
(1992) 11 KAR CK 0009
In the Karnataka High Court
Case No : W.A. No. 1823 of 1992

Management of Mysore Kirloskar Ltd.	APPELLANT
Vs	
Mahaboob Beigh	RESPONDENT

Date of Decision : 09-11-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 36

Citation : (1992) ILR (Kar) 3615 : (1992) 4 KarLJ 644

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : R. Gururajan, for the Appellant;

Judgement

K.A. Swami, Ag. C.J.

1. This Appeal is preferred against the order dated 8.7.1992 passed by the learned Single Judge in W.P.No.3291/1985. In the Writ Petition, the 1st respondent herein has sought for quashing the award dated 30th April 1983 passed by the Additional Industrial Tribunal, Bangalore in Case No. A.I.D. No. 7 of 1979 produced as Annexure-C in the Writ Petition and also the order dated 30th November 1984 produced as Annexure-G passed by the Additional Industrial Tribunal, Bangalore.

2. The aforesaid dispute came to be referred by the State Government by its order No. SWL 762 LLD 78 dated 10/11th September 1979. By the said order, the State Government referred 4 Points for determination as stated in para 1 of the award. In-addition to the Points referred by the State Government, the Additional Industrial Tribunal, Bangalore, raised 4 additional issues. After considering the material on record, the Tribunal answered additional issues 1 to 3 in the affirmative and additional issue No. 4 in the negative, After the award was passed on 30.4.1983, the 1st respondent filed an application for recalling the award and to decide the case afresh. That application was rejected by the Tribunal by its order dated 30.11.1984. Therefore, the 1st respondent challenged

that order also.

3. The learned Single Judge has set aside the findings recorded on additional issues 1 and 2 and has further held that the award is not disturbed in respect of other matters. It is the validity of this order that is challenged in this Appeal by party No. 2 - Management of Mysore Kirloskar Ltd.

4. It is contended by Sri Gururajan, learned Counsel for the appellant that as the order dated 30.11.1984 dismissing the application filed by the 1st respondent has not been set aside or quashed, without setting aside or quashing that order, this Court cannot go into the validity of the award passed by the Tribunal. It is also further contended that the dispute is raised on behalf of the 1st respondent by the Union, as such the 1st respondent has no right to challenge the award. Therefore, the Tribunal is justified in rejecting his application by its order dated 30.11.1984. Consequently, the order dated 30.11.1984 cannot at all be set aside and therefore, the award cannot at all be set aside and therefore, the award cannot at all be disturbed. In support of the second contention, the learned Counsel for the appellant has placed reliance on a Decision of the Supreme Court in Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal,

5. We take up the second contention first for consideration.

6. It may be pointed out here that in Rama Prasad Vishwakarma's case, what was decided by the Supreme Court was that when a dispute is raised by the Union for and on behalf of the workman, he will not have a right of representation through his representative, except in exceptional circumstances. In para 9 of the Judgment it has been held thus:

"It is not unreasonable to think that Section 36 of the Industrial Disputes Act recognises this position by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member. While it will be unwise and indeed impossible to try to lay down a general rule in the matter, the ordinary rule should in our opinion be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representation of the workman concerned. We are not satisfied that in the present case, there were any such exceptional circumstances. It has been suggested that the Union's Secretary Fateh Singh himself had made the complaint against the appellant which resulted in the order of dismissal. It has to be observed however that in spite of everything, the Union did take up this appellant's case against his dismissal as its own. At that time also, Fateh Singh was the Secretary of the Union. If the Union had not taken up his cause, there would not have been any reference. In view of all the circumstances, we are of opinion that it cannot be said that the Tribunal committed any error in refusing the appellant's prayer for representation through representatives of his own choice in preference to Fateh Singh, the Secretary of the Union."

In the instant case, we are not concerned with the right of the 1st respondent to be represented through the representative of his choice in the dispute, as per Section 36 of the Industrial Disputes Act 1947 (for short the "Act"). We are concerned with the merits and validity of the award dated 30.4.1983 passed by the Additional industrial Tribunal, Bangalore, in Case No. A.I.D 7/1979 and the right of the workman to challenge the same.

7. Even though the order dated 30.11.1984 is not disturbed, it will not have any effect on the award passed by the Tribunal because by that order the Tribunal has refused to recall the award and determine the reference afresh. Therefore, without challenging the said order it would be open to the aggrieved party to challenge the validity of the original award.

8. The fact that the dispute is raised by the Union for and on behalf of the workman and that dispute is rejected by the Tribunal, would not in any way affect the right of the workman to challenge the validity of that award because the Union would be fighting for the individual workman and if the award goes against the workman and the Union does not decide to challenge the said award before the appropriate forum, it is the individual workman who would be affected by the inaction on the part of the Union. Therefore, it is not possible to hold that the 1st respondent workman is not entitled to challenge the validity of the award because of Section 36 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). This is a case in which the Union has failed to challenge the award. Section 36 of the Act deals with representation of parties to a dispute. It does not in any way affect the right of workman to challenge the award passed against him in a dispute raised on his behalf by the Union. Therefore, we are of the view that the Writ Petition filed by the individual workman (1st respondent) whose rights are involved in the dispute, is maintainable and he is entitled to challenge the validity of the award.

9. The learned Single Judge has held that the Tribunal has not considered the relevant matters to determine whether the 1st respondent is a "workman" or not; therefore, the findings recorded on additional issues 1 and 2 have been set aside. It is not pointed out to us that the conclusion reached by the learned Single Judge that the Tribunal has failed to take into consideration the relevant material and has failed to give reasons for holding that the 1st respondent is not a "workman" are either erroneous or opposed to law. We have been taken through the award passed by the Tribunal and we see no reason to differ from the view taken by the learned Single Judge.

10. The next question for consideration is whether the finding recorded on additional issue No. 3 should be retained or not? The learned Single Judge has quashed the findings recorded on additional issue Nos. 1 and 2 and has held that in other respects, the award remains undisturbed.

Additional issue No. 3 has been held against the workman and in favour of the Management. The finding on additional issue No. 3 depends upon the correctness

of the findings recorded on additional issues 1 and 2. Therefore, on quashing the findings recorded by the Tribunal on additional issue Nos. 1 and 2, the finding recorded by the Tribunal on additional issue No. 3 also requires to be quashed.

11. As far as the finding recorded on additional issue No. 4 is concerned, it cannot be disturbed because additional issue No. 4 relates to limitation and it is as follows:

"Whether the II Party proves that the demand is barred in view of the settlement dated 16.11.1978 and so the reference is bad?"

The Tribunal has answered this issue in the negative thereby it has negated the contention of the 2nd party-Management that the demand is barred in view of the settlement dated 16.11.1978. Therefore, we are of the view that the finding recorded on additional issue No. 4 does not call for interference.

12. For the reasons stated above, this Writ Appeal is disposed of in the following terms:

The order passed by the learned Single Judge in so far it affirms the finding on additional Issue No. 3 is modified. Consequently, the findings recorded on additional issue Nos. 1 to 3 by the Tribunal are set aside and the finding recorded on additional issue No. 4 stands affirmed. The Additional Industrial Tribunal, Bangalore, shall now decide the reference afresh and in accordance with law and in the light of the observations made in this order.