

(2010) 11 MAD CK 0142

In the Madras High Court

Case No : Writ Petition (MD) No's. 11410 of 2009 and M.P. (MD) No's. 1, 1, 1, 1, 1, 2, 2, 2, 2 and 2 of 2009

Management Parayil Thottam

APPELLANT

Vs

The Labour Court, Cyril Thomas, Proprietor, Erstwhile
Management and Babu

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10, 11, 12(4), 15(2), 18

Citation : (2010) 11 MAD CK 0142

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Sivathilakar, for the Appellant; Not served for RR 2 and 3, for the Respondent

Judgement

K. Chandru, J.—The Petitioner in all these writ petitions is the management of Parayil Thottam. They have come forward to challenge an order passed by the first Respondent Labour Court in I.A. Nos. 13 to 18 of 2009 in I.D. Nos. 82 to 87 of 1999. By the common impugned order, the first Respondent Labour Court directed the impleadment of the writ Petitioner as party second Respondent to the main I. Ds.

2. The facts leading to filing of the case are as follows:

The third Respondent workman in each of the writ petition raised a dispute u/s 2A(2) of the Industrial Disputes Act before the Assistant Commissioner of Labour (Conciliation). As he could not bring about any mediation, he gave failure report u/s 12(4) of the I.D. Act. On the strength of the said failure report, each third Respondent filed claim statement before the Labour Court, the first Respondent, dated 15.7.1999. The first Respondent Labour Court took up those disputes on its file as I.D. Nos. 82 to 87 of 1999. Notices were issued to the second

Respondent. The second Respondent filed a written statement in each of the dispute, dated 16.5.2000 and raised several contentions including non maintainability of reference. While the dispute was pending before the first Respondent, on 22.1.2009 the counsel for the second Respondent management filed a memo, stating that the estate owned by them, i.e. Parayil Estate, Pechippara, Kanyakumari District, was transferred in favour of the writ Petitioner herein by virtue of the registered sale deed with Thiruvattar Sub Registrar as document No. 1370 of 2008 and the ownership of the Estate stood transferred with the writ Petitioner herein with effect from 5.6.2008. A copy of the sale deed with Tamil translation from the original Malayalam document was also filed.

3. Realizing the stand taken by the second Respondent management, the workman (R-3) in each of the dispute filed an interim application in I.A. Nos. 13 to 18 of 2009 to implead the writ Petitioner herein. Notice was issued on the interim applications both to the writ Petitioner as well as the second Respondent herein. While the workmen made a claim that impleadment became necessary in view of the transfer of ownership of the management, the writ Petitioner contended that the workmen cannot raise any claim against the proposed third party. In the counter statement filed by the proposed second Respondent, he had stated that no claim can be made against the management as they are stranger to the dispute and there is no privity of contract between them and the workmen.

4. After hearing the parties, by the impugned order, dated 23.6.2009, the Labour Court allowed the interim applications and impleaded the writ Petitioner herein as the second Respondent in all the disputes. For the impleadment of the writ Petitioner, the first Respondent Labour Court in paragraph 7 recorded the following reasons:

7. ...If the transferor has given undertaking in the memo cum affidavit to pay retrenchment compensation to all the Petitioners concerned in the respective I.D.s, this Court can very well dispense with the appearance of the proposed 2nd Respondent. In the absence of such undertaking by the main Respondent, the impleadment of the 2nd Respondent has become necessary under law so as to decide as to whether transferor or transferee has to pay retrenchment compensation to the Petitioners concerned in the I.D.s and further this Court has got to see whether employer and employee relationship existed between all the Petitioners concerned in respective I.D.s and main Respondent namely the transferor of the Parayil Estate. Hence the impleadment of the transferee namely the proposed 2nd Respondent has become necessary under law to implead him as 2nd Respondent in all the main I.D.s.

Challenging the same, the present writ petitions have been filed by the writ Petitioners. When the matter came up on 11.11.2009, this Court granted an interim stay of the operation of the impugned order.

5. The question as to whether the first Respondent Labour Court was right in impleading the writ Petitioner herein need not be gone into at this stage as the

main disputes have not been completed and they are pending even though disputes are more than 11 years old. It is sorry state of affairs that the industrial disputes of non employment of the workmen filed u/s 2A should take up for 11 years especially when u/s 10 of the I.D. Act, the Parliament had directed the Labour Court to complete the non employment dispute within three months. In any event, with reference to the power of impleadment, the said power is squarely available to the Labour Court in terms of Section 18(3)(b) read with Section 11 of the I.D. Act. It is always open to the writ Petitioner herein to contend that they were unjustly brought on record and they are not liable to mulct with any liability in the dispute. That requires the writ Petitioner to file an appropriate counter statement and participate in the adjudication process.

6. As to the power of the Labour Court to implead a third party in a pending reference came to be considered by the Supreme Court in *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, . It is necessary to refer to the following passages found in paragraphs 4 to 6 and 10 to 12, which are as follows:

4. In dealing with this question, it is necessary to consider the provisions of Section 18(b) in the Act as it was first enacted, and then consider the provisions of Section 18(3)(b) as they now stand. Under the original Act, Section 18 consisted of four Clauses (a), (b), (c) and (d). We are concerned in the present appeal with Clauses (a) and (b). Section 18(a) and (b) read thus:

A settlement arrived at in the course of conciliation proceedings under this Act, or an award which is declared by the appropriate Government to be binding under Sub-section (2) of Section 15 shall be binding on:

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board of Tribunal, as the case may be, records the opinion that they were so summoned without proper cause.

The first question which we have to consider is, did Section 18(b), as it then stood, postulate an implied power in the Tribunal to add persons as parties to the proceedings who are other than those who were parties to the industrial dispute? It will be noticed that Clause (a) refers to all parties to the industrial dispute, whereas Clause (b) refers to all other parties summoned to appear. The word "other" seems to suggest that the parties summoned to appear to whom Clause (b) refers are not identical with the parties to the industrial dispute specified by Clause (a). Section 2(k) of the Act defines an "industrial dispute", inter alia, as meaning any dispute or difference between employers and workmen; so that parties to the industrial dispute under clause

(a) would mean persons between whom the dispute has arisen as prescribed by Section 2(k), and so, Clause (b) contemplates persons other than those who are actually and directly involved in the dispute which is the subject-matter of

reference u/s 10. Thus, Section 18(b) seems to contemplate that persons other than parties to the industrial dispute may be summoned before the Tribunal.

5. That takes us to the question as to who can summon these parties? Section 11(3) of the Act prescribes, *inter alia*, that the Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, when trying a suit in respect of the matters specified in Clauses (a) to (d); Clause (a) refers to enforcing the attendance of any person and examining him on oath; Clause (b) has reference to the power to compel the production of documents and material objects; Clause (c) is in respect of issuing commissions for the examination of witnesses; and Clause (d) is in respect of such other matters as may be prescribed. It is thus clear that the power to add a party to the proceedings pending before a Tribunal which may be exercised under the Code of CPC under Order 1 Rule 10 is not included in Section 11(3), and there is no other section which confers such a power on the Tribunal. Therefore, if Section 18(b) contemplates that persons other than parties to the industrial dispute can be summoned, there is no specific provision conferring power on the Tribunal to summon them, and that inevitably suggests that the power must be read as being implicit in Section 18(b) itself.

6. In this connection, it is necessary to refer to Section 10 as it then stood. Section 10(1) then consisted of three clauses which read thus:

If any industrial dispute exists or is apprehended, the

appropriate Government may, by order in writing:

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute to Tribunal for adjudication.

It is significant that so far as the reference to the Tribunal is concerned, Section 10(1)(c) empowered the appropriate Government to refer the dispute to the Tribunal, and unlike Clause (b), this clause did not take within its sweep any matter appearing to be connected with or relevant to the dispute; so that in regard to the power to refer an industrial dispute to the Government Tribunal for its adjudication, the appropriate Government could make a reference of the dispute itself and was not expressly clothed with the power to refer any matter appearing to be connected with, or relevant to, such a dispute. The result of these relevant provisions clearly seems to be that if the Industrial Tribunal, while dealing with an industrial dispute, came to the conclusion that persons other than those mentioned as parties to the industrial dispute were necessary for a valid determination of the said dispute, it had the power to summon them; and if such persons were summoned to appear in the proceedings, the award that the Industrial Tribunal may ultimately pronounce would be binding on them. Since in cases where persons were added as parties to an industrial dispute were likely to

raise the question as to whether the joinder of the parties was justified or not, Section 18(b) required that the Tribunal should record its opinion as to whether these persons had been summoned without proper cause. Thus, we are inclined to take the view that Mr Chattered is right in contending that Section 18(b) as it originally stood, postulates that the Tribunal had an implied power to summon parties, other than parties to the industrial dispute, to appear in the proceedings before it. That naturally raises the question about the extent of this power.

...10. Section 18(b) with which we began, has also been amended by Act 36 of 1956, and it has now been renumbered. As a result Section 18(b) is now included in Section 18(3)(b). Section 18(3) provides, inter alia, that an award passed by an Industrial Tribunal which has become enforceable shall be binding on:

(a) all parties to the industrial disputes;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Tribunal records the opinion that they were so called without proper cause.

11. The material words in Section 18(3)(b) are the same as they were originally included in Section 18(b), and so, the implied power which could be exercised by the Industrial Tribunal u/s 18(b) can now be exercised by it u/s 18(3)(b). If the Tribunal thinks that the parties who were summoned to appear before it were so summoned without proper cause, it may record its opinion to that effect and then the award which it pronounces would not be binding on them.

12. Reverting then to the question as to the effect of the power which is implied in Section 18(3)(b), it is clear that this power cannot be exercised by the Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal to deal with an industrial dispute is derived solely from the order of reference passed by the appropriate Government u/s 10(1). What the Tribunal can consider in addition to the disputes specified in the order of reference, are only matters incidental to the said disputes; and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, purporting to exercise its implied power u/s 18(3)(b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in the referenced not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions as it may deem necessary. The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? In other words, the test

may well be would then on-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited.

Therefore, it cannot be said that the Labour Court has no power to implead the third party for an effective adjudication of the dispute pending before it.

7. As to the desirability of entertaining the writ petition at the interlocutory stage came to be considered by the Supreme Court in more than one judgment. The Supreme Court in *D.P. Maheshwari Vs. Delhi Administration and Others*, , in paragraph 1 observed as follows:

It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, some times for over a decade....

There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of a High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait by dragging the matter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of the workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not Appellant while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues.

8. Further, the question of entertaining the writ petition on preliminary issue and that too by the public sector company came to be considered by the Supreme Court in *S.K. Verma Vs. Mahesh Chandra and Another*, . In paragraph 2, the Supreme Court had observed as follows:

2. There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from court to court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporations will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures.

9. In considering the scope of Section 11A of the I.D. Act and the need to frame preliminary issue regarding the validity of domestic enquiry, the Supreme Court struck a word of caution to the High Courts from entertaining the writ petition against preliminary order passed by the labour court regarding the validity of the enquiry vide its judgment in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, . The following passage found in paragraph 22 of the said judgment may be usefully reproduced below:

22. ...We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

10. In the light of the above factual matrix and the legal precedents, the writ petitions cannot be entertained. Hence all the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed. Since the matter is of the year 1999 and relates to non employment of the workmen, the first Respondent Labour Court is hereby directed to complete the hearing of the dispute in I.D. Nos. 82 to 87 of 1999 within a period of three months from the date of receipt of copy of this order and send the compliance report to this Court.