

(1964) 03 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 2235 of 1963

M.A. Mohamad Basha Tannery

APPELLANT

Vs

Their Workmen and Others

RESPONDENT

Date of Decision : 04-03-1964

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (c), 25 A (2), 25 C

Citation : (1964) 2 LLJ 449

Hon'ble Judges : K.S. Hegde, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : G.S. Ullal, for the Appellant; K. Subba Rao and B. Venkataswami, Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.—The petitioner is the proprietor of a tannery. The petitioner has, Under Art. 226 of the Constitution of India, sought relief in this Court to quash the order of the labour court (respondent 2) made on 17 October 1963 in Reference No. 46 of 1963 on its file and to issue a writ in the nature of Prohibition to respondent 2 from proceeding any farther with the said reference until the question, whether the petitioner establishment is of seasonal character, is decided by the State Government (respondent 3).

2. The State Government (respondent 3) referred the following question for decision of respondent 2 under S. 10(1)(c) of the Industrial Disputes Act, 1947, hereinafter called "the Act" :

"Are the workmen of M. A. Mohamad Basha Tannery, Kalagondanahalli, Bangalore-6, justified in demanding lay-off compensation for forty days with effect from 1 December 1962."

3. That order of reference was made on 18 July 1963, and the petitioner was notified by respondent 2 on 30 July 1963. The workmen filed their claim statement before the labour court after service of copy thereof on the petitioner on 9 August 1963. The Petitioner filed his written statement to the claim

statement on 25 September 1963 and the labour court posted the case for enquiry on 14 October 1963. It may be mentioned that the only contention of the petitioner before respondent 2 was that the number of workmen employed in his industrial establishment was less than fifty and, as such, the provisions of S. 25C of the Act are inapplicable. When the matter came up for enquiry on 14 October 1963 before respondent 2, the petitioner made an application on that date raising a contention that his establishment is of a seasonal character coming within the scope of S. 25A(2) of the Act and the labour court had no jurisdiction to deal with the reference and, as such, the reference may be rejected. That application was heard by the labour court and the impugned order was passed on the view that no provision of law, under which the Court could stay the further proceedings until the determination of the question by respondent 3, was brought to its notice. Aggrieved by the said order, the petitioner has filed the above writ petition.

4. It is undisputed that under S. 25A(2) of the Act the competent authority to decide the question whether an industrial establishment is of a seasonal character or work is performed only intermittently, is the State Government, and that question has to be decided when it arises between the management and its workers. When the petitioner filed his written statement before respondent 2 on 26 September 1963 no contention was raised that the establishment of the petitioner is either of a seasonal character or work is carried on therein intermittently. Therefore, on the pleadings raised by the parties, no question of the seasonal character of the establishment of the petitioner arose, when the case came up for hearing before respondent 2. The question referred to in S. 25A(2) could arise as incidental to the determination of a possible industrial dispute or when a claim founded on S. 25C is resisted by the management on the ground that the establishment is of a seasonal character or the work is carried on intermittently. In other words, the question may arise where the management, even before the reference, contends before the Government that its establishment falls under S. 25A(2) or it may arise as an issue on the pleadings before the labour court. In the instant case no such question had arisen for decision by respondent 3 when the impugned order was made and, therefore, respondent 2 was fully justified in rejecting the application made by the petitioner.

5. It is, however, argued by Sri G. S. Ullal, learned counsel for the petitioner, that subsequent to the date of the impugned order, petitioner has made an application to respondent 3 raising the question of the seasonal character of his establishment and requesting the Government to give its decision on that question. If such an application had been made and the question has been raised, the State Government has a duty cast under the act to decide that question. We are sure that respondent 3 will expeditiously decide that question before respondent 2 further proceeds with the decision on the point of dispute referred. Since under S. 25A(2) of the Act, the decision to be given by the State Government is of a quasi-judicial nature, it would be appropriate for the

Government to hear both the parties and give its decision. Respondent 2, in these circumstances, may appropriately adjourn its proceedings to await the decision of the Government on the question.

6. With these observations, this writ petition is dismissed with costs of respondent 1. Advocate's fee Rs. 100.