
(2005) 03 MAD CK 0052

In the Madras High Court

Case No : W.A. No. 533 and 534 W.P. No. 21010 of 2004

The Management of Sivananda Steels Ltd.

APPELLANT

Vs

Sivananda Steels Employees Union, The Board for Industrial and Financial Reconstruction and Sivananda Steel Workers Welfare Union
Mr. Sriramulu Vs The Management of Sivananda Steels Ltd., The Board for Industrial and Financial Reconstruction and Sivananda Steel Workers Welfare Union

RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 03 MAD CK 0052

Hon'ble Judges : Markandey Katju, C.J.;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Vijay Narayan for R. Parthiban, for the Appellant; V. Prakash for P. Chandrasekaran, for R1 and R. Vaigai, for K. Elango, for R5, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—The writ petition has been filed for a Declaration that the settlement between the Management (appellants in the

writ appeals and second respondent in the writ petition) and the Sivananda Steels Workers Welfare Union (5th respondent in the appeals and 3rd

respondent in the writ petition) entered into on 5.7.2004 be declared not to be a settlement u/s 12(3) of the Industrial Disputes Act (in short "I.D.

Act") and consequently it should be declared that the said settlement will not have binding effect u/s 18(3) of the I.D. Act.

2. We have heard the learned counsel for the parties. In our opinion, for claiming such a relief, the writ petitioner has an alternative statutory

remedy of raising an industrial dispute u/s 10 of the I.D. Act. Various factual

disputes have been raised by the parties in this writ petition, viz., whether the writ petitioner - Union is a majority union or whether the third respondent - Union is the majority union?; whether the petitioner - union is dead or alive?; whether the Conciliation Officer was acting in collusion with the management?; whether the third respondent - Union is the pocket-union of the Management? etc. These questions, in our opinion, are highly disputed factual matters and writ jurisdiction is hardly the proper remedy for deciding the same, particularly when an alternative remedy of raising an industrial dispute is available under the I.D. Act where all these matters can be gone into.

3. It is no doubt true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that writ jurisdiction is discretionary jurisdiction and if there is availability of alternative remedy under the statute, the discretion to entertain a writ petition will not ordinarily be exercised.

4. A Division Bench of this Court, to which one of us (Markandey Katju, Chief Justice) was a party, in *Chairman and Managing Director, Tamil*

Nadu Co-op. Oilseeds Growers" Federation Vs. Tamil Nadu Co-operative Oilseeds Growers" Federation Employees Union and Others, has

considered the matter and has held that in such cases where there exists or is apprehended an industrial dispute, the parties should ordinarily be

relegated to the alternative remedy available under the I.D. Act. In the said decision, this Court followed its own decision in *Indian Additives Ltd.*

Vs. Indian Additives Employees Union and Another, , and the decisions of the Supreme Court in *U.P. State Bridge Corporation Ltd. and Others*

Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, and Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, .

5. Shri V. Prakash, learned Senior Counsel invited our attention to the Division Bench judgment of this Court in *Britannia Biscuit Co. Ltd.*

Employees Union v. Assistant Commissioner of Labour, Madras and Ors. 1984 I LLJ 349. The said decision only says that a writ petition against

a settlement u/s 12(3) of the I.D. Act can be entertained. In our opinion, even if it is held that such a writ petition can be entertained, it does not

mean that a writ petition must be entertained. It is purely a matter for the discretion of the Court, under Article 226 of the Constitution. No doubt,

existence of alternative remedy is not an absolute bar to a writ petition, yet, in our opinion, it is a sound exercise of discretion to ordinarily reject a

writ petition if there is an alternative remedy under the statute. Hence, the decision relied upon by the learned Senior Counsel cannot be construed

to mean that every writ petition against a settlement u/s 12(3) read with Section 18(3) of the I.D. Act must be entertained by this Court instead of

relegating the parties to avail the alternative remedy under the I.D. Act. In view of the Division Bench decisions of this Court as well as the

decisions of the Supreme Court, cited *supra*, ordinarily the parties should be relegated to the alternative remedy under the I.D. Act.

6. We may add that the dockets of the High Courts in our country are already overfull with arrears and hence the High Courts should ordinarily not

avail of the luxury of entertaining writ petitions despite the existence of alternative remedy, otherwise, the High Court will only further add to the

mounting arrears, resulting in docket explosion. Hence, in matters where there is availability of alternative remedy, the parties should first be

relegated to avail that remedy first and the High Courts should be strict on this point and entertain writ petitions despite the existence of an

alternative remedy only in very rare and exceptional cases.

7. Apart from the above, in our opinion the writ petition was not maintainable as it is settled law that ordinarily no writ lies against a private body

except a writ of habeas corpus vide *Management of GE Power Controls Private Ltd. and Another Vs. Workmen of GE Power Controls Pvt. Ltd.*

and *Others*, . In the present case the prayer of the writ petitioner in substance was that the employer should not enforce the settlement u/s 18(3) of

the I.D. Act. Thus, the relief claimed in the writ petition was against the employer, which is a private company which is not State under Article 12

of the Constitution. Hence, in our opinion, the writ petition was not maintainable vide *Federal Bank Ltd. Vs. Sagar Thomas and Others*, , *Pradeep*

Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, and *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur*,

U.P. Vs. Satrughan Nishad and Others, .

8. In view of the above, we dismiss the writ petition on the ground of availability of alternative remedy under the I.D. Act. All the questions raised

in the writ petition are left open to be agitated by the parties concerned before

the appropriate forum.

9. In view of the dismissal of the writ petition itself, the writ appeals, which emanate out of the impugned interlocutory orders passed by the learned single Judge in the writ petition, become infructuous and, therefore, they are dismissed.

10. If a reference u/s 10 of the I.D. Act is made by the appropriate government, we hope and trust that the Labour Court/ Tribunal concerned will decide the same expeditiously.

11. The writ petition is dismissed. The writ appeals are also dismissed. Connected W.P.M.P.Nos.25191 and 25192 of 2004 and W.A.M.P. Nos. 988 and 989 of 2005 are closed.