

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.04.2018	Delivered on 05.06.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1355 of 2015

and

M.P.No.1 of 2015

1.Aluminium Thozhilalar Sangam (INTUC),
Rep. by its President/ Secretary,
Malco, Mettur Dam - 636 402,
Salem District.

2.Malco Workers Union (LPF),
Rep. by its President/ Secretary,
Malco, Mettur Dam - 636 402,
Salem District.

... Appellants

versus

1.Malco Energy Ltd.,
(Formerly as Vedanta Aluminium Ltd)
Regd. Office: Sipcot Industrial Complex,
Madurai By-pass Road, TV Puram Post,
Thoothukudi District - 628 002.

2.The Presiding Officer,
Labour Court, Salem.

3.Mettur Malco Analmin Nilayam,
Anna General Workers Union,
Rep. by its President/ Secretary,
Malco, Mettur Dam - 632 402.

4.Sesa Sterlite Ltd.,
Unit: Malco Aluminium,
Post Box No.4, Mettur Dam R.S.
Salem District - 636 402.

... Respondents

PRAYER: Appeal filed against the order passed by this Court
dated 16.02.2015 passed in W.P.No.34255 of 2014.

W.P.No. 34255 of 2014: Writ Petition praying to calling for the records of the first respondent comprised in the impugned order dated 13.11.32014 passed in I.A.412 of 2014 in I.D.139 of 2012 dated 13.11.2014 and quash the same in so far as impleadment of the petitioner in I.D. 139 of 2012 is concerned as illegal arbitrary and contrary to law.

For Appellants : Mr.K.M.Ramesh

For Respondents : Mr.Rahul Balaji for R1 and R4.

R.SUBRAMANIAN, J.

1. The appellants which are Trade Unions, challenge the order in W.P.No.34255 of 2014 dated 16.02.2015, in and by which the said Writ Petition filed by the 1st respondent herein was allowed setting aside the order of the labour Court made in I.A.No.412 of 2014 in I.D.No.139 of 2012, impleading the 1st and 4th respondents herein as the respondent Nos.2 and 3 in the said I.D.

2. The main industrial dispute relates to retrenchment of 40 workmen of Madras Aluminium Company Ltd., when the said industrial dispute was pending, this Court on the company side passed an order dissolving the Madras Aluminium Company Ltd., and amalgamating different units of the said Company with two different entities viz., Malco Energy Ltd., [formerly known as Vedanta Aluminium Ltd.,] and Sesa Sterlite Ltd., [formerly known as Sesa Goa Ltd.,]. Upon such orders, the appellant Union had come forward with I.A.No.412 of 2014 in the said I.D seeking to implead M/s.Malco Energy Ltd., [formerly known as Vedanta Aluminium Ltd.,] and Sesa Sterlite Ltd., [formerly known as Sesa Goa Ltd.,] as respondents in the said I.D.

3. The said application was resisted by the 1st respondent herein viz., Malco Energy Ltd., contending that there was no Employer - Employee relationship between the members of the petitioner unions and the 1st respondent viz., Malco Energy Ltd., [formerly known as Vedanta Aluminium Ltd.,]. A reference was also made to the orders passed by the Company Court, in and by which the scheme of amalgamation was approved. According to the said scheme of amalgamation, the power business undertaking of the Madras Aluminium Company Ltd., was hived off and vested with Vedanta Aluminium Ltd., now known as Malco Energy Ltd. The residual business of Madras Aluminium Company Ltd., comprising of Aluminium business and other assets were merged with Sesa Goa

Ltd., later renamed as Sesa Sterlite Ltd., with effect from 17.08.2013. As per the said scheme, all the Power plant employees of Madras Aluminium Company Ltd., will become the employees of Vedanta Aluminium Ltd., [now known as Malco Energy Ltd.,] and the other permanent employees of Malco Energy Ltd., who were working in the Aluminium business would become employees of Sesa Goa Ltd., [now known as Sesa Sterlite Ltd.,].

4. Contending that all these 40 employees were working in the Aluminium business and hence they would automatically become the employees of Sesa Sterlite Ltd., [Formerly known as Sesa Goa Ltd.,], the 1st respondent herein would contend that it has nothing to do with those 40 employees whose retrenchment is in question before the labour Court. Therefore, the 1st respondent contended that it is an unnecessary party to the industrial dispute in I.D.No.139 of 2012.

5. The other proposed party viz., Sesa Sterlite Ltd., the 4th respondent herein had filed a counter claiming that the 40 retrenched workmen had, by virtue of the orders passed by the Company Court, become its employees and it alone would be liable to answer the claims of the said 40 workmen.

6. It was however contended on behalf of the workmen that there was no distinction between the employees of the power business and the Aluminium business prior to the approval of the scheme of amalgamation by this Court and all the employees were treated as employees of Madras Aluminium Company Ltd., which was functioning as one single unit. The hiving-off done by the Company Court will not in any way dis-entitle these employees to make their claim against the successors in interest.

7. The labour Court by its order dated 13.11.2014 allowed the application on the conclusion that the parent Company viz., Madras Aluminium Company Ltd., was dissolved and the power plant of the Madras Aluminium Company Ltd., was merged with Vedanta Aluminium Ltd., while the other business viz., Aluminium business was vested in M/s.Sesa Goa Ltd., which is now been renamed as Sesa Sterlite Ltd. The appellant Union's contention that whether these 40 workmen could be termed as workmen of the power plant business of Madras Aluminium Company Ltd., or whether they are working with the aluminium business of Madras Aluminium Company Ltd., could be decided only while deciding the industrial dispute finally. The labour Court allowed the application and directed impleading of both the entities viz., Malco Energy Ltd., [formerly known as Vedanta Aluminium Ltd.,] and Sesa Sterlite Ltd., [formerly known as Sesa Goa Ltd.,] as respondents in the industrial dispute. Aggrieved the 1st respondent herein viz., Malco Energy Ltd., had filed the above Writ Petition.

8. The learned Single Judge by an order dated 16.02.2015 taking note of the scheme of amalgamation approved by the Company Court concluded that the employees of the aluminium business of Malco Energy Ltd., had by virtue of the amalgamation become the employees of the 4th respondent viz., Sesa Sterlite Ltd. Upon such conclusion, the learned Single Judge found that the 1st respondent viz., Malco Energy Ltd., which had taken over the power business of the parent Company viz., Madras Aluminium Company Ltd., is not a necessary party to the industrial dispute. On the aforesaid conclusion the learned Single Judge allowed the Writ Petition setting aside the order of the Labour Court impleading the 1st respondent as a party to the industrial dispute. Aggrieved the appellant union has come forward with the above appeal.

9. We have heard Mr.K.M.Ramesh, learned counsel appearing for the appellants and Mr.Rahul Balaji, learned counsel appearing for the 1st and 4th respondents. The 3rd respondent though served has not chosen to enter appearance.

10. Mr.K.M.Ramesh, learned counsel appearing for the appellants would contend that the Madras Aluminium Company Ltd., was a single unit, the power business and the aluminium business were only different divisions of the company viz., Madras Aluminium Company Ltd., there were no separate roles of employees for the power business and the Aluminium business. He would also further submit that the employees were interchanged depending upon the exigencies of the work. Therefore, according to Mr.K.M.Ramesh, learned counsel appearing for the appellants, it may not be proper for the Court to decide as to which of the successor companies viz., the 1st and 4th respondents herein would be answerable to the claim of the 40 retrenched employees even at the stage of impleading.

11. Per contra Mr.Rahul Balaji, learned counsel appearing for the respondents 1 and 4 would contend that the 1st respondent has only taken over the power business of Madras Aluminium Company Ltd., along with its assets and liabilities. The other business viz., aluminium business was vested with the 4th respondent and the 4th respondent herein had taken a specific stand in its counter affidavit before the labour Court that it shall be answerable to the claims of these 40 workmen. In view of the said assertion made by the 4th respondent, Mr.Rahul Balaji, would contend that the 1st respondent is an unnecessary party to the industrial dispute.

12. We have considered the rival submissions. The orders of the Company Court approving the scheme of amalgamation would only show that the power business carried on by the parent Company viz., Madras Aluminium Company Ltd., was hived off and

vested in the 1st respondent herein. The other businesses along with the assets and liabilities were vested in the 4th respondent, while the parent Company was dissolved. It is purely the matter of internal arrangement between the parent Company and the successors in interest.

13. There is no material on record to establish that these 40 workmen were exclusively employed in the Aluminium business of the parent Company viz., Madras Aluminium Company Ltd. Who would be answerable to the claims of these 40 workmen would very much depend on the factual position i.e., the nature of the work that was being done by these 40 workmen who were retrenched by the parent Company which is the subject matter of the reference in the industrial dispute. In the absence of any material to show that these 40 workmen were employed in the Aluminium business of the parent Company it cannot be concluded that it is the 4th respondent who alone would be liable to answer the claims of these workmen. The order impleading the two successor entities viz., the 1st and 4th respondents passed by the labour Court does not in any way decide the rights or liabilities of the parties to the proceedings.

14. Its always open to the successor entities viz., the 1st and 4th respondents to show that the 40 retrenched workmen were working exclusively in the Aluminium business carried on by the parent company viz., Madras Aluminium Company Ltd., and the said business having been taken over by the 4th respondent, the 4th respondent alone would be liable. On the other hand if it is shown that these 40 workmen were employed in the power business it would be the 1st respondent which would be answerable to their claims. Merely because the 4th respondent had taken a stand that those 40 retrenched workmen were employed in the Aluminium business and it is answerable to the claims of the workmen, hence it cannot be concluded that the 1st respondent is an unnecessary party.

15. As rightly contended by Mr.K.M.Ramesh, learned counsel appearing for the appellants, if it is shown that these 40 workmen were actually working in the power business or that there was no separate roles of employees for the power business and the Aluminium business of the parent Company viz., Madras Aluminium Company Ltd., then it is for the labour Court to decide as to which one of the successor entities will be liable to the claims, in the event the workmen succeed in the industrial dispute. We are therefore, of the considered opinion that it will not be in the interest of justice to shutout the workmen from making a claim against the 1st respondent even at the threshold.

16. The learned Single Judge had gone by the orders passed

by the Company Court. No doubt a scheme of amalgamation approved by the Company Court will be binding on the employees, but, at the same time, the employees do have a right to contend that they should be treated as workmen of a particular successor entity and if they are able to establish the same, the said entity would be liable to answer their claims. We are therefore, unable to subscribe with the views of the learned Single Judge restricting the claims of the employees as against the 4th respondent alone and exonerating the 1st respondent from incurring liability of any kind whatsoever. We therefore, set aside the order of the learned Single Judge and restore the order of the labour Court. The Writ Appeal will stand allowed. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

17. Even though the learned Single Judge had directed to dispose of the I.D within a period fixed we are informed at the bar that the I.D. Is still pending. We direct the labour Court to expedite the disposal of the I.D. and dispose of the same in any event on or before 31st December 2018 and report such compliance to this Court.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

dsa

To

1. Malco Energy Ltd.,
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Post Box No.4, Mettur Dam R.S.
Salem District - 636 402.

Copy TO

The Section Officer,
Judicial Section, High Court,
Madras.

+1cc to Mr.Parthasarathy, Advocate SR.No.34797
+1cc to Mr.K.M.Ramesh, Advocate SR.No.34700

W.A.No.1355 of 2015

MG (CO)
GN(08/06/2018)



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