
(1990) 07 KAR CK 0098
In the Karnataka High Court
Case No : Writ Petition No. 18063 of 1984

P.V. Desai

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-07-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10 (1), 25 FFA

Citation : (1995) 3 LLJ 859

Hon'ble Judges : R. Ramakrishna, J

Bench : Single Bench

Advocate : R. Gururajan, for the Appellant; B. Srinivasa Gowda, for R-1, for the Respondent

Final Decision : Allowed

Judgement

R. Ramakrishna, J.—On behalf of Messers P. V. Desai, a registered partnership firm, one of its partners, Sri R.V. Desai, has filed this writ petition under Article 226 of the Constitution for issue of a writ of certiorari or any other appropriate writ or direction quashing the order at Annexure ""L" passed by respondent no. 1 declaring the same as illegal and void and also to direct the respondents not to proceed further in pursuance of Annexure "L".

2. The petitioner was a partnership firm engaged in the business of tobacco processing at Nipani in Belgaum District. They had employed more than 50 workmen and the second respondent is the General Secretary of the Union. The workmen were alleged to have created certain situation by doing illegal activities by harassing the partners, their family members and doing dharna, etc. The petitioner being unable to bear with this situation had submitted a letter to the Conciliation Officer, Belgaum. Since the situation had become still worse, he addressed another letter (Annexure A) giving details of the harassment they are facing. Again he sent a telegram and gave a complaint to the police as per Annexure "C". Since the petitioner-firm was not able to get any protection from the police and also the illegal activities of the workmen increased, the firm has

resolved to close their processing operations at Nipani and informed the first respondent regarding the closure with effect from 12th March, 1984.

3. The petitioner-firm also filed civil suits and obtained temporary injunction and the cases are pending. In addition to this, the petitioner issued individual letters to the workmen regarding the closure, advising them to get payments in accordance with law as per Annexure "C" Thereafter, 21 workmen received payment. Consequent to the closure, the petitioner surrendered the factory licence,

4. Later, the second respondent raised a dispute before the Deputy Labour Commissioner and explained the reasons for the closure. Since there was a failure report filed by the Labour Officer, the Government has referred the dispute and the points referred are as follows:

I. Is the action of the management of P.V Desai, Tobacco Merchants and Commission Agents, Dallapalpatti, Nipani, in declaring a permanent closure with effect from 12th March, 1984, bonafide?

II. If so, to what relief are the said workmen entitled to?

5. The petitioner being aggrieved by this reference, has questioned the validity, correctness and competency of the Government to refer the matter for adjudication.

6. On behalf of respondent no. 1, Government Advocate has taken notice. Respondent No. 2 is unrepresented and respondent no. 2, Industrial Tribunal, is only a pro-forma party impleaded by the petitioner.

7. Learned counsel for the petitioner, Sri R. Gururajan, has submitted that since the workmen of the second respondent Union have resorted to conducting dharna, gherao and indulging in the activities to defame the family members of the partners of the petitioner-company for non-payment of bonus of 20 per cent, as demanded for the year 1983, it has become impossible for the petitioner-company to continue the activities, hence the company was temporarily closed during January, 1984. Learned counsel further submitted that since the workmen have increased their illegal activities and remained absent, the company was closed permanently with effect from 12th March, 1984, and necessary notices-were sent to all the workmen to receive the retrenchment compensation in accordance with the provision of Sections 25-F and 25-FFA of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Twenty-one workmen came and received the payment and hence the Government is not justified in making reference of this dispute without applying their mind to the reasons given by the petitioner.

8. We have no opportunity of hearing the second respondent-union as they remained absent after receiving the notice. Learned Government Advocate, appearing for respondent no. 1, however, has supported the action of the Government in referring the dispute for proper adjudication.

9. On going through the records submitted along with the writ petition, it is found that the petitioner-management have made representations to various organs of the Government pointing out the activities of the workmen and the impossibility to run the concern and thereafter they have resorted to permanent closure with effect from 12th March, 1984. When the second party workmen have raised conciliation, the petitioner-company have sent a representation as per Annexure "J" and reiterated the averments made from the beginning. The learned Conciliation Officer, after recording the factual report and the bona fides of the management, in closing down the unit, after offering the workmen their dues as stipulated u/s 25FFA of the Act, has sent a failure report to the Government.

10. u/s 10 of the Act, where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time by order in writing, refer the dispute for adjudication to the competent Court having jurisdiction in accordance with the Act.

11. It is well-established that the discretion to refer a dispute for adjudication is neither unfettered nor arbitrary, for Section 10(1) clearly provides that there must exist an industrial dispute as defined in the Act or such dispute must be apprehended before the Government decides to refer it.

12. In this case, the petitioner-company due to the non-co-operation of the workmen to continue their manufacturing activities and also to save themselves and their family members, after making representations to various authorities has ultimately closed down the company and offered closure compensation in accordance with law to all the workmen by sending letters under registered post. Some workmen have received compensation and some of them have raised the dispute. Admittedly, the establishment has been closed since January, 1984, and a permanent closure notice was served on 12th March, 1984.

13. The only alternative now open to the workmen is to receive the closure compensation as the petitioner-company have also surrendered the factory licence to the Inspector of Factories as per the Annexure "G". In view of these materials and having closed down the factory and surrendering the licence because of permanent closure, there cannot be an industrial dispute in existence.

14. In view of the foregoing, the petitioner is bound to succeed. Accordingly, I make the following order.

15. Writ Petition is hereby allowed.

16. The impugned order Annexure "L" bearing No. SWL 841/LLD/84 dated 22nd August, 1984, passed by the first respondent is hereby declared as illegal and void and hence the same is quashed.