

(2019) 05 DEL CK 0040

In the Delhi High Court

Case No : Letter Patent Appeal No. 283 Of 2018

Gulshan Kumar Juyal

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 13-05-2019

Acts Referred:

Citation : (2019) 175 DRJ 435

Hon'ble Judges : Rajendra Menon, CJ;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Jayant Mehta, Samiksha Godiyal, Aditi Mohan, Sajal Jain, Bhagwan Swarup Shukla, Sarvan Kumar Shukla, Abhinav Vashisth,, Milanka Chaudhary, Abhinav Agnihotri, Abhilasha Singh

Final Decision : Disposed Off

Judgement

Anup Jairam Bhambhani, J

1. The appellant in this matter is an Association of 31 Trolley Retrievers of DIAL ("Association", for short), acting through their Authorised Representative Mr. Gulshan Kumar Juyal, which has filed the present Letters Patent Appeal challenging order dated 05.02.2018 made by a learned single Judge in W.P. (C) No. 1291/2015, whereby the writ petition was dismissed. The respondents are the Ministry of Labour, Government of India and Delhi International Airport Limited, arrayed as respondents Nos. 1 and 2 respectively. The contesting respondent is respondent No. 2 : Delhi International Airport Limited ("DIAL", for short).

2. The members of the Association are workmen, who were engaged as "trolley retrievers" at the Indira Gandhi International Airport ("IGI Airport", for short) and were employees of one M/s TDI International Private Limited. Subsequently, M/s TDI International Private Limited was taken over by DIAL and certain operations at the IGI Airport, including retrieval of trolleys, came to be performed by DIAL.

3. We have heard learned counsel for the parties at length and have perused the record. The submissions made on either side, though not individually attributed, are reflected in the discussion, inferences and conclusions that follow.

4. For purposes of the present appeal, we need to refer only to the following factual aspects that are relevant and material for purposes of the challenge to the impugned order:

(a) By judgment dated 15.09.2011 made by the Supreme Court in Civil Appeal No. 7872/2011 and connected matters, while deciding whether notification dated 26.07.2004 issued by the Central Government under the Contract Labour (Regulation and Abolition) Act, 1970 applied to trolley retrievers employed at the IGI Airport, the Supreme Court ruled as under:

"88. In view of the peculiar facts and circumstances of these cases directing DIAL to regularize services of trolley retrievers who worked with DIAL till 2003 would be harsh, unrealistic and not a pragmatic approach, therefore, in the interest of justice, we deem it proper to direct DIAL to pay rupees five lacs to each of the erstwhile 136 workers of DIAL who were working for them as trolley retrievers till 2003 and in case any worker has expired, then his or her legal heirs would be entitled to the said amount. This compensation is paid to the workers in lieu of their permanent absorption/reinstatement with DIAL and their claim of back wages. This is in full and final settlement of entire claims of erstwhile 136 workers of DIAL.

"89. We direct DIAL to pay the amount to these 136 erstwhile workers of DIAL within three months after proper verification. In case the amount, as directed, is not paid within the prescribed period, then it would carry interest at the rate of 12% per month from that point till the amount is paid."

(Emphasis Supplied)

(b) It appears however that the direction contained in paragraph 89 of judgment dated 15.09.2011 was not complied with by DIAL; nor were any steps taken by the Association or its members to seek enforcement thereof with any immediacy;

(c) Instead, review petitions came to be filed by various parties, including the Association and DIAL against judgment dated 15.09.2011 on various counts; which review petitions however, came to be dismissed by the Supreme Court vide order dated 14.02.2012.

(d) After some six months of the Supreme Court direction for payment of money to members of the Association, by letter dated 23.03.2012, DIAL called upon the addressees to complete the process of verification as was directed by order dated 15.09.2011; and in its letter dated 23.03.2012 DIAL stated as under:

"This is to inform you that the Hon'ble Supreme Court vide Judgment dated September 15, 2011 in Civil Appeals Nos. 7872/2011, 7873/2011, 7874/2011, 7875/2011, 7876/2011, 7878-7879/2011 titled "M/s Delhi International Airport

Pvt. Ltd. v/s Union of India & Others", "M/s Delhi International Airport Pvt. Ltd v/ s Indira Gandhi Airport TDI Karamchari Union & others", "Airport Authority of India v/s Indira Gandhi Airport TDI Karamchari Union & others"; "Airport Authority of India v/s Union of India & Ors." "Indira Gandhi Airport TDI Karamchari Union v/s Union of India" and "Airport Authority of India v/s Union of India & others" respectively directed DIAL to pay Rupees Five Lacs to each of the workmen employed with TDI as contract labour, or his legal heirs as compensation in lieu of their permanent absorption/reinstatement with DIAL and their claim of back wages and as full and final settlement of the entire claims of the workmen.

You are requested to send by registered post, the photocopies of the following documents, to enable us to verify your identity and to process the payment of the amount, as directed by the Hon"ble Supreme Court:

- a. Appointment letter/Contract letter issued from M/s TDI International Pvt. Ltd.
- b. Experience certificate of the M/s TDI International Pvt. Ltd. mentioning clearly the duration of service and proof of employment at the relevant time.
- c. Personal Identity Proof issued from Govt. Authority - with Name, DOB and Address : Voters ID/Ration Card/Driving license/Canceled copy of BCAS pass/ Passport / Passbook of Govt. Banks/PAN
- d. Any other relevant document in this regard

In case the addressee is not alive, the legal heirs entitled to the compensation amount are requested to send, by registered post, the above documents along with documents such as succession certificate/probate letter (certified copy issued by concerned court) and any other document evidencing their claim/ entitlement to the compensation amount.

In order to avoid inconvenience and undue travel, DIAL will communicate to you the date of travel after all the documents have been received by DIAL and have been verified by the Indira Gandhi Airport TDI Karamchari Union through its General Secretary."

(Emphasis Supplied)

(e) After rejection of the review petitions, members of the Association, through the "Indira Gandhi International Airport TDI Karamchari Union" preferred a curative petition before the Supreme Court, which petition was also dismissed by order dated 29.11.2012 ;

(f) Subsequently a civil contempt petition being Cont. Pet. No. 212/2013 came to be filed in one of the appeals connected with Civil Appeal No. 7876/2011 seeking enforcement of judgment dated 15.09.2011. In the contempt petition the Supreme Court made an order dated 18.11.2013, in which it said the following:

"We are not inclined to proceed in the contempt matter any further.

It is stated that 7 bank demand drafts have been drawn in the name of Bharat Kumar, Ashok Kumar, Narendra Kumar, Patras, Rafat Noor, Nitin Kumar and Darshan Singh by Delhi International Airport (P) Ltd. (for short "DIAL").

It is stated that Rafat Noor and Nitin Kumar are present in the Court. They have been identified by the Union leader. The bank demand drafts may be disbursed to them.

As regards the other bank demand drafts are concerned, DIAL will retain them and as and when the concerned workmen or their heirs come to claim that, the same shall be disbursed to them by it.

With the aforesaid directions, these contempt petitions stand disposed of."

(g) In the meantime, members of the Association moved an application being IA No. 4/2014 in Civil Appeal No. 7876/2011 before the Supreme Court claiming the following reliefs:

"Execution of this Hon"ble Court"s order dated 15.09.2011 in Civil Appeal No. 7876/2011 within a fixed time limit;

(b) Direct the respondents to pay 12 % interest per month for 22 months on Rupees five lakhs" which had to be paid within three months of 15.9.2011 and if the said amount was not paid within the prescribed period, then it would carry interest at the rate of .12. % per month from that point till the amount is paid as-stated in para 89 of the Supreme Court Judgment and :

(c) Direct the respondents to carry out the directions of the Supreme Court in paragraph 86 and 87 of its judgement which are not ambiguous and in terms of the said directions DIAL is obliged to regularise the employment of workers employed in retrieval of trollies as its employees and "

(h) On 15.12.2014 the Supreme Court dismissed the above referred IA No. 4/2014 with the following observations:

"Interlocutory Application No. 4 of 2014 is dismissed.

It has not been disputed that the Delhi International Airport (Private) Limited (for short 'DIAL') has already paid Rs.5,00,000/- each to the concerned workmen. Hence for recovery of interest, this Court will not act as an Executing Court. The appellant may approach the appropriate forum."

(Emphasis Supplied)

5. In this background, the Association filed W.P. (C) No. 1291/2015, in which petition the impugned order came to be made, which is now challenged by way of the present Letters Patent Appeal.

6. The reasons for which the single Judge dismissed the writ petition are reflected in the following paragraphs of the impugned order, which are extracted below for ease of reference:

"17. It is apparent from the above that the Supreme Court did not entertain the request for interest; however, DIAL was called upon to retain the bank drafts with regard to other workers and to hand over the same as and when claims were made by the workers or their legal heirs.

"18. DIAL has also filed a tabular statement indicating the dates on which the 131 (of the 136 workmen) had collected the compensation payable to them. It is seen from the said tabular statement that a substantial number of workmen had collected the demand drafts in the year 2012 and the remaining had collected their compensation on various dates in the year 2013. The tabular statement also indicates that the demand drafts for compensation payable to the remaining five workmen were prepared, however, the same were not collected.

"19. The Supreme Court's direction that the disbursement was to be made after due verification is not ambiguous. In view of the facts stated above, this Court is not persuaded to accept that the delay in paying the compensation beyond the period of three months, as directed by the Supreme court in its order dated 15.09.2011, is attributable to DIAL.

"20. It is also apparent that the Supreme Court had not entertained the prayer made for interest on compensation. Thus, the relief claimed by petitioner no.1 cannot be granted. The petition is, accordingly, dismissed."

(Emphasis Supplied)

7. The considerations, both factual and legal, that weigh in our minds in deciding the present appeal are the following:

(i) That upon a conspectus of various appeals, review petitions, curative petition and contempt petitions, the denouement is that in judgment dated 15.09.2011 there was an unequivocal and unambiguous direction by the Supreme Court commanding DIAL to pay to the 136 workmen in question the sum of Rs. 5 lacs each within three months after proper verification; with a further direction that if such sum is not paid within the specified period, then it would carry interest at the rate of 12% per month from that point till the amount is paid;

(ii) That the direction by Supreme Court was clearly to DIAL to make payment as aforesaid;

(iii) That DIAL had not challenged the Supreme Court order dated 15.09.2011 and had therefore accepted its obligation to comply with the directions contained in that order without demur;

(iv) That even de-hors the specific direction, once it was decided that DIAL was to pay to the workmen an ascertained and quantified sum of money, being the debtor it was DIAL's responsibility to seek-out the workmen, who were DIAL's creditors and make the payment;

(v) That at least until 23.03.2012 i.e. the date on which DIAL wrote individual letters to the workmen, DIAL made no effort whatsoever to comply with the

Supreme Court direction. We may add that if DIAL was faced with a situation where it was unable to trace all or any of the workmen, DIAL could have offered to deposit the amount which was now decidedly due from DIAL to the workmen in court ; or DIAL could have applied to court stating that it was ready and willing to comply with the directions but since there was delay in payment for reasons not of DIAL's making, the interest on the money owed should stop running. However DIAL did none of this ;

(vi) That it is also clear that inspite of the Supreme Court having opined in the matter, the workmen were still preferring review petitions and curative petition, being sanguine that they may get full-fledged employment with DIAL instead of receiving only compensation in lieu of reinstatement and back wages;

(vii) That the operation of Supreme Court order dated 15.09.2011 was never stayed or held in abeyance;

(viii) That it was only on 23.03.2012 when DIAL issued letters asking the workmen to come forward for verification, that DIAL took the first step towards discharging the obligation on its part as directed by Supreme Court vidé order dated 15.09.2011. For the record, DIAL also subsequently issued a letter dated 19.06.2012 to the workers, which was in the nature of a reminder to come forward for verification;

(ix) That between 15.09.2011 and 23.03.2012 DIAL retained with itself the substantial sum of money that was due and payable by it to the workmen; and it would be fair to say, that being a running corporation, the money so retained was used and applied by DIAL for purposes of it's own business.

8. The record shows that subsequent to issuance of letters dated 23.03.2012, verification was done of the workmen to whom DIAL was to pay compensation in compliance of the Supreme Court order. A close reading of a sample letter dated 23.03.2012 would, however, show that at least some of the documentation required by DIAL as part of the so-called verification process were unnecessary. It was, for example, completely unnecessary to require the workmen to produce a copy of their experience certificate containing the duration of service with M/s TDI International Private Limited.

9. In our view, the only purpose of the Supreme Court observing that payment was to be made by DIAL to the workmen after proper verification was to ensure that money was paid to the correct persons after verifying their identity. This was necessary since the workmen in question had never been in the employ of DIAL but had worked for the predecessor organisation, namely M/s. TDI International Private Limited. It is relevant to note that the entire list of workers alongwith their names, parentage and addresses, was already available on the record of the civil appeals before the Supreme Court and what remained to be done was for DIAL to ensure that the payment by way of demand draft/pay order, that was required in compliance of Supreme Court order dated 15.09.2011, was being handed-over to the correct persons. What was required to be done was therefore

only a clerical exercise of cross-checking and corroborating the names and the identification documents of a given worker, for which no laborious or time-consuming application of mind, discretion or judgment was necessary. Considering the resources available with DIAL, even though the identity of 136 workers was to be verified, it was not, by any stretch, a humongous task.

10. However, between 15.09.2011 and 23.03.2012 DIAL chose to engage in masterly inactivity. There was clear benefit to be had by DIAL postponing the pay-out of monies as directed by the Supreme Court, inasmuch as around Rs. 6.8 crores would remain in DIAL's coffers in the meantime. On the other hand, there was no reason why the workers would not have accepted the money at the earliest if DIAL had offered it, by complying with the verification requirements, except of course the sanguine wish that they would get an order of reinstatement from court and thereby get their jobs back.

11. We also think that the clear direction of the Supreme Court contained in order dated 15.09.2011 is to be interpreted in a straightforward manner without unnecessary nuance, the purport of the direction being that money was to be paid to the workers within three months but after proper verification. On a plain and honest construction of the direction, in our view, such verification was to be done within the three month period. We say this also for the reason that this direction by the Supreme Court was the sequitur to a detailed consideration whereby in paragraph 89 of order dated 15.09.2011, the Supreme Court expressed that in the peculiar circumstances of the case, it would be harsh, unrealistic and not pragmatic to direct DIAL to regularise the services of the workers; and therefore, to mete-out substantial justice, the Supreme Court directed payment of money to the workers as compensation in lieu of reinstatement and back wages, in full and final settlement of all their claims. This background itself persuades us to believe that the aim and intent of the Supreme Court order was to ensure that money comes into the hands of the workers at the earliest. Therefore to interpret the Supreme Court direction to mean that the time period of three months for payment would only commence after verification, for which verification process no timeline was set in the order, would be to ignore the salutary purpose for which the direction was issued.

12. In the circumstances in which the Supreme Court direction was issued, in our view, the direction should not be interpreted in a way as to give DIAL the discretion to decide as to when the clock would start ticking for the three month period specified for payment.

13. That being said, we cannot lose sight of the fact that the workers, whether individually or collectively through the Association or the Karamchari Union, also took no definitive steps to enforce payment in compliance with the directions of the Supreme Court. As we have observed earlier, this was partly for the reason that the workers were still entertaining the fond hope that they would be reinstated, for which they were resorting to further legal remedies, namely review petitions and curative petition. Such delay on the part of workers however

did not afford any excuse for DIAL to not comply with the peremptory directions contained in Supreme Court order.

14. Emphasis was laid on the wording of order dated 15.12.2014 made by the Supreme Court in IA No. 4/2014 to say that in the said application workers had specifically sought interest for the delay in payment of Rs. 5 lacs beyond three months of 15.09.2011, which prayer it was contended, was declined when the Supreme Court dismissed the application by its order dated 15.12.2014. We are afraid we do not agree. The relevant portion of order dated 15.12.2014 is extracted below to illustrate why we disagree. In order dated 15.12.2014, the Supreme Court said:

"Hence for recovery of interest, this Court will not act as an Executing Court. The appellant may approach the appropriate forum."

(Emphasis Supplied)

Therefore, in the application where the main prayer was for execution of the Supreme Court order dated 15.09.2011, the court observed that while the Supreme Court itself would not act as an executing court for recovery of interest, however, the workers may approach the appropriate forum for this purpose—implying thereby that while otherwise there was interest to be recovered but the Supreme Court would not execute its recovery. By so observing, the Supreme Court certainly did not reject the prayer for interest but only advised the workers to approach the appropriate forum to execute its order for recovery of interest. It must be borne in mind that nowhere in its order on IA No. 4/2014 or in any other proceedings did the Supreme Court vary or modify the direction for payment of Rs. 5 lacs with interest for delay, as contained in its order dated 15.09.2011.

15. In this respect therefore the single Judge erred in saying that the Supreme Court had not entertained the prayer made for interest on compensation. The Supreme Court had only reiterated its direction for payment as per its order dated 15.09.2011 by directing the workers to approach the appropriate forum, which in this case was the writ court.

16. However, to be fair, by issuing letter dated 23.03.2012, for the first time DIAL took steps on its part for complying with the directions of the Supreme Court as contained in order dated 15.09.2011. The delay in complying with the said directions that may be laid at DIAL's doorstep is therefore only the delay for the period from 15.09.2011 to 23.03.2012. We may mention in the passing, that to a query as to why DIAL took no steps to deposit at least the aggregate principal amount of compensation in the proceedings pending in court, DIAL stated that there were no proceedings in which such deposit could have been made. This is untrue. To show its bona fides and to forestall liability for payment of interest, DIAL could well have petitioned the Supreme Court to accept the deposit in court, which DIAL did not do. To a pointed query as to whether, in compliance of the Supreme Court directions, DIAL had got demand drafts or pay orders issued by the bank prior to 23.03.2012 in the names of the workers a list

of which was available, so that at least DIAL could show that it was out-of-pocket having purchased the demand drafts, DIAL admitted that it had not done so.

17. A tabulated statement inter-alia giving the dates on which workers collected their respective demand drafts (giving details of all 136 workers) filed with the petition shows that all workers collected their money after 23.03.2012.

18. In the circumstances, in compliance of the Supreme Court order dated 15.09.2011, and even otherwise in equity and in fairness, we are of the view that DIAL is liable to pay to each of the workers interest at the rate of 12% per month on Rs. 5 lacs for the period between 16.09.2011 and 23.03.2012, regardless of the date on which any workers collected the principal amount.

19. Accordingly, we dispose of the appeal, modifying the impugned order dated 05.02.2018 and allowing interest to the extent indicated above. We allow DIAL four weeks time from the date of this judgment to pay the interest as held to be due.

20. Pending applications, if any, also stand disposed of.

21. In the circumstances there shall be no order as to costs.