

(1996) 07 KAR CK 0076
In the Karnataka High Court
Case No : P. No. 33595 of 1993

K.S.R.T.C. Staff and Workers Federation

APPELLANT

Vs

K.S.R.T.C. and others

RESPONDENT

Date of Decision : 25-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 18 (1), 2 (p)

Citation : (1997) 75 FLR 699 : (1996) ILR (Kar) 3514

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Judgement

1. That, in order to decide the question as to who, among the different federations of the employees unions of the first respondent Corporation, should be recognised as the recognised sole collective bargaining agent of all the workmen in KSRTC, a referendum was held on December 11, 1987. The petitioner having secured 53% of votes polled at the corporate level was accorded recognition by the first respondent, as sole collective bargaining agent of all the workmen in KSRTC by its Official Memorandum dated December 24, 1987. That, on July 28, 1988, a Memorandum of Settlement u/s 18(1) read with Section 2(p) of the Industrial Disputes Act, 1947, was made between the petitioner-federation and the first respondent Corporation. The said Memorandum of Settlement is produced at Annexure-D. The only subject of the settlement under Annexure-D is as to the deduction of the subscription of the members of the Unions affiliated to the petitioner-federation from their wages. It is agreed between the petitioner and the management that, the petitioner-federation will ensure that its affiliated unions will give individual authorisation of its member employees to the management on or before 20th of the month to the effect that the amount prescribed by the federation as union subscription can be deducted and paid to the respective unions and the management agreed that the amount deducted towards the union subscription will be transmitted to the credit of account number of the concerned union affiliated to the petitioner federation.

It is further agreed that the federation would give up the facility hitherto extended to the recognised unions for collection of union subscription by two of their representatives, treating the absence of such representatives as on duty on the pay days and, the settlement is agreed to be valid till the recognition accorded to the petitioner federation exists or until both the parties terminate the terms by mutual consent earlier. This facility is generally known as "Pay-Roll Cheek-off facility". The petitioner also entered into a settlement with the management in respect of the service conditions of the employees, as per Annexure-M, the Memorandum of settlement dated July 17, 1989, and the said settlement was in force for a period of four years commencing from January 1, 1988. As the said settlement was due to expire by December 31, 1991, a notification dated December 3, 1991, was issued by the Corporation to hold another referendum to determine again as to who could be the sole bargaining agent on behalf of the employees of the first respondent Corporation. Pursuant to the said notification, a referendum was held on January 4, 1992, at which the petitioner again secured the highest number of votes polled and therefore the Corporation again accorded recognition to the petitioner as a sole bargaining agent as per Official Memorandum dated July 16, 1992. It is not in dispute that the Corporation continued to deduct the subscription of the members of the Unions affiliated to the petitioner federation from their wages until September, 1993.

That, even before the 2nd referendum the petitioner federation submitted its charter of demands. After the referendum and after the petitioner was recognised as sole bargaining agent, the charter of demands was taken up for consideration and ultimately it resulted in a Memorandum of Understanding dated May 10, 1993, as per Annexure-N. The said Memorandum of Understanding was signed by the petitioner as well as the Management in anticipation of the approval of the Board of Directors and the State Government. The Board of Directors approved the said Memorandum of Understanding and the same was submitted to the State Government for its approval. The State Government by its Order dated September 10, 1993, as per Annexure-A accorded approval to the Memorandum of Understanding suggesting certain alterations to the service conditions and further subject to certain other terms and conditions. One of such conditions is that the management would not take up the responsibility of collecting donations or monthly subscriptions from the employees on behalf of their recognised federation or union of employees. Accordingly, the first respondent Corporation issued an order dated September 21, 1993, withdrawing the pay roll cheek-off facility extended to the petitioner till then, with immediate effect.

The petitioner having been aggrieved by the order dated September 10, 1993, made by the first respondent as per Annexure-B has filed this petition under Articles 226 and 227 of the Constitution of India for quashing Annexures-A and B by a writ of certiorari.

2. Sri M. C. Narasimhan, Learned Counsel appearing for the petitioner has contended that the impugned orders are illegal, invalid and without authority of law. It is contended that the Government has no authority of law to interfere with the settlement validly made u/s 18(1) of the Industrial Disputes Act in exercise of its power under the provisions of the Road Transport Corporations Act, 1950; Section 34 of the Act deals with the power of the Government to issue directions which are of general in nature and such a power shall be exercised in consultation with the Corporation and further in exercising such power it shall not be in relation to any individual or group of individuals. It is his further contention that the impugned order at Annexure-A is not a Government Order issued in exercise of its power u/s 34 of the Act or under any other provisions of the Act; it is a direction issued to the Corporation to substitute the terms of the settlement; hence it is not attracted by Section 34 of the Act. He further contends even if the impugned order at Annexure-A is held to be a Government Order, it is outside the provisions of Section 34 of the Act as the same is made against the petitioner federation alone and not in the nature of a general direction. Sri M. C. Narasimhan, the Learned Counsel appearing for the petitioner further contends that the petitioner has acquired a legal right under Annexure-D and the same cannot be taken away without providing the petitioner an opportunity of being heard. The orders of the Government and that of the Corporation are, therefore, invalid being violative of the principles of natural justice.

Sri Narasimhan, has further contended that the Memorandum of Settlement dated July 28, 1988, was not submitted to the Government for approval and, the action of the Government in directing the Corporation to withdraw the check-off facility is, therefore, without jurisdiction as being outside the scope of consideration of Memorandum of Understanding dated May 10, 1993.

It is his further contention that Annexure-D does not require the approval of the Government and as the same has been in operation for over 6 years and, it cannot be withdrawn without there being any reasonable cause. The Government did not assign any reason to direct the Corporation to withdraw the pay-roll check-off facility. The withdrawal is, therefore, illegal and liable to be declared as such.

3. Sri L. Govindaraj, the Learned Counsel" appearing for the respondent has contended that the petition is not maintainable as the question in controversy in this petition relates to the breach of settlement and the only remedy available to the petitioner is by way of a dispute before appropriate Industrial Court. In exercise of its power u/s 34 of the Act, the State Government has authority to issue any direction regarding service conditions and wages of the employees; the pay-roll check-off facilities being the part and parcel of wages, the impugned order at Annexure-A is, therefore, valid and sustainable. He further contends that the settlement at Annexure-D expired on December 31, 1991 and no further settlement is made between the parties and therefore the petitioner is not entitled to pay-roll check-off facilities irrespective of the legality or otherwise of

the order of the Government as per Annexure-A.

4. Learned Advocate General appearing for the State has contended that the petitioner is not entitled to invoke jurisdiction of this Court, under Article 226 of the Constitution of India, as the right of the petitioner flows from the settlement, breach of settlement gives rise to a dispute under the provisions of the Industrial Disputes Act. The petitioner has neither a fundamental right nor a statutory right and therefore the is Writ Petition under Article 226 of the Constitution of India is liable to be rejected. The Learned Advocate General has further contended that in view of latest settlement dated December 27, 1995, between the petitioner and the Corporation agreeing to discuss the matter with the Government in relation to pay-roll check-off, the petition to quash the order under Annexure-A so far as it related to the pay-roll check-off has become infructuous. It is the further contention of the State that Annexure-D, the settlement expired on December 31, 1991, along with Annexure-M the Memorandum of Settlement dated July 17, 1989. When once the settlement came to an end the check-off facility extended to the petitioner would automatically cease to be in operation, unless it is succeeded by a new settlement. In the absence of a new settlement, the check-off facility is not available to the petitioners and therefore the petition to quash Annexure-A merely because the cheek-off facility was extended till September 1993, by the Corporation without there being any settlement is misconceived and liable to be rejected. The Learned Advocate General has further contended that under the provisions of the State Road Transport Corporations Act, the State Government has deep and all pervasive control over the Corporation. In view of such all pervasive control it has power to issue directions to the Corporation from time to time in order to see that the Corporation works beneficially for the benefit of the general public. By extending pay-roll cheek-off facility the Corporation is put to so many inconveniences on account of labour involved in collecting the subscription from the wages and, crediting it to the account of the respective unions. The said process had a telling effect on the function of the Corporation and therefore the State Government issued direction u/s 34 of the Act on account of expediency. The Government found that continuation of check-off was not expedient and therefore the same is directed to be withdrawn.

In view of the aforesaid contentions the following questions would arise for consideration :

- (i) Whether this petition under Article 226 of to the Constitution of India is not maintainable in view of the question in controversy related to the breach of the settlement ?
- (ii) Whether the Government has lawful authority to interfere with the settlement validly made between the petitioner and the Corporation by issuing directions u/s 34 of the Act ?
- (iii) Whether Annexure-A is a direction u/s 34 of the Act ?

Point No. (i) :

Annexure-D the Memorandum of Settlement dated July 28, 1988 is made between the petitioner and the first respondent u/s 18(1) read with Section 2(p) of the Industrial Disputes Act, 1947. Clause (7) of the Settlement states that the to settlement is valid till the recognition accorded to the Federation exists or until both the parties terminate the terms by mutual consent earlier. The relevant clause reads as follows :

"7. It is agreed that this settlement is valid till the recognition accorded to this Federation exists or this will continue to be in force until both the parties terminate the terms by mutual consent earlier."

5. It is therefore clear that the settlement continues to be in force until the recognition accorded to the petitioner federation exists or until it is terminated on any earlier date by mutual agreement. The settlement made u/s 18(1) of the I.D. Act shall be binding for such period as is agreed upon by the parties and, if no such period is agreed upon, for a period of six months from the date on which the Memorandum of settlement is signed by the parties to the dispute and, it shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to other party or parties to the settlement as envisaged u/s 19(2) of the I.D. Act. It is true that, if there is a breach of settlement, the remedy available to the party against whom the breach is committed is by way of a dispute. But if the breach is occasioned, not on account of any act of either of the parties to the settlement, but on account of a direction issued by the Government, can it be said that the remedy is still by way of dispute ? In this case, the withdrawal of check-off facility is withdrawn, not on account of any action taken by the first respondent but, in view of the order made by the Government as per Annexure-A. Annexure-A is admittedly not in any manner related to the making of the settlement. But it is responsible for the breach of the settlement. The first respondent contends that the direction issued by the Government is binding on him and accordingly he withdrew the check-off facility. It is, therefore, clear that the breach of the settlement is, not by any voluntary act of the Corporation but, because of the direction of the Government said to have been issued u/s 34 of the Act. The petitioner has impugned in this petition, the order made by the Government as per Annexure-A in so far as it relates to the withdrawal of check-off facility and also consequent order made by the first respondent as per Annexure-B. Annexure-A cannot be the subject-matter of a dispute before Industrial Tribunal or Labour Court as the Government is not a party to the settlement. Therefore, the contention of the respondents that the petition under Article 226 of the Constitution of India is not maintainable, is unacceptable in view of the challenge being primarily to the order of the Government and its consequent orders. Hence, Point No. (i) has to be answered in the negative and accordingly answered.

Point Nos. (ii) and (iii) :

It is contended by the learned Advocate General that when once the Memorandum of Understanding dated May 10, 1993, was signed by the petitioner and the first respondent, Annexure-D gets itself incorporated in Annexure-N, the Memorandum of Understanding. The Government having all pervasive control over the activities of the Corporation, has authority of law to issue direction u/s 34 of the Act. The order at Annexure-A shall be construed as a direction issued u/s 34 of the Act and, it cannot be construed as any other order merely because it does not contain the provision under which the direction was issued. When the State has source of power, non-mentioning of the provision under which the said power is exercised would not vitiate the order. As the pay-roll check-off facility was found to be not expedient on account of the inconveniences caused to the Corporation the same was withdrawn. It was only a concession shown and no legal right is conferred upon the petitioner. The withdrawal of a concession would not give any right to the petitioner to maintain an action against the respondents.

6. Sri Narasimhan, Learned Counsel appearing for the petitioner has contended that there is no expediency to issue the impugned order. The direction was not issued as an independent direction capable of being issued u/s 34. While approving the Memorandum of Understanding Annexure-N, the State Government has suggested certain modifications. The settlement at Annexure-D was not the part and parcel of Annexure-N, nor could it be construed as part of Annexure-N and, while considering Annexure-N there was no reason for the Government to issue a direction u/s 34 of the Act in respect of the pay-roll check-off facility which was not the subject matter before the Government. It is, therefore, the contention of Sri Narasimhan that, the State Government has no lawful authority, to interfere with the settlement made between the parties, under the provisions of the Industrial Disputes Act, while considering the Memorandum of Understanding submitted for approval under the provisions of the State Road Transport Corporations Act. Sri Narasimhan further contends that prior to the settlement two employees were allowed to collect the subscription on behalf of each member union affiliated to the Federation, at every Bus Depot on pay days treating them as on duty with full pay. By settlement at Annexure-D that facility was given up as the Corporation agreed to deduct the subscription from the wages of the employees, on the petitioner furnishing of individual consent of every employee. This settlement is for reciprocal consideration and therefore the petitioner has right to enforce the settlement.

7. The admitted facts in this case are that, the petitioner is declared as the sole bargaining agent on behalf of the workmen in K.S.R.T.C. Different Unions are affiliated to the federation of whom the employees are the members. The members are liable to pay their subscription to the Union. The Corporation had agreed to lend the services of one or two of the employees, depending upon the strength of the Union for two days every month, to collect the subscription from

the employees at each Depot. By settlement as per Annexure-D it is agreed between the petitioner and the, Corporation, that the Corporation shall deduct the subscription out of the wages of the employees who are the members of the petitioner-Union and the facility of providing two members at each depot every month for two days to collect subscriptions from the members is given up or withdrawn and it is admittedly a settlement made u/s 18(1) of the Industrial Disputes Act. No proceeding is pending either before the Government or before the Conciliation Officer under any of the provisions of the I.D. Act. The settlement was made on July 28, 1988. It is agreed to be valid till the recognition of the petitioner as sole bargaining agent exists. First referendum was held on December 11, 1987. The petitioner was recognised as the sole bargaining agent for a period of four years from January 1, 1988. The second referendum was held on April 1, 1992. The petitioner was again recognised as sole bargaining agent. At no point of time, the recognition of the petitioner as sole bargaining agent by the Corporation was ceased, because prior to December 31, 1991 the petitioner had submitted the fresh charter of demands to the Corporation for consideration and, above all this, the Corporation continued to deduct the subscription from the wages of the employees till September 1993 without there being any break. In view of the aforesaid facts, it was clear in the minds of all parties concerned, that, the petitioner was the recognised sole bargaining agent on behalf of all the employees of KSRTC and, such recognition was continued even as on this day as the settlement in respect of pay-roll check-off is not substituted by any fresh agreement or settlement. It is also on record that Annexure-N the Memorandum of Understanding dated May 10, 1993, was in respect of various other terms and conditions of service of the employees and it did not touch upon pay-roll check-off facility. The State Government at one stage contends that Annexure-D came to an end on December 31, 1991, the date on which Annexure-M expired. At the other stage, it is contended by the State Government, that Annexure-D gets itself incorporated in Annexure-N which came into being on May 10, 1993. It is not open to the State Government to blow hot and cold at the same time, contending that the settlement ceased to be in operation as soon as the expiry of four years and further contending that the same gets itself incorporated into a document which came into existence in the year 1993. It is agreed by the parties that the settlement was not placed for consideration before the Government. What was before the Government for consideration was, the Memorandum of Understanding dated May 10, 1993. It is true that in the exercise of its power as a Chief Controlling Authority it is open to the Government either to accept or reject the Memorandum of Understanding. It is also open to the Government to suggest certain modifications. But such modifications shall be only in respect of the items settled and agreed to between the parties and not in respect of a matter which is not the subject matter of Memorandum at all. Admittedly, Memorandum of Understanding dated May 10, 1993, was in relation to the service conditions of the employees of the Corporation, whereas Annexure-D, the settlement is in respect of extending check-off facility specifically made u/s 18(1) of the Act, would cease to operate

only when the parties act in accordance with the provisions of Section 19(2) of the I.D. Act. The Government has no role to play u/s 19(2) of the I.D. Act. When the State Government has no role to play under the provisions of I.D. Act,, it is obvious that, it cannot interfere with a settlement made validly by the parties under the provisions of Section 18(1) of the I.D. Act. Shri Narasimhan has further contended that MemorandumAnnexure-A is not an order made u/s 34 of the Act. His main contention is that it must contain a direction in the form of a Government Order, which should necessarily be by means of a Notification. What is stated in Annexure-A is the terms and conditions to substitute the Mernorandum of Agreement made between the parties. The terms and conditions sought to be substituted to the Memorandum of Understanding made between the petitioner and the first respondent cannot be an order or direction made u/s 34 of the Corporation Act. Annexure-A since it is made in relation to the Memorandum of Understanding must be construed as an order made under the provisions of the Industrial Disputes Act, not under the Road Transport Corporations Act. There is force in the contention of Sri M. C. Narasimhan, Learned Counsel for the petitioner. Memorandum of Understanding dated May 10, 1993, was made and signed pursuant to the industrial dispute raised by the petitioner with first respondent. It is therefore an industrial settlement. Even though it does not require the approval of the State Government, since the Government being the Chief Controlling Authority of the first respondent Corporation it was made in anticipation of the approval of the Government and it was submitted. What was submitted to the Government for approval is Memorandum of Understanding in relation to an industrial dispute, governed by the provisions of the Industrial Disputes Act. Any direction or order touching the said Memorandum of Understanding shall be under the provisions of the Industrial Disputes Act and not under the provisions of the Road Transport Corporations Act. Even otherwise, the order under Annexure-A cannot be construed as a direction since no specific order is made but it contains clause to withdraw the cheek-off facility, in addition to certain modifications as to the service conditions. Section 34 of the Act confers power on the Government, to make a general order in relation to the Road Transport Corporation as such as a whole and not in respect of individual cases. As there is no general order, the order directing the Corporation to withdraw the check-off facility cannot be construed as an order made u/s 34 of the Act.

8. The Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, has held as follows :

"47. At this stage I may record my firm conclusion that for the reasons already given the settlement under the I.D Act does not suffer death merely because of the notice issued u/s 19(2). All that is done is a notice "intimating its intention to terminate the award." The award even if it ceased to be operative qua award, continues qua contract. Therefore, if the I.D. Act regulates the jural relations between the LIC and its employees and if we will presently scan-then the rights under the settlements of 1974 remain until replaced by a later award or

settlement".

9. In *The Workmen and Others Vs. Hindustan Lever Ltd.*, the Supreme Court has held that, at-P 397 :

"..... It is a solemn agreement, the agreement of which effective and wholesome advantage has been taken by the employer and when it now does not suit it, it in breach of the solemn agreement wants to turn round and not only repudiate it but disown it as having never been entered into. No Court of justice can ever permit such a thing to be done".

10. In *Karnataka Bank Employees Association Vs. Commissioner of Labour and Others*, this Court has held the agreement made between the employer and the union to deduct the union subscription from the salary of the member employees is not violative of Section 23 of Payment of Wages Act and such deduction is permissible. Sri Bopanna J., considering the purport and intent of Section 7 of the Payment of Wages Act has held as follows :

".... There is no provision for deduction of the union subscription from the wages of the employees nor there is any prohibition for such deduction because it "does not find favour with the Government". But the members and the Bank have entered into an agreement for the deduction of the membership fee. Such deduction is for the betterment of the employees. It is common knowledge that the workers organise themselves by forming unions with a view to bargain collectively with their employers on various matters touching their service conditions, emoluments, bonus, etc. It is, therefore, necessary, for these unions to be self-supporting by taking a nominal subscription from their members only. By their own financial resources the unions can bargain effectively with their employers by retaining their individuality and independence for the is various rights conferred on them by innumerable labour laws that are on the Statute book. From this point of view a nominal deduction of Rs. 2 from the wages of the members of the association cannot be characterised as a deduction against the interest of the members of the association."

11. The Learned Advocate General sought to place reliance on decisions of the Supreme Court in *The General Manager, Mysore State Road Transport Corporation Vs. Devraj Urs and Another*, and *S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another*, in support of his contention that the State Government has lawful authority to issue direction u/s 34 of the Road Transport Corporations Act. There is no dispute as to the aforesaid proposition of law. Hence, they are not relevant for the decision on the question in controversy in this petition.

12. The main contention of the respondents against the extension, of pay-roll check-off is expediency. Annexure-A does not assign any reason as to why the said facility will have to be withdrawn. The Statement of Objections filed by the Corporation indicates that about 744 members have given a representation expressing their dissent for deduction of the subscription from their wages and the Corporation is bound by the direction issued by the Government and as the

Government has issued direction u/s 34 of the Act the facility is withdrawn. The State Government in its Statement of Objections has just stated that the extension of pay-roll cheek-off facility has been withdrawn as it is found to be not expedient. Why it is not expedient is not explained. It was sought to be contented by the Learned Advocate General that the process of deduction of the subscription from the wages of the employees and its remittance to the account of various different unions would involve great deal of labour which is having a telling effect on the functions of the Corporation. Therefore the facility is withdrawn. This was repelled by Sri Narasimhan, Learned Counsel appearing for the petitioner on the ground, that the Corporation stood to gain by this facility. Originally two employees in each depot were allowed to do exclusively the work of collection of subscription for two days in a month treating them to be on duty with salary, which would have resulted in the loss of pay to the extent of Rs. 80,000 per month. The federation has given up the facility agreeing for the Corporation to deduct from the wages. It is only an adjustment by computer. It does not require any laborious process. I do not want to go into all these questions as it is not relevant except taking into consideration the fact that the petitioner union had surrendered their right of service of two employees at each depot for two days in a month with pay, solely for the collection of subscription, in lieu of the Corporation agreeing to deduct the subscription from the wages of the employees. It is very material to know that till Annexure-A, none of the parties expressed either their inability or inconvenience in carrying out the terms of the settlement. It is not the case of the Corporation that it expressed its unwillingness to deduct the subscription from the wages on account of any inconvenience nor was there any unhappiness on part of the petitioner in so far as it relates to the terms of the settlement. When everything was working very smoothly, Annexure-A came to be issued to the petitioner almost like a bolt from the blue without there being any reason. The order does not indicate any reason for such withdrawal nor the statement of objections contain any reason nor is it the case of the Corporation that it is not possible to deduct the subscription from the wages for any tenable reasons. It is therefore clear that the State Government in exercise of its power under whatever provision and whatever Statute may be, has acted beyond its power. Point Nos. (ii) and (iii) are, therefore, answered in the negative.

13. That for the reasons aforesaid, the order under Annexure-A is invalid and liable to be quashed. In view of order at Annexure-B being the consequential order of Annexure-A it is also liable to be quashed.

14. Accordingly this petition is allowed. Rule made absolute. The impugned orders at Annexure-A and B are hereby quashed. In the circumstances of the case, there is no order as to costs.

15. Other connected matters delinked.