

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.37299 of 2017

ORDER:

Heard Mr. R. Sameer Ahmed, for petitioner, the learned Assistant Government Pleader for Labour for Respondent No.1 and Mr C. Niranjana Rao, for respondent No.2.

2. The petitioner prays for Writ of Certiorari to call for the records of Order, dated 18.09.2017, in I.A.No.289 of 2017 in I.D.No.97 of 2017 on the file of the Industrial Tribunal-cum-Labour Court, Anantapuramu, and quash as illegal, perverse etc. The petitioner prays for consequential restraint order against respondent No.2 and his agents from disposing/alienating the machinery situated at the premises of respondent No.2 factory at Chittoor, till the disposal of I.D.No.97 of 2017.

3. The petitioner filed I.A.No.289 of 2017 under Section 10 (4) of I.D. Act, to grant temporary injunction in favour of petitioner and against respondent No.2 herein, restraining its men and agents from disposing/alienating the machinery situated at the premises of respondent No.2 factory till disposal of the Industrial Dispute. The Industrial Tribunal-cum-Labour Court/respondent No.3 rejected the application filed for interim relief. Hence the writ petition.

4. At the outset, it is to be noted that the Writ Petition is filed challenging an interlocutory order refusing to grant injunction in favour of petitioner herein. The Counsel for R.2 objects to the maintainability of Writ Petition against interlocutory order of

Industribunal Tribunal. The *lis* or Industrial Dispute between petitioner and respondent No.2 is pending consideration in I.D.No.97 of 2017. This Court, therefore, for convenience and to confine the narration of circumstances to the requirement of the Writ Petition, refers to the following allegations.

5. I.D.No.97 of 2017 is taken on file pursuant to the Order of competent authority. The dispute referred to the decision of respondent No.3 reads thus:

“(1) whether the Nutrine Confectionery Company Limited, Employees Union (Registered No.T-110/DCL/TPT) is justified in demanding to re-open the factory, pay wages during the period of closure of the factory and declare V.R.S as null and void and employ (sick employment) 57 workmen, who did not opt V.R.S? (emphasis added)

(2) If not, to what relief the said workmen are entitled?

6. Briefly stated, the petitioner herein, in other words, is putting the issue of closure of factory by respondent No.2, as illegal and contrary to the mandate of I.D.Act, 1947. The petitioner and respondent No.2, on this issue, are before respondent No.3 with their respective pleas. While considering the Writ prayer made against refusal of interlocutory application, the merits of the pleas are not considered for it may result in hardship or prejudice to one or the other party.

7. The petitioner, while contending that the closure of factory is illegal and there is *prima facie* case and balance of convenience, filed the instant application.

8. The averments in the affidavit on *prima facie* case etc., read thus:

“ In the said Writ Petition, the Hon'ble High Court passed an Order on 24.07.2017. Since concerned Labour Officer has referred the present matter to the concerned Labour Court with a direction to adjudicate present industrial dispute involved in this case within six months. Therefore, this Court disposes the present W.P by granting liberties to the petitioners to avail appropriate relief in the Labour Court within 10 days till then the interim orders passed by this Court shall be extended for 10 days, failing which it is needless to say that this interim order stands automatically stands vacated on 25.07.2017. The Order copy is awaited. I submit that the respondent is trying to dispose/alienate the petition schedule property to third party and trying to remove the machinery which are in the factory premises. Hence, granting of injunction restraining the respondent, his men and his agents from alienating/dispose machinery is necessary. If the Hon'ble Court is not granted injunction restraining the respondent, his men and his agents from disposing/alienating the machinery till disposal of the I.D, the petitioner Union(workers) will be put to great loss and damage.

9. Respondent No.2 filed Counter affidavit and opposed the grant of any relief and one of the objections, which is required to be prefaced at the outset, is that the petition for interim relief is not maintainable under Section 10 (4) of I.D.Act. The stand of respondent No.2 Management, on *prima facie* case etc., is briefly stated thus:

The petition filed under Section 10(4) of I.D.Act seeking interim relief pending proceedings is devoid of merits both in law and on facts and liable to be dismissed. The closure of the factory was declared long back after obtaining necessary permissions. Since most of the machinery/equipment was kept idle, they started rusting and may become completely useless if kept idle for some more time. Since the respondent closed the operations of the factory, H.T.Power connection and other permissions were decided to be moved to some other unit. Since the Factory is a food industry, the equipment such as compressors, chillers, air conditioners and electronic items needs regular maintenance. When the respondent tried to move some of the equipment, the workers of the factory objected the same raising slogans and filed this unjust petition seeking interim relief for their illegal activities. The petitioner has to prove *prima facie* case, balance of convenience and irreparable injury in order to get interim relief, but, the petitioner neither averred *prima facie* case and balance of convenience in the affidavit filed in support of their petition, nor proved that irreparable loss would ensue if interim order is not granted. Seven joint meetings between the Joint Action Committee and the representatives of the company were held between

08.10.2015 and 25.11.2015. Consequently, the company decided to pay compensation @ Rs.72,000/- per year per worker for his left over service, apart from gratuity and statutory benefits, which works out to Rs.9,36,000/- per worker having 13 years of left over service. Apart from that, the company offered Rs.1,00,000/- per head to each worker aged 50 years and above and Rs.50,000/- per head to a worker aged 49 years and below. However, the workers Union requested the management to pay the said compensation under Voluntary Retirement Scheme in order to get the benefit of exemption of Income Tax. The company accepted the said request and announced V.R.S. and kept it open till 05.12.2015. In response to the same, 170 workers have opted for the V.R.S. and took compensation. For the remaining 125 workers, the company deposited cheques pertaining to full and final settlement of account, along with compensation, before the Joint Commissioner of Labour, Kurnool, and the same was communicated to all the four registered Unions. As per the request of the workers and the advise of the Joint Commissioner of Labour, Kurnool, the company again opened V.R.S. to the left out workers on 10.02.2016 and kept it open till 16.02.2016. In response to the same, 68 workers opted for the V.R.S. towards full and final settlement. However, remaining 57 workers did not opt for the V.R.S. and refused to take compensation and raised an Industrial Dispute before the Joint Commissioner of Labour. The said I.D. was referred by the Government to the Court for adjudication. In fact, the compensation that was offered is more than the entitlement of a worker under the provisions of the Industrial Disputes Act. The Company deposited the compensation with the Joint Commissioner of Labour, Kurnool (Conciliation Officer) by way of cheques and the said amount is still in the custody of the Joint Commissioner of Labour, Kurnool.

10. Respondent No.3 framed the following points for consideration:

- i) Whether the petitioner has established three main ingredients prima facie case, balance of convenience and irreparable loss, which are the ingredients to have equitable relief of temporary injunction?
- ii) To what relief ?

11. In the ultimate analysis, the conclusion recorded by respondent No.3 reads thus:

“ Therefore the documentary evidence would reveal the Respondent Company has given option of VRS to the 1000 (Thousand) Workers in the Nutrine Factory and it seems all the Workmen except 76 (Seventy Six) workmen have opted VRS and the President of the Union raised dispute before the JCL, Kurnool in I.D.No.5/2016 and it seems 9

(Nine) workmen have opted VRS during the pendency of dispute before JCL and remain 57 (Fifty Seven) workers not opted for VRS on that JCL, Kurnool referred to ACL, Vijayawada, as the conciliation before ACL was failed referred to this Court under Section 10(1) (c) of the ID Act and the Respondent Management said to have been deposited the wages and compensation to the 57 (Fifty Seven) Workmen before ACL by way of individual cheques.

Therefore the Government has referred the dispute for adjudication with regard to left over 57 Workmen and other points necessarily to be adjudicated basing on the material placed before the Court and the relief sought in the present petition for temporary injunction from alienating the machinery by the respondent to the 3<sup>rd</sup> party neither disclose *prima facie* case, balance of convenience nor irreparable loss, on the other hand the balance of convenience is in favour of the respondent rather than the petitioner, if interim injunction is not vacated it is the respondent suffers irreparable loss as the material/machinery worth of lakhs of rupees kept idle without being used it definitely gets spoiled, therefore the petitioner failed to establish the three main ingredients to have equitable relief of temporary injunction.”

12. Mr. R. Sameer Ahmed, for petitioner, contends that the order of respondent No.3 suffers from perversity. According to him, the Order does not give reasons, but, records conclusions and, therefore, the rejection of prayer for grant of temporary injunction is illegal and unsustainable. He further contends that the petitioner is agitating a valuable right, viz., against the closure affected by respondent No.2/industry, therefore, if respondent No.2 is allowed to remove the plant and machinery from factory premises, the petitioner will suffer irreparable loss, hardship and injury. The counsel very succinctly contends that the very reference of dispute establishes existence of *prima facie* case in favour of petitioner and preservation of property is required. For according to him, if final relief is granted, the factory will have to be run and such course is not possible if plant and machinery is removed. At any rate, he contends that the interpretation and application of Section 10(4) should not defeat the reference of

dispute pending before respondent No.3. The interpretation of Section 10 must uphold the constitutional provisions, particularly right to life of workers of petitioner's union.

13. Mr. C. Niranjan Rao, for respondent No.2, contends that the application under Section 10 (4) of the Act is not maintainable and according to him, as per Section 10 (4) of the Act, the adjudication shall be confined to the points referred to respondent No.3 and matters incidental thereto. Alternatively, he contends that Writ Petition against an interlocutory order is not maintainable. He relies on the decisions reported in *Dena Bank v D.V.Kundadia*<sup>1</sup>, *T.N.Godavarman Thirumalpad v. Union of India and others*<sup>2</sup>, *the Management of G.T.N. Engineering (India) Limited, rep. by its Manager: HR 18, K.R.Puram Road, Ganapathy, Coimbatore-641006 v The Labour Court, Coimbatore and others*<sup>3</sup>.

14. On the merits of the matter, he contends that the petitioner does not have a vested right to restrain respondent No.2 from using or re-locating plant and machinery, according to its priorities. Respondent No.2, being a party before Industrial Tribunal, is bound by the Order finally passed by respondent No.3. To prove the *bona fides* of respondent No.2, he draws the attention of the Court to the amounts deposited by respondent No.2 by way of compensation to 57 workers, who have not accepted the proposals of respondent No.2 for voluntary retirement. He prays for dismissing the Writ Petition.

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<sup>1</sup> (2011) 15 SCC 690

<sup>2</sup> (2011) 15 SCC 691

<sup>3</sup> 2016 SCC online Mad 6199@2016) 2 LLJ 653; 2016 LLR (SN 44) 893

15. I have heard the counsel, perused the record. The short point that comes for consideration is:

‘Whether the Writ Petition for interim order is maintainable and whether the rejection of such prayer by respondent No.3 suffers from perversity or illegality?’

16. On the maintainability of Writ Petition, Mr. C. Niranjan Rao, relied on *Dena Bank's* case (1 supra) and the Hon'ble Supreme Court, on maintainability of Writ Petition, held as follows:

“It is well settled by this Court that no writ should be entertained against an interim order of the Labour Court or the Industrial Tribunal. It is only when a final award is given, then a party should be allowed to challenge it if he is aggrieved.

In the present case, the order of the Tribunal dated 28.05.1997 was only an interim order and it did not decide the reference finally. Therefore, the Writ Petition was rightly dismissed. Hence, we are not inclined to interfere in this matter.

The Special Leave Petition is dismissed accordingly. However, if the final award goes against the petitioner, it will be open to the petitioner, while challenging that final award, to also challenge the interim order of the Tribunal dated 28.05.1997, if otherwise permissible.”

17. Therefore, by following the decision referred to above, it is held that Writ Petition against interlocutory Order of Tribunal is held as not maintainable.

18. Mr. R. Sameer Ahmed, for petitioner, since has raised a few grounds on merits, they are adverted to and decided.

19. The first contention of petitioner is that the Order suffers from perversity. In support of this contention, Mr. R. Sameer Ahmed, for petitioner, has drawn the attention of the Court to the reasons recorded by respondent No.3 in para Nos. 14 and 15, which are already extracted, and submits that this cannot be

treated as either reasoning or conclusion in an Order passed by the Industrial Tribunal-cum-Labour Court.

20. Firstly, I consider the ground of perspective of the case pleaded by the petitioner. The *prima facie* case is always considered in the background of the right claimed by a party and how the right is established, then balance of convenience between the contesting parties. In the case on hand, the substantial issue pending before respondent No.3 is whether closure of factory by respondent No.2 is legal and whether the petitioner is entitled and correct in demanding re-opening the factory?

21. This Court is of the considered view that at this stage of the matter, the interim prayer is to restrain the respondent No.2 from removing the plant and machinery from factory premises. Keeping in view the stand taken in the affidavit and the reply given by respondent No.2, findings are recorded by respondent No.3. This Court is of the view that the findings now recorded and impugned, since are not in favour of petitioner, cannot be challenged as perverse. Therefore, though a ground is canvassed, this Court is not persuaded to accept the first challenge of petitioner against the order impugned in the Writ Petition.

22. It is further contended that if the plant and machinery is allowed to be removed and taken away, the valuable rights of workers of petitioner's unions are adversely affected. This Court has already excerpted dispute referred to respondent No.3 for decision. Issue No.2 deals with the relief that can be moulded to

57 workmen, whose details are enclosed to the reference order. Once the substantive prayer is pending before Respondent No.3, it cannot be contended that the refusal of interim prayer substantially defeats the right of members of petitioner's union. This ground is not successfully made out and, accordingly, rejected.

23. The learned counsel, though attempted to convince this Court that Section 10(4) of the I.D.Act has to be read keeping in view the objectives of both Industrial Disputes Act and also the Right to Life under Article 21 of the Constitution of India, I am afraid this contention does not fit into the facts and circumstances of the case. The view of either the Apex Court or the other orders on which respondent No.2 is relying upon would amply make clear that the Writ Petition is not maintainable against interlocutory order.

24. For all the above reasons, I am satisfied the petitioner could not make out a case for interference by this Court under Article 226 of the Constitution of India. The Writ Petition fails and is, accordingly, dismissed. The dismissal of the Writ Petition shall not be treated as this Court expressing final view on any of the issues pending before Respondent No.3. It is needless to observe that anything done during and in the course of pendency of I.D.No.97 of 2017 is part of the dispute pending decision before respondent No.3. Respondent No.3 disposes of the I.D. within two months from the date of receipt of a copy of this Order. No order as to costs.

Miscellaneous petitions, if any, pending in this case shall stand disposed of.

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S.V. BHATT, J

Date: 20.12.2017  
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Dt. 20.12.2017

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