
(2010) 02 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No"s. 25212 to 25217 of 2001

MRF Ltd.

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal and V. Divijendiran

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2010) 02 MAD CK 0144

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Sanjay Mohan, for S. Ramasubramaniam Associates, for the Appellant; V. Prakash for G. Ramapriya, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioner is the Management. They have come forward to challenge in these writ petitions the order passed by the first respondent Tribunal in various Miscellaneous Application Nos. 86 to 91 of 2001 in Approval Petition Nos. 69, 57, 118, 58, 124 and 70 of 1995.

3. It is seen from the records that an industrial dispute was pending before the first respondent Tribunal as I.D. No. 11 of 1994. During the pendency of the dispute, the petitioner dismiss the contesting 2nd respondents on 01.06.1995 and they sought the approval of the Tribunal u/s 33(2)(b) of the Industrial Disputes Act. These approval petitions were numbered by the Tribunal and notice was issued to the contesting respondents. The contesting respondents had filed counter affidavits questioning the validity of the enquiry conducted by the Management and also the unjustness of their termination. Though a rejoinder was filed by the petitioner Management, there was no alternative plea by the Management to ask for permission from the Tribunal in case it holds that the domestic enquiry conducted by them was not fair and proper.

4. Thereafter they took out Miscellaneous Application Nos. 86 to 91 of 2001 raising an alternative plea thereby reserving their right to lead fresh evidence, should the Tribunal comes to the conclusion that the enquiry was not fair and proper. On these miscellaneous petitions, the contesting respondent workman have filed counter statements opposing the petitions. Thereafter elaborate arguments were addressed. The Tribunal, accepting the contentions of the 2nd respondent workmen, dismissed those applications by the impugned order dated 20.11.2001.

5. The Tribunal held that though the employer is entitled to raise alternative plea, that should be raised in the counter pleadings or within a reasonable time, but not after six years, after the approval petitions were filed and that too after coming to know the workmen's stand regarding validity of the enquiry. The Tribunal followed the Supreme Court's Judgment rendered in Shambhu Nath Goyal Vs. Bank of Baroda and Others, . Though the said judgment was doubted, subsequently it came to be upheld by a Constitution Bench vide its Judgment in Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, . The Tribunal on the basis of the Judgment in Shambhu Nath Goyal's case held that the request made by the Management was not bonafide and the request for letting additional evidence at any stage before the publication of the award did not mean that at all times the employer seek such permission and the bonafides of the Management will have to be considered.

6. As against the impugned order, all these writ petitions were filed and they were admitted on 21.12.2001. Pending the writ petition, no interim order of stay was granted by this Court. However even those applications were subsequently dismissed on 27.08.2003 and the main writ petitions were directed to be posted. Even thereafter the writ petitions were not posted, which lead to the workmen filing applications for fixing an early date, which were ordered on 04.08.2006. Accordingly, these writ petitions were posted after 3 1/2 years and were taken up today for final disposal.

7. Inspite of the fact that there were no interim orders, it is rather unfortunate that the Industrial Tribunal did not proceed to hear the approval petitions. It is stated by Mr. V. Prakash, learned Senior Counsel appearing for the contesting respondents that in view of the admission of the writ petitions, records were called for from the Tribunal. Because of that fact, the proceedings could not progress further. It is rather unfortunate that a petition for approval filed u/s 33(2)(b) has to be stalled for more than 9 years that too on the question as to whether an alternative plea made by the Management should be entertained or not.

8. It is needless to state that the present controversy centers around the time limit within which an appropriate pleadings raising alternative pleas itself was clouded due to the difference of opinion between the two Judgments of the Supreme Court. However, it came to be resolved subsequently by the Constitution Bench of the Supreme Court in the case of Karnataka State Road

Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, as stated elsewhere.

9. The Supreme Court by a majority opinion upheld the reasoning given in the Shambhu Nath Goyal's case (cited supra). In paragraphs 17 to 20 it was observed as follows:

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambhu Nath Goyal case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal Case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal case. It is to be noted that this judgment was delivered on 27.09.1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This Judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said judgment to see that a long standing decision is not unsettled without a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal v. Bank of Baroda is the correct law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.

10. The short question that arises for consideration in these cases is whether the Tribunal was right in rejecting the request of the Management to entertain their alternative plea is justified or not.

11. Nodoubt in Shambhu Nath Goyal's case the Supreme Court stated that the Management cannot raise such pleas at any time and the bonafides of the Management will have to be taken into account by the appropriate Tribunal. In Lakshmiddevamma's case cited supra, in paragraph 20 (extracted above), the

Supreme Court held that if the employer did not seek permission to lead evidence before the Labour Court's preliminary decision on the domestic enquiry, then no permission need be granted. In the present case, the enquiry regarding the preliminary issue is yet to be taken up by the Tribunal. Though there was undue delay, but since the Tribunal is yet to decide the validity of the enquiry, as a preliminary issue, this Court is of the view that the applications filed by the Management can be taken on record and they may be allowed to raise such an additional plea.

12. However, Mr. V. Prakash, learned Senior Counsel submitted that should this Court comes to the conclusion that the Management petitions are to be allowed then it should be on terms, as the workmen have been prejudiced by these proceedings for the last 9 years.

13. In view of the above the order passed by the Tribunal dated 20.11.2001 is not sustainable and hence it is set aside. M.A. Nos. 86 to 91 of 2001 will stand allowed on terms that each of the contesting respondents shall be paid Rs. 2,000/- within a period of four weeks from today as costs. All the writ petitions stand allowed.

14. Considering the fact that the approval petitions are of the year 1995 and more than 15 years have elapsed, the Tribunal shall give preference for the disposal of the petitions. In any event, the Tribunal shall decide the issue within a period of three months from the date of receipt of a copy of this order. It is needless to state that both the sides shall cooperate for the disposal of the main approval petitions pending before the Tribunal.