(2014) 09 AP CK 0081

Andhra Pradesh High Court

Case No: Writ Appeal No. 1312 of 2012

Ushodaya Enterprises Private Limited		APPELLANT
	Vs	
The State of Andhra Pradesh		RESPONDENT

Date of Decision: Sept. 23, 2014

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10(1), 10(1)(d), 12(4), 2(k), 2(k)(a)

Citation: (2015) 1 ALD 226 : (2015) 2 ALT 489 : (2015) 144 FLR 1043 : (2015) LabIC 2476 : (2015) 1 LLJ 270 : (2015) LLR 534

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: C.R. Sridharan, Advocate for the Appellant; D. Vasudha Nagaraj, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.
This writ appeal is filed by the petitioner in Writ Petition No. 17913 of 2012 feeling aggrieved by the dismissal thereof by the learned single Judge, through order dated 05-10-2012.

2. The facts that gave rise to the filing of the writ appeal are as under:

The appellant is a company incorporated under the Companies Act, 1956 and runs several establishments including the publication of a newspaper, manufacturer of food products. The office is located at a place called Ramoji Film City. Incidentally, that houses several other establishments. Recently, certain corporate changes have taken place in the establishment and it is not necessary to deal with the same in detail.

3. A workman by name Balaraju was employed as a House Keeping Assistant, through order dated 01-10-2006, in an establishment owned and run by the

appellant. Through order dated 10-11-2010, the said employee was transferred to the office of the appellant at Andheri, Mumbai. Alleging that the employee did not join the place to which he was transferred, a show cause notice dated 04-02-2011 was issued and that was followed by a domestic enquiry. The appellant passed order dated 16-08-2011 informing the employee that though it is entitled to terminate his services, such an extreme step is not being taken on humanitarian considerations and that he can join the office at Mumbai on or before 26-08-2011. A clause was added to the effect that in case the employee does not join by that time, it will be deemed that he is not interested in the employment and thereby, has put an end to the contract of employment, on his own accord. It is the case of the appellant that the employee did not join duty and thereby, he ceased to be in employment.

4. Respondent No. 5 is a trade union for the workers employed in various units or establishments functioning within Ramoji Film City, including the appellant. On a representation made by it, the Assistant Commissioner of Labour, respondent No. 3 herein initiated proceedings of conciliation. On an intimation given to the appellant by respondent No. 3 about the proposed conciliation, the appellant addressed a letter dated 23-01-2012 taking objection to the very entertaining of the complaint. Grounds of jurisdiction were also raised.

5. In exercise of power under Section 39 of the Industrial Disputes Act, 1947 (for short the Act), the State of Andhra Pradesh, respondent No. 1 herein issued G.O. Ms.No.63, dated 02-08-2008, delegating the powers of the Government, to the Commissioners and Joint Commissioners of the respective areas mentioned therein. For the Ranga Reddy zone in which the establishment of the appellant exists, the Joint Commissioner i.e., respondent No. 2 is the authority mentioned in G.O. Ms.No.63, dated 02-08-2008. Respondent No. 3 submitted a report of failure of conciliation under Section 12(4) of the Act before respondent No. 2. Through order dated 16-05-2012 respondent No. 2 referred the questions, regarding the transfer of the employee Balaraju and the action taken in connection therewith to the Labour Court-I, Hyderabad (for short the Labour Court) in exercise of power conferred under Section 10(1) of the Act. The same was taken up as I.D No. 43 of 2012 by the Labour Court.

6. Writ Petition No. 17913 of 2012 was filed for a writ of mandamus (a) to declare G.O. Ms. No. 63, dated 02-08-2008 issued by respondent No. 1 as illegal, non est and a nullity; (b) declare proceedings dated 16-05-2012 issued by respondent No. 2 making reference under Section 10(1)(d) of the Act as illegal and void and (c) to restrain respondent No. 4 i.e., the Labour Court from proceeding with I.D No. 43 of 2012.

7. The appellant pleaded that the Act confers specific powers on the appropriate governments and important functions such as referring a dispute to the Labour Court or the Industrial Tribunal, cannot be delegated; and G.O. Ms.No.63, dated 02-08-2008, to that extent is ultra vires the Act, apart from being otherwise illegal.

Another contention was that the subject matter of reference cannot be treated as an industrial dispute as defined under Section 2(k) of the Act, at all. According to it, the dispute was individual in nature and cannot at all be a subject matter of reference. The competence of respondent No. 5 to espouse the cause of the employee was also challenged.

8. The learned single Judge dealt with the matter, in detail, at the stage of admission itself by calling for records and ultimately, dismissed the writ petition. Hence, this appeal.

9. Sri C.R. Sridharan, learned counsel for the appellant submits that G.O. Ms.No.63, dated 02-08-2008 is ultra vires the provisions of the Act and as a consequence, respondent No. 2 did not have the jurisdiction to make reference to the Labour Court. He further submits that a simple issue pertaining to transfer of an employee was projected as though it constituted an industrial dispute under Section 2(k) of the Act and there was total non-application of mind on the part of respondent Nos. 2 and 3. He further submits that respondent No. 5 is not a trade union for the employees of the appellant- organization and simply by taking advantage of the fact that a few of them joined the union, the representation made by it was entertained. Learned counsel further submits that the writ petition was dismissed at the stage of admission, without even waiting for the counter affidavit to be filed by or on behalf of the State Government.

10. Learned Additional Advocate General submits that Section 39 of the Act confers power upon the appropriate Government (in the instant case, the State Government), to delegate its functions to officers of a particular description, and G.O Ms.No.63 was issued strictly in terms thereof. He contends that respondent Nos. 2 and 3 were satisfied that respondent No. 5 has substantial number of employees of the appellant, as its members, and accordingly, the espousal of the cause made by respondent No. 5 was recognized. He further submitted that though the basis for seeking reference was just an order of transfer, there are several disputes, such as whether an employee of a particular description can be transferred to far off places and whether the step was punitive in nature; and the reference of such questions to the Labour Court, is the best option. He pleads that no prejudice can be said to have been caused to the appellant.

11. Ms. D. Vasudha Nagaraj, learned counsel for respondent No. 5 submits that the employee whose emoluments were too meagre, was purposely and deliberately transferred to Mumbai not only as a vindictive measure, but also as a step to warn other employees. She contends that the whole establishment of the appellant is at Hyderabad and the transfer was made to a non-existent unit at Mumbai and when the employee expressed his inability to join at that place, he was removed from service. She contends that the appropriate Government is conferred with the power under Section 39 of the Act to delegate its powers and there is no basis for the appellant to challenge the G.O issued in exercise of such powers. She further

contends that several sister organizations are functioning within the Ramoji Film City and respondent No. 5 is a trade union, for the employees of all such organizations and, in particular, the appellant. Learned counsel submits that there is nothing in law, which insists that a trade union must be exclusively for a particular industry, to enable it to seek reference under Section 10(1) of the Act.

12. The root cause for these proceedings is the transfer of a House Keeper from Hyderabad to Mumbai. It is also mentioned that taking note of the fact that he did not join the place to which he was transferred, disciplinary proceedings were initiated and that entailed in his removal from service. Even while pursuing the remedies vis--vis the order of transfer, the employee approached respondent No. 5-union, which initially submitted an application before respondent No. 3, the Conciliation Officer. On reporting of failure of conciliation, respondent No. 2 referred the dispute to the Labour Court.

13. The very competence of respondent No. 2 is assailed by the appellant by challenging G.O Ms.No. 63, dated 02-08-2008 under which he was conferred with the powers. The Act confers upon the appropriate Government, various powers under different provisions of law. Obviously, taking note of the fact that the functions are manifold in nature and it may not be possible for the appropriate Government, meaning thereby, the head of the concerned department, to attend to all such functions, the power is conferred upon the appropriate Government under Section 39 of the Act, to delegate its functions. It is in this context, that G.O. Ms.No. 63, dated 02-08-2008 was issued. The appellant is not able to demonstrate as to how the G.O is ultra vires the provisions of the Act. Further, a perusal of Section 39 discloses that it does not insist that the delegation must be in favour of any officer or authority subordinate, to the appropriate Government. The only requirement is that the delegation must be through a notification in official gazette. It is not even mentioned that G.O. Ms.No. 63 was not published in the gazette.

14. The second point urged by the learned counsel for the appellant is that the dispute which is referred to the Tribunal is individual in nature and cannot be treated as industrial dispute as defined in Section 2(k) of the Act.

15. Section 2(k) reads:

"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

16. The initial perception was that it is only when the dispute or difference is between the employers on the one hand and the workmen, meaning thereby quite large number of them, on the other hand, that it can be treated as an industrial dispute. Taking note of such interpretations, the Parliament stepped in and inserted Section 2A. Under this provision, if an employee is inflicted with the punishment of

dismissal, removal and the like, that itself can constitute an industrial dispute. It is argued that it is only when the punishment such as dismissal, discharge or retrenchment is ordered against a workman, that it can be treated as an industrial dispute and not when other punishments are inflicted, much less transfers are made.

17. For the most part of it, Section 2(k) refers to the parties to a dispute and directs that if the difference is between the set of parties mentioned therein, it can be treated as industrial dispute. However, it does not explain as to how an industrial dispute can originate and what can be its purport. Obviously for that reason, the broad and general expression, such as difference was employed. The difference can be on a major issue concerning all or majority of the employees or it can be about a relatively trivial issue. What makes a difference as an industrial dispute, is the fact that it is espoused by the union.

18. The only way of approaching the Labour Court or Industrial Tribunal used to be through the concerned union. Individuals used to have no direct entry. The State amendment made by adding sub-section (2) to Section 2A made it possible for the aggrieved workmen to approach the adjudicatory forum, directly. That, however, is under limited circumstances, namely when the punishments of discharge or dismissal are imposed or they suffered retrenchment. The Act does not prohibit the union from espousing the cause of a single employee even if it is not about dismissal. It must not be forgotten that the simmering differences between the employer and the employees may ultimately manifest in the form of a direct action against one or a few employees. If it is to be interpreted that the real industrial dispute as defined under Section 2(k) of the Act would be the one which concerns all the employees in the industrial undertaking or in relation to dismissal of an employee, the very purpose of not only the Industrial Disputes Act but also the Trade Unions Act would get deviated, or at least diluted.

19. In Rajasthan S.R.T. Corpn. v. Krishna Kant, the Hon''ble Supreme Court explained the purport of the expression as under:

We may now indicate the area of dispute. It is this: where a dispute between the employer and the employee does not involve the recognition or enforcement of a right or obligation created by the Industrial Disputes Act and where such dispute also amounts to an industrial dispute within the meaning of Industrial Disputes Act, whether the Civil Courts jurisdiction to entertain a suit with respect to such dispute is barred? To put it nearer to the facts of these appeals, the question can be posed thus: Where the dispute between the employer and the workman involves the recognition, application or enforcement of certified Standing Orders is the jurisdiction of the Civil Court to entertain a suit with respect to such dispute is barred? This question involves the perennial problem concerning the jurisdiction of the Civil court vis--vis Special Tribunals, a subject upon which the decisions of this Court, let alone other courts is legion. We do not, however, propose to burden this

judgment with all of them. We shall refer only to those which have dealt with the question in the context of Industrial Disputes Act.

20. In a given case, what had occurred to one employee may be a matter of serious concern for the rest of the employees; and in a system governed by rule of law, the most respectable way of addressing that issue would be to seek adjudication before the forum constituted under the concerned enactment. The parties to the proceedings would certainly have the right to justify their respective actions. It is only in rare cases that the entry into such forum or rejection of the proceedings at the threshold, can be resorted to. Therefore, this Court is not at all convinced that the subject matter of reference in the instant case, viz., (1) Whether the Management of Ushodaya Enterprises Pvt., Limited, Ramoji Film City, Anajpur Village, Hayathnagar Mandal, Ranga Reddy District is justified in transferring a small employee viz. Sri P. Bala Raju, E.Code.3139773 from Hyderabad to far away place to Mumbai?; and (2) Whether the Management of Ushodaya Enterprises Pvt. Ltd., Ramoji Film City, Anajpur Village, Hayathnagar Mandal, Ranga Reddy District is also justified taking action against Sri P. Bala Raju, E.3139773 in connection with the said transfer?, is outside the scope of the Act.

21. Another strong argument advanced on behalf of the appellant is that respondent No. 5 is not entitled to seek reference or to espouse the cause of an employee of the appellant. Reliance is placed upon the judgment of the Hon''ble Supreme Court in Bombay Union of Journalists v. the Hindu. The Hon''ble Supreme Court held as under: By its constitution the Bombay Union of Journalists is a union not of employees of one employer, but of all employees in the industry of journalism in Bombay. Support of the cause, by the Union, will not in our judgment convert the individual dispute of one of its members into an industrial dispute. The dispute between The Hindu, Bombay, and Salivateeswaran was in respect of alleged wrongful termination of employment; it could acquire the character of an industrial dispute only if it was provided that it was, before it was referred, supported by the Union of the employees of The Hindu, Bombay or by an appreciable number of its employees.

22. That was a case in which the trade union which espoused the cause of an employee was of the entire community of journalists, working in Bombay and not of any particular industry or establishment. Further, there were only three employees in the establishment by name Venkateswaran, Tiwari and Salivateeswaran. The dispute was in relation to the last person and two others filed affidavits stating that they do not having anything to do with that dispute.

23. That is not the case here. At the stage of conciliation, as well as making reference, respondent Nos. 2 and 3 have verified the records and they found that substantial number of employees working in the appellant-organisation are the members of the trade union. The other judgments relied upon by the appellant viz., National Engineering Industries Ltd., v. State of Rajasthan and Express Newspapers

(P) Ltd. v. Workers are of not immediate relevance.

24. During the course of arguments, it was urged that a trade union in which the members of various industrial undertakings are members cannot seek reference of dispute under Section 10(1) of the Act in respect of employees of any particular organization. Though not in so many words, the argument is suggestive of the plea that, to be able to espouse the cause of employees of a particular organization, the trade union must be exclusively of that organization or industry. Though this may have sounded well in the initial days of the working of the Act, the recent developments are in a different direction. In J.H. Jadhav v. Forbes Gokak Ltd.,, the Hon''ble Supreme Court took the view that it is not essential that a trade union must be exclusively for a particular industrial undertaking, in the context of seeking references. At any rate, there is no such requirement either under the Industrial Disputes Act or under the Trade Unions Act.

25. Therefore, there are no merits in this writ appeal and it is accordingly dismissed. The miscellaneous petitions pending in this appeal shall also stand disposed of. There shall be no order as to costs.

Challa Kodanda Ram, J.

26. I had the benefit of reading the detailed order of my brother in the matter. While, broadly I am in agreement with the discussion in relation to the principal question of law which was argued before the Bench, I am of the view that the writ appeal can be disposed of by answering the said question which has been argued at the Bench leaving other aspects of the matter which require verification of facts and investigation by the Industrial Tribunal. In the principal point which has been urged by the learned counsel for the appellant is to the effect that the grievance of an individual employee in relation to the disputes falling within the scope of Section 2(k) of the Industrial Disputes Act, 1947 (for short, the Act) can be espoused by a Union formed exclusively by the workmen/employees of the organisation. In the present case, the employees of the appellant alone and not by the 5th respondent which is admittedly a union formed by various organisations functioning from broadly referred to as Ramoji Film City. On a grievance espoused by one of the employees, at the instance of the 5th respondents union, the impugned G.O was issued referring the dispute to the Labour Court-I, Hyderabad. The same is being challenged in the present writ appeal.

27. The necessary facts for the disposal of the writ appeal are:

At the instance of the 5th respondent, G.O. Ms.No.63 dated 02.08.2008, came to be issued referring the alleged dispute to Labour Court in relation to an individual workman who was subjected to certain disciplinary proceedings. At the instance of the Union, the disputes referred to are:

1. Whether, the Management of Ushodaya Enterprises Pvt. Limited, Ramoji Film city, Anajpur Village, Hayathnagar Mandal, Rangareddy District is justified in transferring a small employee viz. Sri P. Bala Raju, E.Code:3139773 from Hyderabad to far away place to Mumbai?

2. Whether the Management of Ushodaya Enterprises Pvt. Limited, Ramoji Film City, Anajpur Village, Hayathnagar Mandal, Rangareddy District is also justified taking action against Sri P. Bala Raju, E.3139773 in connection with the said transfer?

3. If not, what relief the employee is entitled?

The impugned G.O came to be challenged on various grounds. The learned single Judge dismissed the writ petition at the admission stage leaving the matter to be decided by the Labour Court. In the present appeal, the learned counsel has assailed the order of the learned single Judge on the ground, on the face of record, the reference is bad in law, the dispute does not fall under Section 2(k)(a) of the Act. Further the disputes falling under Section 2(k) of the Act cannot be referred for adjudication by the Labour Court at the instance of a union of all the workers consisting of the very organisation in which the aggrieved employee is working. He further submits that as the writ petition was disposed of at the stage of admission, the petitioner did not have the benefit of filing the counter on its behalf. He submits that the 5th respondents union admittedly, is the Union representing the employees of various organisations, is not the union of the appellants organisation and as such in the light of the authoritative of the pronouncements of the Supreme Court in The Bombay Union of Journalists and others v. The Hindu Bombay and another and Management of Express Newspapers (Private) Ltd., Madras (In both the appeals) v. The Workers and others (In both the appeals), at the instance of the 5th respondents union, no industrial dispute can be raised. He further submits that the learned single Judge failed to take into consideration that there was no material before the authorities forming the function that the aggrieved workman was infact a member of the 5th respondents union and further the 5th respondents union as on its rolls a large number of workmen of the appellants organisation and as such the 5th respondent is incompetent in law to espouse the cause of an individual workman of a dispute falling within the scope of Section 2(k) of the Act.

28. A counter-affidavit has been filed by the 3rd respondent in the writ appeal merely extracting the various portions of the judgment in the writ petition and as such is not much of help for the purpose of deciding the one way or the other the factual aspects which have been raised by the appellant. Particularly with respect to the specific contention that the 5th respondents union does not have substantial membership of the workmen or the employee of the petitioners industry. The only reference to the same in the counter-affidavit is it is submitted that considerable exercise has been done before the certificate is granted to Trade Union. The membership of the Union was verified through an inspector of the establishment by a competent Inspector and the certificate of registration was issued only after

verification. Thus, it is clear that the 5th respondent of the Union is competent to espouse the cause of the house keeping assistant Sri P. Balaraju. As a matter of fact, this aspect of the matter was raised before the learned single Judge who had found the same has to be dealt with by the Industrial Tribunal. In the words of the learned single Judge if a Trade Union, like the 5th respondent, has a substantial membership of workmen/employees of the petitioner industry, lends support to the cause of Sri Balaraju then such a situation stands on a different footing. The petitioner has merely claimed that no workmen of it was a member of the 5th respondent-Trade Union. That was a pure question of fact. As to how many of the members of the 5th respondent-trade union are the employees/workmen of the petitioner company is a subject matter of verification of the facts, which can be undertaken by the Industrial Tribunal. In the absence of any credible material, on a hypothetical basis, it cannot be assumed that the 5th respondent- trade union does not have, as its members, good number of employees/workmen of the petitioner company, to doubt its locus to seek reference of Balarajus plight. In my opinion, that is a subject matter of evidence and verification and cross-verification.

29. In the light of the above observations of the learned single Judge, in the interest of justice, the issue in relation to the said aspect was left to be decided by the Labour Court, by leaving the issue open. As a matter of fact, the determination of the factual aspect is relevant especially in view of the judgment of the Supreme court in Workmen of M/s. Dharam Pal Prem Chand (Saugandhi) vs. M/s. Dharam Pal Chand (Saugandhi), whereby the Supreme Court had explained the purport of the judgment of the Supreme Court in Association Of Medical vs. The Industrial Tribunal And Ors.

30. The other principal question which has been argued by the learned counsel for the appellant that only a Union consisting exclusively representing all the workmen of the organisation alone can espouse the grievance of the workmen under Section 2(k) of the Act, is no longer valid on account of the authoritative pronouncement of the judgment of the Supreme Court in Workmen of M/s. Dharam Pal Prem Chand (Saugandhi) (1 supra) which was later followed in J.H. Jadhav vs. Forbes Gokak Ltd.,. It may be clearly noted that the observations in Association Of Medical (2 supra), were held only to be obiter. However, while holding that the union need not be an exclusive union of the organisation, nevertheless the union should be of a large number of workmen of the organisation has been reiterated. This is clear from the discussion in para Nos. 11 and 12 of the judgment of the Supreme Court.

31. In the light of the above discussion and as the learned single Judge himself had left the said issues to be decided by the Labour Court, I am inclined to dispose of the writ appeal by giving liberty to the appellant to approach the Labour Court. All the questions, including the validity of the reference on the ground that the 5th respondent union does not have a large number of workmen as its members, are left open to be decided by the Labour Court.

32. With the above observations, the writ appeal is disposed of. Miscellaneous Petitions, if any, pending in this appeal shall also stand disposed of. There shall be no order as to costs.