
(2009) 09 KL CK 0005

High Court Of Kerala

Case No: Criminal M.C. No. 3388 of 2007

The Managing Director,
Kerala State
Construction
Corporation Ltd.

APPELLANT

Vs

Regional Joint Labour
Commissioner,
Ernakulam and Another

RESPONDENT

Date of Decision: Sept. 16, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Industrial Disputes Act, 1947 - Section 29, 34

Citation: (2009) 3 KLJ 450 : (2009) 4 KLT 518 : (2010) 2 LLJ 536 : (2011) 6 RCR(Criminal) 2130 : (2009) 7 SLR 366

Hon'ble Judges: C.T. Ravi Kumar, J

Bench: Single Bench

Advocate: M.V. Thampan, for the Appellant; Puzhakara Muhmmmed (P.P.), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.T. Ravi Kumar, J.

The petitioner is the accused in C.C. No. 697 of 2008 on the file of the Judicial First Class Magistrate's Court, Thoppumpady. The petitioner is indicted therein alleging commission of offence punishable u/s 29 of the Industrial Disputes Act, 1947 (hereinafter for brevity "I.D. Act" only). The allegation is that the petitioner had failed to implement Annexure-III award in I.D. No. 71 of 2002 dated 5.11.2005 of the Industrial Tribunal, Alappuzha. The Crl.M.C. is filed with a prayer to quash Annexure-I complaint and all further proceedings pursuant thereto pending in C.C. No. 697 of 2008. I have heard the learned counsel for the petitioner and also the learned Public Prosecutor on behalf of the respondents.

2. Learned counsel for the petitioner contended that a conjoint reading of Annexure-I complaint and Annexure-III award would reveal the unsustainability of the allegation raised against the petitioner. It is further contended that such a reading would also reveal that it is in conflict with Annexure-III award and, therefore, it would be nothing but an abuse of the process of the court to proceed against the petitioner. In the context of the above contentions, it is relevant to look into Annexure-III award. The issue referred for adjudication before the Industrial Tribunal was as follows:

Whether the demand for regularization of the temporary employees namely Sri. Sasthrasaraman, Lekshmikutty, P. Parameswaran, K.S. Satheesan, A. Unnikrishnan, K.T. Velayudhan, C.L. Jose, A. Prabhakaran, C.K. Mohandas, T.M. Haridas and Balakrishna Menon is justifiable? If not, what relief they are entitled to?

The Industrial Tribunal passed Annexure-III award on the aforesaid issues and it, in so far relevant for the purpose of this case, reads as follows:

4 To make the factual position clear, the learned counsel for the workmen has brought to the notice of this Tribunal a judgment of Kerala High Court in K. Jayaprakasan vs. Kerala State Construction Corporation (O.P. No. 15792/97). In that writ petition, the petitioners therein are similarly placed workmen working as Junior Accountant, Typist Clerk, Site Assistant etc. In the judgment dated 13.7.05 the Kerala High Court had given the following direction.

In the event of the petitioners approaching the Government by way of an appropriate representation in the matter of regularization the same shall be considered in accordance with law by the Government. Orders as above shall be passed within a period of four months from the date of receipt of the representation. It will be open to the petitioners to take all available contentions before the Government.

5. The above direction was in the case of similarly placed workmen. In view of that, the workmen concerned herein can also make similar representation if they are so advised. Notwithstanding that, as conceded by the workmen, after coming into force of this award they shall be treated only as contract/daily rate employees for the purpose of drawal of wages and other benefits. If similarly placed workmen are getting the benefit of regularization as per the decision of the Government, these workmen can also follow the same procedure. The workmen will not be entitled for any kind of benefits in the revised pay pattern retrospectively and they will be eligible for all benefits only from the date of coming into force of this award.

3. It is thus obvious from the above extracted portion of Annexure-III award that the question of regularisation which was referred for adjudication was not actually answered by the Industrial Tribunal. In fact, the workmen concerned were only given an opportunity to make representations similar to those representations made by certain other similarly placed workmen whose cases were directed to be considered by this Court in O.P. No.

15792 of 1997. Contextually it will not be inapposite to refer to the contention and consideration in regard to the request of the workmen concerned in Annexure-III for treating them as contract employees for the purpose of drawing various benefits including wages, as obtained from Annexure-III award. They read as hereunder:

It is also submitted that if they are also treated as contract employees for the purpose of drawal of various benefits including wages as in the case of other contract employees, they would be satisfied. That submission is recorded.....

The operative portion of Annexure-III award, in so far as it is relevant regarding the aforesaid aspect, runs as follows:

.....Notwithstanding that, as conceded by the workmen, after coming into force of this award they shall be treated only as contract/daily rate employees for the purpose of drawal of wages and other benefits.

It is thus clear from Annexure-III that as against the request on behalf of the workmen to treat them as contract employees for the purpose of drawing wages and other benefits, no specific direction was issued vide Annexure-III. In other words, Annexure-III contains no specific finding/specific direction to the effect that the workmen concerned shall be treated as contract employees. That being the position, the questions to be considered are whether the allegations incorporated in Annexure-I complaint would constitute an offence u/s 29 of the I.D. Act as alleged in Annexure-I complaint and whether the continuance of the proceedings in C.C. No. 697 of 2008 would be an abuse of the process of the court warranting interference u/s 482 of the Criminal Procedure Code.

4. Section 29 of the I.D. Act reads as follows:

Penalty for breach of settlement of or award.--Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion has been injured by such breach.

5. The petitioner herein was sought to be prosecuted for having failed to implement Annexure-III award and thereby committed the offence u/s 29 of the Industrial Disputes Act. In order to prosecute a person u/s 29 of the Industrial Disputes Act, he should have committed breach of any of the terms of settlement or award which is binding on him. True, Annexure-III award is binding on the petitioner. But, the question is whether the allegations incorporated in Annexure-I complaint that the petitioner had failed to treat the workmen concerned as contract employees and pay them accordingly would constitute an offence u/s 29 of the I.D. Act in the light of Annexure-III award. However, Annexure-III

award does not reveal existence of any such specific direction. As noticed hereinbefore, on behalf of the workmen, a submission was made before the Industrial Tribunal before the starting of the cross-examination that they would be satisfied if they would be treated as contract employees for the purpose of drawing various benefits including wages as in the case of other contract employees and the said submission was recorded. In fact, that was not an issue referred for adjudication and, further more, no materials were placed before the Tribunal for such consideration. These must have bear the circumstances that made the Industrial Tribunal to consciously employ the words while issuing direction relating to the question of payment of wages to the workmen concerned. Consciously, a virgule has been used between the words "contract" and "daily rate" in the relevant clause scilicet, "they shall be treated only as contract/daily rate employees for the purpose of drawl (sic. drawal) of wages and other benefits". The punctuation point virgule (/), a slanting line, is used to indicate a choice between two alternatives. It be so, the direction as extracted above, relating payment of wages to the workmen concerned can only be construed as a direction to treat them either as contract employees or as daily rated employees to which they actually belong, for that purpose. At any rate, it could not be construed as a declaration of their entitlement to get wages at par with the contract employees with effect from the date of coming into force of the award, as alleged in Annexure-I complaint. The objection of the management for payment by treating the workmen concerned as contract employees, as discernible from Annexure-I complaint itself pertains to the practical difficulties for treating daily rated employees as contract employees. Moreover, a scanning of Annexure I and III would go to show that the workmen concerned did not claim the status of contract employees. Of course, the entitlement or otherwise of the workmen concerned to get wages at par with the contract employees is not an issue that can be decided in this proceedings. The learned Magistrate certainly lacks jurisdiction to adjudicate the question regarding the legality or otherwise of an action, in a complaint filed u/s 34 of the I.D. Act, alleging commission of an offence u/s 29 of the I.D. Act in a situation like the one on hand where the award itself carries term/direction carrying two alternatives for compliance and when a total breach of such term/direction was not alleged in the complaint. The long and short of this discussion is that in such situations it will not be expedient and in the interest of justice to permit criminal proceedings to continue. In view of the factual and legal position thus obtained in this case, the allegations incorporated in Annexure-I complaint based on Annexure-III award cannot form the basis for prosecution against the petitioner for an offence u/s 29 of the I.D. Act. The learned Public Prosecutor brought to my attention the fact that the workmen concerned are not made parties to this proceedings. Admittedly, the basis for C.C. No. 697 of 2008 on the file of the Judicial First Class Magistrate's Court-I, Thoppumpady is Annexure-I complaint and the same was filed u/s 34 of the I.D. Act. Section 34 of the I.D. Act reads as follows:

34. Cognizance of offences.--(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

A bare reading of the said section would make it beyond doubt that there is no authority to private individuals to file such a complaint u/s 34 under the authority of the appropriate Government. If they lack authority to file a complaint u/s 34 of the I.D. Act, the workmen concerned cannot be heard on the question of sustainability or otherwise of a complaint filed u/s 34 of the I.D. Act and also on the question of expediency of its continuation. The authority who filed Annexure-I was heard at length. That apart, non prosecution of the petitioner for the alleged offence u/s 29 of the I.D. Act cannot in any way prejudicially affect their rights or entitlement, if otherwise available and enforceable. At any rate, in view of the factual and legal position available in this case, I do not think it necessary to consider the said aspect any further. In the circumstances, I think it would be an abuse of the process of the court to allow continuation of the proceedings, based on Annexure-I complaint, against the petitioner in C.C. No. 697 of 2008 on the file of the Judicial First Class Magistrate's Court, Thoppumpady. I am of the view that to secure the ends of justice, the said proceedings have to be interfered with by invoking the inherent power u/s 482 Cr.P.C. Accordingly, Annexure-I complaint and all further proceedings pursuant thereto are quashed. Needless to say that no further proceedings shall be continued against the petitioner, based on Annexure-I complaint.

The CrI.M.C. is accordingly allowed.