(2011) 06 BOM CK 0179

In the Bombay High Court

Case No : Writ Petition No. 6747 of 2010

ICICI Bank Ltd. and Another — APPELLANT

Vs

Surendra Chelawat and Others — RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 3
Constitution of India, 1950 — Article 12, 226, 227
Industrial Disputes (Banking and Insurance Companies) Act, 1949 — Section 4
Industrial Disputes Act, 1947 — Section 2

Citation : (2012) 132 FLR 410 : (2012) LLR 290

Hon'ble Judges : K.K. Tated, J

Bench : Single Bench

Advocate : Ratnakar Pai assisted with Qadir instructed by Suruchi Kasliwal, for the Appellant; Manoj Gujar, Advocate, for the Respondent

Judgement

K.K. Tated, J.—Heard the learned Counsel for the parties.

Rule. Rule made returnable forthwith.

2. By this petition, under Articles 226 and 227 of the Constitution of India, petitioner-Original respondent challenges the order dated 31st May, 2010 passed by the learned Presiding Officer, 12th Labour Court, Mumbai below Exhibit-C-3, rejecting petitioner''s application about preliminary issue. Petitioner-Original respondent has filed application below Exhibit C-3 where the preliminary issue raised in the present case, whether Central Government is appropriate Government and not the State Government. He submits that in view of section 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949, Central Government is appropriate Government. Section 4 reads thus:--

Section 4 - Prohibition of references by State Governments of certain industrial disputes for adjudication, inquiry or settlement--Notwithstanding anything contained in any other law, it shall not be competent for a State Government or any officer or authority subordinate to such Government to refer an industrial dispute concerning any banking or insurance company, or any matter relating to such dispute, to any Tribunal or other authority for adjudication, inquiry or settlement.

3. In support of his submission, he relied on the judgment of this Court in the matter of Prakash Pandurang Sawant Vs. Punjab and Sind Bank and Others, , and in the matter of National Building Construction Corporation Ltd. Vs. Ram Pal Singh and Another, . He submits that in view of the provisions of section 4 of the Banking Act and the two authorities cited, the State Government is not appropriate Government. Therefore, the impugned order passed by the Labour Court dated 31st May, 2010 and the Judgment dated 31st July, 2010 passed by the Industrial Court in Revision Application (ULP) No. 101 of 2010 is liable to be set aside to that extent.

4. On the other hand, the learned Counsel appearing for the respondent No. 1 vehemently opposes the present application. He submits that the order passed by the Courts below are interlocutory orders and the same cannot be interfered in the present writ petition.

5. I have gone through the provisions of Banking Acts and both the authorities cited by the learned Counsel appearing for the Petitioner. The Labour Court as well as the Industrial Court dismissed petitioner''s application below Exhibit-C-3 only on the ground that in view of Apex Court judgment, all issues raised by the parties to be decided together. It is to be noted that a few preliminary Issues framed by the Courts below should be decided first instead of wasting their valuable time.

6. On the face of both the authorities cited above, it is clear that the Central Government is the appropriate Government in Banking Companies. In the matter of Prakash P. Sawant (supra) this Court held that in case of Banking Companies, the Central Government is the appropriate Government. Para 17 of the said Judgment reads as thus:

Para 17 - Before concluding the discussion on this aspect of the matter, it would also be necessary to note that for the purposes of the Industrial Disputes Act, 1947, the expression ''appropriate Government'' has been defined In section 2(a)(i) to mean the Central Government in respect of an industrial dispute concerning a banking company. Banking companies are defined in section 2(b) to Inter alia include a corresponding new bank constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Parliament also enacted the Industrial Disputes (Banking and Insurance Companies) Act, 1949, section 4 whereof inter alia provides that notwithstanding anything contained in any other law, it shall not be competent for a State Government or any authority of the State Government to refer an industrial dispute concerning a bank or Insurance company for adjudication to any tribunal or authority.

7. In the case of National Building Construction Corporation (supra) similar view is taken by this Court.

From the aforesaid principles it would be seen that though no single test is decisive to reach the conclusion whether particular industry is carried on by or under the authority of Central Government yet, totality of circumstances in the light of the aforesaid principles may provide firm basis for conclusion. A company floated from public exchequer and owned wholly by Central Government is indicative of the fact that it is controlled by or under the authority of the Central Government. The employer industry is admittedly wholly owned by the Central Government and entire share capital has been contributed by it. Though the commercial activity is carried on by the employer industry in accordance with its bye-laws and Memorandum of Association yet the employer undertaking is nothing but an extended arm of Government and it apparently is an instrumentality or agency of the ''State'' and is ''State'' within the meaning of Article 12 of Constitution of India. Its acts, values, regulations and governance power are subject to constitutional obligations and have to be in conformity with public law principles. The existence of deep and pervasive state control depends upon the facts and circumstances in a given situation. In the present case, it would be seen that the entire share capital of the employer was contributed by Central Government and it belongs to the Central Government. The Chairman, Managing Directors and other Directors are appointed by the President of India. The number of Directors, the salary and allowances of the Chairman, the Managing Director and Directors are determined by President of India. The directions are Issued by President of India from time-to-time in regard to the conduct of business and affairs of the employer industry. It would thus, to be seen that for all practical purposes. It is the Central Government which exercises control and supervision over the working and function of the employer industry and the employer-industry is virtually the agency and Instrumentality of the Government of India. In relation to the employer Industry, unhesitatingly, the appropriate Government Is Central Government u/s 2(a)(i) of the I. D. Act.

8. Therefore, on the face of it, It is seen that both the Courts below failed to consider the preliminary issue raised about the maintainability of the complaint on the ground that the appropriate Government Is the Central Government and not the State Government in respect of industrial dispute concerning the Banking Companies constituted u/s 3 of the Banking Companies Act, 1970. Therefore, both the orders passed by the Labour Court below Exhlbit-C-3 dated 31st May, 2010 and the Industrial Court dated 31st July, 2010 in Revision Application (ULP) No. 101 of 2010 in respect of Exhibit-C-3 are set aside and the matter is remanded to the Industrial Court to decide the preliminary issue raised in the application Exhlbit-C-3 filed by petitioner to be decided by the 12th Labour Court at Mumbai within four months from the receipt of the writ of this Court.

9. Writ petition is disposed off with the above directions.

