

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 5825/2004

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Date of decision: 24th May, 2010

THE MANAGEMENT OF M/S HPL INDIA LTD Petitioner
Through: Mr. M.Y. Khan, Advocate.

Versus

**THE SECRETARY (LABOUR), GOVT OF NCT OF
DELHI & ANOTHER** Respondents
Through: Mr. Asheesh Kumar Mishra for R-2
with respondent no.2-in-person.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The Petitioner HPL India Limited by this writ petition impugns the award dated 31st July, 2001 of the Labour Court “against the petitioner company because it was never a party to the adjudication of the industrial dispute of the respondent/workman” and for the reason that it was not impleaded as a necessary party or even summoned by the Labour Court. The petitioner, in the writ petition has pleaded that the respondent no.2 workman was not employed with the petitioner; no industrial dispute was raised by the respondent no.2 workman against the petitioner. It is further

pleaded that M/s Amrex (India) Pvt. Ltd. (hereinafter referred to as “M/s Amrex”) (and which has not been impleaded as a party to the writ petition) against whom the award of the Labour Court is, has been closed down w.e.f. 31st March, 1995; that even though the said fact was brought to the notice of the Labour Court and a letter dated 23rd May, 1995 written by the said M/s Amrex was filed before the Labour Court but the Labour Court has misunderstood the said letter. The petitioner has challenged the award on merits also.

2. The petition was filed after nearly three years of the award and when the award was sought to be enforced against the petitioner and a Recovery Certificate issued against the petitioner. This Court vide *ex parte* order dated 22nd April, 2004 stayed the operation of the award subject to the petitioner depositing litigation expenses in this Court. Rule was issued in the petition on 5th September, 2006 and the interim order made absolute. The records of the Labour Court were requisitioned and on 11th October, 2007 it was directed that the respondent no.2 workman may contact the Management of M/s Amrex and it was clarified that since it is the stand of the petitioner that it was not a party to the industrial dispute, the interim order shall operate only against the enforcement of the award against the petitioner and not for enforcement of the award against M/s Amrex. The respondent no.2 workman filed CM.No.2367/2008 under Section 17B of the ID Act and which is also pending consideration. Since the case of the petitioner is that the award is

not against the petitioner but against M/s Amrex, the application under Section 17B was not taken up for hearing before the hearing of the writ petition.

3. Though the counsels argued on the premise that the award is not against the petitioner but a perusal of the reference order, title of the award and the record of the Labour Court requisitioned before this Court revealed an interesting aspect, which was not highlighted by the counsel for the respondent no.2 workman also. The order dated 30th November, 1992 of the Secretary (Labour) of the Delhi Administration making reference of the dispute records the satisfaction as to the existence of the dispute “between the Management M/s Amrex (India) Pvt. Ltd./Havell’s Electronics Pvt. Ltd., Atma Ram Mansions 1/21, Asaf Ali Road, 2nd Floor, New Delhi and its workman, Shri Bhagwan Singh Rawat.....” . The reference made was as under:

“Whether the services of Shri Bhagwan Singh Rawat have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

However, the statement of claim filed by the respondent no.2 workman before the Labour Court shows only M/s Amrex (India) Pvt. Ltd as the respondent management. A reply thereto is also filed by M/s Amrex only, and authorized representative of the Management appearing before the Labour Court has also filed authorization on behalf of M/s Amrex only.

However, in the award rendered on the reference, the dispute is again shown as between the respondent no.2 workman and “the Management of M/s Amrex (India) Pvt Ltd./Havell’s Electronics Pvt. Ltd.....”, apparently taken from the reference order. The copy of the summons, if any, issued by the Labour Court to the Management and from which it would have been borne out whether the notice/summons were issued only to M/s Amrex or to Havell’s Electronics Pvt Ltd also are not found on record. However, there is on the file of the Labour Court an AD card of a registered AD letter sent by the Labour Court to “Amrex (India) Pvt. Ltd./Havell’s Electronics Pvt. Ltd.” at the address of Atma Ram Mansions 1/21, Asaf Ali Road, 2nd Floor, New Delhi bearing the stamp and signatures dated 19th March, 1993 on behalf of Havell’s Electronics Pvt. Ltd. The reference order is also addressed similarly to both M/s Amrex and Havell’s Electronics Pvt. Ltd.

4. However, the respondent no.2 workman has not sought to enforce the award against the said Havell’s Electronics Pvt. Ltd. either. There is some reference in the writ petition to Havell’s Electronics Pvt. Ltd. from which it appears that the said company still exists. However, since that company also is not before this Court, nothing further turns thereon.

5. It transpires that the respondent no.2 workman sought to enforce the award against the petitioner for the reason of a letter dated 23rd May, 1995 having been filed during the pendency of the dispute before the Labour Court, written by M/s Amrex to the ESIC to the effect that M/s Amrex has

closed down its business activity and has transferred all the “staff members” to its sister concern, namely, the petitioner herein. It is also not in dispute that the petitioner was earlier known as Havell’s Circuit Breakers Pvt. Ltd. The respondent no.2 workman, on the premise that the staff of M/s Amrex in which the respondent no.2 workman was employed, having been transferred to the petitioner, the petitioner is liable under the award against M/s Amrex, sought enforcement against the petitioner. The Labour Commissioner/Court also appears to have issued the Recovery Certificate in the name of the petitioner without recording any satisfaction as to whether the petitioner is a party to the award or not or is a successor to a party to the award or not.

6. The respondent no.2 workman has filed before this Court certified copies of the record of Registrar of Companies which indicate that the petitioner and M/s Amrex have common directors/shareholders. It has also come on record that M/s Amrex, after closing down its business has invested its surplus funds in acquiring the shares of the petitioner.

7. The question which arises is, whether an award against M/s Amrex is executable against the petitioner for the reason of the staff earlier working in M/s Amrex, on closure of business of M/s Amrex, having been transferred to the petitioner or for the reason of the petitioner and M/s Amrex though separate juristic persons having their own identities, having common shareholders/directors and/or having made investments in the shares of each other.

8. The identity of a Company, as both M/s Amrex and the petitioner are/ is distinct from its shareholders/directors. Section 18 of the Industrial Disputes Act, 1947 makes an award binding on the employer, its heirs, successors or assigns in respect of the establishment to which the dispute relates. There is nothing to show that the petitioner is an heir or a successor of M/s Amrex. The only other contingency in which the award against M/s Amrex can be enforced against the petitioner is if the petitioner is the assignee in respect of the establishment to which the dispute relates. However, no fact finding inquiry which is necessary to reach this conclusion has been done. I have also wondered as to before which fora would such fact finding inquiry into the assignee of the employer in respect of the establishment to which the dispute relates would be conducted. The only answer which comes to mind is that if the factum of such assignment is brought to light during the pendency of the industrial dispute then such inquiry will be conducted by the industrial adjudicator before deciding the reference and if such assignment is brought to light after the award, then the question would have to be adjudicated under Section 33C(2) of the Act. I, however find that the Supreme Court in *Central Inland Water Transport Corporation Limited v. The Workmen* AIR 1974 SC 1604 has held otherwise. The Supreme Court has held that an inquiry whether a person is the assignee of the employer under the award is to be conducted by raising a dispute on a reference under Section 10 of the Act. In my humble opinion, it is unduly harsh on the workman to require him to raise a fresh dispute qua

assignee of the employer in the award when it is a settled principle that Section 33C(2) is in the nature of execution proceedings and the question whether a particular person is the assignee of the judgment debtor or not can certainly be decided in execution proceedings.

9. For the enforcement of claim of a workman under the award of the industrial adjudicator, the corporate veil can also be lifted. However, a case of piercing the corporate veil has to be made out and which has not been done in the present case. Moreover, such case in accordance with the ***Central Inland Water Transport Corporation Limited*** (supra) would also have to be made by way of an industrial dispute under Section 10 of the ID Act.

10. Merely because the employees of M/s Amrex were transferred to the petitioner would not constitute the petitioner as the successor or assignee of M/s Amrex in respect of the establishment to which the dispute relates. Though the term “establishment” has not been defined in Section 2 of the ID Act, but it connotes the unit, business or industry or undertaking in which the workman was employed. Mere transfer of employees from M/s Amrex to the petitioner would not necessarily imply that the unit, business, undertaking and industry of M/s Amrex, of which the respondent no.2 workman was an employee, was transferred/assigned to the petitioner. The Madras High Court in ***Workers of Sagar Talkies (South India Cinema Employees' Association) Vs. Odeon Cinema*** (1957) I LLJ 1639 has held that where there is no

transfer of business, no taking over of assets and liabilities but only a new business is conducted in the same premises where earlier another separate business was conducted by another individual and there is no link to connect the two managements except the fact that a somewhat similar business is being carried on in the same premises, it cannot be contended that there is a continuity so as to constitute one as the successor in business of the other. In ***A. St. Arunachalam Pillai Vs. The Chairman, Central Government Industrial Tribunal, Madras*** AIR 1957 Mad 614 a transfer of buses and the route permits was held to amount to a transfer of assets and the purchaser of the said buses was not held to be a successor or assignee within the meaning of Section 18(3)(c) of the ID Act. The Supreme Court in ***Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen*** AIR 1963 SC 1489 has discussed the various considerations to determine whether an industrial concern can be said to be a successor-in-interest or not. There is no averment even in the present case of the petitioner being the successor in business of M/s Amrex. The petitioner has in the affidavit stated that M/s Amrex and itself were involved in entirely separate/distinct businesses having no co-relation with each other. It is also pleaded that only the staff as distinct from workmen of M/s Amrex were taken over by the petitioner.

11. Thus on the basis of the material on record and/or in any case in the exercise of writ jurisdiction this Court is not competent to hold the petitioner

to be the successor or assignee in respect of the establishment of M/s Amrex to which the dispute is related. The award against M/s Amrex / Havell's Electronics Pvt. Ltd. cannot be enforced against the petitioner without the respondent no.2 workman establishing so before the appropriate forum.

12. The counsel for the respondent no.2 workman has drawn attention to the letter of appointment of the respondent no.2 workman whereunder the services of the respondent no.2 workman were transferable to any of the sister concerns of M/s Amrex. However, there was no plea that the services of the respondent no.2 workman were so transferred to the petitioner. In the absence of such a plea, no relationship of employer and employee can be said to have come into existence between the respondent no.2 workman and the petitioner. For this reason CM.No.2367/2008 filed by the respondent no.2 workman under Section 17B of the ID Act is not maintainable against the petitioner and is dismissed. For the same reason, the award of the Labour Court cannot be enforced against the petitioner and the issuance of recovery certificate in enforcement of the award against the petitioner is found to be bad and the recovery certificate is liable to be set aside/quashed.

13. However, it is not felt appropriate to leave the matter so. The parties have been litigating for the last 18 years. The petitioner even though not a successor/assignee of M/s Amrex has chosen to challenge the award on merits also. It is the case in the writ petition that M/s Amrex on receipt of the award had appeared before the Implementation Cell of the Labour

Commissioner and pointed out that it is interested to settle the account of the respondent no.2 workman amicably. From the challenge in the writ petition to the award on merits, it is clear that though technically the petitioner is not bound by the award but the petitioner is otherwise in full know of the facts so as to be competent to challenge the award. It is also an admitted position that M/s Amrex, though may have closed down its business, is still in existence and holds substantial shareholding of the petitioner. Considering the said aspects, attempts were made for amicable settlement at the time of hearing but which did not succeed. In this light of the matter, the award has also been considered on merits.

14. The award finds the respondent no.2 workman to be on probation with the petitioner. However, M/s Amrex instead of simpliciter termination of the said probation and/or not confirming the respondent no.2 workman chose to terminate the services of the respondent no.2 workman for the reason of not only the performance of the respondent no.2 workman being found unsatisfactory and not upto the mark but also for the reason of the respondent no.2 workman being rude to superiors and avoiding their instructions. The award thus finding the termination to be stigmatic and without holding an inquiry declared the same to be illegal and found the respondent no.2 workman entitled to reinstatement with full back wages and continuity of service.

15. Even though M/s Amrex is not a party to the present petition but M/s Amrex having not challenged the award, the same has attained finality. No error can be found in the award. However, the reinstatement of the respondent no.2 workman would be as a probationer only and which can again be terminated simpliciter and without any stigma. It is, thus, not as if the respondent no.2 workman has any right to continue in employment of M/s Amrex also. The award also records the last drawn salary of the respondent no.2 workman to be Rs.1,200/- per month and his services to have been terminated on 24th February, 1992. Thus, the respondent no.2 workman under the award would have been entitled to back wages, say from 1st March, 1992 till the date of the award on 31st July, 2001 i.e. approximately of Rs.1,50,000/-. The said amount was payable about nine years ago. However, considering that the respondent no.2 workman has been negligent in attempting to enforce the award against the petitioner instead of M/s Amrex and which has led to the delays and further considering that if the respondent no.2 workman were to now attempt to prove that the petitioner is the assignee of M/s Amrex, the same would again take a long time, it is directed that subject to the petitioner itself or through M/s Amrex paying a sum of Rs.1,25,000/- to the respondent no.2 workman, all claims of the respondent no.2 workman under the award impugned in this petition and/or against M/s Amrex/Havell's Electronics Pvt. Ltd and/or the petitioner and/or any other group company of the petitioner shall stand satisfied. The respondent no.2 workman is to exercise a choice in this regard and to intimate the petitioner

of the same within two weeks hereof. In the event of the respondent no.2 workman opting to receive the said amount from the petitioner and/or through M/s Amrex, the said amount is to be paid to the respondent no.2 in full and final settlement aforesaid within four weeks thereafter.

16. The writ petition thus succeeds in the aforesaid terms and is disposed of leaving the parties to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

24th May, 2010
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