

(2008) 07 BOM CK 0105

In the Bombay High Court

Case No : Writ Petition No. 3023 of 2006

Sushma Sharad Vartak, Narayan Jivan Deshmukh, Bansidhar
R. Viswakarma and Smt. Pradnya P. Pendse

APPELLANT

Vs

Commissioner of Labour and Others

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Industrial Disputes Act, 1947 — Section 25F, 25G, 25O

Citation : (2008) 6 ALLMR 809 : (2008) 6 BomCR 179 : (2008) 110 BOMLR
2506 : (2008) 118 FLR 995 : (2008) 3 LLJ 790 : (2008) 6 MhLj 731

Hon'ble Judges : Swatanter Kumar, C.J.;V.M. Kanade, J

Bench : Division Bench

Advocate : Gayatri Singh, for the Appellant; R.S. Patne, AGP for Respondent No. 1, C.U. Singh instructed by Madhukar Harmwar and A. Fatangare, for the Respondent

Judgement

Swatanter Kumar, C.J.—It is the case of the petitioners that Seth Industries Limited and Seth Textiles, involved in manufacture of woolen materials, spinning job work and other activities together with its 1200 employees, illegally stopped production without giving any notice or seeking permission in terms of Section 25(O) of the Industrial Disputes Act, 1947. However, the company itself was declared sick by BIFR under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 on 6th October, 1987 as no viable scheme could be worked out despite the repeated opportunities. On the recommendations of BIFR for winding up, finally, the company was ordered to be wound up by this court on 25th May, 1990. The validity of the orders passed by the BIFR was challenged by the company by filing writ petition being Writ Petition No. 3362 of 1992 before Delhi High Court where interim orders were passed on 23rd September, 1992. Since the properties of the company were being alienated, the Woollen Kamgar Sanghatana on behalf of the workers filed complaint which was dismissed on the ground of locus standi which order of the Industrial Court was set aside by order

dated 19th July, 2004 of this court directing the Industrial Court to hear the matter on merits. It is further averred by the petitioners in this petition that on or about 29th October, 2004, the company entered into clandestine and secret transaction with the Developer respondent No. 5 and the entire land and factory was purchased by respondent No. 5 for consideration of Rs. 14.50 crores only. The permission of the court or valuer's report etc. were not obtained and validity of this transaction is in question. In Company Petition No. 262 of 2004 vide order dated 14th July, 2005, interim order to maintain statusquo was passed which was modified subsequently and the Deputy Commissioner of Labour was to settle the matter regarding certain dues of the workmen. Several meetings were held but agreement could not be arrived at. Supplementary Development Agreement was also signed. Various litigations were filed by either parties. It is the allegation that after Company Petition No. 262 of 2005 was allowed to be withdrawn, somewhere on 10th November, 2006, the builder brought 1000 contract workers and anti-social elements alongwith bulldozer to demolish the building factory at Dahisar.

2. During the pendency of these proceedings even this petition was amended to say that the agreements dated 29.10.2004 and 22.2.2006 signed between the respondent Nos. 2, 3, 4 and respondent No. 5 and the settlements dated 1.11.2006 signed by the unions with the respondent No. 2 and 3 was illegal. The petitioners also question on the above premise the correctness of the development agreements dated 29th October, 2004 and 22nd February, 2006 being illegal, void and unenforceable. It is primarily challenged on the ground that no permission of the appropriate authority was sought before closing the unit and the transactions have been entered into by the company and other respondents in a clandestine and improper manner. Interest of the workmen has been entirely overlooked and alleged settlements dated 1.11.2006 is not binding and is liable to be set aside.

3. The learned Counsel appearing for the respondents at the very outset, raised a preliminary objection as regards to the maintainability of the writ petition. It was stated that there are only four petitioners who have approached the court in their personal capacity while large number of workmen who are members of respondent No. 7 Union have already taken the benefits accruing under the settlement. The settlement was voluntary and executed in accordance with law with due compliance to the provisions of Industrial Disputes Act. While alleging that the present petition is malafide and is only intended to delay the proceedings particularly even when complaints under MRTU & PULP Act have already been filed to which one of the petitioners viz. petitioner No. 1 is a party and even name of other petitioner No. 3 has been arrayed in the complaint.

With reference to these facts, it is stated that the extraordinary jurisdiction of this court under Article 226 of the Constitution of India cannot be invoked for the reasons:

(a) the private contracts dated 29.10.04 and 22.2.2006 regarding development

or its correctness or legality cannot be questioned before this court in the present petition;

(b) the industrial settlements dated 1.11.2006 having been executed in accordance with law, its correctness, legality or otherwise can also not be questioned before this court under Article 226 of the Constitution of India and the workmen at best can raise an industrial dispute in accordance with the provisions of Industrial Disputes Act and

(c) the complaints regarding unfair labour practices while questioning the correctness and legality of the agreements and settlement, complaints having been filed before the Industrial Court and after having exercised their option the four workers in any case, cannot file the present writ petition having also invoked appropriate alternative remedy.

4. Opposed to these objections, the learned Counsel appearing for the Petitioners argued that the present Petition is maintainable as the settlement relied upon by the other side is no settlement in the eyes of law inasmuch as before closure was effected to, no proper and valid approval of the appropriate Government was taken in terms of Section 25O of the Act. Further, it is contended that the Complaints filed by the workmen are not the Complaints instituted on behalf of the Union espousing the cause of the workmen. Even if one of the Petitioners is a Complainant in the said Complaint, it could not affect the rights of the Petitioners in the present Writ Petition to get the settlement in question set aside.

5. First and foremost, let us examine the reliefs which have been claimed in the Writ Petition. The Petitioners prayed that the settlements 1st November 2006 signed between Kamgar Utkarsha Sabha and Respondent Nos. 2, 3 and 5 and between Mumbai Textile Mazdoor Sabha and Respondent Nos. 2, 3 and 5 should be set aside and even the development agreements dated 29th October 2004 and 22nd February 2006, Exhibits A1 and A2 to the Writ Petition, signed between Respondent Nos. 2, 3, 4 and Respondent No. 5, the developer, should also be quashed and set aside. As far as the second relief is concerned, it relates to cancellation of the agreements signed between the two private parties which, obviously, is not in exercise of any statutory power or obligation. This is a transaction in the nature of a development agreement simplicitor executed between the private parties and it can hardly be appropriate for this Court to go into the validity or otherwise of these private transactions in exercise of its powers under Article 226 of the Constitution of India. As far as the settlements dated 1st November 2006 are concerned, it is the case of the four Petitioners before this Court that earlier, Mumbai Textile Mazdoor Sabha had allegedly signed the settlement which was espousing the cause of the workmen, but the said settlement was not valid. Respondent No. 7, Kamgar Utkarsha Sabha had signed the settlement in a representative capacity in presence of Respondent No. 1. These settlements are stated to be binding upon the parties and it is the case of the Company as well as Respondent No. 7 that large number of workmen belonging to either of the Unions have already taken benefit of the settlements

and finally settled their accounts with the Company. The present Writ Petition, according to them, has not even been filed by the Union or the representative Union but merely by four workmen. The settlement which has been executed in accordance with law and is duly endorsed in presence of Respondent No. 1 would not be open to question in writ jurisdiction when the mala fides, fraud is neither alleged nor is shown to be in existence with reference to the documents filed on record. Reliance has been placed upon the judgments of the Supreme Court in the case of Mayurakshi Cotton Mills and Others Vs. Panchra Mayurkshi Cotton Mills Employees' Union and Others, ; Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union, ; State of Uttaranchal v. Jagpal Singh Tyagi, (2005) 8 SCC 49 and of this Court in the case of Mansukh Gopinath Jadhav v. W.M. Bapat and Ors. 1983 LAB. I.C. 1044 to support the contention that the settlement between the parties can be subject matter of a reference and normally cannot be challenged under writ jurisdiction.

6. In the case of Mansukh Jadhav (supra), Division Bench of this Court observed that award in terms of settlement between the employer and the representative union, the Industrial Court will be the appropriate forum to challenge and even the individual employees cannot be allowed to challenge the award even on the ground that settlement is against the provisions of law.

7. In the case of Mayurakshi Cotton Mills (supra), the Supreme Court held as under:

4. We have given our anxious consideration to the rival submissions made by the learned Counsel on either side. Whether a settlement is fair or unfair or valid cannot be examined in the absence of factual background in which the same was entered into. If really the Mills were in financial doldrums and retrenchment had to take place in some form or the other and if a method was to be worked out by the Management and the workmen, which is fair, it cannot be easily be said that the Mills should not work with lesser number of workmen and provide a scheme for retrenchment or otherwise. It may not be easy to state that such settlement is unfair or amounts to victimisation. The option was between closure of the Mills itself or opening of the Mills with lesser number of workmen. Sometimes hard choices have to be made and sacrifices are expected to be made by either side. These aspects have to be borne in mind in deciding such questions. Therefore, we cannot in the abstract, in the absence of material before the Court, state that the High Court could have come to the conclusion one way or the other and particularly based on the theoretical approach to Sections 25F and 25G of the Act or Article 21 of the Constitution. We are of the view that the order made by the Division Bench deserves to be set aside and that the order and that of the learned Single Judge be restored, however, with the modification that a reference shall be made, as stated by Shri Dipankar Gupta, in respect of all matters arising in this case as to the employment, unemployment the validity of the settlement and all other allied issues and the reliefs to be granted to the parties, to an

appropriate Industrial Tribunal within a period of six weeks from today and such Tribunal shall enter upon the reference for adjudication as early as possible and decide the same within a period of six months from the date of reference to it.

8. The consistent view of the Supreme Court has been that it would, indeed, need a very strong case for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner. When the dispute relates to the enforcement of a right or an obligation created under an Act, then the only remedy available to the claimant is to get adjudication under that Act. This dictum has been stated by the Supreme Court in relation to availability of the alternative remedy available under the Industrial Disputes Act.

9. Now let us examine the applicability of the above principles to the facts of the present case. It is clear that agreements executed between the private parties can hardly be questioned before this court in terms of Article 226 of the Constitution of India. Whether the agreements executed between the private parties are illegal or vitiated in law or otherwise on any grounds is a matter which normally falls beyond the scope of writ jurisdiction. The settlement dated 1st November, 2006 alleged to have been executed between the parties and even in the presence of respondent No. 1 are stated to have been signed even by the representative union respondent No. 7 in the present writ petition. Noncompliance to the provisions of Section 25(O) really does not fall for consideration directly in the present case particularly when the parties could take recourse to the provisions of the Industrial Disputes Act for questioning the legality and correctness and the extent to which they are binding or not on the members of the unions. The writ jurisdiction, in the facts and circumstances of the case, cannot be appropriately invoked by the four workmen and even more when acting in their individual capacity as it would require evidence, documentary and oral, to even primarily prove the allegations made in the writ petition.

10. The copies of the settlement had been placed on record by the petitioners. According to them, the settlements are not binding as they were not in the interest of the workmen. The settlements dated 1st November, 2006 have been signed by the parties viz. Kamgar Utkarash Sabha and the representative union described as Mumbai Textile Mazdoor Sabha, the legality and correctness of which is challenged in the present petition which can be determined only after leading of appropriate evidence. The other ancillary matters as to the unfair practices and the settlements being violative of statutory provisions and being oppressive and not in the interest of workmen are again matters which will require proper adjudication in a more comprehensive proceedings where the parties would have an opportunity to lead evidence.

11. The challenge to these settlements is on different grounds, legally and factually. The parties have placed on record orders passed in different

proceedings by different Courts in Writ Petitions, including orders of this Court. While amending the Petition, averments are also made in regard to the fact that Kamgar Utkarsha Sabha has never represented the workers nor had it taken any interest in protecting the interest of the employees. Prior to 1986, settlements were signed with Mumbai Textile Mazdoor Sangh. Thus, what was the status of these Unions, its relationship with its employees again is a matter of factual controversy. Reliance was also placed upon the judgment of the Supreme Court in the case of *Herbertsons Ltd. v. The Workmen of Herbertsons Ltd. and Ors.* 1977 LAB. I.C. 162, by the Respondents to show that even question of fraud or misrepresentation in relation to settlement can hardly be challenged by a workman individually when it is signed by the union representative. The bona fides or mala fides of the union representative cannot fall in the adjudicative process of writ jurisdiction.

12. In the peculiar facts and circumstances of the case, we are of the considered view that presently it is not appropriate for the petitioners to invoke writ jurisdiction and they can safely and adequately invoke jurisdiction under the special Act vis. Industrial Disputes Act. Furthermore, the workmen including one petitioner have already filed the complaint under provisions of the MRTU & PULP Act and the said complaint is pending adjudication before the competent court. There the court can obviously, examine the effect of these settlements which have specifically been raised in that complaint.

13. For the reasons foretasted, we are of the considered view that it would not be appropriate to examine the merit or otherwise of the grievances raised by the petitioners in this petition under Article 226 of the Constitution of India. We make it clear that we have neither touched upon nor decided any contentions raised before us. While holding that the present writ petition in the facts of the case would not lie, we make it clear that any observations made in this order are without prejudice to the rights and contentions of the parties and all concerned courts or fora shall adjudicate the disputes between the parties in the proceedings pending or which may be instituted without in any way being influenced by the observations made in this order. The petitioners are at liberty to take such appropriate legal remedy as is available to them in accordance with law. We also direct the concerned court to dispose of all the complaints as expeditiously as possible and in any case not later than eight months from today. Writ petition is accordingly, disposed of.