
(2013) 10 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No's. 813 of 2012 and 59, 62, 67 of 2013

Kundil Alloys Pvt. Ltd.

APPELLANT

Vs

Govind Fadte and Others

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2014) 140 FLR 15 : (2013) 4 LLJ 609 : (2014) LLR 23

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : G.K. Sardesai, for the Appellant; V. Menezes, P. Sawant, Ms. Susan Linhares and S. Narvekar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—Rule in Writ Petitions No. 59 of 2013, 62 of 2013 & 67 of 2013 with the consent of the learned Counsel for the parties made returnable forthwith and heard. In so far as Writ Petition No. 813 of 2012 is concerned, rule came to be issued in the said writ petition on 13.6.2013. By consent of the learned Counsel for the parties, the said writ petition is also taken up for hearing along with the other three writ petitions. The above writ petitions filed under Article 226 and 227 of the Constitution of India arise out of orders each dated 30.4.2012. By the said orders the applications filed by the petitioner-company in the pending references under the Industrial Disputes Act for being permitted to amend the written statement so as to incorporate an averment that in the event the Industrial Tribunal holds the inquiry as vitiated on any grounds it should be allowed to lead evidence in Court came to be rejected. The Industrial Tribunal would be hereinafter referred to as the "Tribunal", the petitioner as "petitioner-company" and the respondents as "respondents-workmen" for the sake of brevity.

2. It is not necessary to burden this order with unnecessary details. Suffice it to say that the references have arisen before the Tribunal in respect of the demands made by the respondents-workmen in each of the above petitions for their reinstatement with consequential benefits. In so far as Writ Petition No. 62 of

2013 and Writ Petition No. 67 of 2013 are concerned, the dismissal orders passed against the respondents-workmen therein were passed without holding inquiry as according to the petitioner-company it was not possible to hold inquiry against the said workmen for the reasons which have been mentioned in the dismissal orders. In so far as Writ Petition No. 813 of 2012 and Writ Petition No. 59 of 2013 are concerned, the respondents-workmen have been dismissed after holding an inquiry. The references in question being IT No. 3 of 2009 (subject matter of Writ Petition No. 813 of 2012) and the companion references are at the stage where the affidavit of evidence of the witness of the respondents-workmen has been filed. The statements of claim in each of the said references have been replied to on behalf of the petitioner-company by filing its written statement. However, the plea that the petitioner-company should be allowed to lead evidence in the event the Tribunal comes to the conclusion that the inquiry is vitiated has not been taken. The petitioner therefore filed the applications in question for amendment of the written statement so as to incorporate an averment which in so far as IT No. 22 of 2010 is concerned is by way of incorporating paragraph 34(a) which for the sake of ready reference is reproduced herein under:

34(a) - The Party No. II states that they have conducted the enquiry in fair and proper manner and in the event this Hon''ble Court set aside the same on any of the ground they may be permitted to lead evidence before this Hon''ble Court to prove the charges leveled against the workmen Party No. I.

3. Similar applications were filed in the other references. It appears that no reply was filed on behalf of the respondents-workmen to the said applications and therefore the applications were proceeded with without the reply of the respondents. The Tribunal as indicated above by orders dated 30.4.2012 which are identical in their content has rejected the application for amendment filed by the petitioner in each of the references. The Tribunal as can be seen from the impugned orders has relied upon the judgment of the Apex Court in Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, in the matter of, wherein the Apex Court has held that in order to avoid delay the averment that in the event the inquiry is held to be vitiated the Company should be allowed to lead evidence in Court should be taken in the written statement itself. The Tribunal thereafter has gone on to consider the reason mentioned by the petitioner in its application wherein it has stated that on account of inadvertence that the said stand was not taken in the written statement. The Tribunal held that the term "inadvertence" cannot be interpreted to mean failure to take the plea on legal advice and therefore did not deem it appropriate to allow the application for amendment of the written statement. As indicated above, the said orders dated 30.4.2012 passed by the Tribunal rejecting the application for amendment of the written statement which are sought to be taken exception to by way of the above petitions.

4. Heard the learned Counsel for the parties.

5. The learned Counsel appearing on behalf of the petitioner Shri Sardessai would contend that the plea that the petitioner-company should be allowed to lead evidence in Court in the event the Tribunal comes to a conclusion that the inquiry is vitiated remained to be taken on account of inadvertence, the learned Counsel thereby would reiterate the case of the petitioner before the Tribunal. The learned Counsel relying on the well settled position in law namely that the Tribunal has to give an opportunity to the employer to lead evidence in Court would contend that even if the said pleas were not to be taken the employer is entitled to prove the misconduct by leading evidence in Court, if any application is filed for the said purpose the Tribunal is required to consider the same and exercise discretion on well settled principles. The learned Counsel Shri Sardessai would contend that the judgment in Karnataka State Road Transport Corporation v. Lakshmiddevamma (SMT) and another (supra) has been misconstrued by the Tribunal to hold that if the plea was not taken in the written statement as filed then it could not be taken by way of amendment of the written statement. The learned Counsel would contend that the Tribunal has in rejecting the applications for amendment of the written statement has failed to exercise jurisdiction vested in it and therefore the interference by this Court in its writ jurisdiction is warranted.

6. Per contra, Shri V. Menezes, the learned Counsel appearing on behalf of the respondents-workmen would support the impugned orders and would contend that since there was no reason worth the name as to why the plea was not taken in the written statement as filed, the Tribunal was right in rejecting the application, the learned Counsel would contend that the stage at which the plea is taken is also relevant, and since the plea is sought to be taken after affidavit in evidence was filed the Tribunal was right in rejecting the application. The learned Counsel would therefore contend that no interference is called for with the impugned order. I have heard the learned Counsel for the parties and have bestowed my anxious consideration to the rival contentions. No doubt, in the instant case, in the written statements which were filed in the references the plea which is now sought to be taken by the petitioner-company was not taken, the question is whether just because the said plea was not taken in the written statement the same cannot now be allowed to be taken and the doors are closed for the employer. It is a settled position in law that if in the adjudication before the Tribunal, the Tribunal comes to a conclusion that the inquiry is vitiated on any grounds then an opportunity is required to be given to the employer to prove the misconduct in Court. This can be said to be one of the facets of industrial adjudication as the employer has to be given an opportunity to prove the charge against the delinquent employee/workmen by leading additional evidence in Court. Considered from the said angle the application filed by the petitioner-company was required to be considered on the basis of the well settled principles applicable. In so far as the order passed by the Trial Court is concerned as indicated above the Trial Court has placed reliance on the judgment of the Apex Court in Karnataka State Road Transport Corporation v. Lakshmiddevamma (SMT)

and another (supra) though the Apex Court has made the observations which have been adverted in the earlier part of the order. The Apex Court as can be seen at the same time has also observed that the same should not be understood as placing fetters on the powers of the Court/Tribunal requiring or directing parties to lead additional evidence including production of documents could at any stage of the proceedings before they are concluded if on the facts and circumstances of the case it is deemed just and necessary in the interest of justice. Hence, the aspect of interest of justice is the paramount consideration. The Tribunal, in my view, has without considering the latter part of the judgment of the Apex Court has sought to lay emphasis only on the fact that such stand was required to be taken in the written statement and has thereby rejected the application. The Tribunal ought to have seen that in the case before the Apex Court the application was made after the Labour Court had held that the domestic inquiry was vitiated. In the instant case the application is made at the stage when the affidavit of evidence on behalf of the workmen is filed. In so far as the non acceptance of the reason cited by the petitioner in the application is concerned, in my view, the Tribunal has taken a hyper-technical view and thereby has recorded that inadvertence cannot be considered to mean as failure to take the plea on legal advice. The Tribunal ought to have seen and appreciated that the question is of giving a proper opportunity to the employer and that the said opportunity sought is contingent upon the fact that in the event the Tribunal comes to a conclusion that the inquiry is vitiated then the permission to lead evidence in Court is required to be granted. Therefore the amendment sought if allowed would not prejudice the respondents-workmen. In my view, therefore, the Tribunal has erred in not exercising jurisdiction in the facts and circumstances of the present case and, therefore, the exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is warranted. The impugned orders all dated 30.4.2012 are accordingly quashed and set aside. The application filed for amendment of the written statement in each of the Reference Applications is accordingly allowed. Resultantly, the petitioner-company would be entitled to amend its written statement in question. Amendment to be carried out within a period of two weeks from date. The workmen in each of the References would be entitled to file their additional rejoinder, if so advised. In the facts and circumstances of the case, the petitioner-company to pay costs of Rs. 3,000/- in the aggregate to the respondents in each of the above petitions making the total amount as Rs. 12,000/- within two weeks from date. Rule on order of the Petitions is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petitions.