
(1984) 12 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 3975 of 1984

Gopalakrishna Textile Mills

APPELLANT

Vs

Workmen

RESPONDENT

Date of Decision : 14-12-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10 (1), 10 (1) (c)
Industrial Disputes Rules, 1957 — Rule 25 (2)

Citation : (1985) ILR (Kar) 3340

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : K.R. Rajagopalan, for the Appellant; Gopala Gowda, for R-1 and N. Devadas, HCGP for R-2, for the Respondent

Judgement

Rama Jois, J.—In this Writ Petition, the petitioner Gopalakrishna Textile Mills Pvt. Ltd., Subramanyapura, Bangalore, has prayed for quashing the order of the State Government made u/s 10(1) of the Industrial Disputes Act, referring certain points of dispute for industrial adjudication to the 2nd Additional Labour Court, Bangalore.

2. The facts of the case in brief are as follows :

By order dated 16th April, 1983 (Annexure-A) the State Government referred the dispute concerning the termination of the services of 48 workmen specified in the said order, by the petitioner, for industrial adjudication. Even as the said dispute is pending before the Labour Court, the State Government made another order dated 23-6-1983 (Annexure-B). It reads :

"Whereas the Government of Karnataka are of opinion that an Industrial Dispute exists between the workmen and the management of Gopalakrishna Group of Textiles, Bangalore on the points noted below :

And whereas the Government of Karnataka consider it desirable to refer the dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (C) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act. No. 14 of 1947), the Government of Karnataka hereby refer the said dispute for adjudication to the 11 Additional Labour Court, Bangalore.

POINTS of dispute

(1) (a) Are the management of . Gopalakrishna Textile Mills, Subramanyapura, Bangalore-61, justified in refusing employment to the workmen listed in Annexure-A with effect from the dates noted against each of them ?

(b) If not, to what relief, the said workmen are entitled ?

(2) (a) Are the management of Shiva kumar Textile Mills, Subramanyapura, Bangalore-61, justified in refusing employment to the workmen listed in Annexure-D with effect from the dates noted against each of them ?

(b) If not, to what relief the said workmen are entitled ?

(3) (a) Are the management of Giridhar Textile Mills, Subramanya-pura, Bangalore-61, justified in refusing employment to the workmen listed in Annexure-F with effect from the dates noted against each of them?

4. (a) Are the management of Madhusudhana Textiles Mills, Subra-manyapura, Bangalore-61, justified in refusing employment to the workmen listed in Annexure-E with effect from the dates noted against each of them ?

(b) If not, what relief the said workmen are entitled ?

5. (a) Are the management of Vijaya Textiles, Subramanyapura, Bangalore-61, justified in refusing employment to the workmen listed in Annexure-C with effect from the dates noted against each of them?

(b) If not, to what relief the said workmen are entitled ?

6. (a) Are the management of Sri Rama Textiles, Subramanyapura, Bangalore-61, justified in refusing employment to the workmen listed in Annexure-B with effect from the dates noted against each of them ?

(b) If not, to what relief the said workmen arc entitled?

3. In Annexure-A which is an enclosure to the aforesaid order, names of 35 workmen, as also the date with effect from which it was alleged that employment was refused to each of them are specified which is the point of dispute referred for adjudication under the aforesaid order. Aggrieved by the said order, the petitioner has presented this Petition.

4. The plea of the petitioner is as follows :

Though dispute concerning the termination of services of 48 workmen and the petitioner had already been referred for industrial adjudication under order dated 16-4-1983 (Annexure-A), under the impugned order, the State Government

purports to refer the dispute concerning the workmen 37 of whom are those included in Annexure "A". This is without authority of law. Further in the impugned order, in the preamble it is stated that dispute exists between the workmen and the management of Gopalakrishna Group of Textile Mills. There is no industry by name . Gopalakrishna Group of Textiles, Bangalore and therefore, the reference is invalid. The dispute referred for adjudication in so far it relates to 24 workmen, in both the orders, is the same though differently worded. The State Government had no jurisdiction to refer a point of dispute for adjudication u/s 10(i) of the Industrial Disputes Act, when the same point had already been referred for adjudication, by an earlier notification. The formation of an opinion that an industrial dispute exists between the management of a particular industry and its workmen, is a condition precedent for the exercise of power u/s 10(i) of the Industrial Disputes Act. In issuing the impugned notification, this condition precedent has not been satisfied for the reason that what the Government was satisfied was, that a dispute existed between the workmen and the management of . Gopalakrishna Group of Textile Mills which did not exist and not between the workmen and the management of . Gopalakrishna Textile Mills Pvt., Ltd.,

5. In support of the above submissions, the Learned Counsel for the petitioner relied on the following decisions ; The State of Bihar Vs. D.N. Ganguly and Others, Western India Automobile Industry Ltd. -v.- Industrial Tribunal 1949 I Ilj 243; Rohtas Industry Ltd., -v.- State of Bihar 1974 L & I.C. 1266; The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, ; Workmen of Mysore Paper Mills Ltd., -v.- Mysore Paper Mills 1980 L. & I.C. 1113; Shambu Nath Goyal Vs. Bank of Baroda, Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others,

The above submission made by the petitioners are supported by Sri Leelakrishna, Learned Counsel appearing for Respondent 3 - Trade Union.

6. As against the above submission, Sri N. Devadas, Learned H.C.G.P., appearing for the State and Sri Gopala Gowda,

Learned Counsel appearing for Respondent I-Trade Union submitted as follows :

(i) There is functional integrality between the industries specified in the impugned notification at points No. 1 to 6 as all of them are situated in the same locality and there is a common manager for some of them. There is a common canteen maintained in respect of all the industries. Therefore, it was competent for the Government to make a composite reference. In support of this submission, the Learned Counsel relied on the judgment of the Supreme Court in Dr. Zafar Ali Shah and Others Vs. The Assistant Custodian of Evacuee Property, Jhansi and Others,

(ii) Alternatively, though in the preamble to the impugned order, it is stated that the State Government was of the opinion that an industrial dispute existed between the workmen and the management of Gopalakrishna Group of Textile

Mills, Bangalore and their workmen, a reading of the points of disputes at once makes it clear that Government had referred for industrial adjudication, the points of dispute between each of the managements specified therein and their workmen which indicate that there were six industries whose workmen had raised industrial disputes and the State Government had made six references, though by a common order.

7. In my view, the reference to number of decisions relied on for the petitioners and the judgment of the Supreme Court on which the Learned Counsel for the 1st Respondent relied, is not necessary for the reason, I am convinced that submission made by Learned Counsel for the State that the impugned reference should be treated as six separate references, is well founded. A reading of the impugned notification which commences with the preamble that the State Government was referring the dispute between the workmen and the management of Gopalakrishna Group of Textiles, Bangalore and not Gopalakrishna Textile Mills, no doubt creates an impression that there exists an industry called Gopalakrishna Group of Textiles.

But a reading of the points of dispute set out in the order unmistakably indicate that the Government was referring six disputes namely,

- (1) the dispute between the management of Gopalakrishana Textile Mills, Subramanyapura, Bangalore and their workmen ;
- (2) the dispute between the management of Shiva kumar Textile Mills, Subramanyapura and their workmen ;
- (3) the dispute between the management of Giridhar Textiles Mills, Subramanyapura, Bangalore, and their workmen ;
- (4) the dispute between the management of Madhusudhana Textile Mills, Subramanyapura, Bangalore and the workmen ;
- (5) the dispute between the management of Vijaya Textiles Subramanyapura, Bangalore and their workmen ;
- (6) the dispute between the management of Sri Rama Textiles, Subramanyapura and their workmen ;

for adjudication. The names of workmen concerning whom the dispute had been raised, have been set out in the Annexure to the impugned notification. Therefore, the Labour Court is called upon to decide the dispute between the workmen and the management of six industries concerning the non-employment of workmen whose names are specified in the six annexures and not a dispute between the workmen specified in the six annexures and Gopalakrishna Group of Textile Mills treating it as one industry.

9. In this behalf, it is also pertinent to point out that the six industries are located in the same location i.e. Subrmanyapura and they had also corresponded with the conciliation officer as if these industries formed a group. In the

conciliation proceedings, in respect of six industries, a common notice was sent to the Manager of Gopalakrishna Textile Mills Private Ltd., describing them as a group of industries. In the reply dated 2-8-1983 sent by the Manager of Gopalakrishna Textile Mills, after referring to the subject matter in the preamble, the Manager stated thus:

"We are in receipt of your above notice. In this connection we wish to submit that the so called Bangalore Dakshina Taluk Hathi Girani Karmikara Sangha has not made any such demands to our Management and we have no such disputes with them and as such the necessity of any joint meeting will not arise at all. In fact, there are some demands made by the Textile Labour Association, Bangalore, regarding the very same persons referred to in your above notice and discussions are going on between the Textile Labour Association and the Management."

In the reply it was not pointed out that all the six industries were different and therefore, reply sent was only in respect Gopalakrishna Textile Mills and not in respect of others. On the other hand, a reading of that reply gives an impression that the Manager of Gopalakrishna Textile Mills was replying on behalf of six industries.

10. It is probable that in view of the mistake committed by the concerned Conciliation Officer and the Manager of Gopalakrishna Textiles, a single Notification came to be issued, though the Government itself had made six separate references on 16-4-1983 in respect of these six industries. The contents of the impugned order however gives the clearest indication that the State Government has referred the dispute between the workmen and the management of each of the six industries concerning the refusal of employment to the workmen whose names are set out in the Annexure and that the Government, has not treated . Gopalakrishna Group of Textiles as one industry. Once the substance of the matter is understood, all that can be said is that the Government which could have made six references by six separate orders has made one order and therefore it can be characterised as inadvertence in, or inept drafting of the order, but not without jurisdiction.

11. As far as the nature of the dispute is concerned while the point of dispute raised by the 3rd Respondent Trade Union was about the termination of the service of 48 work-men specified in Annexure A, the dispute raised by the 1st Respondent-Trade Union was, refusal of employment to 37 workmen whose names are set out in the Annexure to the impugned notification. It is true that consequences of termination of service of, and refusal to give employment to a workman already in service is the same though the nature of evidence would differ. Apart from this difference, admittedly out of the 37 workmen whose disputes are referred for adjudication in the impugned order, only 24 names figure in the first reference and the dispute concerning the rest of the 13 workmen whose names are found in Annexure-3 to the impugned notification, are persons whose disputes are not covered by the first reference. In the

circumstances, all that can be said is there is some amount of overlapping between the points of disputes but it is not correct to state, that the same dispute is referred for adjudication for the second time. Hence the very basis for the 2nd contention raised by the petitioner does not exist.

12. It is also necessary to observe that to cover a situation like this, i.e., when there are more than one reference which are connected with each other and the points of dispute referred for adjudication overlap, provision has been made in sub-rule (2) of Rule 25 of the Industrial Disputes Rules for clubbing the said matters together which reads:-

"(2) Subject to the provisions of sub-rule (1) the Tribunal shall also have the power to consolidate a number of references u/s 10 arising in the same industry and having common issues and give a single award determining such issues."

In view of this provision, it is open to the Labour Court to club the two references and decide six disputes together. For these reasons, there is no reason to strike down the impugned notification.

13. In the circumstances, the only direction that could be given to the Labour Court is to treat the impugned order as six separate references and dispose of the same in accordance with law. It would be open to the Labour Court to consolidate the two references in respect of each of the industries under Rule 25(2) of the Rules.

14. In the result, I make the following:

ORDER

(i) Writ Petition is partly allowed.

(ii) A direction shall issue to the Labour Court to treat the impugned order as making six separate references and to proceed to decide them in accordance with law and in the light of this order.