IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE K.S.BHARATH KUMAR

WRIT APPEAL NO.79 OF 2024 (L-RES)

BETWEEN:

THE AUMA INDIA EMPLOYEES ASSOCIATION
24, MADHUVANTI
1ST FLOOR
1ST A CROSS
CHIKKABOMMASANDRA
NEW TOWN
YELAHANKA
BENGALURU 560 065
REPRESENTED BY ITS SECRETARY

...APPELLANT

(BY SRI. VILAS RANGANATH DATAR, ADVOCATE)

AND:

1. THE SECRETARY TO GOVERNMENT
   DEPARTMENT OF LABOUR
   VIKASA SOUDHA
   BENGALURU-560 001

2. THE AUMA INDIA

Digitally signed by PAVITHRAN
Location: High Court of Karnataka

PLOT NO.38/A AND 39/B
2ND PHASE
PEENYA INDUSTRIAL AREA
BENGALURU-560 058
REPRESENTED BY ITS HEAD-RESOURCES
SRI. VINAY M.S.

…RESPONDENTS

(BY SRI. BYREGOWDA N., AGA FOR R1;
SRI. S.N.MURTHY, SENIOR COUNSEL FOR
SRI. SOMASHEKAR, ADV. FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO CALL FOR THE RECORDS IN WP No.3473/2018 AND ON PERUSAL OF THE SAME BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER DATED 08.12.2023 PASSED BY THE LEARNED SINGLE JUDGE TO DISMISS THE SAID WRIT PETITION.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.10.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE K.S.BHARATH KUMAR

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This Writ Appeal is filed challenging the order dated 08.12.2023 passed by the learned Single Judge in Writ Petition No.3473/2018 (L-RES), whereby the order dated 10.01.2018 passed by the Secretary to Government granting permission to prosecute respondent No.2 under Section 34 of the Industrial Disputes Act, 1947 was quashed.

2. We have heard Shri. Vilas Ranganath Datar, learned counsel appearing for the appellant, Shri. S.N. Murthy, learned senior counsel as instructed by Shri. Somashekar, learned counsel appearing for respondent No.2 and Shri. Byregowda N, learned Additional Government Advocate appearing for respondent No.1.

3. The learned counsel appearing for the appellant submits that the appellant is a registered Trade Union representing workmen employed in respondent No.2 - establishment, which is engaged in the manufacture of electrical actuators and gearboxes. A settlement was

entered into between the Management and the workmen under Section 12(3) read with Section 18(3) of the Industrial Disputes Act in the year 2010, for the period ending on 31.03.2015. Before its expiry, the appellant submitted a Charter of Demands dated 17.02.2014. By order dated 24.02.2015, the State Government referred the dispute concerning the Charter of Demands to the Industrial Tribunal, Bengaluru, for adjudication.

4. The appellant had submitted a complaint dated 28.08.2013 to the State Government alleging unfair labour practices by the Management and seeking permission to prosecute respondent No.2. The State Government sought clarification from the Labour Commissioner, pursuant to which the Assistant Labour Commissioner called upon the parties to submit their responses and furnished a report dated 27.04.2017. Thereafter, a meeting was convened on 15.12.2017 pursuant to a notice dated 07.12.2017. By order dated 10.01.2018, the State Government granted permission to prosecute the Management, recording that discretionary payment of rewards resulted in differentiation

and violation of the Standing Orders, leading to inducement of members to leave the Union. The Management challenged the said order in Writ Petition No.3473/2018.

5. The learned Single Judge held that Section 34 of the Industrial Disputes Act is intended to prevent frivolous and harassing prosecutions and requires the appropriate Government to apply its mind to the relevant material before making a complaint or authorising its Institution. The Government must independently satisfy itself that the facts warranting prosecution exist and that Institution of the complaint is expedient. On examining the complaint, the learned Single Judge found that the allegations related to interference with the workmen's right to organise, discrimination affecting trade union membership, contracting out regular work, transfers, failure to implement an award, settlement or agreement and refusal to bargain collectively in good faith. It was found that the complaint did not contain an allegation concerning payment of rewards to induce members to leave the Union. However, permission for prosecution had been granted on the basis of discriminatory

payment of rewards inducing members to leave the Union, rather than on the allegations contained in the complaint. The order also failed to specify the clauses of the Fifth Schedule allegedly violated.

6. The learned Single Judge further found that the State Government had acted upon the Labour Commissioner's recommendation without independently considering the material before it. Though the Government could accept and act upon the report, the statutory responsibility to decide whether prosecution should be authorised vested in the Government and could not be exercised by the Labour Commissioner. Holding that the order did not disclose independent application of mind or adequate reasons addressing the substance of the matter, the learned Single Judge quashed the order dated 10.01.2018.

7. The learned counsel appearing for the appellant contends that the learned Single Judge erred in treating the grant of permission under Section 34 of the Industrial Disputes Act as a quasi-judicial exercise. It is contended that

the decision is administrative in nature and requires only *prima facie* satisfaction that prosecution is warranted, without detailed reasons or adjudication of the allegations on merits. The State Government had independently considered the complaint, the Management's objections and the departmental reports, after affording both parties an opportunity of hearing**.** The fact that the authority did not accept all the allegations, but confined the permission to discriminatory payment of rewards and the consequent inducement to leave the Union**,** demonstrated application of mind.

8. It is contended that the substance of the order disclosed the alleged unfair labour practices and that omission to expressly specify the relevant clauses of the Fifth Schedule did not justify quashing the permission. Undue or excessive increments and rewards were alleged to constitute wage increases intended to induce workmen to relinquish their Union membership. Whether such payments amounted to inducement, discrimination or unfair labour practices was a matter to be established by evidence before

the jurisdictional Magistrate. It is therefore contended that that the learned Single Judge entered into the merits and failed to properly consider the decisions relied upon concerning the scope of the power under Section 34 of the Industrial Disputes Act.

9. It is further contended that the departmental reports constituted internal administrative assistance obtained to ascertain the *prima facie* veracity of the allegations which were not required to be furnished to the parties. It is also contended that Section 89 of the Industrial Relations Code, 2020 does not govern the present proceedings, which arose from a complaint made in 2013, before the Code came into force.

10. The learned counsel appearing for the appellant has placed reliance on the following decisions:-

- ***Raj Kumar Gupta v. Lt. Governor, Delhi*** reported in ***AIR 1997 SC 2680***;
- ***State of Bihar v. P.P. Sharma*** reported in ***1992 Supp (1) SCC 222***;
- ***Mysore Structurals Ltd. v. State of Karnataka*** reported in ***(2002) 1 SCC 477***, and

- ***S.N. Hada v. The Binny Limited Staff Association*** reported in ***ILR 1987 KAR 3762 (FB)***.

11. The learned Additional Government Advocate appearing for respondent No.1 contends that the Management had been issued notice and had submitted its reply to the Union's complaint. It is submitted that sufficient opportunities of hearing were afforded and that the order dated 10.01.2018 granting permission for prosecution was passed after considering the objections and submissions of both parties.

12. The learned senior counsel appearing for respondent No.2 submits that the State Government granted permission for prosecution solely on the clarification furnished by the Labour Commissioner without independently considering the material or specifying the clauses of the Fifth Schedule allegedly violated. The clarification issued by the Labour Commissioner was neither furnished to the Management nor was an opportunity afforded to controvert its contents. It is therefore contended

that the order suffered from non-application of mind and violation of the principles of natural justice and that the learned Single Judge rightly quashed it.

13. It is further submitted that, in view of the changed statutory framework under the Industrial Relations Code, 2020, particularly Section 89 providing for composition of offences, no purpose would be served by remanding the matter for fresh consideration. It is further submitted that the appellant must pursue such remedy as may be available under the Code.

14. Having considered the contentions advanced, we notice that the complaint dated 28.08.2013 filed by the appellant raised several allegations of unfair Labour Practice against the employer. It was contended that the labourers are deprived of their fair salary and other benefits, the office bearers of the Union were suspended for silly reasons and their increments and other benefits are deducted. It is further contended that scheduled caste labourers are targeted. It is also stated that the Management had threatened the workers requiring them to resign from the

membership of the Association and has shown discrimination in granting increments and other benefits of the workmen. It is further contended that senior employees are deprived of promotions just because they are members of the Association and baseless allegations were made against them. Further, the complaint reveals that allegations are raised in terms of abolition of regular nature of work by contracting out such work to break a strike, *mala fide* transfers, failure to implement award settlement and refusal to bargain collectively in good faith.

15. On receipt of the complaint, the State Government sought a clarification from the Labour Commissioner. The Assistant Labour Commissioner called upon the parties to submit their responses and furnish a report dated 27.04.2017. Thereafter, a notice was issued on 07.12.2017 and requiring parties to attend a meeting convened by the Labour Commissioner on 15.12.2017. A detailed report was placed before the State Government by the Labour Commissioner. Copies of this report are produced as Exhibit 'R8' in the writ appeal. However, it is the specific

case of the employer that no copies of this report was furnished to the parties and its contents were not disclosed. By order dated 10.01.2018, the State Government granted the permission to prosecute the Management. It is clear from the order dated 10.01.2018 that there was no independent application of mind by the Government on the complaint raised by the appellant. The Government had relied entirely on the report submitted by the Labour Commissioner without any application of mind. The learned Single Judge considered these aspects and found that the complaint with regard to unfairly inducing workmen to relinquish their Union membership had not been made out even in the report of the Labour Commissioner. After considering the contentions, the learned Single Judge held as follows:-

> *"x x x x x There was no bar for the State Government to accept the Labor Commissioner's report and to act upon it. But the State Government had to independently consider the matter. A perusal of the order reveals that the first respondent does not even bothered to independently consider the material before it. Instead, the Government simply acts upon the recommendation of the Labor Commissioner as though*

it must simply affix the seal to approve the conclusion reached by the Labor Commissioner. Thus, it must be concluded that the order passed by the first respondent is a result of the decision of the Labor Commissioner and not that of the State Government. Section 34 does not give such a power to the Labor Commissioner, but, that the power there under vests with the State Government. If the accord of sanction for prosecution is made without application of mind, the same shall be quashed on judicial review."

16. Having considered the contentions advanced, we are of the opinion that the power under Section 34 of the Industrial Disputes Act is to be exercised by the State Government. It is an independent exercise of jurisdiction at the hands of the Government that is contemplated under the provisions of Section 34 of the Industrial Disputes Act, which reads as follows:-

"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.

(2) No Court inferior to that of [a Metropolitan Magistrate or a Judicial Magistrate of the first class] [Substituted by Act 46 of 1982, Section 20, for " a Presidency Magistrate or a Magistrate of the first class"

(w.e.f. 21.8.1984).] shall try any offence punishable under this Act."

17. It is therefore clear that the power to make a complaint with regard to an offence punishable under the Act is specifically vested in the appropriate Government. The prosecution for offences under the Act is a serious matter involving consequences to the Management. It is in the said circumstances that the discretion has been vested specifically with the Government to make a complaint with regard to such offences. It is clear that it can be only on a proper application of mind that an order can be issued by the State Government seeking the prosecution of the Management for an offence under the Act.

18. In the instant case, from a reading of the order of the Government dated 10.01.2018, it is clear that there has been no independent exercise of discretion by the Government. The Government has only extracted the opinion expressed by the Labour Commissioner and granted permission on the basis of the same.

19. In the said circumstances, we are of the opinion that the learned Single Judge was indeed justified in having set aside the order of the Government. We find no error in the exercise of jurisdiction which requires a correction under Section 4 of the Karnataka High Court Act, 1961. The appeal fails and the same is accordingly ***dismissed.***

All pending interlocutory applications shall stand *disposed of.*

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(K.S.BHARATH KUMAR)
JUDGE

PN