Dy. Manager Cpc Pltd Vs. Kovai Dist Newdemocratic Labour Front

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Court : Chennai

Decided On : Feb-04-2013

Judge : The Honourable Mr.Justice K.Chandru

Appellant : Dy. Manager Cpc Pltd

Respondent : Kovai Dist Newdemocratic Labour Front

Judgement :
In the High Court of Judicature at Madras Dated:

04. 02.2013 Coram The Honourable Mr.JUSTICE K.CHANDRU Writ Petition Nos.22069 of 2012 and 799 of 2013 & M.P.Nos.1 & 1 of 2012 and 1 & 1 of 2013 C.P.C.(P) Ltd., rep. By its Dy. Manager Personnel Mr.Jayaveeran having registered office at No.207, Mettupalayam Road, Coimbator

030. .... Petitioner in W.P.No.22069 of 2012 Kovai District New Democratic Labour Front rep. By its General Secretary, Regn.No.1241/06 Shop No.137, 1st Floor, K.R.R.Complex, Thadagam Road, KNG Pudur (Branch) Coimbator

108. .... Petitioner in W.P.No.799 of 2013 Vs.

1. The District Collector, District Collectorate, Coimbatore.

2. The Deputy Inspector General of Police, D.I.G.Office, Race Course Road, Coimbator

018.

3. The Inspector of Police, Thudiyalur Police Station, Thudiyalur, Coimbatore.

4. The New Democratic Labour Front, (Reg.No.1241), rep. By its Organising Secretary, Vilavai Ramasamy, Having District Head Office at No.137, 1st Floor, K.R.R.Complex, Thadakam Road, KNG Pudur, Coimbator

108.

5. Mr.Bathrappan 6. Mr.P.S.Rajendran 7. Mr.K.Jayakumar 8. Mr.T.Nagarajan 9. Mr.M.C.Ramachandran .... Respondents in W.P.No.22069 o

1. Government of Tamil Nadu, rep. By its Secretary, Labour and Employment Department, Fort St. George, Chenna

009.

2. Assistant Commissioner of Labour (Conciliation)-3, Dr.Balasundaram Road, Coimbator

018.

3. Management, CPC(P) Limited, No.207, Mettupalayam Road, Cheran Nagar, Coimbator

030. .... Respondents in W.P.No.799 of 2013 W.P.No.22069 of 2012: PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus directing respondents 1 to 3 and forbearing respondents 4 to 9 from indulging any act of illegal strike, arson, sabotage, prevention of ingress and egress of loyal workmen, employees, staff raw materials finished and semi finished goods from the petitioner's factory and premises and in such event to provide adequate police protection to petitioner's factory and premises situated at No.207, Mettupalayam Road, Coimbator

030. W.P.No.799 of 2013: PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Declaration declaring that the action of the 3rd

respondent in issuing the notice dated 2.1.2013 purporting to give alternative employment to the employees working in Lathe, Drilling and Milling without getting permission under Section 33 of the Industrial Disputes Act, 1947, in the Industrial Dispute raised by the petitioner Union which are pending conciliation before the 2nd respondent as Dispute No.28/2012, regarding charter of demand, dispute regarding alteration of service condition without a notice under Section 9A of the Industrial Disputes Act, 1947, as illegal, arbitrary, void ab initio, contrary to law and direct the 1st respondent to conciliate the disputes and effect settlement and if no settlement is forthcoming to submit failure report under Section 12(4) of the I.D.Act, 1947 to the 1st respondent and in turn the 1st respondent to refer the dispute the adjudication before the Competent Industrial Adjudicator. For Petitioner in W.P.No.22069 of 2012 and for R3 in W.P.No.799 of 2013 : Mr.Yashod Varadhan, S.C. for Mr.S.Sivashanmugam For R 1 to 3 in W.P.No.22069 of 2012 and for R 1 & 2 in W.P.No.799 of 2013 : Mr.R.Govindasamy, AGP For Respondents 4 to 9 in W.P.No.22069 of 2012 and For Petitioner in W.P.No.799 of 2013 : Mr.Balan Haridas -------- C O M M O N O R D E R These two Writ Petitions came to be posted on being specially ordered by the Honourable the Acting Chief Justice vide order dated 30.1.2013.

2. Heard the arguments of Mr.R.Yashod Vardhan, learned senior counsel leading Mr.S.Sivashanmugam, learned counsel appearing for the Management and Mr.Balan Haridas, learned counsel appearing for the Trade Union. Mr.R.Govindasamy, learned Additional Government Pleader takes notice for official respondents.

3. The first Writ Petition was filed by the Management in W.P.No.22069 of 2012 seeking for a direction to the official respondents and forbear respondents 4 to 9 from indulging any act of illegal strike, arson, sabotage, prevention of ingress and egress of loyal workmen, employees, staff, raw materials finished and semi finished goods from the petitioner's factory and premises and in such event, to provide adequate police protection to the petitioner's factory and premises situated at No.207, Mettupalayam Road, Coimbatore.

4. This Writ Petition was admitted on 16.8.2012. Pending the Writ Petition, in an application for injunction, only notice was ordered. In the application for grant of police protection, S.Nagamuthu,J observed that the labour dispute has to be settled in the manner known to law and nobody could prevent the other workers, who are willing to go for work and the vehicular movements into the factory premises. Therefore, an interim direction was granted to provide adequate police protection, so as to prevent anybody disturbing peace and tranquility in the premises.

5. During the pendency of the Writ Petition, the fourth respondent in W.P.No.22069 of 2012 filed a separate Writ Petition in W.P.No.799 of 2013 seeking for a declaration declaring that the action of the third respondent/Management in issuing the notice dated 02.1.2013 purporting to give alternative employment to the employees working in Lathe, Drilling and Milling without getting permission under Section 33 of the Industrial Disputes Act, 1947 in the Industrial Dispute raised by the Union, for which conciliation proceedings are pending before the Assistant Commissioner of Labour, (Conciliation)-3, Coimbatore.

6. When W.P.No.799 of 2013 came up on 09.01.2013, this Court, on the basis of the submissions made by the counsel, observed that transferring workers from Foundry or other Mechanical Section was not valid, unless there is an approval by the Conciliation Authority, before whom the conciliation is pending. Aggrieved by the interim order, the Management filed M.P.No.2 of 2013 to vacate the interim order with the supporting counter affidavit dated 17.1.2013. The Trade Union had also filed a reply affidavit dated 22.1.2013.

7. In view of the inter-connectivity between two disputes, both the Writ Petitions were grouped together and a common order is passed. For the sake of convenience, the parties are referred to as Management, Trade Union and Official respondents, as the case may be.

8. It is seen from the records that the Trade Union raised an industrial dispute with reference to several demands in the form of Charter dated 18.1.2012. Based on the same, the Assistant Commissioner of Labour, (Conciliation), Coimbatore

initiated initial discussions between the two parties and finally conciliation meeting was held pursuant to the notice dated 28.12.2012. The failure of conciliation meeting was to be held on 11.1.2013. It is alleged that after getting the said notice, the Management put up notice dated 02.01.2013 informing the workers that in view of the severe power cut, the production of the unit is greatly affected and the customers, who are buying the machined components, seek for high accuracy. Therefore, the conventional machines have to be disposed of and the Mill will have to go for modernisation. This results in changing of old machinery like lathe, drilling and milling and if this is done, the named workers in the annexure to the notice are likely to lose employment. With a view to avoid any loss of employment, on the basis of the request of majority workers, the Management was willing to give work in the Foundry or in any other Machine Section or alternative employment, with effect from 07.01.2013. The workers, whose names were in the annexure, were requested to accept the alternative employment to avoid losing of employment. As soon as the said notice was published, the Trade Union made a further complaint to the Conciliation Officer and thereafter filed the present Writ Petition.

9. The contentions raised by the Trade Union was that when the Charter of demand is pending conciliation, the Management cannot alter the service condition of workman without the approval of the Conciliation Officer. The lathe, drilling and milling machines are required for basic operation and closing that activity in the guise of alternative employment, the employees cannot be rendered jobless and even this cannot be done without a notice under Section 9A of the Industrial Disputes Act.

10. In the counter affidavit filed by the Management, these allegations were strongly denied. It was stated that the Charter of demands placed by the workmen is relating to the general demand and nothing to do with the modernisation process of the Management. It was stated that the Writ Petition, as against the modernisation, is not maintainable, as it is neither a State nor an instrument of the State and only a private management and hence, the Writ Petition is liable to be rejected. It was further stated that because of the power cut in the Coimbatore region, which is running from 12 to 16 hours, many of the industrial units have stopped production and the present management is spending more than

Rs.86,500/- towards diesel cost for running generator and in aggregate, Rs.25,92,000/- towards diesel cost for running the unit. The old machineries are not working to the satisfaction of the customers and therefore, they have imported new machineries and doing the same work with more accuracy. The allegation that they are sending out workers is stoutly denied and it was also stated that many of the superannuation employees were re-employed. In so far as the modernisation of the unit and the apprehension that there will be a loss of employment are concerned, in paragraph 10, it was averred "It is submitted that when the modernisation of machineries, which will in no way prejudice the employees, or alter or amend their conditions of service, and since the respondent had not violated Sec.33 of the I.D. Act, this respondent does not require any prior approval from the second respondent. I state that when the charter of demands does not even touch about the conditions of service, the present writ petition is filed purely based on assumptions and surmises." 11. In the reply affidavit, the Trade Union disputed the number of works mentioned by the Management and also it is stated that in the guise of modernisation and in the guise of new machinery, the employees were sought to be disturbed and the Management sought to alter the service conditions of the employees without getting permission from the authorities.

12. As noted already, the charter of demands raised by the Union did not deal with any of the issue of modernisation or the lay off or the induction of new machinery or alternative employment to be given in other units. On the other hand, the notice dated 02.1.2013 clearly stated that in order to avoid any loss of employment, the workers are given work within the same unit in their Foundry or in the Machine Section. Under Section 25 C of the Industrial Disputes Act, if a worker is laid off, he is entitled to get compensation. Section 25 E(1) provides for cases where no compensation can be paid in the event of the employees given an alternative employment, provided, it does not call for any special skill, previous experience and can be done by the workman and the normal wages are offered in the case of alternative employment. Only in cases where lay off is sought to be resorted to, then the permission of the competent authority is required under Section 25 O of the Industrial Disputes Act, in cases, where the unit is employing not less than 100 workers. Therefore, it cannot be said that the Management had laid off the

workman and had altered their conditions of service. On the other hand, in case, where Section 25 E of the Industrial Disputes Act is attracted, then, it cannot be called as a lay off. It is always open to the workman to question that the alternative employment offered requires high skill or there has been reduction in emoluments, which may give rise to a separate dispute. It cannot be said that the approval of the authority is required, when there is no charter of demands relating to such alleged lay off or grant of alternative employment.

13. The other question raised by the Trade Union was that by bringing new machinery, Section 9-A of the Industrial Disputes Act is attracted and as to whether for the alteration of service conditions for the items specified in the Fourth Schedule of the Industrial Disputes Act, the employer is bound to give notice under the Industrial Disputes Act. Item No.10 specifies rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen.

14. In the present case, as noted in paragraph 10 of the counter affidavit, there is no allegation that this modernisation is going to result in reduction of number of workers, in which event alone, the question of Section 9-A of the Industrial Disputes act gets attracted.

15. This question came up for consideration before the Supreme Court in the decision reported in (1999) 6 Supreme Court Cases 275 (Lokmat Newspapers Pvt. Ltd. V. Shankarprasad), wherein, the Supreme Court observed as follows: "32. When we turn to the Fourth Schedule of the ID Act, we find mentioned therein various conditions of service of workmen. The said Schedule with all of its items reads as follows: CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN 1 Wages, including the period and mode of payment; 2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force; 3. Compensatory and other allowances; 4. Hours of work and rest intervals; 5. Leave with wages and holidays; 6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders; 7. Classification by grades; 8. Withdrawal of any customary concession or privilege or change in usage; 9.

Introduction of new rules of discipline, or alteration of existing rules, except insofar as they are provided in standing orders; 10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen; 11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift not occasioned by circumstances over which the employer has no control. So far as Items 1-9 and 11 are concerned, it becomes obvious that before any such change in conditions of service of the workmen is to be effected, as a precondition for such proposed change, notice under Section 9-A has to be issued; without complying with such a precondition of notice, the proposed change would not legally come into operation. We are directly concerned with Item 10 of this Schedule. It, therefore, becomes obvious that before any rationalisation, standardisation or improvement of plant or technique is to be resorted to by any management if by such an exercise retrenchment of workmen is likely to result, then before introducing such rationalisation, standardisation or improvement of plant or technique, as the case may be, a prior notice under Section 9-A is to be issued to the workmen who can get an opportunity to show that they may not be retrenched because of the new scheme of rationalisation etc. which is in the offing and can suggest ways and means available to the management to avoid such proposed retrenchment of the workmen despite such introduction of a new scheme. Consequently, it must be held on the very wordings of Section 9-A read with Item 10 of the Fourth Schedule that any management which seeks to introduce a new working pattern for its existing work force by any future scheme of rationalisation, standardisation or improvement of plant or technique which has a tendency to lead to future retrenchment of workmen has to give prior notice of a proposed change. Therefore, it must be held that notice under Section 9-A must precede the introduction of rationalisation concerned, it cannot follow the introduction of such a rationalisation. In the present case, it is not in dispute between the parties that in the Composing Department of the appellant where the respondent was working, composing work was earlier being done by hand i.e. manually. That was the existing condition of service of the respondent. By substitution of that type of work by mechanical work having resort to phototype composition through machine, the then existing service condition of the

respondent was bound to be affected adversely. Consequently, before introducing such a change in the condition of service of the respondent by installing phototype composing machine, introduction of which was directly likely to lead to retrenchment of the respondent, a notice under Section 9-A was a must before commissioning such a phototype machine at the work place of the appellant. It is not in dispute between the parties that such a phototype machine was already installed by the appellant in January 1981. Learned counsel for the appellant seeks to contend that it was installed on an experimental basis. Even granting that, the evidence on record clearly established that by November 1981 because of the successful working of the phototype composing machine it was felt by the appellant that the respondent and other Compositors working in the Hand Composing Department were rendered surplus. Of course, the appellant on humanitarian grounds tried to shift them to its other concern at Jalgaon, but those transfer orders were held to amount to unfair labour practice on the part of the appellant when the Industrial Court on the complaints of these transferee workmen held that such transfer orders would amount to unfair labour practice being illegal at law. Thus the attempt on the part of the appellant to transfer these excess workmen from November 1981 on the admitted position that they had become surplus in the Composing Department at Nagpur because of the successful installation and working of the phototype composing machine at the premises, became abortive. Consequently, from November 1981 the installation of the phototype machine ceased to remain an experimental measure but became a stark reality and this machine had necessarily a tendency to displace the workmen who were earlier working in the Hand Composing Department. Thus, at least from November 1981 scheme of rationalisation had come to stay in Composing Department of the appellant. Under these circumstances, even accepting the contention of learned counsel for the appellant that the likelihood of the respondent and other workmen being retrenched because of the aforesaid machine was not a realised possibility from January 1981, it at last became a certainty from November 1981. .....

36. The aforesaid decision, therefore, has clearly ruled that introduction of the rationalised scheme by itself would amount to alteration of the conditions of service of the workmen to their prejudice. It, therefore, follows that before effecting

such a change, meaning thereby, before introducing such a rationalisation scheme which has a tendency to change the conditions of service of the workmen, notice under Section 9-A as a condition precedent becomes a must. If learned counsel for the appellant is right, that machine can be introduced on an experimental basis first or even after it has already worked for some time and is required to be continued as a full-fledged machine, as and when the employer decides to terminate the services of the workmen as a direct consequence of such introduction of machine, he can give notice under Section 9-A of the Act at any such time, then the very scheme of Section 9-A read with Schedule IV Item 10 of the ID Act would be rendered ineffective and inoperative. The purpose of issuing such a notice prior to the introduction of the scheme of rationalisation would get frustrated and then there would remain no effective opportunity for the conciliator to try to arrive at an amicable settlement regarding the dispute centering round the proposed introduction of the scheme of rationalisation which is likely to result in the retrenchment of workmen. Equally there would remain no opportunity for the State Government on receipt of failure report from the conciliator to make a reference of such live industrial dispute for adjudication by the competent court on merits. It is obvious that when such dispute regarding the proposed introduction of the rationalisation scheme is referred for adjudication of the competent court, the said Court after hearing the parties and considering the evidence can come to the conclusion whether the proposed scheme is justified on facts or not and whether any violation of the provisions of Section 9-A had resulted in illegality of the consequential orders of retrenchment. Such competent court can also accordingly pass appropriate consequential orders directing the Management to withdraw such a scheme of rationalisation or in any case, can order reinstatement of the workmen with proper back wages if such retrenchment is found to be illegal on account of failure to comply with the provisions of Section 9-A of the Act. The question regarding the stage at which notice under Section 9-A can be issued in connection with the proposed scheme of rationalisation which has the likelihood of rendering existing workmen surplus and liable to retrenchment as mentioned in Item 10 of Schedule IV of the ID Act was once again examined by a three-Judge Bench of this Court in Hindustan Lever Ltd. v. Ram Mohan Ray12. In that case, this Court was concerned with a scheme of rationalisation and reorganisation

which were proposed to be introduced by Hindustan Lever Ltd., the appellant before this Court, and for which a prior notice under Section 9-A before introducing such reorganisation scheme was issued to the workmen but which had no tendency or likelihood of displacing or retrenching them. It was the contention of the workmen that even for such a scheme a notice under Section 9-A was a must. Examining the scheme of reorganisation in question, it was held that once the scheme was not likely to result in retrenchment of any workman Section 9-A read with Item 10 of Schedule IV did not get attracted on the facts of the case. In this connection the following pertinent observations on the scheme of Section 9-A read with Item 10 of Schedule IV were made by Alagiriswami, J., while dealing with the contention of learned counsel for the workmen: (SCC p. 146, para

8) 8. He also urged that rationalisation and standardisation per se would fall under Item 10 even if they were not likely to lead to retrenchment of workmen and only improvement of plant or technique would require that they should lead to retrenchment of workmen in order to fall under Item 10. A further submission of his was that standardisation merely meant standardisation of wages. We are not able to accept this argument. It appears to us that the arrangement of words and phrases in that item shows that only rationalisation or standardisation or improvement of plant or technique, which is likely to lead to retrenchment of workmen would fall under that item. In other words, rationalisation or standardisation by itself would not fall under Item 10 unless it is likely to lead to retrenchment of workmen. The reference to rationalisation at p. 257 of the report of the Labour Commission and the reference to standardisation of wages in it are not very helpful in this connection. Standardisation can be of anything, not necessarily of wages. It may be standardisation of workload, standardisation of product, standardisation of working hours or standardisation of leave privileges. Indeed in one decision in Alembic Chemical Works Co. Ltd. v. Workmen13 there is reference to standardisation of conditions of service, standardisation of hours of work, wage structure. That case itself was concerned with standardisation of leave. The whole question whether this reorganisation falls under Item 10 depends upon whether it was likely to lead to retrenchment of workmen. In view of the aforesaid decision, it becomes obvious that if the proposed scheme of rationalisation has a likelihood of rendering existing workmen surplus and liable to

retrenchment, then Item 10 of Schedule IV would squarely get attracted and would require as a condition precedent to introduction of such a scheme a notice to be issued under Section 9-A by the Management proposing such an introduction of the scheme of rationalisation, but if the proposed scheme is not likely to displace any existing workmen then mere rationalisation which has no nexus with the possibility of future retrenchment of workmen would not attract Item 10 of Schedule IV and would remain a benign scheme of rationalisation having no pernicious effect on the existing working staff." 16. Therefore, Prima facie, the contention of the Trade Union that Section 33 of the Industrial Disputes Act is attracted does not stand. In view of the same, this Court is not inclined to go into the question as to whether the Writ Petition is maintainable or not. Accordingly, W.P.No.799 of 2013 stands dismissed. This is without prejudice to the Trade Union to pursue their charter of demand and also raise any fresh demand in case necessity arises. No costs. Consequently, M.P.Nos.1 and 2 of 2013 are closed.

17. In W.P.No.22069 of 2012, as far as the Management seeks for police protection is concerned, such direction to give police protection is not an automatic one. Only in cases where a complaint is given to the police authorities, which discloses a cognizable offence and yet, there was no action on the part of the police authorities, the question of issuing a mandamus will arise. In the typed set filed by the Management, the representation made by the Management did not disclose any specific complaint against any individual and there is no offence disclosed. If a combined reading of all the representations is taken into account, in such an event, the Writ Petition seeks for direction to the authorities to give police protection as a matter of right does not arise. Even otherwise, from 16.8.2012, pursuant to the order passed by this Court, the Management is enjoying police protection. In such circumstances, W.P.No.22069 of 2012 is dismissed. No costs. Consequently, M.P.Nos.1 and 2 of 2012 are closed. Index :Yes/No Internet:Yes/No 04.02.2013 sl To 1. The District Collector, District Collectorate, Coimbatore.

2. The Deputy Inspector General of Police, D.I.G.Office, Race Course Road, Coimbator

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3. The Inspector of Police, Thudiyalur Police Station, Thudiyalur, Coimbatore.

4. The Secretary, Government of Tamil Nadu, Labour and Employment Department, Fort St. George, Chenna

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018. K.CHANDRU,J.

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