

(2001) 01 KAR CK 0057

In the Karnataka High Court

Case No : Writ Petition No. 32619 of 1999 (GM-CON)

Karnataka Electricity Board and Another

APPELLANT

Vs

B.P. Vasudeva Murthy and Another

RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Consumer Protection Act, 1986 — Section 12

Criminal Procedure Code, 1973 (CrPC) — Section 80

Citation : AIR 2001 Kar 228 : (2001) 2 CivCC 632 : (2001) 4 KarLJ 228

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri N.K. Gupta, for the Appellant; Sri A. Padmanabhan, High Court Government Pleader and Party in person, for the Respondent

Judgement

T.N. Vallinayagam, J.—This writ petition is to quash the order of the Appellate Authority under the Industrial Employment Standing Orders Act, 1946 and the Industrial Tribunal, Bangalore dated November 8, 1996 which order is filed at Annexure-B to the writ petition, insofar as it relates to deletion of Clauses 12.1, 17, 18, 27.11 and 36 and the modification of Clause 16.2 are concerned.

2. The management who is the petitioner herein has challenged the above order. It is their case that the Standing Orders were submitted for certification before the Deputy Labour Commissioner and Certifying Officer, Bangalore Region No. 1, Bangalore. The second respondent union filed objections and after hearing both the parties the Certifying Officer passed an order on February 3, 1996 allowing certain modification. The union, preferred an appeal against such certification and on the appeal the Industrial Tribunal passed the impugned order deleting the clauses concerning transfer and modifying the clauses with regard to stoppage of work and deletion of the provision with regard to payment of wages etc. These deletions and modifications are challenged in the above writ petition.

3. Sri Kasturi appearing for Kasturi Associates submitted that the union did not lead any evidence before the first respondent Tribunal and on that score alone

the appeal is incompetent and should have been rejected in limine as per the dictum in 1986 LLR Bom 899. So far as Clause 12.1 pertaining to transfer is concerned, such provision is always found in any Standing Order. Transfer is also an implied condition of service. The law only prohibits mala fide transfers. It is also submitted that the employees have no right to the place of work and any mala fide transfers can always be questioned. The reason given for deletion that it is not excluded in the schedule to the Industrial Employment (Standing Orders) Act, is not a ground. In Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, , the Supreme Court held that there is no prohibition against certification of an item which is not included in the schedule to the Act. The Certifying Officer can certify a clause if it is fair and reasonable and secure uniform service condition. In fact the Certifying Officer has also modified the said clause which reads as follows:

"A workman shall be liable to be transferred to any department or section of department in the establishment as the management may decide at its discretion or from one unit to another unit located anywhere in India. Provided that where the transfer involves moving from one State to another such transfer shall take place either with the consent of the workman or where there is a specific provision to that effect in the letter of appointment and provided also that (i) reasonable notice is given to such workman, and (ii) reasonable joining time is allowed in case of transfers from one station to another."

4. It is further submitted that prior to amendment to Section 4 of the Act, no item could have been certified which was not included in the schedule. But the amendment permits the Certifying Officer to include fair and reasonable clause pertaining to the condition of service, having nexus to the preamble to the Act. u/ s 6 of the Act, the Appellate Authority has power only to modify, amend and confirm the provisions and not to delete any item certified. The union neither pleaded nor proved prejudice as to how the Standing Orders if certified will adversely affect them. The clause will ensure uniformity among the workmen which is the very object of the Act. Such deletion of Order 12 Sub-clause (1) is contrary to Section 3 Sub-clause (2) of the Act.

5. With regard to Clause 16.2, it is submitted that proportionate payment of wages is based on the principle of "no work no wages" and Payment of Wages Act provide for the same. Such clause was eminently necessary to get the work done as otherwise the workmen will be prone to idle away their time. In particular the deletion of the words in the Standing Order "the wages will be paid proportionate to the period of work done by the employees" was not warranted.

6. As regards Standing Orders 17 and 18, it is submitted that the said Standing Order pertain to the rights of the management to lay off workmen if it is permissible under law. In The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co., the right to lay off must be available in the contract or Standing Orders without which there will be no power to lay off. In accordance to such declaration of law, the petitioner provided for

declaration of lay off or closing down of the establishment in the event of strike, slow down, which is also provided for u/s 25-E of the Industrial Disputes Act. Such clause is, provided universally in every Standing Order and rejection of these clauses by the Tribunal is not legal. Standing Order 38 provides for retrenchment and provision for the same is also necessary.

7. Clause 27.11 provides for information to the management of the occurrence of any modifiable diseases on the workman and such clause is in the interest of workmen themselves and the staff and for advancement of the public interest as well. The social interest incorporated in such clauses was not properly weighed by the appellate authority. At best the appellate authority could delete the work that amounts to misconduct. Clause 27.16 relates to. interest of workmen to maintain clean appearance and hygiene. It has been so enacted for the well being of the workmen. If the workman appears with unshaven face or unkempt hair the factory will give a look of hospital and would demoralise the workmen themselves.

8. Though no objection statement was filed by the respondent, it is seen from the memorandum of appeal filed before the Industrial Tribunal, that the contention of the workmen was that the amendment to clause 12.1 was unjustified. It is submitted that the employees working in the petitioner establishment are all mostly illiterates and ignorant and also most of them are women. If they were to be transferred out of Bangalore, it will force them to leave the job itself. Further when they joined the service there was no such condition imposed on them. Consequently, such condition is unreasonable and illegal. With reference to Clause 17, it is submitted that the I.D. Act contains elaborate provisions in the matter of lay off. Consequently, incorporating such a provision will be redundant. Even otherwise, the said subject does not form part of the schedule to the Standing Orders Act.

9. With reference to Clause 36 bearing the heading "General", there is no provision in the schedule to the Standing Orders Act and the model Standing Orders for the inclusion of the general Standing Order. The very object of the Standing Orders Act and certifying of the draft Standing Orders is to provide for clear and definite provision regarding the condition of service of the employee. General and vague provisions lead to not only confusion but also conflict.

10. Reliance was placed upon the dictum of this Court reported in Geep Industrial Syndicate Limited, Mysore Vs. Geep Industrial Syndicate Employees" Union, Mysore and Others, wherein this Court has held as follows at PP. 1212, 1213:

"27. To conclude, the position as settled by the Supreme Court in Rohtak (supra) case and Lakheri (supra) case is that the Standing Orders cannot provide for a matter not listed in the Schedule to the Act. Sub-clauses (c) and (d) of Clause 16 of the Standing Orders of the petitioner establishment relate to transfer as also part of the heading of the said Clause 16. Sub-clause (b) relates to the very matter covered by Sub-clause (a), and is, therefore, superfluous. Therefore, Sub-

clauses (b), (c) and (d) of Clause 16 of the Standing Orders are not the Standing Orders certifiable u/s 4. In fact, on the light of what the Supreme Court said in Lakheri case, the very certification particularly of Sub-clauses (c) and (d) of Clause 16 way back in the year 1983, was entirely without jurisdiction, and, such action on the part of the Certifying Officer in certifying the said sub-clause in the year 1983 was a complete nullity. Therefore, the impugned order in so far as it relates to the said sub-clause cannot be found fault with. The appellate authority however was totally in error in construing Sub-clause (a) of Clause 16 also in the same way as he did in respect of Sub-clauses (b), (c) and (d). Clause (a) though uses the word "transfer", it is only from one department or section to another department or section or from one machine or work place to another, or from one job to another similar job within the industrial establishment. It is not a transfer but shifting of a workman from one section to another or from one machine to another, the workman being required to do a job not different from the one he was earlier doing. Certainly such shifting cannot alter the conditions of service of the workman to his disadvantage. So understood, Clause (a) can hardly be found fault with. The impugned order of the appellate authority therefore needs to be interfered with insofar as this Sub-clause (a) is concerned. Since only one sub-clause is left, instead of reading the clause concerned as Clause 16(a), it could as well be read merely as Clause 16 by removing the word "transfer" from the heading of the Clause 16 and also by substituting the word "changed" in place of the word "transfer" in the said Sub-clause (a). Thus read, the said clause reads thus:

"16. Change of place of work:

A workman may be changed from one department or section to another department or section or from one machine or work place to another, or from one job to another similar job within the industrial establishment."

11. I have considered over the contentions pro and contra referred supra. The question is whether deletion of Clause 12.1, 17, 27.11, 36 and the last sentence in Clause 16.2 and certain words in Clause 27.16 by the appellate authority is sustainable?

CLAUSE 12.1:

12. As per Standing Order 12.1, "A workman shall be liable to be transferred to any department or section of department in the establishment as the management may decide at its discretion or from one unit to another unit located anywhere in India."

13. The appellate authority considered the arguments of the union that illiterate workmen tend to leave the job on being transferred and . that will be against the interest of the workmen. The Tribunal relied upon the principle evolved in the case of Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd.; to the effect that the certification of the Standing Orders must be confined to matters mentioned in the schedule to the Act; beyond that if inclusion is

made, it would be a complete nullity. It is also brought to my notice the case of Geep Industrial Synthetic Ltd., mentioned supra, wherein this Court has held following the Rohtak case and Lakheri's case, that Standing Orders cannot provide for a matter not listed in the schedule to the Act. In that case the contention of the counsel for the petitioner was that the Central Rules is applicable to the establishment concerned in that case which was opposed by the respondent union and contending that Central Rules do not apply to that establishment. Therefore, the learned single Judge has excluded Rule 2-A of the Central Rules and held that "as such any inclusion of the matter of transfer in the schedule to the Act by virtue of Rule 2-A of the Central Rules is of no consequence so far as the petitioner establishment is concerned. Here this is not the case and the contention of the learned counsel for the petitioner that Central Rules are applicable to the present institution in question. In any event the applicability of the Central Rules cannot be excluded. Section 15 of the Act enables both the Central Government and the State Government to make rules. Section 15(2)(a) enables both the Governments to include an item in the schedule by making rules in that regard. While the Central Government includes a matter in the schedule to the Act by prescribing it u/s 15 of the Act as an additional matter to be included in the schedule to the Act, then the additional matter so included becomes a part of the schedule to the Act and as such becomes applicable to all the Industrial Establishments in the entire country without any reference to the aspect of the appropriate Government u/s 2-B of the Act and without any reference to the different industrial establishments listed in the said Section 2-B of the Act. The contention is that both the Central and the State Governments are empowered to include any additional matter to the Act by making rules u/s 15 of the Act, whereas the matter included by rules made by any State Government, would not be applicable to an establishment outside the State, the position is not so when the Central Government itself makes such an addition to the schedule and in that event the added part as being part of the Central Act, would be applicable to the establishments all over the country. This position is further evidenced from the fact that u/s 15(3) of the Act the rules were approved by both the Houses of the Parliament and thus it is effective and binding on all establishments throughout the country.

14. Whether Central Rules will have preference and would applicable to all the establishments or the State Rules will have preference, has not been considered by the Tribunal. The entire judgment of my learned brother in Geep Industrial Synthetic Ltd. case moves on the main submission made by the learned counsel for the respondent there that the Central Rules would not be applicable to that establishment only. Whether it is a question of fact or a question of law, has not been considered in that case. Even paragraph 15 of Rohtak's case reported in (supra) reads as follows:

"15. Then in regard to the matters which may be covered by the Standing Orders, it is not possible to accept the argument that the draft Standing Orders can relate to matters outside the Schedule. Take for instance, the case of some

of the draft Standing Orders which the appellant wanted to introduce; these had reference to the liability of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two Standing Orders were included in the draft of the appellant as Nos. 10 and 11. These two provisions do not appear to fall under any of the items in the Schedule; and so, the certifying authorities were quite justified in not including them in the certified Standing Orders."

15. Therein the question whether the Central Act will be applicable or not was not in consideration as Section 2-A itself was introduced to the Central Act by the Central Government in 1983. In fact in that case the Supreme Court observed towards the end of paragraph 9 of the judgment that "when certification proceedings are held before the Certifying Authority, reasonableness or fairness of the provision contained in the draft Standing Orders falls to be examined. The position, that the schedule if does not contain a particular provision then certainly the Standing Orders cannot be touching a subject which is not so included. But it is seen that in 1983, Rule 2-A has been introduced to the Central Rules. It has not been contended before me specifically that such a rule is not applicable to the present establishment concerned in this writ petition. Factually therefore the view of the learned single Judge in Geep case (supra) is distinguishable.

16. Coming to the question of fairness and reasonableness of rule of transfer, it cannot be said that transfer is unfair. In fact towards the end of the judgment, the learned single Judge wanted to distinguish the word transfer by using the word change of place of work. This is what the learned single Judge in the above case has said:

"To conclude, the position as settled by the Supreme Court in Rohtak (supra) case and Lakheri (supra) case is that the Standing Orders cannot provide for a matter not listed in the Schedule to the Act. Sub-clauses (c) and (d) of Clause 16 of the Standing Orders of the petitioner establishment relate to transfer as also part of the heading of the said Clause 16. Sub-clause (b) relates to the very matter covered by Sub-clause (a), and is, therefore, superfluous. Therefore, Sub-clauses (b), (c) and (d) of Clause 16 of the Standing Orders are not the Standing Orders certifiable u/s 4. In fact, in the light of what the Supreme Court said in Lakheri case, the very certification particularly Sub-clauses (c) and (d) of Clause 16 way back in the year 1983, was entirely without jurisdiction, and, such action on the part of the Certifying Officer in certifying the said sub-clause in the year 1983 was a complete nullity. Therefore, the impugned order insofar as it relates to the said sub-clause cannot be found fault with."

17. Really speaking change of place of work means transfer. What the learned single Judge meant therein perhaps internal transfer and external transfer. In fact Clause 16 referred to in that judgment speaks about "from one department or section to another department; from one machine or work place to another; or from one job to another similar job within the industrial establishment". In

that case perhaps that industrial establishment did not have any branch outside the particular place. The very word from one job to another similar job within the industrial establishment would automatically mean within any branch or other places of the industrial establishment. Any other narrow interpretation is not permissible.

18. In this view, I find that deletion of Clause 12.1 by the Tribunal is not sustainable and the same is set aside.

CLAUSE 17:

19. Clause 17 speaks about lay off, which is as follows:

"17.1 The management may, in the event of shortage of power or any business reasons may notify to its workmen inability to provide employment to them and to lay them off from work for such period as notified from time to time.

17.2 The employees/workmen so laid off shall be eligible for lay off compensation as provided under the provisions of Industrial Disputes Act.

17.3 Workmen eligible, to receive lay off compensation as per the Industrial Disputes Act will be entitled to be paid lay off compensation only up to a maximum of 45 days in a period of 12 months. The management shall have the right of discretion either to continue to keep the workmen under lay off without paying them any lay off compensation, or to retrench their services and set off the layoff compensation payable in cases where lay off has been for more than 45 days.

17.4 The Management may, in the event of strike or slowdown affecting either wholly or partially any section or department of the establishment, lay off the workmen and such of those workmen laid off will not be entitled for wages or compensation as per the provisions of Industrial Disputes Act, 1947."

20. The objection to such clause by the union is that the same is covered under the Industrial Disputes Act and it will be a redundant clause. Rightly therefore the Certifying Officer included such clause in the Standing Orders. The Tribunal has dealt with the aspect in only one line saying that "the union is justified in requesting to delete the clause relating to lay off and retrenchment, since the Industrial Disputes Act, 1947 defines lay off and retrenchment and they have been exhaustively dealt with under the Act." Such a conclusion arrived at by the Tribunal is not sustainable. If Clauses 17 and 18 are only repetition, reiteration of the same will not affect either the union or the workman. Though it may amount to a superfluous clause according to the union. No illegality is shown against such inclusion. In this view, confirming the view of the Certifying Officer, the finding of the Tribunal is set aside.

CLAUSE 27.11:

21. Clause 27.11 reads as follows, under the heading of misconduct.

"Failure to inform the Management of the occurrence of any modifiable diseases, viz., cholera, small pox, leprosy, diphtheria, cerebrospinal meningitis, plague, bacillary dysentery, yellow fever, typhoid or enteric fever, mumps, measles or any other epidemic diseases and other diseases notified by the health authorities."

22. The Certifying Officer found that the clause may be deleted because sometimes workers may not be in a position to inform the management about the occurrence of modifiable disease. This cannot be a reason for deletion of such a clause. As rightly pointed out by the petitioner that inclusion of this clause is in public interest and also is in the interest of workmen themselves. In these days of development of social justice, as an important branch of law, and environmental protection as an inevitable safeguard for the society at large such a clause is necessary. The diseases referred to therein are certainly serious in nature and are equally contagious. If workman who has been affected by such a disease without availing himself of leave on medical grounds or grounds of inability, he is very likely to pollute the healthy atmosphere prevalent among the workmen resulting in unwarranted hygiene problem being developed in the working area. A man having small pox or suffering from cholera or afflicted with plague, mumps or measles or other affect able diseases shall not enter an industrial establishment. To do work, basically health is required and epidemic diseases are being treated in isolated departments even in all hospitals. Such health menace should not be allowed to prevail over the industrial workers so as to affect their body and health. It is certainly within the discretionary jurisdiction of the management. There is no vagueness in that as the diseases are identified; consequently the same cannot be considered as unfair or unreasonable as has been held by the Tribunal. Thus, that finding also is set aside.

CLAUSE 36:

23. Clause 36, General, reads as follows:

"36.1 The granting of increments and other ex gratia payments cannot be claimed by any employee as a matter of right or part of his terms of employment and any such payments made are entirely within the sole discretion of the Management.

36.2 The Management will not entertain any representation from political or communal bodies supporting to speak on behalf of.

36.3 The employees shall personally be responsible for proper and faithful observance of these Standing Orders and the provisions of any other law for the time being in force applicable to the establishment.

36.4 The management may, for the smooth functioning of the establishment, frame issue or alter from time to time rules and regulations subject to the provisions of law for the time being in force and it will be the responsibility of employees to abide by and follow the same.

36.5 Person accepting employment in the establishment will be deemed to have accepted the terms of these Standing Orders.

36.6 A copy of these Standing Orders in English and translation thereof in Kannada will be displayed on the Notice Board of the establishment and shall be kept in a legible condition. In case of dispute, English version of these Standing Orders shall be considered authentic."

24. It is opposed by the union that they are vague and general in nature. In fact the Certifying Officer has upheld the said clause on the ground it is fair and reasonable. The contention of the management is that the conditions laid down under the clause are specific and clear and no confusion can arise. The Certified Standing Orders are not required to be in exact terms of Model Standing Order and the clause cannot be objected to. No reasons are given by the union and no prejudice is explained for deletion or modification of this clause. The Tribunal has rejected this clause on the ground that such a clause has not been mentioned in the schedule. Even the Tribunal mentions that the Standing Order relates to grant of increments, intervening of political or communicable (sic) bodies, to speak on behalf of the employees, faithful observance of the Standing Orders, the right of the management to frame issues or alter them from time to time and also the rules and regulations, and the responsibility of the employees to abide by it and follow them. As rightly titled as General, these general rules which only reiterate the Standing Orders already made cannot be termed as prejudicial to the workmen or unreasonable or unfair. In my opinion, it is only in the interest of the workmen in particular and the management in general. Consequently, the finding rendered by the Tribunal is also set aside.

25. In the result, the writ petition is allowed as prayed for. There shall be no order as to costs.