
(1983) 01 MAD CK 0060
In the Madras High Court

Chemplast Employees Union

APPELLANT

Vs

The Appellate Authority under the Industrial Employment
(Standing Order) Act, 1946. The Labour Court and Others

RESPONDENT

Date of Decision : 21-01-1983

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10(2)

Citation : (1983) 2 MLJ 476

Hon'ble Judges : S. Mohanj, J;S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—The short question that arises for consideration in this case is whether an appeal can be maintained before the appellate Authority by the petitioner-union. It is submitted that there are certified Standing Orders between the Management of Chemicals and Plastics India Limited, Mettur Dam and the Workmen. The Management wanted an amendment to modify the Standing Orders and therefore u/s 10(2) of the Industrial Employment (Standing Orders) Act, 1946, herein after referred to as the "Act", notice was issued to the Union, namely, the writ petitioner herein Chemplast Employees Union and another union by name Chemplast Operators and Workers Union, Mettur Dam. The certifying Officer passed an order, dated 23rd September, 1980, overruling the objections of the Union and allowed the amendment as prayed for by the Management. Against that order an appeal was preferred to the Labour Court, Coimbatore. One of the points urged was that the Union has no right to prefer the appeal. This was upheld by the Labour Court on the basis of the rulings reported in Sundaram Industries Limited Vs. Secretary, Madurai Motor Labour Union and Others, . It is the correctness of this order that is questioned before me by the learned Counsel for the petitioner stating that u/s 10(2) of the Act, the right to move an amendment to the Certified Standing Orders is conferred either upon the Management or the workmen. However, it does not curtail the rights of the Union to make a representation in opposition to the amendment sought for. As a matter of fact, a careful reading of Section 10(3) of the Act will clearly show that the

procedure either for the original certification or the amendment to be carried out to the Certified Standing Orders, is the same. Where therefore, u/s 5(2) of the Act, an opportunity is given to the Trade Union or any other representative of the workmen to put forth its objections, the same procedure is equally applicable to this case as well. The Labour Court had gone wrong in applying the rulings reported in Sundaram Industries Limited Vs. Secretary, Madurai Motor Labour Union and Others, . That was a case wherein the question related to the right of a Union to prefer an amendment. Having regard to the restricted language employed in Section 10(2), it was held that the Union had no such right. That is distinguishable clearly because, we are not concerned with the right to move. We are only concerned with the right to make a representation where either of Union or the workmen seek an amendment. Therefore, the order is liable to be quashed.

2. In opposition to this, learned Counsel for the Management says that once the right to move an amendment is conferred only on the workmen or the management as the case may be, merely because a notice was given by the Certifying Officer, it cannot be contended that the Union is a person aggrieved. This is all the more so, because the Union has no right to seek an amendment. In such a case it stands to reason that it has equally no right to appeal as well. An union cannot be considered to be a person aggrieved is well-settled by the decision of this Court which is rightly relied on by the Labour Court reported in Sundaram Industries Limited Vs. Secretary, Madurai Motor Labour Union and Others, .

3. I have given my careful consideration to the above matter. The matter has not been adverted to in the proper perspective by the Labour Court. The Writ Petitioner Union was correctly heard when the management wanted to seek an amendment before the Certifying Officer. Section 10(3) of the Act reads as follows:

The foregoing provisions of this Act shall apply in respect of an application under Sub-section (2) as they apply to the certification of the first standing orders.

By a reading of this, it is clear that the procedure either for certification, or for the amendment to the Certified Standing Orders is the same. That procedure is set out in Section 5(2) of the Act which is extracted below:

After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

In other words, it is as though by reason of Section 10(3) of the Act, entire procedure contemplated u/s 5(2) of the Act gets attracted. We are not concerned as correctly put by the learned Counsel for the petitioner, with the right to move for an amendment. That of course, as my learned brother held in Sundaram Industries Limited Vs. Secretary, Madurai Motor Labour Union and Others, , is

confined only to the workmen or to the Management. But where an amendment is sought either by the Management or the workmen, certainly, the Trade Union or even the representative of the workmen would be entitled to be heard. By reason of Section 5(2) of the Act. which as I stated above, gets attracted by the operation of Section 10(3) of the Act. In such a case, therefore, it is impossible to contend that the Union cannot prefer an appeal. Apart from the statutory source of Section 10(3) of the Act read with Section 5(2) of the Act, an Union having a right to be heard when an amendment is sought for, even on the general principle, I should hold that the Union has right to move. This is because the Certifying Officer rightly arrayed the writ petitioner along with another Union. Therefore, there was a lis created between the Union and the Management. Even otherwise, where the Union put forth certain representations which representations though overruled by the Certifying Officer, it has every right to file an appeal. The party who was heard and against whom an adverse decision was made is still entitled to say that he could file an appeal. That exactly is the simple position in this case. Therefore, I have no hesitation whatever to quash the impugned order and remand the matter to the Labour Court, Coimbatore for fresh consideration on merits. The writ petition is allowed; but in the circumstances without costs.