

(1962) 09 KAR CK 0007
In the Karnataka High Court
Case No : Civil Petition No. 470 of 1960

Mysore Iron and Steel Works, Bhadravathi	APPELLANT
Vs	
Appellate Authority Under Industrial Employment (Standing Orders) Act, 1946 and Another	RESPONDENT

Date of Decision : 12-09-1962

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 3, 4, 5, 6

Citation : AIR 1963 Kar 290 : (1962) ILR (Kar) 986 : (1963) 2 LLJ 672 : (1963) 1 MysLJ 371

Hon'ble Judges : G.K. Govinda Bhat, J;A. Narayana Pai, J

Bench : Division Bench

Judgement

Narayana Pai, J.—Certain standing orders governing the conditions of service of workmen in the Mysore Iron and Steel Works, Bhadravathi, were certified by the Commissioner of Labour functioning as certifying authority under the Industrial Employment (Standing Orders) Act, 1946.

2. The workmen represented by their association which is respondent 2 in this petition filed an appeal under S. 6 against the said order before the appellant authority. The appellate authority modified the standing orders in so far as certain categories of leave and holidays were concerned and confirmed the same in all other respects. In regard to monthly rated staff, he gave four additional holidays as festival holidays on full pay. In regard to daily rated staff, he gave three additional holidays as festival holidays and also gave them the benefit of another category of leave called casual leave to the extent of three days on full wages and six days on half wages.

3. In this civil petition presented by the employer, the attack against the appellate order is confined to the above modification made by the appellate authority in regard to leave.

4. The principal argument in support of the petition is that the appellate authority has exceeded its jurisdiction in making the above modifications,

especially in view of the fact that the appellant before it, who had been given full opportunity to make all comments on the draft standing orders proposed to be certified, had failed to make any claims in regard to the additional leave asked for by them before the appellate authority and granted by the said authority as aforesaid.

5. As already pointed out by this Court in *Mysore Kirloskar Employees' Association Vs. Industrial Tribunal, Bangalore and Another*, the jurisdiction of the authorities functioning under the statute have to be ascertained from Ss. 3 and 4 of the Act which govern the provisions of both Ss. 5 and 6. Section 4, which is more important, reads as follows : "4. Conditions for certification of standing orders. - Standing orders shall be certifiable under this Act if -

(a) provision is made therein for every matter set out in the schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act."

6. Before the amendment carried by Central Act 36 of 1956 which came into force on 17 September, 1956, the rest of the section read as follows :

"and it shall not be the function of the certifying officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing order."

7. By the said amending Act the word "not" was deleted with the result that in addition to satisfying itself on Cls. (a) and (b) of that section, both the certifying authority and the appellate authority were assigned the additional function of adjudicating upon the fairness or reasonableness of the provisions of any standing orders.

8. Section 6, which prescribed the procedure and defines the ambit of jurisdiction of the appellate authority, states, among other things, that

"the appellate authority shall, by order in writing, confirm the standing order either in the form certified by the certifying officer or after amending the said standing orders by making such modifications thereof additions thereto as it thinks necessary to render the standing orders certifiable under this Act."

9. Before, therefore, the petitioner can succeed in this petition, he should make out that the appellate authority in making the above modifications has either acted without jurisdiction or exceeded its jurisdiction as defined in S. 6.

10. No question arises in this case as to the standing orders being not exhaustive of the subjects mentioned in the schedule to the Act as applicable to the establishment or of their conformity or otherwise with the provisions of the Act.

11. The appellate authority does not state in its order that the standing orders as originally certified by the certifying authority are not certifiable for the reason

that they do not comply with the provisions of Cls. (a) and (b) of S. 4.

12. The appellate authority, however, states that in regard to the modification effected by it by making available a new category of leave to daily rated staff, viz., casual leave,

"in these circumstances it would be fair and equitable to make some provision for meeting emergent and unforeseen circumstances."

13. While there is no such specific statement in the course of the discussion in regard to national and festival holidays, there is sufficient indication of the appellate authority having entertained an opinion that it was reasonable to give the additional holidays granted by it or to put it the other way, that the smaller number of holidays proposed to be granted in the standing orders certified by the original authority were not quite fair or reasonable.

14. If that much can be read or ascertained from the order of the appellate authority, we think it is difficulty for the petitioner to contend that the authority has exceeded its jurisdiction. The actual entertaining of an opinion as to fairness or reasonableness or otherwise of a standing order is a matter exclusively for the authorities functioning under the statute. Though we are not prepared to say that this Court will not interfere in cases where authorities have acted with manifest or clear unreasonableness or unfairness, the mere fact that we might entertain an opinion slightly different from the one entertained by the statutory authority is not a sufficient ground for interference.

15. Having regard to the deliberate omission of the word "not" from the later portion of S. 4 by the legislature itself, it has to be held either that the certifying and appellate authorities have to satisfy themselves not only on the purely legal of verifiability according to the express provisions of the statute but also as to fairness or reasonableness of the provisions of a standing order or that the amendment has enlarged the idea of verifiability itself by including therein fairness or reasonableness of the provisions of standing orders as one of the aspects thereof.

16. There is, however, another argument addressed by the learned counsel for the petitioner, viz., that the workers or their representatives having refrained from raising these points before the certifying authority while actually offering their comments on the draft proposed to be certified, it was not open to them to contend that the standing orders certified by the original authority were either unfair or unreasonable, or to the appellate authority to entertain any such case on appeal.

17. Though at first sight there appears to be considerable force in this argument, there is one possible answer to it. In matters or topics arising under law of industrial relations, it is well-known that the case on behalf of the workers is neither necessarily nor always presented by them individually but by chosen representatives. The representative of the latter need not necessarily be

workmen. It may be that, having regard to these considerations, the law has though it proper to impose upon the authorities functioning under the statute the duty of exercising their independent judgment on the question of fairness or reasonableness of the provisions of standing orders, irrespective of the fact whether the workers had actually raised or formulated the point before coming up in appeal. But, the omission on the part of the workers' representatives to raise this question, though it may be one of the relevant considerations on the question of fairness or reasonableness, does not take away the jurisdiction of the appellate authority or absolve it of the duty imposed upon it by the statute of satisfying itself as to the fairness or reasonableness of any of the standing orders as certified by the original authority.

18. This civil petition, therefore, fails and is dismissed.

19. There will be no orders as to costs.