

(2008) 12 BOM CK 0101

In the Bombay High Court

Case No : Letters Patent Appeal No. 412 of 2008 in Civil Application No. 194 of 2008 in Writ Petition No. 5700 of 2006 and Civil Application No. 377 of 2008

Oil and Natural Gas Corporation Ltd.

APPELLANT

Vs

Ninan Thomas

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 17B

Citation : (2009) 3 BomCR 344 : (2009) 120 FLR 1170 : (2009) 2 MhLj 270 : (2009) 3 SLR 277

Hon'ble Judges : Swatanter Kumar, C.J;S.A. Bobde, J

Bench : Division Bench

Advocate : J.P. Cama, instructed by Gobindram D. Talreja, for the Appellant; P. Gopal Krishna and Shobana Gopal, for the Respondent

Judgement

Swatanter Kumar, C.J.—The Central Government Industrial Tribunal vide Award dated 30th April 2006 answered the Reference in favour of the workman and granted him reinstatement with 50% back wages. The correctness of this Award was questioned by the Appellant in Writ Petition No. 5700 of 2006 filed on 21st August 2006. When the matter came up before the learned Single Judge at the admission stage, Rule was issued and interim stay of operation of the Award was granted vide order dated 21st March 2007. During the pendency of that Petition, the Petitioner filed an affidavit in terms of Section 17-B of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act") claiming last drawn wages during the pendency of the Petition and as a result of the order of the Court dated 21st March 2007. The learned Single Judge of this Court heard the parties and after examining the matter at great length, vide order dated 1st October 2008 passed on Civil Application No. 194 of 2008, allowed the prayer of the workman against the Management calling upon the Respondents in the Writ Petition to pay to the Petitioner last drawn wages from 21st March 2007, the date

from which the operation of the Award was stayed. This judgment of the learned Single Judge has been impugned in the present Appeal by the Appellant.

2. The main plank of the submission on behalf of the Appellant is that the workman had failed to file an affidavit in conformity with the settled principles of law. Resultantly, there was no compliance to the ingredients of Section 17-B of the Act and as such the impugned order is liable to be set aside. It is also contended that the learned Single Judge has also not appreciated that there was no pleadings or foundation for arriving at a conclusion that the workman had made attempts to secure alternate employment and had failed. According to the Appellant, the judgment of the learned Single Judge is contrary to the judgment passed by the Division Bench of this Court in the case of U.P. State Bridge Corporation Limited v. Maharashtra General Kamgar Union 200730.

3. The learned Single Judge referred in some detail to the judgment of the Division Bench and then came to the conclusion that there was sufficient and substantial compliance to the principles stated in that case. The following findings of the learned Single Judge can be usefully reproduced:

7. The submission which has been urged cannot be accepted. The view which was taken in Elpro International Ltd. by the Division Bench of this Court has been expressly held to be incorrect in the judgment of the Supreme Court in Dena Bank v. Kiritikumar T. Patel. In the judgment of the Supreme Court in Dena Bank, the judgment of this Court in Elpro was extensively extracted in paragraph 17 of the judgment, including the observation that where an award was without jurisdiction or is otherwise a nullity or grossly erroneous or perverse, the High Court or the Supreme Court was not debarred from exercising the powers under the Articles 226 or 136 respectively. The view in Elpro was overruled by the Supreme Court as would be evident from the following observations:

But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. [1987 (I) L.L.J. 695] (vide supra), that in exercise of the power under Articles 226 and 136 of the Constitution an order can be passed denying the workman the benefit granted u/s 17B. The conferment of such a right u/s 17B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution.

8. Section 17-B has been enacted by Parliament in order to provide relief to a workman who is ordered to be reinstated under an award of the Labour Court or the Industrial Tribunal during the pendency of the proceedings where the award is under challenge before the High Court or the Supreme Court. The payment which is required to be made is in the nature of subsistence allowance which is not refundable or recoverable from the workmen even if the award is set aside by the High Court or the Supreme Court. Having regard to the nature and object of the provision and the judgment of the Supreme Court, it is impossible to subscribe to the view that this Court should be in the exercise of its jurisdiction under Article 226, reject the application u/s 17-B, even though all the

requirements which have been spelt out in the statutory provision have been fulfilled, by looking into the legality of the award. That would amount to rewriting legislation and imposing a condition which Parliament has not imposed. That lies beyond the jurisdiction of the Court under Article 226. In these circumstances, the Civil Application would have to be allowed and is accordingly allowed. Accordingly, the Civil Application is disposed of directing the employer, ONGC, to pay to the Applicant before the Court the wages last drawn by him from 21st March, 2007 which is the date on which the award was stayed by a learned Single Judge of this Court. The Civil Application is accordingly disposed of.

4. The analysis of the facts of the case in light of the stated principles of law makes it clear that the Court treated the affidavit of the workman as a sufficient and substantial compliance to the requirement of Section 17-B of the Act. The workman had stated before the Industrial Court that he was not gainfully employed. The workman thereafter filed an affidavit dated 18th April 2007 which is subsequent to the order of stay dated 21st March 2007, stating substantially in paragraph 10 that he was not gainfully employed in any establishment and he made lot of attempts to get employment elsewhere, but could not succeed. It was also averred that he was not earning anything and claimed last drawn wages as on the date of his dismissal in October 1996. In paragraphs 6 and 7 of the Civil Application No. 194 of 2008, the workman has reiterated these averments and had also stated that he was surviving on his savings and even has to sell his ancestral property to meet his needs. He also gave names of some of the organizations where he had applied, but could not secure a job for the reason that in Government or Public Sector Undertakings, the application is to be sent through proper channel. In the Private Sector, he was even required to submit letter of resignation from previous employer. Referring to these circumstances, the workman claimed the wages as contemplated u/s 17-B of the Act. There is no doubt that in light of the Division Bench judgment of this Court as well as the other judgments, compliance to the requirement of Section 17-B is a condition precedent to the passing of an order for payment of wages wherever the Court grants a stay. The Court primarily is not concerned with the status of the family members of the workman because it is the workman alone who is entitled to the benefit of the specific provisions under the Industrial Disputes Act, 1947 and it is only his means and his employment which is relevant. We are unable to agree with the contention raised on behalf of the Appellant Management that there is no substantial or proper compliance of the provisions of Section 17-B of the Act by the workman. It is factually incorrect to take up a plea in the Memorandum of Appeal that there were no pleadings in the application or in the affidavit in support of the application as regards to unemployment and some explanation as to how the workman had subsisted during the relevant period.

5. It has to be kept in mind that order on an application u/s 17-B of the Act is not result of a trial and not even a summary trial. It is only on the basis of an affidavit as contemplated u/s 17-B of the Act and reply received thereto, if any, that the Court has to take up a prima facie view and pass appropriate orders. It

is not entirely correct to state that the workman is expected to prove the averred facts at this stage. Filing of an affidavit, of course, properly stating the basic ingredients of Section 17-B is sufficient compliance of the requirements of Section 17-B of the Act and it is then for the Management to refute as well as, if they so desire, place documents in support of denial on record.

6. A Division Bench of this Court in the case of U.P. State Bridge Corporation (*supra*) has stated that the onus on the workman is very limited one and once an affidavit as contemplated under the provisions of Section 17-B of the Act is filed and the Court is satisfied that the workman was not employed in any establishment during the relevant period, direction for payment of wages u/s 17-B would be issued. It also stated that it was expected of the workman to make a definite correct averment in the affidavit in that regard. This requirement of the Section has been squarely met with in the facts and circumstances of the case. The affidavit of the workman and the contents of his application have to be taken as substantial compliance of the provisions of Section 17-B of the Act. In that case as well as in the present case, the Management had done nothing more than making a mere denial. A formal denial on an affidavit would not render the affidavit ineffective or inconsequential particularly when the Court is satisfied with regard to contents thereof. The Management without filing a reply affidavit and substantiating such plea cannot just find faults with the affidavit to deny the claim of the workman. The limited onus placed on the workman will be discharged when such an affidavit is filed which contains sufficient averments in regard to unemployment and other relevant considerations like his efforts to seek an employment and with what difficulty he was able to subsist during that period. These are merely relevant factors. The prime consideration is unemployment of the workman during the relevant period.

7. The Legislative intent of the provisions of Section 17-B of the Act is an indication and in fact the key to the opening of the reason and spirit of the law. The legislative emphasis on the expression "reinstatement" and an "award" indicates that once these requirements exist and the Award is stayed by the Court, then the workman should not be deprived of his wages during the period of grant of stay and disposal of the Writ Petition. A Full Bench of the Delhi High Court while dealing with intent of legislature in the case of *Delhi Transport Corporation v. Jagdish Chander* 2005 II LLJ 390, held as under:

11. Obviously the intention of the legislature was to provide definite protection to the workman against the long litigation and exploitation by the affluent Management. As such these welfare provisions are directly relatable to the prescribed benefit to the workman under various provisions of the statute....

The Court went on to say that liability to pay workman during the pendency of the proceedings is subject to compliance of the provisions of Section 17-B of the Act.

8. We have already expressed in no uncertain terms that the application and

affidavit filed by the workman is substantial compliance of the requirement of the provisions of Section 17-B of the Act. Resultantly the Letters Patent Appeal is dismissed. No order as to costs.

9. In view of the dismissal of the Letters Patent Appeal, nothing survives in Civil Application No. 377 of 2008 and the same is disposed of as infructuous.