

(1968) 07 KAR CK 0006

In the Karnataka High Court

Case No : Civil Revision Petition No. 616 of 1967

Nippani Electricity Company (Private) Ltd. and Another

APPELLANT

Vs

Bhimarao Laxman Patil and Others

RESPONDENT

Date of Decision : 05-07-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 25 F, 25 G, 7 A
Specific Relief Act, 1963 — Section 54

Citation : (1968) 17 FLR 281 : (1969) 1 LLJ 268 : (1968) 2 MysLJ 194

Hon'ble Judges : B.M. Kalagate, J

Bench : Single Bench

Judgement

1. The question raised in the revision petition relates to the jurisdiction of the trial Court to entertain the suit.

2. The facts leading to the question as appears from the pleadings of the parties may thus be state. Plaintiffs eight in number claimed to be the employees of defendant 1, Nippani Electricity Company, (Private) Ltd. Which is an industrial establishment, over a period between six and twelve years. The Mysore State Electricity Board stated supplying its grid power to the defendant-company for distribution in the city and suburbs of Nippani. Therefore, the defendant-company closed down its generation station with effect from 6 November, 1966. Thereafter, it gave notices to the plaintiffs informing them the their services will be discontinued with effect from the afternoon of 31 December, 1966, and also a notice to the Government as required under rule 77 of the Industrial Disputes (Mysore) Rules, 1967, in form P to the effect that it had decided to retrench eight workmen with effect from 31 December, 1966 on account of the closure of the generation station and for the reasons explained in the copy of the notice dated 30 November, 1966. The Government was further informed that the workmen concerned were given one month's notice in writing on 30 November, 1966 as required under Clause (a) of S. 25F of the Industrial Disputes Act which will hereafter be referred to as the Act. Plaintiffs, therefore, complain that the notices of retrenchment issued to them are not bona fide and are not legal and valid as

they have been issued against the provisions of Ss. 25F and 25G of the Act. They also complain that the defendant has failed to follow certain mandatory provisions of the Act and the rules framed thereunder.

3. The plaintiffs complain that the notices are issued mala fide and they have been deliberately chosen for retrenchment with a view to victimize them for their legitimate trade union activities and for their efforts to safeguard the legitimate interests of their co- worker. This mala fide action according to the plaintiffs, is an unfair labour practice and on this account also, the proposed retrenchment is illegal, unfair and unjust. The plaintiffs also state that the defendants by issuing such notices of retrenchment threatened to commit breach of obligation existing in their favour and that therefore, they have a right to continue in service in the defendant-company even after 31 December, 1966. They, therefore, seek a declaration that the proposed threatened retrenchment by the defendants is illegal and void. They also seek a perpetual injunction restraining the defendants from retrenching them as threatened or any of them otherwise than in due course of law.

4. It appears that the plaintiffs obtained an interim order of injunction against the defendants on the very date on which they filed the suit.

5. The defendants, in their objections, raised the question of jurisdiction of the Court to entertain the suit and grant the relief asked for by the plaintiffs. The defendants contended that by S. 7A of the Act, the State of Mysore constituted industrial tribunals for adjudication of industrial disputes relating to the matters specified in Schs. II and III of the Act. Retrenchment of workmen is one of the matters specified at serial No. 10 of Sch. III for adjudication by the industrial tribunal. Therefore, the jurisdiction of the civil Court is barred and the plaint is liable to be rejected under order VII, rule 11(d) CPC :

The trial Court, therefore, raised the following preliminary issue, viz.,

"Has this Court jurisdiction to entertain the suit for declaration that the retrenchment of plaintiffs is illegal and void ?"

and held that it has jurisdiction to entertain the suit. It is the correctness of this finding that is being challenged in this petition by the defendants.

6. Sri Datar, the learned counsel for the defendant-petitioners, contends that since the dispute raised by the plaintiffs in their plaint is an industrial dispute, it is to be settled by the machinery provided by the civil Court to entertain the suit is impliedly barred. Hence, the finding of the trial Court that, it had jurisdiction to entertain the suit is liable to be set aside. On the other hand, Sri Joshi, appearing for the plaintiff-respondents, seeks to support the order of the trial Court. I shall, therefore, proceed to examine the question as to whether the trial Court has the jurisdiction to entertain the suit.

7. It is clear from the facts stated that the dispute raised by the plaintiffs is an industrial dispute relating to their rights to continue in the service of the

defendant-company which by its notice seeks to terminate their services. There is no dispute that defendant 1 is an industrial establishment and the plaintiffs are the employees therein. The complaint of the plaintiffs is that the notices of retrenchment issued to them are in violation of the provisions of Ss. 25F and 25G of the Act and that they are issued mala fide.

8. From the details given in the plaint, it is obvious that what is complained of is that the defendants have not followed the principle of "last come first go." The Act permits an industrial establishment to effect retrenchment of workmen in its industry, but there are certain conditions precedent which the industry has to follow in effecting such retrenchment. The dispute raised by the plaintiffs that the notice issued to them is in violation of the provisions of Ss. 25F and 25G an industrial dispute as defined in S. 2(k) of the Act. It says :

"2(k) "Industrial dispute" means any dispute or difference between employers and employees, or between employees and workmen or between workmen and workmen which is connected with the employment or non- employment or the terms of employment or with the conditions of labour, of any person."

9. It is, therefore, clear that the plaintiffs have raised an industrial dispute in connexion with their employment in the industry. If it is so, then as provided by S. 7A of the Act, the appropriate Government may, by notification in the official gazette, constitute one or more industrial tribunal for the adjudication of the industrial disputes relating to any matter whether specified in Sch. II or in Sch. III of the Act and the defendants contend that the Government has established tribunals to settle such disputes.

10. Now, Sch. III mentions the matters coming within the jurisdiction of the industrial tribunal and item 10 thereof relates to retrenchment of workmen. "Retrenchment" as defined in S. 2(oo) means :

"The termination by the employer of the service of a workman for any reason whatsoever otherwise than as punishment inflicted by way of disciplinary action, but does not include ..."

11. Therefore, the dispute raised by the plaintiffs is an industrial dispute for the adjudication of which, Government has established tribunal, and under S. 10 of the Act, it may refer such dispute to a board, court or tribunal as the case may be. The question, therefore, is whether by implication the jurisdiction of the civil Court is barred in respect of disputes for the settlement of which provision has been made in the Act.

Section 9, Civil Procedure Code, provides that -

"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

12. It is obvious that all suits of a civil nature have to be tried by civil Court

excepting those whose cognizance is either expressly or impliedly barred. In the Industrial Disputes Act, there is no specific provision made barring the jurisdiction of the civil Court respect of industrial dispute. Therefore the question is whether the jurisdiction of the civil Court is impliedly barred in the instant case.

13. Sri Mulla, in his Code of civil procedure, 13th Edn., under the heading "Tribunal and Jurisdiction of Civil Courts." While observing that the question how far the jurisdiction of ordinary civil Courts is taken away with respect to matters which entrusted to special tribunals constituted the legislature, has been the subject-matter of several decisions in recent times, state the principles governing the determination of this question as follows :

"(1) Where the statute re-enacts a right existing at common law and provides a special form of remedy therefor, the jurisdiction of the civil Court to deal with the matter is not excluded unless the statute says so expressly or by necessary implication.

(2) So also where the statute creates a new right but provides no special remedy therefore, it can be enforced in the ordinary civil Court.

(3) But where a statute creates a new right not existing at common law and specified a particular mode in which it is to be enforced, it bars by implication the jurisdiction of civil Courts.

(4) Even when the jurisdiction of civil Courts is excluded they would have jurisdiction to examine into cases where the provision of the statute have not been complied with or where the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, or of natural justice." (Page 40, Vol. I.)

14. It is the contention of Sri Datar that his case falls within the third principle stated above, because the Industrial Disputes Act creates new rights and specifies a particular mode of establishment of tribunals, boards or courts in which it has to be enforced; it bars by implication the jurisdiction of civil Court.

15. The Industrial Disputes Act provides an elaborate machinery for the enforcement of rights or settlement of disputes relating to matters specified in Schs. II and III thereof. The plaintiffs have raised an industrial dispute and such a dispute is to be settled in accordance with the provisions made in the Act. If it is so, clear that the legislature intended that such disputes should be speedily settled in accordance with the machinery set up by the Act and that by implication excludes the jurisdiction of the civil Court to deal with such disputes.

16. The real test is whether the plaintiffs have raised a dispute which is really an industrial dispute for the settlement of which remedy is provided by the Act. It may be that the tribunal may not have the power to issue an order of injunction and in the instant case, plaintiffs would not get an order of injunction against the defendants even from the civil Court, because the Act provides for the retrenchment of employees. But that, in my opinion, is not a real test, because

the plaintiffs would get the necessary relief by the settlement of their dispute either by the tribunal or by the other dispute either by up by the Act. In such circumstances, the jurisdiction of the civil Court must be held to be impliedly barred.

17. Sri Joshi for the respondents, drawing my attention to the following passage in Para 6 (at p. 324) of the decision in *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, ,

"The exclusion of the jurisdiction of civil Courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself for certain remedies may not by itself necessarily exclude the jurisdiction of the civil Court to deal with a case brought before it in respect of some of the matters covered by the said statute."

contends that merely because some provision has been made for the settlement of disputes by the establishment of tribunal in the Industrial Disputes Act, it may not by itself exclude the jurisdiction of the civil Court to deal with a case in respect of the matters covered by the said statute. I do not find anything in the said passage suggesting that even if a certain remedy is provided for a certain dispute, such a dispute can be raised before a civil Court. As I understand the passage, it means that if there is no provision for the settlement of certain disputes in the Industrial Disputes Act, then such disputes can be brought before the civil Court and its jurisdiction cannot be said to be barred merely because there is some provision made in the Industrial Disputes Act for the settlement for of certain disputes; a citizen cannot be denied his legitimate right to approach a civil Court to establish his civil right. But in my opinion, if a remedy is provided in the Industrial Disputes Act for the settlement of industrial disputes, then such a dispute has to be settled in accordance with the provisions made therein and to the extent, the jurisdiction of the civil Court must be held to be barred.

18. Sri Datar in support of his submission relied upon the decision of the Madras High Court in *Krishnan and another v. East India Distilleries and Sugar Factories, Ltd. Nellikuppam*, and another 1964 I Ilj 217, where it has been observed (at p. 218) that :

"... If the dispute is an industrial dispute and the same could be referred for adjudication under S. 10(1) of the Industrial Disputes Act, it, takes away the jurisdiction of the civil Court to try the action involving such a dispute. It is wellknown that the jurisdiction of the civil Court to try a suit of a civil nature is assumed unless statutorily it is taken away either expressly or by necessary intendment. It seems to me that if the scheme and the provisions of the Industrial Disputes Act are regarded, it would be plain that they impliedly exclude the jurisdiction of the civil Court to try industrial disputes which can well be referred to for an adjudication under S. 10(1) of the Act to labour court ..."

19. With respect, I agree with the said observation.

20. However, Sri Joshi for the respondent has relied on an unreported decision of this Court, in addition to the two decisions referred to by the trial Court in Support, of its order, in Bharat Electronics Ltd., Bangalore Vs. Aswathanarayan B., . The facts of the said case as stated in the order are that the plaintiff, an employee of the defendants, sued for declaration that the punishment imposed by the defendants is illegal and for a mandatory injunction to retransfer him to his original department. One of the defenses raised by the defendants was that the civil Court's jurisdiction to try the suit is barred by the Industrial Disputes Act. The question posed was whether the pendency of the industrial disputes between the workmen and the management of the Bharat Electronics, Ltd., in the labour court constituted a bar to the plaintiff's suit.

21. The plaintiff in that case was aggrieved by the disciplinary action taken by the management as, according to him, the principles of natural justice were violated in the conduct of the enquiry and the standing orders have been contravened and, there fore, the order of punishment is illegal. Such a case, in my opinion, fall within the fourth principle state by Mulla which states that even when the jurisdiction on the civil Courts is excluded, they would have jurisdiction to examine the case whether the provisions of the statute have not been complied with or whether the tribunal has not acted in conformity with the fundamental principles of judicial procedure or of natural justice and, therefore, on the facts of that case, the learned Judges held that the civil Court's jurisdiction was not barred. It may be seen that during the course of the judgment, the learned Judge observed that the plaintiff has not raised any industrial dispute exclusively cognizable by the industrial tribunal but he is merely seeking to establish his civil right which is cognizable by civil Courts. It has been further observed that it was not its case of either party that the employer has contravened the provisions of S. 33 of the Act. Therefore, it is clear that there was no industrial dispute raised by the plaint and all that he complained was that the punishment inflicted on him was in violation of the principles of natural justice. In my opinion, such a case is clearly cognizable by the civil Court. Therefore, the decision is no authority for the proposition that where an industrial dispute which can be settled by an industrial tribunal is raised the civil Court can entertain a suit in respect of such dispute.

22. The second case relied on by Sri Joshi is Amalgamated Electricity Company, Ltd. v. N. S. Bathena AIR 1958 Mys.148. In that case, the plaintiff contended that the standing charges imposed on him by the defendant are illegal and ultra vires. The defendant applied to the trial Court under S. 34 of the Arbitration Act to refer the dispute to arbitration as, according to him under clauses 16 of Sch. VI to the Electricity Supply Act, 1948, read with S. 76 of the said Act, the dispute in question does require to be referred to the arbitration of the "authority" mentioned in S. 3 of the Act. It was therefore, contended that the jurisdiction of the civil Court was barred. The learned Judge, after referring to the provisions

relied upon by the defendant, pointed out that the dispute which is the subject-matter of the suit is clearly outside the scope of all or any of the sections mentioned above and stated that there was no prohibition in the Indian Electricity Act or the "Act" which was brought to his notice under which the dispute is required to be submitted to arbitration and since the dispute raised was outside the scope, the learned Judge held that the civil Court's jurisdiction was not barred.

23. The last decision relied on by Sri Joshi was in the case of Shankarappa v. Basamma AIR 1964 Mys. 148. That was case where the wife as plaintiff brought a suit of perpetual injunction restraining the defendant her husband, from contracting a second marriage, and such a suit was held to fall within S. 9, Civil Procedure Code, cognizable by a civil Court. It was pointed out that the Hindu Marriage Act contains no remedy for prevention of an act of bigamy and the suit therefore not impliedly barred by S. 4(b) of that Act. It was also stated that the plaintiff when she seeks an injunction in a suit is seeking the prevention of the breach of an obligation created by S. 5(1) of the Hindu Marriage Act in her favour and therefore entitled to seek that injunction under S. 54 of the Specific Relief Act.

24. But, in the instant case, the Industrial Disputes Act provides for the retrenchment of the employees in the industrial establishment, and it is difficult to conceive how any civil Court can prevent an industrial establishment from retrenching its employee if it is permissible to do so under the Act. That decision again, in my opinion, does not help the plaintiffs to sustain the order of the trial Court. I, therefore, hold that since the plaintiffs have raised an industrial dispute for the settlement of which provision has been made in the Industrial Disputes Act, 1947, the said dispute must be settled by the industrial tribunal only and to that extent, the jurisdiction of the civil Court to entertain the suit is impliedly barred.

25. In that view of the matter, I allow the petition and set aside the order made by the Court below and hold that the trial Court has no jurisdiction to entertain the suit. Consequently, the plaint is rejected under order VII, rule 11(b) Civil Procedure Code.

26. In the circumstances, there will be no order as to costs.