

(2011) 07 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No's. 5497 of 2006, 23782 of 2007, 3901 to 3903, 7479 of 2009

The Management of RSL Industries (Textile Division),
Formerly RSL Industries Ltd. (Textile Division)

APPELLANT

Vs

The Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Contract Act, 1872 — Section 23

Industrial Disputes Act, 1947 — Section 18(1), 18(2), 18(3), 25C, 25J

Tamil Nadu Industrial Disputes Rules, 1958 — Rule 48(2)

Citation : (2011) 07 MAD CK 0115

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ravindran, for S.R. Shanmugadoss, in W.P. No. 5497/2006, W.P. No. 23782/2007 and W.P. Nos. 3901 to 3903/2009, G.B. Saravana Bhavan, in W.P. No. 7479/2009, for the Appellant; R. Sunil Kumar, for R2 to R9, R11 to R30 and R32 to R57 in W.P. No. 5497/2006, G.B. Saravana Bhavan, for R2 to R13 RM. Muthukumar, G.A. for R14 and R15 in W.P. No. 23782/2007, R.M. Muthukumar, G.A. for R3 to R5 in W.P. Nos. 3901 to 3903/2009, S. Ravindran, for S.R. Shanmugadoss, for R2 in W.P. No. 7479/2009, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—In W.P. No. 5497 of 2006, the Petitioner is the Management of RSL Industries, Textile Division, Coimbatore. They have

come forward to file the writ petition, challenging a common order passed by the first Respondent Labour Court, Coimbatore in C.P. Nos. 674 to

707 of 2004 and 709 to 730 of 2004. By the impugned order dated 18.11.2005, the Labour Court computed the amounts in favour of the

contesting Respondents pertaining to the claim for wages for the period from 12.12.2003 to 31.05.2004 depending upon their salary. The Labour

Court held that they were entitled for full wages in terms of 25-O(6) of the Industrial Disputes Act, 1947 (for short I.D. Act).

2. The writ petition was admitted on 28.02.2006. Pending the writ petition, an interim stay was granted on the same day. Subsequently, it was

extended on 03.04.2006. The aggrieved contesting Respondents filed vacate stay application in WPMP. No. 147 of 2008 and the same was

dismissed by this Court. The interim stay was made absolute by an order dated 03.11.2008.

3. In the meanwhile, the workmen who were covered by the impugned order filed a separate writ petition in W.P. No. 7479 of 2009, challenging

that portion of the order, wherein and by which, they were denied the payment of bonus, overtime wages, encashment of earned leave and interest.

That writ petition was admitted on 23.04.2009.

4. When these two writ petitions were pending, the very same Management had filed three other writ petitions being W.P. Nos. 3901 to 3903 of

2009. In those writ petitions, they had challenged different orders passed by the Labour Court in C.P. Nos. 181 of 2005, 1101 of 2004 and 1102

of 2004. Those three writ petitions were admitted on 27.04.2009. Pending those writ petitions, an interim stay was granted.

5. The Management also filed another writ petition, being W.P. No. 23782 of 2007, challenging an earlier order dated 18.11.2005 in C.P. Nos.

533 to 539 of 2004, 627 to 629 of 2004 and 651 to 671 of 2004. That writ petition was admitted on 23.07.2007 and an interim injunction was

also granted.

6. In the subsequent four writ petitions, it was stated that the order passed by the Labour Court was an ex parte order. But the workmen

thereafter moved the State Government and had obtained recovery certificate in terms of Section 33-C(1) of the I.D. Act. While they sought to

enforce the revenue recovery certificate, the writ petitions came to be filed. Though it is contended that it was an ex parte order, the Management

has not moved the Labour Court with an application to set aside the ex parte order in terms of Rule 48(2) of the Tamil Nadu Industrial Disputes

Rules, 1958. Therefore, only on the ground that an order was passed ex parte, this Court is not inclined to set aside those orders.

7. With reference to the claim made by the workmen before the Labour Court u/s

33-C(2) of the I.D. Act, in their claim statement, they had stated that the Trade Union to which they were members was trying to collude with the Management and therefore, 400 out of 600 workers had quit the I.N.T.U.C Union and joined a separate union called Tamizhaga Panchalai Thozhilalar Sangam. In the meanwhile, INTUC Union had entered into a settlement on 10.04.2004, wherein by which the Union had agreed that the Management was facing a severe financial hardship and the workers have agreed that they will not claim any wages for the period of closure and that period will be taken as "No work No pay" and that the Management will try to settle the terminal benefits. It was also agreed to pay goodwill amount of Rs.10,000/- in respect of Apprentice and Rs. 5,000/- for Badlies. The other workers will get their claim relating to gratuity. Once these amounts have been settled, the workers will not claim any other amount and in future, if the Management re-opens the Mill, the workmen will be given preference in the recruitment process. In Clause 1 of the settlement, it was agreed that the workers themselves voluntarily will come forward to resign and give resignation letter, which will be accepted by the Management and thereafter, the Management will settle their accounts. Notwithstanding the said settlement, the workmen claimed that since the Mills have been closed without any prior approval of the State Government either to lay off or closure, the workers are entitled for full wages in the absence of any approval.

8. The Labour Court assigned various numbers to the claim petitions and issued notice to the Management. The Management filed separate counter statement in each of the claim petitions disputing the maintainability of the Claim Petitions. They also disputed that in the light of Settlement u/s 18(1), the workers are not entitled for any other relief. Out of 624 workers, 557 workers have collected their dues in terms of the settlement and only 66 workers have not collected and they represent hardly 10.5% of the work force. The Mill came to a grinding halt on 12.12.2003 and there was no lay-off as alleged by the workmen.

9. Before the Labour Court, a joint trial was conducted in respect of the claim petitions noted above. On the side of the workmen, 16 documents were filed and marked as Exs.W1 to W16. On the side of the Management, no documents were filed and no witnesses were examined. The

workmen had examined one N. Muthusamy as W.W.1.

10. On an analysis of materials placed before it, the Labour Court rejected the contention of the Management that the settlement u/s 18(1) is

binding on the workers. In any event, the Labour Court held that since the Mill was closed during the relevant period viz., 12.12.2003 to

31.05.2004, in terms of Section 25-O(6) of the I.D. Act, the workmen are entitled for arrears of wages. With reference to the claim for bonus,

earned leave encashment, overtime wages, the Labour Court held that the workmen have not proved their claim. It is in that view of the matter,

various amounts were computed in favour of the workmen.

11. Mr. S. Ravindran appearing for Mr. S.R. Shanmugadoss, learned Counsel for the Management submitted that the order passed by the Labour

Court is erroneous. There is no proof that the workmen had left the Union before the settlement was signed between the parties. Once the

settlement is held to be binding on the workers, by virtue of Clause 1 of the said settlement, the workmen were deemed to have resigned from

service and the question of applying Chapter V-B of the I.D. Act will not arise. It was also stated that the claim u/s 33-C(2) of the I.D. Act is not

maintainable. He placed reliance on the judgment of the Supreme Court in State of Uttar Pradesh and Anr. v. Brijpal Singh reported in 2006 AIR

SCW 66. In that case, it was held that in the absence of any pre-existing right, the workmen cannot move the Labour Court u/s 33-C(2) of the

I.D. Act and the matter will have to be adjudicated between the parties. The Court also held that the difference between a pre-existing right or

benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. It is only because of pre-existing right,

jurisdiction of the Labour Court is available.

12. Per contra, Mr. R. Sunil Kumar, learned Counsel appearing for the workmen submitted that the issue is no longer res integra. If it is a claim

based upon the rights under Chapter V-B of the I.D. Act, then certainly, petition u/s 33-C(2) of the I.D. Act is maintainable. For this purpose, he

placed reliance on the judgment of the Supreme Court in Oswal Agro Furane Ltd., and Anr. v. Oswal Agro Furane Workers Union and Ors.

reported in 2005 (2) L.L.N.21. The Supreme Court in that judgment has held that the right of the workers under Chapter V-B cannot be bartered

away by way of settlement and Chapter V-B will prevail over the said settlement. In paragraphs 14 to 19, it was observed as follows:

14. A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, where as the provisions of Section 25-N of the Act provide for conditions precedent to retrenchment; Section 25-O speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.

15. A settlement within the meaning of Section 2(p) read with Sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regards the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regards retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law.

Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may be, and/or a decision thereupon by the appropriate

Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing

such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the

workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid

down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or

refusal of such permission is the interest of the workmen. The afore mentioned provisions being imperative in character would prevail over the right

of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which

may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of

Section 23 of the Indian Contract Act.

16. It is trite that having regard to the maxim "*ex turpi causa non oritur actio*", an agreement which opposes public policy as laid down in terms of

Sections 25-N and 25-O of the Act would be void and of no effect. Parliament has acknowledged the governing factors of such public policy.

Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of Sub-section (7) of

Section 25-N and Sub-section (6) of Section 25-O, a legal fiction has been created. The effect of such a legal fiction is now well known. (See

East End Dwellings Co. Ltd. v. Finsbury Borough Council, Om Hemrajani v. State of U.P. and Maruti Udyog Ltd. v. Ram Lal.)

17. The consequences flowing from such mandatory requirements as contained in Sections 25-N and 25-O must, therefore, be given full effect.

The decision of this Court in P. Virudhachalam² relied upon by Mr. Puri does not advance the case of the Appellant herein. In that case, this Court

was concerned with a settlement arrived at in terms of Section 25-C of the Act. The validity of such a settlement was upheld in view of the first

proviso to Section 25-C of the Act. Having regard to the provisions contained in the first proviso appended to Section 25-C of the Act, this Court

observed that Section 25-J there of would not come in the way of giving effect to such settlement. However, the provisions contained in Sections

25-N and 25-O do not contain any such provision in terms whereof the employer and employees can arrive at a settlement.

18. In Engg. Kamgar Union³ the question which fell for consideration of this Court was as to whether in relation to an industry which was

governed by the State Act, the provisions of Section 25-O would be attracted. This Court held that having regard to the provisions contained in

Article 254 of the Constitution, the provisions of the State Act shall prevail over the parliamentary Act as the former received the assent of the

President of India stating: (SCC p. 54, para 40) "⁴⁰. The contention of Mr. Banerji to the effect that Section 25-J of the Central Act has been

incorporated by reference in Section 25-S cannot be accepted. Section 25-S does not introduce a non obstante clause as regards Chapter V-A.

Furthermore, Section 25-J is not a part of Chapter V-B. By reason of Section 25-S, the provisions of Chapter V-A were made applicable only in

relation to certain establishments referred to in Chapter V-B. Parliament has deliberately used the words "so far as may be" which would also

indicate that provisions of Chapter V-A were to apply to the industrial establishments mentioned in Chapter V-B. The non obstante clause

contained in Section 25-J does not apply to the entire Chapter V-B. Applicability of Chapter V-A in relation to the industrial establishments

covered by Chapter V-B in terms of Section 25-J vis-à-vis Section 25-S is permissible but the contention cannot be taken any further so as to

make Section 25-O of the Central Act prevail over the State Act by taking recourse to the non obstante clause. Non obstante clause contained in

Section 25-J is, thus, required to be kept confined to Chapter V-A only and in that view of the matter we have no hesitation in holding that

Chapter V-B does not have an overriding effect over the State Act.

19. Indisputably, in this case, the industrial undertaking belonging to the Appellant herein attracts the provisions of Chapter V-B of the Act and

consequently the provisions referred to in Section 2(s) including Section 25-J shall apply in relation thereto.

13. The contention that the settlement would amount to worker's deemed resignation will not arise. In the settlement itself, it was stated that the

workmen must give a resignation letter and upon giving resignation letter, the Management will have to accept the same and settle their dues. There

is no evidence let in that the workers covered by the writ petitions have given any such resignation. In any event, inasmuch as Section 25-J(2) of

the I.D. Act has overriding effect over any other term of contract and the Chapter V-A or V-B put in high pedestal, the workers are entitled to get

the benefit u/s 25-O or 25-M of the I.D. Act as the case may be. In this case, the Mill was under closure without getting prior permission from the

Government is not in dispute and once no approval application is filed before the Government or approval application is rejected then in terms of

Section 25-O(6), the workmen are entitled to get all benefits under law.

14. In fact the appropriate State Government can grant a certificate to any workman for any amount due and it need not necessarily be based upon

any award or order of the Labour Court even for a claim made under the

provisions of the Chapter V-A or V-B of the I.D. Act. This has also been clarified by the Supreme Court vide its judgment in *Fabril Gasosa Vs. Labour Commissioner and Others*, .

15. In view of the well settled legal position and in the light of the judgment referred to above in *Oswal Agro case* (cited supra) and *Fabril Gasosa case* (cited supra), the order passed by the Labour Court does not call for any interference. Hence, W.P. No. 5497 of 2006 stands dismissed.

16. In W.P. No. 7479 of 2009, the claim of the workmen regarding bonus, overtime wages, encashment of earned leave has been rejected by the Labour Court on the ground that they have not produced any proof to substantiate their right. Therefore, in the light of such 2 In W.P. Nos. 3901

to 3903 of 2009, it is claimed by the Management that it is an ex parte order passed by the Labour Court. But in the meantime, the workmen have

moved the Government and had also obtained Revenue Recovery Certificate. The order passed by the Labour Court was July 2006 and the

Revenue Recovery Certificate issued by the Government was June 2008. Nothing prevented the Management from approaching the Labour Court

to set aside the order if it is an ex parte order. When the Management had not moved the machinery provided under the Act, this Court is not

willing to entertain the writ petitions solely on the ground that is finding of fact, the claim made by the workmen also cannot be entertained. 17. In

W.P.Nos.3901 to 3903 of 2009, it is claimed by the Management that it is an ex parte order passed by the Labour Court. But in the meantime,

the workmen have moved the Government and had also obtained Revenue Recovery Certificate. The order passed by the Labour Court was July

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Labour Court to set aside the order if it is an ex parte order. When the Management had not moved the machinery provided under the Act, this

court is not willing to entertain the writ petitions solely on the ground that is an ex parte order. In any event, the claim made therein is also similar to

the claim made in W.P.No.5497 of 2006. Hence, all the three writ petitions will stand dismissed.

18. In W.P. No. 23782 of 2007, the Labour Court has computed the arrears of wages for the period from January 2004 to May 2004. In the light

of the reasoning made in W.P. No. 5497 of 2006, for the very same reasons, this writ petition also cannot be entertained. Hence, W.P. No.

23782 of 2007 also stands dismissed.

19. In the result, all the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.