

(1985) 01 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 5877 and 4377 of 1983 and 1984

Indian Oil Corp. Ltd. Etc.

APPELLANT

Vs

State of Bihar Etc.

RESPONDENT

Date of Decision : 24-01-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 136, 141, 226, 227, 32
Industrial Disputes Act, 1947 — Section 10

Citation : (1985) 33 BLJR 332 : (1985) PLJR 226

Hon'ble Judges : S.S. Sandhawalia, C.J;B.P. Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—Can the High Court in its discretionary writ jurisdiction altogether ignore and thus override the prior dismissal in limine of the identical Us by their Lordships of the Supreme Court under Article 136 of the Constitution has come to be the spinal issue at the very threshold in this set of two connected civil writ jurisdiction cases.

2. Because of the view I am inclined to take on the aforesaid issue, it is wholly unnecessary to recount the facts in any great detail. Equally irrelevant it is now to advert to the long and chequered history of the dispute between the petitioner management of the Indian Oil Corporation and its employee (Respondent No. 3) Sri C. D Singh, Assistant Manager. Suffice it to mention that a reference u/s 10(1) (c) of the Industrial Disputes Act was made by the State of Bihar on the 26th of September, 1980 for the adjudication of the following questions-

Whether in view of the order of Labour Court Ranchi in B. S. E. Case No. 23 of 1969 Sri C. D. Singh should be allowed the scale of 1025-1625 from the date his juniors were promoted to this scale of pay ? If so what consequential benefits in scale of pay should be given to him from that date onward.

The Presiding officer, Labour Court, Patna in an exhaustive award dated the 11th of March 1983 (Annexure. I) running into 38 typed pages held that respondent Sri C. D. Singh should be allowed the pay scale of Rs. 1025-1625 from the date his juniors were promoted to that scale of pay i.e. with effect from the 30th of December, 1973. He further directed that Sri C. D. Singh should be promoted from grade "B" to grade "C and should also be given the benefit of revision in the pay scales of those grades.

3. Against the aforesaid award the petitioner-management directly moved their Lordships of the Supreme Court under Article 136 of the Constitution of India. Petition for Special Leave to Appeal (Civil) No. 9147 of 1983 was preferred on its behalf on the 14th of July, 1983, It is common ground that respondent No. 3 had earlier filed a caveat before the Hon'ble Supreme court after the impugned award of the Labour Court, Patna, was rendered. Consequently a copy of the SLP was served on the counsel of respondent No. 3, It is the case of respondent No. 3 that identical points were raised in the exhaustive SLP Annexure-A to the counter affidavit) running into 28 typed pages as are now sought to be raised in the present writ petition. A detailed counter affidavit to this special leave petition was filed on behalf of respondent No. 3 on the 5th of September, 1983. Thereafter the SLP came up for hearing Lordships of the Supreme Court, on the 9th of September 1983. After hearing counsel of both the parties on the merits of the case their Lordships dismissed the same in limine and the relevant part of the order (Annexure. B) to the counter affidavit is as under:

Indian Oil Corporation Ltd....Petitioner.

versus

The State of Bihar and Ors.

(with appln. for ex parte stay)....Respondents

Date=9-9-83-This petition was called on for hearing today.

Coram=Hon'ble Mr. Justice C. Chinnappa Reddy Hon'ble Mr. Justice A. Varadarajan.

S.S. Ray, B. Gupta, D. Mondal and Rathin Das Advocates for the petitioner.

S. N. Misra, Bhatia and P. C. Kapur, Advocates for the Respondent (s).

Upon hearing counsels the Court made the following order The SLP is dismissed,

Sd. M. M. P. Sinha. Court Master.

It is in terms averred on behalf of the respondents that the SLP was not dismissed for any laches, limitation, or any other technical ground.

4. On the aforesaid facts, the threshold preliminary objection, forcefully and ably projected by Mr. Ranen Roy, on behalf of the respondents, is that the dismissal of the special leave petition" to appeal by the Supreme Court under Article 136 of

the Constitution is a vital factor that ought to be given great weight in the exercise of the discretionary jurisdiction by the High Court under Article 226. It is pointed out that the SLP was directed against the same award of the Industrial Tribunal and was challenged on virtually identical grounds as in the writ petition. After notice and hearing counsel of either of the parties on merits, the SLP was dismissed on the identical cause of action and not on any technical plea of laches limitation or alternative remedy. It was contended that the overriding by the High Court of such dismissal by the Supreme Court, apart from any illegality, would be an improper and erroneous exercise of a discretionary jurisdiction. On the other hand, Mr. K. D. Chatterjee, learned Counsel for the petitioners, in attempting to meet this challenge had taken the stand that the dismissal of the SLP was wholly irrelevant to the issue and in any case, was no bar to the exercise of the power under Article 226. Basic reliance was placed by him on the observations in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, .

5. Since great emphasis was sought to be laid on the ratio in *The Workmen of Cochin Port Trust v. the Board of Trustees of the Cochin Post Trust* (supra) it seems apt, at the threshold, to clear the deck about the application or otherwise of the said authority to the issue before us. Therein also the employers had preferred a SLP against the award of the Industrial Tribunal, which was dismissed in limine and, thereafter, the preferred the writ petition to challenge the award. The specific objection raised and pressed on behalf of the workman was that the dismissal of the SLP by the Supreme Court operated as res-judicata on the writ petition. The High Court rejected the objection holding that the limine dismissal of the SLP did not give rise to any issue of either resjudicata or constructive resjudicata. The very question was then pointedly pressed in the final Court and was rejected, whilst affirming the view of the High Court and observing that it would not be safe to stretch the technical rule of resjudicata to the dismissal in limine by a wholly non speaking order of a SLP under Article 136 of by the Supreme Court.

6. Now, a perusal of the judgment would make it plain that the original point of adjudication before their Lordships was one of the applicability or otherwise of the principles of resjudicata or constructive resjudicata and the ratio therein cannot and does not travel beyond this limited point. The Court was at pains to point out that a limine dismissal under Article 136 may well be not technical grounds like those of gross or unexplained laches or on limitation, or in the existence of alternative remedy. Clearly enough, a dismissal on these grounds could not amount to res-judicata on the merits on other issue which were not either explicitly or implicitly even remotely adjudicated upon, It seems thus plain that on this point the ratio decidendi in the *Workmen of C. P. Trust v. The Board of Turstees of C. P. Trust* (supra) is patently and narrowly cofined to holding that dismissal in limine by a non-speaking order under Article 136 does not attract the principles of resjudicata or of constructive res judicata.

7. Herein it is common ground that no issue of resjudicata arises and indeed Mr. Roy. learned Counsel for the respondents was at pains to highlight that he was not even remotely raising any objection on grounds of constructive resjudicata. That being so and the alleged hurdle of the Workmen of C.P. Trust (supra) being clearly crossed, the matter to be examined on the parameter of four basic principles which may be separately enunciated for reason of clarity.

(i) The doctrine in the context of two alternative remedies being available to the suitor and he, in terms, electing the remedy in the superior forum,

(ii) The writ jurisdiction being admittedly discretionary whether it would be mond expression of such discretion to entertain an identical cause of action, which has been agitated before and rejected by a superior Court,

(iii) The larger rule of public policy to avoid multiplicity of litigation and

(iv) The anomalous results flowing from the High Court entertaining and allowing a writ on an identical causes of action, which was dismissed in limine by the Supreme Court under Article 136 of the Constitution.

8. Mr. Roy learned Counsel for the respondents, plausibly projected the doctrine of election of alternative remedies by a suitor. It is common ground that the Us in the present writ petitions and that in the SLP before their Lordships of the Supreme Court was wholly identical. In the final forum, it was equally sought to be projected, on closely similar, if not identical, ground. No technical issues of limitation, or alternative remedy, etc. could at all be pointed out on behalf of the writ petitioners. Not only was the cause of action identical, but the relief sought was equally so namely, the quashing of the impugned award of the Industrial Tribunal supposedly for jurisdictional errors. Undisputedly, the remedy under Article 136 of the Constitution was available to the petitioners and was deliberately and designedly so exercised. It is not in dispute that the jurisdiction under Article 136 of the final Court is wide and unfettered. It is not constricted within the constraints of the writ jurisdiction of the High Court under Article 226. It is unnecessary to multiply precedent on this issue, because in the workmen of C. P. Trust (supra) itself it was observed as follows:

Mr. Krishnan rightly pointed out that the lines extracted above indicate that the scope of the proceeding under Article 136 was wider than that of a writ petition.

9. In the light of the above, the writ petitioners herein deliberately and advisedly elected a wider and unfettered remedy in a superior Court. Having done so, they cannot now appropriately veront afresh to a remedy in the relatively limited writ jurisdiction at a lower level of the hierarchy in the High Court. That a suit or having once elected one remedy or relief of the two alternatives available to him cannot thereafter resort to the other and more in to the one in the inferior jurisdiction, seems to How directly from a onolgsel of precedent. Reference may first be made to Nagubai Ammal and Others Vs. B. Shama Rao and Others, . wherein relying on the observations of Lord Justice Scrutton, in Verschures

Creameries Ltd. v. Hull and Netherlands Steamship Co. Limited (1921) 2 K. B. 605(D). it was observed-

The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief.

In Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, . it was observed in the context of the resort to either the remedy u/s 115 of the CPC or that under Articles 226 and 227 of the Constitution, as under-

If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted, it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate Court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord finality to its own decisions.

Lastly, both directly and by way of analogy the observations in The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, deserve notice There in the focal issues pertained to the remedies with regard to an industrial dispute being available under the Industrial Disputes Act, 1947, under the general law in the Civil Courts It was held that therever alternative remedies were available in the civil Courts or in the forums under the Act, the suit or concerned must elect his remedy for relief and cannot resort to one after the other. It was observed as under-

But where the industrial dispute is for the purpose of enforcing an right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act 1 to approach the civil Court. It is plain that he cannot have both. He has to choose the one or the other.

Undisputedly, for getting the impugned industrial award quashed the alternative remedy of challenging it in the writ jurisdiction of the High Court or by way of special leave to appeal to the Supreme Court was available. The writ petitioners indeed advisedly elected the remedy in the superior forum. Having failed therein., it is incongruous that they should be essily allowed to now resort to one in the High Court As was said in the Premier Automobiles case (supra) the writ petitioners cannot have both and have to choose the one or the other. Having made that choice, the are not to be ordinarily permitted to retract therefrom Consequently, on the doctrine of election betwixt two alternative remedies, the writ petitioners would tend to disentitle themselves to the present relief in the writ jurisdiction.

10. Independently of the doctrine of election altogether, the question of the sound exercise of judicial discretion and entertaining a writ in this context is equally attracted. Herein, it is plain that having chosen the remedy of appeal to the Supreme Court, the petitioners had the benefit of a meaningful hearing of the Us therein. SLP (Civil) No. 9147 of 1983 (Annexure-A to the counter-affidavit) was exhaustive in its pleading of facts and the jurisdictional challenge on the points of law. Specifically, grounds A to Q assailed to impugned award of March 11, 1983, from every conceivable legal angle. Significantly, it is common ground that a Caveat having been already altered, the respondent workman was served through his counsel and a detailed counter affidavit to the SLP was also filed on his behalf to oppose the same. Our attention could not be drawn to any technical pleas for opposing the SLP on grounds of limitation, laches or alternative remedies, etc. On the basis of the aforesaid pleading, the latter was then heard on the 9th September, 1983? by their Lordships and counsel for both the parties addressed them on the merits of the case. The dismissal that followed, even though not by a speaking order was equally a dismissal on merits and it was not even the stand of the learned Counsel for the petitioners that it was either wholly or even collaterally rested on any technical ground. That being so, the question is whether in such a situation it would be a sounder proper exercise of discretion by the High Court in its writ jurisdiction to entertain afresh the same or identical cause of action, which had been earlier heard and dismissed by the final Court itself. I do not think so. One must hearken to the settled law that the writ jurisdiction is discretionary and the High Court, for sound reasons may decline to grant relief, apart from the merits of the case. Equally, it has to be borne in mind that whatever may be the position in other forums, the orders and judgments of the Supreme Court are law and binding on all Courts within the territory of India under Article 141. In specified circumstances even an obiter dictum of the final Court may be binding on this Court and is, in any case entitled to great respect. Would it therefore, be a sound or proper exercise of discretion to entertain and grant a writ for the High Court when the Supreme Court itself, on the same cause of action and in an unfettered jurisdiction under Article 136, had rejected the identical challenge to the same industrial award. I do not think so. Perhaps, doing so would in a way be sitting in judgment on the earlier order of the final Court itself, which, if not totally and technically barred, would, in any case, be patently incongruous.

11. What appears as sound on principle, is equally buttressed by precedent. In *The Management of Western India Match Co. Limited, Madras v. The Industrial Tribunal Madras and Anr.* AIR 1958 Mad. 398. B-43 whilst even finding that the writ petitioner would have been entitled to relief under Article 226, the Division Bench declined the same with the following observations -

That the Supreme Court declined to exercise its discretion in favour of the petitioner appears to us to be a factor that ought to be taken into account and given due weight when we are called upon to exercise our discretion in favour of interference with the award of the Tribunal on some of the very grounds specified

in the application for leave to appeal that failed. It should be needless to emphasise that had leave been granted and that was the stage for the exercise of the discretion vested in the Supreme Court the scope of the appeal could have been much wider than that permissible in proceedings under Article 226 of the Constitution.

Though not without hesitation, we have reached the conclusion, that in the circumstances of this case, it would not be a proper exercise of discretion, despite the findings we have recorded earlier, to set aside the award by the issue of a writ of certiorari, after the Supreme Court had refused the petitioner leave to appeal against that award. It is in these circumstances that we direct that the rule nisi be discharged and that the petition be dismissed but without costs.

12. Following the above, a Division Bench of the Bombay High Court, consisting of N. L. Abhayankar and D. P. Madon, JJ. in Vasant Vithal Palse and Others Vs. The Indian Hume Pipe Co. Ltd. and Another, . observed as follows-

We also are unable to hold that we should entertain this petition now and adjudicate it on merits when the Supreme Court has thought fit not to admit the petition for special leave to appeal against the very award which is under challenge in this petition.

13. To the same tenor are the observations in The Metal Corporation of India Ltd. and Another Vs. Union of India (UOI) and Another, . In the context of the earlier dismissal in limine by a non-speaking order of a writ petition under Article 32 by the Supreme Court and the subsequent attempt to resort to the writ jurisdiction under Article 226 in the High Court relying on an unreported decision of the Supreme Court in Khairati Lal v. Life Insurance Corporation of India C. A. No. 1 of 1964. it was observed as under-

The absence of a speaking order, in my view makes no difference in this case, because the dismissal by the Supreme Court must have been on the ground that no fundamental right of the petitioners had been violated. For these reasons, the contention of the learned Attorney General that the present petition is, barred by res judicata must be upheld.

14. It deserves mention that the Supreme Court, in the Workmen of Cochin Port Trusts case (supra) referred extensively to the judgment of the Madras High Court in The Management of Western India Match Company Limited (supra) and after quoting Paragraph 18 thereof, observed that the law, so broadly stated, is not quite accurate though substantially it is correct to the extent we have pointed out above. It would follow therefrom that their Lordships intended to construct the somewhat wide ranging observations in the High Court judgment that the dismissal of the petition for special leave to appeal under Article 136 would not affect the jurisdiction vested in the High Court under Article 226. This seems evident from the earlier observations in the Supreme Court judgment highlighting the fact that dismissal In limine by a non-speaking order may also create a bar to a subsequent petition for the same or similar relief. Since much

emphasis was sought to be placed on the effect of a non-speaking order of dismissal, it becomes necessary to quote the relevant observations in *The Workmen of the Cochin Port Trusts* case (supra)-

Similarly, even if one writ petition is dismissed in limine by a non-speaking one word order "dismissed" another writ petition would not be maintainable because even the one word order as we have indicated above must necessarily be taken to have decided impliedly that the cause is not a fit one for exercise of the writ jurisdiction of the High Court. Another writ petition from the same order or decision will not lie,

Again-

We have thought it proper to elucidate this aspect of the matter a bit further, to indicate that dismissal of a writ petition in limine by a non-speaking order could certainly create a bar in the entertainment of another writ petition filed by the same party on the same cause of action.

15. In fairness to Mr. L. D. Chatterjee, learned Counsel for the petitioners, reference must also be made to his reliance on *Ahmedabad Manufacturing and Calico Printing Co. Limited v. The Workmen and Anr.* AIR 198 S.C. 960. However, a close perusal of that judgment would indicate that far from helping the writ petitioners, it might go to the aid of the respondents. The primal issue therein was whether an unconditional withdrawal of a SLP would amount to its dismissal. On an independent consideration of this matter, their Lordships concluded that permission to withdraw a leave petition cannot be equated with an order of its dismissal. Consequently, it was opined that the dismissal by the High Court of a writ petition in limine on this sole ground will not be sustainable. Plainly this ratio in no way aids the case of the writ petitioners and on the other hand, would indicate that if an unconditional withdrawal amounted to dismissal, then different results would have ensued, namely that the subsequent proceedings might well have been barred, indeed their Lordships distinguished the *Management of Western India Match Company Limited* (supra) on this very ground that whilst in the former there had been a dismissal of the special leave petition, in the case before them it was only an unconditional withdrawal, duly permitted by the Court.

16. To sum up on this aspect, it appears to me that it would not be a sound and proper exercise of discretion to entertain writ petition afresh on an identical cause of action, which has been earlier rejected by the Supreme Court in a SLP under Article 136 of the Constitution and where such dismissal is "not established to be on any technical ground of laches, limitation or alternative remedy, etc.

17. Lastly the anomalous results and even grave hardship which may ensue from the stand canvassed on behalf of the writ petitioners seem to be manifest. They had with open eyes and advisedly resorted to a superior jurisdiction with unfettered powers, and, having failed there after hearing, they cannot be allowed afresh to reopen and reagitate the identical matter in the High Court. On behalf of the respondents it was argued with patent plausibility that this would give an

unfair edge to affluent litigants with a long, purse. It was the case herein that the forum in the Supreme Court was designedly chosen to put the respondent workmen as the handicap of defending himself at an expenditure, which is basically involved in the final Court. As in the present case, he had been duly served, had engaged counsel, filed pleadings, and opposed the matter successfully before the final forum. To rob him of that success by an altogether fresh proceeding, would both be burdensome to the respondents and otherwise incongruous. This apart, the stand canvassed on behalf of the petitioners would give a triple remedy, even after a long drawn out proceeding before the Industrial Tribunal he might first choose to try his luck in the highest forum in the Supreme Court under Article 136. Having failed there, even after notice and hearing to the opposite party he may then resort afresh to the writ jurisdiction in the High Court. A failure in that might well give him a remedy of a letters patent within the High Court itself, and yet again, he could prefer a SLP a second time, directed as it would be against the judgment of the High Court. It is a sound cannon of public policy that the law frowns on the multiplicity of litigation. For these reasons as well, it is not possible to accede to the stand canvassed on behalf of the writ petitioners.

18. To finally conclude, the answer to the question posed at the very outset is rendered in the negative. It is held that in its discretionary writ jurisdiction, the High Court cannot altogether ignore and override the prior dismissal in limine of the identical cause of action by their Lordships of the Supreme Court under Article 136 of the Constitution. Indeed, this is a factor that must be taken into account and given the due weight it deserves in a sound and proper exercise of the discretion in this context.

19. For the detailed reasons recorded earlier, I would uphold the preliminary objection and in the context of the facts would decline relief to the petitioners on the threshold ground of the prior dismissal of their SLP by the Supreme Court, which now precludes, as from entering the thicket of merits. Both the writ petitions must consequently fail and are dismissed, but without any order as to costs.

Birendra Prasad Sinha, J.

19. I agree.