

(2011) 02 KAR CK 0114

In the Karnataka High Court

Case No : Writ Appeal No's. 3893 and 3928 of 2005

Bharat Fritz Werner Ltd. and Machine Tools Manufacturers

APPELLANT

Vs

Assistant Labour Commissioner Division No. 11 and Bharat
Fritz Werner Karmika Sangha

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 (2) (b), 33 (4)

Karnataka Industrial Disputes Rules, 1957 — Rule 62, 62 (1), 62 (4)

Citation : (2011) 2 LLJ 850

Hon'ble Judges : J.S. Khehar, C.J.;A.S. Pachhapure, J

Bench : Division Bench

Advocate : K. Kasturi, for A.Y.N. Gupta and J. Aravind Babu, for the Appellant;
B. Veerappa, AGA for R 1 and K.S. Subrahmanya, for C/R 2, for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure, J.—The Appellant herein is a Company registered under the provisions of the Companies Act, 1956. It carries the business of manufacture and sales of Machine Tools etc., It has employed several employees/workmen for its business. The workmen who have been employed in the Company have formed a Union which is Respondent No. 2 herein. The Respondent No. 2 Union by its letter dated 04-04-2000 requested the Appellant to recognise five workmen viz., 1) K.A. Ganganna, 2) K.M. Biddappa, 3) S. Shivanna, 4) T. Aswathnarayan and 5) Mallappa as "Protected Workmen" for the year 2000-01 (01-05-2000 to 30-04-2001) under the provisions of Section 33(4) of the Industrial Disputes Act, 1947, (hereinafter called as "the Act") read with Rule 62 of the Industrial Disputes (Karnataka) Rules, 1957 (hereinafter called as the Karnataka Rules.

2. As the request of the Union was not considered within a reasonable time, the Respondent No. 2 Union raised a dispute in this behalf before Respondent No. 1 on 24-04-2000 and the Appellant raised the objections for recognition of K.A.

Ganganna and Shivanna as "Protected Workmen", since they were said to have been involved in criminal offences and the State had filed complaints against them in the Criminal Courts. In these circumstances, the Respondent No. 1 herein by order dated 04-07-2000 refused to accord the status of "Protected Workmen" to the aforesaid two workmen viz., K.A. Ganganna and S. Shivanna for the year 2000-01. Thereafter, on 05-07-2000 the Appellant dismissed K.A. Ganganna from the services for the misconduct said to have been committed by him, after a domestic enquiry conducted by the Enquiry Officer and filed an application u/s 33(2)(b) of the Act for approval of the action taken before the Labour Court, where the industrial dispute with regard to the recognition of the aforesaid workmen i.e., K.A. Ganganna and Shivanna was decided.

3. Further, Respondent No. 1 by his order impugned in the writ petition refused to recognise them as "Protected Workmen" Aggrieved by the order passed by Respondent No. 1 the Union approached this Court in W.P. Nos. 42719/2001 and 42720/2001. The Respondent No. 2 Management filed the objections putting forth the grievances that the said two workmen were involved in commission of criminal offences and that the Assistant Labour Commissioner was justified in passing the order refusing recognition of the said two persons as "Protected Workmen" and as the learned Single Judge allowed the writ petition of the Union, the management of the Appellant Company has filed these appeals challenging the order passed by the learned Single Judge.

4. We have heard the learned Counsel for both the parties.

5. The learned Counsel for the Appellant would contend that the order passed by the first Respondent No. 1 herein by refusing the recognition of the aforesaid two persons as there were criminal cases against them at the time when the names were communicated by the Union to the Appellant Management for their recognition as "Protected Workmen", was just and proper. Therefore, he contends that the order passed by the learned Single Judge setting aside the orders of the Assistant Labour Commissioner is erroneous.

6. Now, so far as the number of workmen to be recognised as "Protected Workmen" depends upon the number of employees working in the company and the Union would be at liberty to send the names of workmen subject to a minimum of 5 employees under the provisions of Section 33(4) of the Act. It is no doubt true that the Respondent No. 2 Union sent the names of 5 persons including the names of Ganganna and Shivanna and as there were criminal cases against the aforesaid two persons, Respondent No. 1 refused to recognize the aforesaid persons as "Protected Workmen" while he granted the status of workmen so far as the remaining 3 employees. Now, in this context, it is necessary to consider the provisions of Rule 62(1) to (4) of Karnataka Rules which prescribe the procedure so far as the recognition of workmen is concerned. The said Rule is extracted hereunder:

62. (1) Protected Workmen: (1) Every registered trade union connected with an

industrial establishment, to which the Act: applies shall communicate to the employer, before the 30th April every year, the names and addresses of such of the officers of the union who are employed in that establishment and who in the opinion of the union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to Section 33, Sub-section (4) recognise such workmen to be "protected workmen" for the purposes 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 workmen recognised as protected workmen.

(3) 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 recognised 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.

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered Trade Union in any matter connected with the recognition of "protected workmen" under this rule, the dispute shall be referred to the conciliation Officer concerned, whose decision thereon shall be final.

(The underline is ours).

7. As per Sub-rule (1) of Rule 62, the Union has to send the names of 5 persons before 30th April every year and when such names are sent, the employer has a duty to consider the recognition of such workmen as "Protected Workmen" for the purpose of Sub-Section 3 of Section 33 and communicate to the Union in writing within 15 days of the receipt of the names and addressees under Sub-rule (1), the list of workmen recognised as "Protected Workmen". With reference to Sub-rule (2), it is the contention of the learned Counsel for the Respondents that, when there is a duty cast upon the employer to communicate to the Union the names of the recognised workmen within 15 days of the receipt of the names, the failure on the part of the employer impliedly leads to the acceptance of the recognition of the names sent as "Protected Workmen". According to the learned Counsel, it is a deeming provision and the word "shall" having been used under Sub-rule (2), it is imperative on the part of the employer to communicate

the recognition of the workmen as "Protected Workmen", failing which it is deemed that the recognition is granted to those whose names have been sent by the Union.

8. On this aspect of the matter, the learned Counsel relied upon the Division Bench decision of the High Court of Gujarat reported in *R. Balasubramanian and Others Vs. Carborandum Universal Ltd., Okha*, wherein it has been held by the High Court of Gujarat that once the Union makes its choice of "Protected Workmen" and communicates it to the employer by the due date, Rule 66 of Bombay Rules casts mandatory obligation that the employer shall recognize the workmen as "Protected Workmen" subject to the statutory provision made in Section 33(4) and in view of the mandatory language of Rule 66(2) of Bombay Rules, the employer can refuse to recognise the protected workmen only if he can bring the case within the statutory grounds provided in Section 33(4) of the Act. In the said case, the list was sent by the Union which contained only the minimum number of five persons as required under Clause 33(4) of the Act and the High Court held that there was no valid or bonafide ground which the employer could have taken. It further said that the employer had no option but to send the recognition and the failure on the part of the management would not lead to non recognition. So, in view of Rule 66(1) of Bombay Rules, the High Court held that even the absence of any express recognition, it has to be necessarily presumed and the persons would be recognised as "Protected Workmen" from the date of the application. As the Rules referred in the aforesaid decision are similar to the Karnataka Rules, he submits that the employer having not communicated the names of five workmen sent for recognition, it is deemed to have been recognised and that recognition relates back to the date of their application filed. So also, the counsel relied upon an unreported judgment of this Court in *W.P. 1420/1995* dated 13th July 1995. wherein it is observed as under:

Since the only objection that the employer could raise is confined to Section 33(3) read with Rule 62(2) and as this objection, as a matter of fact, does not exist in this case no illegality has been committed by the 1st Respondent in proceeding to decide the claim made under Rule 62(4).

9. So relying upon the decisions, it is the contention of the learned Counsel for Respondent No. 2 that when the Union sent the five names, it was mandatory on the part of the employer to recognize the said persons as "Protected Workmen", as there is no breach of the provisions of Section 33 (3) and (4) of the Act which according to him is the only objection that the employer could raise.

10. Now advertent to the contention on of the learned Counsel for the Appellant, it is relevant to note that in a case, where a dispute arises between an employer and the Trade Union, in any matter connected with the recognition of a "Protected Workmen", the dispute shall have to be referred to the Conciliation Officer concerned and his decision thereon shall be final. So far as the word "dispute" mentioned in Sub-rule (4) of Rule 62 is concerned, there is no definition provided under the Rules about the nature of the dispute. Thereby, it is

a matter of interpretation of the said Rules, so as to consider the scope of dispute that is to be decided by the Conciliating Officer.

11. The law is made to protect the good and to punish the bad. So, if the dispute referred in the Rule is looked into in this context, the Conciliating Officer has taken a just decision in refusing to recognise the names of the aforesaid two persons on the ground that they were involved in criminal cases. The learned Counsel for the Appellant has placed reliance on the decision of the High Court of Madras reported in Parthasarathy N. Vs. Blue Star Limited and Another, , wherein, the Division Bench of the Madras High Court took into consideration a similar provision contained in the Rules of West Bengal referred to in the case of P.H. Kalyani. v. Air France Calcutta (supra), wherein it was opined as under:

The question whether a particular workman is a protected workman or not for the purpose of Section 33, Industrial Disputes Act is a question of fact, and the finding of the Labour Court on such a question will generally be accepted by the Supreme Court in appeal from the award of the Labour Court as conclusive.

Furthermore, it also held as under:

34. While considering the usage of the word "deemed" in the Central Sales Tax Act, the Supreme Court in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, Paragraph 11, observed that:

The word "deemed" is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object, the Legislature has made such a deeming provision. In St. Aubyn v. Attorney-General Lord Radcliffe observed thus:

The word "deemed" is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it used to put: beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, What is uncertain and what is, in the ordinary sense, impossible.

40. Rule 65(5) enables the aggrieved person to refer the dispute to the Labour Officer, whose decision shall be final. if Rule 65(2) has to be interpreted in such a manner to confer deemed status on the failure of the management to communicate in writing within 15 days from the date of receipt: of the union's letter, then Rule 65 (5) cannot be given effect to and such interpretation would make Rule 65(5) otiose/redundant. The rights and obligations sought to be enforced by the Appellant are those created by the Industrial Disputes Act and the rules framed thereunder. When the dispute relates to the enforcement of a

right or an obligation created under the Act, then the original remedy available to the workmen is to get adjudication of the dispute under the Act before the competent authority, viz., the Labour Officer under Rule 65(5) of the Tamil Nadu Industrial Disputes Rules.

46. In view of the specific language employed in Section 33 of the Act and Rule 65(2), of the Rules framed thereunder requiring specific recognition in the manner as provided for, we are of the considered view that there must be a positive action on the part of the employer to recognise the employees mentioned in the list of Union as Protected Workmen before they could claim protection guaranteed to them u/s 33 of the Industrial Disputes Act and the concept of "deemed recognition" cannot be impliedly imported into the Section to provide legislative safeguards. Unless there is a positive decision taken by the management in this regard and communicated to the trade union in writing within the stipulated time, it cannot be said that the workmen have automatically acquired the status of "protected workmen", on the failure of the employer to communicate within 15 days. Our view is also fortified by the decision of the Apex Court in *P.H. Kalyani v. Air France, Calcutta* (supra). In view of the above decision, the contention of the Appellant that he is a protected-workman cannot be countenanced in law.

12. So as could be seen from the interpretation of the provisions of Rules 1 and 4 of Rules 62 of Karnataka Rules, there is no such deeming provision so far as the recognition of an employee as "Protected Workmen". Even the Apex Court in the decision reported in *P.H. Kalyani Vs. Air France Calcutta*, has held as under:

5. ...The Labour Court has held that according to the rules framed by the Government of West Bengal as to the recognition of protected workmen there must be some positive action on the part of the employer in regard to the recognition of an employee as a protected workman before he could claim to be a protected workman for the purpose of Section 33. Nothing has been shown to us against this view. In the absence therefore of any evidence as to recognition, the labour Court rightly held that the Appellant was not a protected workman and therefore previous permission u/s 33(3) of the Act would not be necessary before his dismissal.

13. So, even as could be seen from the principles laid down by the Apex Court, a positive action on the part of the employer is necessary recognising an employee as a "Protected Workmen". Here, in the case on hand, it is relevant to note that there is no positive action on the part of the employer which led to the dispute and it is the first Respondent who took a decision refusing the recognition of the aforesaid two workmen as "Protected Workmen" So as stated above, when a person is facing criminal charges, the law would not come to the help of such persons to protect them so as to defeat the very purpose of the legislation.

14. This Court in an unreported judgment in W.P. No. 33915/2004 dated 14-06-2005 has taken into consideration the question of recognition after the

expiry of the period for which a person should be given the status of "Protected Workmen" and held that in case if the period has already expired, there is no question of recognising such person as "Protected Workmen". So when the recognition was sought for the period from 01.05.2000 to 30.04.2001, and the said period had expired by the time the writ petitions were filed, there is no question of granting recognition retrospectively, particularly in a case Where the proposed workmen are of abnormal conduct. Any how, it is relevant to note that the scope of the word "dispute" used in Sub-Rule 4 of Rule 62 is wide enough to include the workmen against whom there are criminal charges and thereby differentiate between the good and bad. Though there is no exhaustive definition of the word "dispute, there can be many illustration"s amongst which one is u/s 33(4) of the Act with regard to the number of employees to be recognised and the other could be the aberrant conduct of workman, therefore, in our considered opinion, a person is not entitled for the recognition as a "Protected Workmen", so long there are criminal charges against him.

15. The learned Single Judge took into consideration the provisions of Section 33(4) of the Act and despite the fact that there were criminal charges against the aforesaid two workmen, held that the Assistant Labour Commissioner the first Respondent herein was not justified in refusing the recognition of the said workmen. This approach in our considered opinion is erroneous. So also, we disagree with the view expressed by the High Court of Gujarat in the decision referred to supra. At the same time, the High Court of Madras has taken a just view by enlarging the scope of dispute referred to in Rule 66(5) of the Tamil Nadu Rules which is similar to Rule 62(4) of Karnataka Rules and has held that there has to be a positive action on the part of the employer recognizing the employees as "Protected Workmen" and in case if there is any failure on his part to recognise the employees, the dispute has to be decided by the Conciliating officer. The Respondent No. 1 after hearing both the parties has taken a just decision refusing to recognise the aforesaid workmen and that order has to be upheld.

16. In that view of the matter, the writ appeals are allowed by setting aside the order of the learned Single Judge in the aforesaid writ petitions and the order of the first Respondent i.e., the Assistant Labour Commissioner refusing recognition of the aforesaid persons as "Protected Workmen" is restored.