

(1999) 11 KAR CK 0030

In the Karnataka High Court

Case No : Writ Appeal No's. 3439 and 3440 of 1999

Manipal Printers and Publishers Private Limited

APPELLANT

Vs

Workmen of Manipal Printers and Publishers Private Limited
and Another

RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 11 (1), 11 (3)
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2001) 88 FLR 599 : (2000) ILR (Kar) 4813 : (2001) 1 KarLJ 517

Hon'ble Judges : Y. Bhaskar Rao, C.J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Sri M.L.N. Reddy, for the Appellant; Sri M.C. Narasimhan and Sri S.V. Shastri, for the Respondent

Judgement

1. The 3rd respondent in the writ petition has filed this appeal assailing the order of the learned Single Judge allowing the writ petition. Brief facts of the case are:

2. The 1st respondent herein got a reference to the Labour Court on the following question:

Are the 64 workmen as detailed in the 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 (newspaper employees) of the Manipal Publishers and Printers (Private) Limited, Manipal, from the date of their appointments with all consequential benefits arising out of various Wage Board recommendations and awards for journalists?

If not, to what other relief these employees are entitled?

3. After reference, the case was started and some of the witnesses were examined. When one of the witnesses (M.W. B1) was being cross-examined, a petition is filed u/s 11(1) and 11(3) of the Industrial Disputes Act, 1947 by the

1st respondent seeking a direction to the appellant herein and the 2nd respondent to produce certain documents:

- a. Attendance register of workmen from 1981 to 1992.
- b. Pay register of workmen from 1981 to 1992.

Particulars of records called for from the impleaded 2nd respondent are as follows:

- a. Attendance registers of composing section and other sections where 64 workmen whose names are mentioned in the order of reference from 1981 to 1992,
- b. Leave registers from 1981 to 1992, and
- c. Leave application submitted by the 64 workmen on various dates from 1981 to 1992.

4. The same was objected to on the ground that the application filed is hopelessly belated. The documents called for are old and not required to be preserved till date and that they are voluminous. The application is filed to cause delay in the proceedings and attempt is made to create confusion and make a mess of the proceedings. The records called for are unnecessary to decide the issue involved in the case. The documents called for are of a period anterior or subsequent to the date of reference. A similar application filed in I.A. 15 was dismissed by the Tribunal by its order dated 9-6-1997. Similar objections were taken by the other party also. The Tribunal after elaborately considering all the points, dismissed the I.A. holding that the case is posted for cross-examination of M.W. 1 and his cross-examination is yet to be completed and at that stage the application is filed. Further, it observed that the onus of proof on the issues mentioned in I.A. 5 is on the management. Assailing that order, writ petition is filed. Learned Single Judge, allowed the writ petition holding that the reasons given by the Tribunal is not proper. Aggrieved by that, the present appeal is filed.

5. Learned Counsel for the appellant contended that, to decide the points referred, the documents are not necessary as they are old documents and further, similar application filed was already dismissed and the learned Single Judge erred in allowing the writ petition.

6. Learned Counsel for the contesting respondent 1 contended that the documents are necessary for trial. Therefore, the learned Single Judge was right in allowing the I.A. There are no merits in the writ appeals and the same is liable to be dismissed.

7. In view of the rival contentions, the important question of law that arises for consideration is whether the documents directed to be produced by the appellant and the 2nd respondent are relevant for determination of the issue involved in the case and whether the application can be allowed. To appreciate the above contention, it is relevant to look into Section 11(1) and 11(3) of the Act which

are as follows:

Section 11(1):

Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

Section 11(3):

Every Board, Court, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

- a. enforcing the attendance of any person and examining him on oath;
- b. compelling the production of documents and material objections;
- c. issuing commissions for the examination of witnesses;
- d. in respect of such other matters as may be prescribed,

and "every enquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal, shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

8. By reading the above sections, it is evident that the Court in order to examine each case on its merits, can decide whether documents are required or not. In the present case, reference is made only to decide whether the 64 workmen were working in the Manipal Power Press represented by its employees association at Udupi and their demand that they should be considered as employees from the date of their appointment with all consequential benefits or not is justified or not. First of all, as observed by the Tribunal, number of witnesses are already examined and M.W. B1 is being cross-examined and at that stage, I.A. 5 is filed. According to the Tribunal, similar I.A. filed was dismissed earlier. That order became final. Therefore, filing I.A. 5 when the earlier I.A. is dismissed shows that the party is bent upon to drag on the proceedings one way or the other. Further, the plea of the appellant is that the documents are not available as they are old and have no relevance and in those circumstances, directing them to produce the documents will unnecessarily cause further delay in the proceedings. If at all the Tribunal after examining the entire material evidence on record felt that those documents are necessary and it would have helped the case of the 1st respondent, it is open to the Tribunal to, draw an adverse inference particularly when the plea of the appellant and the 2nd respondent is that they are not available.

9. In considering the request for filing the documents u/s 11 (1) and (3) of the Act, the Tribunal must first find out whether the documents are relevant, whether they are available, whether it will cause further delay in the proceedings and whether the application is filed in time or not. In this case, admittedly, the

application is filed belatedly i.e., at the time of cross-examination of M.W. B1. The evidence of the first party was closed on 12-7-1981. After so many years and at the time of cross-examination of M.W. B1, the present application is filed which clearly shows that it is only to drag on the proceedings. When the documents are not available, directing the parties to file the same will not yield any fruit. On the other hand, it will only delay the proceedings. If at all the Tribunal comes to the conclusion that the documents, if available, would have been helpful in resolving the dispute, it could draw an adverse inference on the relevant point.

10. In view of those circumstances, we allow the writ appeals and restore the order of the Tribunal.