
(1990) 04 KAR CK 0015
In the Karnataka High Court
Case No : W.F. No. 11079 of 1984

V. Ram Rao

APPELLANT

Vs

Commissioner of Labour

RESPONDENT

Date of Decision : 02-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 62 FLR 125 : (1990) ILR (Kar) 1848 : (1991) 1 LLJ 14

Hon'ble Judges : N.Y. Hanumanthappa, J;K.A. Swami, J

Bench : Division Bench

Judgement

K.A. Swami, J.—In this petition under Article 226 of the Constitution, the petitioners have sought for quashing the order dated 29th March 1984 passed by the 1st respondent in IAA/CR-104/83-84 produced as Annexure "M" in the writ petition and also for issuing a writ in the nature of prohibition or any other appropriate direction restraining the Munsiff and First Class Magistrate, Chikmagalur, from proceeding further with C.C. No.701 of 1984 on his file.

2. It is contended by the petitioners that there is a dispute as to the contents of the settlement for the violation of which the sanction is accorded for prosecution; therefore, the order of sanction is bad in law; that there is no determination as to the terms of settlement; that the sanction is accorded for prosecution without application of mind.

3. On the contrary, Sri Subba Rao, learned Counsel for the 3rd respondent, submits that the petitioners did not dispute that there was a settlement arrived at between the petitioners and the 3rd respondent and, as such, the settlement which was arrived at was the one produced as Annexure "E" dated 9th February 1983. Therefore, it is contended that the sanction accorded is valid in law.

4. In this case, we are of the view that it is not necessary to go into the question as to whether there has been satisfaction on the part of the authority who accorded sanction; because this is a case in which the very terms of the

settlement dated 9th February 1983 are disputed. It is necessary to mention that on 6th February 1983 the parties had a joint meeting and they agreed for certain terms which were reduced into writing and signed by the parties the original of which is produced as Annexure "A" which reads thus :

"Points agreed at the Joint Meeting held at T.B. on 6th February 1983 at 3 p.m. when MSRs/M. P. Padmegowda, M. S. Balakrishna, T. S. Uthaiah, A. K. Vishwanath and V. Rama Rao were present. 1. To take 17 workers as suggested by the Union from 9th February 1983 after due verification.

2. To pay a lump-sum amount equal to 50% of the earned wages for a period of 45 days.

3. After 46th day if the position does not improve, the remaining workers be retrenched. From 7th February 1983 the strike be called off.

4. In case if work is given during this year or next year preference should be given to these workers only.

5. The payment be adjusted towards compensation paid at the time of retrenchment.

6. This was executed before Sri M. P. Padmegowda, General Secretary, Janatha Party, Chikmagalur District, Sri T. S. Uthaiah. President, Jagritha Praja Samithi, Sri A. K. Viswanath, Secretary C. C. M. E. K. Sangha. Sri M. S. Balakrishna and Sri V. Rama Rao.

Sd/- M. P. Padmegowda, Sd/- V. Rama Rao, Sd/- T. S. Uthaiah Sd/- A. K. Viswanath Sd/- M. S. Balakrishna."

5. Thereafter again on 8th February 1983 the parties, held a joint meeting and reduced into writing the terms agreed to by them as per Annexure "B". The original containing the signature of the parties reads thus :-

"The following points are agreed in the meeting held on 8th February 1983 at 8.30 p.m. in Janatha Party Office. Sri H. A. Narayana Gowd presided over the meeting. Sri M. S. Balakrishna, Sri T. S. Uthaiah, Sri A. K. Viswanath and Sri V. Rama Rao were present.

Points agreed in the meeting :

1. To take 18 workers as suggested by the Union from tomorrow i.e., from 9th February 1983.

2. To pay a lumpsum amount of Rs. 100/- to each worker who was not taken on duty.

3. In case the position improves the existing workers should be given preference and no new workers is to be taken.

4. The payment of Rs. 100/- paid need not be recovered and this shall be an ex

gratia payment.

5. Agreement to this effect be executed between the Management and the Union before the A.L.C.

Sd/- M. S. Balakrishna Sd/- V. Rama Rao Sd/- H. A. Narayana Gowd Sd/- A. K. Viswanath Sd/- T. S. Uthaiiah."

6. Thereafter again on 9th February 1983 the Settlement was filed before the Assistant Labour Commissioner and Conciliation Officer, Chikmagalur. A copy of it as given to the petitioner containing the signatures of the parties produced as Annexure "D", reads thus :-

"Memorandum of Settlement

parties :

1. Representing 1. Sri M. S. Balakrishna, the Management : Director. 2. Sri V. Rama Rao Chief Executive & Secretary. 2. Representing the 1. Sri A. K. Viswanath, workman : Secretary, Coffee Curing Mattu Eatre Karmikara Sangha, Chikmagalur. 2. Smt. Bomdalli Kamma 3. Smt. D. K. Kenchamma. Short Recital of the Case.

WHEREAS an Industrial Dispute arose between the Workmen and the Management of the Mysore Coffee Curing Works Ltd. Chikmagalur regarding unemployment of certain workmen in the Garbling Section due to power cut in the Unit;

AND AS the matter was admitted in conciliation under the Industrial Dispute Act by the Assistant Labour Commissioner and Conciliation Officer, Chikmagalur;

AND AFTER prolonged discussions and negotiations between the parties, the dispute is settled amicably on the following terms :-

Terms of Settlement

1. That the respondent Management agreed to take 18 workers mentioned in Annexure back to work with effect from 9th February 1983.

2. The Management also agreed to pay a lumpsum amount of Rs. 100/- to each of the other workers who were not taken on duty during the current season. The benefit is to be extended to all the Garblers who were working during the last season.

3. It is agreed between the parties that in case the position in the power supply improves the existing unemployed workers.

4. The Management agree that the payment of Rs. 100/- paid to the unemployed workers under reference need not be recovered and this shall be an ex gratia payment.

5. The Management agreed to pay said amount of Rs. 100/- to each of the

unemployed workers on or before 22nd February 1983.

Both the parties affix their signatures to the settlement to their best satisfaction this Day the 9th of February 1983.

Representing the Management :

1. Sd/- M. S. Balakrishna
2. Sd/- V. Rama Rao

Representing the Workmen :

1. Sd/- A. K. Vishwanath
2. Sd/- Kamma
3. Sd/- Kenchamma

Witness :

1. Sd/- T. S. Uthaiiah.

Jagratha Praja Samithi,
Chikmagalur.

Before Me :

Sd/- T. B. Gurunangiah,
Assistant labour Commissioner
& Conciliation Officer,
Chikmagalur."

7. The one on the basis of which the sanction for prosecution is accorded is produced as Annexure "E" which reads thus :

MEMORANDUM OF SETTLEMENT

parties :

1. Representing the 1. Sri M. S. Balakrishna Management : Director 2. Sri V. Rama Rao Chief Executive & Secretary 2. Representing the 1. Sri A. K. Viswanath Workmen : Secretary, Coffee Curing Mattu Eatre Karmikara Sangha, Chikmagalur, 2. Smt. Bomdalli Kamma 3. Smt. D. K. Kenchamma
Short Recital of the Case

WHEREAS an Industrial Dispute arose between the Workmen and the Management of the Mysore Coffee Curing Works Ltd., Chikmagalur, regarding unemployment of certain workmen in the Garbling Section due to power cut in the Unit;

AND AS the matter was admitted in conciliation under the Industrial Disputes Act

by the Assistant Labour Commissioner and Conciliation Officer, Chikmagalur;

AND AFTER prolonged discussions and negotiations between the parties, the dispute is settled amicably on the following terms :

TERMS OF SETTLEMENT

1. That the respondent management agreed to take 18 workers mentioned in Annexure back to work with effect from 9th February 1983.
2. The Management also agreed to pay a lumpsum amount of Rs. 100/- to each of the other workers who were not taken on duty during the current season. The benefit is to be extended to all the Garblers who were working during the last season.
3. It is agreed between the parties that in case the position in the power supply improves, the existing unemployed workers will be provided with work.
4. The Management agree that payment of Rs. 100/- paid to the unemployed workers under reference, need not be recovered and this shall be an ex gratia payment.
5. The Management agreed to pay said amount of Rs. 100/- to each of the unemployed workers on or before 22nd February 1983.

Both the parties affix their signatures to the settlement to their best satisfaction this day the 9th of February, 1983.

Representing the Management : 1. Sd/- M. S. Balakrishna 2. Sd/- V. Rama Rao
Representing the Workmen : 1. Sd/- A. K. Vishwanath 2. Sd/- Kamma 3.
Sd/- Kenchamma Witness : 1. Sd/- T. S. Uthaiyah, Jagratha Praja Samithi,
Chikmagalur Before me : Sd/- T. B. Gurunangiah, Assistant Labour
Commissioner, Chikmagalur."

8. Annexure D and E are similar except to the extent of the following words "will be provided with work" found in Clause 3 of the terms of settlement Annexure E are not found in Clause 3 of Annexure D. The words "will be provided with work" are added and are hand written. These words are not found in Annexures A and B about with there is no dispute between the parties. Therefore, there is a genuine dispute between the parties as to whether the words "will be provided. With work" added in Clause 3 of the terms of settlement on page 1 of Annexure E form part of the settlement. That apart, addition of these words does not bear any signature or initials of the parties. Therefore, there is a genuine dispute as to the material terms of the settlement for the violation of which sanction is accorded for prosecution. The authority according sanction is required to decide if there is a genuine dispute between the parties as to the terms of settlement for the violation of which the sanction for prosecution is sought. The authority must take care to see and must satisfy itself that the dispute as to the terms of settlement is genuine. It is not a mere denial of either the existence of settlement, or true contents of the terms of the settlement, that would disable

the authority to accord sanction for prosecution; but it is the proof of either the non-existence of the settlement or the contents of relevant terms of the settlement not being true, for the violation of which the sanction for prosecution is sought. If such a controversy is raised, the authority empowered to accord sanction for prosecution has to decide the same before according sanction. In the absence of any such decision, the order according sanction for prosecution will be without the authority of law, or without any basis because the very terms of settlement the violation of which is alleged will be under dispute. In these circumstances, we are of the view that the order according sanction without determining the terms of the settlement is not valid in law. Hence, in a case like this, even applying the observations made by us in the decision rendered today in Writ Petition No. 13129 of 1982 F.K. Menzlin Vs. B.P. Premakumar, interference is called for.

9. For the reasons stated above, this Writ Petition is allowed. The order dated 29th March 1984 in IAA/CR-104/83-84 passed by the Commissioner of Labour in Karnataka, Bangalore (Annexure M) is hereby quashed. It is made clear that it is open to the parties interested in prosecution to prove the existence of the terms of the settlement and seek sanction for prosecution for the violation of the same. We also make it clear that this decision shall not be construed as affecting the right of the 3rd respondent to avail any other remedy available in law.