
(2001) 11 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 11571 of 2001

Karnataka Couriers" Cargo and General Employees Union	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 31, 34

Citation : (2002) ILR (Kar) 1016 : (2002) 1 KCCR 57 SN : (2002) 4 LLJ 171

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The petitioner-Union has questioned the correctness of the impugned order dated March 7/9, 2001 passed by the 2nd respondent as per Annexure-K and has sought for issuance of a writ of certiorari quashing the same and has further sought for permission to initiate prosecution proceedings against the 4th respondent-Management u/s 31 of the Industrial Disputes Act, 1947 (for short "ID Act") by granting an authority as required u/s 34 of the ID Act to prosecute fourth respondent employer urging various grounds.

2. The relevant facts which are necessary for the purpose of appreciating the rival contentions of the parties are stated as hereunder:

There was an industrial dispute raised by the petitioner/union before the Conciliation Officer with regard to the better serviced conditions of the workmen on the basis of fresh Charter of Demands dated March 13, 1998; since the matter could not be settled before the conciliation Officer, the Government in exercise of its power u/s 10(c) of the Act made reference to the Industrial Tribunal which was registered in I.D. No. 29/1999 vide its order dated March 3, 1999. The said industrial dispute is still pending adjudication by the Tribunal. In the said dispute, against the concerned workmen namely A.T. Subbaiah, P.M. Shivakumar, N. Channappa, N. Magesh and D. Ravi respectively though the

disciplinary proceedings were initiated for the alleged acts of misconduct under the Model; Standing Orders applicable to fourth respondent/company, the Disciplinary Authority did not pursue the same on the basis of the charge sheets issued and served upon them. However, the General Manager of 4th respondent has passed the order of discharge, discharging their services with retrospective effect from October 5, 1998.

2. It is contended by the learned counsel, for the petitioner Sri T. S. Anantharam, that the retrospective termination orders passed against the concerned workmen is not sustainable in law; that in respect of the said orders of discharge when the industrial dispute regarding charter of demands was pending in I.D. No. 29/1999 before the Industrial Tribunal, Bangalore; that in the said dispute, the 4th respondent did not file the approval application as required u/s 33(2)(b) of the I.D. Act was not filed simultaneously after passing the termination orders as per Annexure-A1 series, even though the said workmen are concerned workmen in the said industrial dispute. The said workmen filed complainants u/s 33-A of the Act for adjudication of the Industrial dispute contending there is a contravention of the provisions u/s 33(2)(b) of the I.D. Act; preliminary objection was raised by the fourth respondent in the complaints proceedings regarding the maintainability of the complaints; the Tribunal vide its order dated May 5, 2000 after considering the rival contentions of the parties held that the complaints filed by the concerned workmen against the orders of discharge were passed as maintainable; since 4th respondent Management did not comply with the statutory requirement u/s 33(2)(b) of the I.D. Act, the petitioner-Union wanted to prosecute the 4th respondent/employer for the alleged contravention of Section 33(2)(b) of the Act as it is a statutory offence alleged to have been committed by the 4th respondent employer punishable u/s 31 of the I.D. Act; therefore, vide Annexure-C dated September 20, 1999, petition was filed by the petitioner Union before the first respondent requesting for grant of authorisation as required u/s 34 of the Act to prosecute 4th respondent/employer; that in that regard, remainders were also submitted vide Annexure-D; that pursuant to the directions issued by the Secretary, petitions were also submitted before the Labour Commissioner vide Annexure-J dated February 9, 2000. It is urged by the learned counsel Mr. T.S. Ananth Ram on behalf of the Union that on an irrelevant ground the request made by the petitioner/union was rejected by first respondent by passing the impugned order, thereby the rights of the union as conferred upon it u/s 33(2)(b) read with Sections 31 and 34 of the I.D. Act are contravened; that the first respondent has failed to exercise his statutory power coupled with his duty as he is required to grant the authority in favour of the Union to prosecute the 4th respondent as there is the contravention of the provisions of the Act as referred to (supra); that since the first respondent has failed to exercise his power, the valid statutory rights guaranteed under the provisions of the Act upon the concerned workmen and Union are contravened by non-exercise of the power by first respondent as he has refused to grant the authority in favour of the petitioner on irrelevant grounds; and as such this is a

fit case for issuing the writ as prayed in this Writ Petition.

3. The learned counsel for 4th respondent Sri S.N. Murthy, has sought to justify the impugned order contending that the grant of authority in favour of the Union is not a mechanical function or administrative exercise of power by the Government as the Government represented by the Labour Department Secretary is required to apply his mind as held by the Full Bench of this Court in S.N. Hada and Ors. v. Binny Limited Staff Association, 1968-I-LLJ-405 wherein this Court after interpreting Section 34 of the Act has clearly laid down the law at Paragraph(13) in the said case. He further states that the 1st respondent on the basis of the material available before him and having regard to the facts namely that the petitioner has sought for grant of authority to prosecute the representative of the employer namely the Deputy General Manager who is functioning at Bombay is of no relevance for grant of authority and as such he has rightly refused to grant the authority u/s 34 of the I.D. Act. In this view of the matter, the learned counsel submits that the exercise of power by the first respondent is perfectly legal and valid. Further, he has submitted that there are already complaints presented u/s 33-A of the Act in the dispute pending before the Industrial Tribunal in I.D. No. 29/1999 and since the Tribunal has already held that the complaints filed by the concerned workmen are maintainable after rejecting the Preliminary objection, the complaints have been treated as if they are reference made by the Government as an Industrial Dispute or as the Industrial Dispute presented by the concerned workmen u/s 10(4-A) of the I.D. Act (Karnataka Amendment) Act, 1987 and the complaints are required to be adjudicated and appropriate awards have to be passed in the complaints by the Industrial Tribunal and as such no purpose would be served by granting the authority u/s 34 in favour of the Union to prosecute 4th respondent/Employer though this reasoning is not mentioned in the impugned order, this Court need not interfere with the same and grant the reliefs as prayed.

4. The learned counsel for the petitioner has placed reliance upon the number of judgments of the Apex Court and the various High Courts of the Country which are not relevant to refer in this order for the purpose of considering the real issue that would arise in this case and answer the same. The learned counsel has particularly placed reliance upon the ratio laid down by the Punjab and Haryana High Court reported in Kimti Lal, Workman, Panipat Coop. Sugar Mills Ltd. Vs. State of Haryana and Others, Para 13 in support of his contention that any violation of Section 33 of the Act entails the workmen to file a complaint and make the employer liable to be punished for the contravention of the statutory provisions of the I.D. Act.

5. The learned counsel for the 4th respondent has placed reliance upon the judgment of the Supreme Court reported in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, wherein it has been held that every representation submitted by the workmen before the first respondent alleging the statutory contravention of the provisions of the I.D. Act by the fourth

respondent, the first respondent on a relevant consideration of the case it can either exercise its power for grant of authority letter or refuse to grant the authority letter in exercise of the power u/s 34 of the Act in favour of the petitioner/union. In the instant case, the first respondent having regard to the relevant fact namely that against the orders of discharge simpliciter passed against the concerned workmen, they have filed complaints which are already pending before the Industrial Tribunal and therefore first respondent has rightly declined to exercise his power and as such this is not a fit case for this Court to interfere with the impugned order.

6. After hearing the learned counsel for the parties, I have examined the impugned order with reference to the rival contentions urged by the learned counsel on behalf of the parties.

7. Section 34 has been interpreted by the Full Bench of this Court in S.N. Hada's case wherein the scope and limitation of the first respondent-Secretary to the Government to, examine either to grant the authority in favour of the union or the workmen has been considered and the law has been laid down at Paragraph 13 in the said cases. The object of examining the request made by the Union or the workmen after hearing the employer is only to see that no authority shall be given either in favour of the Trade Union or concerned workmen with a view to see that frivolous complaints are not filed indiscriminately. The Government is required to keep in mind the law laid down in the case of S.N. Hada by the Full Bench of this Court, at the time of examining the representation submitted by the petitioner/union. The order passed by the first respondent is required to justify only the ground or the reason under which it has rejected the application of the petitioner-Union is the law (sic) laid down by the Apex Court in the case reported in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . The aforesaid law laid down by the Supreme Court has been reiterated by the Apex Court in the case reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . In view of the law laid down in the aforesaid cases, this Court is required to examine the impugned, order and also further record a finding as to whether the reasons assigned by the first respondent are legal or not and whether the penal action may be taken against the employer for the alleged contravention of Section 33(2)(b) of the Act which is the statutory offence u/s 31 of the Act after obtaining authority u/s 34, which is required to be examined by the first respondent. The words any employer in the opening sentence of Section 31 has to be properly understood keeping in view the definition of employers as defined u/s 2(g) of the I.D. Act. The word "Employer" as defined u/s 2(g) of the I.D. Act reads thus:

"(i) in relation to an industry carried on by or under the authority of any department of [the Central Government or a State Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the

Chief Executive Officer of the authority."

By a close reading of the aforesaid definition of "employer" in the Act, the authority prescribed in this behalf or where no authority is prescribed then the head of department. In the representation submitted by the petitioner Union at Annexure-C at Paragraphs (4) and (5) a specific request has been made for grant of permission to the Union to file a complaint against the Management for violating Section 33 of the I.D. Act. No doubt, in the subsequent representations before the Labour Commissioner at Annexure-D dated February 9, 2000 the Union has furnished the address of the Deputy Managing Director of the 4th respondent and requested to send the notice to him. That does not mean that the request was made to the first respondent to grant the authority to file the complaint against the Deputy Managing Director of 4th respondent/employer. Even if such a request is made, the Government cannot grant such authority to the petitioner Union to prosecute him unless he is the employer of the 4th respondent in terms of the definition u/s 2(g) of the I.D. Act. This important aspect of the matter has not been considered by the first respondent secretary while passing the impugned order. The Secretary being the Executive Officer of the Government is required to examine the request made by the Union and the request sought for granting the authority letter in its favour as required u/s 34 of the I.D. Act on the alleged contravention of Section 33 which is a statutory offence u/s 31 of the Act on the basis of the materials produced before him by the Union has to be considered and grant the same to the Union to see that the employer shall implement the provisions of the I.D. Act in the interest of maintaining industrial peace and harmony. The documents produced by the petitioner right from December 20, 1999 vide Annexure -C and the remainder representations given to the first respondent and the Labour Commissioner vide Annexure-"H" and "J" would clearly show that the first respondent-Government represented by its Secretary has not carefully examined the request made by the Union with all seriousness keeping in view the policy of the Government in enacting the I.D. Act. The very provisions of the Act provide that the petitions of either the workmen or the employer must be viewed seriously otherwise there will be violation of rule of law in not implementing the statutory provisions of the I.D. Act thereby the public at large would be affected on account of industrial disharmony for non-implementation of the provisions of the I.D. Act by the employer, workmen and also the appropriate Government. This important aspect of the matter should be borne in mind by the first respondent. The manner in which the first respondent has dealt with the matter while considering the representation of the Union and he has not applied his mind properly and considered the law on this question and he has refused to grant the Authority under-Section 34 in favour of the petitioner Union to prosecute the 4th respondent/employer, would clearly show the failure to exercise his statutory power and discharge his statutory duty at the time of passing the impugned order. The Labour Secretary is not expected in law to ask either Trade Union or the workmen or the employer under the provisions of the Act particularly for

grant of authorisation letter as required u/s 34 of the I.D. Act to approach the Labour Commissioner for grant of Authorisation Letter, He cannot make them run from pillar to post asking them to go and meet the Labour Commissioner, as the Labour Commissioner is not the Government in terms of Karnataka (Business Transaction and Allocation) Rules, 1977 and also the phrase Government as referred to in the above said provisions. In view of the observations made by this Court in this order, the first respondent hereafter when the applications are received by him shall see that those applications must be disposed of keeping in view the statutory provisions of the I.D. Act and the law laid down by the Full Bench of this Court in S.N. Hada "s case.

8. The first respondent has not considered the request of the Union for grant of Authorisation Letter u/s 34 of the Act to prosecute the 4th respondent/employer u/s 31 read with Section 200 Cr.P.C. by assigning irrelevant reason namely that the Union has sought for issuing a notice to the Deputy Managing Director who is at Bombay as no Authority against him can be granted to prosecute him by filing a complaint by the Union by the first respondent as the respondent can grant the authority only against the employer in terms of Section 2(g) of the Act. For the aforesaid reasons, the submission made by the Bar on behalf of the petitioner is well founded as the same is legal and valid and the same has to be accepted by this Court. The reliance placed upon the Judgment of the Pepsi Food case by the learned counsel for 4th respondent is not applicable to the facts of the case for the reason that the alleged contravention made by the 4th respondent has got the merit or not is not the domain of either the first respondent or this Court while exercising the power u/s 34 of the ID Act by first respondent or this Court under Articles 226 and 227 of the Constitution of India. The request made by the petitioner Union is only to grant authority u/s 34 of the I.D. Act in its favour to enable the Union to file a complaint before the Jurisdictional Magistrate Court u/s 200 Cr.P.C. read with Section 31 of I.D. Act It is the I Class Judicial Magistrate who is required to examine the merits of the case with regard to the alleged statutory contravention of Section 31 by the 4th respondent. Therefore, the submission made on behalf of 4th respondent that in case of every petition of a Trade Union or the workmen, no authority need be given cannot be accepted by this Court. If such contention is accepted, there will be blatant violation of the statutory provisions of the I.D. Act and there will be violation of the rule of law. The violation of the rule of law by either of the parties would have serious civil consequences of causing industrial unrest, disharmony and which will affect the public at large. Therefore, the first respondent with all seriousness and responsibility shall exercise its power coupled with duty under the provision of Section 34 of the I.D. Act. The paramount consideration for the first respondent is to see that the policy of the Government is implemented by letter and spirit of the statutory enactment of the Industrial Disputes Act and not in the manner in which he has passed the order by assigning irrelevant reasons in the impugned order.

9. For the reasons stated supra, this Writ Petition must succeed and accordingly,

I proceed to pass the following:

ORDER

Writ Petition is allowed. Issue Rule. Impugned order is hereby quashed. The First respondent is directed to consider request made by the Union in its application and pass appropriate orders in the light of the observations made in this order within two weeks from the date of receipt of this order.