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Batliboi Employees Union Vs. Batliboi Ltd. and anr.

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Court : Mumbai

Decided On : Mar-22-2004

Reported in : (2005)ILLJ471Bom

Judge : A.M. Khanwilkar, J.

Acts : Industrial Disputes Act, 1947 - Sections 10(1)

Appeal No. : O.O.C.J. W.P. No. 2976/2003

Appellant : Batliboi Employees Union

Respondent : Batliboi Ltd. and anr.

Advocate for Def. : C.U. Singh and ;N.M. Makandar, Advs., i/b., P.N. Shastri, Adv.

Advocate for Pet/Ap. : V.A. Pai, Adv.

Judgement :

A.M. Khanwilkar, J.

1. Heard counsel for the parties.

2. Rule. Rule returnable forthwith, by consent.

3. As short question is involved, petition taken up for final disposal forthwith, by consent.

4. The moot question that needs to be addressed in this petition is: whether the Labour Court had jurisdiction to decide the Reference in question? Indeed, the Labour Court formulated that question as Issue No. 1, and has answered the same by holding that the matter in issue was exclusively triable by the Industrial Tribunal, in view of the fact that the dispute pertains to one or retrenchment tailing under Item 10 of Schedule III of the Industrial Disputes Act. The petitioners have specifically challenged that finding before this Court, as can be discerned from grounds (c) and (d), to contend that the Labour Court had jurisdiction to decide the Reference in question. However, during the course of arguments, counsel appearing for the Respondents submitted that the Court below has wrongly decided the issue of jurisdiction on the above basis. According to him, in fact, the issue of jurisdiction was not pressed by the Respondents before the Court below at the final hearing, which position is reinforced from the statement made in the written submissions filed before the Court in that behalf. According to the counsel for the Respondents, therefore, the grounds pressed into service on behalf of the petitioners, grounds (c) and (d) in particular, be accepted, and this Court may hold that the Labour Court had jurisdiction. However, counsel for the petitioners submits that the Respondents, having contested the issue of jurisdiction before the Court below, it is not open for them to take a turn around and now contend that the Labour Court had jurisdiction.

5. In the circumstances, the appropriate course, to my mind is to decide the issue of jurisdiction on its own merits. It is not in dispute that the Reference has been made in relation to the retrenchment of the concerned workmen (33 in number). That issue would obviously be covered by Item No. 10 of the Third Schedule of the Act, which reads thus:

'70. Reference of disputes to Boards, Courts or Tribunals:

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (d);

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this Sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced.

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.'

6. To my mind, it is rightly contended on behalf of the Respondents that it was open to the appropriate Government to make reference to the Labour Court in the fact situation of the present case, as the number of workmen were only 33, which is less than 100 workmen, by virtue of proviso to Sub-clause (d) of Clause (1) of Item 10.

7. On plain language of proviso to Sub-clause (d) of Clause (1) of Item 10, it is clear that the appropriate Government, in given cases, may make a Reference to Labour Court in respect of matters covered by proviso to Sub-clause (d). Proviso to Sub-clause (d) of Clause (1), relates to matters appearing to be connected with, or relevant to the dispute if it relates to any matter specified in Second Schedule or the Third Schedule, it could be referred to the Labour Court, if it is not likely to affect more than 100 workers. In the present case, the number of workers to be affected are admittedly, only 33. Viewed in this perspective, it is not a case where the Court had no jurisdiction at all. To overcome this position, counsel for the Petitioners submits that the Reference was not made by invoking proviso to Sub-clause (d) of Clause (1) of Item 10. However, such a plea has not been raised before the Court below. In any case, it is not open to the Petitioners to contend contrary to their stand before the Court below that the Labour Court had jurisdiction. In the circumstances, finding regarding issue of jurisdiction rendered by the Labour Court will have to be reversed. In other words, it is held that the Labour Court had jurisdiction to decide the matter in issue.

8. In so far as the merits of the rival case is concerned, the Labour Court has analysed every material on record to hold that the retrenchment of the concerned workmen was on account of economic condition of the Respondent Company. That finding being finding of fact, needs no interference in exercise of writ jurisdiction. To overcome this position, counsel for the petitioners placed reliance on document Exhibit B dated September 17, 1987, to contend that the Company had assured the workmen and that assurance was placed on record before the Assistant Commissioner of Labour that the Company will not retrench the workmen on account of computerization and mechanisation. Relying on that document, it is submitted that the present workmen are retrenched, essentially because of the computerization of the concerned Departments. There is no substance in this grievance. On the other hand, finding of fact recorded by the Court below, as can be discerned, is that the Petitioners have never questioned the retrenchment, on the ground that it was on account of computerization of the concerned Departments of the Respondents. No such plea is expressly taken, nor any evidence has been adduced before the Court below. This opinion is recorded by the Court below in Para 8 of the impugned judgment. That finding of fact, again,

cannot be interfered in exercise of writ jurisdiction. Besides, as mentioned earlier, the Court below has adverted to all the relevant circumstances, as have been established from the record to hold that the retrenchment of the concerned workmen was necessitated on account of economic compulsion of the Respondent Company. This again, is a finding of fact, which cannot be questioned before this Court, as it is supported by tangible materials on record.

9. No other contention has been raised on behalf of the petitioners. Accordingly there is no substance in so far as the challenge to the merits of the case is concerned, and the conclusion so reached by the Labour Court in the impugned decision, warrants no interference in exercise of writ jurisdiction.

10. Accordingly, this petition partly succeeds, only to the extent of challenge to the issue of jurisdiction, as recorded by the Court below.

11. Petition disposed of on the above terms.

12. All concerned to act on the ordinary copy of this order, duly authenticated by the Associate of this Court.

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