

(2003) 12 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition 27739 of 2003

DHL Worldwide Express (I) Pvt. Ltd.

APPELLANT

Vs

Airfreight Employees Union and Another

RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

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

Citation : (2004) 101 FLR 399 : (2004) ILR (Kar) 1307 : (2004) 2 KCCR 783

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : C.K. Subramanya, for B.C. Prabhakar, for the Appellant; K.S. Subramanya, for R1, Deshraj, AGA for R2, for the Respondent

Judgement

N. Kumar, J.—The petitioner is a Private Limited Company registered under the Indian Companies Act and has a separate legal entity carrying on the business in the name and style of "DHL Worldwide Express (I) Private Limited". Before formation of this petitioner-Company in the year 1981, the business which it is carrying on was formed part of division of a Company by name "Airfreight Limited". It is in 2001, the said courier business was spin off into a separate entity namely, the petitioner-company. Before separation of Airfreight Limited, the workers of Airfreight Limited, had formed an Association by name "Airfreight Employees" Union", the 1st respondent herein. At the time of incorporation of the Company in 2001, the Workmen employed in Courier division were taken over by the petitioner-Company and thereafter, they became the employees of the petition-company and they ceased to have any connection whatsoever with the parent company.

2. The 1st respondent-Trade Union addressed a joint letter to the Airfreight Limited as well as to the petitioner-company on 10.3.2003 with a request to recognise five of their workmen as Protected workmen u/s 33(4) of the Industrial Disputes Act, 1947 (hereinafter referred as "the Act") for the year 2003-2004.

Annexure-A is the copy of the said letter. The petitioner replied to the said letter by contending that no such union by name "Airfright Employees" Union" is functioning in the petitioner-company, therefore, they do not recognise the 1st respondent union and that even the 1st respondent has no locus-standi to seek recognition of the workmen of its company as protected workmen. Apart from this, five employees for whom they have claimed the protected workmen status, only three were on the rolls of the petitioner-company and therefore, it has rejected the said request. Thereafter, the 1st respondent made an application by way of a letter dated 4.4.2003 to the 2nd respondent seeking recognition for the five persons, whom they have been mentioned in the aforesaid letter. Thereafter, the 2nd respondent sent a notice to the petitioner and called upon them to have their say in the matter. The petitioner appeared before the 2nd respondent and filed a detailed reply contending that the 1st respondent has included the three names of its employees for recognition as protected workmen. As the petitioner do not recognise the 1st respondent union, it is espousing the cause of the workmen working in their establishment. It was further contended that there is only one union by name "DHL Worldwide Employees" Union, which has got majority of the workmen of the Bangalore Office, is functioning in the petitioner establishment. Accordingly, the petitioner has entered into settlement with the said union. Therefore, the question of recognising the members of the 1st respondent as protected workmen would not arise. It was subsequently contended that Airfreight Limited and petitioner is two different and distinct legal entities and no representation can be made to them in common. Therefore, they sought for rejection of the request of the 1st respondent. On considering the rival contentions, the 2nd respondent passed the impugned order on 6.5.2003 overruling the objections raised by the petitioner and granted the recognition as sought for by the 1st respondent as protected workmen to five of its employees. Aggrieved by the said order, the petitioner has preferred this Writ Petition.

3. Learned Counsel for the petitioner assailing the impugned order first contends that the 1st respondent-union has no connection with the petitioner-establishment. Therefore, the question of considering the request of conferring the status of protected workmen to their members would not arise. Secondly, it was contended that in the petitioner-establishment, already there is union by name "DHL Worldwide Express Employees" Union", with whom in fact, they have already entered into settlement which is being disputed by the 1st respondent. The Conciliation Officer has not granted his approval to the said settlement and therefore, the matter is before the Labour Court for adjudication. Therefore, the question of recognising the employees of the 1st respondent as protected workmen would not arise. Lastly, it was contended that though these facts are brought to the notice of the authorities, the authority neither considered the said contentions nor held any enquiry to find out the truth or otherwise of these allegations but has mechanically proceeded to grant the prayer sought for by the 1st respondent. Therefore, he submits that the impugned order requires to be quashed.

4. Per contra, the learned Counsel appearing for the 1st respondent-Union submits that the petitioner has recognized its workmen during the period 2001-2002 by granting the status of protected workmen. So it is not fair on the part of the petitioner to contend that the 1st respondent-union is not connected with it. When the petitioner declined to grant the said status, the 1st respondent had no option except to approach the authority. The authority after considering the rival contention has rightly conferred the status of protected workmen. Though they claim the status of protected workmen to five workmen, three of them are from the petitioner-establishment and two of them are from Airfreight Private Limited. Therefore, the authority committed no illegality in granting the said status. As such, no case for interference with the impugned order is made out.

5. In order to appreciate the aforesaid rival contentions, it is necessary to have a look at the provisions, which governs the same. Section 33 of the Act deals with the conditions of service etc. of the workmen. Section 33 (3) & (4) of the Act deals with recognition of protected workmen and protecting their interests during the pendency of an industrial dispute. The said provisions read as under:

"Section-33(3); Notwithstanding anything contained in Sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute-

a) By altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

b) By discharging or punishing whether by dismissal or otherwise, such protected workman.

Save with the express permission in writing of the authority before which the proceeding is pending.

Explanation - for the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office-bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

Section 33(4): In every establishment, the number of workmen to be recognised as protected workmen for the purposes of Sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen."

6. The Rules framed by the State Government under the provision i.e., under

Rule 62 of the Industrial Disputes (Karnataka) Rules, 1957 reads as under:-

Rule 62: 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.

7. A reading of the above provision makes it clear that a "protected workmen" in relation to an establishment means, a workmen who, being a member of the executive or other office-bearer of a registered trade union connected with the establishment is recognised as such in accordance with rules in this behalf. Therefore, before status of protected could be given, three things have to be satisfied. They are:-

- a) He should be a workman
- b) He should be a member of a registered trade union, and
- c) The said registered Trade Union should be connected with the establishment

8. Sub-section (4) of section 33 deals with the number of person who could be recognised as protected workmen. It states the number of persons who could be recognised as protected workmen shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of hundred protected workmen. If there are more than one trade union in an establishment, the aforesaid Section empowers the company to make rules providing for the distribution of such protected workmen among various trade unions. Rule 62 is a Rule framed for the aforesaid purpose. On a representation made by the union requesting for recognition of the persons mentioned in the list as protected workmen, it is open for the management/employer to grant the said recognition and thereafter, it/he shall communicate to the President or the Secretary of the union in writing intimating the number of protected workmen allotted to it, within 15 days of the receipt of the request.

The said recognition of persons as protected workmen would be for a period of one year.

9. The problem arises if there is more than one union. In the event of a dispute between the employer and the registered trade union in any matter connected with the recognition of the protected workmen, the dispute shall be referred to the Conciliation Officer concerned and whose decision thereof shall be final. This is the procedure under the Act and Rules for making the request for recognition of employees as protected workmen and also in the event of a dispute, for resolution of the said dispute.

10. Now the question for consideration is, when a dispute arises between the Registered Trade Union and the workmen, what is the procedure to be followed by the Conciliation Officer concerned and what is the nature of enquiry, which is contemplated and required to be done by him. The nature of proceedings before the Conciliation Officer is in the nature of a Quasi-Judicial Function. A valuable statutory right conferred on the workmen is sought to be decided by the Conciliation Officer when there is a dispute between the parties. Therefore, it is implicit under the powers provided, he must follow the principles of natural justice in giving equal opportunities to the parties before him and also hear the party/person who would be affected by his order and if that party/person is not made a party by either of the parties, it is incumbent upon him to implead such affecting party/person as a party and then decide the dispute between the parties. It is because, actually, the dispute arises when there is more than one trade union and the request of the one Trade Union is accepted by the Management without considering the grievances of the other union. Then, naturally, the aggrieved Trade Union while approaching the Conciliation Officer impleads only the Management and not the other Trade Union. If the entire enquiry is conducted behind the back of that competent Trade Union, without notice to them, any order passed, it would definitely affect the interest of the other union and violates the principles of natural justice. Therefore, when a dispute arises between one Trade Union and the employer regarding recognition of the workmen as protected workmen and if that dispute is sought to be resolved by the Conciliation Officer under the proviso to Sub-rule (4) of Rule 62, he has to verify whether the parties before him have made the other Trade Union as a party or not, if it is not made a party, a duty is cast on the Conciliation Officer to send notice to the other union and hear them also and pass order. It is because, when there are more than one Registered Trade unions in an establishment, if the Conciliation Officer has to distribute the status of protected workmen among the Union, he should take into account the total members of the unions for an effective adjudication of the dispute, and allot the status of protected workmen in proportion to their membership. Therefore, while deciding such dispute of the Trade Union, all the Registered Trade Unions connected with the establishment should be necessary parties to the proceeding. Thereafter, if the employer were to contend that the Registered Trade Union which is complaining is not connected with the establishment and that the members of the said union are not the workmen of the establishment, it is incumbent upon the Conciliation Officer to secure the list of members of the Registered Trade Unions and then call upon them to show how the said union is connected with the establishment. It is only thereafter, he should be in a position to adjudicate the dispute between the parties. From the aforesaid provisions, it is clear though the registration of a Trade Union is a condition precedent for entertaining such claims of either of the employer or adjudication of the dispute by the Conciliation Officer, recognition of such union by the employer, is of no consequence.

11. In the light of these legal positions, if we analyze the facts of this case, the

petitioner came into existence in the year 2001 as a legal independent entity having registered under the provisions of the Companies Act and in the year 2001-2002, the petitioner has recognised the protected workmen as per the names of the workmen suggested by the 1st respondent. For the year 2003-04, when such request was made, the petitioner raised an objection to the effect that three members out of five employees only are working in their establishment and two are not their employees and their establishment already has a trade Union by name "DHL Worldwide Express Employees" Union" and it is the only union connected with it. Subsequently, the petitioner company has contended that the 1st respondent-union is not connected with its establishment. Therefore, the Conciliation officer ought to first find out whether the 1st respondent-Union was connected with the petitioner-Establishment and then to find out whether the "DHL Worldwide Express Employees" Union" with whom the petitioner claimed to have entered into settlement, is a Registered Trade Union and if so, what is their membership. When the petitioner has categorically stated that they have nothing to do with the 1st respondent-Union, he should have verified the strength of the members of the 1st respondent-union and whether those members are the workmen of the petitioner-establishment. A reading of the impugned order makes it very clear that an enquiry in this regard has not been made by the 2nd respondent. The 1st respondent did not implead the DHL Worldwide Express Employees" Union at all and no steps were taken in this regard. When there is a dispute between the employer and the Trade Union, it was subsequently, contended before him that there is one more Trade Union, then a statutory duty is cast upon the Conciliation officer to send notice to the other union in order to ascertain whether the said union is a registered union and if so, how many members are there and how many workmen out of the petitioner are their members in order to give proportionate recognition of the status of protected workmen. Even that exercise has not been done by the 2nd respondent.

12. Learned Counsel appearing for the 2nd respondent has contended that the petitioner-company did not produce any material to show that there is one Registered Trade Union which is already having protected workmen and with whom their settlement has been arrived at. This coupled with the fact that for the previous year the petitioner has recognised the workmen sponsored by the 1st respondent as protected workmen, the authority was not under any obligation to conduct any enquiry as referred to above. In this regard it is to be noted that the orders passed by the authority will be in force only for one year. Therefore, the principles of res-judicata is not attracted when the very order passed is for one year and it will come to an end after the expiry of the said period. Secondly, it is contended that once it is urged that there is one more union other than that union, the Conciliation Officer has to find out the nature of the union, the strength of the union, whether the union has been registered or not and thereafter, in terms of the proviso contained u/s 33(4), confer the status of the protected workmen in proportion to the membership of the union. In fact in the counter filed before this Court, the 1st respondent has taken a specific

stand that the petitioner has entered into settlement with the DHL Worldwide Express Employees" Union which is not acceptable to them and the Conciliation Officer has not accepted the same and therefore the said dispute in I.D. No. 159/2002 is pending before the Tribunal. In that the petitioner has sought approval for dismissal of its employees who was in the list of "Protected Workmen". Other two employees are opted for voluntary Retirement. Therefore, the existence of the other union is not disputed, entering into a settlement by the petitioner with the said union is not disputed. What is disputed is the validity of such statements.

13. Under the facts and circumstances stated above, I am of the view that the impugned order passed by the authority without properly appreciating the legal requirements and the disputed facts in the case and without recording the finding on disputed questions, cannot be sustained. In fact, the claim was against two establishments. Now by the impugned order 5 persons have been conferred status of protected workmen without specifying to which establishment they have been given the said status. Under the circumstances the impugned order cannot be sustained. Accordingly, it is hereby quashed. Hence I pass the following order:-

a) Rule is made absolute.

b) The impugned order at Annexure-E passed by the 2nd respondent is hereby quashed.

c) The entire matter is remitted back to the 2nd respondent for fresh consideration for adjudicating the claims of all the parties in the light of the observations made above with a further direction to send notice to the other union which is connected with the petitioner-establishment in the event of either of the parties failing to make other union as a party, and to hear them also, and then pass an appropriate order in accordance with law and on merits of the case. This exercise shall be done within a period of one month from the date of communication of this order.