

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 16th September, 2011
Judgment Delivered On: 28th September, 2011

+ CRL.M.C.4899-4901/2006

M/S.JAGATJIT INDUSTRIES LTD. Petitioner
Through: Ms.Simar Narula, Advocate

versus

LABOUR OFFICER & ANR. Respondents
Through: Ms.Asha Jain, Advocate with
Mr.Mukesh Jain and Ms.Shivika Jain,
Advocates for R-3 to R-5

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

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?

PRADEEP NANDRAJOG, J.

1. An interesting issue pertaining to interpretation of Section 19 and 29 of the Industrial Disputes Act 1947 arises for consideration in the instant petition which lays a challenge to the order dated 11.11.2005 under which the petitioners have been summoned in a complaint filed by the Labour Officer (South) Government of NCT Delhi alleging that Labour Court Award in ID No.357/1995 dated 28.11.2001 requiring reinstatement of 3 workmen has not been implemented qua 2 of them and thus an offence

stands committed as per Section 29 of the ID Act 1947. The complaint has been filed on 11.5.2005.

2. Section 29 of the ID Act 1947 reads as under:-

“29. Penalty for breach of settlement or award - Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion has been injured by such breach.”

3. Section 19 of the ID Act 1947 which specifies the period of operation of settlements and awards reads as under:-

“19. Period of operation of settlements and awards.-

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the

parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A.

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be on such reference shall, be final.

(5) Nothing contained in sub- section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub- section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) No notice given under sub- section (2) or sub- section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.”

4. Relevant would it be to highlight that in the complaint, it is alleged that the award was pronounced against accused No.1; and accused No.2 being the Director of accused No.1 and accused No.3 being the Assistant Manager (Personal) were responsible for conducting the day to day affairs of accused No.1 and thus were liable for the defaults committed by accused No.1. Though not expressly stated, it is apparent that the vicarious liability was cast in view of Section 32 of the ID Act 1947 which makes liable the Director or any other person concerned with the management of a company liable for the default committed by a company unless such person could establish that the offence was committed without his knowledge or consent.

5. Now, it was not disputed that by virtue of Sub-Section 3 of Section 19 of the ID Act 1947, subject to the provisions of Section 19, an award remains in operation for a period of 1 year from the date on which the award becomes enforceable under Section 17(A) of the ID Act 1947 unless the period is reduced or extended by the appropriate Government in exercise of its power under either of the two provisos to Sub-Section 3 of Section 19 of the Act, a power which was never exercised. It was also not disputed by learned counsel for the parties that by virtue of Sub-Section 5 of Section 19 of the ID Act 1947, Sub-Section 3 of Section 19 did not apply to awards which imposed continuing obligation on the parties bound by the award. Further, learned counsel were not at variance that by virtue of Sub-Section 6 of Section 19, notwithstanding the period of 1 year contemplated by Sub-Section 3 of Section 19 during which an award remains operative, the said period could be curtailed by giving a notice by either party to the other intimating its intention to terminate the award. Learned counsel also did not dispute that under Section 17(A) of the ID Act 1947 an award becomes enforceable on the expiry of 30 days from the publication of the award under Sub-Section 1 of Section 17 of the ID Act 1947 and further agreed that by virtue of the proviso to Sub-Section 1 of Section 17(A) of the ID Act the appropriate Government may declare an award not enforceable on the expiry of 30 days from the date of its publication under Sub-Section 1 of Section 17 of the ID Act 1947.

6. The subject award was published on May 16, 2002 and became enforceable on the expiry of 30 days from the date of its publication i.e. became enforceable on June 15, 2002.

7. As per the award, 3 persons Sh.Thakur Singh, Sh.Dinanath and Sh.Kailash, the termination of whose services by accused No.1 was held to be illegal under the award dated November 28, 2001, were required to be reinstated.

8. Whereas the company reinstated Sh.Kailash on the ground that he reported for duty after the award was published and hence he was reinstated, the other two never reported to the company till February 13, 2004 and hence were not permitted to join the company i.e. were not reinstated and thus the complaint filed by the Labour Commissioner before the learned Metropolitan Magistrate alleged violation of law pertaining to the award qua Thakur Singh and Dinanath.

9. As noted above, taking cognizance of the complaint filed before the learned Metropolitan Magistrate, the accused were summoned vide order dated 11.11.2005.

10. The question which arises for consideration is whether the award requiring reinstatement of workmen would be a continuing offence for the reason vide Section 29 of the ID Act 1947, punishment prescribed for breach of an award is 6 months and as per Section 468 of the Code of Criminal Procedure 1973 period of limitation prescribed is 1 year for offences punishable with imprisonment for a term not exceeding 1 year. It may also be highlighted that Section 472 of the Code of Criminal Procedure 1973 requires that in

a case of continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

11. Let me trace the concept of a continuing offence and the associated problem in identifying as to which offence would be a continued offence.

12. The origin of the concept of a continuing offence could be traced to the concept of a continuing cause of action in a civil matter. The concept of continuing cause of action arose principally in regard to the point of time up to which damages could be assessed in a given action and way back in the year 1804, in the decision reported as (1804) 1 Ch. 298: 7 R.84 (70) LT 52 Hole Vs. Chard Union, Lord Lindley had observed:-

“What is a continuing cause of action? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought.”

13. In the same decision Lord Justice A.L.Smith concurred in the following words:-

“If once a cause of action arises, and the acts complained of are continuously repeated, the cause of action continues and goes on de die in diem. It seems to me that there was a connection in the present case between the series of acts before and after the action was brought; they were repeated in succession, and became a continuing cause of action. They were an assertion of the same claim – namely, a claim to continue to pour sewage into the stream – and continuance of the same alleged right. In my

opinion, there was here a continuing cause of action within the meaning of the rule."

14. This is how, in civil law, a continuing cause of action was understood; and a closer look would show that a *recurring cause of action* i.e. same act which constitutes the original wrong is repeated again and again would have been a better phrase. Thus, a continuing cause of action would be a recurring cause of action; or to put it differently the phrases 'continuing cause of action' and 'recurring cause of action' would be synonyms.

15. In its mutated application as a concept of a *continuing offence*, way back in the year 1937, speaking for the Full Bench of the High Court of Judicature at Bombay, Beaumont C.J. in the decision reported as AIR 1937 Bom. 1 (FB) Emperor Vs. Chotta Lal Amar Chand expressed:-

"..... That you can have a continuing offence in the sense in which you can have a continuing tort, or a continuing breach of contract, and I doubt, myself whether the assumption is well-founded, having regard to the provisions of the Criminal Procedure Code as to the framing of charges and as to the charges which can be tried at one and the same trial. It is quite clear that you could not charge a man with committing an offence 'de die in diem' over a substantial period."

16. Yet in spite thereof, since, in relation to limitation, a continuing offence finds a statutory enactment, notwithstanding the inherent problem in the very import of the concept of a continuing cause of action with respect to a continuing offence, courts have always struggled to outline,

on case to case basis, whether or not it is a case of a continuing offence or not.

17. An understanding of the concept of a continuing wrong could be with respect to the decision of the Bombay High Court reported as AIR 1955 Bom. 161 State Vs. A.H.Bhiwandiwalla wherein the accused was charged for the offence of (i) failure to apply for registration of his factory and give notice of occupation thereof; and (ii) run the factory without a license under the Factories Act 1948. For the former offence it was held that the same was not a continuing offence and qua the latter it was held to be a continuing offence. The decision guides that whereas the former was not an act repeated akin to an act causing an injury repetitively, the latter was an act akin to an act repetitively causing injury as and when the act was repeated. This is the way in which the aforesaid decision reconciled the concept of a continuing cause of action or a recurring cause of action as understood in civil law with respect to the concept of a continuing offence.

18. The decision of the Supreme Court AIR 1959 SC 798 Bal Krishna Savalram Pujari & Ors. Vs. Sh.Dayaneshwar Maharaj Sansthan & Ors. makes us understand, with greater clarity, as to what would be the essence of a continuing offence. It was observed:-

“It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may

continue. If, however, a wrongful act is of such character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by a wrongful act and what may be described as the effect of said injury."

19. Thus, the effect of the injury being felt at a point of time subsequent to when the act was done and its distinction with the injury caused being continued has to be kept in mind, for the reason the distinction is subtle and if the subtlety is ignored, the line may get blurred.

20. Learned counsel for the respondent had cited a decision of a learned Single Judge of the Kerala High Court reported as ILR 1987 (1) Kerala 954 Trichur Urban Co-operative Bank Ltd. vs. District Labour Officer wherein it was held that an award becomes enforceable on the date when it is published under Section 17-A of the ID Act 1947 and with reference to sub-section 3 of Section 19 the award remains in operation for a period of one year. It was held that the obligation survives during the successive days till the award can be enforced and on this reasoning it was held that the offence would be a continuing offence.

21. With respect to the decision, it may be observed by me that the offence pertaining to an award directing reinstatement cannot be said to be completed till one year from the date of the publication of the award lapses, for the reason the I.D.Act 1947, treats one year within which the award can be implemented and thus for the purposes of computing limitation for the offence of not having

implemented the award, the limitation has to commence from the day next after one year elapses after the award is published for the reason it is only when the award is published that it becomes enforceable. Unfortunately, in the decision, the dates have not been mentioned and the reasoning in the judgment is intertwined with respect to limitation commencing after one year of the publication of the award with the concept of a continuing offence.

22. In the decision reported as 1979 (1) LLJ 423 State of Maharashtra vs. Ajit Maniklal Choksey, with respect to an award directing reinstatement, the Bombay High Court held that the non-implementation of the award does not constitute a continuing offence, a view which was followed with approval by the Calcutta High Court in the decision reported as 1985 LLN 458 Swaranjit Singh vs. State.

23. A Division Bench of this Court, in the decision reported as AIR 1976 Delhi 168 Coz & Kings (Agents) Ltd. vs. Their Workmen & Ors. discussed the interplay of sub-section 3 and sub-section 5 of Section 19 of the ID Act 1947 in the context of an award imposing continuing obligations as under:-

“....The words "subject to the provisions of this section" used in subsection (3) mean that sub-section (3) is to be qualified by the other provisions of Section 19. One qualification made explicit in sub-section (5) but which was already implicit in sub-section (3) is that it is to apply only to those awards which imposed a continuing obligation on the parties. The continuance of the obligation would naturally be after the award has become effective, that is to say, after the award is delivered and published. It does not mean that merely because

the award has become effective it must continue to be in operation. We are of the view, Therefore, that sub-section (5) has to be read with sub-section (3) and so read, it becomes clear that these two provisions apply only to an award which, after pronouncement and publication, continues to impose obligations on the parties making it necessary to know for what period it would be in operation under sub-section (3)..."

24. From a perusal of the case law hereinabove, it would be apparent that an award directing reinstatement would constitute an offence punishable under the ID Act 1947 if within one year of the publication of the award the same is not implemented and the wrong would be completed on the expiry of one year from the date when the award is published. That its non implementation would continue resulting in the damage to the workman is irrelevant for the reason, as observed by the Supreme Court in Balkrishna's case (supra), if the wrongful act causes an injury which is complete, it would not be a case of a continuing offence unless it is the injury which is continued to be caused each day. Thus, it has to be held in favour of the petitioners and against the respondents. The petition stands disposed quashing the order summoning the petitioners being the order dated 11.11.2005. The complaint filed is time barred and no cognizance can be taken thereof.

25. No costs.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 28, 2011
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