

H.S. Rawat Vs. Voltas Ltd.

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Court : Mumbai

Decided On : Jun-28-2004

Reported in : 2004(4)ALLMR153; 2005(1)BomCR397; (2005)ILLJ448Bom; 2005(1)MhLj904

Judge : Chandrachud D.Y., J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33C(2); [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 2497 of 2000

Appellant : H.S. Rawat

Respondent : Voltas Ltd.

Advocate for Def. : K.M. Naik, Adv., ;i/b., S.P. Dhulapkar, Adv.

Advocate for Pet/Ap. : Shobha Govel, Adv.

Judgement :

Chandrachud D.Y., J.

1. The petitioner has been working in the service of the respondent as an Assistant Security Officer since 3rd November, 1982. On 15th September, 1989, the petitioner filed an application under Section 33-C(2) of the [Industrial Disputes](#)

[Act, 1947](#) claiming overtime wages between 25th December, 1982 and 31st August, 1989. The Labour Court framed five issues on 24th October, 1991; the three principal issues being: (i) Whether the petitioner proves his claim as set out in Exh. U-1; (ii) Whether the claim is legally maintainable; and (iii) Whether the petitioner is a workman under the [Industrial Disputes Act, 1947](#). The issue in regard to whether the petitioner is a workman was raised since in the reply to the application, the management contended that the petitioner is not a workman.

2. On 18th June, 1996, the management submitted an application recording that the application was pending before the Court since 1991 for leading evidence and the matter had been adjourned time and again at the behest of the petitioner on 30 occasions to enable the petitioner to lead evidence. The Management stated that the petitioner had not led evidence in the matter, nor had he remained present at the time when the case was listed for leading evidence. The Advocate appearing on behalf of the petitioner had withdrawn his appearance on 13th November, 1995 after which, the petitioner, nor his Advocate remained present. In the circumstances, the management prayed that the application should be dismissed for default. In reply thereto, the petitioner in his reply submitted on 21st January, 1996 stated thus:

'3. It is further submitted that the contention of the respondent Company that the applicant is required to lead evidence in the said matter is incorrect and the respondent Company is trying to oust the jurisdiction of the Hon'ble Court, inasmuch as the preliminary issue to be decided is as to whether the applicant is a workman or not under the [Industrial Disputes Act, 1947](#) and the onus of proving the same lies solely on the respondent Company.'

3. From the reply of the petitioner, it is thus abundantly clear that the submission of the petitioner was that it was the management which must initially lead evidence specifically in view of the objection of the management to the maintainability of the application on the ground that the petitioner was not a workman. The reply of the petitioner contemplates that this was a preliminary issue which was to be decided first.

4. On 19th November, 1998, the Labour Court passed an order to the effect that the issue as to whether the petitioner was a workman would be decided as a preliminary issue. Evidence was led on this issue by the management and three witnesses were examined. The evidence on the side of the management was closed on 1st August, 2000. Thereafter, when it came to the petitioner leading evidence in rebuttal, an application was submitted before the Labour Court by the petitioner that the issue as to whether he was a workman should be decided together with all other issues. That application has been rejected by the impugned order dated 5th August, 2001. The Labour Court is of the view that the Court is not ousted completely by a straight jacketed formula from framing a preliminary issue on the question as to whether the employee is a workman in view of the judgment of the Supreme Court in *The Workmen of Hindustan Lever Ltd. v. Management of Hindustan Lever Ltd.* : (1984)11LLJ391SC . The Court took due note of the lack of diligence on the part of the petitioner in proceeding with the dispute and noted that after its order dated 19th November, 1998 framing a preliminary issue, the management completed its evidence and when the turn of the workman came to lead evidence in rebuttal, the application had been filed on his behalf. The Labour Court noted that the order dated 19th November, 1998 had not been challenged until the management completed its evidence.

5. Counsel appearing on behalf of the petitioner has urged that the Labour Court was in error in rejecting the application moved by the petitioner to the effect that all issues should be decided together. Counsel urged that the application was submitted as per the law laid down by the Supreme Court in *D.P. Maheshwari v. Delhi Administration* 1984(1) L.L.N. 1. Reliance was also sought to be placed on the judgment of a learned Single Judge of this Court in *Rajiv Bhalchandra Gundewar v. Crompton Greaves Ltd.* 2000(1) C.L.R. 818 and upon a judgment of the Supreme Court in *M/s, Cipla Ltd. v. Ripu Daman Bhanot* : (1999)11LLJ900SC .

6. In considering the question as to whether the order passed by the Labour Court rejecting the application of the petitioner to try all issues together without considering the issue of whether he is a workman as a preliminary issue should be interfered with at this stage, it would be necessary to recapitulate the salient circumstances of this case. The petitioner filed an application as far back as in

1989 claiming overtime wages during the period from 1982 to 1989. The Labour Court has adverted to the fact that there was a lack of diligence on the part of the petitioner in pursuing the application and that is borne out of the application submitted by the management on 18th June, 1996 recording though the matter was pending for recording evidence of the petitioner since 1991, about 30 adjournments had been sought and granted to the petitioner to enable him to lead evidence despite which the petitioner had failed to do so. In response thereto, it was the case of the petitioner that the management must lead evidence first since, having raised the objection to the jurisdiction of the Labour Court on the ground that the petitioner was not a workman, that issue would have to be decided first as a preliminary issue. The Labour Court decided by its order dated 19th November, 1998 to frame a preliminary issue on the question as to whether the petitioner is a workman. The management led evidence on that issue and the recording of the evidence of three witnesses who deposed on behalf of the management was completed on 1st August, 2000. The order of the Labour Court dated 19th November, 1998 was not challenged by the petitioner, nor indeed is that order challenged even today. The witnesses who deposed on behalf of the management were cross-examined by the petitioner and it is, therefore, clear that the order of Labour Court deciding to try the issue as to whether the petitioner was a workman was accepted by both the sides and was duly acted upon while recording the evidence and the cross-examination of the witnesses for the management. It was only after the management had closed its evidence and the turn came for the petitioner to record his own evidence, that an application was filed on behalf of the petitioner to the effect that all issues should be decided together. The Labour Court was, in these circumstances, justified, in my view, in coming to the conclusion that there was a lack of due diligence on the part of the petitioner and the Court was entitled to consider the conduct of the petitioner himself during the pendency of the proceedings.

7. The Supreme Court has laid down that while it is desirable that the Labour Court and Industrial Court should decide all issues together to avoid a piecemeal adjudication of various issues, this is by no means an inflexible rule which can brook no exception. The principle that all issues should be decided by the Labour Court or Industrial Tribunal is intended to ensure that the employer will not be able to

delay the proceedings as is likely to happen when successive applications are moved before the Court for framing preliminary issues on diverse questions. The adjudication of the main grievance of the employee is liable to be postponed indefinitely if as a result of successive applications on the part of the employer, issues such as whether there is an industrial dispute; whether the employee is a workman within the meaning of section 2(s); and in a disciplinary enquiry as to whether the enquiry was fair and proper, are heard and decided as preliminary issues. However, the principle that all issues should be tried together is a statement of what is desirable. Undoubtedly, the Labour Court in an appropriate case is entitled to proceed to decide the issue as a preliminary issue for cogent and sound reasons. That the Labour Court or Industrial Tribunal is not totally prohibited from doing so is apparent from the judgment of three learned Judges of the Supreme Court in *Express Newspapers Ltd. v. Their Workers and Staff* : (1962) IILLJ227SC . That was a case where the issue was to whether the action of the management amounted to a closure or lockout. If it was a closure that would bring the proceedings before the Tribunal to an end and on the other hand if it was a lockout, the Tribunal would be entitled to deal with the matter. In that context, Gajendragadkar, J. (as the learned Chief Justice then was) speaking for the Bench held thus:

'It is also true that even if the dispute is tried by the Industrial Tribunal, at the very commencement, the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the appellant is a closure or a lockout. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not. If the finding is that the action of the appellant amounts to a closure, there would be an end to the proceedings before the Tribunal so far as the main dispute is concerned. If, on the other hand, the finding is that the action of the appellant amounts to a lockout which has been disguised as a closure, then the Tribunal will be entitled to deal with the reference. The finding which the Tribunal may make on this preliminary issue is a finding on a jurisdictional fact and it is only when the jurisdictional fact is found against the appellant that the

Industrial Tribunal would have jurisdiction to deal with the merits of the dispute. This position is also not in dispute.'

8. Later, in *D.P. Maheshwari v. Delhi Administration* 1984(1) L.L.N. 1, a Bench of three learned Judges of the Supreme Court had occasion to consider the issue. That was a case where in a reference under section 10 of the [Industrial Disputes Act, 1947](#), relating to the termination of the services of a workman, the employer had raised a preliminary contention that the employee was not a workman within the meaning of section 2(s) of the [Industrial Disputes Act, 1947](#). The Industrial Court on the basis of the evidence which was adduced, rejected the objection. A learned Single Judge of the High Court allowed the writ petition filed by the management and quashed and set aside the order of the Labour Court which was confirmed in appeal by the-Division Bench. The Supreme Court held that the High Court was not justified in interfering with the order of the Labour Court under Article 226 of the Constitution. In that context, the Supreme Court held that it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes, should decide all issues in dispute at the same time without trying some of them as preliminary issues, 'where delay may lead to misery and jeopardize, industrial peace'. That this is not an inflexible, rule is evidenced from the subsequent observations of the Supreme Court where the Court has held that Tribunals and Courts who are requested to decide preliminary questions must, therefore, ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. The Industrial Tribunals, the Supreme Court held, are set up for expeditious resolution of certain special disputes and their jurisdiction should not be stilled by all kinds of preliminary objections. Hence, the Supreme Court ruled that the High Court ought not to have interfered with the exercise of the jurisdiction by the Tribunal at an interlocutory stage and on a preliminary issue. This principle was followed by a learned Single Judge of this Court in *Rajiv Bhalchandra Gundewar v. Crompton Greaves Ltd.* 2000(I) C.L.R. 818, where the Labour Court had rejected the prayer made by the employer for framing a preliminary issue on the question as to whether the complainant in a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was a workman. The Industrial Court in revision had directed the Labour Court to frame a

preliminary issue. This Court held that the direction given in revision by the Industrial Court to the Labour Court was not justified since a piecemeal decision on issues results in protracting the litigation. Even if it is held by the Labour Court that the complainant is not a workman, the other issues raised in the complaint are required to be decided because in case the said finding is not upheld ultimately by the superior court, the matter should not be required to be remanded for a decision on other issues.

9. In *The Workmen of Hindustan Lever Ltd. v. The Management of Hindustan Lever Ltd.* : (1984)11LLJ391SC , which was a decision of the same Bench of three learned Judges of the Supreme Court which decided D.P. Maheshwari's case, the Court held that the Tribunal derives its jurisdiction by the order of reference and on the determination of a jurisdictional fact which it must of necessity decide to acquire jurisdiction. The Supreme Court held thus:

'Ordinarily, the Tribunal after ascertaining on what issue the parties are at variance raises issues to focus attention on points in dispute. In industrial adjudication, issues are of two types; (i) those referred by the Government for adjudication and set out in the order of reference and (ii) incidental issues which are sometimes issues of law or issues of mixed law and fact. The Tribunal may as well frame preliminary issues if the point on which the parties are at variance, as reflected in the preliminary issue, would go to the root of the matter.'

10. Finally, it would be instructive to advert to the judgment of the Supreme Court in *M/s. Cipla Ltd. v. Ripu Daman Bhanot* : (1999)11LLJ900SC . In that case, the services of a Medical Representative were terminated by a Pharmaceutical Company, upon which, an industrial dispute was raised. The employer moved an application before the Labour Court contending that the employee was not a workman within the meaning of section 2(s). The Labour Court accepted this plea and consequently dismissed the reference. The employee thereupon challenged the award before the High Court which remanded the matter back to the Labour Court for deciding the issue afresh. Subsequently, the Labour Court decided another issue as a preliminary issue, namely, as to whether the enquiry was fair and proper. The Labour Court held that the enquiry was not fair and proper on the

ground that the employee was not allowed the assistance of an Advocate and that the termination order passed by an authority who was not an appointing authority. The writ petition filed by the employer was dismissed by the High Court. The Supreme Court held that the employee was not entitled to the assistance of an Advocate as a matter of right. The Court set aside the interim award of the Labour Court and directed the Court to decide the entire matter afresh. In that context, the Supreme Court observed that it would be appropriate for the Labour Court to decide all issues together and should not split the issues into preliminary or non-preliminary issues so that the proceedings may come to an end at the earliest.

11. In the present case, it is abundantly clear that there has been no effort on the part of the management in either delaying or protracting the proceedings in the courts below. On the other hand, the finding which has been recorded by the Labour Court is that it was the petitioner who had protracted the conduct of the proceedings. The facts show that several adjournments were sought on behalf of the petitioner, in fact, 30 of them as recorded by the employer in the application dated 18th June, 1996. When the employer moved for the dismissal of the application under section 33-C(2) on the ground that the petitioner was not diligent in conducting the proceedings, it was the petitioner who submitted that the employer must lead evidence first since the issue as to whether he is a workman must be decided as a preliminary issue. The order of the Labour Court dated 19th November, 1998 framing a preliminary issue was not challenged and was acted upon. The witnesses of the employer were cross-examined by the petitioner. It is only after the petitioner's turn came to lead his evidence, that an application was filed to the effect that all issues should be decided together. In the circumstances, I am of the view that the interference of this Court is not called for under Article 226 of the Constitution having regard to the conduct of the petitioner and the circumstances which have been adverted to above.

12. While disposing of the petition, I am of the view that certain directions would be necessary so as to ensure that the claim application filed by the petitioner is not unduly protracted. In the circumstances, the following directions are issued:

(i) The parties shall appear before the Seventh Labour Court, Mumbai on 12th July, 2004 so that the Court may issue directions for recording such evidence as the petitioner may wish to lead on the question as to whether he is a workman within the meaning of section 2(s) of the [Industrial Disputes Act, 1947](#);

(ii) The Labour Court shall lay down a time schedule for the disposal of the issue and endeavour to do so preferably by 30th September, 2004;

(iii) In the event that the Labour Court overrules the objection of the respondent-management to the maintainability of the application, the Labour Court shall then proceed to deal with the application on merits immediately thereafter, and arrive at its final decision thereon within a period of two months of the determination of the preliminary issue. This should be without prejudice to the right of the respondent-employer to adopt appropriate proceedings for challenging the order that may finally be passed on the claim application on all questions open in law and fact.

13. The petition is accordingly disposed of in terms of the above directions. There shall be no order as to costs.

14. Parties be given copies of this order duly authenticated by the Associate/ Personal Secretary of this Court.

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