The Management Balmer Lawrie and Company Ltd. Vs The State of Tamil Nadu and Balmer Lawrie Employees Union

Court: Madras High Court

Date of Decision: Aug. 26, 2011

Acts Referred: Industrial Disputes Act, 1947 â€" Section 10(1), 12(3), 2

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: P. John, for T.S. Gopalan and Company, for the Appellant; V. Subbiah, Spl. G.P. for R 1, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
The two writ petitions are filed by the management of Balmer Lawrie & Company Ltd, represented by its General

Manager. In the first writ petition, the challenge is to the order made by the first Respondent State Government in G.O.(D) No. 241, Labour and

Employment Department, dated 1.8.2011. By the impugned order, the State Government by exercise of power u/s 10(1)(d) had referred several

demands relating to service conditions of employees working in the Petitioner company and raised by the third Respondent trade union. The

second Respondent was directed to adjudicate the said dispute within a period of three months from the date of receipt of the order of reference.

2. Likewise in the second writ petition, the challenge is to the order passed in G.O.(D) No. 246, Labour and Employment Department, dated

2.8.2011 referring the dispute relating to introduction of bio-metric form of attendance and that the demand was whether the electronic bio-metric

machine should be kept either in the main entrance or should be kept on the basis of divisionwise and whether by such installation, the workers are

bound to lose anything?

3. The second Respondent Tribunal on receipt of the two reference orders, took up the dispute as I.D. Nos. 10 and 11 of 2011 and had ordered

notice to the Petitioner and the third Respondent Union to file their respective statement of claim and counter claims. It is at this stage, challenging

the two orders of reference, the Petitioner management which is the wholly owned public sector company has filed the present writ petitions.

4. The contention of the Petitioner was that the State Government is incompetent to make a reference as it is not an appropriate Government u/s

2(a) of the Industrial Disputes Act. It is the stand of the Petitioner that they are having factory for manufacturing of leather chemicals, greases and

lubricants and mild steel barrels at Manali. They have also factories all over India. It is the Government of India enterprises coming under the

Ministry of Petroleum and Natural Gas. The majority of the shares of the Petitioner company are held by Balmer Lawrie Investments Ltd., which is

an another public sector unit in which the Government of India is holding 59.67% shares. Therefore, as per the amended provisions of the

Industrial Disputes Act, the Central Government is the appropriate Government for the Petitioner establishment. The Managing Director and the

other whole time Directors are appointed by the Central Government. The Government of India has also appointed six independent Directors to

the Board of the Company. The salary and other conditions of service were determined by the guidelines issued by the Central Government. The

management and the workmen have entered into various settlements u/s 12(3) including the existing settlement for the year 2004-08 only before

the conciliation officer appointed by the Central Government. The Standing Orders of the factory were also certified on 10.02.1993 by the

Regional Labour Commissioner (Central). Notwithstanding these facts, the third Respondent union raised a dispute before the Assistant Labour

Commissioner, Chennai appointed by the first Respondent.

5. When the Petitioner company raised a dispute regarding the locus standi, the third Respondent union filed a writ petition before this Court being

W.P. No. 6415 of 2009 seeking to challenge the communication, dated 8.4.2009 issued by the conciliation officer and after setting aside the same

seeks for a direction to entertain the industrial dispute raised by that union. The said writ petition came to be disposed of by an order dated

8.2.2010. Subsequently on the matter being mentioned, the learned judge of this Court passed a further order on 30.3.2010 and in paragraph 5 of

the said order, it was stated as follows:

5. As far as this apprehension is concerned, so far, there was a dispute with regard to the appropriate authority. By order dated 08.02.2010, it has

been made clear that the State Government is the appropriate authority. As such, the State Government, as the appropriate authority, will have

only prospective effect and not retrospective effect. With this, the order dated 08.02.2010 is clarified.

6. The third Respondent union also filed an another writ petition being W.P. No. 2432 of 2009 seeking for a direction to the conciliation officer to

commence conciliation proceedings and it was asserted that it was the State Government which is the appropriate Government in respect of the

Petitioner. This Court after notice to the parties had passed the following order on 22.4.2010 which reads as follows:

Learned Counsel appearing for the third Respondent concede to the prayer of the Petitioner seeking writ of mandamus directing the third

Respondent to commence conciliation proceedings holding that the appropriate government for the 4th Respondent is the Government of

Tamilnadu and not the Central Government and the for further direction to the 4th Respondent to await the conclusion of the industrial dispute in

accordance with the provisions of the Industrial Disputes Act.

2. Recording the submission of the counsel appearing for the third Respondent, the third Respondent is directed to complete the proceedings and

pass orders within a period of ten weeks from the date of receipt of a copy of the order. The Writ Petition is disposed of accordingly. ...

7. It is after these two orders, the Assistant Commissioner of Labour, Conciliation-2 sent the failure report dated 30.6.2010 to the State

Government which resulted in the impugned reference orders. It is the stand of the Petitioner company that the Industrial Disputes Act have been

amended by the Central Act 24/2010. One of the amendment was made to Section 2(a) defining the term ""appropriate Government"" and the

amendment reads as follows:

(a) in Sub-clause (i), for the words ""major port, the Central Government, and '', the words ""major port, any company in which not less than fifty-

one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause,

established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal

undertaking and autonomous bodies owned or controlled by the Central Government, the Central government, and"" shall be substituted;

8. The said amendment was brought into force by the Central Government vide Gazette notification, dated 15.9.2010. Therefore, it was claimed

that the first Respondent State Government has no further right to refer the dispute as it ceased to be the appropriate Government. But, in the

present case, it is not the Petitioner company, but it is in the holding company, the Central Government is having 59.67% shares and the holding

company is having 61.8% shares in the Petitioner company. Therefore, it is too late for the Petitioner to contend that the Petitioner company which

shares are held by an another company, in which the Central Government is holding majority shares will also cover under the new definition. In any

event, already by the two orders of this Court, referred to above, a direction has been given to the State Government to deal with the issue. It was

recorded that it is the State Government which is the appropriate Government.

9. In this context, it is necessary to refer to a judgment of the Supreme Court in Tata Memorial Hospital Workers Union Vs. Tata Memorial

Centre and Another, . The following passages found in paragraphs 58 to 62, 76 to 78 and 80 of the said judgment reads as follows:

58. It is also material to note that this exercise is to be done basically in the context of an industrial dispute to find out as to whether in relation to

any industrial dispute concerning that industry, the Central Government is the ""appropriate Government"" or the State Government is the

appropriate Government"". Oxford Dictionary defines word ""concerning"" as ""involving"" or ""about"". The word ""concerning"", according to

Webster''s Dictionary means ""relating to"", ""regarding"" or ""respecting"" proximate, intimate and real connection with the establishment. It is to be

noted that the Industrial Disputes Act is an Act for investigation and settlement of industrial disputes and the MRTU Act, 1971 is for recognition of

trade unions for facilitating collective bargaining for certain undertakings with which we are concerned in the present matter, and for prevention of

certain unfair practices amongst other objectives. This being the position it is to be noted that the examination of the issue as to which Government

is the ""appropriate Government"" is to be carried out in this context.

59. As far as an industry ""carried on by the Central Government"" is concerned, there need not be much controversy inasmuch as it would mean the

industries such as the Railways or the Posts and Telegraphs, which are carried on departmentally by the Central Government itself. The difficulty

arises while deciding the industry which is carried on, not by but ""under the authority of the Central Government"". Now, as has been noted above,

in the Constitution Bench judgment in SAIL, the approach of the different Benches in the four earlier judgments has been specifically approved and

the view expressed in Air India has been disagreed with. The phrase ""under the authority"" has been interpreted in Heavy Engg. to mean ""pursuant

to the authority"" such as where an agent or servant acts under authority of his principal or master. That obviously cannot be said of a company

incorporated under the Companies Act, as laid down in Heavy Engg. Mazdoor Union case. However, where a statute setting up a corporation so

provides specifically, it can easily be identified as an agent of the State.

60. The judgment in Heavy Engg. Mazdoor Union observed that the inference that a corporation was an agent of the Government might also be

drawn where it was performing in substance governmental and non-commercial functions. The Constitution Bench in SAIL case has disagreed with

this view in para 41 of its judgment. Hence, even a corporation which is carrying on commercial activities can also be an agent of the State in a

given situation. Heavy Engg. judgment is otherwise completely approved, wherein it is made clear that the fact that the members or Directors of

corporation and he is entitled to call for information, to give directions regarding functioning which are binding on the Directors and to supervise

over the conduct of the business of the corporation does not render the corporation an agent of the Government. The fact that entire capital is

contributed by the Central Government and wages and salaries are determined by it, was also held to be not relevant.

61. In Hindustan Aeronautics the fact that the industrial dispute had arisen in West Bengal and that the ""appropriate Government"" in the instant

case for maintaining industrial peace was West Bengal was held to be relevant for the Governor of West Bengal to refer the dispute for

adjudication. In Rashtriya Mill Mazdoor case the fact that the authorised Controller was appointed by the Central Government to supervise the

undertaking was held as not making any difference. The fact that he was to work under the directions of the Central Government was held not to

render the industrial undertaking an agent of the Central Government.

62. In Food Corporation of India in spite of the fact that FCI is a specified industry u/s 2(a)(i) of the Industrial Disputes Act, 1947, this Court

considered the definition of ""appropriate Government"" in the CLRA Act, 1970, and the State Governments were held to be the ""appropriate

Governments"" for the regional offices and the warehouses situated in various States wherein the demand for regularisation of the services under the

CLRA Act had arisen.

76. Besides, as observed in Heavy Engg. Mazdoor Union case, if we look to the definition of ""employer"" under the Industrial Disputes Act, in a

case where an industry is carried on by or under the authority of the Government, the employer is defined as the authority prescribed in this behalf

or the Head of the Department. In the instant case, no such authority has been prescribed, nor any Head of the Department notified by the Central

Government. On the contrary, right from the time the Society was created, its administration and management is completely under its Governing

Council and it is functioning independently. No contrary evidence has been produced. The evidence of Mr. Muthusamy, the Chief Administrative

Officer of Tata Memorial Centre establishes the independent functioning of the first Respondent under its Governing Council. It is the Governing

Council which has been exercising the executive powers of the employer.

77. It was then submitted that mentioning of Tata Memorial Centre in the Rules for Allocation of Business of the Government of India is a pointer

to the control of the Central Government. Insofar as the Rules for Allocation of Business of the Government of India are concerned, they are for

the purpose of allocation of business between various departments of the Government of India whenever the Government of India has to take a

decision. As rightly held by a Division Bench of the Bombay High Court in their own case in Tata Memorial Centre v. Dr. Sanjay Sharma mere

allocation of business under any department would not in any manner decide the issue as raised in the present case as to whether a particular

industry is under the control of the Central Government. The Business Rules cannot be conclusive to show that any institution or organisation listed

under the allocation of business, would be part of any department of the Government of India. Besides, as noted in Heavy Engg. Mazdoor Union

even if a Minister appoints the Directors, gives directions, calls information or supervises business, that will not make the industry an agent of the

Government.

78. Hence we have to conclude that even on the test of control and management of the Hospital and the Centre, they are functioning independently

under the first Respondent Society. They cannot be said to be ""under the control"" of the Central Government. In the circumstances the State

Government shall have to be held as the appropriate Government for the first Respondent for the purpose of the Industrial Disputes Act and

consequently the MRTU Act.

80. In view of all these factors, it is not possible for us to sustain the judgment of the Division Bench of the Bombay High Court. The Division

Bench has clearly erred in its consideration of the judgment in SAIL case. The first Respondent cannot be held to be functioning under the authority

of the Central Government. The State Government is therefore the appropriate Government for Respondent 1 for the purposes of the Industrial

Disputes Act and the MRTU Act. The two applications filed by Respondent 2 will have to be held as maintainable under the MRTU Act. The

order of the Industrial Court holding them to be maintainable but dismissing them on merits is held to be correct.

10. In the light of the above, this Court is not inclined to interfere with the impugned orders of reference. Hence both writ petitions will stand

dismissed. No costs. Consequently connected miscellaneous petitions stand closed.