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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1614 OF 2020

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Hind Kamgar Sanghatana

... Petitioner

V/s.

L.G. Electronics (I) Pvt. Ltd. & Anr.

... Respondents

Ms. Seema K. Chopda with Mr. T.R. Yadav for the petitioner.

Mr. Varun R. Joshi (through V.C.) with Mr. Chetan Alai and Mr. Ashutosh Karangutkar for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 11, 2024

P.C.:

1. The petitioner/union registered under the Trade Unions Act, 1926 is challenging legality and validity of order dated 3 February 2020 passed by the Industrial Court below Exhibit 'U-2' in Complaint (ULP) No.68 of 2019 framing preliminary issue, which reads thus:

“Whether complainant proves that the concerned employees are workmen as per Section 2(s) of the I.D. Act, 1947?”

2. Learned advocate for the petitioner relying on judgment of the Apex Court in **Ramesh Chandra Sankla & Ors. v. Vikram Cement & Ors.**, reported in (2008) 14 SCC 58

submitted that instead of framing the status of employees of the petitioner/union as workmen as a preliminary issue, the said issue ought to have been decided along with all other issues.

3. Per contra, learned advocate for the respondent/employer relied on the judgment of the Apex Court in **Hussan Mithu Mhasvadkar v. Bombay Iron & Steel Labour Board & Anr.** reported in (2001) 7 SCC 394 and of this Court in **Siemens Ltd., Thane v. Their employees represented by Siemens Workers' Union, Thane & Anr.**, reported in 2010 (4) Mh.L.J.319 to urge that the issue in relation to status of person as a workman needs to be decided as a preliminary issue.

4. The question, therefore, arises for consideration is whether the issue of status of employees as workmen needs to be decided as a preliminary issue or such issue needs to be decided along with all other issues.

5. The Supreme Court in **Ramesh Chandra Sankla (Supra)** has held as under:—

“72. It was also submitted that this Court has held that statutory Tribunals must decide all issues raised by the parties. This is particularly true to industrial disputes. Strong reliance was placed on *D.P. Maheshwari v. Delhi Administration*, (1983) 4 SCC 293. Dealing with a similar argument, this Court said:

“1. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of

adjudicating labour disputes Where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. *It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues”.*

(emphasis supplied)

73. Reference was also made to *S.K. Verma v. Mahesh Chandra*, (1983) 4 SCC 214. In that case, this Court commented that there appears to be three preliminary objections which have become quite the fashion to be raised by all employees. Firstly, there is no industry. Secondly, there is no industrial dispute. Thirdly, the workman is no 'workman'.

74. The attention of the Court was also invited to *National Council for Cement & Building Materias v. State of Haryana*, (1996) 3 SCC 206, wherein the Court deprecated the practice of the management to raise preliminary issues with a view to delay adjudication of industrial disputes.

75. In our considered opinion, in the present case, it cannot be said that the Courts below have committed any error of jurisdiction in not deciding the issue as to the maintainability of claim-petitions as preliminary issue. It is well settled that generally, all issues arising in a suit or proceeding should be tried together and a judgment should be pronounced on those issues. Before more than hundred years, the Privy Council in *Tarakant v. Puddomoney*, (1863-66) 10 Moo IA 476, favoured this approach. Speaking for the Judicial Committee, Lord Turner stated:

“.....The Courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the Courts below should, as far as may be

practicable, pronounce their opinions on all the important points”.

(emphasis supplied)

The above principle has been consistently followed.

76. This Court dealing with the provisions of Order XIV Rule 2 (prior to the amendment Act of 1976), in *Major S.S. Khanna v. Brigadiar F.J. Dillion*, (1964) 4 SCR 609, stated;

“18.....Under Order 14 Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. *Normally all the issues in a suit should be tried by the Court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lop-sided trial of the suit*”.

(emphasis supplied)

77. The Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order XIV (before the amendment), the Commission stated:

“This Rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. *It is considered that this delay should be eliminated, by providing that a court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force*.”

(emphasis supplied)

6. In the case of **Ramesh Chandra Sankla** (supra), the Apex Court relying on the Constitution Bench judgment in **Major S.S. Khanna v. Brig. F.J. Dillon** reported in (1964) 4 SCR 409 and the recommendations of the Law Commission deprecating framing of preliminary issue and deciding complaint on such preliminary issue held that though the provisions of the Code of Civil Procedure, 1908 do not strictly apply to industrial adjudication, normal rule is to decide all the issues in a suit.

7. Apart from the said fact, on perusal of the record, it appears that in the facts of the case, the issue as to whether the members of petitioner/ union (employees) are workman or not, is a mixed question of fact and law which requires parties to lead evidence. Therefore, to obviate leading two sets of oral evidence, it is necessary that parties be permitted to lead oral evidence in support of all issues framed by the Industrial Tribunal.

8. In so far as the judgment relied upon by the respondent in **Hussan Mithu Mhasvadkar** (supra), the Apex Court was not considering an issue as to whether a particular issue needs to be decided as a preliminary issue or all the issues need to be decided along with all other issues. In the facts of said case, considering nature of dispute involved in the said case, the Apex Court observed that instead of embarking upon an adjudication in the first instance as to whether the respondent is an industry or not so as to attract the provisions of the Industrial Disputes Act, it ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold and if only the finding recorded was against the appellant, refrained from adjudicating on the larger issue affecting the various kinds of other employees, as to the character of the Board, as and industry or not. On careful perusal of paragraph 5, it is evident that the observations made were restricted in the facts of the said case and no legal proposition of law is laid down by the Apex Court. Moreover, the judgment in **Ramesh Chandra Sankla** (supra) and **D.P. Maheshwari** (supra), the Apex Court was concerned with framing of preliminary issue. It is also important to note that the judgment in **D.P. Maheshwari** (supra) has been delivered by three Judges of the Apex Court and the judgment in the case of **Hussan Mithu Mhasvadkar** (supra) has been delivered by two Judges of the Apex Court. Hence, the view taken by three Judges of the Apex Court bind this court.

9. In so far as the judgment of learned Single Judge of this Court in **Siemens Ltd.** (supra) is concerned, this Court has not

taken into consideration the judgment in **D.P. Maheshwari** (supra) or **Ramesh Chandra Sankla** (supra) and, therefore, the judgment will not support the respondent.

10. In my view, therefore, the issue framed by the Industrial Court by the impugned order needs to be decided along with all other issues.

11. During the pendency of the writ petition, this Court had protected services of employees represented by the petitioner/union. Therefore, the same interim relief is continued till the disposal of the complaint. It is, therefore, directed that till the disposal of the complaint, services of employees represented by the petitioner/union shall not be terminated by the respondent without following due process of law.

12. The writ petition, therefore, stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)