTC is "essential service" is assailed and that is declared to be ultra-vires of the Act or invalid for any other reason. Although in W.P.No. 21365 of 1998 the constitutionality of clause (b) of sub-section (4) of Section 3 of the Act is assailed, at the time of hearing, the learned counsel for the writ petitioner quite understandably did not advance any arguments to assail the constitutionality of that provision. The whole attempt of the learned counsel for the writ petitioner is against the Government Order in G.O. Ms. No. 180, T., R & B dated 7.6.1980 issued u/s 2(1)(a)(vi) of the Act. It could be seen from the affidavit averments that when the writ petition was presented in this Court, it was contended that the Government issued notification u/s 3(1) of the Act without declaring that the service under the APSRTC is "essential service" as envisaged u/s 2(1)(a)(vi) of the Act. However, in the counter filed by the State Government, while denying the above factual assertion, it was pointed out that the notification u/s 2(1)(a)(vi) of the Act was also issued as far back as on 7.6.1980. In addition to the above pleading, the Government also enclosed a copy of G.O. Ms. No. 180 dated 7.6.1980 as a piece of material paper. Despite this, the petitioners have not assailed the validity of G.O. Ms. No. 180 dated 7.6.1980. In our considered opinion and having regard to the well settled position in law governing the procedure to be followed by the writ Courts, it is not proper for this Court to entertain the challenge to the same at the time of hearing without a proper prayer and pleading to assail the validity of the statutory order passed by the Government by virtue of its delegated power. If that is so, finding any flaw in the orders subsequently made by the State Government u/s 3(1) of the Act would not arise.

8. However, at the time of hearing, it was brought to our notice that both the workmen and the Management realizing their mutual responsibility and accountability gave a quietus and called off the strike with effect from 1.8.1998. Therefore, in terms of practical utility, the question now raised with regard to validity of G.O. Ms. No. 180 dated 7.6.1980 at the time of hearing though not challenged is only an academic issue. However, there seems to be an apprehension in the mind of the workmen concerned that the Management of APSRTC might deny them the wages for the strike period in the light of the opinion handed down by the learned single Judge in his orders under appeal. It is well settled that in order to claim wages for the strike period, the concerned workmen shall satisfactorily establish that the strike in question is not only valid in terms of law but also justified. In that view of the matter, we are of the considered opinion that the question whether the strike was illegal and justified be kept open to be decided at an appropriate stage by the jurisdictional

Industrial Court. Although the learned counsel for the workmen at the time of hearing sought time for amending the prayer in the writ petition to assail the validity of G.O. Ms. No. 180 dated 7.6.1980 also, we do not think it appropriate at this distance of time in the present proceedings to permit them to do so. The order that may be passed in these cases would not come in the way of the workmen or the Trade Unions assailing the validity of G.O. Ms. No. 180 dated 7.6.1980 in an appropriate legal proceeding, if they are so advised.

9. In the result and for the foregoing reasons, we make the following order:

- i) The writ appeal Nos. 1265 and 1275 of 98 are allowed and the impugned orders are set aside and the writ petitions Nos. 20522 of 1998 and 20572 of 1998 are dismissed;
- ii) W.P. No. 21365 of 1998 and W.P. No.2 4711 of 1998 are dismissed;
- iii) Liberty is reserved to the concerned workmen and their Trade Unions to assail the validity of the Government order in G.O. Ms. No. 180 dated 7.6.1980 issued u/s 2(1)(a)(vi) of the Act;
- iv) The question whether the strike resorted to by the workmen concerned is justified and legal is also left open to be decided by the jurisdictional Industrial Court at an appropriate stage, if resolution of such a question becomes necessary in the matter of payment of wages to the workmen during the strike period, and in such an eventuality, the Industrial Court shall decide that question independently and on the basis of the evidence that may be laid before it without being influenced by any of the observations made by the learned single Judge of this Court in these writ proceedings.