

(2005) 03 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No's. 44699 and 44787 of 2004

Workmen

APPELLANT

Vs

Kudremukh Iron Ore Company Limited and Others

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2005) ILR (Kar) 4500 : (2005) 2 KarLJ 494 : (2005) 2 KCCR 94 SN

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : M.C. Narasimhan, for the Appellant; Kasturi, for Respondent-1, N. Devadas, Central Government Standing Counsel for Respondent-2 (absent) and Subbarao, for Respondent-3, for the Respondent

Judgement

Mohan Shantanagoudar, J.—The petitioner's Union seeks (a) writ of certiorari to quash the impugned order/endorsement dated 9-9-2004 vide Annexure-A passed/issued by the 1st respondent, by which the petitioner-Union is directed to vacate and surrender the Sampath Bhavan Annex Building and (b) writ of mandamus directing the respondent 1 to grant promotions due to the employees (non-executives) since 2003 in terms of Promotion Rules contained in Annexure-F and certain other incidental reliefs.

2. Heard Sri M.C. Narasimhan, learned Senior Counsel appearing on behalf of the petitioner-Union, Sri Subbarao, learned Senior Counsel appearing on behalf of the respondent 3-Union and Sri Kasturi, learned Senior Counsel appearing on behalf of the contesting respondent 1 and perused the material on record.

3. The brief facts of the case are that: the respondent 1 is a public sector undertaking engaged in Iron Ore mining operation, its marketing and other connected business; that it is a State within the meaning of Article 12 of the Constitution of India; that the petitioner-Union and respondent 3 are the Trade Unions representing certain workmen under their respective roles, employed by the 1st respondent; the petitioner-Union was recognised by the management of

the 1st respondent after holding secrete ballot amongst the concerned workmen in the year 2002; that on expiry of recognition on 8-9-2004, the management has issued the impugned order/endorsement directing the petitioner-Union to vacate the association building located in Sampath Bhavan Annex building and surrender the premises of the Union office.

4. Sri M.C. Narasimhan, learned Senior Counsel, by placing reliance on the decision of the Apex Court in Management of Karnataka State Road Transport Corporation Vs. KSRTC Staff and Workers' Federation and Another, , made two-fold submissions viz., firstly, that the petitioner-Union is entitled for continuation of the recognition despite the expiry of two years period till the new election is held and new office-bearers are elected, and till such period, the management should treat the petitioner-Union as recognised Union for all practical purposes and consequently, ought to have permitted the petitioner to occupy the said premises for running the Union Office; that in all fairness, the concerned authorities should have taken steps to hold elections much prior to the expiry of the period of recognition of existing Union so as to enable the recognised Union to carry on Trade Union activities uninterruptedly. He further clarified that petitioner-Union is not coming in the way of holding fresh elections. Secondly, he submitted that, with a mala fide intention to embarrass the petitioner's recognised Union which has taken up the question of promotion and with a view to delay in effecting promotions, the respondent 1 is deliberately postponing the grant of promotions to the non-executives. Thereby the respondent 1 has discriminated amongst it's employees i.e., executives (who are granted promotions) and non-executives (who are not given promotions). According to the petitioner, many employees have been looking forward to their promotions eagerly in view of urgency. The urgency is because of the fact that the respondent 1-Company is likely to close its operations of mining by 2005 at Kudremukh as per the directives of the Supreme Court. According to him, the management is evading to issue promotions on one or the other pretext, though there is no difficulty for the management to implement their assurance regarding promotion. Hence, the petitioner's Union, by filing this writ petition demands that the promotions due to the non-executives since 2003, should be given to them as per the existing rules produced at Annexure-F and that the orders to that effect may be issued at the earliest.

5. Per contra, Sri Kasturi, learned Senior Advocate appearing on behalf of the contesting respondent-management fairly submits that the 1st respondent has no objection for the petitioner occupying the premises till the newly elected Union occupies the said premises after the forthcoming elections which is scheduled to be held on 18-3-2005. Further, countering the second submission made by the petitioner's Counsel, he submitted that the promotion policy vide Annexure-F is virtually superseded by the settlement arrived at on 14-8-2003 which is reduced to writing by way of Supplementary Memorandum of Settlement ("SMOS" for short) vide Annexure-D to the writ petition. He points out from the wage structure that, two new pay scales viz., Sections 6 and 10 are introduced

as per the said settlement; that the petitioner's Union itself has pointed out certain anomalies and sought for certain clarifications from the management with regard to the promotions to the new scales i.e., Sections 6 and 10. In view of the above, unless every doubt as raised by the Union is clarified and sorted out between the Union and the management, promotions cannot be given to the non-executives.

6. Per contra, Sri Subbarao, learned Senior Counsel appearing on behalf of the 3rd respondent-Union submitted that the elections should not be stopped at any cost to safeguard the industrial democracy. He further submitted that his Union is also aggrieved by the inaction on the part of the 1st respondent-management in stopping/withholding the promotions of non-executives since 2003. Consequently, he submitted that the workers should be promoted as per the existing promotion policy vide Annexure-F.

7. This Court, while rejecting the application for vacating stay filed by management by the interim order dated 15-12-2004 has observed that:

"It is well-settled position of law that the petitioner's Union is entitled to continue in occupation of the office premises despite the expiry of their term until new elections are held and new office-bearers are recognised".

8. In view of the said interim order and in view of the aforesaid submission made by Sri Kasturi, learned Senior Counsel appearing on behalf of the management-respondent 1, the first grievance of the petitioner that it should not be evicted from the premises and that it should be permitted to continue in the present office premises until the new office-bearers are elected, does not survive any more. It is made clear that the petitioner's Union is entitled to continue in occupation of the office premises despite the expiry of its recognition until new elections are held and new office-bearers are elected. Further, it is made clear that this order will not come in the way of concerned authorities holding the election, as per the calendar of events already published by Assistant Returning Officer, which is scheduled to be held on 18-3-2005. Counting shall take place on the very day as per the calendar of events.

9. However, it is necessary to observe here itself that the authorities should have taken appropriate steps to conduct elections much prior to the date of expiry of recognition of the existing Union. Generally, the employees ventilate their grievances through the recognised Union. As the management generally holds meeting only with the recognised Union, there should not be any vacuum or void in the matter of recognition of the Trade Unions. In the event of vacuum regarding recognition of the registered Union, the Trade Union activities will suffer. In the instant case, the recognition of the petitioner's Union had ended on 8-9-2004. In this view of the matter, the concerned authorities should have initiated steps to hold elections at least one month prior to the expiry of the recognition, so as to enable the subsequently elected recognised Union to occupy its office and start functioning from the date of expiry of recognition granted to

the erstwhile recognised Union.

The Code of Discipline was ratified by all Central Employers' and Workers' Organisations at the 16th Session of India Labour Conference held in 1958. As per Annexure-I to the said Code of Discipline, where there is more than one Union, a Union claiming recognition should have been functioning for at least one year after registration. It is also clear therein that where there are several Unions in an industry or establishment, the one with the largest membership should be recognised. Therefore, there is duty cast upon the respondent 1 to determine the representative character of registered Trade Unions functioning in the establishment of the 1st respondent-Company either through verification of membership method as contemplated under the Code of Discipline in Industry or based on the membership of the Unions ascertainable through check off system or by conducting a secret ballot through an officer of the State Labour Department. In the instant case, the authorities have made efforts to conduct elections only after the lapse of about 5 months from the date of expiry of recognition of the petitioner's Union. The concerned authorities should avoid creation of such vacuums at least in future.

10. Thus, the question that remains to be considered by this Court is:

"Whether the management-respondent 1 is justified in withholding promotions due to non-executive employees working in its establishment since 2003?"

11. Looking to the rival contentions of the parties, it is clear that the petitioner and respondent 3 are very much agitated against the inaction on the part of the respondent 1 in withholding/stopping the promotions to non-executives since 2003. Both the Unions are demanding promotions at least as per the existing Promotion Rules contained in Annexure-F. Looking to the totality of facts and circumstances, in my considered opinion, even assuming that there are some anomalies in the subsequent settlement arrived at on 14-8-2003 vide Annexure-D, there was no hurdle for the 1st respondent-management to give promotions to the non-executives as per the existing promotion policy contained in Annexure-F. Though there was some confusion raised with regard to the newly created pay scales viz., Section 6 and Section 10, there was no hurdle for the 1st respondent to effect promotions to the employees falling under other categories of pay scales. As certain anomalies are pointed out by the petitioner's Union in the settlement dated 14-8-2003 arrived at between the parties vide Annexure-D, the said settlement cannot be acted upon for the present for the purposes of effecting promotions. In other words, till the so-called anomalies pointed out by the workmen are cleared, the settlement at Annexure-D cannot be said to have attained finality for the purposes of promotions. Thus the promotions of the non-executives have to be dealt with and considered in accordance with the existing promotion policy found in Annexure-F.

The grievances of the petitioner's Union are well-founded, inasmuch as there is no reason for the 1st respondent to withhold the promotion to the non-

executives though they are due for the same since 2003. It is curious note at this stage itself that the 1st respondent-management had already implemented almost the similar promotion policy at Annexure-F in respect of the employees working in the executive cadre i.e., officers cadre. They are also covered by more or less similar rules of promotions. The first respondent-management having effected promotions to Executives, should have adopted the same policy in respect of the non-executive staff and it should have acted fairly while dealing with the service conditions of the non-executives. The Promotion Rules, as contained in Annexure-F have been in force for a number of years. As per the said Rules, the Departmental Promotion Committee ought to have given promotions to the employees falling under the category of non-executive from time to time, i.e., as and when they become eligible for promotion. Further, as per the said Promotion Rules, the promotion is time-bound and is based on seniority. Under such circumstances, the denial of promotions to the non-executives since 2003 amounts to discrimination and ultimately has resulted in unfair labour practice.

12. In view of the above, the following order is made:

(a) The petitioner's Union is entitled to continue the occupation of the office premises despite the expiry of its term until new elections are held and new office-bearers are recognised.

(b) The Authorities concerned shall hold elections on 18-3-2005 in terms of the calendar of events already published, by following the procedure as contemplated in the Code of Discipline.

(c) The 1st respondent-management is directed to grant promotions due to the non-executives in terms of Promotion Rules contained in Annexure-F with effect from 2003 as expeditiously as possible, but not later than the end of April 2005.

With the aforesaid directions, these writ petitions are disposed off.