

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.1049/2024 (L-RES)

BETWEEN:

M/S. ARMSTRONG DESIGN AND ACMITE
INDIA MANUFACTURING PRIVATE LIMITED,
INCORPORATED UNDER THE
COMPANIES ACT 1956/2013,
NO.41 B, 2ND PHASE,
PEENYA INDUSTRIAL ESTATE,
BENGALURU - 560058.
REPRESENTED BY ITS,
DIRECTOR AND CHIEF MANAGER -
FINANCE AND ADMINISTRATION,
MR. K.R. RAMASWAMY.

... PETITIONER

(BY SRI PRASHANTH B.K., ADVOCATE)

AND:

1. THE ASSISTANT LABOUR COMMISSIONER
DIVISION-2,
KARNATAKA STATE LABOUR INSTITUTE,
MANJUNATHANAGARA, BAGALAGUNTE,
BENGALURU - 560073.
2. ARMSTRONG DESIGN AND ACMITE INDIA
MANUFACTURING WORKERS UNION
REGISTERED UNDER THE TRADE UNIONS ACT, 1926,
TRADE UNIONS OFFICE, NO.138,
GROUND FLOOR, 9TH CROSS, 4TH MAIN,
CHAMARAJPET, BENGALURU - 560018
REP. BY ITS GENERAL SECRETARY
MR. RANGASWAMY G.

... RESPONDENTS

(BY SMT. RASHMI PATEL HCGP FOR R-1;
SRI T.S. ANANTHARAM, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 04/12/2023 PASSED BY THE RESPONDENT NO.1 IN ALCB-2/PTN/CR-1/2023-24 (ANNEXURE-P) TO THIS WRIT PETITION.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 18/01/2024 FOR ORDERS AND COMING FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

M/s. Arm Strong Design and Acmite India Manufacturing Pvt. Ltd. (hereinafter referred to as 'the company' for short) has assailed the order dated 04.12.2023 passed by respondent No.1, on the application filed by respondent No.2-union under Section 33 (4) of the Industrial Disputes Act, 1947 ('the ID Act' for short) recognizing all five workmen as "protected workmen" for the year 2023-24.

2. Application under Section 33 (4) of the ID Act was filed by respondent No.2-Union to decide upon the status of "protected workmen". The facts reveal that for certain acts of misconduct, charge-sheet-cum-show cause notice was issued to one workman, namely Umesha K.P., Departmental enquiry was initiated, pending enquiry, respondent No.1 declared five workmen employed by the petitioner namely,

- a) Hemanth Kumar-Vice President
- b) Rangaswamy .G-General Secretary
- c) Ravi Kumar .S-Assistant Secretary
- d) Umesh H.B.-Joint Secretary
- e) Vishwanath Reddy – Treasurer

as “protected workmen” for the year 2022-23. In the meanwhile, the enquiry held against Mr. Umesh K.P. was completed holding him guilty for the act of misconduct. Second Show-cause notice was issued calling upon him to show cause as to why the enquiry report and finding should not be accepted and acted upon. In the interregnum on 03.04.2023, respondent No.2-union submitted a letter to the petitioner-company to declare five of its office bearers and in place of one Ravi Kumar .S, Assistant Secretary, the name of the delinquent Umesh K.P. was included as “protected workmen” for the year 2023-24. Even before the petitioner would reply to the letter of respondent No.2, respondent No.2-union approached respondent No.1-Commissioner to decide upon the status of the “protected workmen”. This

being the state of affairs, the second show-cause notice issued to Umesha K.P. was replied, after taking into consideration all the material, the disciplinary authority dismissed Umesha K.P. from his services and the application was filed by the petitioner as required under Section 33 (2) (b) of the ID Act seeking approval of the order of dismissal. Pending consideration of that application, respondent No.1 has passed the order recognizing all the five office bearers by including Umesha K.P. as "protected workmen" for the year 2023-24.

3. Heard Sri Prashanth B.K., learned counsel for the petitioner, Smt. Rashmi Patel, learned HCGP for respondent No.1 and Sri T.S. Anantharam, learned counsel for respondent No.2.

4. It is the case of the petitioner that despite the request made by the petitioner-company seeking details about the general body, office bearers when they were elected and when it was decided to nominate those office

bearers as "protected workmen", respondent No.2-union did not submit any details/records and as such, respondent No.1 ought not to have declared five of those workmen as "protected workmen". The union seeking special status as "protected workmen" of his office bearers is duty bound to furnish the details sought by the employer and cannot refuse to give those particulars. Respondent No.2-union submitted the letter on 03.04.2023 to the petitioner to declare five of its office bearers and in place of one Ravi Kumar, the name of the delinquent Umesha K.P. was included as "protected workmen" for the year 2023-24.

5. Rule 62 (2) of the Industrial Disputes (Karnataka) Rules, 1957 similar to Rule 61 (1) of the Industrial Disputes (Central) Rules, 1957 specifies that every registered trade union shall communicate to the employer before the 30th of April every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union, should be recognized as "protected workmen", any change in the incumbency of any

such officer shall be communicated to the employer by the union within 15 days of such change. In the instant case, even before the petitioner could reply to the letter, respondent No.2-union approached respondent No.1 to decide the status of "protected workmen".

6. In terms of Section 33 (4), only those trade union can get their workmen get declared as "protected workmen" who are registered trade union under the Trade Unions Act, 1926 in accordance with Rule 62 (2) of the Industrial Disputes (Karnataka) Rules, 1957. Section 6 of the Trade Unions Act provides that the trade union shall not be entitled to be registered unless the executives of the trade union is constituted in accordance with the provisions of this Act and Rules thereof and also specifies the manner in which the members of the executives and other office bearers shall be appointed and removed. The said section clearly envisages that the registered trade union have to make its rules in respect of the matters specified in Sections 6(a) to 6(j),

including Rules for specifying the manner of appointment of the executive body of the trade union.

7. The union when seeking a special status of "protected workmen" of its office bearers, is duty bound to furnish the details sought by the employer and it cannot refuse to give those particulars. As envisaged under Section 6 of the Trade Unions Act, the names of those only office bearers can be communicated who have been appointed/elected in accordance with the rules of the trade union and if the employer has a doubt that the office bearers had not been appointed in accordance with the rules, he has every right to ask the trade union to provide him the details of appointment of the office bearers and the manner in which they have been elected or appointed. The status of the "protected workmen" is a privileged status which is granted by law for smooth functioning of the trade union. The status of a "protected workman" is given so that the office bearers, elected by the workmen, are not victimized by the employer only because they had been elected as office bearers of the

trade union. The "protected workmen" is provided safeguards against any action of management and the said safeguard is not available to the other workmen, thus the employer has every right to ensure that the status of the "protected workmen" sought for by the union is of genuine persons and the shield of "protected workmen" sought is not to be misused.

8. The material on record would reveal that the enquiry officer submitted enquiry report and findings on 19.03.2023 holding Umesha K.P. is guilty of charges and second show-cause notice was issued and the earlier list of "protected workmen" before 31.03.2023 was one Ravi Kumar, later in order to shield Umesha K.P., his name came to be included and submitted a letter on 03.04.2023 by respondent No.2-union even without waiting for reply which the Section enables to be granted, i.e., 15 days time. The material on record would clearly indicate that during the pendency of disciplinary proceedings, respondent No.2-union has sought inclusion of the name of Umesha K.P. as a "protected workman" for the year 2023-24. Though the

pendency of any disciplinary proceedings may not be considered sufficient to deny the status of "protected workmen", if it is proved in the disciplinary proceedings that a person is guilty of the allegations, or if a charge sheet is filed in a criminal case, after due investigation by the police, then in that event, it can be held that the said workman cannot be accorded the status of "protected workman". The Division Bench of this Court in ***M/s. Fouress Engineering (India) Ltd. Vs. Fouress Engineering Karmika Sangha and Anr.***¹ (*M/s. Fouress Engineering*) at paragraph Nos.14 and 15 has held as under:

"14. In the light of what is stated above, when the recognition of a workman as a 'Protected Workman' is not automatic, a certain amount of discretion is conferred on the employer to recognize or not to recognize a workman as a 'Protected Workman'. Such a discretion cannot be exercised by him according to his whims & fancies. If he chooses to recognize a particular workman as 'Protected Workman' probably the employer need not give any reasons, but if he wants to deny such a right to a

¹ ILR 2013 KAR 1531

workman or to the Union which has made the request, there should be a sufficient cause for refusing recognition. If a workman is dismissed from service on the ground of gross misconduct, it is in the interest of the Industry and the workmen, such persons are not given the benefit or a privilege to indulge in such misconduct. Otherwise, law abiding workmen would get frustrated. Similarly, if a person is charged with a criminal offence and facing criminal trial, if such person is given the status of 'Protected Workman' it only encourages people to indulge in such illegal activities. The whole object of conferring such a status of 'Protected Workman' is to see that they espouse the cause of workmen while dealing with the Management without any fear of reprisal. If persons who are already indulged in such act or given the status it would send wrong signals. In those circumstances, if a Management in order to maintain Industrial peace refuses to recognize them as 'Protected Workmen' they cannot be found fault with. When a Trade Union makes such a request, they should see that the persons to whom such protection is sought are law abiding workmen, who can fight for the cause of the workmen and who do not indulge in illegal activities. Therefore, a positive act specifically recognizing an employee as a protected workmen is required to be taken by the employer. There is an element of discretion vested with the employer in order to protect

the interests of the industry and maintain industrial peace which is in the interest of the workforce. Therefore, the rejection of the request for granting the status of a protected workmen either on the ground that there are criminal cases pending against them or on the ground that they are dismissed from service is a good ground and such an action cannot be found fault with.

15. In the instant case, the Union came into existence in the year 1988. On 15.6.1989 there was a strike in the second respondent-establishment. The workers were incited to strike, stop work and go slow. There was also riotous or disorderly behaviour within the factory premises. There was intimidation, assault of workmen or staff or superior who wanted to attend the work. It is in those circumstances criminal complaints were lodged against all the five persons on whose behalf the Union made a request for the status of protected workmen. Similarly, departmental enquiry was initiated against all of them. It is after the initiation of the departmental enquiry and criminal proceedings, an application was filed on 8.5.2000 requesting for recognizing these five persons as protected workmen. If the protection sought for had been given by the Management then even if they were found guilty in the departmental enquiry, the Management could not have proceeded against them

without seeking the permission of the Court, that is the object behind such request. The proceedings were concluded. Two of the aforesaid five persons were dismissed from service on 27.1.2001 on the proved misconduct. Because of the pendency of the departmental enquiry as well as criminal cases, the Management not at all considered their request in respect of all the five persons. It is in those circumstances, the Union approached the first respondent. The first respondent refused to extend the status of protected workmen in respect of the aforesaid two dismissed employees by its order dated 27.1.2001 though the said benefit was conferred on the other three persons. On the date the first respondent passed the order those two employees had been dismissed from service. It is stated that subsequently the Government has withdraw the criminal case lodged against them also. Be that as it may, it is in this background that the first respondent has refused to extend the benefit of protected workmen to those dismissed employees and the Management also refused to extend the said benefit. It cannot be said that their action is perverse or arbitrary. It is a lawful act on their part. It is also necessary to notice that the request for such recognition was made on 21.4.2000. If that request had been granted it would be in force from 1.5.2000 to 31.4.2001. That period is over. Therefore, the

learned Single Judge on 1.6.2006 was not justified in setting aside the order passed by the first respondent on the ground that the order of dismissal being subsequent to the date of application, that would not come in the way of they getting the benefit of status of protected workmen. He proceeds on the basis that when once such request has been made, the Management has no option but to grant the said recognition, which is not the correct legal position. Therefore, the order passed by the Learned Single Judge is contrary to law declared by the Apex Court as well as this Court and cannot be sustained."

9. The Co-Ordinate Bench of this Court in ***Wonderla Holidays Limited, Bengaluru Vs. Assistant Labour Commissioner, Bengaluru Division-1, Bengaluru and another***² (Wonderla) has held at paragraph No.25 as under:

"25. The reasoning given by the learned Commissioner is untenable for the following reasons:

Firstly, the law does not impose a condition that the workman can be denied the special status of a protected workman, if he/she is facing charges for serious offences. Even if charges are for "minor offences, such as assault, or wrongful restraint, or

² 2019 (1) Kar. L.J. 177

wrongful confinement”, causing hurt, or grievous hurt, even such offences are sufficient to disrupt industrial peace and harmony. Therefore, if a workman is facing charges even for minor offences, even then, he can be denied the special status of being a protected workman.

Secondly, Trade Union leaders are meant to be the role model for the rest of the workforce. Since they lead the workforce by their conduct, their conduct has to be above board. Therefore, their conduct has to be pristine. Moreover, by bestowing the special status of "protected workmen", certain privileges and protection are bestowed upon the individual workman. Hence, the quality of their behaviour and conduct has to be beyond doubt. Those who break the law, or commit misconduct cannot expect to be given the privilege and protection of being declared "protected workmen". Hence, it is not even necessary that a conviction should be recorded against the workman before he can be denied the special status of being a "protected workman". Therefore, the reasoning given by the learned Commissioner is unsustainable."

10. In the decisions stated supra in **M/s. Fouress Engineering** and **Wonderla** held that the recognition of the

workmen as "protected workmen" is not automatic, a certain amount of discretion is conferred on the employer to recognize or not to recognize a workman as a "protected workman" and even if the charges are for minor offences, even then the workman can be denied the special status of being "protected workmen".

11. In the instant case, the enquiry officer submitted his enquiry report on 19.03.2023, holding Umesha K.P. is guilty of charges and second show-cause notice was issued on 31.03.2023. It was only then that respondent No.2-union included Umesha K.P. in the list, replacing Ravi Kumar and submitted a letter to the management on 03.04.2023, even without waiting for the reply of the management, respondent No.2 filed petition before the Labour Court on 10.04.2023 seeking a declaration as "protected workmen". The Labour Commissioner has lost sight of this aspect and committed a serious error apparent on the face of record, if the delinquent workman facing disciplinary proceedings is bestowed with the status of "protected workman", it will nothing but encourage

the other workmen to indulge in such activities and get them protected under the shield of “protected workman”.

12. The reasoning accorded by the Assistant Labour Commissioner that the workman is neither facing charges of serious offences nor has been convicted by the trial Court is not justifiable and the matter requires to be reconsidered by the Labour Court by following settled principles of law regarding the entitlement of a workman to be declared as a “protected workman” in the facts stated supra.

13. In the result, the order passed by respondent No.1 warrants interference and accordingly, this Court pass the following:

ORDER

- i. Writ petition is ***allowed in part.***
- ii. Impugned order passed by respondent No.1 dated 04.12.2023 in ALCB-2/PTN/CR-1/23-24 is hereby ***quashed*** and the matter is remitted back to

respondent No.1 to pass appropriate order in accordance with law.

- iii. Parties to appear before respondent No.1 on **20.02.2024.**

**SD/-
JUDGE**

MBM