

(2011) 09 MAD CK 0228

In the Madras High Court

Case No : C.R.P. (PD) No's. 1694 to 1696 of 2009 and M.P. No's. 1 and 1 of 2009

The Nadippisai Pulavar K.R. Ramasamy Cooperative Sugar Mills

APPELLANT

Vs

Rajendran

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Co-operative Societies Act, 1983 — Section 156
Industrial Disputes Act, 1947 — Section 10, 12, 18(1), 2, 2A

Citation : (2011) 5 LW 563

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : G. Thilagavathi, for the Appellant; R. Kannan, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman

1. C.R.P. (PD) No.1964 of 2009 has been filed challenging the order of the learned Principal District Munsif, Mayiladuthurai dated 20.10.2008 made in O.S.No.217 of 2008 rejecting the claim of the petitioner on the maintainability of the civil suit filed by the respondent herein against the issuance of charge memo.

2. C.R.P (PD) Nos. 1695 and 1696 of 2009 have been filed challenging the orders of the learned Principal District Munsif, Mayiladuthurai dated 26.10.2008 granting interim injunction in favour of the respondent herein in I.A.Nos. 328 and 329 of 2008 in O.S.No.217 of 2008.

3. The respondent herein has laid the said suit against the petitioner herein for the following reliefs:

(a) for a declaration that the proceedings of the defendant in naka. No.756/2008/m3 dated 21.1.2008 and the subsequent proceedings based on that are all

abinitio, void, illegal without jurisdiction, ultra vires the powers of the defendant, mala fide and will not fall under the enumerated misconduct and for the consequential relief of permanent injunction restraining the defendants, his men, agents, servants or any body acting through him or under him in any manner enforcing the proceedings or proceedings with the enquiry till the disposal of the Crime No.217/07.

(b) for a declaration that the proceedings of the defendant in naka. No.3993/2008/ m3 dated 29.5.2008 and the subsequent proceedings based on that are all are all abinitio, void, illegal without jurisdiction, ultra vires the powers of the defendant, mala fide and will not fall under the enumerated misconduct and for the consequential relief of permanent injunction restraining the defendants, his men, agents, servants or any body acting through him or under him in any manner giving effect to the proceeding or in any manner proceeding with the enquiry.

4. The claim of the respondent in his suit, more so, in paragraphs 5 to 9 is usefully extracted here under:

(a) The two charge memos are made with an intention to victimize the respondent for no fault of him. The charges are the result of representation made by trade union which supports the ruling party and was issued only on their insistence, that too, ten months after the alleged incident. The charges were issued only to prevent the respondent from discharging his duties as trade union leader. Further more, the charges are vague, baseless, without any basis, mala fide and does not fall within the enumerated misconduct and there is no nexus between the respondent and the charges levelled against him. The charges are clearly motivated. Based on the illegal charges, the petitioner herein takes hectic steps to victimize the respondent. The petitioner succumbed to the pressure exercised by the rival union who owe their allegiance to the ruling party.

(b) The alleged incident did not happen anywhere within the premises of the factory. There is no nexus between the alleged incident and the employment. The very identity and the presence of the respondent at the place of occurrence is in question and the he disputes the entire episode. Even if the alleged incident is true, the respondent presumes to be innocent till the guilt is proved and he denies the very charge levelled by the police authorities. Any departmental enquiry for the said charge will amount to compelling the respondent to disclose his defence and it violates the basic doctrine that the accused should not be compelled. It amounts to violating the right of silence which an accused has got. Even in the very charge memo, it is stated that the respondent is liable to be punished for misconduct if the charges are proved in the criminal Court. While, it is premature on the part of the petitioner herein to proceed with the enquiry at this stage.

(c) Charge Nos. 1 and 4 are only based on first charge in Charge Memo No.1 and has no independent legs to stand. Unless and until the accusation is proved by

the police, the guilt cannot be established. There cannot be a parallel enquiry at criminal Court and another one by disciplinary proceedings.

(d) The second charge is purely based on surmise and conjectures and there is no basis for it. The respondent has nothing to do with the acts and commissions of his sister in law who resides at different place. The respondent should not be charged for an act committed by an independent person. There is no nexus between the respondent and his sister in law in respect of the alleged offence. The respondent is not an accused and therefore the question of levelling a charge against a person who is in no way connected with the crime is not maintainable.

(e) Both the charges are mala fide and without application of mind. From the copies of the document, it is very clear that the proceedings are initiated only on the basis of the representation given by the union which supports the ruling party. The charges are born out of union rivalry and decision to be rendered by a competent court will have a direct impact on the proposed disciplinary proceedings.

(f) The bar u/s 156 of the Tamil Nadu Cooperative Societies Act is not applicable inasmuch as the present dispute cannot be considered as dispute u/s 90 of the said Act. Further, as per Section 90 of the said Act, the disputes regarding disciplinary proceedings will not be referred to registrar. The respondent is not entitled to agitate the issue before the Labour Court under Industrial Disputes Act, 1947 since the very proceeding is challenged as one without jurisdiction and nullity and the matter goes to the root of the jurisdiction of very authority and therefore, the only course open to the respondent is to challenge the same before the Civil Court. The individual dispute referred u/s 2A of the Industrial Disputes Act is not applicable to the respondent. Hence, the respondent has filed the suit for the reliefs of declaration and injunction.

Thus, the claim of the respondent before the civil Court was that the charge memo issued to him is without jurisdiction and does not fall within the enumerated misconduct for the reasons set out thereunder.

5. In the said suit, the petitioner herein has raised a preliminary issue regarding the jurisdiction of the civil Court to entertain the said suit. The respondent has also filed two applications in I.A.Nos. 328 and 329 of 2008 for interim injunction. The Court below while dismissing the claim of the petitioner, allowed the said applications and granted interim injunction by an order dated 20.10.2008. Aggrieved over the same, as stated earlier, the petitioner is before this Court by filing the present civil revision petitions.

6. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent in all the petitions.

7. It is the case of the petitioner that the learned Principal District Munsif, Mayiladuthurai ought not to have entertained the civil suit at all since the same is barred u/s 156 of the Cooperative Societies Act, 1983 (herein after referred to as

the Act). It was also contended that the respondent is entitled only to approach the Labour Court / Industrial Tribunal if his grievance is against the proceedings initiated by the management.

8. On the other hand, it was contended on behalf of the respondent that since the very jurisdiction for initiation of the charge memo is challenged, the same could be agitated only before the civil Court and not before the other forum.

9. Before adverting to the said rival contentions, it would be more appropriate to extract Section 156 of the said Act and the same is extracted here under:

156. Bar of jurisdiction of civil Courts:-Notwithstanding anything contained in any other law for the time being in force, no order or award passed, decision or action taken or direction issued under this Act by an Arbitrator, a Liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any Court and no injunction shall be granted by any Court in respect of anything which is done or intended to be done by or under this Act.

The said provision makes it very clear that an order or award passed, decision or action taken or direction issued under the said Act by an Arbitrator, Liquidator, the Registrar or an officer authorised or empowered by him or any subordinate to them, shall not be liable to be called in question in any Court. In the case on hand, the issuance of charge memo is not by an Arbitrator or Liquidator or Registrar or any officer authorised under the Act. That apart, it is the case of the respondent that the misconduct alleged against him is nothing to do with the employment and the incident cited in the charge memo has not taken place within the premises where he is employed. In such circumstances, I am of the considered view that the petitioner cannot claim that in view of Section 156 of the said Act, the suit filed by the respondent is not maintainable.

10. In *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , the issue raised in the present civil revision petition came in for consideration. The Hon"ble Apex Court, after considering the relevant provisions under the Industrial Disputes Act, 1947 viz., Section 2(k), 2(p), etc., has summed up the principles applicable to the jurisdiction of the Civil Court in relation to an Industrial Dispute in the following manner:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the 11remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be.

The question that came up for consideration before the Hon"ble Apex Court in the said decision was pertaining to an incentive scheme providing for certain incentive payment to the workmen of the Motor Production Department of the Premier Automobiles Limited. The claim against the company was that the settlement arrived at between the company and the association u/s 18(1) of the Industrial Disputes Act, 1947 was not binding on those workmen who were not its members. While the matter came up before the Hon"ble Apex Court, the principles applicable to the jurisdiction of the civil Court in relation to the industrial dispute were set out by the Hon"ble Apex Court.

11. Now, it has to be seen whether the dispute raised by the respondent herein is an industrial dispute or it relates to enforcement of any other right under the Industrial Disputes Act. If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Industrial Disputes Act as held by the Hon"ble Apex Court, the remedy lies only before the Civil Court. In the present case on hand, the dispute undoubtedly is not an industrial dispute or it relates to enforcement of any other right under the Industrial Disputes Act. The reason being that Section 2-A of the Industrial Disputes Act defines what is industrial dispute, which is usefully extracted here under:

2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:-Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Thus, if an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, it could be agitated in a manner prescribed under the Industrial Disputes Act, 1947. In the given case on hand, the respondent herein challenges the very issuance of charge sheet issued to him on the grounds raised in his suit which is obviously cannot be agitated in a manner prescribed under the Industrial Disputes Act. If there is no provision for adjudication of such dispute under the said Act, it cannot be said that Civil Courts have no jurisdiction to decide the issue raised by the respondent herein. In this connection, it would be useful to extract Section 9 of the Code of Civil Procedure, which is extracted here under:

9. Courts to try all civil suits unless barred:-

The Courts shall (subject to the provisions contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I: A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II: For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

The said provisions makes it very clear that the Civil Court has got jurisdiction to decide all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Absolutely, no materials have been placed before me showing any Standing Orders of the company which prevents the respondent herein in approaching the Civil Court. That apart, as stated already, against the order of dismissal, retrenchment, etc., as provided for u/s 2-A of the Industrial Disputes Act, the respondent may have a remedy under the Industrial Disputes Act. However, the claim of the respondent herein in his suit cannot be agitated before the authorities envisaged under the Industrial Disputes Act.

12. Yet another decision that has been relied on by the learned counsel appearing for the respondent is reported in 1995 (I) CTC 318 " Virudhunagar Sarvodaya Sangh vs. S.Sathiyathinakaran. In the said matter, an employee has filed a suit before the Additional District Munsif, Sattur, challenging the order of suspension passed against him. When the question came for consideration whether the suit is maintainable, this Court, in the said decision, has held that a suit for declaration that the suspension of service is invalid, is maintainable in law before the Civil Court since there is no express or implied bar from entertaining the suit. Paragraphs 11 to 13 of the said judgment are usefully extracted here under:-

11. So far as the facts of this case are concerned, as stated earlier, the reliefs prayed for are two, and the second is for recovery of salary, which is a common law dispute, arising on the basis of the contract between the employer and employee. It is one of the service conditions that the employee will be paid his dues every month. It is not an industrial dispute, nor does it relate to enforcement of any other right under the Act. So, by no stretch of imagination, can it be said that the second relief sought for in the plaint is in any way barred u/s 9 C.P.C. The second guideline given in the Premier Automobiles case is, " if the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the Suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy". The learned counsel for the respondent also did not dispute that the plaintiff is an employee of the defendant and, going by the definition of "industrial dispute" under the Industrial Disputes Act, it could be construed as an industrial dispute.

"Industrial Dispute" has been defined u/s 2(k) of the Industrial Disputes Act. It reads thus:

2(k) "Industrial dispute" means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or no employment or the terms of employment or with the conditions of labor, of any person.

It is relevant to take note of Section 2-A of the Act. It says thus:

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Under the definition given as per Section 2(k) (extracted supra), to be an "industrial dispute", the case must be taken by the Union or other workers even though it pertains to the conditions of labour of a particular person. In the case of Section 2-A of the Industrial Disputes Act, in a case where the workman is discharged, dismissed or retrenched, even if it is a case where the Union does not take the cause, it will be an industrial dispute. In this case, admittedly, the plaintiff has not been dismissed, discharged or retrenched. He has only been suspended for a period of 30 days. So, Section 2-A of the Act has no application. Section 2(k) of the Act also may not have any application, because, the respondent's cause is not taken up by any other Union or other workmen. So, even if it is a case of industrial Dispute, the Act does not provide for any remedy. Further, in the suit, the plaintiff is not seeking for any specific performance. He seeks only a declaration that the suspension is invalid.

12. When a workman is dismissed from service, it is settled law that he can seek his grievance redressed through a civil Court by seeking a declaration that his dismissal is invalid and also sue for damages. Only in a case where he seeks for reinstatement, i.e., specific performance of reinstatement, the question of enforcement of a right provided under the Act arises. In such a case, he may have to move only the Labour Court. In this case, the question of reinstatement does not arise. An enforcement which is provided under the Industrial Disputes Act also does not arise in this case. For, he continues to be in employment. A suspension will not amount to non employment. It is only keeping away the employee from work during the time of investigation. It is also not a case where any condition of labour is violated. It is within the power of the Master to suspend an employee for any alleged misconduct. There is no condition of service that an employee shall not be suspended during the enquiry.

13. The Industrial Disputes Act also does not take away that right of the Master. Only for wrongful dismissal, or retrenchment or discharge from duties, Industrial Disputes Act makes a provision for a redressal through the Labour Court. According to the guideline 2 enunciated in the Premier Automobiles case by the Apex Court, even if the dispute is an industrial dispute, arising out of right or

liability under the general common law and not under the Act, the employee has got a right to move the civil Court, to get a declaration that the action of the employer is illegal. The machinery under the Industrial Disputes Act is not necessary, for, he is not enforcing a right or obligation created under that Act. Under the General law, the employee is always entitled to move the civil Court for the wrong done to him except for which provisions have been made under the Industrial Disputes Act. The common law right is not taken away. If that be so, he has the option to move the civil Court.

13. The present issue came for consideration before the Hon"ble Apex Court in the judgment reported in Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, . Paragraphs 12, 13, 14, 41 and 42 of the said judgment are usefully extracted here under:-

12. Section 9 of the Code is in enforcement of the fundamental principles of law laid down in the maxim ubi jus ibi remedium. A litigant, thus having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly barred by any statute. Ex facie, in terms of Section 9 of the Code, civil courts can try all suits, unless bared by the statute, either expressly or by necessary implication.

13. The civil court, furthermore, being a court of plenary jurisdiction has the jurisdiction to determine its jurisdiction upon considering the averments made in the plaint but that would not mean that the plaintiff can circumvent the provisions of law in order to invest jurisdiction on the civil court although it otherwise may not possess. For the said purpose, the court in given cases would be entitled to decide the question of its own jurisdiction upon arriving at a finding in regard to the existence of the jurisdictional fact.

14. It is also well settled that there is a presumption that a civil court will have jurisdiction and the ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.

41. There is another aspect of the matter which cannot also be lost sight of, namely, where the conditions of service are governed by two statutes, the effect thereof on an order passed against an employee/workman in violation of a rule which would attract both the statutes. An attempt shall be made in a case of that nature to apply the principles of "harmonious construction.

42. When there is a doubt as to whether the civil court has jurisdiction to try a suit or not, the courts shall raise a presumption that it has such jurisdiction.

14. Yet another decision that has been relied on by the learned counsel appearing for the respondent is reported in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, . In the said decision, the

Hon"ble Apex Court has held that jurisdiction of a Civil Court is not ousted if the dispute would not fall u/s 2K or 2A of the Industrial Disputes Act, 1947. Paragraph 18 of the judgment made thereunder is usefully extracted here under:-

18. The expression "Industrial Dispute" is defined in Section 2(k) to mean any dispute or difference (i) between employers and employers; (ii) between employers and workmen; and (iii) between workmen and workmen, provided such dispute is connected with the employment, non-employment, terms of employment or conditions of labour of any person. It is well settled by several decisions of this Court that a dispute between the employer and an individual workman does not constitute an industrial dispute unless the cause of the workman is espoused by a body of workmen (see *Bombay Union of Journalists v. The Hindu*). Of course, where the dispute concerns the body of the workers as a whole or to a section thereof, it is an industrial dispute. It is precisely for this reason that Section 2-A was inserted by Amendment Act 35 of 1965. It says "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute". By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only Section 2(k) but also Section 2-A. Section 2-A, however, covers only cases of discharge, dismissal, retrenchment or termination otherwise of services of an individual workman and not other matters, which means that " to give an example " if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of Section 2-A. (However, if the union or body of workmen espouses his cause, it does become an industrial dispute.) We have given only one instance; there may be many disputes which would not fall within Section 2(k) or Section 2-A. It is obvious that in all such cases, the remedy is only in a civil court or by way of arbitration according to law, if the parties so choose. The machinery provided by the Industrial Disputes Act for resolution of disputes (in short Sections 10 or 12) does not apply to such a dispute.

15. In 1998 II LLJ 109 Mad " *Somasundaram vs. Liyakat Ali and another*, it has been held that a reading of Section 156 makes it clear that to get protection under the Act, the authorities under the Act must pass orders or awards for which they are empowered under the Act and it is only those powers that cannot be called in question in a civil suit. That is the case where the plaintiff therein was a clerk in a cooperative society and he filed the suit for a declaration that the second defendant in the said suit is a junior to him and also for a declaration that the resolution passed by the first defendant therein appointing the second defendant as a senior clerk is illegal, incompetent and without jurisdiction. The second defendant contended that the suit is not maintainable. According to him, the plaintiff ought to have moved either under the provisions of the Cooperative

Societies Act or under the Industrial Disputes Act. It was held that a civil suit, is barred u/s 9 of the Code of Civil Procedure. The said judgment may not be of any use to the present case on hand.

16. The learned Principal District Muinsif, Tiruchengode has gone into the matter extensively and held that the civil Court jurisdiction was not ousted and that the civil Court has got jurisdiction to decide the issues raised by the respondent and granted interim injunction and I do not find any illegality or infirmity in those orders.

17. In fine, all the civil revision petitions stand dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.