

(2016) 11 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No. 53001 of 2016 (L-RES)

Management, M/s. Schneider Electric I.T. Business India
Private Ltd.

APPELLANT

Vs

General Secretary, American Power Conversion (India) Pvt.
Ltd.

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 AirKarR 267 : (2017) 1 CLR 578 : (2017) 153 FLR 596

Hon'ble Judges : A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : Sri. T.S. Anantharam, Advocate, for the C/Respondent; Sri. S.N. Murthy, Sr. Adv. and Sri. Somashekar, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J. - The respondent, American Power Conversion (India) Pvt. Ltd., Employees' Union, (for short "the Union") is a Trade Union registered under the Trade Unions Act, 1926. The Union submitted a Charter of Demands on 14.08.2014, demanding increase in wages and for providing of other benefits to the workmen of the petitioner. Subsequently, the Union raised a dispute and the same was referred for adjudication to the Industrial Tribunal, Bangalore (for short "the Tribunal"). The reference was registered in I.D.No.245/2014. Later, the case was transferred to the Additional Industrial Tribunal and registered in ADD No. 12/2016. In the said reference, the Union filed an application on 30th August, 2014 for interim relief i.e., for payment at the rate of Rs.5,000/- per month per worker from 01.04.2014 till the disposal of the case. Statement of objections to the said application was filed on 27.09.2014, by the petitioner/management.

2. W.P.No.46815/2014 was filed to quash the Government order of reference dated 14.08.2014 to the Industrial Tribunal. The petition was dismissed on

01.04.2015. W.A.No. 1613/2015 filed by the Management was allowed, restoring the writ petition for reconsideration in the light of the observation made in the judgment. W.P. No.46815/2014 having been dismissed on 23.02.2016, W.A.No.536/2016 was filed and is pending.

3. The Union submitted another charter of demands dated 09.02.2015 to increase the wages and for providing other benefits to the workmen of the petitioner. The demands having not been met and Government having been approached, a reference was made for adjudication to the Tribunal and is registered in AID No.38/2015. The Union has filed claim statement on 28.10.2015. The Union also filed an application on 08.10.2015, under Section 10 (4-A) and Section 11 of the I.D. Act, 1947 read with Section 151, CPC, to grant interim relief at the rate of Rs.8,000/- per month per workman from 01.04.2015 till disposal of the case. Counter to the said application by the Management was filed on 13.01.2016.

4. The petitioner filed an application on 27.01.2016 to frame preliminary issues. The application having been opposed by the Union, an order dated 10.02.2016 was passed holding that preliminary issues do not arise and the main matter of reference can be decided. Evidence having been adduced by both sides, upon hearing of the arguments, an order dated 23.08.2016 as at Annexure-L was passed. The application was allowed and the workmen of the petitioner was held entitled to get increased pay of Rs.5,000/- per month from 01.04.2015 till disposal of the case. Challenging the said order, this writ petition was filed.

5. Sri. S.N. Murthy, learned Senior Advocate, contended that the wages was increased for a period of 3 years (2015-2018) to the workmen, who have signed the individual settlements. He submitted that the same benefits cannot be claimed by the respondent, in respect of the workmen who have not signed the settlements. He contended that interim relief cannot be granted as Tribunal has not found prima facie case in favour of the members of the Union, whose cause is being espoused in the case. Reliance was placed on the decision in Tata Consulting Engineers and Associates Staff Union v. Tata Consulting Engineers and another, 2002-II-LLJ 323. He contended that the members of the Union having decided to seek adjudication of their demands by the Tribunal, till the Award is passed, there cannot be any interim relief in their favour. He contended that the impugned order is arbitrary. Alternatively, learned Senior Advocate, by placing reliance on the decision in T.T. Limited v. R. Subramaniam and another, 1990 (61) FLR 591, contended that the application for interim relief having been filed on 28.10.2015, Tribunal has committed error and illegality in entitling the workmen to get increased pay of Rs.5,000/- per month from 01.04.2015 itself. He submitted that, even if prima facie case is found in favour of the workmen, the relief, at best, can be granted only from the date the application was filed and not for the earlier period. Learned counsel submitted that the evidence having been recorded, instead of deciding the main case, the allowing of application vide order at Annexure-L is unjustified.

6. Sri. T.S. Anantharam, learned advocate, on the other hand contended that the dispute relating to the charter of demands having been referred for adjudication by the Government, Tribunal has the competence to grant interim relief "as matters incidental to" the main question which has been referred to it. Reliance was placed on the decision reported in 2003-I-LLJ 131, State of Karnataka and others v. BPL Group of Companies Karmikara Sangha, Bangalore and others. Learned counsel by placing reliance on the decision reported in 1993-I-LLJ Supreme Court 965, Sarva Shramik Sangh v. Indian Hume Pipe Co. Ltd., contended that the Tribunal can grant relief from a date anterior to the date on which the dispute was raised. Learned counsel submitted that there being no dispute with regard to the payment of higher pay and allowances to the other workmen by the petitioner, as has been specifically found by the Tribunal, in para No. 17 of its order, Tribunal is justified in allowing the application and entitling the members of the Union/Workmen of the petitioner, to Rs.5,000/- per month per worker, from 01.04.2015. Reliance was placed on an order dated 05.07.2016 passed in W.P.No.392/2016 (L-RES) (The Management of Sami Labs Ltd. v. The Organising Secretary, Bangalore North Industrial Workers Union (CITU). Learned counsel submitted that the petitioner has been resorting to unrighteous and protracted litigation to break the resistance of the workmen who have been claiming implementation of the just charter of demands. Reference was made to the decision reported in AIR 1984 Supreme Court 153, D.P. Maheshwari v. Delhi Admn. and others.

7. Perused the writ petition and considered the rival contentions. Point for consideration is whether the impugned order is arbitrary ?

8. Undisputedly, there is disparity in the matter of payment of salary and allowances by the petitioner to its workmen. The members of the respondent-Union, who are before the Tribunal, are being paid lesser pay and allowances when compared to the other employees, who have entered into individual settlements with the petitioner - management. The salary disparity among the members of the Union and Non-Union members can be found from evidence and has been made clear in para 17 of its order, by the Tribunal. The Tribunal having found prima facie case, which becomes clear from para 18 of its order, has held that the members of the Union should get increased pay of Rs.5,000/- per month per worker from 01.04.2015.

9. The expression "matters incidental thereto" having been taken note of in the case of Hotel Imperial v. Hotel Workers" Union, AIR 1959 SC 1342, Apex Court has held that, interim relief wherever it is admissible can be granted as a matter incidental to the main question referred to the Tribunal without being itself referred to in express terms. Hence, in the present case, Tribunal having the power to grant interim relief has considered the application and the material brought on record by the parties in the matter of the claim for grant of interim relief pending adjudication of the main case.

10. In view of the law laid down by the Apex Court in the Sarva Shramik Sangh's

case, with regard to the power of the Tribunal to grant relief from the date anterior to the date of raising industrial dispute and making it clear that the power is not limited to grant the relief only from the date of raising of industrial dispute, the alternate contention urged by placing reliance on T.T. Limited's case is unacceptable, as the law laid down by the Apex Court is binding, in view of the mandate of Article 141 of the Constitution.

11. The parties having led evidence and the Tribunal having appreciated the same and having found huge disparity in the wages of the members of the Union and the Non-Union Members/Workers, who are performing identical duties and there being prima facie case, has allowed the application. The members of the Union would not be getting any higher pay and allowances, even after the pay as has now been directed by the Tribunal vide Annexure-L is taken into consideration.

12. The reference made being in respect of the charter of demands for the period commencing from 01.04.2015, the order passed vide Annexure-L entitling the members of Union to get increased pay of Rs.5,000/- per month from 01.04.2015, is neither arbitrary nor illegal. Sri. Anantharam is justified in placing reliance on the order dated 05.07.2016 passed in W.P.No.392/2016, involving almost an identical fact situation.

13. There is merit in the contention of Sri. Anantharam, that in order to break the resistance of the members of the Union, the petitioner is resorting to protracted litigation, which the workmen can ill-afford. The observation made by the Apex Court in D.P. Maheshwari's case (AIR 1984 SC 153) aptly applies.

In the result, the writ petition is dismissed with no order as to costs. However, it is made clear that the liability of the petitioner would be only towards the serving workers/members of the Union, who have not signed the settlements.

In view of the submission made by the learned counsel for both parties, that they will fully co-operate with Tribunal in expeditious disposal of the reference, Tribunal is directed to decide the reference with expedition and before 31st March, 2017.