

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 229 OF 2021 (L-RES)

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BETWEEN:

M/S INTERNATIONAL TRIMMINGS AND LABELS
INDIA PRIVATE LIMITED
NO. 463/1, KIADB MAIN ROAD,
4TH PHASE, PEENYA INDUSTRIAL AREA,
BANGLAORE - 560058,
REPRESENTED BY ITS MANAGING DIRECTOR,
MR. PRASANNA M HEGDE.

...PETITIONER

(BY SRI PRASHANTH B.K, ADVOCATE)

AND:

1. THE ADDITIONAL CHIEF SECRETARY TO
DEPARTMENT OF LABOUR,
GOVERNMENT OF KARNATAKA,
VIKASA SOUDHA, DR. AMBEDKAR VEEDHI,
BANGALORE - 560001.
2. THE LABOUR COMMISSIONER,
GOVERNMENT OF KARNATAKA,
KARMIKA BHAVANA, BANNERGHATTA ROAD,
BANGALORE - 560 029.
3. THE ADDITIONAL LABOUR COMMISIONER (IR),
GOVERNMENT OF KARNATAKA,
KARMIKA BHAVANA, BANNERGHATTA ROAD,
BANGALORE - 560 029.
4. INTERNATIONAL TRIMMINGS AND
LABELS INDIA EMPLOYEES ASSOCIATION,
NO. 138, GROUND FLOOR,
9TH CROSS, 4TH MAIN, CHAMARAJPET,
BANGALORE - 560018.
REPRESENTED BY ITS PRESIDENT

...RESPONDENTS

(BY SRI M RAJAKUMAR, AGA FOR R1 TO R3,
SRI G V P REDDY, ADVOCATE FOR R4)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 07.12.2020 PASSED BY THE R-1 ANNEXURE-N TO THIS WRIT PETITION.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24TH MARCH, 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV JUDGMENT

Whether Section 34*¹ of the Industrial Disputes Act, 1947 ("Act, 1947") can be invoked to seek authorisation for prosecution, for an alleged violation of the provisions of the Act, 1947 even before adjudication of the underlying '*industrial dispute*' arising out of such alleged violation?

2. If so, whether the appropriate Government can defer the consideration of such application under Section 34 of the Act, 1947, till the '*adjudication of the dispute*' under Section 10 of the Act, 1947?

3. These two questions arise in this petition where the petitioner-Establishment seeks to quash the order dated 07.12.2020 passed under Section 34 of the Act, 1947 granting

¹ Wrongly quoted as Section 31 in the impugned order

authorisation to prosecute the petitioner, for alleged violation of Section 25M of the Act, 1947.

FACTS:

4. The petitioner–Establishment employed about 157 employees and 112 among them were workmen. The petitioner–Establishment laid-off 61 workmen during the COVID-19 pandemic. The decision to lay-off 61 workmen was taken on 5th May, 2020.

5. The said lay-off is the subject matter of an industrial dispute pending adjudication before the Tribunal/Labour Court.

6. On a complaint by the Union alleging violation of Section 25M of the Act, 1947, the Labour Commissioner submitted a report to the appropriate Government. Acting thereon, the appropriate Government, in terms of the impugned order has accorded sanction under Section 34 of the Act, 1947 to prosecute the petitioner.

7. The petitioner’s contention that the Covid-19 pandemic is a “natural calamity”, as such, the decision to lay-

off does not require prior permission under Section 25M of the Act, 1947, is rejected. Thus, the petitioner is before this Court.

8. Submissions on behalf of the petitioner:

(8.1) The impugned order is vitiated by non-application of mind. The appropriate Government has mechanically acted upon the report of the Labour Commissioner, without independently examining whether a case for prosecution is made out or not.

(8.2) The decision to lay-off 61 workmen was taken in during the COVID-19 pandemic, which according to the petitioner, is a "natural calamity" and, as such, there is no need to seek permission from the appropriate Government, under Section 25M of the Act, 1947.

(8.3) The question relating to the validity of the lay-off is pending adjudication before the Labour Court and unless the said adjudication takes place, the application under Section 34 of the Act, 1947 is not maintainable.

9. Contentions on behalf of the respondents:

(9.1) The prior permission under Section 25M of the Act, 1947 is mandatory to lay-off the workmen and admittedly, no

such permission was obtained. Thus admittedly, there is violation of Section 25M of Act, 1947.

(9.2) The proceeding under Section 34 of the Act, 1947 is independent of the finding in adjudication proceeding under Section 10 of the Act, 1947 and appropriate Government can proceed under Section 34 of the Act, 1947, notwithstanding the pendency of adjudication proceeding under Section 10 of the Act, 1947.

CONSIDERATION

10. Admittedly, the petitioner has not obtained prior permission under Section 25M of the Act, 1947 before the lay-off was effected. The justification put forth by the petitioner is that, the lay-off was occasioned by the COVID-19 pandemic, which according to the petitioner is a "natural calamity", under Section 25M of the Act, 1947 and the prior permission is not required.

11. Whether the COVID-19 pandemic would fall within the scope of "natural calamity" under Section 25M of the Act, 1947 or the lay-off is otherwise justified without there being a prior permission, are matters which are presently pending adjudication before the Tribunal/Labour Court under Section 10

of the Act, 1947. This Court does not propose to examine the said issue in this petition.

12. The petitioner contends that the proceeding under Section 34 of the Act, 1947 should await the adjudication under Section 10 of Act, 1947, when the dispute under Section 10 of the Act, 1947 is on the same allegation of the violation complained of under Section 34 of the Act, 1947.

13. The petitioner's contention that criminal prosecution cannot be initiated under Section 34 of the Act, 1947 pending adjudication of the dispute under Section 10, where the allegations in both proceedings are one and the same cannot be accepted in absolute terms. In appropriate cases, there can be simultaneous proceedings under Sections 10 and 34 of the Act, 1947. In some cases, the simultaneous proceedings may not be desirable.

14. While considering such a question on permissibility of simultaneous criminal prosecution pending adjudication proceeding, in the context of two different enactments, the Apex Court in ***P. Jayappan v. S.K. Perumal, First Income Tax Officer***², and ***Radheshyam Kejriwal v. State of West***

² 1984 (Supp) SCC 437

Bengal and another³ has held that such criminal prosecution pending adjudication of dispute is permissible. On behalf of the respondent-Union, these two judgments are cited to justify the simultaneous application under Sections 10 and 34 of the Act, 1947.

15. In **P. Jayappan** (*supra*), the Apex Court was considering Section 276-C of Income Tax Act, 1961 (Act, 1961) and in **Radheshyam Kejriwal** (*supra*), Section 56 of the Foreign Exchange Regulation Act, 1973 (Act, 1973). In both the enactments, the provisions of law provide for simultaneous criminal prosecution pending adjudication of a claim or liability under the said Acts.

16. Section 276-C of Act, 1961 which provides for criminal prosecution, uses the expression "**without prejudice to any penalty that may be imposable on him under any other provisions of this Act**". Likewise, Section 56 of the Act, 1973, uses the expression "**Without prejudice to any award of penalty by the adjudicating officer under this Act**".

³ (2011) 3 SCC 581

17. From the language employed in the aforementioned two provisions, it is explicit that, the simultaneous criminal prosecution for the violation of the provisions of the aforementioned two Acts, even before the adjudication takes place on the claim or liability under the respective Acts, is expressly provided.

18. In the Act, 1947 there is no provision which uses similar expression which expressly provides for simultaneous criminal prosecution and adjudication of a claim or liability under the Act, 1947. Thus, in a way it is possible to urge a contention that, the simultaneous prosecution pending adjudication of the dispute alleging violation of the provisions of the Act, 1947 is not permissible.

19. At the same time, one has to notice that there is no provision which specifically bars simultaneous criminal prosecution pending adjudication of any claim or liability by any other authority/Tribunal/Court under the Act, 1947.

20. To answer the questions raised, the Court has to keep in mind the object of the Act, 1947. One of the objects is to provide efficacious remedy to the workmen against the violations of the provisions of the Act, 1947. At the same time,

among other, the Act, 1947 also aims in securing industrial peace.

21. If these two aspects are borne in mind, it is not permissible to accept the contention that the complaint under Section 34 alleging violation of the provisions of the Act, 1947 is permissible only in a situation where the adjudication gets concluded by the authority/Court/Tribunal relating to the violation of the provisions of the Act, 1947.

22. At the same time it is not possible to accept the contention that every application alleging violation of the provisions of the Act, 1947, seeking permission to prosecute for alleged violation of the provisions of the Act, 1947, will have to be allowed pending adjudication of the dispute arising from such violations of the provisions of the Act, 1947.

23. Both contentions referred to above are extreme contentions and such an interpretation also does not augur well with the object and purpose of Section 34 of the Act, 1947.

24. At this juncture, it is relevant to notice the ratio in ***Radheshyam Kejriwal*** (*supra*), where the Act, 1973 expressly

provided simultaneous prosecution. Paragraph No.38 of the said judgment reads as under:

"38. *The ratio which can be culled out from these decisions can broadly be stated as follows:*

- (i) *Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) *Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) *Adjudication proceedings and criminal proceedings are independent in nature to each other;*
- (iv) *The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*
- (v) *Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;*
- (vi) *The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and*
- (vii) *In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."*

(emphasis supplied)

25. The ratio is laid down in the context of Act, 1973. Section 56 of said Act, 1973 which provides for simultaneous

criminal prosecution and uses the expression "without prejudice to any award of penalty by the adjudicating officer under the Act."

26. Even though the Act, 1973, provides for simultaneous criminal prosecution, in addition to penalty by the adjudicating authority, the Apex Court in paragraph No. 38(vi) of the aforementioned judgement has held that, where the person is exonerated on merits, criminal prosecution is unwarranted.

27. This Court is dealing with Section 34 of the Act, 1947. As already noticed, *there is no provision in the Act, 1947 which expressly provides for simultaneous criminal prosecution or expressly bars simultaneous criminal prosecution pending adjudication of an industrial dispute.*

28. In the instant case the adjudication under Section 10 of the Act, 1947 is not yet over and is still pending consideration.

29. It is true that the expression "without prejudice to any award of penalty by the adjudicating officer under the Act," found in the Act, 1973 or any other similar expression conveying similar meaning is not used in Section 34 of the Act,

1947. However, as already noticed, the provision if analysed under the scheme of the Act, 1947, is there to provide an additional remedy to an aggrieved party to initiate a criminal prosecution (after obtaining authorisation), in the event of violation of the provisions of the Act, 1947 which attract penal consequences. At the same time, one should not lose sight of the fact that the Act, 1947, also aims at securing industrial peace over unrest and confrontation.

30. Precisely for these reasons, though the application under Section 34 of the Act, 1947, to seek authorisation to prosecute the person who violates the provisions of the Act, 1947, which attract penal consequences is maintainable, sufficient safeguard is also built in the provision to prevent indiscriminate criminal prosecution and the abuse of the said provision. The aforesaid view is evident from the manner in which Section 34 of the Act, 1947 is couched, where there is a requirement to obtain authorisation to lodge the complaint.

31. The appropriate Government acting under Section 34 of the Act, 1947, is required to apply its mind before passing any order on the application under Section 34 of the Act, 1947 and in this behalf the law is well settled.

32. The appropriate Government has to apply its mind to ascertain whether a *prima facie* case is made out alleging violation of the provision of the Act, 1947 which attracts penal consequence under Section 34 of the Act, 1947.

33. Cases where the violation is *prima facie* established, or not established, or, where the alleged violation is doubtful and requires a finding by the adjudicatory authority, cannot be enlisted exhaustively. Suffice it to say that such consideration depends on the materials placed before the appropriate Government alleging violation or denying the allegation of violation.

34. Based on the materials placed before it, the appropriate Government has to take the decision as to whether the permission to prosecute has to be accorded, or has to be rejected or has to be deferred until the adjudication takes place before the adjudicating authority. In any case, the order has to be supported by reason/s.

35. Learned counsel for the contesting respondents have placed reliance on the judgment in ***Bhushan Power and Steel Limited vs Grid Corporation of Orissa***⁴ rendered by

⁴ ***Appeal No.226/2015***

the New Delhi Electricity Appellate Tribunal to contend that the expression “natural calamity” used in explanatory clause is not followed by the expression “such other circumstances”.

36. In addition, the learned counsel also placed reliance on the judgment of the Delhi High Court in ***Halliburton Offshore Services Inc. vs Vedanta Limited and Another***⁵ to contend that *force majeure* clause should be construed narrowly and not broadly.

37. Reliance is also placed on the judgment of the Apex Court in ***Papnasum Labour Union vs Madura Coats Limited and another***⁶.

38. The Court has considered the ratio laid down in the aforementioned judgments. The questions raised in the present petition are not answered in the aforementioned judgments.

39. Learned Counsel for the petitioner would urge that if simultaneous proceedings are permitted, there is a possibility of conflicting orders/findings.

40. As to the effect or consequence of any finding by the appropriate Government on the question as to whether or

⁵ **2020 SCC OnLine Del 542**

⁶ **AIR 1995 SC 2200**

not COVID-19 pandemic would be a “natural calamity” or not, under Section 25M of the Act, 1947, where same question is pending adjudication under Section 10 of the Act, 1947, there is no difficulty in holding that the provisions of Sections 34 to 37 of the Bharatiya Sakshya Adhiniyam, 2023 would guide the course of action in such an eventuality.

41. Learned counsel for respondent No.4 has also placed reliance on the judgment of the Apex Court in ***Mysore Structurals Limited and others vs State of Karnataka and Anr***⁷ to urge that once prima facie satisfaction is recorded on the allegation of violation of the provisions of the Act, 1947, the order granting permission to prosecute should not be interfered with.

42. In the aforesaid case the application under Section 34 of Act, 1947, was filed for not complying with the award which has attained finality. Section 29 of the Act, 1947 expressly provides for penal consequence in case of breach of the settlement or award. Thus, in the said case, the breach was apparent, as admittedly award was not satisfied. Hence, the ratio in the said case cannot have the application in the present

⁷ **2002 (1) SCC 477**

case as the petitioner has raised a defence citing Covid-19 pandemic as a natural calamity.

43. From the discussions and reasons recorded supra, the following principles would emerge:

- (a) *The application under Section 34 of the Act, 1947 seeking authorisation to initiate criminal proceedings is maintainable, even before the adjudication takes place on the allegations relating to violation of the provisions of the Act, 1947 which attract penal consequences under the Act, 1947.*
- (b) *Mere allegation of violations of the provisions of the Act, 1947 by itself does not mandate the appropriate Government to accord sanction to prosecute. The grant of sanction or rejection of application under Section 34 of the Act, 1947 is not an empty formality. The appropriate Government is required to arrive at an independent satisfaction before passing orders on such application. The reason/s for granting or rejecting such application must be forthcoming in the order.*
- (c) *In deserving cases, the appropriate Government may take a view that the application seeking permission to*

*prosecute the concerned, for the violation of the provisions of the Act, 1947, relating to alleged violation, has to be **allowed** or **rejected** pending consideration before the adjudicating authority/Court/Tribunal. Such an order must be supported by the reason/s.*

*(d) In deserving cases, the appropriate Government may take a view that the application seeking permission to prosecute for the violation of the provisions of the Act, 1947, for the reasons to be recorded has to be **deferred**, pending consideration of the dispute relating to alleged violation pending before the adjudicating authority/Court/Tribunal.*

(e) In which case, the application under Section 34 of the Act, 1947 has to be allowed, or rejected or deferred cannot be explained exhaustively. Such consideration depends on the materials placed before the appropriate Government alleging violation or denying the allegation of violation. In any case, the order under Section 34 of the Act, 1947 has to be supported by the reason/s.

44. In the present case, the very question as to whether there is a contravention of Section 25M of the Act,

1947 is seriously disputed on the premise that the case is covered under second part of Section 25M(1) of the Act, 1947 which exempts application seeking permission under certain circumstances. In such circumstances, it was incumbent upon the appropriate Government to consider:

- the nature of the allegation and the defense;
- the pendency of adjudicatory proceeding and the questions raised in such proceeding; and
- whether a *prima facie* case for grant / rejection of application for prosecution is made out or not, or whether the appropriate Government is required to defer the consideration of the said application till the adjudication of the dispute under Section 10 of the Act, 1947 or not.

45. It is also noticed that the impugned order does not assign reasons for according sanction to prosecute. The Full Bench of this Court in ***S. N. Hada & Others vs The Binny Limited Staff Association***⁸ has held that the order granting sanction to prosecute under Section 34 of the Act, 1947 must be supported by reasons.

46. In the instant case, the appropriate Government has not assigned the reasons for allowing the application except

⁸ ***ILR 1987 Kar 3762***

recording a statement that the application is perused in detail, in addition to referring to the report dated 24.08.2020 of the Labour Commissioner. There is no independent application of mind and independent reasons assigned for passing the impugned order. Hence, the impugned order has to be set aside.

ORDER

- (i) The Writ Petition is ***allowed in part***.
- (ii) The impugned order dated 07.12.2020 marked at Annexure-N passed by respondent No.1 granting authorisation for prosecution under Section 34 of the Industrial Disputes Act, 1947 is quashed.
- (iii) The Appropriate Government to reconsider the application afresh in accordance with law and pass appropriate orders, keeping in mind the observations made above.
- (iv) The exercise shall be completed within three months from the date of receipt of a copy of this order.
- (v) No order as to costs.

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

BRN