(1985) 01 KAR CK 0029

Karnataka High Court

Case No: Writ Petition No. 9784 of 1983

Shanmugam	APPELLANT
Vs	
Mysore Mineral Ltd.	RESPONDENT

Date of Decision: Jan. 31, 1985

Acts Referred:

- Industrial Disputes Act, 1947 - Section 32
- Industrial Employment (Standing Orders) Act, 1946 - Section 3, 4

Citation: (1985) ILR (Kar) 3117 : (1986) 1 LLJ 464

Hon'ble Judges: M. Rama Jois, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner who is a Driver in the service of Mysore Minerals Limited, has presented this petition questioning the legality of the order by which he was transferred from the Byrapura Chromite Mines in the district of Hassan to Jambunathanahalli Iron Ore Mines in the district of Bellary.

2. The facts of the case, in brief, are as follows :

The Mysore Minerals Limited is a Government Company incorporated under the Companies Act, 1956. It was established in the year 1966. The petitioner was a Driver employed in the service of the first Respondent-Company. He was working at Byrapura Chromite Mines in the district of Hassan. By order dated 6th April, 1983 (Annexure-B) he was transferred in the interest of the service of the Company from Byrapura Chromite Mines to Jambunathanahalli Iron Ore Mines in the district of Bellary. Questioning the legality of the said order, the petitioner presented this petition.

3. (i) Before proceeding to consider the merits of the case, it is necessary to set out the scope and history of S. 4 of the Standing Orders Act to the extent necessary for

this case. S. 3 of the Act requires every employer to whom the Standing Orders Act applies to submit draft standing orders making provision for every matter set out in the schedule to the Act and applicable to the establishment concerned. S. 4 empowers the Certifying Officer to certify Standing Orders so submitted if only provision has been make for every one of the matters in the schedule and applicable to the concerned establishment.

(ii) Section 4 as it stood originally, further provided that it was not the function of the Certifying Officer to adjudicate upon the fairness or reasonableness of any of the provisions incorporated in the standing orders submitted for certification. In view of the above condition, S. 4 was understood to have incorporated a prohibition for inclusion of any condition of service in the Certified Standing Orders which was not covered by the schedule.

(iii) Section 4 was amended by S. 32 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. By that amendment, the word ''not'' in S. 4 was omitted. The amendment came into force on 17th September, 1956. As a result, on and after that date, the duty of the Certifying Officer is not only to ensure that provisions have been made in Standing Order not only in respect of everyone of the matters incorporated in the schedule, but also to adjudicate whether the provisions incorporated are fair and reasonable.

There are two divergent construction of S. 4 of the Act.

(A) One of the construction is that even after the amendment of S. 4, no condition of service on matters other than those set out in the schedule could find a place in the certified standing orders and even if found incorporated, it is void.

(B) The other view is that after the amendment S. 4 provisions regarding condition of service of employees in respect of matters not incorporated in the schedule to the Act, but found necessary could be incorporated in the standing orders and if the Certifying Officer finds them fair and reasonable there is no bar for certifying them and if certified they are valid.

With this background, I shall proceed to consider the merits of the case.

(i) The plea of the petitioner is as follows :

The transfer of the petitioner was contrary to law. Transfer is not one of the items set out in the schedule to the Industrial Employment Standing Orders Act, 1946 (''the Act'' for short). Therefore, the condition incorporated was invalid and the order of transfer is liable to be struck down.

(ii) The plea of the first respondent in the statement of objection is as follows :

The first respondent-company owns and operates about 30 Mines in different parts of the State of Karnataka. Under the Standing Orders of the Company a specific provision had been incorporated regarding transfers. It is S.O. 9(g). It reads :

"9(g) TRANSFERS : The employees (of all categories) of the Company are liable to be transferred any where in India (in Company''s service) in the interest of the company''s work."

The above provision was incorporated into the Standing Orders in 1974 with the consent of the Labour Union and after the same was considered by the Certifying Authority as fair and reasonable. Petitioner joined service only on 7th July, 1978. The validity of the inclusive of the said provision has not been questioned in appeal. Therefore, there is no substance in the contention that the order of transfer was illegal.

4. In the alternative, even on the basis that Standing Order 9(g) could not have been incorporated in the standing orders on the ground that there was no provision in the schedule to the Act for incorporating a condition of service on the topic of transfer, it is a condition of service applicable to all the employees of the Company and it has been there even prior to the date on which the petitioner became an employee of the first respondent. Further, transfers from one place to another is an incident of service and it is part of managerial powers. Therefore, the transfer cannot be said to contravene any provision of law.

5. In support of the contention of the petitioner that Standing Order 9(g) was invalid on the ground that it was not one of the conditions of service incorporated in the Schedule to the Act. Learned Counsel relied on the judgment of the Supreme Court in the case of Workmen of Lakheri Cement Works Limited v. Associated Cement Companies Limited (1). Relevant portion of the judgment reads :

"Mr. I. M. Nanvati appearing for the respondent contends that the scheme of the Act is to show the minimum which has to be the prescribed in an industrial establishment, but it does not exclude the extension otherwise. This argument cannot be accepted, because in a decision of this Court in Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Utter Pradesh and Others, it was observed as follows :

"Then in regard to the matters which may be covered by the Standing Orders, it is not possible to accept the argument that the draft Standing Orders can relate to matters outside the Schedule. Take for instance, the case of some of the draft Standing Orders which the appellant wanted to introduce. These had reference to the liability of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two Standing Orders were included in the draft or the appellant as Nos. 10 and 11. These two provisions do not appear to fall under any of the items in the schedule : and so, the Certifying authorities were quite justified in not including them in the certified Standing Orders."

"In view of the pronouncement of this Court it is clear that the extension of the Standing Orders to the two topics was entirely without jurisdiction and the Standing

Orders could not therefore be framed. It may however be mentioned that this point does not seem to have been taken either before the Appellate Authority. But even so, any action without jurisdiction would be a complete nullity as this Court has already stated in the passage quoted above. In the result, the appeal must be followed. Those two Standing Orders must be expunged and we order accordingly. In the circumstances of the case, there shall be no order as to costs."

In the above judgment, the Supreme Court has held that no condition of service which does not fall under anyone of the items in schedule to the Act could be included in the Standing Orders.

6. Learned Counsel for the first respondent, however, submitted that in the above judgment, the attention of the Supreme Court was drawn only to paragraph 15 of the judgment in Rohtak Hissar District Electric Supply Co. Ltd. v. State of Uttar Pradesh (supra) and that the attention of the Court had not been drawn to paragraph 16 of the same judgment which unmistakably indicates that while it was obligatory on the part of the employers to incorporate conditions of service on every items incorporated in the Schedule to the Act, it was also open for the employers to include conditions of service on items not specified in the schedule and in such a case it was open for the Certifying Authority to certify such standing orders if it considered that it was fair and reasonable, though it might not be open to the employer to compel the Certifying Officer to certify such a provision. The relevant portion of paragraph 16 on which the Learned counsel for the first respondent relied reads :

"Thus the true position appears to be that under S. 3(2) of the Act the employers have to frame draft Standing Orders and they must normally cover the items in the Schedule to the Act. It, however, it appears to the appropriate authorities that having regard to the relevant facts and circumstances, it would not be unfair and unreasonable to make a provision for a particular items, it would competent for them to do so; but the employer cannot insist upon adding a condition to the Standing Orders which relate to a matter which is not included in the Schedule."

7. In paragraph 15, the Supreme Court observed that the Certifying Authority was justified in not certifying the conditions of service which did not fall under anyone of the items mentioned in the schedule to the Act. In paragraph 16, the Supreme Court observed that it was competent for the Certifying Officer to certify conditions of service which it considers fair and reasonable in the Standing Orders even if such conditions did not fall under anyone of the items in the schedule to the Act.

8. Learned Counsel for the first respondent submitted that the judgment in the case of R. H. Dist. Electricity Supply (2) was a decision rendered by a Bench of five judges, therefore the judgment of the Supreme Court in the case of Workmen of Lakheri Cement Works (1) on which the Learned Counsel for the petitioner relies, cannot, prevail particularly when the attention of the Court was not drawn to paragraph 16

of the said judgment. Learned Counsel for the first respondent also relied on a Divisional Bench decision of this Court in the case of Mysore Kirloskar Employees'' Association Vs. Industrial Tribunal, Bangalore and Another, In the said case, a Division Bench of this Court held that the items set out in the schedule to the Act are the minimum and therefore it was obligatory for the employers, in view of the express provision in Ss. 3 and 4 of the Act, to incorporate conditions of service in respect of each of those items, but that did not mean that provision could not be made for additional matters. Learned Counsel for the first respondent also relied on a subsequent judgment of the Supreme Court in the case of The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen, and pointed out that in the said case, the Supreme Court noticed the judgment of the Madras High Court in Management of the "Hindu", Madras Vs. Secretary Hindu Office and National Press Employees Union and Another, in which the Madras High Court had taken the same view as taken by the Division Bench of this Court in Mysore Kirloskar Employees'' Association case (supra), and it also noticed the contrary view taken by the Orissa High Court in Saroj Kumar Ghosh Vs. Chairman, Orissa State Electricity Board, and proceeded to state that it unnecessary to decide the point on the ground that Clause 32 of the Standing Orders under consideration which fixed the age of superannuation for the employees of the Uttar Pradesh Electricity Supply Board, even in the absence of a provision contained in the schedule to the Act, was invalid on the ground that it was certified in July, 1951 when according to S. 4 of the Act the Certifying Authority was debarred from adjudication upon the fairness and reasonableness of the provisions of any Standing Orders Learned Counsel pointed out that the necessary implication of the observation of the Supreme Court was that after the amendment of S. 4 by the 1956 amendment which required the Certifying Officer to go into the fairness and reasonableness of everyone of the clauses in the Standing Orders before certifying it, the Certifying Officer could certify provisions not covered by the items in the schedule to the Act. I see considerable force in the submission made for the respondents. However, it is unnecessary to discuss the matter further for the reason that the alternative contention put forward on behalf of the first respondent is sound.

9. The alternative contention of the first respondent was that the power to transfer an employee from one place to another is an inherent managerial power and is an incidence of service. In support of this submission, Learned Counsel relied on the judgment of the Supreme Court in the case of The Management of the Syndicate Bank Ltd. Vs. The Workmen, The relevant portion of the judgment reads :

"There is no doubt that the Banks are entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch. There is also no doubt that the management of the Bank is the best position to judge how to distribute its employees between the different branches. We are, therefore, of opinion that Industrial Tribunals should be very careful before they interfere with the orders made by the Banks in discharge of

their managerial functions."

The Learned Counsel also relied on the judgment of the Supreme Court in the case of The Hindustan Lever Ltd. Vs. The Workmen, In the said judgment, the Supreme Court held that transfer of an employee from one department to another was at the discretion of the management provided, the terms and conditions of service are not affected and if the order of transfer was invalid, the burden of proving that it was invalid lay on the workman. Both these decisions clearly establish that the transfer of an employee from one department to another or from one place to another is part of managerial powers of the employer. In fact in this case the Respondent has produced order transferring its employees even before the amendment of Standing Orders. These orders are dated 21st February, 1970 and 10th January, 1973, produced as Exhibits I and II along with the objection statement dated 2nd September, 1983.

10. Learned Counsel for the petitioner, however, submitted that there was no inherent right in the Master to transfer his employee from one place to another. In support of this submission, he relied on the judgment of the Supreme Court in the case of Kundan Sugar Mills v. Ziyauddin [1960 I L.L.J. 226] at 270. Relevant portion of the judgment on which the learned Counsel relied reads :

"None of these cases holds as it is suggested by the Learned Counsel for the appellant, that every employer has the inherent right to transfer his employee to another place where he chooses to start a business subsequent to the date of employment. We therefore hold that it was not a condition of service of employment of the Respondents either express or implied that the employer has the right to transfer them to a new concern started by him subsequent to the date of their employment."

In the present case also, Learned Counsel maintained, that the first Respondent had no inherent right to transfer the petitioner.

11. The contention of the petitioner, in my opinion, is untenable. The ratio of the decision in Kundan Sugar Mills case (supra) is that an employer has no right to transfer his employee to a new concern started by him subsequent to the date of employment of the concerned workman. The facts of the said case shows that the employee concerned therein was an employee of sugar mills at Amroha. Subsequently, the partners of the sugar mills at Amroha purchased the sugar mills at Kiccha in the district of Nainital in the year 1951 and started the same in Bulandshahr in or about 1955. The employees who were employed at Amroha sugar mills were transferred to the Bulandshahr sugar mills and it was the validity of those transfers which came up for consideration and the Supreme Court held that both the sugar mills were two separate and distinct factories and that the Proprietors of the sugar mills at Amroha established the sugar mill at Bulandshahr subsequent to the employment of the concerned employees and the transfer of employees from

one industrial establishment to another was invalid. In the present case, the Byrapura Chromite Mines in Hassan district and the Jambunathanahalli Iron Ore Mines in the district of Bellary are not two separate concern or entities. They are only branches of the first Respondent. The Mysore Minerals Limited, which owns and operates mines not only at the above two places but also at 28 other places in the State. These mines existed even on the date of employment of the petitioner. Therefore the ratio of the Supreme Court''s decision in Kundan Sugar Mills'' case (supra) is not at all apposite to the facts of this case.

12. Leaned Counsel for the Respondent stated that as pointed out in the statement of objection, closing the working of mined becomes inevitable when the ore deposits get exhausted and, therefore, it transfers are not permitted, it would lead to retrenchment. Therefore the transfer becomes inevitable. He also submitted that transfer of the petitioner has been effected in the interest of service of the company. The submission is well founded.

13. In the result, I make the following order :

(i) Rule discharged.

(ii) Petition dismissed.

(iii) No Costs.