

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

% *Judgment Reserved on : July 02, 2015*
Judgment Delivered on : July 08, 2015

+ **LPA 305/2009**

FEDERATION OF TATA
COMMUNICATIONS EMPLOYEES UNIONS Appellant
Represented by: Mr.Sachin Dutta, Sr.Advocate
instructed by Mr.Manik Dogra and
Mr.Siddhartha Das, Advocates

versus

UOI & ORSRespondents
Represented by: Mr.R.V.Sinha, Advocate with
Mr.A.S.Singh, Advocate for R-1
Mr.Chetan Sharma, Sr.Advocate
instructed by Mr.Karan Luthra and
Mr.Anuj Malhotra, Advocates for
R-2 and R-3

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Holding that the memorandum of settlement dated January 31, 2008 was a material document; and since in the writ petition filed by the appellant no mention thereto was made, returning a finding that there was a suppression of a material fact and a document, the writ petition filed by the appellant has been dismissed by the learned Single Judge vide impugned order dated July 03, 2009.
2. It is apparent that the learned Single Judge has returned a finding that the appellant has failed to observe *Uberrimae fides*. It is trite that

concerning the extraordinary writ jurisdiction of a Court, if it finds truth being suppressed or misrepresented or a material fact suppressed, the Court would be justified in refusing to adjudicate upon the claim on merits.

3. A perusal of the pleadings of the second respondent, which was the contesting party, would evince that it had pleaded a summary rejection of the writ petition on the plea that two earlier writ petitions on the same subject which were dismissed; one held as not maintainable and the other as withdrawn, which fact was not disclosed. Apart therefrom, it was pleaded that the settlement memorandum dated January 31, 2008 was also suppressed and was a relevant document.

4. In the impugned order the learned Single Judge has noted that the rejection of the writ petition filed by the appellant was prayed by the second respondent on suppression of two counts, but the finding returned is of suppression only on the count of non-disclosure of the settlement memorandum dated January 31, 2008.

5. The learned Single Judge has noted that the maintainability of the writ petition was also questioned on the ground that the relief effectively sought was against respondent No.2 which was not a State within the meaning of Article 12 of the Constitution of India nor was respondent No.2 discharging any public function. But, the learned Single Judge has not dealt with said aspect of the defence raised by the respondent No.2.

6. Relevant facts to be noted for an adjudication of the instant appeal are that telecommunication services in India were provided only by the Government of India. Ministry of Telecommunications, Government of India was the Nodal Ministry and all employees in the telecommunication department were government servants. Overseas Communication Services were also under the Government of India and the employees

were government servants. With effect from April 01, 1986 a 100% owned government company was incorporated named Videsh Sanchar Nigam Ltd. (VSNL). The government servants working in the Overseas Communication Services were initially transferred to VSNL and were later on absorbed permanently as employees of VSNL. The employees were apprehensive regarding their service conditions and especially pertaining to disciplinary matters. The appellant which is a union of the employees of Overseas Communication Services raised a demand concerning service conditions of the employees who were to be permanently absorbed in VSNL resulting in two settlements being arrived at, terms whereof were notified vide office memorandums dated July 18, 1989 and December 11, 1989, the former by the Government of India and the latter by VSNL. The service conditions of the employees of VSNL were governed by the said office memorandums including disciplinary matters.

7. Pursuant to a policy of disinvestment privatization of VSNL took place. Its majority and controlling shares were acquired by M/s.Panatone Finvest Ltd., a company owned by the TATA Group of Companies and as a result thereof with effect from February 13, 2002 the Government of India lost controlling power in VSNL. The Government retained only 26% shareholding in VSNL. Somewhere in the year 2007 the name of VSNL was changed to M/s.TATA Communications Ltd.

8. When Overseas Communication Services were sought to be transferred to VSNL, and as noted above a settlement took place between the Union of the employees of Overseas Communication Services and the Government of India, terms and conditions of services of the employees under VSNL were agreed resulting in office memorandums dated July 18, 1989 and December 11, 1989 being promulgated, on the subject of

dismissal/removal from service, the following was agreed upon and made a part of the two office memorandums:-

“Dismissal/Removal

Dismissal/Removal from the service of VSNL after absorption for any subsequent mis-conduct, shall not amount to forfeiture of his retirement benefits for the service rendered in the Central Govt. Also in the event of dismissal/removal of a transferred employee from VSNL, the employee concerned will be allowed protection to the extent that the administrative ministry/department will review such order before taking a final decision.”

9. In the writ petition filed by the appellant the prayer made is that a writ be issued directing the respondents to abide by the office memorandums dated July 18, 1989 and December 11, 1989 and prohibit them from terminating the services of the members of the appellant without adhering to the two office memorandums.

10. Needless to state the pleadings in the writ petition set out aforenoted facts.

11. Pleading for a summary rejection of the writ petition the respondent No.2 pleaded that on January 31, 2008 a settlement between the appellant and the management of respondent No.2 was arrived at concerning the terms and conditions of the services of the employees of VSNL who were by then the employees of respondent No.2, and inter-alia, the settlement notified on January 31, 2008 incorporated as under:-

*“And whereas, the terms and conditions relating to salary, allowances and other benefits are implemented in accordance with the provisions of the Memorandum of Settlements dated 02.12.2000 and 24.07.2001 which was concluded at the time when VSNL was a Public Sector Undertaking (PSU). **Though the company ceased to be a PSU with effect from 13th Feb 2002, the benefits under these settlements continued to be***

implemented since the said Memoranda of Settlement(s) were valid till 31.12.2006.”

x x x

*“And whereas, during the course of preliminary discussions, the Management informed and the Federation agreed that any discussions on the charter of demands could not be done on the basis followed earlier **since the practices which were then followed are not relevant any more with the company ceasing to be a Public Sector Undertaking (PSU) and in the context of loss of monopoly status, it was imperative to restructure the entire operations and adopt practices that are typically followed in the private sector in competitive environment. The Management and the Federation also discussed issues relating to need of the business and of mutual interest for retraining and redeployment of the workforce, identify the redundancies and enhancement in manpower productivity as may be required to remain competitive in the market.**”*

“16.5 ISSUES ARISING OUT OF CONVERSION FROM A PSU: It is agreed by the Federation that with the company ceasing to be a PSU with effect from 13.02.2002, the company is no longer governed by the policies, guidelines and directions that may be issued by the government from time to time in respect of wages, allowances and related benefits as applicable to other PSU's or departments / bodies under the government. The management reaffirms its commitment to abide by all statutory provisions as applicable to establishments in the private sector as existing or as may be amended / introduced from time to time. **The Federation also agrees that in the context of the changed circumstances of the company, the general rules and regulations that were drafted when the company was a PSU are no longer applicable after the company has ceased to be a PSU. Pending the introduction of the revised rules all workmen will be governed by the provisions of the Model Standing Orders as applicable to private establishments.**

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18.4 It is agreed by the Federation that this settlement fully settles all issues and grievances against VSNL that may have been taken up by them before any other forum, agency or authority in the past.

18.5 It is agreed that this Settlement fully finally settles all the demands raised in the Charter of Demands submitted by the Federation of VSNL Employees' Unions vide their letter dated 23.02.2007 and all subsequent correspondences and discussions thereon. It is agreed that all the demands raised in the charter of demands dated 23.02.2007 or otherwise and all subsequent correspondences and discussions thereon, which have not been specifically dealt with herein in this Settlement will be deemed to have been raised, discussed, not pressed and therefore dropped by the parties, in terms of this Settlement."

12. The view taken by the learned Single Judge is that the earlier settlement terms whereof were notified under the office memorandums dated July 18, 1989 and December 11, 1989 were subsumed in the subsequent settlement terms whereof were notified on January 31, 2008. Holding so, the learned Single Judge has held that a material fact was suppressed. The result is a summary rejection of the writ petition filed by the appellant.

13. The contention urged in the appeal by learned senior counsel for the appellant was that the learned Single Judge has overlooked the point that the settlement notified on January 31, 2008 between the appellant and respondent No.2 was not at all pervasive i.e. did not embrace all issues concerning the service conditions of the employees of respondent No.2. The settlement was pursuant to the charter of demand dated February 23, 2007. Per-contra, learned senior counsel for respondent No.2 urged that the settlement notified on January 31, 2008 was all pervasive.

14. In paragraph 11 above we have noted paras 16.5, 18.4 and 18.5 of the settlement notified on January 31, 2008 and would simply need to

highlight that in para 18.5 there is a clear mention to the fact that the settlement in question fully and finally settles all the demands raised in the charter submitted by the appellant on February 23, 2007 and subsequent correspondences and discussions thereon. It records an agreement that all demands raised in the charter of demand dated February 23, 2007 or otherwise and all subsequent correspondences and discussions thereon which have not been specifically dealt with in the settlement would be deemed to have been raised, discussed and dropped by the parties.

15. It is ex-facie clear that the settlement notified on January 31, 2008 had to take its colour from the charter of demand submitted on February 23, 2007 and the subsequent correspondence and discussions thereon. The view taken by the learned Single Judge that the settlement was all pervasive is thus ex-facie a wrong view.

16. The charter of demand submitted by the appellant is at pages 351 to 353 of the appeal record, and we have perused the same. The caption of the charter of demands reads as under; followed by the demands:-

*“Sub: **CHARTER OF DEMANDS** for wage revision and other fringe benefits to be effected from 1st January, 2007.*

On completion of 10 years term OF WAGE AGREEMENT on 31st December 2006, the employees of this company are due for Wage Revision from 1st January 2007. During the past 10 years, lot of changes had taken place in the company. By a major policy decision, VSNL was privatized and the administration was given to the TATAs to manage the affairs of the company. However the government is still holding 26% of the share and veto power over the financial management of the company. On disinvesting the company, the VSNL management was aware of the loss of monopoly, and preponement of monopoly from 2004 to 2002. In the same manner, the wage structure, fringe benefits, qualification, the service condition including the recruitment policy, promotion policy, etc. were

provided in the data room, and the management was fully aware of the company's work force/culture and wages.

In the telecom field, the non executives are available in BSNL, and MTNL, and market conditions differ from time to time. Today the company is growing fast to reach ₹10000/- Crores revenue company, and it is necessary to mention that, the affairs of the PSU, VSNL was under ONE. CMD, and Five full time Directors, supported by few CGMs and GMs. Their salary was based on Justice Mohan's Recommendations, and was very less compared to the present day salary of the newly recruited Presidents and Vice Presidents, whose number along with wage is increasing by everyday. The profit of the company is distributed to them by way of incentive, and higher salary. During 1997 wage negotiations, the Federation wanted to have 5 years term for the settlement, but the Government gave the option to have this 10 years period and 10 years term was arrived amicably. As the Central Government had formed the Pay Commission for its work force, they had merged the Dearness Allowance (DA) upto 50% with the Basic pay, and benefit is extended to its employees. The Pay Commission also considering payment of Interim Relief to its employees pending the finalization of the Commissions report. The Central PSU's also had demanded merger of DA with pay and Interim relief from the Government of India and PSUs.

*Instead of payment of Interim Relief, and merger of DA, the Government had permitted the PSUs to hold discussions with the Unions and arrive at the settlement. While doing so the criteria for wage revision is fixed as, the financial status of the company and its willingness to pay to its employees. The Federation also had **demanded for the Profit Sharing between the employer and employees** and it is the high time that the profit of the company is shared with the employees by way of liberal wage revision. This Charter Of Demand is prepared with the hope to get the profit of the company equally distributed among the employees.*

In the past 5 years of private administration, the employees have started stagnating in the respective grades due irrational promotion policy adopted by it. The recruitments at the NE

level is completely stopped though more than Ten Thousand employees were recruited in the executive stream that too without reference to the recruitment policy. The compassionate appointments also are stopped. With the stagnation at all levels has created very unusual situation in VSNL. It had resulted in all employees stagnated at either NE4 level or NE9 level. Those who got the promotion to executive level were covered under CTC, thereby denying them their eligible pensionary/retiral medical benefits. Under this circumstances, it is also proposed to introduce three more grades at NE level, and remove the (Group D, Group C and Group B Non Gazetted) since all employees are workmen and the Group D criteria is not available in TATAs.

While framing this COD, we have taken into account the facts quoted above, the natural aspirations of the employees, their need to achieve a higher standard of living and mental upliftment, kept in view the benefit and amenities already available in other companies. Further the compensation to the loss of Government Pension like other PSUs like, BSNL, MTNL is also taken into consideration.

The Federation also has given considerable importance to the following aspects:-

- i) Gigantic growth of this company from a Navratna company to a pure international company with the gross income touching to ₹10,000 Crores.*
- ii) If the COD is implemented in total, the wage bill will be minimum since the strength of the workmen in the company is only 600.*
- iii) The company having only about 600 workmen, nothing is compared to its size and capital base.*
- iv) The cost of the total expenditure towards employees in 2006 is ₹207.98 Crores compared to the year 2005 cost of ₹140.44 Crores. This 30% increase is purely due to the wages offered to the new recruits at middle level management. This*

30% increase in wages is in no way passed on to the workmen of the company in any form.

v) For the past 5 years, the employees were given only with increment, DA and differential performance linked incentive.

vi) Consequential price increase in almost all essential articles in the past 10 years.

Under these circumstances, the Federation urge the Management to start immediate dialogue on the following urgent demands:

INTERIM RELIEF

Interim relief of

₹5000/- Per Month For NE1 to NE4

₹8000/- Per Month For NE5-PS, NE5 to Ne7and

₹10000/- Per Month for NE8 to NE9, E1-PS. Groups respectively.

The above must be sanctioned immediately pending finalization of the settlement with effect from 1st January, 2007.

TERM OF THE UNDERSTANDING

The term of the understanding is from 1st January 2007 to 31st December 2016.

All Employees on roll of the company on 1st January 2007 must be provided with all benefits.

All workmen who left the company by 20th December 2006 by way of VRS ending 5th January 2007, also must be provided with all benefits including pensionery benefits.

If negotiation is delayed, the periodical announcement of Interim Relief of the above mentioned quantum should be made.

If the process is delayed beyond 2 months, 50% of the DA may be merged with pay and take it for consideration of all benefits.

We are now submitting this C.O.D and hope the management will start meaningful negotiations expeditiously. The demands put forth in this are very much justified and the employees

deserve the hike. The Proposed Pay Scales and Fringe Benefits from the Charter of Demands.

The Federation reserves its right to make changes/additions in the proposed pay scales, fringe benefits any time after submission of the COD.

Finally, we reiterate our abiding faith in the negotiating process of the management in arriving at a just and best wage packet and offer our fullest co-operation to the management in completing this task ahead of schedule.”

17. A perusal of the charter of demands shows that not a part thereof concerns with the service conditions. Least bit, on the subject of dismissal or removal from service. The financial package which the Union wanted for its employees in terms of wages and other fringe benefits forms the subject matter of the demand and so does the final settlement.

18. Keeping in view the relief prayed for in the writ petition it cannot be said that it was incumbent upon the appellant to plead the settlement agreement dated January 31, 2008 and thus we conclude by returning a finding that the view taken by the learned Single Judge is not supported by any fact.

19. The appeal is accordingly allowed. Impugned order dated July 03, 2009 dismissing the writ petition by accepting the preliminary objection raised by respondent No.2 is set aside and the writ petition is restored for hearing afresh on merits with a clarification that the learned Single Judge would first decide the issue of maintainability of the writ petition on the grounds of non-maintainability pleaded by respondent No.2 concerning its status and character.

20. The Registry is directed to list the writ petition for directions before the learned Single Judge as per roster on August 01, 2015.

21. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 08, 2015
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