

(2004) 04 MAD CK 0187

In the Madras High Court

Case No : W.A. No. 1031 of 2004 and W.A.M.P. No's. 1863 and 1864 of 2004

Kilburn Electricals Ltd. and Another

APPELLANT

Vs

Macneill and Magor Kilburn Group Companies Employees'
Union and Others

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 32

Citation : (2004) 3 LLJ 674

Hon'ble Judges : B. Subhashan Reddy, C.J;M. Thanikachalam, J

Bench : Division Bench

Advocate : Mohan Parasaran, for the Appellant; S. Vaidyanathan, for the Respondent

Final Decision : Dismissed

Judgement

M. Thanikachalam, J.—This writ appeal is directed against the order passed by the learned single Judge in Writ Petition No. 14028 of 2002, wherein a direction was given to respondents 2 to 6 therein, including the appellants, to implement the award of the Industrial Tribunal passed in Complaint No. 17 of 1999.

2. The workers concerned in this writ appeal, whose interest is represented by the union, were working in Macneill and Magor Ltd. The electrical division of the said company was separated and formed as a separate unit, naming as Kilburn Electricals Ltd., the first appellant herein. The Managing Director of the said company is Sri Srinivasan, the second appellant. Sri Srinivasan segregated Macneill and Magor Ltd., into the four different companies, to avail certain concessions and they are the first appellant, 3rd, 4th and 5th respondents in this appeal. Some dispute had arisen regarding the transfer of electrical division of Macneill and Magor Limited to Kilburn Electricals Ltd., affecting the conditions of the service of the workmen, resulting in a reference under the Industrial Disputes Act in I.D. No. 108 of 1993. The Tribunal concluded that the transfer of electrical division of Macneill and Magor Ltd., to Kilburn Electricals, Ltd., is

justified and if, the workmen are put to difficulties like non-employment in a part of the month, etc., respondents 2 to 5 in I.D. No. 108 of 1993 are liable and not the first respondent therein, which award became final.

3. It seems for certain period, respondents 2 to 5 denied employment without obtaining prior permission from the Tribunal, either for laying off its workmen or suspending operation. Therefore, Complaint No. 17 of 1999 was filed for certain reliefs, wherein a direction was given, as per the award, dated August 9, 2001, to the respondents therein, to reinstate the workers with effect from November 2, 1999 and pay the back-wages. This award was published in the Tamil Nadu Government Gazette and it became final, since the same has not been challenged by the appellants.

4. According to the workmen, since the award in I.D. No. 108 of 1993 has come into force with effect from May 25, 2000, per Sections 17 and 17-A of the Industrial Disputes Act, 1947, hereinafter called the Act as aforementioned, the action of Sri Srinivasan in not taking prior permission from the Tribunal when I.D. No. 108 of 1993 was pending, the workers are entitled to the entire relief and in this view alone, the complaint was filed for appropriate relief, on which basis, an award was passed on August 9, 2001.

5. Despite the fact, the award became final respondents 2 to 6 in Complaint No. 17 of 1999 have failed to implement the award of the Industrial Tribunal, dated August 9, 2001, and because of this reason, the first respondent/writ-petitioner filed W.P. No. 14028 of 2002, seeking direction to reinstate the workers. The learned single Judge, considering the facts and circumstances of the case, taking into account the award is not challenged, issued a direction as prayed for, in the writ petition, excluding 43 employees, whose names were mentioned in the additional affidavit, filed in the writ petition, granting two months time for compliance, which is under challenge in this writ appeal.

6. Heard the learned counsel for the appellants, Sri Mohan Parasaran and the learned counsel for the respondents Sri S. Vaidyanathan.

7. The only point urged before us, by the learned counsel for the appellants is, that the appellants were never a party to the award passed by the Industrial Tribunal and in this view, directing them to comply with the terms of the award, is not maintainable. The first appellant is a party to the award in Complaint No. 17 of 1999 and therefore, the direction issued cannot be questioned. As far as the second appellant is concerned, he was not shown as a respondent either in Complaint No. 17 of 1999 or in I.D. No. 108 of 1993. But, the fact remains, as the Managing Director, he alone represented respondents 2 to 5 in I.D. No. 108 of 1993, as well as in Complaint No. 17 of 1999. As rightly submitted by the learned counsel for the respondents, in I.D. No. 108 of 1993, he had admitted that he was filing the counter statement, in his capacity as one of the Directors of the said company. It is further conceded by Sri Srinivasan that he ceased to be the Managing Director of Kilburn Electricals Ltd., as on December 28, 1999, when

his period of appointment ended, thereby showing, admittedly, on the date of violation of Section 33 of the Act, he was the Managing Director. When the employees union filed W.P. No. 1411 of 2003, to pass an order on the complaints u/s 29 of the Industrial Disputes Act, 1947, a direction was given by this Court to the Government, to consider the petitioner's representation and in pursuance of the said order, a G.O. was passed for non-implementation of the award and settlement, holding Srinivasan is a person concerned as per the Section 32 of the Industrial Disputes Act, 1947.

8. Section 32 of the Act fixes the responsibility, if any offence is committed by company under this provision, every Director shall be responsible, subject to other conditions. As aforementioned and even as admitted by Srinivasan, the second appellant, he was the Managing Director of respondents 2 to 4 companies, and in that capacity alone, he entered into the settlement u/s 12(3) of the Act, agreeing to abide by the decision of the Industrial Tribunal in I.D. No. 108 of 1993. The award in I.D. No. 108 of 1993 was pronounced on November 26, 1999, which came into force with effect from May 28, 2000. In view of these admitted facts, despite Sri Srinivasan has not been shown as party by name, he is responsible as contemplated u/s 32 of the Act, and he is bound by the award. All the workers in this writ appeal are concerned in dispute, in I.D. No. 108 of 1993, and the action of Srinivasan, in not taking prior permission from the Tribunal when I.D. No. 108 of 1993 was pending and for the violation committed, the workers are entitled to the full relief, for which purpose Complaint No. 17 of 1999 was filed. In the light of the above discussion, the appellants could not escape from their liability, under the guise, they are not parties to the award.

9. Having regard to the facts and circumstances of the case, considering the status of the second appellant, a direction was issued by the learned single Judge in W.P. No. 14028 of 2002, to implement the orders, in which we are unable to find any error of law or any other reason to interfere.

10. In the light of the above observation, we find no merit in the appeal and the same is dismissed. No costs. Consequently, connected W.A.M.P. Nos. 1863 and 1864 of 2004 are closed.