

(2010) 01 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No. 18896 of 2009 and M.P. No. 1 of 2009

The Management of Veejay Lakshmi Engineering Works Ltd.	APPELLANT
Vs	
The Presiding Officer Labour Court and V.N. Sarangapani	RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (2010) 01 MAD CK 0077

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S. Jayaraman, for the Appellant; K.V. Shanmuganathan for R2, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The prayer in the writ petition is to issue a writ of mandamus directing the 1st respondent/Labour Court to decide the

issue as to whether the 2nd respondent is a workman or not u/s 2(s) of the Industrial Disputes Act as a preliminary issue. According to the

petitioner, the 2nd respondent was discharged from service which is now the subject matter of an industrial dispute before the 1st respondent in I.D.

No. 22 of 2000.

2. According to the management, the 2nd respondent is not a workman and accordingly had raised a preliminary objection by filing a memo dated

23.7.2009. In the said memo it was contended that the management should be permitted to adduce evidence on the preliminary issue. Accordingly

the management has also examined certain witnesses and produced as many as 21 documents. An interlocutory application was filed in I.A. No.

700/2005 by the management stating that both the parties should be heard on the preliminary issue.

3. A counter statement has been filed and a request was made to the Labour Court to reopen the case for advancing certain arguments. A memo

has been filed by the management on 20.9.2005 praying that orders may be passed on the issue of Section 2(s) of the Industrial Disputes Act. This

memo is said to have been recorded by the Labour Court. The management also relied on certain decisions in support of their contention that the

Labour Court is equally empowered to decide the preliminary issue. However by the diary order dated 8.9.2009, Labour Court directed the

management to proceed on the other issues also simultaneously. Aggrieved by the said diary order, the present writ petition has been filed.

4. A counter has been filed by the 2nd respondent contending that if a piecemeal hearing is given, the workman would be put to harassment and

the case is of the year 2000 and it is appropriate for the Labour Court to proceed with all issues and to pass a final award after hearing the parties.

Further, the respondent placed reliance on the decision of the Hon'ble Supreme Court in National Council for Cement and Building Materials v.

State of Haryana and Ors. reported in 1996 (2) L.L.N. 49. In the said case, the appellant raised a question whether its activities constituted an

industry"" within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. Subsequently, the

Tribunal in the said case directed the parties to proceed all other issues on merits. This came to be questioned by the management as being

unsustainable. The High Court which heard the writ petition dismissed the same and directed the Labour Court to proceed on all issues. When the

correctness of the order of the High Court was assailed before the Hon'ble Supreme Court in the above matter, the Hon'ble Supreme Court held

as follows:

16.The facts in the instance case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication

of the industrial dispute on merits. It raised the question whether its activities constituted an ""industry"" within the meaning of the Industrial Disputes

Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as

a preliminary issue, but subsequently, by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a

later stage of the proceedings. It was at this stage that the High Court was approached by the appellant with the grievance that the Industrial

Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other

issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and

dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by

this Court in its various decisions referred to above and we do not see any occasion to interfere with the order passed by the High Court. The

appeal is dismissed, but without any order as to costs." Thus considering the above legal principle, in my opinion, if the facts of the present case are

looked into, it is also an identical case, in which the labour Court allowed the parties to lead evidence and mark documents on the preliminary

issue. Subsequently, taking into account that the case is pending on the file of the Labour Court for over nine years, the Labour Court directed that,

apart from the preliminary issue, the parties can also agitate the matter on its merits.

5. In my view there is no error in the approach of the Labour Court, since this would bring out an early resolution of the dispute. That apart, the

Hon"ble Supreme Court has also held in similar circumstances that the High Court was fully justified in rejecting the claim of the management. The

learned Counsel for the petitioner placed reliance on the judgment of the Hon"ble Supreme Court in *Neelakandan Namboothiri Vs. State of*

Kerala, , in support of his contention.

6. Firstly it is to be noted that before the Hon"ble Supreme Court in the case of *Hussain Mithu Mhasvadkar*, earlier judgement of the Hon"be

Supreme Court in *National Council for Cement and Building Materials v. State of Haryana and Ors.* reported in 1996 (2) L.L.N. 49, as referred

supra was not placed for its consideration. Further the Hon"ble Supreme Court was considering a large issue as to whether the Bombay Iron and

Steel Labour Board would fall within the definition of "industry" within the meaning of Section 2(j) of the Act as well. That apart the appeal before

the Hon''ble Supreme Court was against final orders passed by Labour Court which came to be confirmed by a learned Single Judge of Hon''ble

Division Bench of the Bombay High Court. However, the facts of the present case are different and the writ petition has been filed after a diary

order was passed by the Labour Court. Therefore, I find that the judgment of the Hon''ble Supreme Court does not render much assistance to the

petitioner''s contention. On the other hand the facts of the case in the case of National Council for Cement, which was decided by the Hon''ble

Supreme Court is identical and hence I am of the view that, this judgment would be equally applicable to the facts of the present case.

7. Hence for the above reasons, the writ petition cannot be entertained at this stage. It is made clear that the Labour Court shall decide the

preliminary issues as first among the several issues to be framed and the parties to the proceedings shall be entitled to lead evidence on the other

issues namely on the merits of the claim raised by each of them. With these observations, the writ petition is dismissed. Consequently, connected

miscellaneous petition is closed. No costs.