
(2011) 05 PAT CK 0039
In the Patna High Court
Case No : CWJC No. 11935 of 2008

M/s Deepak Vegpro Private Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : (2011) 05 PAT CK 0039

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the Petitioner challenging notification No. 3/D-1-180-150/2007LR 3147 dated 23.6.2008 (Annexure-1) issued by Govt. of Bihar, Labour Employment and Training under the signature of its Joint Secretary (Respondent No. 1) by which the alleged industrial dispute was referred to the Industrial Tribunal, Patna for its adjudication vide Reference No. 71 of 2008.

2. The claim of the Petitioner is that it is a company incorporated under the Companies Act, 1956 and the factory at Durgawati is a unit of Petitioner-company known as Vanaspati Division engaged in manufacturing hydrogenated Vanaspati oil.

3. It is also claimed by the Petitioner that there was another company, namely Ganga Vanaspati Private Limited, which was also engaged in production of Vanaspati oil, but since it could not run properly, Company Petition No. 2 of 1995 was filed in the High Court for winding up the company in which notices in different newspaper was published for the auction sale of its assets. The Petitioner-company participated in the auction sale and being the highest bidder offering Rs. 2.11 Crore purchased the assets of the demised company without any encumbrance and the same was finalized in favour of the Petitioner after deposit of the full and final consideration money by the Petitioner-company which was given sale letter dated 27.9.2006 (Annexure-2) by Official Liquidator of this High Court, whereafter the factory unit was handed over to the Petitioner on 28.9.2006 after issuance of certificate dated 18.9.2007 (Annexure-3) issued by

the Official Liquidator of the Patna High Court in which it was made clear that the Petitioner-company was not liable to pay any dues/tax payable on behalf of the erstwhile company in liquidation.

4. Learned counsel for the Petitioner further submitted that the Petitioner company for the first time came in production on 6.8.2007 which is also apparent from the certificate dated 24.8.2007 (Annexure-4) issued by the Industries Department after installing sophisticated machinery and engaging 55 experienced persons in technical side and, accordingly, vide letter dated 14.1.2008 (Annexure-5), the Petitioner submitted the list of employees employed in the Petitioner-company before the Labour Superintendent, Dalmianagar (Kaimur). Learned counsel for the Petitioner further submitted that one Prabhu Dayal Pandey claiming to be President of a Trade Union not even registered under the Trade Union Act sent letter dated 29.9.2007 (Annexure-6) to the Petitioner-company for employment of 23 ex-employees of M/s Ganga Vanaspati Private Limited who were purportedly employed by contractors. The said 23 alleged employees of M/s Ganga Vanaspati Private Limited also sent a letter to the Petitioner (Annexure-7) in February, 2008 against their alleged termination from service from 23.1.2008 and employing 40 to 50 outsiders in the company.

5. Learned counsel for the Petitioner further submitted that it transpired that the said matter was also referred by the said persons to the Labour Resources Department which issued the impugned notice dated 23.6.2008 (Annexure-1) through its Joint Secretary regarding the said purported industrial dispute to the Industrial Tribunal, Patna for adjudication vide its Reference No. 71 of 2008.

6. Learned counsel for the Petitioner argued that the said persons who raised dispute were allegedly employees of M/s Ganga Vanaspati Private Limited and winding up for the said company started in the year 1995 and hence on that date their services automatically stood terminated and they had no concern left for the property of the company. It is also stated that there was auction sale in the year 2006 u/s 445(3) of the Companies Act, 1956 and the Petitioner purchased only the assets of the company in the said auction and did not purchase any business of the said company as is clear from the sale letter and Petitioner was not liable to pay any dues which was payable by the company in liquidation as per certificate of the Official Liquidator of the High Court. He referred to Section 25FF of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for the sake of brevity) in which it has been provided that only in case where the ownership or management of undertaking is transferred the workmen is entitled to compensation.

7. Learned counsel for the Petitioner also argued that if there was any dues of workmen of the erstwhile M/s Ganga Vanaspati Pvt. Ltd. they are entitled to get their dues only from the sale proceeds of the auction sale of the assets of the said company which has already been completed as far back as in the year 2006. In this connection, learned counsel for the Petitioner referred to three decisions of the Apex Court in case of Anakapalla Co-operative Agricultural and Industrial

Society Limited Vs. Workmen, as well as in case of Maruti Udyog Ltd. Vs. Ram Lal and Others, and also in case of New Horizon Sugar Mills Ltd., Ariyur and Another v. Ariyur Sugar Mills Staff Welfare Union and Others, reported in 2010 (I) LLJ (I) (SC).

8. Learned counsel for the Petitioner further argued that in the aforesaid facts and circumstances, it has no liability against the employees of the erstwhile M/s Ganga Vanaspati Pvt. Ltd. and hence the Government was not justified to refer a non-existent dispute to the Industrial Tribunal for adjudication u/s 10 of the Act as he had only purchased the assets and not the liability as according to Section 2(k) of the Act where there is no relationship of employer and workmen there can be no industrial dispute. In this connection, learned counsel for the Petitioner relied upon a decision of the Apex Court in case of Ram Pravesh Singh & Ors. v. State of Bihar & Ors., reported in 2006 (4) PUR (SC) 222, in which principle of legitimate expectation had been discussed.

9. Learned counsel for the Petitioner further argued that when there was no industrial dispute between the employer and the workman, the provision of the Act was not applicable and, thus the Government had no jurisdiction to refer the dispute to the Industrial Tribunal. In this connection, learned counsel for the Petitioner relied upon three decisions of the Apex Court in case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, as well as in case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, and in case of Karan Singh v. M/s Executive Engineer, Haryana State Marketing Board, reported in 2008 (1) PLJR (SC) 1 in which it has been held that the jurisdiction of reference can be looked into by the High Court and the Supreme Court. Hence, he submitted that this writ petition is maintainable as there being no dispute as per the definition provided in the Industrial Disputes Act, the Respondent had no jurisdiction to refer the dispute to the Industrial Tribunal. Learned counsel for the Petitioner also argued that the impugned reference itself being under challenge on the ground of being without jurisdiction, the High Court has the authority to interfere.

10. On the other hand, learned counsel for Respondents No. 3 and 4 vehemently opposed the contentions of learned counsel for the Petitioner and submitted that the employees in question were no doubt the employees of M/s Ganga Vanaspati Private Limited, but they continued to be the employees even after the auction sale in favour of the Petitioner and their services were terminated by the Petitioner much subsequently on 23.1.2008 when 40 to 50 outsiders were employed, hence there was relationship of employer and workmen between them and the Petitioner-company which was squarely covered under the Industrial Disputes Act. Hence, the Government was fully justified in referring the matter to the Industrial Tribunal which has the jurisdiction to decide such matter u/s 10(4) of the Act. Thus, the reference before the Tribunal being the appropriate, adequate and proper remedy for the said dispute there is no occasion for interference by this court as there is no grave or exceptional circumstances

shown by the Petitioner, hence this writ petition is not maintainable. In this connection, learned counsel for the Respondent relied upon a decision of this court in case of Sidheshwar Prasad Vs. Bihar State Road Transport Corporation and Others as well as a decision of the Apex Court in case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others,

11. Learned counsel for the said Respondents further argued that the proceeding of the reference before the Industrial Tribunal is on the verge of conclusion as the evidence of Respondent nos. 3 and 4 has been concluded and the evidence on behalf of the Petitioner is continuing, hence there is no occasion for any interference with the said reference which has been referred and is proceeding in accordance with the specific provisions of law.

12. Learned counsel for the State of Bihar and its authority (Respondent No. 2) adopts the arguments raised by learned counsel for Respondent nos. 3 and 4 and defended the term of reference vide impugned notification dated 23.6.2008 (Annexure-1) issued by the Government of Bihar, Labour Employment and Training through its Joint Secretary referring the purported industrial dispute to the Industrial Tribunal, Patna for its adjudication vide its Reference No. 71 of 2008.

13. Considering the averments made by learned counsel for the parties and the materials on record it is quite apparent that the dispute between the parties included the question as to whether the workmen of the erstwhile company M/s Ganga Vanaspati Private Limited continued to be the workmen after auction purchase by the Petitioner in the year 2006 and whether their services were terminated by the Petitioner-company in the year 2008. Such matter which is disputed question of fact cannot be decided by this court as for its decision evidence has to be led on behalf of the parties for coming to the correct finding with respect thereto.

14. So far the provision of Section 445(3) of the Companies Act, 1956 relied upon by learned counsel for the Petitioner is concerned it does not support the Petitioner's claim as it has to be followed fully and raising of any dispute by the said workmen giving rise to a reference under the Industrial Disputes Act is not precluded.

15. No doubt, the High Court has jurisdiction to invalidate such reference made by the Government to the Industrial Tribunal under the Industrial Disputes Act, but there being an adequate and efficacious alternative remedy and there being no grave and exceptional circumstances, this court did not find reason to interfere in the matter as Industrial Tribunal is the proper authority which can take evidence of the parties and decide the matter after considering the pleadings and evidence on record as well as the provisions of law applicable to the case.

16. Furthermore, it is not in dispute that the proceeding has considerably advanced before the Industrial Tribunal in which even the evidence of

Respondent nos. 3 and 4 has been concluded and the evidence of the Petitioner is continuing. Hence, this court feels it proper that the Industrial Tribunal should proceed and decide this matter in accordance with law.

17. Furthermore, the decisions of the Hon''ble Apex Court relied upon by learned counsel for the Petitioner in case of Anakapalle Co-operative Agricultural and Industrial Society Ltd. (supra), in case of Maruti Udyog Ltd. (supra), in case of New Horizon Sugar Mills Ltd., Ariyur (supra), in case of Whirlpool Corporation (supra), in case of National Engineering Industries Ltd. (supra) and in case of Karan Singh (supra) do not in any manner take away the jurisdiction of the Industrial Tribunal in such cases where dispute is with respect to relation between the workmen and the employer and the fact of termination of the workmen by the Petitioner-company which can legally be decided only after taking evidence and considering the pleadings of the parties in the light of those evidences.

18. In the aforesaid facts and circumstances, this court does not find any reason to interfere in the matter and accordingly this writ petition is dismissed.