(2013) 10 BOM CK 0155

In the Bombay High Court

Case No : O.O.C.J. Writ Petition No. 2141 of 2013

Laxman Kisan Gaikwad and Others APPELLANT

Vs

Godrej Industries Ltd. RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2014) 140 FLR 483

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

Advocate : Anand Grover and Susheel Mahadeshwar instructed by and Ms. Ranjana Todankar, for the Appellant; Rajesh Gehani, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard learned Counsel for both the sides.

Rule. Rule made returnable forthwith by consent of the parties and present Writ Petition is taken for final hearing at the admission stage itself.

Total 93 persons, ex-workers of the present respondent-Company, have filed the present Writ Petition challenging the order dated 3rd July, 2013 passed by the Member, Industrial Court, Mumbai on the applications (Exhibit C-8 & Exhibit C-9). Said applications (Exhibit C-8 & Exhibit C-9) were preferred by the present respondent in Reference (IT) No. 24 of 2008.

2. Prior to coming to the merits or demerits of the order impugned in the present Writ Petition, certain background of the case is narrated hereunder in order to appreciate the rival submissions:

The respondent-Company has its factory at Vikhroli, Mumbai and there are about 1000 workmen employed. Sometime in the year 2005, the respondent-Company introduced Voluntary Retirement Scheme (VRS). An understanding was reached between the respondent-Company and the Union of Workmen, namely, Bhartiya Kamgar Sena. Said Union is a recognized Union in the factory of the respondent and as such working for more than 25 years in the said factory. A settlement was reached u/s 18(1) of the Industrial Disputes Act, 1947 and almost 323 workmen, including the present petitioners, opted the VRS Scheme and apparently took benefit under the said Scheme. This happened in the year 2005. Sometime in March, 2006 one employee submitted a demand on behalf of various ex-employees and raised a plea that all these employees were misrepresented and were compelled to undertake the VRS scheme. Said plea of the group of ex-workers was repudiated by the respondent. On this, some employees approached the Labour Commissioner. However, they could not succeed as after verification of the matter, the Labour Commissioner dismissed their demand. This resulted in filing of Writ Petition bearing No. 592 of 2008 before this High Court. Suffice it to say, without going into much details of the said Writ Petition, that the matter was remanded back to the Labour Commissioner/Government to reconsider the demand of some of the ex-employees and to make a Reference to the Industrial Court. Consequently Reference was made to the Industrial Court for adjudication. Said reference was made vide order dated 6th August, 2008 by the Additional Commissioner of Labour, Mumbai to the following effect:

SCHEDULE

Shri Laxman Kisan Gaikwad and other 322 workmen whose names are mentioned in Annexure ''A'' represented by Godrej Industries Ltd. Workers Committee (V.R.S.) should be reinstated and V.R.S. of all the workmen should be cancelled or set aside.

3. Said reference is specifically for 323 workmen. During pendency of the said Reference, applications i.e. Exhibit C-8 & Exhibit C-9 were preferred by the respondent-Company. Application below Exhibit C-8 was filed for giving directions to the workmen, i.e. the second party, to deposit the VRS amount already obtained by them under the VRS scheme amount, in the Industrial Tribunal. Application below Exhibit C-9 was filed for necessary directions to close the evidence of the workmen below Exhibits UW-1 to UW-6 i.e. the six affidavits filed by only six workmen out of various other workmen. Also by application below Exhibit C-9 it was prayed by the Company to permit it to cross-examine only those workmen who had filed their affidavits at Exhibits UW-1 to UW-6 and only on the condition that they deposit the money received by them under the VRS Scheme or otherwise for non-deposit of such money in the Court their case to be struck off. Both the said applications (Exhibits C-8 & C-9) were opposed by the present petitioners-workmen by filing respective replies. Considering the rival cases, vide impugned order dated 3rd July, 2013 the Industrial Court partly allowed the said applications (Exhibit C-8 & Exhibit C-9) preferred by the present respondent-Company. The operative order dated 3rd July, 2013 reads thus:

ORDER

(1) Applications at Exh. C-8 and Exh. C-9 are hereby partly allowed.

(2) The workmen involved in the present Reference shall furnish the bank

guarantee of the amount received by them from the company under VRS Scheme on or before 30th September, 2013. The claim of only those employees who furnish bank guarantee before this Court would be prosecuted further by this Court, and the employees who fail to furnish the bank guarantee, their claim shall be treated as rejected in default of non-compliance of the order passed by this Court.

(3) The parties are directed to appear before this Court on 1st October, 2013.

4. Being aggrieved by the order, as mentioned above, 93 petitioners preferred present Writ Petition for quashing and setting aside the said order dated 3rd July, 2013 and also pending the hearing and final disposal of the present Writ Petition for stay of the said order. At this juncture, it must be mentioned that by earlier orders of this Bench time to furnish the bank guarantee as per the impugned order has been extended from time to time and such time is till final adjudication on this Writ Petition.

5. During the arguments, much is argued by the learned Senior Counsel Mr. Anand Grover on behalf of the petitioners mainly canvassing two propositions- firstly that there cannot be an issue estoppel available to the respondent as against the petitioners who had already availed the monetary benefits under the VRS scheme, and secondly that the Industrial Court has exceeded the limit under which it was supposed to act in view of the specific wordings of the Reference made to it. In other words, it is submitted on behalf of the petitioners that now the plea of issue estoppelcannot be available to the respondent-Company for want of any specific mention to that effect during different stages of proceedings between the parties and even at the time of filing of the written submission before the Industrial Court. On this count, it is submitted on behalf of the petitioners that though all the petitioners had availed the benefit under the VRS scheme, now they cannot be estopped from going back to the original position prior to VRS without surrendering the monetary benefits, for the simple reason that no such plea is raised by the respondent-Company.

6. On the second submission, it is strongly submitted on behalf of the petitioners that the Industrial Court has transgressed its authority and dealt with extraneous matter as to giving directions to the petitioners for giving bank guarantee for the amount which each of the petitioners had received under the VRS Scheme. On this aspect, attention of this Court is drawn towards section 10(4) of the Industrial Disputes Act, 1947.

Said provision reads thus:

10. Reference of disputes to Boards, courts or Tribunals--

....

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court

or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.

7. According to the learned Counsel for the petitioners the mention in the Reference was to decide the question whether total 323 workmen specifically named in Annexure-A to the Reference represented by Godrej Industries Ltd. Workers Committee (V.R.S.) should be reinstated and V.R.S. of all the workmen should be cancelled or set aside. According to the learned Counsel for the petitioners the aspect as to giving directions to the workmen to either deposit the amount obtained under the VRS scheme or to give bank guarantee to that extent to the Court, is outside the purview of the Reference. On this context, shelter of the following authorities is taken on behalf of the petitioners:

i. Bank of India Workers Organization v. Batik of India and another 2009 (121) FLR 778 (Bom.).

ii. Between: Delhi Cloth & General Mills Co. Ltd. v. Their Workmen and others (1967) 1 LL.J 423.

iii. Regional Manager, SBI v. Rakesh Kumar Tewari 2006 (108) FLR 733 (SC).

iv. Mukand Ltd. v. Mukund Staff & Officers Association 2004 (101) FLR 219 (SC).

8. By pointing out the ratios propounded by the above authorities, it is strongly submitted that the Tribunal while adjudicating Industrial dispute has to limit itself to points specifically referred for adjudication and the matters incidental thereto and the Tribunal cannot go beyond the terms of reference. So far as the legal pronouncements, as mentioned in the aforesaid cited authorities, there is no dispute. However, whether or not said issue in the present matter at hand regarding directions to the workmen to give bank guarantees to the extent of amounts received by them under VRS Scheme, is extraneous or whether it is the matter incidental to the points of reference.

9. In the case of Bank of India Workers Organization (supra) the reference was:

Whether the action of the Management of Bank of India, Nagpur, in terminating the services of Shri K.D. Kanholkar, Driver-cum-Sepoy with effect from 31.5.1993 is justified? If not, what relief the said workman is entitled to?

In that matter the bank was precluded to produce any material and to plead that the said driver-cum-sepoy was never employed as a driver of the Bank, as determination of said issue was against the parameters of the reference.

10. On the similar lines shelter of the second authority of the Apex Court in the case of Delhi Cloth and General Mills Company Ltd. (supra) was taken on behalf of the petitioners. According to the arguments on behalf of the petitioners, the order of the Industrial Court directing the workmen to furnish bank guarantees is beyond the scope of reference so also the said action cannot be covered under the words "matters incidental thereto". It is an admitted position that as per section 10(4) of the Industrial Disputes Act, 1947, the points of reference and

the matters incidental thereto are within the purview and scope of the Court to deal with.

11. When the above aspect as to matters ''incidental thereto'' was vehemently argued on behalf of the respondent-company, it was countered by the learned Senior Counsel Shri Anand Grover by taking shelter of observations in Delhi Cloth and General Mills Company Ltd. (supra). The observations in the said authority are quoted hereunder with advantage:

From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word ''incidental'' means according to Webster''s New World Dictionary:

happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated;

"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct.

From the above mentioned observations it is clear, in the considered opinion of this Court, that the directions given by the Industrial Court are definitely matters incidental to the main points of reference.

12. Apart from the above, the learned Counsel for the respondent-Company placed reliance on the contents of the written statement filed in Reference No. 24 of 2008, and mainly relied on the contents of paragraph Nos. 2 and 4 and strongly submitted that these pleadings are nothing but the doctrine of issue estoppelpressed as a defence. The contents of said paragraph Nos. 2 and 4 are reproduced hereunder with advantage:

2. It is respectfully submitted that none of the alleged workmen whose names are shown in the reference numbering 323 are not discharged, dismissed, retrenched or terminated nor they are capable of raising an industrial dispute seeking reinstatement from the employer. It is submitted that all 323 persons had opted for VRS and have submitted their resignation voluntarily which was accepted and the accounts settled with them in full and final settlement of their accounts. The said terms of VRS have been reached with the recognised union namely the Bhartiya Kamgar Sena on 12.4.2005 and the benefits given to the workmen who have opted for the VRS have been very liberal and the scheme has

been approved by the recognised union and the said settlement has been reached in the prescribed manner u/s 18(1) read with rule 62 of the Industrial Disputes (Bombay) Rules, 1957. As these 323 persons have accepted benefits willingly and many of them continue to enjoy the retiral and medical benefits as set out in the agreement, the reference sought by them on their behalf is unjustified, improper, illegal and as such the reference is not enforceable at law.

4. It is respectfully submitted that the employer has not received any charter of demands directly or from employees or from the recognised union in order that they raise an industrial dispute. It is submitted that on this ground itself the reference is invalid and is liable to be rejected. It is submitted that the benefits offered under the settlement dated 12.4.2005 are still flowing and are enjoyed by the persons and as such without terminating the said settlement in the prescribed manner there cannot be any demand or adjudication as the reference seeks cancellation of the VRS. The VRS having already been implemented, it is submitted that there cannot be any cancellation or an award setting aside the VRS.

13. Noticing the pleadings as above, again in the considered opinion of this Court, though there is no specific mention as to plea of issue estoppelraised on behalf of the respondent-Company, it was so spelt out before the Industrial Court dealing with the reference.

14. Apart from the above submission, during the arguments, the learned Counsel for the respondent placed much reliance on the ratio propounded by the following authorities:

i. Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., .

ii. Man Singh v. Maruti Suzuki India Ltd. and another 2011 (131) FLR 1 (SC).

15. By pointing out the above authorities, it is submitted on behalf of the respondent-Company that it is just and equitable for the petitioners to deposit the respective amounts obtained by them under the VRS scheme if it is their specific contention that the VRS was compelled on them without their consent and it was so done by practicing fraud and/or coercion. In view of the ratios propounded by the authorities cited above on behalf of the respondent-Company, it is definitely warranted under the situation that the petitioners are required to surrender the amount to the Court if they want to negate the VRS. Though in the present matter the Industrial Tribunal had not directed for deposit of the entire amount along with interest as mentioned in the case of Ramesh Chandra Sankla (supra), directions were given to the petitioners-workmen to give bank guarantee for the respective amounts which they have obtained under VRS. This part of the order of only directing the workers to give bank guarantee and not directing them to deposit the amount, is not challenged by the respondent-Company and as such this aspect need not be gone into at this juncture while deciding the Writ Petition.

16. Lastly other arguments advanced on behalf of the respondent-Company can be mentioned in brief, which are-on the general law and binding effect of the decisions of the Hon''ble Apex Court and also on the aspect as to under which circumstances interference is needed in the orders of the Courts under writ jurisdiction. It is argued that there was no error apparent on record. So also there was no error of law while passing the impugned order by the Industrial Court and as such there is no legal necessity to exercise the writ jurisdiction and to interfere with the said order. It is also argued that the pronouncements of the Hon''ble Apex Court are binding on all the Courts and so equally binding on the Industrial Court and as such taking recourse to the decision of the Apex Court in Man Singh v. Maruti Suzuki India Ltd. (supra), the Industrial Court had accepted the ratio propounded by the Hon''ble Apex Court and as such there is nothing erroneous, warranting interference, in the impugned order, further argued.

17. At the end of the arguments, the learned Counsel for the respondent-Company submitted that the respondent has no objection if all the remaining workers those who have not filed their affidavit in lieu of examination in-chief, if permitted to file such affidavits of course after submitting the respective bank guarantees, the respondent will not press the prayer for closing the evidence of the workers only on the affidavits of six workers. It is further submitted that if during the adjudication of the reference such affidavits are filed by other workers, the respondent-Company will cross-examine them. This stand taken by the respondent-Company is required to be considered while passing final orders on the present Writ Petition and to give suitable directions to the concerned Industrial Court while disposing of the reference.

18. In view of the above, there is no merit in the present Writ Petition and the same is accordingly dismissed with no order as to costs. Rule stands discharged accordingly. Directions are given to the Industrial Court to allow the workers who had not yet filed the affidavits, to submit their respective affidavits if they wish and then in that event to allow the present respondent-Company to cross-examine them and to deal with the matter in accordance with law. Rest of the order impugned in the present Writ Petition shall sustain. Upon oral request by learned Counsel for the petitioners, the ad interim protection earlier granted for depositing the bank guarantees is extended for a period of four weeks from today as the learned Counsel for the petitioners submitted that the petitioners want to take up the matter before the Apex Court.

