(2001) 01 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 19740 of 1999 and W.M.P. No. 27522 of 2000

Coimbatore District Textile Workers Union APPELLANT

Vs

E.S.I. Corporation and Others RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:
Industrial Disputes Act, 1947 — Section 18(1)

Citation : (2001) 2 LLJ 747 : (2001) WritLR 391

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for the Appellant; G. Desappan, for Respondent Nos. 1 and 2, S. Sathiskumar and V. Vibishanan, Commissioner, for the Respondent

Judgement

E. Padmanabhan, J.—Writ Miscellaneous Petition No. 27522 of 2000 has been filed by the writ petitioner-Union to withdraw the above

writ petition with liberty to file a fresh writ petition if necessary at the appropriate time. It is but essential to refer to the details which led to filing of

W. P No. 19740 of 1999.

I-Case of the petitioner as set out in writ petition:

2. The petitioner, Coimbatore District Textile Mill Workers Union filed W.P. No. 19740 of 1999 praying this Court to issue a writ of mandamus

directing the 1st and 2nd respondents to raise the attachment over B Mill''s property of the 3rd respondent and restrict the attachment to A Mill in

the interest of providing succour to hundreds of families of the workers who are starved in deprivation and award cost.

3. It is the claim of the petitioner that it is a trade union which had taken up the cause of the workers of the third respondent mills. According to the

petitioner, in the third; respondent Mill, nearly 900 workers were previously employed. The management of the third respondent-Mill changed

hands from time to time and it incurred heavy losses resulting in the decrease of the work force. During 1995, it is stated that the Mill was

employing 500 workers and the machinery of the mill are obsolete and almost worn put. The quantity of the yarn produced is not at the optimum

level and the Company is under a huge debt burden. On account of the unprecedented crash in the textile industry the third respondent-company

closed the mills during February 1995. There were attempts by every one to revive the mill by making a representation to the State and Central

Government. Four years of unemployment subjected the workers to abject economic distress and they fell victims to frustration and despair.

4. It is the further case of the petitioner that the Workers'' Union and the management after protracted negotiations entered into a settlement u/s

18(1) of the Industrial Disputes Act on January 4, 1999. In terms of the settlement, the workers volunteered to retire from service provided the

company pay them all their retirement benefits in one lump sum immediately. As the third respondent had no means to pay the workers their

retirement dues, and other dues the workers also agreed for the sale of the B Mill and its premises so that out of the sale proceeds the company

would be able to disburse all statutory dues to the workers. The third respondent has two units viz., A Mill and B Mill. It was decided by the

Company to retain the A Mill and sell the B Mill not only to liquidate the dues to the Respondents and other statutory authorities, but also to revive

the Mill to provide employment to the remaining workers. In the absence of any help forthcoming from Banks and Government, the management

and the workers embarked on the scheme provided for in the settlement u/s 18(1) of the Industrial Disputes Act. The workers were cherishing

hopes that the settlement would be translated into action. The workers found certain unexpected hitch which cropped up between the first and

second respondents on one side and the third respondent on another side. The respondents 1 and 2 were adamant and unrealistic attitude of the

1st and 2nd respondents displayed towards the third respondent''s proposals has become the sole block for the implementation of the 18(1)

settlement entered on January 4, 1999.

5. The respondents 1 and 2 declined to raise attachment to enable the third

respondent Mill to sell B Mill and continue attachment in respect of A

Mill for the purpose of making payment to workers. The workers, it is stated not only agreed to resign from the Mills, but also actively canvassed

for securing lucrative prices for the land covered by B Mill in view of their dire financial needs. The value of the B Mill area is estimated roughly at

Rupees four crores while the value of the A Mill which is retained by the third respondent is worth Rupees five crores. Despite that respondents 1

and 2 declined to withdraw the attachment. The third respondent management earlier filed W.P. No. 10b44 of 1999 for a direction to be issued to

the 1st and 2nd respondents to consider the joint proposals of the third respondent. This Court partially allowed the writ petition quashing the letter

of ESI Corporation addressed to the Joint Sub Resgistrar, Tiruppur asking him not to entertain sale documents when presented by the third

respondent. But no direction has been given to the ESI Corporation to raise the attachment on B Mill and safeguard their interest by restricting the

attachment to A Mill. The application taken out by the Workes Union to implead them was not considered and the workers representatives were

deprived of an opportunity to present their version of the events and seek justice.

6. The Writ Appeal preferred by the third respondent is pending and petition before the E.I. Court is also pending, which may take years together

for disposal. Families of 500 workers are subjected to acute financial misery and there is urgent need to provide them succour. The workers took

initiative and instituted separate action in order to rescue their family from hunger and penury as their lives and careers are exposed to danger. It is

stated that public interest weighs supreme with all authorities, legislature, executive and judiciary. The plight of the families of 400 workers warrants

urgent ameliorative measures. But the interest of the workers have suffered neglect both at the hands of the ESI Corporation and also the State

Government. In that background, the present writ petition has been filed.

7. The respondents 1 and 2 have filed their counter affidavit controverting the averments set out in the affidavit and the ESI Corporation raised

very many legal objections. The ESI Corporation ultimately took the stand that if B Mill is sold in public auction it is in a position to utilise the

arrears and it can have no objection for the proposed auction.

8. The management of the third respondent Mill filed a supporting affidavit in the

writ petition in W.M.P. Nos. 28973 and 28974 of 1999 while

confirming the settlement concluded u/s 18(1) of the Industrial Disputes Act on January 4, 1999, admitted that the company has to pay nearly

Rupees 40 lakhs to the Income Tax Department which has also issued an order of attachment over the property of the Mills, besides various other

directions or attachments. The total dues to the ESI Corporation is less than Rs. 50 lakhs. The third respondent further stated that it has no

objection for the sale of B Mill and according to them the sale of B Mill will fetch not less than Rs. 4 crores and their scheme is to sell the area in

piece meal in order to secure lucrative prices. The third respondent stated that the sale of B Mill is expected to fetch Rs 4 crores, while pleading

that it has no funds to make any deposit in the Bank to lift the attachment.

9. A reply affidavit has been filed on behalf of the petitioner in the writ petition reiterating that the prayer in the writ petition is for working of the A

Mill, to settle the dues of A Mill by sale of B Mill, besides stating that to pay the dues to 270 workers, the management has to necessarily sell B

Mill.

10. Pending the writ petition the petitioner has filed W.M.P. No. 28973 of 1999 seeking for stay of the operation of the order of attachment

passed by the second respondent on August 4, 1994 and February 26, 1996. The petitioner also filed W.M.P. No. 28974 of 1999 for directions

directing the third respondent to explore all avenues to settle the dues to workers expeditiously pending disposal of the writ petition.

II. First Directions Issued Pending Writ Petition:-

11. The above writ petition and the connected writ miscellaneous petitions came up for enquiry on various dates. On April 27, 2000 this Court

with the consent of the counsel for the petitioner as well as all the respondents in the light of the settlement and to provide earlier succour to

workers while recording the joint representation made by either parties, issued the following directions:

Heard Mr. N.G.R. Prasad appearing for the writ petitioner, Mr. G. Desappan for the respondents 1 and 2 and Mr. S. Sathish Kumar for the 3rd

respondent.

2. The 3rd respondent, a textile mill has located its mill at Tiruppur which is referred to as A Mill and B Mill for convenience by the management

otherwise they are one comprehensive mill or establishment.

3. It is now represented by Mr. N.G.R. Prasad, learned counsel for the writ petitioner that out of 500 workmen 270 have already agreed to go on

voluntary retirement and with balance of 230 workmen the management as well as the Trade Union propose to revive the A Mill. For this, it is

suggested that a portion of the 3rd respondent property, namely B Mil be disposed of. For such a proposal the 3rd respondent management has

no objection. The property with respect to which the proposal is being made is under the attachment of the orders of the respondents 1 and 2 and

a substantial amount is due according to Mr. Desappan, Standing Counsel appearing for the respondents 1 and 2,

4. It is now brought to the notice of the Court that in respect of the statutory dues or contributions claimed by the respondents 1 and 2,

proceedings are also pending before the E.I. Court at Coimbatore. It is now admitted that both the units are not functioning. The counsel for the

3rd respondents represented that B Mill measures 4.5 acres while A mill Section measures 4 acres. The learned counsel for the 3rd respondent is

not aware as to whether there are superstructures in the B Mill portion or other machineries. There is no demarcation between the A & B Mill

also. It is the consensus ad idem between the petitioner and the 3rd respondent that a portion of the property held by the 3rd respondent has to be

disposed of to settle the claims payable to the 270 workmen who had agreed to go on voluntary retirement and remaining to be used for payment

of the dues to ESI Corporation and other statutory dues and revive the A Mill with the remaining 230 workmen.

5. As the particulars or details with respect to the property furnished are not sufficient and this Court is unable to estimate the local market value of

the property proposed to be sold, with the consent of counsel for the petitioner as well as the respondent this Court proposes to appoint an

Advocate Commissioner to inspect, take the assistance of surveyor, divide the A Mill and B Mill and find out the conditions of B Mill portion,

physical features as well as the existing constructions or machineries, if any, that are available on the Mill portion with all fittings and fixtures,

estimate the superstructures with the assistance of qualified Engineer and also estimate the land value of the entire B Mill portion and the

Commissioner also may find out the extent of vacant land that may be disposed of without reference to the existing mills, if any which would have

direct access from the public street and if it could dispose of so, in what manner either by convenient plots or complex. In respect of the remaining

larger portion also the Commissioner may evaluate the value of the property with reference to what is available on ground. The parties are directed

that they shall not change or remove tRe superstructure or available machinery or any portion of the building from the entire mill until further orders.

6. The Advocate Commissioner appointed shall have the assistance of a qualified Engineer or Surveyor or expert valuer whose assistance he may

take and file a report After receipt of the report, details of properties or break up particulars and the estimated value which each portion of the

property may fetch including the superstructure or the machineries either jointly or separately as the case may be, this Court would issue further

orders with respect to the proposal of the writ petitioner and the respondent to dispose of the property. The Commissioner may also ascertain any

other charge or attachment over the properties and get a statement from the 3rd respondent management in this respect, besides verifying the tax

liabilities or outstanding, which may be due to State and Central Government authorities.

7. The Commissioner is granted six weeks time to file a report. The 3rd respondent management shall bear the remuneration and other incidental

expenses payable to the Commissioner as well as the expert valuer whom the Commissioner may engage and whose fees the Commissioner may

evaluate and intimate to the 3rd respondent. However, the initial remuneration shall be paid by the 3rd respondent to the Commissioner as directed

hereunder within two weeks from today. In the event of the 3rd respondent failing to remit the initial remuneration the writ petitioner is directed to

remit the initial remuneration as directed hereunder to the Advocate Commissioner within two weeks.

8. The Commissioner is granted six weeks time to file a report from the date payment of his initial remuneration and initial estimated expenses of

Rs. 25,000/-. The Commissioner''s initial remuneration is fixed at Rs. 30,000/-. The Commissioner while filing the report may also furnish a

statement of accounts with respect to the amounts spent by him, which is entrusted towards expenditure. The total aggregate of the initial remuneration and the expenditure to be incurred by the Commissioner is assessed at Rs. 55,000/-.

9. Mr. V. Vibishanan, Advocate is appointed as the Commissioner. The Advocate Commissioner may issue necessary notice to all the parties

including ESI Corporation, Trade Union, Management and other interested persons. During his inspection the writ petitioner and the 3rd

respondent shall also render all assistance for filing the report without delay.

III - Second Directions:

12. Thereafter the Advocate Commissioner inspected the property and submitted a detailed report. The report has been accepted with consent of

either side and there was no objection from any quarter. Once again with the consent of either side taking into consideration the totality of the

circumstances on August 4, 2000, this Court issued the following directions:

As per the earlier orders of this Court, the Advocate Commissioner Mr. V. Vibishanan had visited, inspected, prepared a report and filed the

same before this Court. The report is a fair report as seen from the fact there is no objection from any quarter.

2. Mr. N.G.R. Prasad, learned counsel appearing for the petitioner, contended that it would be sufficient to continue the attachment in respect of A

Mill alone and attachment in respect of B Mill could be lifted. Mr. G. Desappan, learned counsel appearing for the first respondent, opposed. the

same.

3. The objection raised by Mr. G. Desappan deserves to be considered and it cannot be ignored. It is right of the first respondent to have

attachment in respect of A and B Mills for recovery of the amount due. However, that need not deter the Court from issuing further direction for

working out the remedies, for which petitioner had approached this Court.

4. During the hearing, the counsel appearing for the writ petitioner, management and ESI Corporation agreed for the following directions and

accordingly with their consent, the following directions are issued:

(a) The said learned Advocate Commissioner is hereby directed to sell the entire B Mill area as identified by the Commissioner with

superstructures either in one lot or in different lots as he may choose which may get a good price and place the bid before this Court for confirmation.

(b) The Management of the third respondent Mill shall pay Rs. 25,000/- (rupees twenty five thousand only) as additional remuneration to the

Advocate Commissioner for the services already rendered by him, directly.

(c) The Management of the third respondent Mill shall pay another twenty five thousand rupees to the Advocate Commissioner, directly towards

initial incidental expenses for the sale and also further sums, which the Commissioner may demand from time to time for disposing of the property

i.e., B Mill, either in one lot or in any number of lots as he may choose. The Advocate Commissioner is granted eight weeks time. Call this matter

after eight weeks.

13. As per the directions issued on August 4, 2000, the Commissioner proceeded further. The order dated August 4, 2000 also came to be

passed on merits and in the interest of the workers as well as Management and with the consent of either side. The Commissioner proceeded

further to sell the B Mill property as ordered. After several months on November 9, 2000, the present application has been filed by the writ

petitioner to withdraw the writ petition with liberty to file a fresh writ petition.

14. In para I of the affidavit, the petitioner had admitted the earlier stand taken and the subsequent proceedings also had been set out in para 2 of

the affidavit.

15. Concedingly both the orders were passed on merits and with the consent of either side. It is also to be pointed out that no objection had been

filed to the report submitted by the Commissioner or to the valuation of the land by the Commissioner and it was not only accepted, but such

acceptance was recorded by this Court.

IV - Withdrawal Petition and Shifting Stand of petitioner:-

16. Curiously in the affidavit filed in support of the petition, it is now suggested that B Mill may fetch 4 crores while A Mill Rs. 4.5 crores, while the

Commissioner had fixed the value for A Mill at Rs. 8,08,27,856/- and for B Mill at Rs. 10,24,63,641/-. In the affidavit filed in support of the

present application the petitioner Union had made a special pleading for the third respondent-management and it would be useful to set out the

very para for the purpose of the present application:

para 5. It is submitted that the valuation fixed by the Commissioner for A Mill and B Mill is unrealistic and highly inflated. At the maximum the B

Mill may fetch nearly 4 crores and A Mill Rs. 4.5 crores. When the Advocate Commissioner, the ESIC officials and other Advocates twice visited

the mills premises an impression was generated among the people that B Mill was for distress sale. Already the prospective buyers were planning

to form an unholy alliance and attempting to buy the property at a depressed price. Once this contagion spreads it is difficult to secure a lucrative

price for the property covered by B Mill. Besides, the present Board of Directors who are honest and sincere feel let down and humiliated. The

image of the management will be tarnished. No merchant will supply cotton to the management on credit basis if A Mill has to be opened. No

Bank will agree to provide working capital. All sundry creditors will exert huge pressure on the management for payment of their dues. Thus the

adverse and hostile factors that emerge will render it impossible for the management to reopen the A Mill and those workers who do no opt to

retire would be deprived of their livelihood. Though the scheme given by the Hon''ble Court is well intentioned, it is detrimental to the interests of

the workers and the management. Therefore, in the larger interest of the workers, I may be permitted to withdraw the writ petition without

prejudice to the rights of the workers envisaged in the settlement.

V-Pointsfor Consideration:

17. The points for consideration are:

(A) Whether the application for withdrawal of the writ petition filed by the writ petitioner-Trade Union is bona fide and whether it should be

allowed?

(B) Whether in the light of the averment set out in para 5 of the affidavit, this application is prejudicial to the interest of several hundred workers for

whose benefit the writ petition has been filed?

(C) Whether the petitioner-Union had acted bona fide and in the interest of the workers in taking out the present application to withdraw the writ

petition filed pursuant to a concluded settlement entered u/s 18(1) of the Industrial Disputes Act to benefit the several hundred workers ?

(D) What is the further appropriate course to be adopted in this writ petition ?

(E) To what relief?

18. Points (A), (B), & (C) could be considered together. The third respondent-management had not filed any affidavit. In fact at the hearing once a

new counsel represented that he had filed change of vakalat however, he had not taken any stand. However, at the final hearing the said counsel

failed to appear and the counsel who had filed vakalat represented that he is no longer interested. Mr. N.G.R. Prasad in his usual and inimitable

style argued that the application should be allowed as prayed for and the petitioner being a dominus litus has the right, discretion and liberty to

withdraw the writ petition at its whims and fancies and this Court cannot sit over the petition or decide or proceed when the writ petitioner had

filed an application to withdraw the same.

19. It is essential to refer to the basis and the reasons assigned for filing of the very writ petition. ""To dispose of the B Mill, and revive A Mill so

that the claim of B Mill workers will be settled, E.S.I. dues will be settled, and A Mill could be revived to give employment to A Mill workers. This

is the very object with which the petitioner approached the Court based upon Section 18(1) Settlement. On the said claims the third respondent-

management rightly agreed to such a course as there had been a settlement u/s 18(1) of the Industrial Disputes Act, for such a course and there is

no chance of revival or financial assistance from institutions or further investment of capital, besides the workers are agitating for payments.

20. However, it is now sought to be made out that buyers are planning to form an unholy alliance and attempting to buy the property at a

depressed price and that it will be difficult to secure a lucrative price for the property covered by B Mill. It has been further stated that the present

Board of Directors who are honest and sincere feel let down and humiliated and that the image of the management will be tarnished. It is further

suggested that the adverse and hostile factors that emerge will render it impossible for the management to reopen the A Mill and those workers

who do not opt to retire would be deprived of their livelihood. It is further stated that the scheme given by this Court is well intentioned, yet, it is

detrimental to the interests of the workers and the management and therefore the petitioner should be permitted to withdraw the writ petition. Here

and now it has to be pointed out that all these averments are nothing but special pleadings by the petitioner-Union and such special pleadings had

been made betraying the confidence reposed on the Trade Union by the workers of A and B Mills.

21. According to the writ petitioner the settlement u/s 18(1) of the Industrial Disputes Act had been concluded on January 4, 1999, a copy of

which has been included in the typed set of papers. This is a settlement entered between the third respondent-management and workers employed

in the third respondent-mills. It is a settlement u/s 18(1) ofthe Industrial Disputes Act. By Clause-I of the settlement the management and the

workers have agreed to sell the B Mill while retaining A Mill and the machineries available therein for spinning as well as preparatory cone winding,

bundling, reeling and also agreed to sell the surplus machineries while keeping the machineries so that 10,000 to 12,000 spindles could be

operated. This is the Clause-I of the settlement.

22. By Clause-2 of the settlement, the parties agreed that by the sale proceeds all arrears of wages, gratuity, bonus, leave salary, ESI and EPF

dues, Co-operative Stores arrears, Income Tax arrears, sales-tax arrears, property tax arrears could be settled and with the balance of the amount

A Mill has to be revived by continuing the A Mill workers while settling the dues of B Mill workers who have agreed to go on voluntary retirement,

on certain terms set out in Clause(e) of the settlement and the agreement provides for other contingencies as well to settle the claims of workers, to

pay the advance, to sell surplus machineries, etc.,

23. It further provides that the settlement concluded u/s 18(1) of the Industrial Disputes Act is to be placed before the Deputy Commissioner of

Labour for being notified for converting the same u/s 12(3) of the Industrial Disputes Act. The settlement has been signed on behalf of the workers

as well as by the management.

24. It is relevant to note that till date it is not the case of the petitioner, that the said Section 18(1) settlement had been modified or altered by any

subsequent settlement. The settlement is binding both on the petitioner as well as the third respondent management. Only pursuant to the said

settlement the petitioner trade union had approached this Court by filing W.P. No. 19740 of 1999.

25. It should not be forgotten that even as of today there is no change in the

condition of the third respondent Mills or its management and till date

none of the dues of the workers have been settled, nor the Mills have been revived, nor the third respondent Company had taken any effort to

settle the dues of the workers, nor it had come forward with some alternate possible proposal to settle the workers or for revival of the Mill.

26. The present application filed by the writ petitioner obviously not only runs counter to the settlement concluded u/s 18(1), but also to the

affidavit filed by the writ petitioner Union and the consent affidavit given by the third respondent-management in the very writ petition.

27. The averments set out in para 5 of the affidavit would show that the present application is not a bona fide application taken out in the interest of

workers. The withdrawal is not in the interest of workers, but it has been moved at the behest of the third respondent management and to subserve

the interest of the third respondent who might have other concealed scheme and delay the implementation of the concluded settlement and defeat

the settlement itself. Curiously the third respondent had kept silent and it had not filed any affidavit, nor it had chosen to come out with a new or

alternate proposal which may alter the situation or to show improvements.

28. The present condition of the third respondent mill has worsened. It is not as if the third respondent has given alternate proposal and there had

been a subsequent agreement between the petitioner and the third respondent by which the interest of the workers has been safeguarded. There is

no such averment or suggestion in the affidavit but on the other hand the petitioner-Union had given a go bye to its proclaimed object as well as the

interest of the workers and had set out special pleadings as if it is the management.

29. Further, it is rather strange that without any basis the petitioner had stated that the value of the property is far less than what has been reported

by the Commissioner. The Commissioner''s report in this respect has been accepted by all including the petitioner and this Court in the absence of

any objection, which would belie such a suggestion and it is only an invented reason to justify the shifting stand taken by the trade union leaders. All

these material aspects have to be taken into consideration by this Court while considering the above points.

30. This Court had passed two orders for the sale of the B Mill and revival of A

Mill in the interest of the workers and with the consent of

management. There is no change in the status at all nor there is any improvement by which the third respondent could avoid sale of the Mill.

Section 18(1) settlement still holds good and there is no alteration to the said settlement. In the circumstances, the very averments set out in para 5

of the affidavit, being a special pleading would obviously show that the present application has been moved betraying the interest of the workers

and it might have been filed to subserve the interest of some vested interest.

31. The very object of the writ petition is for the realisation of all the arrears, dues and for revival of the A Mill to benefit the remaining section of

workers, which is based upon the very settlement. That being so, it would be impermissible and not proper, nor it would be in the interest of

workers, nor it Would be in the interest of everyone concerned to permit the petitioner to withdraw the writ petition and more so when orders

have been passed by this Court directing sale of the property with the consent of either side.

32. The said orders are on merits and every one factually consented which have been passed in the presence of every one concerned. The said

orders had been accepted by all the parties concerned at all stages and it had not been challenged or demurred by any one at any stage. The

orders have become final. Much could be said against the petitioner with respect to its conduct in filing the present application and advancing a

special pleading for the third respondent-management. Less said is better.

33. This Court might not have viewed the matter differently. If there was a subsequent settlement between the workers and the third respondent

making and providing for payment, effecting settlement and reviving the mill which course alone would be in the interest of the workers. It is not as

if the third respondent as well as the writ petitioner have altered the settlement or any other agreeable settlement had been entered into between the

parties or any other solution had been found to dissolve the dispute.

34. If the application to withdraw is not bona fide and when it betrays the interest of the workers for whose benefit the writ petition has been filed

and gives a go by to the objectives with which the settlement has been arrived at, this Court has to view the application not in a routine manner but

also examine the bona fides of the withdrawal as well as its consequences on workers. In fact this Court has no hesitation to hold that the

application is not bona fide, and it is prejudicial to the interest of workers, apart from the fact that if the present application is allowed, then the

earlier proceedings deserve tp be branded as abuse of process of Court and representations so far made before this Court by either side to issue

directions based upon concluded settlement have to be viewed as susceptible, collusive action which is impermissible, such an attempt on Courts

should be deprecated. The Settlement is yet binding on both the parties and if permission is granted to withdraw the writ petition, it would also be

violative of a binding settlement which will frustrate the settlement and it will not only be adverse to the interest of the workers, but also prejudice

them. It is not as if the third respondent mill had been revived and it had started functioning with the further investment by the third respondent

management. Hence the application deserves to be rejected and it is accordingly dismissed. This Court has to proceed further in the interest of

workers and other respondents and to issue further directions and to implead the workers'' representative who consider their interest as

predominant rather than that of the Management.

35. It may be that the petitioner-Union may not be interested, but the workers interest shall not be allowed to suffer and therefore this Court has to

take appropriate action. In this connection the question as to whether the petitioner, dominus litus could be permitted to withdraw the writ petition

also requires to be considered. It is not as if the petitioner had agitated its private rights, nor it is a claim by an individual, but it is for the benefit of

few hundred workers, the present writ petition has been filed and this has to weigh with this Court necessarily in its view to render substantial

justice.

36. In Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, : the Apex Court held that the principle

underlying Rule (1) of Order 23 of the CPC should be extended in the interests of administration of justice to cases of withdrawal of writ petition

also. vENKATARAMIAH, J., speaking for the Bench held thus:

8. The question for our consideration is whether it would or would not advance the case of justice if the principle underlying Rule 1 of Order 23 of

the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very

often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the

petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw from the writ petition without seeking permission to

institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just

agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself

he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the

order passed by the High Court. He may as stated in Daryao and Others Vs. The State of U.P. and Others, :in a case involving the question of

enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case

there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao case is as follows:

If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no

decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata

which has been argued as a preliminary issue in these writ petitions and no other.

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the

Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under the Article. On this point

the decision in Daryao case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order 23 of the Code should be

extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of resjudicata but on the ground

of public policy as explained above. It would also discourage the litigant from indulging in bench hunting tactics. In any event there is no justificable

reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once

again....

37. In S.P. Anand Vs. H.D. Deve Gowda and others, : while considering the request to withdraw the Public Interest itigation their Lordships held

thus:

Here we must mention that in PIL cases, the petitioner is not entitled to withdraw his petition at his sweet will unless the Court would be guided by

considerations of public interest and would also ensure that it does not result in abuse of the process of law. Courts must guard against possibilities

of such litigants settling the matters out of Court to their advantage and then seeking withdrawal of the case. There are umpteen ways in which the

process can be abused and the Courts must be aware of the same before permitting withdrawal of the petition. This is not to say that this was one

such case. Here we did not allow withdrawal as we noticed that the very same question was being raised from Court to Court"".

The Apex Court had held so in a Public Interest litigation.

38. In the present case the petitioner-Union approached this Court for the benefit of few hundred workmen employed by the third respondent in A

and B Mills which is under closure for more than several years. The present writ petition has been filed only after concluding a valid settlement u/s

18(1) between the workers and the third respondent-management. It is in effect not an individual''s writ petition, but it is a writ petition filed to

benefit few hundred workers so that one half of the workers could be given employment on revival of A Mill and the remaining half could be

rehabilitated by payment of retirement benefit as agreed and detailed in the settlement. If the present application is to be allowed, the very interest

of the workers will be defeated by adopting such a course.

39. Though strictly and in effect the writ petition may not be a public interest litigation, yet it is a litigation instituted for the benefit of several

hundred workers employed in the A and B mills. At the first instance the trade Union had chosen to espouse the cause of the workers in terms of

the settlement u/s 18(1) concluded which is still in force, which is binding on either parties. That being so, the Trade Union cannot be permitted to

withdraw the writ petition as if it is an individual''s dominus litus at its sweet will ignoring the interest of several hundred workers and prejudice that

it caused by adopting such a course.

40. As already pointed out, the averments set out in para 5 of the affidavit is a

special pleading for the third respondent- management and factually

there is no such change or alteration in the prevailing conditions of the workers or in the status of the Mill Management to adopt such a course and

betray the workers.

41. This Court is of the considered view that the petitioner is not entitled to withdraw the writ petition at its sweet will unless this Court sees valid

reasons and uphold the bona fides to permit the writ petitioner. In granting permission, this Court should be guided by consideration of the interest

of several hundred workers and would also ensure that it does not result in abuse of process of law. The conscience of this Court which had

entertained the writ petition to rescue the rights and livelihood of few hundred workers should be satisfied as a bona fide action.

42. Normally, when a writ petitioner seeks to withdraw the writ petition, this Court may permit him to do so and not to proceed to decide upon it

and this was the view expressed by the Apex Court in Shaik Hussain and Sons Vs. M.G. Kannaiah and Another, : However, in the present case it

is not as if the present writ petition has been filed espousing the cause of the individual right or claim, but, on the other hand the writ petition itself

has been filed for the benefit of a few hundred workers by the Trade Union and based upon a settlement u/s 18(1) of The Industrial Disputes Act.

Further directions have been already issued on merits and with the consent of either parties to sell B Mill and to revive A Mill and suitable

directions have been issued in this respect several months back. The Commissioner appointed by this Court had also proceeded further. At that

stage, as if the entire claim relates to an individual, such an application has been filed betraying the cause of several hundred workers and when

there being no change in the circumstances.

43. As already pointed out the Apex Court in Sarguja Transport Services v. S.T.A.T.M.P. Gwalior, (supra) held that the principle of Rule 1 Order

23 of CPC is applicable to the writ petitions and extending the same, this Court is well-founded in declining permission to withdraw the writ

petition after passing of the orders in the main writ petition directing the sale of B Mill property by appointing the Commissioner who had also

proceeded further.

44. In R. Rathinavel Chettiar and Another Vs. V. Sivaraman and Others, : even in

a civil proceedings between two set of individuals the Apex

Court held that the party cannot seek to withdraw the suit, at a later stage after passing of decree as a matter of course when by virtue of such

withdrawal vested or substantive rights of any party to the litigation will be adversely affected. The Apex Court while taking note of the orders of

adjudication or decree already passed, and when the matter in controversy has received the judicial determination, the suit results in a decree either

in favour of the plaintiff or in favour of the defendant, and thereafter withdrawal of a suit by the appellant, which is not permissible, the Apex Court

held that it will not be open to the parties to withdraw the suit so as to destroy the decree or orders which had vested certain rights on the parties

to the suit and the same cannot be taken away by withdrawal of the suit at that stage.

45. The same principle could be extended to the present case as well, as the order already passed by this Court with the consent of either side is

being implemented by the Commissioner proceeding further with the sale and after several months only the present application has been filed

betraying the interest of several hundred workers by advancing the cause of the third respondent-management.

VI-Decision in the Writ Miscellaneous Petition:

46. Hence following the above pronoucement of the Apex Court such a request cannot be entertained as it is not a bona fide application and

adverse to few hundred workers. The present application in my considered view deserves to be dismissed as not bona fide and it has been filed

with apriori designs and an affront to the interest of several hundred suffering workers. In the foregoing circumstances, this Court is of the

considered view that the application for withdrawal filed by the petitioner- Trade Union not being a bona fide action taken out by the Trade Union,

but an action taken out at the instance of the third respondent-management, a collusive one, as the petitioner had specifically admitted in para 5 of

the affidavit that the sale would not be in the interest of the third respondent-management and at the same time giving a go by to Section 18(1)

settlement concluded between the workers and the third respondent-management and such an attitude of the petitioner- Trade Union has to be

deprecated and the application has to be dismissed. Accordingly points (A), (B) and (C) are answered against the petitioner and the writ

miscellaneous petition is dismissed.

VII - Futher Directions in Writ Petition:

47. The next question that may arise as to who will be allowed to continue the writ petition, this Court has to issue notice to the workers

themselves and or their representatives and to substitute them in the place of the present Union. As seen from the Commissioner''s report there are

few other Unions who are interested in the welfare of the employees of the third respondent-Mills and they have also taken part and assisted the

Advocate Commissioner who inspected the property. Hence with a view to safeguard the interest of the workers those Unions also could be

impleaded as parties to the present writ petition.

48. Apart from that, this Court also impleads the Deputy Commissioner of Labour, Coimbatore suo motu as one of the respondents, as this Court

proposes to issue directions to the Deputy Commissioner of Labour to convene a meeting of the workers, apprise the workers of the above facts

and ascertain their stand and submit a report with respect to their stand besides putting them on notice that it is open to the workers of the third

respondent Mills to get themselves impleaded to safeguard their rights and interest of the workers may themselves select a few among them to

represent the remaining so that they could agitate their rights by coming on record or by substituting either as respondents or to substitute

themselves in the place of the writ petitioner as they deem fit.

49. This course has to be adopted necessarily as this Court finds that the writ petitioner-Union which came with all high sounding words and

strength at its disposal representing the cause of the workers employed in the third respondent Mill and project their difficulty, has now chosen to

go back. Much could be said against the said conduct of the petitioner-Union and a doubt necessarily arises as to whether the action of the

petitioner Union is in the interest of the workers.

VIII-Suo Motu Impleading:

50. In the circumstances while dismissing W.M.P. No. 27522 of 2000, this Court suo motu impleads,

(1) Mr. Chellappan, Plant Local President, Hindu Mazdoor Sangam:

(2) Mr. K. Arguman Local Area President, Hindu Sangam;

(3) Mr. C. Ponnusamy, President, Hindu Mazdoor Sangam, Tiruppur;

(4) Mr. P. Periyasamy, District President, Labour Progressive Union (DMK);

(5) Mr. A. Subramanian, Plant Local Area President, Labour Progressive Union (DMK);

(6) Mr. Murugasamy, Joint Secretary, Anna Thozhilalar Peravai (AIADMK) and

(7) The Deputy Commissioner of Labour, Coimbatore,

as respondents 4 to 10 respectively in this Writ Petition No. 19740 of 1999 and the Registry is directed to issue notice to those Unions returnable

by two weeks.

IX - Directions:

51. The Deputy Commissioner of Labour, Coimbatore, now impleaded as Respondent No. 10 is directed to give due publicity and convene a

meeting of workers employed in the third respondent- Mills as well as other Trade Unions in which the workers of the third respondent-Mills are

members, by giving two weeks notice, apprise them of the facts and developments and thereafter submit a report to this Court within six weeks

from the date of communication of this order as to the result of such meeting and the reaction of the workers.

52. The said Deputy Commissioner is directed to inform the other Trade Unions in the District about the developments in this writ petition and

putting them on notice that it is open to them to come before this Court to safeguard the interest of their members.

53. The Registry is directed to issue notice to the proposed parties and also communicate a copy of this order to the newly impleaded parties for

immediate action. Call the writ petition after eight weeks.

