



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 16742 OF 2024 (L-RES)

BETWEEN:

THE MANAGEMENT OF MAHINDRA
AEROSTRUCTURES PRIVATE LIMITED,
PLOT NO.251(P), 252 TO 264 AND 265 (P)
NARASAPURA INDUSTRIAL AREA,
KOLAR TALUK, KOLAR DISTRICT,
KARNATAKA - 563 133,
REPRESENTED BY ITS PLANT HEAD,
MR. NARENDRA SHANBHAG

...PETITIONER

(BY SRI PRASHANTH B.K, ADVOCATE)

AND:

1. THE PRINCIPAL SECRETARY/
DEPUTY SPECIAL OFFICER (DO-06),
CHILD LABOUR CELL TO DEPARTMENT OF LABOUR
GOVERNMENT OF KARNATAKA,
VIKASA SOUDHA, DR.AMBEDKAR VEEDHI,
BENGALURU - 560001.
2. THE LABOUR COMMISSIONER,
GOVERNMENT OF KARNATAKA,
KARMIKA BHAVANA, BANNERGHATTA ROAD,
BENGALURU - 560029.
3. THE DEPUTY LABOUR COMMISSIONER
REGION -02, KARMIKA BHAVANA,
BANNERGHATTA ROAD, BENGALURU - 560029.
4. MAHINDRA AEROSTRUCTURES WORKERS UNION
A TRADE UNION REGISTERED
UNDER THE TRADE UNIONS ACT, 1926





NO.51 BAGALAGUNTE, NEAR HAVANUR EXTENSION,
NAGASANDRA POST, BANGALORE - 560073,
REPRESENTED BY ITS PRESIDENT,
MR. JAYAKUMARA J.

...RESPONDENTS

(BY SRI M RAJKUMAR, AGA FOR R1 TO R3,
SMT AVANI CHOKSHI, ADV. FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER BEARING NO.L.D.277 I.D.M 2024 DTD
11.06.2024 PASSED BY THE R1 (ANNEXURE-K) TO THIS WP.

THIS PETITION, COMING ON FOR FURTHER HEARING,
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

ORAL ORDER

Heard the learned counsel for the petitioner, learned
Additional Government Advocate appearing for respondents
No.1 to 3 and the learned counsel appearing for respondent
No.4.

2. The petitioner-Management is before this Court
assailing the order bearing No.LD 277 I.D.M. 2024, dated
11.06.2024 passed by respondent No.1. In terms of the said
order marked at Annexure-K, respondent No.1 has directed
payment of Rs.6,000/- per month as interim wages in favour of
the workman of the petitioner/Management.



3. Learned counsel appearing for the petitioner would submit that such an order is impermissible as the order impugned is in violation of the law laid down by the Division Bench of this Court in the case of ***State of Karnataka vs BPL Group of Companies, Karmikara Sangha and others.***¹ Learned counsel would contend that the Government was required to form an objective opinion as to whether the industrial dispute exists or not and thereafter, it ought to have considered whether an emergent situation has arisen or not to pass an interim order pending dispute before the Labour Court/Industrial Tribunal.

4. Learned counsel further submits that the Government ought to have issued notice to the petitioner/Management as well as 4th respondent - Union before passing such an order.

5. Learned counsel appearing for 4th respondent - Union fairly submits that the State Government is required to afford an opportunity to the petitioner/Management as well as 4th respondent - Union before passing the order, as such, the

¹ (2003) 1 LLJ 131



order is passed in violation of the directions issued in the aforementioned Division Bench judgment.

6. Learned Additional Government Advocate appearing for respondents No.1 to 3 would contend that the order impugned is passed on 11.06.2024 and under the relevant provision of law, the order will be effective only for six months and same has spent its life. Thus, he would contend that since more than six months have elapsed, the order has spent its life and the writ petition has become infructuous.

7. The controversy involved in this case is squarely covered in terms of ratio in laid down in ***BPL Group of Companies supra***. In the said case, four questions were framed and questions No.i, ii, iii in the said judgment are relevant for discussion in the present case and they are extracted as under:

"(i) Whether, at the time of or after making a reference of an industrial dispute under S. 10(1) of the Act, it is incumbent on the part of the Government to pass orders in terms of S. 10-B of the Act?

(ii) Whether the powers conferred under S.10-B of the Act can be exercised by the State Government



even during the pendency of adjudication of a dispute before the Industrial Tribunal?

(iii) Whether the order to be passed under S.10-B of the Act is to be based on its objective or subjective satisfaction and as to whether it should be preceded by an opportunity of hearing to be granted to the workmen as well the management?

The findings are recorded in paragraphs No.18, 19, 20 and 21.

Those paragraphs are extracted as under:

*"18. Now again reverting to S.10-B of the Act, it is clear from its provisions that the power to issue orders regarding terms and conditions of service pending settlement of dispute can be exercised by the Government subject to fulfilment of certain conditions precedent. **Firstly, the Government can resort to this provision only after it has formed its opinion that an industrial dispute exists or apprehended and thereupon refer the same for adjudication to the Tribunal. Secondly, it is further to form an opinion that passing of an order under S.10-B is necessary or expedient to meet the emergent situations mentioned therein. The second condition requires the Government to form an opinion regarding existence of circumstances envisaged therein and such opinion can be formed only on the basis of data available with the Government.** Further, any order passed under S.10-B will necessarily have some civil consequences affecting interest of either of the disputing parties. Keeping in view these aspects, as even held by the Supreme Court though in the context of another provision as noticed above, it is appropriate and expedient to hold that the power of the Government under S.10-B of the Act cannot be said to be purely administrative or that it can be based*

(emphasis supplied)



on just subjective satisfaction of the Government.

19. In the case of S.L.Kapoor v. Jagmohan and ors., [(1980) 4 SCC 379: A.I.R. 1981 S.C. 136], it has been observed that wherever an action entails civil consequences, observance of principles of natural justice is imperative. Accordingly, we hold that before passing an order under S.10-B, it is incumbent upon the Government to at least afford workman and the management a reasonable opportunity of filing effective representations in the manner as indicated by the Supreme Court in the case of State of Assam, supra. Contrary view expressed by the learned Single Judge in the case of Kanoria Industries Ltd., Bagalkot v. State of Karnataka, [1996 (7) Kar. L.J. 638], is accordingly held to be per incuriam and is therefore overruled.

20. The next question is at what stage the Government can exercise its powers under Section 10-B of the Act. For dealing with this question, one thing has again to be borne in mind that the conditions precedent for exercise of jurisdiction to grant interim relief by the Government and that conferred on the Tribunal for the said purpose are materially distinct. The Government can pass interim order under Section 10-B of the Act only on forming opinion as to the existence of exigencies of maintaining public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment. The Government for invoking powers under Section 10-B is not required to enter into merits of the dispute and form any opinion in this regard. Whereas, the Tribunal can grant relief only on having judiciously determined that there exists strong prima facie case.



21. Keeping in view the above aspects, it is appears to be quite reasonable to hold that if the Government while making reference is of the opinion that the conditions precedent as envisaged under Section 10-B of the Act exists then only while making reference it can simultaneously or immediately pass order in terms of the said provision subject to observance of the principles of natural justice as indicated above. If it is not so done, then the power to grant interim relief will rest only with the Tribunal in terms of Section 10(4) of the Act. This view of ours find support in the judgment of the Madras High Court in the case of E.I.D. Parry (India) Ltd., v. Industrial Tribunal, Madras, [1993 (2) L.L.N. 166]".

(emphasis supplied)

8. From the aforementioned paragraphs, the following ratio emerge.

(a) once the dispute is referred to the Labour Court or the Tribunal, the Government will have no power to pass interim order under Section 10-B.

(b) If the Government chooses to exercise power under Section 10-B before referring the matter to the Labour Court or the Industrial Tribunal or simultaneously chooses to pass interim orders and refer the dispute to the Industrial Tribunal, the Government has to hear the Union as well as the Management before passing the interim order.



(c) While exercising power under Section 10-B, the Government has to arrive at a conclusion that the industrial dispute exists or industrial dispute is apprehended.

9. Admittedly, in this case while passing the impugned order, the Government has not heard the Management. Thus, the principles of natural justice are violated and the interim order which has got the civil consequence could not have been passed without hearing the Management.

10. In addition to that when the impugned interim order was passed, the matter was already pending consideration before the Labour Court/Industrial Tribunal. Hence, the Government could not have passed the interim order at all.

11. Though the Learned Government Advocate contends that the petition has become infructuous on the premise that six months have elapsed since the impugned interim order and its life span is only six months, what is required to be noticed is the operation of the impugned interim order is stayed by this Court as such, it cannot be said, the petition has become infructuous.



12. Since, this Court has already noticed that the impugned interim order is untenable, same has to be set-aside and accordingly, set-aside.

13. It is submitted that despite the law being settled in terms of ***BPL Group of Companies supra***, the orders are passed without noticing the ratio laid down. Hence, the Registry is directed to circulate the copy of this order to the Secretary, Department of Labour, Government of Karnataka.

14. Hence the following:

ORDER

- (i) The Writ Petition is ***allowed***.
- (ii) The impugned order bearing No.LD 277 IDM 2024 dated 11.06.2024 passed by 1st respondent - the Principal Secretary/ Deputy Special Officer (DO-06), Child Labour Cell to Department of Labour, Government of Karnataka is set-aside.
- (iii) The application filed by the Union pending before the Labour Court/Industrial Tribunal seeking interim measure shall be



considered by the Labour Court/Industrial Tribunal.

- (iv) Labour Court/Industrial Tribunal shall consider the said application without being influenced by the observations made by this Court as this Court has not expressed anything on the merits of the claim of the petitioner and respondent No.4.

**Sd/-
(ANANT RAMANATH HEGDE)
JUDGE**

BRN
List No.: 1 Sl No.: 31