



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S.G.PANDIT

WRIT PETITION NO. 38751 OF 2019 (L-RES)

BETWEEN:

M/S.SHAKTI PRECISION
COMPONENTS (INDIA) PRIVATE LIMITED,
PLOT NO.20B, DODDANEKUKUNDI
INDUSTRIAL ESTATE, WHITEFIELD ROAD
MAHADEVAPURA POST
BENGALURU - 560 048
REPRESENTED BY ITS DIRECTOR
MR C R NARASIMHA MURTHY

...PETITIONER

(BY SRI. PRASHANTH B K., ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF LABOUR (IR)
KARMIKA BHAVANA, DAIRY CIRCLE,
BANNERGHATTA ROAD, BENGALURU - 560 029

2. THE GENERAL SECRETARY
ENGINEERING AND GENERAL WORKS UNION,
GHATE BHAVAN, GAYATHRI DEVI
PARK EXTENSION, VYYALIKAVAL
BENGALURU - 560 003

...RESPONDENTS

(BY SRI.DEVARAJ C.H. GOVERNMENT ADVOCATE FOR R1
SRI.S.V.SHASTRI ADVOCATE FOR R2)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 PRAYING TO
QUASH THE ORDER DATED.11.07.2019 PASSED BY THE R1, ANNX-J
TO THIS W.P. & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN
'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

Petitioner is before this Court under Article 226 of the Constitution of India praying for a writ of certiorari to quash the order dated 11.07.2019 in No.ಐಎಎ-1/ಸಿಆರ್-16/2018-19 passed by the first respondent (Annexure-J) by which, permission is granted to respondent No.2-Engineering and General Workers' Union (for short "Workers' Union") to prosecute the petitioner under section 34 of the Industrial Disputes Act, 1947 (for short "I.D.Act") for not implementing certain clauses of settlement dated 02.08.2017.

2. Heard learned counsel Sri.Prashanth B.K. for petitioner and Sri.Devaraj C.H., learned Government Advocate for respondent No.1. Perused the writ petition papers.

3. Learned counsel for the petitioner would submit that there was settlement of wages between the petitioner and respondent No.2-Workers' Union on 02.08.2017 for a



period of 3 years from 01.04.2016 to 31.03.2019. It is submitted that respondent No.2-Workers' Union filed a complaint before the first respondent on 08.12.2017 at Annexure-B, complaining non-implementation of settlement in respect of Distribution of Wage increase, Coverage of Settlement in respect of 5 workmen and Medical Insurance for Non-ESI members and prayed to take necessary action against the Management. Learned counsel would submit that in terms of Annexure-D dated 26.10.2018, the petitioner filed objections contending that in terms of settlement dated 02.08.2017, settlement is implemented and there is no room for any action in terms of Sections 29 or 34 of I.D. Act. Learned counsel would further submit that infact, respondent No.2-Workers' Union itself submitted one more letter dated 14.05.2019 to the first respondent wherein it is stated that after intervention of respondent No.1, the Distribution of Wage increase and benefits of Medclaim is implemented only to few workmen and settlement benefits are not extended to 5 employees who are members of respondent No.2-Workers' Union.



Learned counsel would submit that without looking into objections or without application of mind, respondent No.1 passed impugned order granting permission to respondent No.2-Workers' Union to prosecute the petitioner-Company for non-implementing the settlement dated 02.08.2017. Learned counsel would draw attention of this Court to impugned order and would submit that nowhere, the first respondent took note of the letter dated 14.05.2019 submitted by respondent No.2-Workers' Union wherein they have stated that settlement regarding Distribution of Wage increase and benefits of Medclaim insurance for non-ESI employees are implemented. With regard to extension of benefits to 5 employees, learned counsel would submit that they are in the Supervisory cadres and they are not workman. If at all they are entitled for extension of settlement, it is for them to approach appropriate authority seeking benefit arising out of settlement dated 02.08.2017. Thus, he prays for allowing the writ petition.



4. Per contra, learned Government Advocate would submit that respondent No.1 passed impugned order based on the material available on record and would submit that even after providing sufficient opportunity, the petitioner failed to establish that settlement dated 02.08.2017 is implemented with regard to Distribution of Wage increase. When he failed to establish the implementation of distribution of wage increase, the first respondent proceeded to pass order granting permission to respondent No.2-Workers' Union to initiate prosecution against the petitioner-Company.

5. Having heard the learned counsel for the parties and on perusal of the writ petition papers, the only point which falls for consideration is as to whether the impugned order dated 11.07.2019 passed by respondent No.1 requires interferes?

6. Answer to the above point would be in the affirmative for the following reasons:



Section 29 of 1947 Act could be invoked where there is breach of any terms of settlement or award and if such breach is established, any person committing such breach shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both. A reading of the above provision would also makes it further clear that a breach may be a continuing breach or breach already committed by such person. Granting permission for prosecution would have a serious consequence on such a person. In that circumstance, Authority which grants permission for prosecution has greater responsibility. Order under Section 29 of 1947 Act cannot be passed lightly. The Authority which considers complaint under Section 29 of 1947 Act shall have to apply its mind and shall have to record its finding with regard to breach or continuing breach. Unless specific breach or continuing breach is recorded on the complaint after considering the objections if submitted, the Authority would not get jurisdiction to grant permission for prosecution.



6. It is an admitted fact that there was memorandum of settlement between the petitioner and respondent No.2-Workers' Union dated 02.08.2017 in terms of Annexure-A. By representation dated 08.12.2017 addressed to first respondent, respondent No.2-Workers' Union sought action for non-implementation of 3 items of settlement. The said 3 items read as follows:

*"1. **Distribution of Wage increase** - According to the settlement (Clause 3.2 a)- Distribution of wage increase) the distribution of the wage increase should be divided in the proportion of 40:60 in to Basic and other allowances. However the proportion of 40% to the Basic wages has not been implemented and instead the entire wage increase has been made on allowances.*

*2. **Coverage of Settlement** - The terms of the settlement has not implemented for 7 workmen namely Sunil, Karibasappa, Shyam, Gautham, Nagesh, Jaipal and Satish JV. They have not been paid the arrears as per the terms of the settlement.*

*3. **Medical insurance for Non-ESI members** - Medical insurance for non-ESI*



employees and their families is provided as per the settlement. However, the family members of the non-ESI employees have not yet been covered by Medical insurance.”

7. The petitioner submitted its objection dated 26.10.2018 wherein it categorically stated that distribution of wage increase was implemented and medical insurance for non-ESI employees is extended. Thereafter, second respondent submitted one more representation dated 14.05.2019 to the first respondent wherein paragraph 2 reads as follows:

“2. In this matter, after your kind intervention issues 1(a) and 1(b) have been implemented by the Management. However the issue 1(c) regarding the benefits of the settlement to be given to 5 employees who are members of our union has not been implemented by the management. In this regard, we submit the following for your consideration.”

8. A reading of the above paragraph would make it clear that second respondent/Workers Union has informed first respondent that items 1(a) and 1(b) stated in the said



letter i.e., distribution of wage increase and medical insurance for non-ESI employees are implemented and only grievance of the Workers Union was non extension of certain benefits to 5 employees. When the Workers Union stated that major of the settlement is implemented i.e., distribution of wage increase and extension of medical insurance, the first respondent committed an error in proceeding further without noting the implementation of the settlement. With regard to non-extension of certain benefits to 5 employees, it is for those employees to approach appropriate authority seeking whatever benefit they are entitled to under the settlement. Further there is no finding with regard to specific breach of the terms of the settlement by the petitioner/Management. Unless the authority records breach of the terms of the binding settlement, it would not get jurisdiction to accord permission to prosecute under Section 29 of the 1947 Act. Moreover, as submitted by the learned counsel for the petitioner, subsequently one more memorandum of settlement is entered into between the petitioner and



second respondent-Workers Union for the period from 01.04.2019 to 31.03.2023.

9. The impugned order granting sanction to initiate prosecution under Section 29 of the Industrial Disputes Act, 1947 suffers from non-application of mind for not taking note of the second respondent's letter dated 14.05.2019. Hence, the following:

ORDER

Impugned order dated 11.07.2019 in No.ಬಎಎ-1/ಸಿಆರ್-16/2018-19 passed by the first respondent is set aside.

With the above, writ petition stands disposed of.

Sd/-
JUDGE

MPK/NC
CT:JR
LIST NO.: 1 SL NO.: 40