
(2010) 11 KL CK 0359
In the High Court Of Kerala
Case No : W.A. No. 1171 of 2010

H.L.L. Lifecare Ltd.

APPELLANT

Vs

Hindusthan Latex Labour Union

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 61, 61(1), 61(2), 61(4)
Industrial Disputes Act, 1947 — Section 33, 33(2), 33(3), 33(4)

Citation : (2011) 128 FLR 471 : (2010) 4 KLT 882 : (2011) 2 LLJ 375

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : U.K. Ramakrishnan, P. Vijayamma and V. Krishna Menon, for the Appellant; K.S. Madhusoodanan, T.V. Jayakumar Namboodiri, M.M. Vinod Kumar, Thushar Nirmal Sarathy, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—This appeal is filed by the management of a Central Government company challenging the judgment of the learned single Judge declaring first Respondent's eligibility for recognition of it's nominee as a "protected workman". We have heard senior counsel Sri. U.K. Ramakrishnan appearing for the Appellant, Sri. K.S. Madhusoodanan, counsel appearing for the first Respondent-Union and Government Pleader for second Respondent.

2. The facts leading to the controversy are the following. One Sri. Ajay K. Prakash, an employee of the Appellant, was proceeded against in disciplinary proceedings three times vide Exts.P1, P2 and P3 charge sheets issued by the management. In the enquiry conducted pursuant to Ext.P1 charge sheet he was found guilty. However, during the pendency of Exts.P2 and P3 charges levelled against him, first Respondent-Union nominated the delinquent employee's name under Rule 61(1) of the I.D. (Central) Rules, 1957, hereinafter called the "Rules" for recognising him as "protected workman". The application sent by the first Respondent-Union vide Ext.P4 was rejected by the Appellant against which first

Respondent approached Assistant Labour Commissioner, the second Respondent, though a petition filed under Sub-rule (4) of Rule 61. Second Respondent vide Ext.P2 order directed the Appellant to declare the nominee of the first Respondent as "protected workman" against which WPC was filed before the learned single Judge. The learned single Judge held that Rule 61(2) makes it mandatory for the management to declare the nominee of the Union as "protected workman" and they have no right to reject the same. The challenge in the Writ Appeal is against the finding of the learned single Judge.

3. The contention raised by the Appellant is that during the pendency of disciplinary proceedings, the Union is not entitled to nominate any person for recognition as "protected workman" under Rule 61(1) and the very purpose of the Union is to provide immunity to a delinquent employee from any disciplinary action u/s 33(3) of the I.D. Act, which in this case the management is free to decline. Since the matter involves interpretation, and understanding of meaning and scope of Rule 61 and Section 33, we extract hereunder the said provisions for easy reference:

33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings:

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute;

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

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has

been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(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.

(4) In every establishment, the number of workmen to be recognised as protected workman 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.

Rule 61. 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.

(2) The employer shall, subject to Section 33, Sub-section (4), recognise such workmen to be "protected workmen" for the purposes of Sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under Sub-rule (1), the list of workmen recognised as protected workmen for the period of twelve months from the date of such communication.

(3) Where the total number of names received by the employer under Sub-rule (1) exceeds the maximum number of protected workmen, admissible for the

establishment, u/s 33, Sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen:

Provided that where there is more than one recognised trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bears roughly the same proportion to one another as the membership figure of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the Union the number of protected workmen allotted to it.

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the Union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of "protected workmen" under this rule, the dispute shall be referred to any Regional Labour Commissioner (Central) or Assistant Labour Commissioner (Central) concerned, whose decision thereon shall be final.

What Section 33(1) says is that during the pendency of any proceeding before the authorities mentioned therein in respect of an industrial dispute, the employer shall not alter the service conditions to the prejudice of the workman concerned or discharge, dismiss or punish any workman concerned in the dispute without the express permission in writing of the authority before which proceeding is pending. The principle recognised under this provision is something like subjudice which prohibits an employer from changing conditions of service of employees involved in the dispute to their prejudice or take any action to punish or remove them from the service without the permission of the authority which considers the dispute. However, Sub-section (2) which is in the form of exception says that employer is free to change the conditions of service of employees in the establishment, if the standing orders or terms of contract of employment permit the same. Similarly under Clause (b) of Sub-section (2) of Section 33 for any misconduct not connected with the pending dispute, employees can be punished with even dismissal. Sub-section (3) of Section 33 gives certain protection to "protected workmen" and this provision is in the form of exception to Sub-section (2) of Section 33 which gives authority to the management to take disciplinary action, or alter conditions of service, against employees on matters unconnected with the pending dispute, if the standing orders or terms of contract of employment permit the same. The exception in Sub-section (3) is to provide immunity to protected workmen from any action during the pendency of the dispute, even if the management is otherwise entitled to take action under the standing orders or under the terms of employment. What is specifically

prohibited under Sub-section is punishment in the form of discharge, dismissal or otherwise of protected workmen except with the express permission in writing granted by the authority before which proceeding is pending.

4. The question to be considered is whether a Union is entitled to nominate a person against whom disciplinary proceeding is pending basically to give him immunity from punishment u/s 33(3) without prior approval of the authority before which proceeding is pending. Appellant's counsel pointed out to us that the first Respondent's object is only to protect the delinquent employee from serious punishment without prior permission from the authority concerned and for this purpose, Sri. Ajay K. Prakash's name is nominated to declare him as a protected workman under Rule 61(1) of the Rules. In fact first Respondent has nominated only the delinquent employee, namely, Sri. Ajay K Prakash for recognition as protected workman and no other office-bearer is nominated by the union for recognition as protected workman even though they could send upto 5 names for protection in terms of Section 33(4) of the Act. The learned single Judge noticed that Rule 61(2) makes it mandatory for the employer to recognise the list of such of the workmen nominated by the Union under Rule 61(1) for recognition as protected workman and the only authority for the management is to limit the number of workmen in terms of Section 33(4) of the Act. However, we are unable to accept the interpretation placed by the learned single Judge on Rule 61(1) and (2) of the Rules. No doubt the selection of office bearers of the Union for declaration by the management as protected workman is within the exclusive discretion of the Union. In other words, it is upto the Union to select their office-bearers and forward names of such of the office-bearers whom the Union considers eligible and desires to declare as protected workman. However, in our view, management is not bound to approve the list of names forwarded by the union for recognition as protected workman. It is upto the management to consider whether any of the office-bearers nominated by the union is undesirable or ineligible for recognition and if they find so for valid reasons, they are free to reject the nomination of such office bearer. If the management declines to recognise any office-bearer as protected workman, it is for the Union to either contest the same by raising a dispute before the Regional Labour Commissioner or Assistant Labour Commissioner as provided under Sub-rule (4) of Rule 61 of the Rules whose decision shall be final or to send the name of another office bearer of the Union for recognition as protected workman by the management in the place of the rejected candidate. We do not think there is any need for us to consider the circumstances which justify the management to reject the nomination of any office bearer of the union as protected workman. However, we are of the view that the management is entitled to decline recognition to person nominated by the union for recognition as protected workman if any disciplinary proceeding is pending against such workman. Union certainly cannot exercise their power under Rule 61(1) to give immunity to an employee against whom disciplinary proceedings initiated by the management is pending by nominating his name for recognition as protected workman. In this case, admittedly during

the pendency of Exts.P2 and P3 charge sheets, the first Respondent nominated the name of the delinquent employee for recognition as protected workman. In our view, the management has rightly declined the nomination as protected workman and the decision of the second Respondent vide Ext.P8 overruling the decision of the management is unsustainable. Though, disciplinary action suffered may not disqualify an office-bearer of the Union from being recognised as a protected workman, the position is different so far as an employee against whom disciplinary action initiated by the management is pending. An office bearer of the Union facing disciplinary proceedings is not entitled to be nominated by the Union for recognition as protected workman and the management is absolutely within their powers to decline recognition to such an office-bearer under Sub-rule (2) of Rule 61. Counsel for the first Respondent relied on the decision of the Gujarat High Court in R. Balasubramanian and Others Vs. Carborandum Universal Ltd., Okha, and the decision of the Bombay High Court in Maharashtra State Road Transport Corpn. Vs. Conciliation Officer and Others, . We have gone through the above decisions and we find that those decisions have no application to the facts of this case. We are of the view that the view taken by the learned single Judge that management has no discretion in regard to recognition of an office-bearer of a union as protected workman is incorrect and in our view management can for good and valid reasons reject nomination for recognition furnished by the union. In this case we find that Ext.P8 order issued by the second Respondent is not sustainable for the reasons stated above.

Accordingly we allow the Writ Appeal by vacating the judgment of the learned single Judge and allow the W.P.C. by vacating Ext.P8 order issued by the second Respondent. It will be open to the management to continue disciplinary action against the delinquent employee in accordance with law. It is upto the first Respondent to nominate anyone or more office-bearers for recognition as protected workman or wait for final orders on disciplinary proceedings and thereafter consider whether delinquent employee's name can be nominated for recognition again.