

(2008) 05 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 17555 of 2006

Karnataka Antibiotics and Another

APPELLANT

Vs

National Commission SC and Others

RESPONDENT

Date of Decision : 29-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 338

Citation : (2008) ILR (Kar) 3305 : (2009) 3 KarLJ 481

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : V.S. Naik, for the Appellant; S.N. Murthy for S.N. Murthy, Assts. Advocate for R3, K. Subba Rao for Subba Rao and Co. for R4 and Y. Hariprasad, CGSC for R1 and 2, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioners have prayed for a writ in the nature of certiorari to quash the directions dated 11.9.2006 issued by the second respondent directing the third respondent to reinstate the fourth respondent into service and also to extend him other benefits.

2. The third respondent is a company registered under the Companies Act and jointly owned by the Government of India and Government of Karnataka. Fourth respondent was a Senior Manager in the third respondent company. On 29.01.2004 the third respondent company issued articles of charges to the fourth respondent stating that he indulged in corrupt practices, neglected to discharge his duties, acted in a manner prejudicial to the interest of the company, indiscipline, made false statement before superiors, favouritism for pecuniary benefit etc. The fourth respondent submitted his reply on 10.02.2004 denying the charges levelled against him. The Disciplinary Authority being not satisfied with the explanation of fourth respondent initiated enquiry proceedings. On 13.06.2005 the Enquiry Officer submitted a report stating that the charges levelled against the fourth respondent as proved. After providing an opportunity

to the fourth respondent the Disciplinary Authority passed an order of penalty on 15.12.2005 removing the fourth respondent from service. Aggrieved by this order of penalty the fourth respondent filed an appeal and the same came to be rejected vide order dated 27.01.2006 and it had become final.

3. The fourth respondent instead of questioning the order of penalty and the order of Appellate Authority before the appropriate forum gave a representation to the first respondent-Commission stating that injustice has been caused to him. The second respondent, as member of first respondent Commission visited the third respondent company at Bangalore and held a meeting with the officers of the third respondent company on 11.09.2006. In the said meeting among other things the second respondent discussed the issue relating to fourth respondent and directed the third respondent to conduct a fresh enquiry and treat the fourth respondent as deemed to have been continued in service and to pay the salary and allowance. Aggrieved by this direction issued by the second respondent on 11.09.2006 in so far as it relates to the fourth respondent, the present writ petition is filed.

4. Sri. V.S. Naik, Learned Counsel for the petitioners contend that the second respondent has no power or authority to issue directions to the third respondent to hold a fresh enquiry. Article 338 of the Constitution of India will only empower the Commission and its members to investigate into the complaint received by it and to submit a report to the concerned authority to take suitable measures to protect the interest of Scheduled Caste and Scheduled Tribe community people. The first respondent Commission is not empowered to set aside the order of penalty and the order of the Appellate Authority against the fourth respondent and to order for a fresh enquiry. He further contends that the directions issued by the second respondent has no sanction by the first respondent Commission. The impugned directions issued by the second respondent will be a bad precedent in the third respondent Company and it will affect the interest of employees and the company. Reliance is placed on the following decisions.

i. Confederation of Ex-servicemen Associations and Ors. v. Union of India and Ors. (2006) 8 SCC 399,

ii. Karnataka (Reg.) Unaided Schools Management"s Association Vs. State of Karnataka, Education Department and The Director, Primary Education, Public Instructions, .

iii. Fertilizer Corporation Kamagar Union (Regd.) Sindri and Ors. v. Union of India and Ors. AIR 1981 SC 344,

iv. Ghulam Qadir Vs. Special Tribunal and Others, ,

5. Sri. S.N. Murthy, learned Senior Counsel for the third respondent submits that they have written a letter to the Deputy Secretary to the Government of India, Department of Chemicals and Petrochemicals to clarify with regard to the directions issued by the second respondent. Similar letter was also written to the

first respondent Commission on 24.10.2006 to clarify with regard to the directions issued by the second respondent. He contends that the impugned action of the second respondent in directing to hold a fresh enquiry is beyond the scope of Article 338 of the Constitution of India.

6.Sri. K. Subba Rao, learned Senior counsel for the fourth respondent contends, that the writ petition filed by the first petitioner - trade union is not maintainable. The petitioners have not come to the Court with clean hands. On the other hand the petitioners are abusing the due process of law and with a malafide intention to harass and intimidate the fourth respondent. He contends that the impugned direction issued by the second respondent are not in accordance with law and he justifies the same. Reliance is placed on the following decisions.

i. Rome Gowda v. State of Karnataka and Ors. 2006 (1) KLJ 518

ii. Adi Pherozshah Gandhi Vs. H.M. Seervai, Advocate General of Maharashtra, Bombay,

iii. R.K. Jain Vs. Union of India and Others, ,

IV. Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal and Ors. AIR 1962 SC 1944

7. Sri. Y. Hariprasad, learned Counsel for the first and second respondents submit that the Supreme Court of India in the case of All India Indian Overseas Bank SC and ST Employees" Welfare Association and Others Vs. Union of India (UOI) and Others, , held that the Commission has no power to issue injunctions, permanent or temporary. The Commission has got the power of civil Court for limited purpose of investigating or enquiring in to any complaint received by it. In view of the law declared by the Supreme Court, the Commission issued an official memorandum on 01.01.1998 specifying that the Commission has no power to grant injunction or withholding of operation of any order issued by the Government and that it can only recommend on the complaints received by it.

8. On the basis of pleadings and arguments advanced at the Bar the following two questions will arise for my consideration:

(i) Whether the petitioners are entitled to maintain a writ petition under Article 226 of the Constitution of India?

(ii) Whether the 2nd respondent is having power to issue the impugned directions dated 11.09.2006 to the 3rd respondent?

On Question No. 1

9. First petitioner is a trade union registered under the provisions of Indian Trade Union Act and having support of majority of employees working in the third respondent - company. First petitioner is espousing the cause of its members who are the employees of third respondent - company. Second petitioner is an employee of the third respondent-company and member of first petitioner trade

union. In this writ petition the petitioners have called in question the impugned direction dated 11.9.2006 issued by the second respondent directing the third respondent to hold fresh inquiry, to reinstate the fourth respondent employee and to extend all benefits. Learned senior counsel for the fourth respondent contends that petitioners have no locus standi and are not entitled to maintain the writ petition. It is necessary at this stage to notice the law laid down by the Supreme Court in *Confederation of Ex-Servicemen Associations and Ors. v. Union of India* (Supra) it is held as under:

We are also satisfied that the contention of the respondent is even otherwise not tenable at law. A similar point came up before a Constitution Bench of this Court in the well-known decision in *D.S. Nakara v. Union of India*. There also, one of the petitioners was a society registered under the Societies Registration Act, 1860. It approached this Court for ventilating the grievances of a large number of old and infirm retirees who were individually unable to approach a court of law for redressal of their grievances. This Court held locus standi of the society "unquestionable". In the present case, apart from the fact that a larger public issue and cause is involved, even individually, all associations are registered associations of ex-servicemen. The petitioner Confederation representing those associations which is also registered, can certainly approach this Court by invoking the provisions of Part III of the Constitution. We, therefore, reject the preliminary objection raised by the respondents and hold that the petitioner Confederation has locus standi to file the petition.

In *Fertilizer Corporation Kamagar Union (Regd.) Sindri and Ors. v. Union of India and Ors.* (Supra) it is held as under:

If a citizen is no more than a way-farer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226.

In *Ghulam Qadir v. Special Tribunal* (Supra) it is held:

The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right

whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.

10. Keeping in view the law declared by the Supreme Court in the decisions referred to above, it is required to examine the fact situation in the present case. The impugned direction dated 11.9.2006 was issued by the second respondent. The second respondent is a member of first respondent-National Commission for Scheduled Castes and Scheduled Tribes, hi this writ petition the petitioners are questioning the competency of the second respondent to issue the impugned direction. Therefore what is questioned in this writ petition is the competency of second respondent to issue the impugned direction and not the service condition relating to the fourth respondent Though the impugned direction mentions reinstatement and payment of other benefits to the fourth respondent the same is only an incidental. The first petitioner being the trade union representing the majority of employees of the third respondent company and the second petitioner being an employee are entitled to maintain a writ petition questioning the competency of second respondent to issue the impugned direction.

The decisions relied on by the learned Counsel for the fourth respondent in Ramegowda v. State of Karnataka (Supra) and R.K. Jain v. Union of India and Ors. (Supra) are in relation to the service jurisprudence. In this judgment it is held that any service jurisprudence it is for the aggrieved person to assail the legality of the offending action. But in the instant case, the petitioners are questioning the competency of second respondent to issue the impugned directions and not the service conditions. Though the impugned order mentions about the reinstatement of fourth respondent and payment of benefits is only an incidental. Therefore the decisions relied on by learned Counsel for the fourth respondent are not applicable. Accordingly I answer question No. 1 in affirmative holding that the petitioners are entitled to maintain the writ petition.

On Question No. 2

11. Article 338 of Constitution of India specifies for constitution of National Commission for Schedule Castes and Schedule Tribes. The Supreme Court in All India Indian Overseas Bank SC and ST employees" welfare association v. Union of India (Supra) held that "all the procedural powers of civil court given to the National Commission for Schedule Caste and Schedule Tribe by Article 338(8) of the Constitution of India are for the limited purpose of investigating any matter under Article 338(5)(a) or inquiring into any complaint, under 338(5)(b). The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution. The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 4.3.1993 directing the Bank to stop the promotion process pending further investigation and final verdict in the matter".

13. In the instant case the third respondent - company issued articles of charges on 29.1.2004 to the fourth respondent stating that he indulged in corrupt practices, neglected to discharge his duties, acted in a manner prejudicial to the interest of the company, indiscipline, made false statement before the superiors, favoritism for pecuniary benefit etc. Since the reply of the fourth respondent was not satisfactory, the disciplinary authority initiated inquiry proceedings. On 13.6.2005 the inquiry officer submitted his report stating that the charges levelled against the fourth respondent as proved. The disciplinary authority after providing an opportunity to the fourth respondent passed an order of penalty on 15.12.2005 removing the fourth respondent from service. Even the appeal filed by the fourth respondent came to be rejected vide order dated 27.1.2006 and the same had become final. When the matter stood at that stage, the fourth respondent gave a complaint to the first respondent -Commission stating that injustice has been caused to him. The second respondent being the member of the first respondent - Commission visited the third respondent - company at Bangalore and held a meeting with the officers of the company. In the said meeting the second respondent directed the third respondent to conduct a fresh inquiry, to treat fourth respondent as deemed to have been continued in service and to pay him the salary and other allowances. By this impugned direction the second respondent virtually set asides the inquiry report dated 13.6.2005, order of penalty dated 15.12.2005 and the order of appellate authority dated 27.1.2006. Therefore the impugned direction issued by the second respondent is without power and authority. Under Article 338 of the Constitution the second respondent is not empowered to set aside a concluded inquiry and the order of penalty and the order of appellate authority. Therefore the impugned direction issued by the second respondent is liable to be quashed.

For the reasons stated above, the following:

ORDER

- i) Writ petition is allowed.
- ii) The impugned directions dated 11.9.2006 issued by the second respondent to the third is hereby quashed. Ordered accordingly.