

(2005) 11 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition No's. 42719 and 42720 of 2001

Bharat Fritz Werner Karmika Sangha

APPELLANT

Vs

The Assistant Labour Commissioner and Another

RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33 (3), 33 (4)
Karnataka Industrial Disputes Rules, 1957 — Rule 62

Citation : (2006) 108 FLR 779 : (2006) ILR (Kar) 148 : (2006) 4 KarLJ 443 :
(2006) 1 KCCR 33 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : K.S. Subramanya, for the Appellant; A.Y.N. Guptha, for R-2 and
S.Z.A. Khureshi, Additional Government Advocate for R1, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.

WP No. 42720 of 2001

1. Petitioner in this petition i.e. Bharat Fritz Werner Karmika Sangha ("the Union" for short), is before me challenging the order at Annexure-A dated 30.10.2001 as unsustainable in law.

2. The Union is a registered trade union existing in the respondent company namely M/s Bharat Fritz Werner Limited, Bangalore ("the management" for short). The Union is recognized by the management for the purpose of collective bargaining. Petitioner Union by its letter dated 31.3.2001 requested the management to recognize five workmen as protected workmen for the year 2001-02 u/s 33(4) of the Industrial Disputes Act, 1947 ("the Act", for short). There was no response. The Union approached the Assistant Labour Commissioner in the matter. Objections were filed by the management. After hearing, the Assistant Labour Commissioner has rejected the request of the petitioner in

terms of the impugned order.

WP No. 42719 of 2001

3. This petition is also by the Union seeking a writ of certiorari quashing the order dated 4.7.2000 bearing No. SAA.KAA.AA. -2/ PTN/CR-4/2000-2001. The Union by its letter dated 4.4.2000 requested the respondent management to recognize five workmen as protected workmen for the year 2001-02 u/s 33(4) of the 1947. In the absence of response, the petitioner Union approached the Assistant Labour Commissioner. The Assistant Labour Commissioner issued a notice. A reply was made by the management.

Thereafter, the Assistant Labour Commissioner has recognized only three workmen and refused to recognize two workmen in the case on hand.

4. Management entered appearance and filed a detailed statement of objections. In the objection statement filed in WP No. 42720 of 2001, management would say that one Ganganna was involved in criminal cases for various offences. It is also stated that one Shivanna is also involved in several criminal offences. It is further stated that Biddappa and Mallappa Nagappanavar and Aswathnarayana are involved in certain misconducts in terms of the averments in the statement of objections. Management would therefore say that the Assistant Labour Commissioner was justified in not recognizing these two workmen in the light of their conduct. They have also enclosed various documents in support of his submission and with regard to the workmen's involvement in criminal cases. State Government also has filed its affidavit supporting the management.

5. Counter statement is also filed in Writ Petition No. 42719 of 2001. In the said statement, it is stated that the petitioner has sought for recognition of the workmen namely Biddappa, Shivanna, Aswathnarayana, Mallappa Nagappanavar and Srinivas as protected workmen. It is stated that the said workmen were involved in various criminal acts and have committed several misconducts. They say that the Assistant Labour Commissioner is justified in passing the impugned order.

6. Heard the Learned Counsel for the parties.

7. Sri Subramanya, Learned Counsel for the Union took me through the pleadings to say that the Assistant Labour Commissioner is wrong in terms of Section 33 of the Industrial Disputes Act read with Rule 62 of the Industrial Disputes (Karnataka) Rules, 1957 ("the Rules" for short). He says that the management had not responded to the request of the Union and that therefore there is deemed approval in terms of the statutory provisions. He relies on few judgments.

8. Per contra, Learned Counsel for the management and the Learned Government Advocate would support the impugned order. They have also invited my attention to several judgments in support of their submission.

9. After hearing the Learned Counsel on both sides, I have perused the materials available on record.

10. Section 33(3) and (4) of the Industrial Disputes Act deals with protected workmen. Rules have been framed in this regard. Rule 62 deals with the protected workman. The said relevant rule reads as under:

62(2) The employer shall, subject to Section 33, Sub-Section (4) recognize such workmen to be "protected workmen" for the purpose of Sub-section (3) of the said Section and Communicate to the union in writing, within fifteen days of the receipt of the names and addresses under Sub-rule (1), the list of workmen recognized as protected workmen.

Provided that, where there is more than one registered trade union in the Establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognized protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it.

11. Courts have considered this issue in several judgments. This Court in the case of Canara Workshops Vs. Presiding Officer, , has considered the scope of Section 33 of the Act and also Rule 62 of the Rules. This Court no doubt in the said judgment has ruled that in the absence of any positive action on the part of the management, workman cannot have the status of "protected workman". This judgment is confirmed in so far as the first point is concerned by the Division Bench.

12. The said very provisions have been subsequently considered by a Learned Judge of this Court in Kanoria Industries Limited v. The Assistant Labour Commissioners and Ors. WP No. 1420 of 1995 disposed of on 13.7.1995. The Learned Judge in this case notices the Canara Workshops case and thereafter observes that the Canara Workshops case stands on totally a different footing. In that case, the union never submitted a list of workmen. The Learned Judge therein has chosen to extract Section 33 and Rule 62 and thereafter came to the conclusion that there is a deemed approval in the absence of any communication in terms of the said judgment. The said judgment is applicable to the facts of the case on hand.

13. In the circumstances, I find substance in the argument of Sri Subramanyam, learned counsel for the union. In the light of the said binding judgment, I have no hesitation in setting aside the impugned orders, and I do so in these writ petitions. A direction is issued to the Conciliation officer to provide the workmen in these petitions a status of protected workmen" in terms of the Act and the Rules for the relevant year.

14. At this stage, I must notice the submission of the Learned Counsel for the

respondents. There seems to be some proceedings pending in the Department. I deem it proper to make it clear that I have not expressed any opinion with regard to those proceedings and those proceedings are to be dealt with on their merits in accordance with law. This judgment is confined only to the order of the Assistant Labour Commissioner.

15. These two Writ Petitions are accordingly allowed. Impugned orders are set aside with no order as to costs.