
(2001) 02 KAR CK 0066
In the Karnataka High Court
Case No : Criminal Petition No. 621 of 2001

Subbaiah

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Penal Code, 1860 (IPC) — Section 323, 341

Citation : (2001) CriLJ 3163 : (2001) 4 KarLJ 358 : (2001) 3 KCCR 2030

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Sri H.P. Leeladhar, for the Appellant; Sri G. Bhavani Singh, High Court Government Pleader, for the Respondent

Judgement

M.P. Chinnappa, J.—The brief facts of this case are that the petitioner institution which was earlier known as Food Craft Institute was established in March, 1969 which is sponsored by the Government of India and is an autonomous body, registered under the Mysore Societies Registration Act, 1960. The petitioner conducts classes and prepares the students who in turn sit for the examinations conducted by the National Council for Hotel Management and Catering Technology. The National Council is also registered as a Society and this Council conducts examination for which training is imparted by the petitioner institution and several other institutions. The National Council consists of representatives of Government of India and certain others. The petitioner Institute is carried on under the Authority of the Central Government. The Government of India has also issued notification u/s 14 of the Administrative Tribunal Act thereby stating that all service matters pertaining to these institutions can be raised before the Central Administrative Tribunal. A copy of the said notification is as per Annexure C. The 1st respondent workman raised certain disputes and conciliation proceedings were initiated by the 3rd respondent u/s 12 of the Industrial Disputes Act. In the said proceedings, the petitioner filed the statement contending inter alia that the said officer has no jurisdiction to examine the

matter inasmuch as the petitioner institute is one is carried under the Authorities of the Central Government. A copy of the said objection statement is produced as per Annexure D. The 3rd respondent submitted the report to the 2nd respondent stating that the settlement could not be arrived at. Thereafter, the State Government exercised its power u/s 10(1) of the Industrial Disputes Act and has referred the matter to the Industrial Tribunal. The Industrial Tribunal after the receipt of the reference had issued notice to the petitioner. Yet again, the petitioner filed detailed objection statement before the Tribunal stating that the reference itself is illegal and such proceedings cannot be continued. Hence, this petition wherein it is sought for a writ of certiorari and quash the order of reference passed by the Karnataka State Government in order dated May 5, 1999 bearing No. ID 143 LID 99 (Annexure A) and consequently hold the reference proceedings registered as ID No. 50/99 on the file of the Industrial Tribunal, Bangalore, as one without jurisdiction.

2. The respondent also filed a detailed objection in this petition which I have perused.

3. Heard Sri Ashok Haranhalli the learned advocate for the petitioner and Sri T.S. Anantaram, the learned advocate for the respondent No. 1, Sri V.K. Narayanaswamy H.C.G.P. for R-2 to R-4.

4. The only ground urged by the petitioner is that the State Government has no jurisdiction/power to refer the dispute to the Industrial Tribunal and thus the Tribunal lacks jurisdiction as the petitioner institute is exclusively owned by the Central Government.

5. According to the learned counsel for the petitioner, it is only the Central Government which ought to have referred the matter, whereas the State Government has referred the dispute in question to the Industrial Tribunal and the same is without jurisdiction or authority. Therefore, the Industrial Tribunal ought not to have entertained that reference. He further contended that this particular ground of not having power or authority to the State Government to refer to the Industrial Tribunal can neither be agitated by the petitioner before the Tribunal nor be decided by it. Therefore, he submitted that the writ petition is maintainable and it is only the High Court which can go into that question and in support of this argument he placed reliance on a decision reported in The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, wherein Their Lordships have held that the Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question of validity of the reference. The question before the High Court was one of jurisdiction which failed to consider.

6. In The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, it is held :

"It was submitted by the respondent that once a reference has been made u/s 10 of the Act, a Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a

correct proposition to state. An administrative order which does not take into consideration statutory requirements or travels outside that is certainly subject to judicial review, limited though it might be. The High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. In *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, , this Court observed at p. 264 of LLJ: "It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial dispute which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference."

7. From this decision, it is clear that in so far as the question of jurisdiction of the Industrial Tribunal to adjudicate upon the existence of the industrial dispute and the power of the Government to make reference in respect of a particular case, etc. cannot be gone into by the Labour Court or the Industrial Tribunal but it is the exclusive jurisdiction of the High Court under Articles 226 and 227 of the Constitution. The question is whether in this particular case the State Government had power or authority to refer the matter in view of the contention raised in the petition. At this stage it cannot be *prima facie* said that there is no industrial dispute.

8. At this stage, it is relevant to mention that the Government passed the order of reference in the year 1999 and the same came to be registered as I.D. No. 50/99 on the file of the Industrial Tribunal, Bangalore. The petitioner who appeared before the Industrial Tribunal filed an application u/s 11(1) and (3) of the Act read with Order 14 Rule 2 CPC to frame preliminary issues. After hearing both the parties, the Court by order dated June 16, 2000 allowed the application filed by the petitioner and also framed addl. issues which read as follow:

- (1) Whether the II party Institute is an Industry as defined u/s 2(j) of the Industrial Disputes Act?
- (2) Whether the State of Karnataka is an "Appropriate Authority" to refer the dispute pertaining to the Institute of Hotel Management to this Tribunal? If not, whether this Tribunal has jurisdiction to adjudicate the dispute?
- (3) Whether the I Party Association has properly espoused the cause of the II party Group "D" Employees?

However, none of the parties questioned this order and this order came to be passed only on the application of the petitioner and virtually that application was allowed. In view of this, the learned counsel for the respondent submitted that since there is an issue on this particular question, it is open to the petitioner to

urge it before the Tribunal. However, the learned counsel submitted that the question cannot be decided by the Tribunal in view of the judgments referred to above.

9. The learned counsel for the petitioner has drawn my attention to Clauses (f), (j), (k) (i), (iii) and (xi) at Annexure B1 the Memorandum of Association. As far as these clauses are concerned, there is absolutely no dispute and the respondent counsel also submitted that this Memorandum of Association also goes to show that this Institute is established for the purpose of carrying on the administration of Hotel Management and Catering Technology and Applied Nutrition, etc. and the same is registered under the Karnataka Registration Act, having its head office in Bangalore. There is nothing to show in the Memorandum of Association that it is governed by Central Government. He also submitted that as far as the disputes in regard to students, etc. it is the Central Administrative Tribunal, which has jurisdiction to deal with the matters. In so far as the workers are concerned, such as electrician, cook, watchmen, peon, etc. who help in day to day work, only the Industrial Tribunal has the jurisdiction. In support of his argument, he further submitted that even educational institutions also are industry but teachers are not workmen. As this dispute is not in between teachers, students and management, it is only the Industrial Tribunal has jurisdiction to try the case. In support of this argument, he has drawn my attention to the decision rendered by the Supreme Court in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, wherein the Supreme Court has held:

"Educational Institution is an Industry in view of the decision in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, In order to be workman a person should be employed in an Industry for hire or reward in skilled or unskilled, manual, supervisory, technical or clerical work and such person should fall under any one of the four exempted clauses mentioned in Section 2(s). Teachers employed by educational institution cannot be called "workmen" within the meaning of Section 2(s) of the Act, irrespective of the fact whether such institutions are imparting primary, secondary, graduate or post-graduate education. Imparting of education which is the main function of the teacher cannot be considered a skilled or unskilled manual work or supervisory work or technical work or clerical work. It is a noble mission or a noble vocation. A teacher educates children, moulds their character, builds up their personality and makes them fit to become responsible citizens and children grow under the care of teachers. The clerical work done by teachers is only incidental to the principal work of teaching. It is not that all employees in an industry excepting those falling under the four exempted categories in Section 2(s) should be treated as workmen. In order to be a workman an employee should be employed to do any skilled or unskilled manual, supervisory, technical or clerical work".

10. The Division Bench of this Court in *Cotton Corporation of India Ltd. v. Odusmath G.C. and Ors.* 1999-I-LLJ-19, held that under Sections 2(a) and 10

meaning of appropriate Government whatever be extent of Central Government's control over company, it remains separate juristic person. It cannot be treated as carrying on business under authority of Central Government unless so specified in this behalf.

11. The Division Bench of Madras High Court in *Administrative Officer, Central Electro Chemical Research Institute v. State of Tamil Nadu* and Ors.1990 Lab IC 1815, held that dispute between the Management of Central Electro Chemical Research Institute and its employees - "Central Government." is "appropriate Government" on the ground that the Central Government had expressly stated in the notification that CSIR is a society owned or controlled by the Government. In view of the said notification, it was taken that it is a concern carried on under the authority of the Central Government. On that ground, the Court held that the appropriate Government to refer the dispute assuming the appellant is an industry, will be the Central Government.

12. The Madhya Pradesh High Court in *Ramkishna and Samrat Ashok Technical Institute, Vidisha*, had occasion to deal with the question whether educational institution is an "industry" and held that considering the provisions of law as they stand today, the educational service is not only an industry but is the mother of industries of the respondent is therefore, held to be an industry, within the meaning of Section 2(j) of the Industrial Disputes Act. In that case, a lower division clerk was discharging clerical work and therefore, it held that the workman fell under the definition 2(s) of the Act.

13. In W.A. 8772/96 the Division Bench of this Court has held following the decision in W.A. 10011/96 decided on September 11, 1998 reversing the order of the single Judge holding that the Institute of Hotel Management Catering Technology and Applied Nutrition (Karnataka) Society is a State within the meaning of Article 12 of the Constitution.

14. As far as the principles of law in the aforesaid decision are concerned, they are not in any way commented upon by the respondents and virtually they have no quarrel in this aspect. The question is whether the Central Government only could refer the matter to the Industrial Tribunal. To substantiate this argument, the petitioner has drawn my attention to the notification issued by the Central Government bringing this petitioner establishment under the jurisdiction of Central Administrative Tribunal.

15. The petitioner has produced the notification as per Annexure C. This notification was issued under Sub-section (3) of Section 14 of the Act. On the other hand, it was issued by the Ministry for Tourism and therefore, it is not applicable. This argument is unsustainable. Any notification in the normal course issued by the Government if a decision is taken by the Cabinet, irrespective of the fact which Department issues it, it is deemed mat the Central Government which had issued this notification. Therefore, this argument also is rejected.

16. The learned counsel for the respondent further argued that the respondents

are none other than the peons, watchmen, electricians, etc. They do not come within the jurisdiction of the CAT. On the other hand, they are workmen as defined under the Act. Therefore, this notification does not affect the case of the respondents. As I have stated above, the question was as to which Government should have referred the matter. In view of the notification issued by the Central Government and in the absence of any material prima facie to show the State Government has power, control, authority or ownership over this petitioner concern, it is only the Central Government which has to pass an order in regard to the reference. Therefore, the order impugned in this petition calls for interference.

17. For the foregoing reasons, notwithstanding the fact that additional issues came to be raised referred to above, on the application of the petitioner itself by the Industrial Tribunal, nonetheless this Court is required to interfere with the order of reference as the Labour Court cannot decide the question of competency of State Government in making reference where an establishment is owned and is under the control of the Central Government.

18. In the result therefore, the petition is allowed. The order of reference passed by the State Government referring the matter to the Industrial Tribunal is set aside. However, the 1st respondent is at liberty to approach the competent authority for necessary orders, in the light of the observations made above.