
(2003) 12 AP CK 0033
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 2199 of 2003

Gummadiseti

APPELLANT

Vs

The Joint Collector

RESPONDENT

Date of Decision : 30-12-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 2

Citation : (2004) 1 ALD 535 : (2004) 1 ALT 565

Hon'ble Judges : K.C. Bhanu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : C. Veera Reddy and C.V. Mohan Reddy, for the Appellant; B.D. Maheswara Reddy, Govt. Pleader for Labour, for the Respondent

Final Decision : Dismissed

Judgement

1. The core issue in these two writ petitions arises in connection with the election to recognise majority trade union in Panyam Cements and Mineral Industries Ltd., (hereafter called "Panyam Cements"), Cement Nagar, Kurnool District. Panyam Cements Employees Mazdoor Union (hereafter called "Mazdoor Union") and Panyam Cements Employees Union (hereafter called "Employees Union") are before this Court raising objection in the method and manner of inclusion and non-inclusion of certain categories of workers in the voters' list. Employees Union filed W.P.No.16250 of 2003 praying this Court for a direction to the Commissioner of Labour, Hyderabad, and Deputy Commissioner of Labour, Kunool, first and second respondents herein, to conduct election by secret ballot under code of discipline to determine the majority trade union in Panyam Cements pursuant to the memoranda dated 5-2-2003 and 21-3-2003. Be it noted that by the said memoranda, the two rival unions were called to attend the joint meeting before the Deputy Commissioner and Returning Officer along with necessary material to determine the majority union in Panyam Cements. Mazdoor Union filed W.P.No.23487 of 2003 challenging the letter of the Deputy Commissioner dated 30-10-2003 whereunder the Deputy Commissioner rejected

the request of the Mazdoor Union to include four employees working in branch offices as well as forty-one badli workers in the voters" list.

2. As per the code of discipline, recognition of majority union for the purpose of negotiating with the management is done once in two years. In 1990, Employees Union was recognized as majority trade union for a period of two years. After 1993, no union was, however, recognized due to various reasons including the non-functioning of Panyam Cements. The factory started functioning in 2000. There was a settlement between the Mazdoor Union and the management of Panyam Cements regarding collection of electricity charges from the workers in occupation of factory quarters, canteen facilities, leave encashment, badli and casual employees etc. Be that as it is, the Deputy Commissioner, by communication dated 21-3-2003 requested the General Secretaries of both the unions to attend the joint meeting on 31-10-2003 along with records and renewal certificate of the union to enable the Retuning Orricer to conduct secret ballot election under code of discipline to determine majority union in Panyam Cements. On 31-10-2003, General Secretary of Employees Union alone attended the meeting, but no action was taken for conducting election. The Employees Union, therefore, filed W.P.No.16250 of 2003 alleging that as there is no recognized union for the purpose of collective bargaining, salaries of workers are not paid from October 2001 and that elections should be conducted to recognize the majority union in the factory.

3. On 26-3-2003, General Secretaries of Mazdoor Union as well as Employees Union attended the joint meeting in the chambers of the Deputy Commissioner of Labour, Kurnool when it was agreed to take 1-2-2003 as the date of reckoning for preparation of voters" list. It was also agreed to exclude permanent wage board employees who are retired or promoted to managerial cadre after 1-2-2003. The minutes of the said meeting have some bearing and, therefore, need to be read in verbatim.

MINUTES OF THE MEETING HELD ON 26/08/2003 IN THE CHAMBERS OF DEPUTY COMMISSIONER OF LABOUR; KURNOOL ZONE; KURNOOL REGARDING CODE OF DISCIPLINE (RECOGNITION OF UNION/CONDUCT OF VERIFICATION) TO DETERMINE THE MAJORITY UNION IN M/s.PANYAM CEMENTS AND MINERAL INDSUTRIES LTD., CEMENT NAGAR; KURNOOL DISTRICT

4. Sri Ch.Ramalingeswara Rao, General Secretary, Panyam Cements Mineral Industries Hind Mazdoor Union, R.No.F.95 attended the meeting and produced the following documents.

1) Original Registration Certificate

2) Rules Copy

3) Latest Annual Return

5. The General Secretary of the above union agreed to take 01/02/2003 as date of reckoning for the preparation of voters list. The persons whose names are in

the workers Muster Roll (Permanent Wage Board Employees) as on 01/02/2003 and subsequently promoted to managerial cadre, persons who retired after 01/02/2003 are not eligible to vote.

6. The General Secretary of the Panyam Cements Employees Union Sri M.Venkataramaiah attended the meeting and submitted the original registration certificate. The General Secretary of the Panyam Cements Employees Union also agreed to take 01/02/2003 as date of reckoning.

7. The next step in the election process was verification of members of each union to determine majority before conducting secret ballot. Both the unions agreed that secret ballot is best method for the purpose of election and, therefore, a valid code of discipline should be followed. A draft voters' list was prepared. Both the unions raised certain objections regarding the same. These objections related to inclusion of four (4) employees, security staff in the factory, inclusion of employees working in the branches and inclusion of forty-one (41) badli workers working in the factory. Considering these objections as well as the right of these employees to vote in the election, by proceedings/letter bearing No.B1/821/2003, dated 30-10-2003, the Deputy Commissioner passed an order on the three objections as follows.

OBJECTION No.1: Vote to Security Staff who are working in the Factory:

The Management representative stated that all the security staff are permanent Wage Board employees. Both the unions requested to include security staff in the voters list. Accordingly their request is considered and the security staff are included in the voters list.

OBJECTION No.2: Employees working in the Branches:

The Panyam Cements Hind Mazdoor Union raised an objection and requested to allow 4 people who are working in Branch Offices both at Hyderabad and Kurnool and who are permanent Wage Board employees. In this regard the management representative stated that the Muster of the 4 employees are maintaining at Hyderabad office and they are taking their salaries at Hyderabad office only and they are not on the rolls of the factory. Basing on the above clarification the objection raised by the Panyam Cement Hind Mazdoor Union is rejected.

OBJECTION No.3: Regarding Badli Workers:

The Panyam Cements Hind Mazdoor Union raised an objection regarding 41 badli employees who are working for the last 15 to 20 years and getting Wage Board wages and requested to allow them to vote. In this regard the management submitted list of working days from 1999 to 2003 for all the 41 Badli workers which shows that none of the employee has not completed 240 days in any year from 1999 onwards. Further, at the time of Joint Meeting held on 26/08/2003 the unions accepted to take all permanent Wage Board employees as voters. Regarding the payment of wages the management is paying minimum rates of wages to the workers as per the Wage Board recommendations. With this it is

not possible to consider the request of the unions in respect of all the 41 badli workers who have not completed 240 days in any year from 1999. Hence the objection is not considered.

8. The above letter of the Deputy Commissioner is assailed by the Mazdoor Union in .P.No.23487 of 2003. As can be seen, all the twenty-two security staff working in the factory were included in the voters" list as both the unions requested for their inclusion. Insofar as the inclusion of four employees of Panyam Cements working in the branch offices at Hyderabad and Kurnool, a reading of the impugned letter would show that Employees Union did not raise any objection. Even the anagement"s representative has not raised objection. However, it was brought to the notice of the Deputy Commissioner that the muster roll of the four employees is maintained in Hyderabad office, that the employees are receiving salaries in Hyderabad and that they are not workers of the factory. These factors influenced the Deputy Commissioner to reject the request of the Mazdoor Union to include four employees in the voters" list. When Hyderabad and Kurnool branches are not separate establishments but are part of the factory meant to deal with incidental matters, I fail to understand the logic behind excluding these four employees. These four employees were employed by Panyam Cements and they were very much employees of the factory. It would be improper to deny these four employees the right to vote in the election. Learned counsel Sri G.Veera Reddy, does not seriously dispute this.

9. Insofar as non-inclusion of badli workers of the factory, learned counsel for Mazdoor Union (petitioner in W.P.No.23487 of 2003), Sri C.V.Mohan Reddy, raised the following contentions challenging such non-inclusion. Badli workers are also workmen for the purpose of the Industrial Disputes Act, 1947 (hereafter called "the I.D.Act") and the Trade Unions Act, 1926 (hereafter called "the Trade Unions Act"). Therefore, it was not proper for the Deputy Commissioner to prevent badli workers from voting. Secondly, he would urge that when there was a settlement u/s 18(1) of the I.D. Act between the management of Panyam Cements and Mazdoor Union in 2000, it was also agreed between the parties to the settlement that badli workers will be engaged for a minimum of two days in a week on payment of daily wages and if they are engaged beyond two days they will be paid Rs.100/- per day depending upon the exigencies of work. This, according to the learned counsel, clenchingly shows that badli workers have also a right to vote in the election to recognize majority union. Unless and until badli workers are treated as workmen for the purpose of industrial law, the management could not have given the benefit of assured employment and payment of production wages to badli workers at the instance of Mazdoor Union because they are espousing the cause of all the workmen of Panyam Cements.

Per contra, learned counsel Sri G.Veera Reddy, appearing for Employees Union, submits that badli workers are not workmen and they cannot be included in the voters" list. He would submit that when the joint meeting was convened on 26-8-2003, it was agreed between the two unions to include all the permanent

wage board employees on muster roll as on 1-2-2003 alone in the voters" list. Therefore, Mazdoor Union cannot turn around and agitate the inclusion of badli workers in the voters" list. He would contend that the Deputy Commissioner came to a right conclusion in excluding forty-one badli workers from the voters" list as they are not permanent wage board employees.

10. The short question is whether badli workmen/employees are workmen for the purpose of the Trade Unions Act? Section 2(s) of the I.D. Act defines "workman" as under. (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or, as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an Officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions, mainly of a managerial nature.

11. The definition of the workman is in two parts i.e., inclusive part and exclusive part. Every person employed in an industry to do any manual, unskilled, skilled, clerical and other types of works is a workman. As per the exclusive part, a person who is subject to the Air Force Act, the Army Act or the Navy Act, a person who is employed in police service and a person who is in managerial or administrative post or a person employed in supervisory capacity drawing wages exceeding Rs.2500/- per month are not workmen. A reading of the inclusive part of the definition "workman" of the I.D. Act, would show that it does not make any distinction between the persons who are paid salaries as per the Cement Wage Board or the persons who are paid daily wages or persons who are badli workers. The term "badli workers" is not defined in the I.D. Act. Nonetheless, it must be held that badli workers also fall within the definition of workman and badli workers are workmen for the purpose of the I.D. Act entitled to the benefits under all industrial laws. Section 2(ra) of the I.D. Act defines "unfair labour practice" as any practice specified in the Fifth Schedule. Fifth Schedule to the I.D. Act enumerates a number of unfair labour practices on the part of workmen as well as on the part of the employer. Clause 4 of Part I of the Fifth Schedule reads as under.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say:-

- a. discharging or punishing a workman because he urged other workmen to join or organize a trade union;
- b. discharging or dismissing a workman for taking part in any strike (nor being a strike which is deemed to be an illegal strike under this Act);
- c. changing seniority rating of workmen because of trade union activity;
- d. refusing to promote workmen to higher posts on account of their trade union activities;
- e. giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;
- f. discharging office-bearers or active members of the trade union on account of their trade union activities.

12. In relation to the trade union, as can be seen from the above, any action on the part of the employer/workmen to discourage a workman from participating in a trade union activity is unfair labour practice. Badli workmen are workmen and, therefore, if any management disapproves a "trade union of badli workers" or discourages badli workers to join a trade union or denies voting right to badli workers, the same would amount to unfair labour practice. If the interpretation by Sri G. Veera Reddy is accepted, the same would give right to the management to deny trade union right. Such interpretation would be ex facie contrary to the intention of the legislation and cannot be countenanced. Therefore, badli workers under law cannot be excluded from voting.

13. "Trade union" is defined in the Trade Unions Act as any combination whether temporary or permanent, formed primarily for the purpose of regulating relations between the workmen and employers or between workmen and the workmen or between employers and employers. "Trade dispute" is defined in Section 2(g) of the Act as under.

(g) "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises;

Reading the definitions of "trade union" and "trade dispute" it must be held that any dispute inter alia between the employer and workmen connected with the employment or non-employment, terms of employment or conditions of labour of any person would be a trade dispute and the term workman includes all persons employed in the trade or industry. Any dispute between the badli workers and

the management is also a trade dispute. It is for this reason that when there was a settlement between the Mazdoor Union and Panyam Cements in June 2000, both the parties agreed on certain terms regarding assured employment to badli workers. In that view of the matter, learned counsel for the Mazdoor Union is right that badli workers cannot be excluded from participating in the election to recognize the majority trade union. If that interpretation is accepted, that would lead to badli workers to lurch in a helpless state of suspended animation.

14. The submission of learned counsel for the Employees Union that only permanent wage board employees can be included in the voters" list cannot be accepted. Similarly, the objection of the Deputy Commissioner that forty-one badli workers did not complete 240 days from 1999 onwards is misconceived. A person who is employed even for a day is a workman for the purpose of industrial law and no management can refuse the benefits allowed under law and the Constitution. After reading the minutes of the joint meeting dated 26-8-2003, which is extracted hereinabove, I am convinced that permanent wage board employees who retired and/or who were promoted to managerial cadre after 1-2-2003 are alone agreed to be excluded from the voters" list and not badli workers as contended by the counsel for Employees Union.

15. In the result, the writ petitions are disposed of in the following manner.

- i) the impugned proceedings bearing Rc.No.B1/821/2003, dated 30-10-2003 is set aside;
- ii) the four employees of Panyam Cements working at Hyderabad and Kurnool branches and forty-one badli employees working in the factory shall be included in the voters" list for the year 2003;
- iii) the Deputy Commissioner-cum-Returning Officer shall forthwith complete the election process by allotting election symbols and finalising the election date; and
- iv) there shall be no order as to costs.