

(2004) 04 MAD CK 0188

In the Madras High Court

Case No : Writ Petition No. 2956 of 2001

Gem Granites

APPELLANT

Vs

Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25, 25O, 25T, 34

Citation : (2005) 1 LLJ 183

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : A.L. Somayaji, for Gupta and Ravi, for the Appellant; K.M. Ramesh, H. Hidayathulla Khan and Premkumar, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner seeks to challenge G. O. (D) No. 975 dated November 29, 2000, in and by which, the first respondent State Government has referred two issues for adjudication before the Industrial Tribunal, Chennai, u/s 10 of the Industrial Disputes Act.

2. The issues referred for adjudication are:

(i) Whether the transfer of the following eight workmen from the establishment of Gem Granites at Injambakkam, Chennai to its branch situated at Karnataka State, the termination of 23 probationers on and from September 10, 1998 on the ground that they joined the trade union and also the termination of another set of 33 workmen who opposed the above said activities of the management would all amount to " unfair labour practice" as claimed by the union?

Names of the transferred eight workmen

1. T. Baskaran
2. R. Varadhan

3. M. Shankar
4. M. Selvaraj
5. T.V Shanmugham
6. K. Rajendran
7. V. K. Prakasam and
8. S. Jacob

Names of the terminated 23 probationers:

1. K. Natarajan
2. J. Pethuru
3. J. Masthanaiah
4. K. Kurugan
5. K. Arivazhagan
6. A. Chinnappa
7. K. Gengappa
8. R. Thangamani
9. S. Scnthil Kumar
10. M. Kather Basha
11. N. Punniamurthy
12. R. Swamynathan
13. G. Govindaraj
14. K. Panner
15. K. Manokaran
16. K. Palani
17. N. Selvamani
18. C. Elumalai
19. P. Venugopal
20. R. Ganesan
21. S. Jeeva
22. B. Kannan
23. K.V. Nagaran

Names of the terminated 33 workmen:

1. Logadurai
2. P. Muniappa
3. R. Chandran
4. M. Vedachalam
5. A. Sivakaminathan
6. A. Nathan
7. D. Karunakaran
8. S. Baskaran
9. S. Anbu
10. M. Venkataraman
11. S. Anbazhagan
12. D. Balakrishnan
13. C.H. Venkataramayya
14. A. Rajendran
15. N. Arjunan
16. E. Ramu
17. C. Nagaraju
18. V. Govindasamy
19. R. Manoharan
20. K.B. Venugopal
21. A. Baasha
22. P.K. Murugan
23. K. Anandan
24. V. Kuar
25. S. Murugan
26. A. Sundaram
27. V. Suresh Babu
28. I. Dcnnison
29. P. Vijayan

30. R. Mohan

31. A. Saleem

32. K. Venkatesan

33. M. Krishnamurthy

(ii) Whether the temporary suspension and imposition of 8 days' wage cut to the 33 workmen of the management of Gem Granites in its Injambakkam establishment and the subsequent based on an enquiry amounted to imposition of double punishment on them by the management and whether that would amount to "unfair labour practice" ? If so, to what relief?

3. The main plank of attack of the petitioner-management as against the above said impugned order of reference is that, as regards the justification of the transfer of 8 workmen, earlier there was a reference to the very same Industrial Tribunal in I.D. No. 100 of 1998, that in the said dispute, an award came to be passed by the Tribunal on May 26, 2000 holding that the transfer was justified; that while holding so, the Tribunal ruled that there was no allegation of victimisation pleaded at the instance of the union, that as regards the non-employment of 23 probationers and 33 permanent workmen, another dispute came to be referred before the very same Industrial Tribunal in I.D. No. 818 of 1999 and in the circumstances, the present order of reference cannot be maintained as it would be hit by the well settled principle of the very issue already forming part of the terms of reference in another existing dispute.

4. As regards the second issue also, it was contended that apart from the above-stated ground, there was one other order, dated November 29, 2000, in G.O.(D) No. 976, wherein the first respondent- State Government had declined to refer the dispute raised by the second respondent-union, wherein, the question of 8 days wage cut was specifically raised; where again, it was contended that such 8 days wage cut imposed would amount to an "unfair labour practice" of the petitioner-management.

5. Sri AL. Somayaji, learned senior counsel appearing for the petitioner, contended that having regard to the scheme of the provisions of the Industrial Disputes Act, 1947, the very purport of the provision for adjudication of the disputes between the management and the workmen having been provided, and when as a matter of fact, the substantive dispute relating to the justification of the transfer of 8 workmen, as well as, the termination of the 23 probationers and 33 permanent workmen being subject-matter of reference in the earlier disputes, while the second respondent-union, could at best allege "unfair labour practice" as one of the grounds of attack while seeking appropriate remedy in those disputes, it would be futile on the part of the first respondent-State Government to make a further reference as has been done under the order impugned in this writ petition.

6. According to the learned senior, counsel, especially as regards the justification

of the transfer of 8 workmen, when the Tribunal had already passed an award, which of course, is the subject-matter of challenge in the pending writ petition in W.P. No. 16139 of 2000, there would be no scope for the first respondent State Government to mention the said factor for the purpose of making the first issue as point of reference in the impugned Government order.

7. As against the above submissions, Sri K.M. Ramesh, learned counsel appearing for the second respondent would contend that after introduction of Chapter V-C, when "unfair labour practices" have been listed out in the Schedule V of the Act, the workmen as a body, are entitled to seek for appropriate reference with reference to any "unfair labour practice" committed by the management in order to work out their remedies in the event of such reference being answered in their favour. According to the learned counsel for the second respondent, unless such a declaration is validly made by the appropriate adjudicatory forum, the workmen may not be able to get their grievances redressed in the event of any unfair labour practice being committed by the concerned management. The learned counsel, therefore, contended that when the exact terms of reference under the impugned order is distinguishable, compared to the reference made in ID. No. 100 of 1998 as well as 818 of 1999, it cannot be held that the present issue referred for adjudication was overlapping on the earlier disputes so as to render the present impugned order to be interfered with as not maintainable.

8. Having heard the learned counsel for the respective parties, I find force in the stand of the petitioner in contending that the present reference made in G.O.(D) No. 975, dated November 29, 2000, cannot be maintained in the light of the issues which had earlier formed part of the references which, in one case, having been adjudicated upon, and has culminated into an award in I.D. No. 100 of 1998 and another dispute which is pending adjudication in I.D. No. 818 of 1999 on the file of the very same Industrial Tribunal, Chennai.

9. For the sake of better appreciation, the earlier issues which were referred for adjudication in the other two disputes need to be mentioned. In G.O.(D) No. 472, dated July 2, 1998, the dispute which was referred for adjudication was "whether the transfer of the 8 workmen mentioned therein, from Chennai to its branch situated at Karnataka State by the management was justified? If not, to what relief, they are entitled to?" Similarly in G.O.(D) No. 973, dated September 21, 1999, the issue referred for adjudication was "whether the termination of 23 probationers and 33 permanent workmen mentioned therein, by the management of Gem Granites, Injambakkam Branch was justified. If not, what is the relief to be granted?" G.O.(D) No. 472, dated July 2, 1998, is the subject-matter of reference in I.D. No. 100 of 1998, while G.O.(D) No. 973, dated March 21, 1989, is the subject-matter of reference in ID. No. 818 of 1999. As far as I.D. No. 100 of 1998 was concerned, the Tribunal has passed an award on May 26, 2000, holding that the transfer of 8 workmen concerned in the said dispute, was justified and the workmen were not entitled for any relief?

10. As pointed out by the learned senior counsel for the petitioner, in Para. 12 of the said award, it has been stated that the union has not mentioned the word "victimization" in its claim statement, though in the course of arguments, the learned authorized representative vehemently argued that it was a clear case of "victimization". The Tribunal has held that the union neither pleaded victimization, nor let in any evidence. At this juncture, it will have to be stated that Sri K.M. Ramesh, learned counsel appearing for the second respondent, however, contended that the said observation of the Tribunal was not correct and that in the writ petition filed by the second respondent-union as against the said award in W.P. No. 16139 of 2000, a challenge has been made among other grounds, on the ground that the said finding cannot be sustained, it was also pointed out that there is a complaint in Complaint No. 1 of 2000 which came to be filed since the transferred 8 workmen were subsequently dismissed from service and that the said complaint was allowed by the Tribunal holding that the dismissal of the said 8 workmen was not justified. It is stated that as against the said order of the Tribunal made in the Complaint No. 1 of 2000, dated June 22, 2001, another writ petition has been filed at the instance of the petitioner in W.P. No. 17664 of 2001 and that the said writ petition is also pending on the file of this Court.

11. Be that as it may, as far as I.D. No. 818 of 1999 is concerned, it is stated that the dispute is as on date pending on the file of the Tribunal. In such a situation, when the correctness of the impugned order of reference is considered, I find that the consideration of the present terms of reference, though it seeks to refer to the alleged "unfair labour practice" committed by the petitioner-management, on the basis of the transfer of 8 workmen, as well as, the termination of 23 probationers and 33 permanent workmen apart from imposition of 8 days", wage cut, yet it will have to be stated that any attempt to adjudicate the present reference would only involve the very issues relating to the justification or otherwise of the cases of "transfer" as well as "dismissal orders." In other words, the very adjudication of the dispute in I.D. No. 818 of 1999, wherein, the very many grounds of attack that may be made at the instance of the second respondent, would involve a consideration of questions among other things, about the unfair labour practice stated to have been committed by the petitioner- management. Therefore, when this very basis of the present issue of reference is already pending consideration before the Industrial Tribunal in I.D. No. 818 of 1999, it will have to be held that it would be wholly unnecessary for the Industrial Tribunal to make any attempt to independently investigate into the issue relating to "unfair labour practice" by virtue of the transfer of 8 workmen or the termination of the probationers and the permanent workmen. Such a concept was never thought of under the provisions of the Industrial Disputes Act in exercise of the power of the State Government u/s 10 of the Act, while making a reference for adjudication to the Tribunal.

12. After all, the purpose and intent of the Industrial Disputes Act is for

resolution of the relevant disputes as between the workmen and the management and when the very issue relating to the "transfer", as well as, the "non-employment" of the concerned workmen, had already formed part of the dispute which was either disposed of or pending before the Industrial Tribunal, it would be superfluous for the State Government to refer the further issue relating to "unfair labour practice" based on the very same allegation of "unjustified transfer" and "unjustified termination of the probationers and the regular workmen." Therefore, when the second respondent can validly contend in the pending dispute, this very issue as a ground of attack, namely "the commission of unfair labour practice by the management," while attacking the order of "transfer" as well as the "termination", the present order of reference will have to be held, as wholly uncalled for and the same cannot be allowed to remain in force.

13. As far as the contention of the second respondent-union that, but for the reference, there would be no scope for the workmen to get their grievances redressed in the event of any unfair labour practice being committed by the management, I am of the view that the same cannot be accepted. Under Chapter V-C of the Industrial Disputes Act, 1947, Sections 25-T and 25-O have been specifically provided prohibiting "unfair labour practice" and also the penalty in the event of such unfair labour practice being committed. Again u/s 34, it is provided that in the event of any offence being committed punishable under the provisions of the Industrial Disputes Act, the same can be maintained in the form of a complaint by or under the authority of the appropriate Government and that such a complaint can be investigated and tried by no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of first class. Therefore, when u/s 25(ii) the issue can be validly tried in the form of an offence u/s 34 of the Act by a judicial forum presided over by an officer at the level of a Metropolitan Magistrate or a Judicial Magistrate of first class at the instance of the authority of the appropriate Government. I am unable to accept the stand of the second respondent-union that the workmen would be left with no remedy in the event of commission of "unfair labour practice" by its management.

14. Therefore, it will have to be held that this very issue namely, the commission of "unfair labour practice" could as well be a ground of attack available to the second respondent- union in the pending dispute in I.D. No. 818 of 1999 and the same could as well be agitated while attacking the award in I.D. No. 100 of 1998 in the pending writ petition in W.P. No. 16139 of 2000. When such a scope for agitating the right of the workmen is already available in a pending dispute covering the very same cause of action, I do not find any validity at all in the impugned order of reference made by the first respondent-State Government. The order impugned is therefore, liable to be set aside and accordingly, same is set aside. The writ petition stands allowed. No costs.

15. However, if the second respondent-union seeks to raise a specific ground of unfair labour practice in the pending dispute of I.D. No. 818 of 1999, it is open to

the second respondent-union to seek for filing of any additional claim statement before the Labour Court, Chennai.