THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24644 of 2004
and
W.P.M.P.No.29967 of 2004

The Management of
Ford India Private Ltd.,
Singaperumal Koil Post
Chengalpattu - 603 204
Rep.by its Manager - HR ..Petitioner

vs

1. The Presiding Officer
   First Additional Labour Court,
   Chennai.

2. J.Franklin

3. M/s.Haden International Group
   India(P) Ltd.,
   (Formerly known as "MacLellan")
   Serias Veerat,
   First Floor - 3rd Cross Street,
   R.A.Puram
   Chennai - 600 028. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the 1st respondent, Presiding Officer, First Additional Labour Court, Chennai from proceeding with the adjudication of I.D.No.373 of 2003 in so far as the Petitioner is concerned and thereby render justice.

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For Petitioner :Mr.Sanjay Mohan
For M/s.S.Ramasubramaniam Associates

For Respondents: R1 - Labour Court
R2 - Mr.P.Solomon
R3 - Mr.S.Ravi
For M/s.Gupta and Ravi

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O R D E R

The relief sought for in the writ petition is to forbear the 1st respondent, Presiding Officer, First Additional Labour Court, Chennai from proceeding with the adjudication of I.D.No.373 of 2003 in so far as the petitioner is concerned.

2. The writ petitioner is the Management of Ford India Private Limited. The petitioner states that the 2nd respondent was an employee of the 3rd respondent M/s.Haden International Group India(P) Ltd., and without making any demand upon the petitioner, the 2nd respondent has sought to raise an Industrial Dispute for his alleged non-employment by the 3rd respondent, making the petitioner as a party in the Industrial Dispute.

3. The learned counsel for the writ petitioner states that in similar situation, where a principal employer was sought to be roped in the proceedings under Section 2A of the Industrial Disputes Act was pleased to allow the writ petition at the instance of the Principal employer.

4. In this regard, the learned counsel for the writ petitioner solicited the attention of this Court that the order of appointment was issued by the 3rd respondent Contractor. The Contract of employment of the 2nd respondent dated 15th September 1988 is enclosed in Page No.2 of the typed set of papers filed along with the writ petition.

5. On a perusal of the contract of employment, the same reveals that the 3rd respondent is the party to the Contract of employment. Even the order of suspension, is enclosed in page No.10 of the typed set of papers are also reveals that the ENV.Services Manager of the 3rd respondent, issued the order of suspension. Thus, the writ petitioner has established a Prima facie ground that the order of appointment as well as the order of suspension were issued by the 3rd respondent and therefore, the 3rd respondent is the necessary party in the Industrial Dispute. As per the ESI Records, the 3rd respondent is responsible in respect of the 2nd respondent workman. The 3rd respondent is the employer as far as the 2nd respondent is concerned.

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6. It is further contended that even in case, an Award is passed in favour of the workman and if the 3rd respondent fails to execute the Award, then the Principal employer is liable for the execution of the Award and therefore, the rights of the workman is well protected under the provisions of the Act and under these circumstances, the writ petitioner Management need not be roped into the proceedings unnecessarily. The liability of the Principal employer is undoubtedly during the period in

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which the Contract was in force.

7. The similar issue was already considered by this Court in W.P.Nos.25207 & 25208 of 2003 dated 18.09.2018 and the relevant paragraphs are extracted hereunder:

> "14. However, the learned counsel for both sides would submit that, since some obligation is there to pay the wages, if ultimately the employee succeeded before the Industrial Tribunal, that obligation has to be fulfilled, not by a contractor but only by the principal employer. In this context, Section 21 of the Contract Labour Act provides the following:
>
> "21. Responsibility for payment of wages.- (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
>
> (2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
>
> (3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.
>
> (4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."
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> 15. Probably, having this legal position in mind, the first respondent might have issued notices, with reference to the impugned reference, also to the petitioner bank and pursuant to which, the second respondent, Industrial Tribunal also has issued notice to the petitioner bank to appear before the Tribunal as one of the party.
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> 16. In this context, the judgment referred by the learned counsel appearing for the petitioner can be usefully pressed into service. In 1990 SCC Online Madras (9) in the matter of Ashok Leyland, Ltd., case, the following has been stated:

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"3.Sri Sanjay Mohan, the learned counsel for the petitioner, strongly argues that the dispute against the petitioner-company cannot be referred to under the Industrial Disputes Act when the petitionercompany is not an employer and the fourth respondent are not the workers under sec 2(s) of the Industrial Disputes Act, i.e., the sum and substance of the arguments of Sri Sanjay Mohan is that the workmen of the third respondent are not the employee so far as the fourth respondent is concerned. The learned counsel further argues that the petitioner's liability is only under S.21 of the Contract Labour (Regulation and Abolition) Act,1970 (Act 37 of 1970). The learned counsel refers me to rule 27(V)(a) of the Tamil Nadu Labour (Regulation and Abolition) Act, 1970, i.e., that if there is dispute, it has to be decided by the authority as prescribed under S. 10 of the Act and as matters stand, the petitioner is not an employer as far as the workers who were working under the third respondent. The learned counsel refers to the decision of the Supreme Court in Workmen of Food Corporation of India V. Food Corporation of India [1985-II L.L.N. 20]. The Supreme Court in that case has categorically held that when the contract system is in vogue the workmen employed by the con-tractor, certainly are not the workmen of the corporation in that case. In my view, the principle enunciated by the Supreme court in this decision fully applies to the facts of this case.

4.The learned counsel also refers to another decision in Employers in relation to Punjab National Bank V. Ghulam Dastagir [1978-I L.L.J. 312,] to show that when a person is riot a workman, the reference to the industrial dispute was without jurisdiction. It that case, Justice Sri Krishna Iyer observed as follows:

"The reference assumes what really is 12 the most contested point in the case as to whether Sri Ghulam Dastagir was the driver of the said bank. By definition, a workman means any person employed in any industry and so the basic jurisdictional issue is as to whether the respondent-workman was a person employed by the bank. It he was, his termination was illegal. It he was not, the reference to the industrial dispute was without jurisdiction. The Industrial Tribunal examined the matter at some length and came to the conclusion that the driver was employed by the bank. Consequently, a direction for reinstatement together with back-wages was made."

5.Sri Fenn Walter, the learned counsel for the fourth respondent, does not dispute the legal

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contentions raised by Sri Sanjay Mohan, the learned counsel for the petitioner. The law is settled on this aspect and as such the impugned order with regard to the petitioner alone is bad and will stand quashed. The reference in other respects will stand against the third respondent."

17. In 2000 SCC Online Madras 811 in Britannia Industries, Ltd., Madras case, similar view has been taken by a learned Judge, where the learned Judge has held as follows:

"4.Sri Sanjay Mohan, the learned counsel for the petitioner, contends that the petitioner is not a relevant or necessary part in the above I.D.No.1996 of 1992, as the petitioner is neither the employer of the second respondent not the second respondent was appointed or terminated by the petitioner.

5.Sri.D.Govinda Reddy, the learned counsel appearing for the second respondent fairly accepts that the second respondent, was appointed and terminate only by the third respondent co-operative canteen, formed under rules 70(6) of the Rules.

6.Rule 70(6) of the Rules, reads as follows:

"Whether the workers of a factory in which a canteen has been provide by the occupier in accordance with rules 65 to 67 for the use of the workers, desire to run the canteen by themselves on a co-operative basis with share capital contributed by themselves, the management may permit them to run the canteen in accordance with the bye-laws of the co-operative canteen, the Madras Co-operative Societies Act, 1932 (now the Tamil Nadu Co-operative Societies Act, 1998), and the rules framed thereunder, subject to such conditions as the Chief Inspector may, in consultation with the Registrar of Cooperative Societies, Madras, impose."

7.If that be so, I am unable to understand how the petitioner -management is a necessary and relevant party to the impugned I.D.No.1996 of 1992 and, therefore, I do not find any justification to permit the first respondent to adjudicate the I.D.No.1996 of 1992 against the petitioner management, as the second respondent was neither appointed not terminated by the petitioner management.

8.That apart, in view of the admitted fact the second respondent was appointed and terminated only by the third respondent co-operative canteen which is a separate entity in the eye of law registered under the

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co-operative societies for running a canteen."

18. In both the aforesaid decisions it has been held that if there is no employer employee relationship available between the employee and the principal employer and everything was done by the immediate employer or the contractor, then the reference roping the main employer was unnecessary. In view of the obligation on the part that the principal employer (like the petitioner herein) especially in the context of Section 21 of the Contract Labour Act, if ultimately the third respondent employees succeeded in the Industrial dispute, in order to execute the award to be passed in this regard, during the contract period between the petitioner bank and the fourth respondent, certainly the role of the petitioner bank would become inevitable.

19. However, in this context, the learned counsel for the petitioner has very much relied upon the Chennai Petroleum Corporation Ltd., case, of the Hon'ble Supreme Court (cited supra), where also a similar situation was under consideration, where their Lordships held as follows:

"It is evident from the above that the respondent employees are seeking no relief against the corporation. It is also evident that the respondent employees admit that the appropriate authority to reinstate them in service and to pay back wages is the society by whom they have been employed. That the proposed addition of the Corporation is entirely based on an apprehension which the employees have expressed about the efficacy of the award of the Labour Court is also evident from the averments extracted above. Mr.Vishwanathan was, therefore, justified in arguing that an apprehension which by itself has no basis could not provide a reasonable ground for the Labour Court or the High Court to add the Corporation as a party respondent. Having said that Mr.Viswanathan submitted on the instructions of the appellant-Corporation that if the respondent employees eventually succeeded in getting their dismissal order set aside by the Labour Court with a direction that they should be reinstated back in service of the society, and if the society upon such reinstatement deploys the employees to work with the Corporation in terms of the subsisting contract with the society, the appellant-corporation shall have no objection to such deployment. That statement should in our opinion, sufficiently allay the apprehension of the employees that even if they succeed before the

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Labour Court, they may be able to go back to the place of work from where they were removed pursuant to the complaint of theft made against them. The statement should in our opinion also obviate the necessity of adding the Corporation as a party respondent especially when no relief is being claimed against it by the employees. In the result, we allow these appeals set aside the order passed by the High Court, quash the order passed by the Labour Court adding the Corporation as a party respondent and direct that I.D.Nos. 531 of 2003 and 82 of 2004 pending before the Labour Court be disposed of expeditiously on their merit uninfluenced by any observations made by the Labour Court or the High Court in their proceedings. We make it clear that in case the employees succeed in getting their dismissal set aside from the Labour Court and the society reinstates them pursuant to such an award and deploys them to work with the appellant-Corporation, the corporation shall not object to any such deployment and shall allow them to work on conditions as are otherwise applicable to workman deployed under the terms of the contract between the Corporation and the Society. No costs"

20. From the reading of the aforesaid judgment of the Apex Court, it is to be noted that, in that case also, there was an apprehension and in order to allay the said apprehension, it was submitted on behalf of the employer corporation that ultimately if the employee succeeded in the I.D between the employee and his immediate employer and in order to execute the same, the appellant corporation therein had to fulfil its obligation and the corporation was ready and willing to fulfil during the contract period between the appellant corporation and the immediate employer of the employee. That position accepted by the appellant corporation in that case was recorded by the Hon'ble Apex Court, in the order referred to above, and accordingly the impleading or roping of the appellant corporation therein was considered to be unnecessary and therefore, the said SLP was allowed.

21. If the same logic is applied to the facts of the present case also, such kind of statement or undertaking has to be given by the petitioner bank. In this context, Mr.Sanjay Mohan, learned counsel for the petitioner has, in unequivocal term, made submissions during the argument that, in case if ultimately the I.D raised by the third respondents in both the cases against the first respondent ended in favour of the

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employees and pursuant to which, in order to comply with the award to be passed by the second respondent, the role of the petitioner bank would become necessitated only for the contract period between the petitioner bank and the fourth respondent and in that case, certainly the petitioner would not have any objection for such liability only to the extend of the contract period between the petitioner and the fourth respondent.

23. For all these reasons stated and the discussions made above, this Court is inclined to pass the following order :

i) The impugned reference insofar as implicating the petitioner bank is concerned, is here by quashed. However the remaining portion of the reference are to be sustained intact.

ii) If ultimately, the third respondent employees in each case succeeded in the proposed Industrial dispute before the second respondent Industrial Tribunal and in order to execute such award to be passed in this regard during the contract period between the petitioner bank and the fourth respondent, certainly the liability of the petitioner bank would be ensured and in that case, the petitioner bank shall not shirk its responsibility as a principal employer."

8. In another judgment dated 05.06.2012 passed in W.P.Nos.35842 and 35843 of 2007, this Court held as follows:

"12. He also referred to the judgment of the Supreme Court in Bharat Heavy Electricals Ltd., vs. Anil and others reported in 2007 (1) LLJ 619 for contending that the Labour Court cannot direct reinstatement of the workmen as against the principal employer that too in a dispute under Section 2-A of the Industrial Disputes Act. In paragraphs 13 and 15, it was held as follows:

"13. ..... An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2(l) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case. In Radhey Shyam v. State of Haryana4 it has been held after considering various judgments of the Supreme Court that Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section

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2(k) of the Industrial Disputes Act, 1947 [which is similar to Section 2(l) of the said 1947 Act]. Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities, etc.

15. .....We set aside the impugned judgment of the High Court by directing BHEL to re-employ Respondents 1 to 14 directly or through its contractor. This order will, however, not preclude the workmen from raising an industrial dispute claiming status of direct workmen of the Company after joining the recognised union/union concerned in the said reference. This order will not prevent the respondents herein from seeking abolition of contract labour in accordance with law. Accordingly, the civil appeal is disposed of. No order as to costs."

14. But, in the present case, the workmen himself were not very clear about the real employer and at the time of raising a dispute, they have impleaded both of them as party respondents and during the trial, the Labour Court had accepted the evidence of M.W.1, namely Contractor and found that the claim against the 2nd respondent was not justified. In doing so, the Court also referred to the oral evidence in which the categorical admission was made by the workmen about their relationship with the Contractor. Such a finding of fact cannot be interfered with by this Court, that too in a dispute raised under Section 2-A of the Industrial Disputes Act."

9. In view of the fact that the legal principles in this regard are settled and the rights of the workman is also protected in respect of the Award, if any passed by the competent Court, the writ petitioner need not be impleaded as a party in the Industrial Dispute at this point of time.

10. This being the factum, the present writ petition deserves to be considered. Accordingly, the 1st respondent is directed to delete the name of the Writ Petitioner Management from the cause title in respect of I.D.No.373 of 2003 and proceed with the adjudication as expeditiously as possible and dispose of the same.

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11. With this direction, this writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

The Presiding Officer
First Additional Labour Court,
Chennai.

W.P.No.24644 of 2004

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