

(2000) 09 KAR CK 0053
In the Karnataka High Court
Case No : Writ Appeal No. 7486 of 1999

Manipal Printers and Publishers Limited, Manipal	APPELLANT
Vs	
Workmen of Manipal Printers and Publishers (Private) Limited, Udupi, Dakshina Kannada and Others	RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10
Karnataka High Court Act, 1961 — Section 4

Citation : (2000) 8 KarLJ 172

Hon'ble Judges : Mrs. Manjula Chellur, J;G. C. Bharuka, J

Judgement

G.C. Bharuka, J.-The case involved herein has chequered history. It relates to an industrial dispute between the appellant-company and its workmen. The establishment of the appellant-company is located at Manipal in the district of Mangalore. But, as admitted by both the appellant and its workmen since the dispute related to the matter specified in the Third Schedule to the Industrial Disputes Act, 1947 (in short, the "Act"), it could have been adjudicated only by the Industrial Tribunal subject to the enabling provision contained in the proviso to Section 10 of the Act which empowers the State Government to refer the dispute even to a Labour Court provided that the dispute is not likely to affect more than one hundred workmen.

2. The present dispute had arisen in 1983. At that time, there was only one State Industrial Tribunal with sitting at Bangalore. Since the State Government did not find it expedient to invoke its powers under the first proviso to Section 10 of the Act. By its order dated 10-1-1983, the Government referred the following Industrial Dispute arising between the parties for adjudication to the Tribunal at Bangalore.

"I. Are the 64 workmen as detailed in Annexure appended to this Government Order working in the Manipal Power Press, Manipal, represented by the Manipal Printers and Publishers Employees Association, Udupi, justified in demanding that

they should also be considered as employees (working journalists) of the Manipal Publishers and Printers (Private) Limited, Manipal, from the date of their appointments with all consequential benefits of arising out of various wage board recommendations and awards of journalists?

II. If not, to what relief these employees are entitled to?"

2-A. The Tribunal at Bangalore registered the reference as AID 61/83. For the one or the other reason, no substantial progress took place in the proceedings at Bangalore. In 1990, with Constitution of the Tribunal at Mysore, the State Government transferred the proceedings to Mysore where it was numbered as Reference No. 271 of 1990. Because of the slow pace in disposal of the proceedings even by the Tribunal at Mysore, the workmen moved this Court in W.P. No. 3940 of 1994 for its expeditious disposal. This writ petition was disposed of by an order dated 7-10-1994 (Annexure-B) with the following direction.

"Taking into consideration that the dispute has been pending for over ten years, I pass the following interim order. The 1st respondent is directed to dispose of the Reference No. 6 of 1983 renumbered as 271 of 1990 within 3 months here of holding its sitting at Mysore".

3. It has been brought on record that despite the above direction by this Court, the proceedings could not be concluded because of the dilatory methods adopted by the management as has been discussed by the learned Single Judge.

4. Anyhow, when the proceedings were in progress at Mysore, suddenly the State Government pursuant to a representation made by the appellant-Company passed an order dated 18-6-1999 (Annexure-A) transferring the proceedings from the Tribunal at Mysore to the Labour Court, Mangalore. This order was admittedly passed by the State Government without even giving an opportunity of hearing to the workmen. As such the workmen challenged the order by filing the writ petition before this Court in which the above Government Order was quashed by the learned Single Judge. While disposing of the writ petition the learned Single Judge has directed that appropriate award should be passed on merits by 31-12-1999. He has also directed that.- "Though as an extraordinary measure, but having regard to the facts and in the circumstances of this case, I make it clear to the learned Presiding Officer of the Industrial Tribunal, Mysore, that he would be personally responsible if the matter is not disposed of on merits by 31st December, 1999".

5. We are told by the learned Counsel appearing for the parties that despite the above directions, the appropriate award has not been passed by the concerned Presiding Officer till this day. The reasons may be many. But to us, it is surprising that the Presiding Officer of the Industrial Tribunal, Mysore, did not take the direction of this Court with appropriate seriousness.

6. Accordingly, we direct the Registrar (General) to bring this matter to the notice of the Hon"ble Chief Justice so that an explanation be called for from the

concerned judicial officer presiding over the Industrial Tribunal, Mysore, and if found advisable initiating appropriate disciplinary action in the matter.

7. Now, coming to the merits of the case, in our opinion, the State Government has acted illegally and mala fide in passing the impugned order of transfer of the proceedings from the industrial Tribunal, Mysore to Labour Court, Mangalore. The power of transfer is conferred on the State Government under Section 33-B of the Act. Sub-section (1) thereof, which is material for the present, reads as under:-

Section 33-B. Power to transfer certain proceedings.-(1) The appropriate Government may, by order in writing and for reasons stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred, may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred:

Provided that where the proceeding under Section 33 or 33-A is pending before the Tribunal or National Tribunal, the proceeding may also be transferred to the Labour Court.

8. From the above provision, it is quite clear that except in cases relation to the proceedings under Section 33 or 33-A of the Act, the State Government has no power to withdraw the proceedings from the Tribunal and transfer the same to the Labour Court. In the present case, admittedly the proceedings do not relate to Section 33 or 33-A of the Act. Therefore, the State Government had absolutely no power to pass any order of the nature impugned herein. The State Government ought to have borne in mind that once it has made the reference to the Tribunal, it had exhausted its power of reference, and the transfer of the proceeding arising out of such reference could have been exercised only in terms of Section 33-B of the Act, which did not permit it to withdraw and transfer the present proceedings from the Industrial Tribunal to the Labour Court.

9. For the aforesaid reasons, we uphold the order passed by the learned Single Judge. This writ appeal is accordingly dismissed with costs assessed at Rs. 5,000/- to be paid by the appellant-Company to the respondent workmen within a week from today under a crossed bank draft.

10. Before parting, we direct the Industrial Tribunal to pass an appropriate award within a month from the date of communication of this order either by this Court or by production of the certified copy of the order by either of the parties.

11. The Registrar (General) shall ensure remittance of the copy of this order forthwith.