
(1999) 4 ALD 435

Andhra Pradesh High Court

Case No: Writ Petition No. 16764 of 1989

Hindustan Aeronautics
Workers Union, HAL,
Hyd.

APPELLANT

Vs

G.M. Hindustan
Aeronautics Ltd.,
(Electronics), HAL,
Hyd. and Another

RESPONDENT

Date of Decision: July 20, 1999

Acts Referred:

Constitution of India, 1950 – Article 21, 226, 23

Citation: (1999) 4 ALD 435

Hon'ble Judges: A.S. Bhate, J

Bench: Single Bench

Advocate: Mr. K.G. Kannabiram, for the Appellant; Mr. K. Srinivasa Murthy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Petitioner herein is a recognised Workers" union in the Hindustan Aeronautics Limited, Hyderabad. It is represented by the respondents.

2. An All India "Bundh" call was given by the political parties in opposition on 30-8-1989 on variety of grounds. On 26th August, 1989

respondent No.2 issued a letter directing all the employees to report to duty on 30th August, 1989 irrespective of the "bundh" call given by the

Opposition parties. The respondent in the said letter had pointed out that they had requested the law and order machinery to provide escort to the

workers and requested the A.P. State Transport Corporation authorities (hereinafter referred to as "the APSRTC") to make arrangements for

appropriate transport for bringing the employees from the twin cities of Hyderabad and Secunderabad to the factory area. The letter stated that if

the workmen did not attend on 30th August, 1989, the said absence shall be treated not as "leave" but absence without pay. Only cases covered

by urgent medical reasons will be expected. It was clearly stated that those, who would not come for work, pay will not be given to them on the

principle of "no work no pay". The petitioner-Union contends that this stand was completely contrary to the previous practice of treating absence

of employees, which was due to reasons beyond the control of the employees, as casual leave or special casual leave. The Union Government by

its Circular dated 26th June, 1976 had given directions to all Public Enterprises as to how the absence of employees is to be treated on such

occasions. In the said circular it was stated that on "occasions" of "bundh" if the absence of the employee was due to failure of transport

authorities, special casual leave may be granted to the employees, who have to travel a distance of more than 3 miles from their residence to the

place of duty. Similar concession was to be given to those employees, who came or attempted to come for work but due to picketing or

disturbance or curfew were unable to reach the place of work. The petitioner-Union has admitted that respondent had informed by a letter to the

workers that all employees should stay overnight from 29th August, 1989 in the factory premises and arrangement for their food and stay will be

made. Such arrangement was made so that employees should not make a grievance of want of transport on 30th for reaching the place of work.

The contention of the petitioner-Union is that it had no intention of participating in the "bundh". The petitioner-Union members were prevented

from reaching the place of work due to failure of transport. Neither APSRTC nor the employer provided any transport and hence the employees

could not report to duty and yet the management has decided not to grant any casual leave or special casual leave but has refused to pay wages on

the principle of "no work - no pay" for 30th August, 1989. The petitioner-Union made repeated request to follow the previous practice and

comply with the circular issued by the Union Government and to grant special casual leave to all the workers, who were unable to report to duty

for reasons beyond their control. The said request having been rejected, the petitioner-Union has approached this Court for seeking a direction

that the respondents should not deduct wages for the absence of workers, if they could not report to duty on 30th August, 1989 for reasons

beyond their control.

3. The stand of the respondent-management is quite harsh. It is contended that there is no violation of any statutory order in the action taken by the

management. The employees have no legal right under any Standing Order, or agreement to abstain from work and yet demand wages. It is not

disputed that there was "bundh", in consequence of call given by certain political parties, on 30th of August, 1989. The management says that it

has no obligation whatsoever to provide transport to its employees for attending work and the workers must make their own arrangement. Further,

it is stated that the management had made all arrangements for transport of the employees on the previous day of "bundh" and had informed the

employees that they should reach the township of the factory of the respondent-management on 29th August, 1989 itself and, their

accommodation, food etc., will be arranged by the management so that the employees would be able to attend the factory on 30th August, 1989.

In spite of this concession and arrangement made by the management, the workers did not report and hence, no claim for pay can be made when

they did not do any work. As far as the Union Government's Circular is concerned, it was stated that the circular was not mandatory. It was only

by way of advice to all the Public Sector undertakings and therefore, employees cannot draw any mileage from the said circular. In para 5 of the

counter, the respondents stated :

It is true that on many occasions, the management granted special casual-leave to the employees who could not attend the duties on account of

"Bundh" etc.

It is however, stated that on those occasions the management did not make any satisfactory arrangement for boarding or lodging of the workers

from the previous day. It was due to management's failure to arrange for such stay and food to the workers that special casual leave was granted

on all those occasions. It is stated that management cannot be a party to the national-loss of production particularly as the Industry in question is a

sensitive defence industry. Statistically it is stated that out of total employees of 3,831, as many as 2,876 employees reported to work on 30th

August, 1989. Meaning thereby that only 955 employees did not attend. It is contended that as a large number of workers reported to work, that

was itself indicator to show that the members of the petitioner-Union did not avail the facilities provided by the respondent-management. In para

11 of the counter it is admitted that the petitioner-Union did not give the call for "strike" or "bundh". It is however, stated that as the employees did

not attend inspite of making of arrangement for food and stay, the management cannot be saddled with their pay without they having worked. In

para 12 of the counter, the management says :

"The management made it clear that there would be problem in sending transport on 30-8-1989 and as such arrangements were made the

previous evening for the employees to come and stay in the campus. As such the petitioner-Union should not except the transport arrangements on

"Bundh" 1 day endangering the safety of the employees.

In spite of having said so, the management says-at the end of para 14 :

It cannot be said that the circumstances were beyond the control of the employees to attend duties on 30-8-1989. BPE guidelines are not

applicable in the present case.

4. The respondent-management thus disputes the claim of the petitioner-Union that the workers should be paid wages for 30-8-1989, as they did

not work. The ground of previous practice or the Union Government's circular or an any other ground was not sufficient to claim wages.

5. The facts are hardly in dispute. The call of "bimdh" was not given by any Workers' union but was given by opposition-political parties. It is not

the case of respondent-management that the members of petitioner-Union abstained from work purposefully or in order to participate in the

"bundh" or with a view to support the "bundh". The parts of the counter extracted above, clearly show that there was no transport available on

30th August, 1989. Though the respondent-management had made request to the APSRTC to provide transport, the same was also not available.

There was no arrangement for safety and security of the workers, who were expected to commute from a long distance to the factory. It is not in

dispute that the factory is far beyond three miles from Secunderabad or Hyderabad where the workers of the respondent-management stay.

6. The argument advanced by the learned Counsel for the respondents is that "bundh" is now declared to be illegal. The learned Counsel read at

length the judgment in Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others, , holding that a call for "bundli" by the political

parties involves a threat, express or implied to citizens not to carry on activities and not to practice avocation on the "bundh" day. Such a "bimdh"

violates fundamental rights of the citizens. The judgment has been affirmed by the Supreme Court in Communist Party of India (M) Vs. Bharat

Kumar and Others, . The argument is that as it is now declared fiat practising "bundh" violates the fundamental rights of the citizen, the "bundh" in

the instant case must be viewed not differently. Such a "bimdh" call violated the fundamental rights of all citizens. Such a "bundh" therefore, cannot

give any right to the workers to abstain from duty. The management was the victim of the "bundh". The management cannot be forced to keep the

working of the factory closed due to such illegal calls of "bundh". The workers were expected to ignore the call of such "bundh". The management

has the right to expect the workers to do their work in accordance with the Standing Orders and settlement reached between the management and

the unions. I am completely at a loss to understand as to how the judgment referred to has any relevance to the facts of the present case. The

workers in the present case are not the persons, who gave the call for "bundh". They were not participating in "bundh". Participation in "bundh"

would have different consequence. They are victims of "bundh". They are as much victims as was the management, perhaps they were worst

victims than the management because the management has its vast resources at its command. I do not think that the aforesaid judgment has any

relevance, even remotely, to advance the arguments of the management in support of its case.

7. It is no doubt true that the management cannot be blamed for the call of "bundh" and for transport facilities which were not provided by the

APSRTC. However, it is an admitted fact, may be by way of concession that the management was providing facility to the workers for bringing

them to the place of work from their residence every day by their transport. The management itself was unable to provide transport on 30th August,

1989. This is sufficient to show the plight of the workers. The management was afraid of giving safe transport. The stand of the management as per

para 11 of the counter is that the management is more concerned about the safety and welfare of the employees. It does not stand to reason, that

when the management is concerned about the safety and welfare of the employees, yet the management wants the employees to reach the place of

work on 30th August, 1989 by any process inspite of the "bundh" which admittedly posed a threat to the safety and security of all those, who

could have attempted to come by road to reach the place of work. It is thus clear that the claim that the management is concerned, about the safety

and security of workers is a hollow claim.

8. It is worth noticing that the management has admitted that on many previous occasions, the management has granted special casual leaves to the

employees, who could not attend the duties on account of "bundh". Thus this was a settled practice. By no stretch of imagination can it be said that

the workers, who did not report to duty on 30th August, 1989, could have attended to the duties inspite of "bundh". The previous settled practice

of granting special casual leave in identical situation was not only a wholesome policy but showed the concerns of the management for its workers

and deserved being repeated.

9. The learned Counsel for the respondents contended that the management cannot be expected to bear the loss due to the absence of the

workers. If the same logic is applied, the workers cannot be expected to reach the place of work in the face of grave threat to their safety, security

and life. Even if it is true that the Standing Orders nowhere prescribed duty on the management to pay wages to the workers on such occasions,

the duty of any welfare State cannot be ignored. The welfare-State cannot force the labour to work under grave threat of security.

10. The contention of the learned Counsel for the respondents is that the respondents had made arrangement for transport, lodging and boarding of

the workers from previous day of "bundh" and the workers should have utilised this facility and should have reached the place of work from the

previous day. It is not disputed that such arrangements were made by the respondent-management. The argument is that the workers were

expected to stay on from 29th of August, 1989 and had they stayed, they would have been paid wages for the work done on 30th August, 1989.

Even though the arrangements were made by the management for stay and transport on 29th, I do not think that the management can say that the

workers ought to have reported from 29th August, 1989 itself to enable them to claim wages of 30th August, 1989. This would be bringing force

on the labour. This is nothing short of pressurising the labour to work on 30th. Such a compulsion would almost be close to ingredients of

"wrongful confinement". Such tactics of the management can be stamped as inhuman if not draconian. The learned Counsel for the respondents

contended that such a move cannot be said to be an unfair labour practice. It may or may not fall strictly within four corners of unfair labour

practice. Clause 14 of Vth Schedule of Industrial Disputes Act dubs, indulging in acts of force as unfair labour practice by the management.

Therefore, whether the action of the respondent-management in forcing the workers to come to the work place from a day ahead of their duties for

claiming wages amounts to unfair labour practice or not can be a moot question ? It is quite arguable that it amounts to unfair labour practice.

Assuming that it is not unfair labour practices it is undoubtedly unconscionable on part of the management to pressurise the workers to come to

place of work a day in advance to enable them to claim wages for the day of work next day. The mere fact that the management had arranged for

food and stay does not dilute the ruthlessness of management. If the argument is to be accepted then, the logical consequence would be that if for

next four or five days the "bundh" was to spill over the workers would have to stay further at the factory and carry on the work if the management

had supplied them food. Such an eventuality is not totally imaginary but very much possible. The argument advanced by the management that the

workers were bound to accept the offer of the management of staying at the premises since a day in advance has seeds of ruthlessness. If the

principle sought to be enunciated by the learned Counsel for the respondents is held as valid, then the same will become applicable to the High

Officers of the management. If the General Manager or Managers stay away from the factory and if due to "bundh" they are unable to reach the

factory, would the management apply the same yardstick to them? The answer is obviously in the negative. They would merrily enjoy the leave

which would be available to them and they would claim salary for their absence.

11. The approach and expectation of the management shows that they want to treat the labour on the lines of "bonded-labour". Every worker has

a right not to be subjected to unfair conditions of labour. Though the proposal of the management may not smelly amount to treating the worker as

"bonded-labour", it has all the trappings of such altitude. Though no such argument was advanced by the petitioner, it would be worth, in

appropriate case, to consider as to whether such an attitude of management deprives the concerned-worker of his personal liberty and right to live

with dignity. It is arguable whether such action of the respondents offends Article 21 of the Constitution of India. By enforcement of such proposal

on the labour, the concerned worker would be deprived of his right to live with his family-members and he would not be in a position to render

security and welfare supervision to the family members. In short he would be deprived of leading his life in the manner he deserves. Further, Article

23 of the Constitution of India requires that labour shall not be forced. Force need not necessarily be physical but also can be on account of

provisions and actions which are apparently not illegal. Compelling a person to work even for remuneration on the terms proposed by the

management may amount to "forced labour". "Forced labour" is a wider expression which would be attracted whenever a person is compelled to

do labour even though remuneration is paid for it. This was so held in People's Union for Democratic Rights and Others Vs. Union of India (UOI)

and Others, . It was again so observed in Saijith v. State of Rajasthan, AIR 1983 Rajasthan 328. Therefore, the proposal of the respondents was

certainly not in tune with the spirit of the Constitutional provisions.

12. As stated already, the respondent-management in fact had in the past treated such absence i.e., which was due to reasons beyond the control

of the workers, as special casual leave. The circular issued by the Union Government is in consonance with the spirit of welfare of the labour. The

said circular dated 26th June, 1976 so far as is relevant runs as follows :

As regards the second category, if the competent authority is satisfied that the absence was due to failure of transport facilities, special casual

leave may be granted to the employees, who had to come from a distance of more than three miles of their place of duty, If the absence was due to

picketing or disturbances or curfew, then too special casual leave could be granted to regularise the absence without insisting on the condition that

the distance between their place of duty and their residence should be more than three miles.

This memorandum gives very pragmatic as well as sympathetic directions to all the Public Enterprises. The Memo says that the procedure

prescribed be adopted by all the Public Enterprises. Therefore, it was expected that the respondent-management would also follow the same

procedure as was directed by the Union Government. The contention raised by the learned Counsel for the respondent is, that guidelines are not

mandatory. When the respondent-management itself had followed those guidelines for all these years, there is no reason for saying that the said

procedure can not followed in the instant case. The learned Counsel for the respondents relied on the judgment of this Court in Smt. S. Jayanthi

Bhandary and Others Vs. Syndicate Bank and Others, , wherein a Division Bench of this Court had observed that guidelines in the matter of

transfer of employees are not mandatory for the management and they do not confer any enforceable right on the employees. The said

observations were in context of totally different situation. The case at hand is unique. Had it been that there was some semblance of chance of

availing some transport with reasonable security to reach the place of work, it could have certainly be said that the concerned employee cannot

invoke the benefit of the circular. Assuming that the procedure laid down by the Union Government for Public Enterprises was only absolutely

mandatory but it was-left to the discretion of the management to follow the same, yet the management cannot escape the scrutiny of this Court in

matter of exercising its discretion. It is well settled that a mandamus does lie in case where discretionary power is not exercised in a spirit and

nature in which it has to be exercised. If the authority exercises discretionary power palpably in an unreasonable or in irrational manner resulting in

manifest injustice, the Courts would step in to give appropriate directions. Any discretion has to be exercised for purposes of accomplishing just

and equitable results. It is for that purpose that the discretion has been conferred on the authorities, Though it is true that due to absence of

workers on 30th August, 1989 there was some loss of production, the fact remains that the absence was not of own violation of the workers but

due to circumstances beyond their control. Judicial review of any administrative action including exercise of the discretionary powers, depends

upon facts and circumstances of each case. The dimensions of judicial review are never closed and they are always flexible. The power under

Article 226 of the Constitution of India has to be exercised by the Court not mechanically but for doing true justice in letter and spirit. If the

discretion is not exercised fairly and objectively, the Courts would be doing great injustice by not correcting the palpable unjust action of the

administration. It would be a myth to say that the powers of the management in exercise of discretion are absolute and above any judicial scrutiny

under all circumstances. Even while exercising discretion it is expected that it would be exercised in accordance with good reason, justice, good-

conscience and for the welfare of the larger community. At one time the Supreme Court had said :

The law always frowns on uncarmalised" and unfettered discretion conferred on any instrumentality of the State and it is glory of administrative

law that such discretion has been through judicial decisions structured and regulated.

The Courts intervene only when the exercise of such discretionary powers manifestly appears to be arbitrary or unjust. The wider the discretion,

the greater is possibility of it being misused. Therefore, the Courts have to be aware of the* basic principles. Even though normally the Courts do

not intervene when administration takes decision under its discretionary powers, the Courts are compelled to intervene in extraordinary situations

like the present one.

13. In view of the above discussion, and in view of the Union Governments Circular and past settled practice of the respondent-management, I

think that the authoritarian action of the respondents in refusing to consider the claims of the workers for special casual leave has to be struck

down. The respondents are directed to consider the cases of those workers for grant of Special Casual Leave in accordance with the settled past

practice and particularly in accordance with the Union-Government's Memorandum dated 26th June, 1976. The workers, who claim Special

Casual Leave shall give a statement that they did not participate in the "bundh" of 30th of August, 1989 and that they were victims of "bundh".

However, it will be open for the management to make enquiry and find out as to whether the concerned workers are residing more than 3 miles

away from the gate of the factory. If anyone was residing within three miles from the gate of factory, appropriate orders in respect of him may be

passed. If all the conditions in the Memorandum issued by the Union Government are fulfilled in respect of a particular worker, the management

shall pass appropriate orders granting casual leave or special casual leave as the case may be and consequently pay the wages in such case.

14. With the above directions, the writ petition is disposed of. No costs.