

(2011) 11 KAR CK 0371

In the Karnataka High Court

Case No : Writ Petition No. 35412 of 2010 (L-Res)

The Mysore Paper Mills Workers Association, Bhadravathi

APPELLANT

Vs

The Assistant Labour Commissioner and 1926 Deputy
Registrar of Trade Unions Mangalore Division, Mangalore 2

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Karnataka Trade Union Regulations, 1958 — Regulation 12
Limitation Act, 1963 — Section 10, 15, 23, 24, 4
Trade Unions Act, 1926 — Section 11, 11 (1) (aa)

Citation : (2012) 132 FLR 866 : (2011) ILR (Kar) 5661 : (2012) 2 KarLJ 69 :
(2012) 2 LLJ 808

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Jagadeeshachari, for the Appellant; Jagadish Mundargi, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy

1. Petitioner, a trade union having its registered office at No, 357, 3rd Cross, Suragithopu, Bhadravathi, Shimoga District, when registered under the Trade Unions Act, 1926, for short "the Act", was issued with a certificate of registration on 18/1/1995, The respondent - Assistant Labour Commissioner, it is alleged, by order dt. 18/11/2005 cancelled the registration without intimation. Petitioner having come to know of the cancellation on 24/5/2006, preferred M.A.No. 13/2006 before the District & Sessions Judge, Shimoga, invoking Sec. 11 of the Act r/w Regulation 12 of the Karnataka Trade Union Regulations, 1958, for short "the Regulations". Petitioner having noticed that the appeal was filed before a wrong forum, did not press the appeal which was accordingly rejected on 30/9/2006. Thereafterwards petitioner filed Misc. Appeal No. 7/2006 before the Labour Court at Mangalore invoking Sec. 11(1)(aa) of the "Act", along with an application to condone the delay in preferring the appeal by arraigning the

Deputy Registrar of Trade union and the Assistant Labour Commissioner. The appeal was resisted by filing a counter, contending that the notice in Form No. D. issued to the petitioner on 30/5/2005 through RPAD when not responded, led to the order, cancelling the registration, which was communicated. The petitioner examined one witness in support of the plea to condone the delay while none were examined for the respondent. The Labour Court, on the basis of the materials and pleading, held that the appeal, when not filed within 60 days from the date of the order, the period prescribed under the Regulations, and the petitioner having not obtained an order of the District & Sessions Judge granting liberty to file an appeal before the jurisdictional court, held that the appeal was barred by time and accordingly by order dt. 24/6/2010, dismissed the appeal. Hence this petition.

2. Sec. 11 of the Trade Unions Act, 1926, reads thus:

11. Appeal. - (1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal -

(a) where the head office of Trade Union is situated within the limits of a Presidency town, to the High Court, or

(aa) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal to that Court or Tribunal, as the case may be;

(b) where the head office is situated in any other area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of Sec. 9 or setting aside the order for withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under subsection (1) an appellate court shall so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908, and may direct by whom the whole or any part of the costs of the appeal shall be paid, any such costs shall be recovered as if they had been awarded in a suit under the said Code,

(4) In the event of the dismissal of an appeal by any Court appointed under clause (b) of subsection (I), the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under subsections (2) and (3), and the provisions of those sub-sections shall apply accordingly.

3. Regulation 12 of the Karnataka Trade Union Regulations, 1958, reads thus:

12. Appeals. - Any appeal made under sub-section (1) of Section 11 shall be filed within sixty days of the date of the order against which the appeal is made.

4. Petitioner having its head office in Bhadravathi, falling within the territorial jurisdiction of the Labour Court or the Industrial Tribunal, Mangalore was required to file the appeal under Sec. 11(1)(aa) of the Act, within 60 days from 18/11/2005 the date of cancellation of the registration by the respondent, as prescribed in Regulation 12. Petitioner alleging that it had no notice of the order of cancellation prior to 24/5/2006, preferred M.A.No. 13/2006 before the District & Sessions Judge, Shimoga, who had no jurisdiction to entertain the appeal and on noticing the same, withdrew the appeal as not pressed, on 30/9/2006. Thereafterwards having regard to Section 11 of the Act, petitioner filed the appeal invoking Sec. 11(1)(aa) of the Act before the Labour Court, Mangalore, camp at Shimoga, along with an application to condone the delay in preferring the appeal.

5. Though the Labour Court, in the order impugned, held that the appeal ought to have been preferred atleast 2 months after 24/5/2006, the date of knowledge of the order of cancellation of registration, nevertheless opined that the failure on the part of the petitioner to obtain an order of the District & Sessions Judge in M.A.No. 13/2006 reserving liberty to it to file an appeal before the court having jurisdiction, the appeal filed beyond 60 days is hopelessly barred by limitation.

6. Although Regulation 12 of the Regulations prescribes 60 days from the date of order as the period of limitation for filing an appeal, nevertheless in the light of Sec. 29(2) of the Limitation Act, 1963, the provisions contained in Sec. 4 to 24 (inclusive) of the Limitation Act is made applicable, since its application is not expressly excluded under the "Act", or the Regulations. The petitioner having approached a wrong forum by filing an appeal before the District & Sessions Judge, had placed material in that regard, and therefore it was for the Labour Court to appreciate that material while considering the exclusion of the said period, while prosecuting a proceeding before a wrong forum, if found bonafide, as contemplated by Sec. 14 of the Limitation Act, 1963. Moreover, the District & Sessions Judge having no jurisdiction under the Act to try the appeal, could not have, by an order, reserved liberty to the petitioner to file an appeal before the appropriate forum. The Labour Court having not appreciated that aspect of the matter, as required by law, the finding is perverse calling for interference.

In the result, petition is allowed in part. The order dt. 24/6/2010 in Misc. Appeal No. 7/2006 - Annex. D of the Labour Court is quashed and the proceeding remitted for consideration afresh in the light of the observations made supra and after extending reasonable opportunity of hearing to the parties, to pass orders strictly in accordance with law.

Since parties are represented by learned Counsel, are directed to be present before the Labour Court, Mangalore, camp Shimoga, on the first date of the

camp sitting at Shimoga during December 2011.