

*
+

HIGH COURT OF DELHI : NEW DELHI
W.P.(C) No. 7920/2008

%

Pronounced on: 11.06.2010

M/S. H.T. MEDIA LTD.

...Petitioner

Through: Mr. Amit Kumar, Advocate.

Versus

SH. SHASHI BHUSHAN SINGH & ANR.

....Respondents

Through: Mr. Prashant Bhushan and Mr.
Rohit Kumar Singh, Advocates.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

MANMOHAN SINGH, J.

1. The present writ petition has been filed under Article 226 and 227 of the constitution of India prying for quashing of order dated 02.08.2008 passed by the Labour Court, Karkardooma, Delhi against the two Respondents namely Sh. Shashi Bhushan Singh, Respondent no. 1 and Hindustan Times Limited, Respondent no. 2.

2. Brief facts of the case are that Respondent no.1 has filed the statement of claim under Section 2 A of Industrial Disputes Act, 1947 with respect to his retrenchment on 05.05.2007 by the Respondent no.2 management Hindustan Times Limited. According to the Respondent no.1 workman he was appointed by the Respondent no.2 on 17.09.1993 as "Temporary Semi Clerk" and

was confirmed in the said post vide letter dated 08.07.1994. He was the permanent employee of Respondent No.2 and continued to be employee with the same Respondent till the date of retrenchment.

3. The present petitioner was also impleaded as party in the statement of claim. Earlier also, the Respondent no.1 workman had raised the industrial dispute on 22.05.2007 with respect to the same cause of action and the Respondent no.2 employer Hindustan Times Limited had filed an application for rejection of the said industrial dispute on the ground that it was not maintainable since the Respondent no.1 had failed to serve the demand notice on the Respondent no.2. In compliance of the said order Respondent no.1 served the demand notice on the Respondent no. 2 with respect to their alleged termination of service. No demand notice was served by the workman to the present petitioner.

4. An application was moved by the present petitioner, after filing of the written statement, in which preliminary objection was raised that no demand notice was served upon the petitioner by the Respondent No.1/workman, therefore, the dispute raised by him is not maintainable. The said application of the petitioner was dismissed by the Labour Court No. 18, Karkardooma Court, Delhi by the impugned order wherein it was observed that the Respondent no.1 had been retrenched by the Respondent no.2 herein and it has to be decided whether the petitioner is functioning in the guise of the Respondent no.2. Admittedly, workman is not seeking any relief against the petitioner. There is

a specific finding by the Labour Court that the petitioner is necessary and proper party for just adjudication of the dispute raised by the workman.

5. The main contention of the petitioner is that Respondent no.2 i.e. M/s. Hindustan Times Limited is a sound and healthy company and is defending the industrial dispute before the Labour Court who has retrenched the Respondent no.1 from the service w.e.f. 09.05.2007 by invoking the provision of Section 25 F of the Industrial Dispute Act, 1947. Since the Respondent no.1 was retrenched by the Respondent no.2, the Respondent no.1 cannot claim any relief against the petitioner, as the petitioner is not a necessary party. Adjudication, in accordance with law, should be confined between Respondent no.1 and Respondent no.2. It is contended by the petitioner that Respondent no.2 may have several subsidiary companies, therefore, there is no question of impleading such subsidiary companies which are admittedly not the employer of the Respondent no.1.

6. The Respondent No.1 has filed the counter affidavit to the present writ petition. The following averments have been made in the counter affidavit inter alia by the Respondent no.1 which reads as under:

- In 2003, Respondent No.2 Company (Hindustan Times Ltd.) created a wholly owned (now about 70% shares are owned) subsidiary company i.e. the Petitioner Company (H.T. Media Ltd.)
- The same Management which was running H.T. Ltd. started running H.T. Media Ltd. The Chairman and most of the full time Board of Directors of both the companies are same.
- In August 2003, H.T. Ltd. transferred its entire business of printing and publishing daily newspapers, magazine,

journals etc. to H.T. Media Ltd. which was being run by it for last several years. Now H.T. Media Ltd. is publishing Hindustan Times, Hindustan, Kadambani, Nandan which earlier was being published by H.T. Ltd.

- Though, these changes were made on papers but the workers did not feel any change at the ground level as they continued to work as usual in the same office, with same work and on pay roll of H.T. Ltd. only.
- After few months, i.e. from October 2004, H.T. Ltd. started retrenching its workers mainly on the ground that it has no work left to provide them as printing and publishing works have been taken over by the Petitioner Company and the Petitioner Company has its own workforce.
- It is the case of Respondent No.1 that H.T. Ltd. has created H.T. Media Ltd. as a part of the strategy to get rid of its regular wage board and unionized employees, whose service conditions are governed and protected by various labour laws.
- H.T. Ltd. is doing same business but now through H.T. Media Ltd. It has created a façade of H.T. Media Ltd. for running its old business and retrenching the workers on the ground that it has no work left now. A corporate veil has to be lifted to know the realities of the alleged two separate companies. In view of the structure and pattern of the shareholding of the Petitioner Company and Respondent No.2 Company, the aforementioned transfer of media business is nothing but a sham. H.T. Media Ltd. may have assumed the garb of a separate legal entity but it is basically an instrumentality of H.T. Ltd. and is created to deceive the world by covering itself with the corporate veil. The Hon'ble Supreme Court in several cases has held that the corporate veil may be lifted to know the realities of a particular Company when there is fraud intended to be prevented or there is allegation of sham and collusive transaction or there is tax evasion etc. In State of U.P. Vs. Renusagar Power Co., (1988) 4 SCC 59, the corporate veil was lifted by the Hon'ble Supreme Court to know whether Renusagar Power Co. is wholly owned subsidiary of Hindalco or not and it was held that Renusagar Power Co. and Hindalco should be treated as one concern and therefore, the companies generating the power and consuming the power are same. Similarly, the Hon'ble Supreme Court in Gurmail Singh Vs. State of Punjab, (1991) 1 SCC 189, in the context of right of compensation of workers in case of transfer of ownership of any company under Section 25 FF of the Industrial Disputes Act said :
"The Supreme Court itself has visualised such a case and made it clear that if a transfer is fictitious or benami, Section

25-FF has no application at all. Of course, in such a case, “there has been no change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation”. A second type of cases which comes to mind is one in which there is in form, and perhaps also in law, a succession but the management continues to be in the hands of the same set of persons organised differently such as in *Bombay Garage Ltd v. Industrial Tribunal* and *Artisan Press Ltd. v. LAT-In* such cases, the transferee and transferor are virtually the same and the overriding principle should be that no one should be able to frustrate the intent and purpose of the law by drawing a corporate veil across the eyes of the court.”

- Therefore, in order to determine whether the retrenchment of Respondent No.1 like other retrenched employees are legal and justified under Industrial Disputes Act or not, the presence of the Petitioner Company is necessary. Moreover, if Respondent no.1 succeeds before the Labour Court then his re-employment could be done by Respondent No.2 through the Petitioner Company only thus, even for an effective order, the presence of the Petitioner Company is necessary.

7. After considering the rival submissions of the parties, prima facie it is not in dispute that since the year 2003, the Respondent no.2 Hindustan Times Limited transferred its entire business of printing and publishing, daily newspaper, magazine etc. to the petitioner i.e. H.T. Media Limited who is now publishing the Hindustan Times, Hindustan, Kadambani, Nandan which were earlier published by Respondent no.2.

8. In view of the specific contention raised by the Respondent no.1 workman that the Respondent no.2 Hindustan Times Limited is doing the same business but now through Petitioner H.T. Media Limited and according to the Respondent no.1 these changes were made on papers despite of the fact that

the Chairman and full time Board of directors of both the companies are same. According to the Respondent no.1 the petitioner company has been created in order to get rid of its regular wage board. The Respondent no.1 submits that, the petitioner was made a formal party in the claim raised by him due to the above mentioned circumstances. It appears from the impugned order that nothing has been decided on merit by the Labour Court rather it has been observed in the impugned order that the said point raised by the parties have to be decided on merit as to whether the petitioner is functioning at the guise of Respondent no.2 or not. It has been rightly observed in view thereof that the requirement of notice to the petitioner is not imperative at this juncture. I agree with the finding given by the Labour Court. I feel that the petitioner has failed to make any case for interference in the order of the Labour Court.

9. I find no merit in the writ petition. The same is hereby dismissed. However, liberty is granted to the petitioner to raise all the objections before the Labour Court and the same shall have to be decided as per its own merit.

10. The writ petition and the interim application stands disposed of.

MANMOHAN SINGH, J.

JUNE 11, 2010
dp