

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.31191 of 2014
and
W.M.P.No.5952 of 2016

M/s.Sri Balaji Cylinder Employees' Union,
rep. by its Secretary Mr.A.K.Paulraj,
161, Thambu Chetty Street,
Madras - 600 001.

...Petitioner

Vs.

1. The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
Chennai - 600 001.
2. The Management of
M/s.Sri Balaji Cylinders Pvt.Ltd.,
MGR Road, Palavakkam,
Madras - 41.
3. Easwari Enterprises,
No.18, Lakshmana Perumal Nagar,
Kottivakkam, Madras - 41.
4. Jeyabal Enterprises,
Thiruveethi Amman Koil Street,
Palavakkam, Madras 41.
5. Sundar Industries
1/5, East Coast Road,
Palavakkam, Madras 41.
6. Prasana Enterprises,
No.10, Selvaraj Colony,
Kottivakkam, Madras 41.
7. Lea Enterprises,
No.1, Ezzhilagam,
Neelangarai Madras 41.

8. Azagu Enterprises,
Neelangarai, Madras 41.

9 Swami and Company,
No.44, Karpagambal Nagar,
Muttukadu Road,
Kottivakam, Madras 41.

10. The Management of Landmark,
No.27, Saravana Street,
T.Nagar, Chennai - 17.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records from the first respondent's impugned order made in I.D.No.52 of 1993, dated 23.10.2013, and to quash the same and to direct the first respondent to restore I.D.No.52 of 1993, on its file and decide the same on merits within the time, that may be stipulated by this Court.

For Petitioner : Mr.R.Lawrence

For Respondent-1 : Tribunal

For Respondent-2 : Mr.Anand Gopalan for
M/s. T.S.Gopalan and Company.

O R D E R

Heard Mr.R.Lawrence, the learned counsel appearing for the petitioner and Mr.Anand Gopalan, the learned counsel appearing for M/s.T.S.Gopalan and Company, the counsel for the second respondent.

2. The challenge in the present Writ Petition is to the award passed by the Industrial Tribunal, Chennai, in I.D.No.52 of 1993, dated 23.10.2013.

3. The facts, which are necessary for the disposal of the Writ Petition are as follows:-

i) The second respondent/Management had established a Factory for manufacture of cylinders during the year, 1981. A dispute was raised by the petitioner-Union during the year 1984, alleging that 432 workmen were denied employment from 07.11.1984, on closure of the Factory, without payment of compensation. The second respondent-Management contended that the Factory was still functioning and not closed, and it hinges upon the orders, which are placed by the Public Sector Unit,

which was at that point of time, perennial, and the second respondent-Management used to engage piece rate contractors and the workmen, 432 in numbers, were workmen of such contractors. The petitioner Union raised a dispute, which the Government declined to refer for adjudication, and the petitioner-Union filed a Writ Petition, and this Court directed the Government to refer the dispute, and also ordered that the contractors should be also be made as parties to the dispute. Accordingly, the dispute was taken on file by the Industrial Tribunal on 04.05.1993, and time was granted to the petitioner-Union to file their claim statement. However, since the petitioner-Union did not file their claim statement till 05.05.1994, their claim was dismissed for default. Thereafter, the petitioner-Union, during the month of November 1994, filed an application to set aside order of dismissal, dated 05.05.1994, along with a condone delay application, as there was delay in filing the application to set aside the order of dismissal. It is seen that the condone delay application has been filed by the petitioner-Union only a after period of nine months, i.e., during August, 1995. The said condone delay application was dismissed, as against which, another Writ Petition was filed before this Court, being W.P.No.12026 of 1996, after about one year gap. The Writ Petition was not properly prosecuted by the petitioner-Union, and it was dismissed for non-prosecution in the year, 2004. After about 1,200 days, the petitioner-Union filed a Miscellaneous Petition to restore the Writ Petition to the file of this Court. By then, the second respondent/Management is stated to have entered into an agreement/arranged for joint development of the property. Ultimately, the delay in filing the application to set aside the order of dismissal of the Writ Petition was condoned, and the Writ Petition was restored, and it was allowed by order, dated 11.03.2011, thereby, the order passed by the Industrial Tribunal, refusing to condone the delay in filing the set aside application, was set aside. Subsequently, the matter was taken up by the Industrial Tribunal, and, it is stated by the second respondent-Management that on nine occasions, the petitioner-Union did not appear before the Industrial Tribunal, and did not come forward to lead evidence. Therefore, the claim was dismissed on merits. Challenging the same, the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner submitted that, the dispute was posted for hearing on 22.02.2013, and, on the said date, the petitioner-Union filed a claim statement, to which, a counter statement was filed, and thereafter, the matter was adjourned for filing proof affidavit. It is stated that, due to the transfer of the Presiding Officer of the Industrial Tribunal, the case was adjourned to several hearings, and the petitioner had wrongly noted the hearing date of the dispute as 23.11.2013, instead of

22.10.2013. Therefore, the Secretary of the petitioner-Union states that he could not appear on the said date. However, by then, the petitioner-Union came to know that their claim has been dismissed.

5. The learned counsel appearing for the second respondent-Management, while reiterating the contentions raised before the Industrial Tribunal, submitted that 432 workmen were not the employees of the second respondent-Management, and they were employees of respondents 3 to 9, who are the contractors in the Factory, and therefore, the question of entertaining the dispute raised by the petitioner-Union does not arise. It is stated that the Writ Petition, which was filed during the year 1996, viz. W.P.No.12026 of 1996, was disposed of on 11.03.2011, with a direction to the Industrial Tribunal to dispose of the dispute as expeditiously as possible, and even thereafter, the petitioner-Union was lethargic in contesting the dispute, and did not prosecute the dispute, and though it was listed before the Industrial Tribunal on several occasions, the petitioner-Union had not adduced evidence to fortify their claim. With regard to the reason assigned by the petitioner-Union in the Writ Petition affidavit, for not being able to be present before the Industrial Tribunal whenever the dispute was taken up for hearing, it is submitted that the reasons are vague, and therefore, the award passed by the Labour Court is proper and justified, since the petitioner-Union did not adduce any evidence to substantiate their claim. It is further submitted that, a suit was filed by the petitioner-Union, being O.S.No.898 of 2008, on the file of the Additional District Munsif Court, for the relief of permanent injunction, restraining the second respondent-Management from alienating the schedule mentioned property, without disbursing the dues and the said suit was dismissed. The learned counsel referred to the decision of the Hon'ble Supreme Court, in the case of (State of Karnataka and another Vs. Ravikumar) reported in (2009) 13 S.C.C. 746, and contended that stale claim cannot be permitted to be referred, and in the said case, the Hon'ble Supreme Court declined to grant any relief, because, it was a stale claim, and there was delay of 14 years. Thus, the learned counsel seeks to sustain the impugned award passed by the Industrial Tribunal.

6. Heard the learned counsel appearing for the parties (viz., the Union and the Management), and carefully perused the materials placed on record.

7. At the first instance, on a cursory perusal of the impugned award, it appears that, it is a contested award on merits, but on a closer scrutiny of the same, it is found that the award, in fact, is an ex parte award, dismissing the claim petition of the petitioner-Union. In para No.3 of the award, the contentions raised by the petitioner-Union in their claim

statement has been set out in brief. In para No.4, it is stated that respondents 2 to 8 remained ex parte, and the ninth respondent, who was impleaded, also remained ex parte. Para No.5 contains the gist of the contentions raised by the Management in the counter statement. The Industrial Tribunal, based on the oral and documentary evidence on the side of the Management, proceeded to frame three points for consideration:-

" i) Whether employer and employee relationship exists between 432 persons, whose names are mentioned in the Government order (members of the Union) and the first respondent?

ii) Whether the non-employment of the said person is justified?

and

iii) To what relief, the said persons are entitled to? "

8. The Industrial Tribunal, while deciding the point Nos.i) to iii) together, observed that the matter has been adjourned for recording evidence, but there was no representation for the petitioner-Union for several hearings (i.e. for 9 occasions), and taking into consideration the witnesses, who were examined by the Management, the Industrial Tribunal held that the Management would assert that 432 persons, were employees of the contractors in the Factory of the petitioner-Union, and this version was corroborated by M.W.1, and the claim came to be rejected in the absence of any evidence on the side of the workmen to controvert the evidence of M.W.1. Thus, in effect, the impugned award is an ex parte award, though, it appears to be contested on merits. In fact, the claim has been dismissed solely on the ground that there is no contra evidence to disprove the evidence deposited by M.W.1.

9. Admittedly, the matter pertains to a labour issue, and taking into consideration, the manner, in which the petitioner-Union had been prosecuting the matter, it could be seen that upto a certain point of time, the labour Union was diligent in contesting the dispute, but, the moment they succeeded in the Writ Petition, pursuant to which, the Government referred the matter for adjudication, there has been slackness on the part of the petitioner-Union. Nevertheless, on the Writ Petition filed by them, being allowed by order, dated 11.03.2011, all the earlier issues stood concluded, and those issues cannot be now pressed into service for the purpose of judging the manner, in which, the petitioner had behaved in the past. All that is required to be seen in the instant case is that, whether the non appearance of the petitioner-Union was wilful, tainted with mala fide, or for any other collateral purpose. In fact, the second respondent-Management has not raised any averments on those

lines, but has stated that the averments are vague. The workmen, being an unorganized force, is represented by the Union, and therefore, even assuming that there was some default committed by the Secretary of the petitioner-Union in not appearing before the Industrial Tribunal, this Court should not lose sight of the fact that the case projected by the petitioner-Union is in respect of 432 workmen. Therefore, liberal approach is required to be adopted in the matter, as the petitioner-Union has not deliberately failed to appear before the Industrial Tribunal, as it is the dispute, which was referred by the Government for adjudication only after the High Court issued direction. As pointed in the preceding para, all the defaults of the petitioner, prior to the date on which Industrial Dispute was taken up for adjudication, i.e., 23.10.2013, could not be looked into for assessing the conduct of the petitioner, since the earlier conduct of the Management was taken into consideration and the Writ Petition was allowed on 11.03.2011. Therefore, for the very same reasons, once again, the petitioner cannot be jeopardized to reject their claim in challenging the impugned award.

10. For all the above reasons, the Writ Petition was allowed, the impugned award is set aside, and the matter is remanded to the Industrial Tribunal for fresh consideration. Mr. Lawrence the learned counsel appearing for the petitioner-Union submitted that he has recently entered appearance on behalf of the petitioner-Union, and assures that the petitioner-Union will cooperate for early disposal of the Industrial Dispute, and will not seek for adjournment, if at all, the situation demands. This submission made by the learned counsel appearing for the petitioner is placed on record.

11. The learned counsel for the Management submitted that the dispute raised is a proxy litigation at the instance of the purchaser of the property, taking advantage of the untiring demise of the Managing Director of the Management, and taking advantage of the fact that he has left behind his wife and two daughters, the dispute is being sponsored by the purchaser, and there are no bona fides. In order to dispel any such doubt, the Union is not bona fide in prosecuting the claim, there will be a direction to the Union to ensure that all the workmen on behalf of whom, the dispute is raised, shall appear before the Industrial Tribunal and make a solemn statement that they have cut-hosed the Union to prosecute their claim. This peculiar direction is required in this case, as the dispute would have to be adjudicated after three decades, for no fault of the Management. Subject to the above compliance by the workmen, the Industrial Tribunal is directed to conclude the adjudication of the dispute as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. It is made clear that this Court has not gone into

the merits of the claim made by the Union or the defence that may be raised by the Management. It is open to the parties to lead oral and documentary evidence before the Industrial Tribunal and agitate the case on merits before the Industrial Tribunal, and the Industrial Tribunal shall hear and decide the matter on merits and in accordance with law, without being influenced by any of the observations made herein by this Court.

12. In the result, the Writ Petition is allowed on the abovesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
Chennai - 600 001.

+1cc to Mr.T.s.Gopalan, Advocate, S.R.No.17664
+1cc to Mr.R.Lawrence, Advocate, S.R.No.17328

Writ Petition No.31191 of 2014

ev(CO)
srg(30/03/2016)

सत्यमेव जयते

WEB COPY