A RAJ KUMAR GUPTA

v.

LT. GOVERNOR, DELHI AND ORS.

NOVEMBER 5, 1996

B [J.S. VERMA, K. RAMASWAMY AND S.P. BHARUCHA, JJ.]

Labour Law :

Industrial Disputes Act, 1947 :

C *S. 34—Order of appropriate Government authorising Patron of Karamchari Sangh to file a complaint for offence punishable u/s. 25U—Held, valid—The appropriate Government may authorise some one other than itself, even a non-Government servant to file the complaint.*

D *Words and Phrases :*

Words "or under the authority of" occurring in s. 34(1) of Industrial Disputes Act, 1947—Meaning of.

Respondent no.1, the Lt. Governor of Delhi, passed an order E **under s. 34 of the Industrial Disputes Act, 1947 authorizing the appellant, the Patron of the Karamchari Sangh, to file a complaint against the employer—Companies, their Directors and the Regional Manager, the contesting respondents, for committing unfair labour practice punishable under s. 25-U of the Act. The Directors and the Regional Manager challenged the order before the High Court, which** F **allowed their writ petition in terms of the earlier judgment* wherein it was held that a complaint under s.34 of the Act could be filed either by the Government or its functionaries. Aggrieved, the appellant filed the present appeals before this Court.**

G **It was contended for the appellant that there was no justification for the High Court to read s.34 of the Act in a restricted manner. For the respondent, it was contended that only a delegate of the appropriate Government appointed under the provisions of s.39 of the Act could be authorised to file a compilation under s. 34.**

H **Allowing the appeal, this Court**

HELD : 1.1. There is no limitation in s.34 of the Industrial Disputes Act, 1947 in regard to the party to whom the authorisation may be given. It is the workman, the trade union and the employer who are most concerned with offences under the said Act and neither the terms of s. 34 nor public policy require that they should be excluded from making such complaints. At the same time, the provisions of s. 34 are in the nature of a limitation on the entitlement of a workman or a trade union or an employer to complain of offences under the said Act. They should not, in the public interest, be permitted to make frivolous, vexatious or otherwise patently untenable complaints, and to this end s.34 requires that no complaint shall be taken cognizance of unless it is made with the authorisation of the appropriate Government. [470 H, 471 A,B]

******Tobu Enterprises Ltd. and Ors.* **v.** *The Lt. Governor, Delhi, and Ors,* **53(1994) DLT 255, disapproved.**

S.N. Hada **v.** *The Binny Ltd., Staff Association,* **(1989) LAB. I.C. 165, approved.**

1.2. The words "or under the authority of" in s.34 necessarily must be given due meaning and the meaning is that the appropriate Government may authorise someone other than itself, even a non-Government servant, to file a complaint under s. 34. It cannot be said that these words are only clarificatory and are implication of the provisions of s.39. Section 39 empowers the appropriate Government to delegate the powers exercisable by it under the said Act. This is altogether different from the concept of authorisation to file a complaint under Section 34. [471 C-E]

Ishwar Singh Bagga and Ors **v.** *State of Rajasthan,* **[1987] 1 SCC 101, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8417 of 1994.

From the Judgment and Order dated 5.11.93 of the Delhi High Court in C.W.P. No. 1889 of 1991.

H.K. Puri, Rajesh Srivastava and Ujjwal Banerjee for the Appellant.

A S.K. Dholakia, Shiv Kumar and Pramod Dayal for the Respondents.

The Judgment of the Court was delivered by

BHARUCHA, J. On 16th April, 1991, the first respondent passed the following order, acting under the provisions of Section 34 of the B Industrial Disputes Act, 1947 (hereinafter referred to as 'the said Act"):

> "Whereas it has been made to appear to the Lt. Governor of the Union territory of Delhi that the management of M/s. Garden Silk Mills Ltd. Bella Mill Compound, Outside Seharagate, Surat (ii) Ms. Garden Silk Mills Ltd., 4959- C Kucha Rehman, Chandni Chowk, Delhi-6 have indulged in unfair labour practices as enumerated in the Fifth Schedule of the Industrial Disputes Act, 1947 and thereby contravened section 26-T of the aforesaid Act which is an offence punishable under section 25-D of the Act ibid.
>
> D
>
> 2. Now, therefore, in exercise of the powers conferred under section 34 of the said Act read with the Government of India, Ministry of Home Affairs Notification No. 2/2/61-Judl.1 dated the 24th March, 1961 and after having considered the matter carefully, the Lt. Governor of the Union Territory of E Delhi, is pleased to authorise Shri Raj Kumar Gupta, Patron, Garden Silk Mills, Karamchari Sangh (Regd), 5239-Ajmeri Gate, Delhi to file a complaint in the court of competent jurisdiction, against the above said establishment and the following of its Officers, which is punishable under section 25-U of the Industrial Disputes Act, 1947, as amended up- F to-date.
>
> | | | |
> |---|---|---|
> | (i) | Sh. Praful A. Shah | Managing Director, Garden Silk Mills Ltd,., Bella Mill Compound, Outside Seharagate, Surat. |
> | G | | |
> | (ii) | Sh. S.J. Bhesania | Whole time Director, Garden Silk Mills Ltd., Bella Mill Compound, Outside Seharagate, Surat. |
> | H (iii) | Sh. I.P. Singh | Regional Manager, Delhi. |

Garden Silk Mills Ltd., 4959- Kucha Rehman, Chandni Chowk, Delhi-6." A

The order was challenged by the employer (the third respondent) in a writ petition filed in the High Court of Delhi. The writ petition was allowed by the order under appeal, which reads thus: B

> "In view of our judgment in C.W.P. No. 1715 of 1991 (*M/s. Tobu Enterprises Limited and others* v. *The Lt. Governor, Delhi, and others*) the impugned order is bad in law and is set aside. There will be no order as to costs. Rule is made absolute." C

This appeal by special leave is filed by the person to whom the authorisation under Section 34 was given :

Section 34 reads thus: D

> "34. Cognizance of offences—(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government. E
>
> (2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act."

In the case of M/s. Tobu Enterprises Limited, the only question F which arose for consideration was whether a private person could be authorised under Section 34 to file a complaint for an offence under Section 25-U of the said Act. Section 25-U prescribes the penalty for committing an unfair labour practice. The Delhi High Court came to the conclusion that under the provisions of Section 34, the appropriate Government could G file the complaint itself or the complaint could be filed under its authority, but there could not be two extremes, that is, either the appropriate Government itself filed the complaint or it could authorise any private party to do so. The complaint had to be filed either by the appropriate Government or its functionaries. If the authority to file a complaint was given to a private person it was likely to be abused. There would be no H

A check on the complainant to prosecute the complaint with due diligence. He would not be interested in a fair trial and might be actuated by personal vendetta against the accused, frustrating a fair and speedy trial. The appropriate Government had to have control over the whole of the prosecution.

B The Delhi High Court found itself unable to agree with the view taken to the contrary by a Full Bench of the Karnataka High Court in *S.N. Hada* v. *The Binny Ltd. Staff Association,* 1989 LAB. I.C. 165. The indentical question had been raised before the Full Bench of the Karnataka High Court and the Full Bench held that if the view was taken that only the Government or its agent could file the complaint, then the provisions C of Section 30, providing for the filing of the complaint by or on behalf of a trade union or a business which was affected, would become redundant. This could not have been the intention of the legislature. Viewed from any angle, the Full Bench found it difficult to hold that under Section 34 a private body or a person other than an agent of the Government could not D be authorised by the Government to file a complaint.

Section 30 reads thus:

"30. Penalty for disclosing confidential information.—Any E person who wilfully discloses any such information as is referred to in section 21 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand F rupees, or with both."

Learned counsel for the appellant relied upon the decision of the Full Bench of the Karnataka High Court and submitted that there was no justification for reading Section 34 in a restricted manner, as had been G done by the Delhi High Court in the case of M/s. Tobu Enterprises Ltd.

Learned counsel for the employer submitted that the words "under the authority of the appropriate Government" in Section 34 were only clarificatory and an amplification of the provisions of Section 39.

H Section 39 reads thus:

"39. Delegation of powers.- The appropriate Governments may, by notification in the official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification."

In learned counsel's submission, only a delegate of the appropriate Government appointed under the provisions of Section 39 could be authorised by the appropriate Government to file a complaint under Section 34. There was, in any event, an implied limitation in Section 34, having regard to the nature of a criminal prosecution and the general policy that a prosecution could only be at the instance of the Government. Learned Counsel cited the judgment of this Court in *Ishwar Singh Bagga and Ors.* v. *State of Rajasthan,* [1987] 1 SCC 101, upon which the Delhi High Court had relied in the case of M/s. Tobu Enterprises Ltd.

Ishwar Singh Bagga's case related to the provisions of Section 129-A of the Motor Vehicles Act, 1939, which dealt with the power to detain vehicles used without certificate of registration or permit. Section 129-A provided, "Any police officer authorized in this behalf or other person authorized in this behalf by the State Government may...seize and detain the vehicle.." It was held by this Court that the expression "other person" in Section 129-A had to be read ejusdem generis with the expression "any police officer" which preceded it. The expression could refer only to an officer of the Government and not to an officer or employee of a statutory corporation or any other private person. Having regard to the nature of the power conferred by Section 129-A, it could not have been the intention of the Legislature to confer such power on persons who were not officers of the Government. If it had been so intended, the provision would have so stated. Ordinarily, whenever a statute empowered the Government to

A appoint persons to administer any of the provisions of a statute, the persons who could be so appointed by the Government could only be persons appointed in connection with the affairs of the State. In other words, they would be employees or officers of the Government who were directly subject to its administrative and disciplinary control. The powers of search, seizure and detention of vehicles belonging to private parties under Section B 129-A and of launching prosecutions in that regard were incidental to the sovereign powers of the State and they could not ordinarily be entrusted to private persons unless the statute concerned made express provision in that behalf. It was a different matter if a private person, on his own, filed a complaint before a Magistrate and wished to establish a criminal charge. In such a case the private person would not be investigating into the crime C with the aid of the statutory powers of search, seizure or detention.

In our view, the judgment in *Ishwar Singh Bagga's case* is clearly distinguishable. The provisions of section 129-A of the Motor Vehicles Act deal with the power to seize and detain vehicles. This is the police power of the State. It was in the context of this power that it was held by D this Court that the "other person" would be exercising the sovereign powers of the State and therefore, should be an employee of the State. This view was reinforced by reading the words "other person" ejusdem generis with the words "any police officer" used in the provision just earlier. This Court noted that a private person could file the complaint but he would not be entitled to the powers of search, seizure and detention conferred by E Section 129-A. It was, therefore, the nature of the power conferred by Section 129-A which led this Court to hold that "other person" in Section 129-A meant an employee of the Government.

Penalties under the said Act are prescribed for the offences of illegal F strikes and lock-outs (Sections 26,27 and 28), of breach of a settlement or award (Section 29), of disclosing confidential information (Section 30), of closure without notice (Section 30A), and of altering conditions of service pending proceedings (Section 31 read with Section 33). These offences most closely concern workmen, the representative trade unions and employers.

G

The provisions of Section 34 require that no court shall take cognizance of any offence punishable under the said Act or of the abetment of such offence save on a complaint made by the appropriate Government or under the authority of the appropriate Government. There is no limitation therein in regard to the party to whom the authorisation may be given. It H is the workman, the trade union and the employer who are most concerned

with offences under the said Act and neither the terms of Section 34 nor public policy require that they should be excluded from making such complaints. A

At the same time, the provisions of Section 34 are in the nature of a limitation on the entitlement of a workman or a trade union or an employer to complain of offences under the said Act. They should not, in the public interest, be permitted to make frivolous, vexatious or otherwise patently untenable complaints, and to this end Section 34 requires that no complaint shall be taken cognizance of unless it is made with the authorisation of the appropriate Government. B

The argument that the words "or under the authority of" in Section 34 (1) are only clarificatory and an amplification of the provisions of Section 39 must be rejected. Section 39 empowers the appropriate Government to delegate the powers exercisable by it under the said Act. This is altogether different from the concept or authorisation to file a complaint under Section 34. If the powers under Section 34 have been delegated under Section 39, the delegate can file the complaint himself or authorise someone else to file it. Learned counsel's argument, if accepted, would render the words "or under the authority of" in Section 34 otiose and that is impermissible. These words necessarily must be given due meaning and the meaning is that the appropriate Government may authorise someone other than itself, even a non-Government servant, to file a complaint under Section 34. C D E

Learned counsel submitted that, in any event, the writ petition should be remitted to the Delhi High Court because contentions had been taken therein which had not been dealt with in the order under appeal. We see no good reason to do so, but we make it clear that it shall be open to those against whom the complaint is filed to take all available defence before the criminal court. F

In the result, the appeal is allowed. The order under appeal is set aside. The writ petition filed before the Delhi High Court is dismissed. There shall be no order as to costs. G

R.P. Appeal allowed.