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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1616 of 2012

The Management
Indicarb Limited,
Registered Office at
Ramanashree Chambers
No.37, Lady Curzon Road,
Bangalore 560 001,
Karnataka

... Appellant

-vs-

1. The Presiding Officer,
Industrial Tribunal,
High Court Compound,
Madras -600 104.
2. Indicarb Employees Union,
Rep. by its General Secretary,
37, Shanthi Nagar, 4th cross,
Hosur-635109,
Krishnagiri District.
3. M/s.Karnataka Electricals,
And Mechanical Systems Ltd,
Rep by its Managing Director,
No.63 SIPCOT Industrial Complex,
Hosur -635 126.

(R3 impleaded as party respondent vide
Court order dated 13.08.2021 made in
C.MP.No.19452 of 2016 in
W.A.No.1616 of 2012-TRJ & VSGJ)

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters
Patent against the order dated 05.06.2012 passed in
W.P.No.34626 of 2007.

Prayer in W.P.No.34626 of 2007:

Writ Petition filed Under Article 226 of the
Constitution of India, to issue a Writ of Certiorari
Mandamus to call for records of the first Respondent in
connection with the award in ID.NO.27/2004 dated 13.04.2007



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published on 13/07/2007 & quash the same and direct the 2nd Respondent to reinstate the workers in service with full back wages and continuity of service.

For Appellant : Mr.S.Ravi
For R1 : Tribunal
For R2 : Mr.K.M.Ramesh
For R3 : Mr.V.Karthick,
Senior Counsel
for M/s.Adithya Varadharajan

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Writ Appeal has been directed against the impugned order dated 05.06.2012 passed in W.P.Nos.31022 and 34626 of 2007 by a learned Single Judge of this Court whereby the Writ Petition filed by Indicarb Employees Union in W.P.No.34626 of 2007 was allowed, thereby remanding the matter back to the Industrial Tribunal, Madras, the 1st respondent herein, to adjudicate the matter as to whether the second respondent-Management is covered by the provision of chapter V-B of the Industrial Disputes Act and if the answer is in affirmative, then for what relief, the workmen were entitled to whereas W.P.No.31022 of 2007 was dismissed with liberty to the workmen to approach the Tribunal with appropriate application with regard to the issues raised by them.

2. Mr.Ravi learned Counsel appearing for the appellant-Writ Petitioner pleaded that the learned Single Judge, while setting aside the award passed by the first respondent, wrongly came to the conclusion that the provisions of chapter V-B will apply whereas the said provision cannot be made applicable for the simple reason that only there were 92 workmen were found employed. When the learned Tribunal has given a finding, after appreciating both oral and documentary evidence that there were only 92 workers, Chapter V-B cannot be attracted. In view of the factual error committed by the learned Single Judge, in calculating the number of heads of the workmen whether they are 100 in number or less than 100 in number so as to attract the provision of chapter V-B, the matter may be remanded back to the learned Tribunal. Therefore, the finding made by the learned Industrial Tribunal cannot be found fault with. Hence, the order of the remand is unjustifiable by reversing the order passed by the learned Single Judge and the award passed by the learned Industrial Tribunal deserves to be affirmed.

3. Coming to the question of fulfilling the liability to pay the total compensation and gratuity to the workmen, learned counsel for the appellant pleaded that



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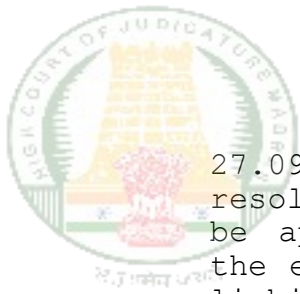
the company-in-question was already sold away to the 2nd respondent-proposed party. Therefore, he made a prayer before us that in view of the passage of time although some liability can be legally fastened on the appellant with regard to the payment of closure compensation and gratuity as the proposed second respondent has stood benefited after purchase of the factory-in-question with machinery, he may be directed to meet out the partial liability of making the interest part on the closure compensation and the gratuity.

4. Mr.Karthick learned Senior Counsel appearing for the 3rd respondent opposing the above prayer soliciting our attention to the Board Resolution of the appellant company dated 27.09.2006 made it clear that when there was a clear and explicit resolution passed stating that the sale proceeds from the above sale or disposal will be appropriated for setting the compensation payable to the employees, creditors and such other statutory and other liabilities of the company, the appellant cannot be conveniently escaped out from the liability. Again drawing our notice to the sale deed dated 19.01.2007, read over one of the clauses therein to impress upon us that the vendor's company had already made it known that after selling the property, the proceeds thereof will be utilized for settling statutory and labour dues. Again taking us to the Letter of Undertaking dated 10.07.2007 which is given as under submitted that the appellant, not only once, on many occasions, repeatedly undertook to fulfill the statutory liability to the workmen and if any liability that may exist post or present or anything arise in future whether they may be of statutory or otherwise in nature or to any third parties including the erstwhile workers of M/S.Indicarb Limited.

'Sub:- Sale of clear property - Reg

We hereby conform that The M/s.INDICARB LIMITED has sold only assets without any encumbrances and liabilities to M/s.Karnataka Electrical & Mechanical Systems Ltd and if any liabilities that may exist, post or present, or may arise in future whether they may be of statutory or otherwise in nature, or to any third parties, including the erstwhile workers of the M/s INDICARB LIMITED are the responsibility and to the account of M/s INDICARB LIMITED and that M/s INDICARB LIMITED undertakes to indemnify and absolve M/s. Karnataka Electrical & Mechanical Systems Ltd to this extend.'

5. We are fully agree with the submissions made by the learned Senior Counsel for the third respondent. The reason being that when the Board Resolution dated



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27.09.2006 of the appellant company states that it has been resolved that the sale proceeds from the above sale or will be appropriated for settling the compensation payable to the employers, creditors and such other statutory and other liabilities of the company, we are not able to accept the passing of the liability to pay the closure compensation and gratuity to the third respondent. Moreover, a perusal of the undertaking given by M/s.Indicarb Limited dated 10.07.2007 which is already extracted supra, clearly shows that the appellant is only a person to pay the closure compensation and gratuity. Therefore, we are unable to find any merit or justification in this appeal.

6. At this stage, Mr.K.M.Ramesh learned counsel appearing of the 2nd respondent submitted that so far as the interest on the payment of closure compensation is concerned, it has to be at 10% gratuity and it cannot be less than 10%, but so far as the closure compensation is concerned it may be ordered accordingly. Therefore, the appellant is liable to clear the entire closure compensation and also the gratuity amount payable to all the workmen who are all not till date paid. With the above amount, 10% interest will be paid on the gratuity amount and 6% can be calculated on the closure compensation.

7. With the above modification, this Writ Appeal stands partly allowed and the award passed by the learned Industrial Tribunal, the 1st respondent herein is restored. The appellant is hereby given four weeks from the date of receipt of a copy of this Order to pay the closure compensation and gratuity with interest. No costs. Consequently, connected Miscellaneous Petition is closed. If any.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

vsn

To
The Presiding Officer,
Industrial Tribunal, High Court Compound,
Madras.

+1cc to Mr.K.M.Ramesh, Advocate Sr.No.40659(02/03/2022)
+3ccs to Mr.Adithya Varadarajan, Advocate Sr.No.41041
(02/03/2022)
+1cc to Mr.Gupta & Ravi, Advocate Sr.No.40440(02/03/2022)

W.A.No.1616 of 2012

VG II(CO)

A.SK(25.10.2021), KKV/18/11/2021