

(1982) 07 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 22305 of 1982

S.K. Seshadri

APPELLANT

Vs

H.A.L. and Others

RESPONDENT

Date of Decision : 07-07-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Industrial Employment (Standing Orders) Act, 1946 — Section 2 (g), 3 (2)

Citation : (1983) ILR (Kar) 634 : (1983) 2 LLJ 410

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Judgement

1. In this petition under Art. 226 of the Constitution, the petitioner has challenged the validity of the SO No. 25(19) of the Standing Orders framed by the first respondent on the ground that the said Standing Order is violative of Art. 14 of the Constitution. The petitioner has also sought for quashing the second show cause notice issued to him, as per Annexure-B to show cause as to why the sentence proposed therein should not be imposed on him.

2. It is not necessary to go into the validity of the show cause notice (Annexure-B) in this writ petition, since that is a matter which can be gone into after the proceedings are completed by the disciplinary authority. Therefore, I propose to deal only with the contentions relating to the validity of SO 25(19) of the State Orders framed by the 1st respondent. The said standing order reads as follows :

"25. Acts of misconduct : The following acts and omission inter alia shall be treated as misconduct :

(1) to (18) x x x x x x

(19) Gambling and money lending or doing any other private business within the Company's premises".

It is contended by Sri G. V. Thirumale, learned counsel for the petitioner, that the

aforesaid Standing Order is bad in law, on two grounds : (1) that it cannot be the subject-matter of Standing Orders; (2) that even if it is held that it can be the subject-matter of the Standing Orders, it is violative of Art. 14 of the Constitution.

3. 1) In my opinion, there is no substance in both the contentions. "Standing Orders" as defined in S. 2(g) of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as "the Act") mean rules relating to matters set out in the Schedule. The schedule to the Act, provides for the matters to be provided in "Standing Orders" under the Act. Item No. 9 in the Schedule to the Act, reads thus :

"9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct".

Sub-s. (1) of S. 3 of the Act, specifically provides that within 6 months from the date on which the Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer 5 copies of the draft Standing Orders proposed by him for adoption in his industrial establishment. Sub-s. (2) thereof further directs for making a provision in the draft-Standing Orders for every matter set out in the Schedule which may be applicable to the Industrial establishment and where model-Standing Orders have been prescribed, the draft-Standing Orders submitted for certification shall be so far as is practicable, in conformity with such model. On the basis of this provision, it is contended that the Rule have been framed under the Act, known as the Karnataka Industrial Employment (Standing Orders) Rules, 1961 (hereinafter be referred to as "the Rules"). Schedule 1 to the Rules, sets out the model-Standing Orders for the purposes of the Act. It is submitted that these model-Standing Orders do not contain that acts of "gambling and money-lending or doing any other private business within the company"s premises" shall constitute misconduct; therefore it is not open for the 1st respondent (employer) to make a Standing Order as or So No. 25(19) constituting the acts of gambling and money-lending or doing any other private business within the company"s premises as misconduct. It is not possible to accept this contention. It is clear from the Schedule to the Act, read with Ss. 2(g) and 3(2) thereof, that the employer shall make a provision in respect of all the matters mentioned in this Schedule. Item No. 9 of the Schedule, as it is already extracted above, specifically provides for making Standing Orders regarding suspension or dismissal for misconduct and also to provide as to the acts or omissions which constitute misconduct. No doubt. sub-s. (2) of S. 3 of the Act provides that where model Standing Orders have been prescribed, the draft-Standing Orders proposed by the employer for adoption in his industrial establishment shall be, so far as is practicable, in conformity with such model-Standing Orders, Power to frame the Standing Orders as per the provisions contained in the Act, is given to the employer subject to the conditions that he must submit draft-Standing Orders to the certifying officer who is required to certify the same. Section 4 of the Act further directs that the

Standing Orders shall be certifiable under the Act, if provision is made thereunder for every matter set out in the Schedule, which is applicable to the industrial establishment and the Standing Orders are otherwise in conformity with the provisions of the Act. The Certifying Officer is also required to adjudicate upon the fairness or reasonableness of the provisions of any of the Standing Orders submitted for certification. Section 5 of the Act, further provides for affording an opportunity to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such a manner as prescribed by the Rules for raising objections. If any objections are filed to the draft-Standing Orders, the Certifying Officer is required to decide them after giving the employer and the trade union or such other representative of the workmen as may be prescribed, an opportunity of being heard. After deciding the objections, the Certifying Officer after making any modifications thereunder as per the order passed by him under sub-s. (2) of S. 6 of the Act, shall have to certify and send within seven days copies of the certified Standing Orders authenticated in the prescribed manner along with his order passed under sub-s. (2) of S. 6 of the Act, to the employer and to the trade union or such other representative of the workmen. Thus, it is clear that in the Standing Orders, a provision is required to be made for every matter set out in the Schedule to the Act, which is applicable to the industrial establishment concerned. Therefore, the mere fact that the model-Standing Orders do not provide for constituting particular act as misconduct, it does not mean that the Standing Orders cannot include such act or acts as constituting misconduct. Sub-s. (2) of S. 3 of the Act, merely provides that where model-Standing Orders have been prescribed, the Standing Orders shall have to be, so far as is practicable, in conformity with such model-Standing Orders, Model Standing Orders are framed in exercise of the Rule-making power. The Rules cannot restrict the scope and ambit of the provisions contained in the Act. Thus, the question as to whether the Standing orders are within the ambit of power conferred in that regard by the Act, has to be determined with reference to the provisions contained in the Act, more especially with reference to the Schedule which forms part of the Act. Providing for certain acts and omissions in the Standing Orders not already provided in the model-Standing Orders, does not make such a Standing Order invalid or beyond the power of the employer to make such a Standing Order. Applicability of the model-Standing Orders establishment. The same have to be applied as far as is practicable. In a given industrial establishment, certain other acts or omissions which are not mentioned in the model-Standing Orders may be required to be prescribed as constituting misconduct. Therefore, it is not possible to hold that the Standing Orders should not contain anything more than what is contained in the model-Standing Orders. As long as the Standing Orders fall within the Schedule to the Act, irrespective of the fact that they contain additional provision or they provide that in certain acts, which are not provided in the model-Standing Orders, shall constitute misconduct will not make the Standing Orders invalid or ultra vires of the Act. The model-Standing Orders only serve as a model for framing the Standing Orders, So 25(19) falls within Item 9 of the Schedule to the Act. Therefore the

first contention is rejected.

3. 2) Leaned Counsel has placed reliance on a decision of this Court reported in Karnataka Agro Industries Corporation v. Krishnappa (1981) 1 Kar. LJ 350, in support of his contention that the subject which is not found in the model-Standing Orders cannot at all be the subject-matter of the Standing Orders framed by the Establishment. It suffices to observe that the aforesaid decision is not on the point, inasmuch as in the said decision what is considered is the question as to the matters to be provided in the Standing Orders under the Act. The question as to whether the Standing Orders can contain the matter which is not found in the model-Standing Orders has not been considered therein. Therefore, the said decision is of no avail to the petitioner.

3. (3) The other contention is that the SO No. 25(19) is violative of Art. 14 of the Constitution. It is submitted that in a money-lending business, two parties are involved i.e., the person who lends money and the person who receives it. It is submitted that SO No. 25(19) constitutes the act of money-lending alone a misconduct. In other words, it is only the act of the workman who lends money within the company's premises is treated as misconduct and not the act of the workman who receives money as loan from the other workman who does money-lending business; therefore, there is a discrimination. It is not possible to appreciate this argument. The object of SO No. 25(19) is to see that no workmen does the act of gambling or money-lending or any other business within the company's premises. Therefore, the Standing Order does not make any discrimination between the workmen who commit the act falling under SO No. 25(19). A money-lender and debtor do not form one class and they form different classes; therefore, there is no question of treating both of them alike. It is only the like-persons who are required to be treated alike. Therefore, it is not possible to hold that SO No. 25(19) is discriminatory and is in any way violative of Art. 14 of the Constitution., Accordingly, this contention is also rejected.

4. For the reasons stated above, I do not see any ground to issue Rule. The petition is accordingly rejected.