

(2016) 02 KAR CK 0151

In the Karnataka High Court

Case No : Writ Petition No. 10758/2013 [L-RES]

K.C. Das Pvt. Ltd.

APPELLANT

Vs

The President, Karnataka State Hotels and Resorts

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 12[3], Section 18[3]

Citation : (2016) 02 KAR CK 0151

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Somashekar, Advocate for S.N. Murthy and Associates, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

S. Sujatha, J.—1. This petition is directed against the Conciliation proceedings pending before the Respondent Nos. 2 and 3 vide Notices dated 5.1.2013 and 30.1.2013 at Annexures - U & W respectively to the writ petition.

2. The brief facts of the case are: That the petitioner in response to the new Charter of demands submitted by K.C. Das Employees" Union, submitted the proposal for settlement after several rounds of discussion before the Respondent No. 2, tripartite settlement under sections 12[3] and 18[3] of the Industrial Disputes Act, 1947, [the "Act", for short], was assigned on 11.04.2012. The benefit of settlement is extended to all the 58 employees working in the petitioner-Company. This settlement was extended from 1.4.2011 to 31.3.2016. It transpires that the Respondent No. 1 submitted a charter of demands claiming that it is representing the workers of the company. The Respondent No. 1 - Union sent a letter dated 18.01.2012 to the Respondent No. 2 to initiate conciliation proceedings. In the conciliation proceedings, the locus standi of the Respondent No. 1 - Union to submit charter of demands was questioned. During those proceedings, the Respondent No. 1 - Union submitted a letter dated 21.01.2012 claiming that 15 workers are its Members. The petitioner submitted a reply dated

23.02.2012 questioning the locus standi of the Respondent No. 1 - Union to raise charter of demands on behalf of all the workmen. It is also informed by the petitioner that all the benefits of settlement are extended to all the employees including 15 members of the minority unrecognized union and also produced the payment sheet.

3. The Respondent No. 2, on failure of conciliation, sent a factual report dated 30.08.2012 to the Labour Commissioner. Further, the Respondent No. 2 also sent a report dated 30.08.2012 to the Secretary to the Government, Labour Department. In these two reports, the Respondent No. 2 has come to the conclusion that the benefits of the settlement dated 11.04.2012 with the recognized majority K.C. Das Employees Union is binding on all the workers including the Members of the Respondent No. 1 - Unrecognized minority union. The charter of demands of the Respondent No. 1 - unrecognized minority union was referred for adjudication dated 16.10.2012 to the Industrial Tribunal, Bangalore, which has been registered as I.D. No. 296/2012. The Respondent No. 1 -Union once again submitted a petition dated 7.9.2012 to the Respondent No. 1 reiterating that the benefits given to Kolkata employees are not extended to the Bangalore employees apart from alleging other violations. To the notice issued by the Respondent No. 2, petitioner has submitted a reply explaining that the allegations of Respondent No. 1 - Union is without any basis and should be dismissed. The Respondent No. 1 again submitted similar demands by letter dated 9.11.2012, on the basis of which, the Respondent No. 2 issued notice dated 5.1.2013 directing the Managing Director of the petitioner to appear before the Authority. Again, on one more letter submitted by the Respondent No. 1 on the same ground, another notice was issued by the Respondent No. 2 calling on the petitioner to appear before the Conciliation Officer. The petitioner being aggrieved by the proceedings initiated by the Respondent Nos. 2 and 3 at the instance of the Respondent No. 1 -Unrecognized Employees Union at Annexures-U and W is before this Court.

4. Heard the learned Counsel for the parties and perused the material on record.

5. Learned Counsel for the petitioner would submit that a Settlement Deed dated 11.4.2012 was entered into between the Management and the majority Employees Union of K.C. Das Private Limited. In terms of Clause 4[b] of the said Settlement Deed, it is made clear that during the period of operation of the Memorandum of Settlement, no demands or disputes shall be raised by the workmen and the period of operation of the Settlement is with effect from 01.04.2011 to 31.03.2016 and during the subsistence of the Settlement Deed, minority Union having 15 employees to whom such benefit as per the Settlement Deed dated 11.04.2012 is extended cannot raise any further demand contrary to the Settlement Deed and in support of this submission, learned Counsel has placed reliance on the Judgment of the Apex Court in the case of "Barauni Refineries Pragatisheel Shramik Parishad v. Indian Oil Corporation Ltd., and Others" reported in 1991 [1] LLJ 45.

6. None appears for the Respondent No. 1. Learned Government Pleader appearing for Respondent Nos. 2 and 3 justifies the conciliation proceedings initiated by the Respondent Nos. 2 and 3.

7. Having heard the learned Counsel for the parties and perused the material on record, the only question that arises for consideration before this Court is whether the Minority Employees Union can raise a demand during the subsistence of Settlement Deed executed between the Management and the Majority Employees Union before the Respondent No. 2?

8. The Respondent No. 1 is not present before the Court to refute the contentions raised by the petitioner, more particularly, the Settlement Deed was entered into between the Majority Employees Union and the Management. However, from the records, it is clear that 44 employees are representing the Majority Employees Union whereas 15 employees are representing the Respondent No. 1 - Union. It is undisputed fact that the Majority Employees Union has executed the Settlement Deed with the Management on 11.04.2012. The terms of Settlement at Clauses 4[b] and 5 reads thus:

"4. Charter of Demands

[a] xxx xxx xxx

[b] In consideration of improved benefits monetary and otherwise hereby provided, the workmen and the Union collectively and individually agree and undertake that they shall not during the period of operation of this Memorandum of Settlement, make any demands or raise any disputes or resort to go slow, strike or any coercive means in regard to any matter settled/covered by this Memorandum of Settlement and/or ancillary or incidental thereto.

5. Period of Operation of this Settlement: This settlement shall come into force from 01.04.2011 and shall remain in full force and effect till 31.03.2016 and will continue to be applicable to the parties thereafter until it is substituted or replaced by another Settlement or an Award."

9. In view of the said Settlement Deed, no workman can raise any dispute or make any demands or resort to go slow, strike or any coercive means in regard to any matter settled or covered by the Memorandum of Settlement. The Respondent No. 1 raising demands on the ground that the workers of the Bangalore are discriminated against the Employees of Kolkata who are given higher benefits is totally contrary to the terms of settlement as per the Settlement Deed dated 11.04.2012.

10. The Apex Court in the case of Barauni Refineries [supra], while considering an identical issue, has held thus:

"Therefore, a settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To

that extent, it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority."

11. Thus, it is settled law that the settlement reached with the help of Conciliation Officer is fair and reasonable and binding not only on the employees belonging to the Union signing the Settlement Deed but also on other employees. In such circumstances, the Respondent No. 1 demanding further benefits being a Minority Union is not justifiable and contrary to well established principles of law. The Respondent Nos. 2 and 3 initiating conciliation proceedings on the basis of the demands made by the Respondent No. 1 is wholly illegal and unsustainable.

12. For the foregoing reasons, the proceedings initiated by the Respondent Nos. 2 and 3 at Annexures -U & W respectively are not just and proper. Accordingly, Annexure - U dated 5.1.2013 and Annexure-W dated 30.01.2013 are quashed. Writ petition stands allowed.