

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.10.2014

+ **W.P.(C) 1959/2008 & CM Nos. 3743/2008 & 2129/2014**

M/S ABASKAR CONSTRUCTION (P) LTD. Petitioner

versus

DEVI DUTT & ORS. Respondents

AND

+ **W.P.(C) 7452/2012 & CM No. 5815/2014**

DEVI DUTT AND ORS Petitioners

versus

ABASKAR CONSTRUCTION PVT LTD. Respondent

Advocates who appeared in this case:

For the Petitioner :Mr Kailash Vasudev, Sr. Advocate with Mr
Siddharth (M/s Abaskar Construction (P) Ltd.)

For the Respondents :Mr Jay Sarla, MrSandeep Das, Ms Amrita
Mishra and MrVipinTyagi (Devi Dutt & Ors.)

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The writ petition (W.P.(C) No.1959/2008) has been filed by M/s Abaskar Construction (Private) Limited (hereafter also referred to as 'ACPL') impugning an award dated 30.11.2007 passed by the Labour Court (hereinafter referred to as the 'impugned award') inasmuch as the

Labour Court has set aside the retrenchment orders issued against three workmen, namely, Devi Dutt, Narain Dutt and Beerinder Pal. The said workmen are arrayed as respondents in W.P.(C) 1959/2008 and are petitioners in W.P.(C) 7452/2012 (hereafter referred as ‘the respondent workmen’). The Labour Court set aside the retrenchment orders of the respondent workmen as it held that the Joint Managing Director of the ACPL was not empowered under the Articles of Association of ACPL to issue retrenchment orders and/or terminate the services of the respondent workmen. Consequently, the Labour Court directed reinstatement of the respondent workmen with continuity of service and full back wages.

2. By the impugned award, the Labour Court also held that there was no violation of the retrenchment procedure or Section 25F, 25G and 25H of the Industrial Disputes Act, 1947 (hereinafter referred to as the ‘Act’). These findings of the Labour Court have been challenged by the respondent workmen in writ petition (W.P.(C) No.7452/2012).

3. Since the impugned award is assailed in both the petitions, the same have been heard together. Briefly stated, the relevant facts for considering the controversies which are subject matter of the present petitions are as under:

3.1 ACPL owns a multistoried building known as “Kailash”, situated at Kasturba Gandhi Marg, New Delhi and its main object, *inter alia*, is to manage land, buildings and properties. ACPL engaged the respondent workmen for the purpose of maintenance and other associated works of the said building. Devi Dutt worked as an Office Boy from 01.05.1985; Narain

Dutt joined as a supervisor from 01.05.1971; and Beerinder Pal worked as a sweeper from 01.05.1976.

3.2 Mr A.B. Mitra was the Managing Director and was managing the affairs of ACPL. The Board of Directors of ACPL appointed Mr Arun Kumar Jain as a Joint Managing Director of ACPL, by a resolution passed on 28.03.1992. Mr A.B. Mitra resigned from the post of Managing Director on 01.09.2001 and the Board of Directors accepted his resignation at a meeting held on 05.12.2001 and Mr Arun Kumar Jain and Mr Tarun Kumar Jain (Joint Managing Directors) were requested to look after the day to day affairs of ACPL.

3.3 Subsequently, by separate letters dated 05.03.2002, Mr Arun Kumar Jain (Joint Managing Director) issued retrenchment orders to the respondent workmen. It is stated on behalf of ACPL that along with the said retrenchment orders ACPL also tendered cheques for amounts which included notice pay, bonus and retrenchment compensation towards full and final settlement of the dues payable to the respondent workmen. However, it is stated that the said cheques were refused by the respondent workmen. This is disputed by the respondent workmen who claim that they did not receive any cheques along with the said letters and contend that no amount was tendered to them.

3.4 Thereafter, on 30.03.2002, the Board of Directors of ACPL passed a resolution whereby the actions of the Joint Managing Directors - Mr Arun Kumar Jain and Mr Tarun Kumar Jain were ratified and approved, w.e.f. from 01.09.2001.

3.5 The respondent workmen challenged the termination of their services by ACPL and raised an industrial dispute. It was stated that the cheques were accepted by the respondent workmen in the conciliation proceedings that ensued, however, the same excluded the notice pay and retrenchment compensation. As the proceedings before the Conciliation Officer were not successful, the said dispute was referred to the Labour Court in the following terms:—

“Whether retrenchment of S/Sh. Devi Dutt & two others as per Annexure-‘A’ from the services by the management is illegal and/or unjustified, if so, to what relief are they entitled and what directions are necessary in this respect?”

4. ACPL claimed that Narain Dutt was not a workman within the meaning of section 2(s) of the Act and the Labour Court lacked the jurisdiction to entertain the disputes. After the pleadings were complete the Labour Court struck the following issues:

- “i) Whether the claimant Narain Dutt is a workman within the meaning of Section 2(s) of I.D. Act? OPW*
- ii) Whether this court has no jurisdiction in view of the preliminary objection no.1 in the WS? OPM*
- iii) As per terms of reference.”*

5. By the impugned award, the Labour Court held that although Narain Dutt was designated as a supervisor but the uncontroverted evidence indicated that the nature of his activities was clerical and as such he was a workman within the definition of section 2(s) of the Act. The Labour Court also rejected the plea of ACPL that the Labour Court did not have the jurisdiction to entertain the disputes. In so far as the challenge laid by the

respondent workmen to their retrenchment as being violaitve of 25F, 25G and 25H of the Act is concerned, the same was negated and the Labour Court found that the respondent workmen had failed to point out any person junior to them, who was retained in employment. It was further held that there was no illegality in outsourcing the work done by the respondent workmen to other persons retained by ACPL. However, the Labour Court held that that the Joint Managing Director was not empowered to retrench the respondent workmen and directed reinstatement of the respondent workmen with continuity of service and full back wages.

6. The controversy that needs to be addressed is whether the retrenchment of the respondent workmen is rendered invalid on account of the retrenchment letters being signed by the Joint Managing Director of ACPL. And whether the Labour Court has erred in holding that in the given facts and circumstances, the provisions of Section 25F, 25G and 25H of the Act have not been violated.

7. A company is an artificial juridical entity and at the material time was governed by the provisions of Companies Act, 1956. Section 291 of the Companies Act, 1956 clearly provides that “*Board of Directors of a company shall be entitled to exercise all such powers, and do all such acts and things, as a company is authorized to exercise and do.*”

8. The functioning of a company was eloquently presented by O. Chinnappa Reddy, J. in **LIC v. Escorts Ltd.: (1986) 1 SCC 264** as under:

“95. A company is, in some respects, an institution like a State functioning under its “basic Constitution” consisting of the

Companies Act and the Memorandum of Association. Carrying the analogy of constitutional law a little further, Gower describes “the members in general meeting” and the directorate as the two primary organs of a company and compares them with the legislative and the executive organs of a Parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government, subject to a measure of control by Parliament through its power to force a change of government. Like the government, the Directors will be answerable to the “Parliament” constituted by the general meeting. But in practice (again like the government), they will exercise as much control over the Parliament as that exercises over them. Although it would be constitutionally possible for the company in general meeting to exercise all the powers of the company, it clearly would not be practicable (except in the case of one or two-man companies) for day-to-day administration to be undertaken by such a cumbersome piece of machinery. So the modern practice is to confer on the Directors the right to exercise all the company's powers except such as the general law expressly provides must be exercised in general meeting. [Gower's Principles of Modern Company Law] Of course, powers which are strictly legislative are not affected by the conferment of powers on the Directors as Section 31 of the Companies Act provides that an alteration of an article would require a special resolution of the company in general meeting. But a perusal of the provisions of the Companies Act itself makes it clear that in many ways the position of the directorate vis-a-vis the company is more powerful than that of the government vis-a-vis the Parliament. The strict theory of Parliamentary sovereignty would not apply by analogy to a company since under the Companies Act, there are many powers exercisable by the Directors with which the members in general meeting cannot interfere. The most they can do is to dismiss the Directorate and appoint others in their place, or alter the articles so as to restrict the powers of the Directors for the future. Gower himself recognises that the analogy of the legislature and the executive in relation to the members in

general meeting and the Directors of a company is an oversimplification and states “to some extent a more exact analogy would be the division of powers between the Federal and the State Legislature under a Federal Constitution.” As already noticed, the only effective way the members in general meeting can exercise their control over the directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the directorate and appoint others in their place. The holders of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a Director and appoint another.”

9. Section 26 of the Companies Act, 1956 mandates that the Articles of Association of a company “*prescribing regulations for the company*” be registered along with the Memorandum of Association. Section 36(1) of the said Act, provides that subject to the provisions of the Companies Act, 1956 the Memorandum and Articles of Association of a company shall bind the company and its members. Thus the Articles of Association are, essentially, for the purposes of internal conduct of affairs of a company and are binding upon the company and its members. In the present case, Clause 27 of Articles of Association of ACPL provides that the Managing Director of ACPL shall carry on the business of ACPL as delegated to him subject to the supervision and control of the Directors. Clause 30 of Articles of Association *inter alia* provides for the power of the Managing Director to engage and dismiss workmen and other employees. The relevant portion of the said clause is quoted below:-

“30. The Managing Director shall have the power to engagement and dismissal of Managers, Engineers, technical

experts, artists, assistants, clerks, servants, workmen and other employees and the general management and superintendence of the business of the company with full powers to do all acts, matters and things deemed by him necessary, proper or expedient for carrying on the business and concerns of the company and to make sign and carry into effect such contracts and to make draw, accept, endorse, sign and negotiate on behalf of the company all such bills of exchange, Government of India and other promissory notes, hundis, cheques, drafts and other instruments as shall be necessary, proper or expedient for carrying on the business of the company and to make conduct, defend, compound or abandon any legal proceedings by or against the company or its officers or otherwise concern-ing the affairs of the company and also to compound and allow time for payment or satisfaction of debts due to and or any claims or demand by or against the company in arbitration and otherwise, and observe and perform the awards and to exercise such of the powers of the Directors as may be delegated to him....”

10. Section 2(26) of the Companies Act, 1956 defines ‘Managing Director’ as a director who has been entrusted with substantial powers of management which would not otherwise be exercisable by him. By this definition, even a Joint Managing Director who, as a delegate of the Board of directors, substantially manages the affairs of a company would qualify to be considered as a Managing Director for the purposes of the Companies Act, 1956 as well as under the Articles of Association of the company.

11. The Articles of Association of ACPL does not provide for a separate post of a Joint Managing Director, however as the nomenclature itself indicates a Joint Managing Director would also be a Managing Director. In any view, undisputedly, the Joint Managing Director is an executive director of ACPL and any act done by him under the ostensible authority as

an executive director would bind ACPL. Any person dealing with a company would be entitled to presume that its Joint Managing Director has obtained the requisite authority to act for the company and by virtue of the doctrine of indoor management, the company would be bound by the actions of its officers done under their ostensible authority.

12. Further, Section 290 of the Companies Act, 1956, provides protection to the outsiders who deal/transact with a company. It provides that the acts of a person acting as Director shall be valid, notwithstanding that the appointment of the said Director was later on discovered to be invalid by virtue of any provision contained in this Act or in the Articles. Section 290 of the Companies Act, 1956, is relevant and is quoted below:-

“290. Validity of acts of directors.—Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.”

Thus, even in cases where the appointment of a director is found to be invalid, his actions cannot be called into question and would be valid and binding on the company.

13. In the present case, all the actions of Mr Arun Kumar Jain, Joint Managing Director, were later approved and ratified by the Board of Directors by a resolution dated 30.03.2002. This court in **Rameshwar**

Dayal Gupta v. Abaskar Construction P. Ltd.: W.P. (C) 7933/2005, decided on 08.07.2010, upheld a notice of superannuation issued by Mr Arun Kumar Jain, Joint Managing Director of ACPL, as all the actions of the Joint Managing Director were ratified by the Board of directors by a resolution dated 30.02.2002. The court considered the question of competency of Mr Arun Kumar Jain to issue the said notice and held as under:

“10. I have heard the arguments of learned counsel for both parties. As far as the question of the competency of Mr. Arun Kumar Jain, Joint Managing Director is concerned, a bare perusal of the Resolution dated 30.03.2002 shows that all the actions taken by him after 01.09.2001 were ratified and approved by the Board of Directors vide the said resolution.”

14. The learned counsel for the respondent workmen relied upon a decision of a division bench of Punjab and Haryana High Court in **Haryana Seeds Development Corporation Ltd. & Ors. v. J.K. Aggarwal:** (1989) 65 Comp Cas 95 (P&H) in support of its contention that the services of respondent workmen could not be terminated by a Joint Managing Director. However, the facts of the said case were materially different. In that case, the respondent - a Company Secretary and as such a principal officer of Haryana Seeds Development Corporation Ltd. - was dismissed by the Chairman of that company. In the given facts of the case, the court came to a conclusion that the powers of the Board of directors was usurped by the chairman and set aside the dismissal of the respondent. No such inference can be drawn in the facts of the present case and the dismissal of the respondent workmen was within the scope of authority of an executive director. Given the wide powers of Board of Directors and the doctrine of

ratification, I am unable to agree with the view that an act, which is within the powers of the Board of Directors but beyond the scope of authority of any director of a company, cannot be ratified by the Board of directors. It is also relevant to note that the Supreme Court in **J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd. & Ors.:** (1991) 2SCC 283 had held that the enquiry proceedings against the said company secretary, which could result in his dismissal would be guided by Haryana Civil Services (Punishment and Appeal) Rules, 1952. Thus, the decision in the case of that company cannot be applied in the facts of the present case.

15. The respondent workmen have challenged their termination, principally, on the ground that the retrenchment compensation was not tendered/paid simultaneously and thus, the conditions of Section 25F of the Act were violated. It is also contended that the retrenchment of respondent workmen was unjustified as the work load of ACPL had increased after their termination.

16. The Labour Court had examined the evidence and had concluded that the conditions of Section 25F of the Act were duly met. ACPL had also led evidence that retrenchment letters were accompanied with cheques for the amounts towards retrenchment compensation as well as bonus for the relevant year. I find no reason to interfere with the findings of the Labour Court that the conditions of Section 25F of the Act were duly complied as the same is based on proper appreciation of evidence and, as such, well informed.

17. The Labour Court noted that the respondent workmen had failed to name a single employee junior to them who had not been retrenched by the management, while passing the retrenchment orders against the respondent workmen. Thus, the respondent workmen could not point out any violation of Section 25G of the Act.

18. The learned counsel for the respondent workmen contended that the retrenchment of respondent workmen was not justified as, admittedly, the administrative expenses of ACPL had increased in the financial year after retrenchment of the respondent workmen. The witness on behalf of ACPL had also admitted that after retrenchment of the employees, ACPL had hired other personnel on retainer basis. However, he denied any suggestion that the employees employed by ACPL were being engaged in the same work as was done by the respondent workmen prior to their retrenchment.

19. In the light of the evidence led, the Labour Court did not find that the provisions of Section 25H of the Act were violated in any manner. The evidence clearly indicated that ACPL had not employed persons to do the work that was being done by the respondent workmen prior to their retrenchment. ACPL had, however, retained certain persons on a retainer basis and the Labour Court found no irregularity with the same.

20. In the given circumstances, I am unable to accept that the findings of the Labour Court warrant any interference. It is well settled that the scope of judicial review under Article 226 of the Constitution of India is limited

and the Court will not supplant its opinion over that of the industrial adjudicator unless it finds a manifest error of law or a flaw in the decision making process.

21. The Supreme Court in **Lalit Popli v. Canara Bank: (2003) 3 SCC 583**, held that:

“17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

18. In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding.”

22. In view of the aforesaid, the writ petition preferred by ACPL (W.P.(C) 1959/2008) is allowed and the petition preferred by the respondent workmen (W.P.(C) 7452/2012) is rejected. The impugned award insofar as it holds the retrenchment orders to be invalid, is set aside.

23. The writ petitions and all applications are disposed of as above. No order as to costs.

VIBHU BAKHRU, J

OCTOBER 16, 2014
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