(2013) 10 MAD CK 0140

Madras High Court

Case No: Application No. 1207 of 2013 in C.S. No. 72 of 2013

The Madras Race Club	APPELLANT
Vs	
M. Victor and Others	RESPONDENT

Date of Decision: Oct. 23, 2013

Citation: (2013) 6 CTC 481 : (2013) 8 MLJ 609

Hon'ble Judges: V. Ramasubramanian, J

Bench: Single Bench

Advocate: R. Viduthalai, S.C. for Mr. L. Dhamodaran, for the Appellant; V. Prakash, S.C. for Mrs. S. Kala, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.
This is an application filed by the sole defendant in the suit praying for the rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. I have heard Mr. R. Viduthalai, learned Senior Counsel appearing for the applicant/defendant and Mr. V. Prakash, learned Senior Counsel for the respondents/plaintiffs.

2. The respondents herein were employed as workmen in the applicant club. The applicant is incorporated as a company, probably u/s 25 of the Companies Act, 1956. During the period 28.7.2012 to 9.8.2012, the applicant club appears to have terminated the services of 110 persons employed as security personnel. Protesting such an en masse termination, the workers'' union (unregistered) issued a strike call with effect from 30.8.2012, demanding reinstatement of those 110 security workers.

3. The Deputy Commissioner of Labour (Conciliation) initiated proceedings, but the same ended in failure on 14.12.2012. However, the union decided to resume work without prejudice to their demands and the workers claim that they reported for duty on Monday, 17th day of December 2012. According to the respondents-workers (who are the plaintiffs), they were prevented by the

management from resuming work.

4. Therefore, contending that the action of the management in refusing to allow them to perform their duties is illegal, the workers, who are the respondents/plaintiffs filed the above suit in January 2013, praying for the following reliefs:

(a) For a declaration declaring the action of the defendant in denying the plaintiffs access to the place of work, viz., The Madras Race Club, Post Box No. 2639, Guindy, Chennai-600032 and thereby not paying them wages from 17.12.2012 to be illegal;

(b) For permanent injunction restraining the defendant from denying the plaintiffs wages for the period from 17.12.2012 onwards; and

(c) Directing the defendant to pay to the plaintiffs the costs to the suit.

5. Along with the plaint, the respondents/plaintiffs filed an application for injunction in O.A. No. 78 of 2013, for restraining the applicant/defendant from denying wages to the workers from 17.12.2012 onwards. In the said application, this Court ordered notice and after service of notice, the applicant/defendant has come up with the above application under Order VII Rule 11, CPC for rejection of plaint.

6. Mr. R. Viduthalai, learned Senior Counsel appearing for the applicant/defendant submitted that the suit is not maintainable-

(i) in view of the implied bar of jurisdiction of civil court contained in the Industrial Disputes Act, 1947;

(ii) in view of the provisions of section 14(1)(b) of the Specific Relief Act, 1963, as the reliefs sought in the suit cannot be granted by this court;

(iii) in view, at least of, the doctrine of election, since the workers have already invoked the machinery provided under the Industrial Disputes Act, 1947; and

(iv) in view of improper valuation and non payment of proper court fee as prescribed by the Tamilnadu Court Fees and Suits Valuation Act, 1955.

7. Per contra, Mr. V. Prakash, learned Senior Counsel for the respondents/plaintiffs contended-

(i) that though the dispute between the parties is an industrial dispute, the reliefs sought by the respondents in the above suit, do not fall within the four corners of the Industrial Disputes Act, 1947;

(ii) that the contracts of employment between the applicant and the respondents are still intact and hence, the refusal of the applicant to provide work entitles the respondents to seek the remedies before the civil court;

(iii) that only three out of 164 workers have gone to Labour Court and the doctrine of election does not apply to all the plaintiffs; and

(iv) that the suit has been instituted on a common cause of action for all the plaintiffs in terms of Order I Rule 1 of the Code and hence, the suit is perfectly valued and adequate court fee already paid.

8. I have carefully considered the above submissions.

9. At the outset, it is admitted by the learned senior counsel on both sides that the Industrial Disputes Act does not contain an express bar of jurisdiction of the civil courts. This is why even the learned Senior Counsel for the applicant/defendant raises only the issue of implied bar, on the basis of the earliest pronouncement of the Supreme Court in The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, . In paragraphs 23 and 24 of the said decision, the Supreme Court summed up the principles applicable to the jurisdiction of civil courts in relation to an industrial dispute. They read as follows:

23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:

(1) If the dispute is not an industrial dispute nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suit is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

24. We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(i) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act, such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an industrial dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above.

10. But, the law laid down in Premier Automobiles Limited by a Three Member Bench of the Supreme Court was not allowed to rest at that. In 1989, the next case

came up before the Supreme Court in Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, . That case arose out of a suit filed by an employee, seeking a declaration that his dismissal was not in accordance with the Standing Orders and that therefore, the employer should be injuncted from giving effect to the order of dismissal and should also be directed to pay backwages. The employer raised in their written statement, two preliminary issues, on the question of maintainability, the first with reference to Section 2A of the Industrial Disputes Act and the second with respect to Section 14(1)(b) of the Specific Relief Act. The Trial Court answered both preliminary issues in favour of the workman and this order of the trial Court was reversed by the High Court of Gauhati, in a civil revision petition. Therefore, the employee went before the Supreme Court.

11. After analysing Section 9 of the Code of Civil Procedure, Sections 2(k), 10 and 12 of the Industrial Disputes Act and the decision of the Constitution Bench of the Supreme Court in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , a two Member Bench of the Supreme Court held in Jitendra Nath Biswas that "the scheme of the Industrial Disputes Act excludes the jurisdiction of the civil court by implication in respect of remedies, which are available under the Act and for which, a complete procedure and machinery has been provided in the Act."

12. But, it is interesting to note that in Jitendra Nath Biswas, the Supreme Court did not refer to the decision in Premier Automobiles Limited, despite the fact that the decision therein had been rendered at least 13 years earlier.

13. After about six years of the decision in Jitendra Nath Biswas, the case of termination of the employees of the Rajasthan State Road Transport Corporation, came up for consideration before the Supreme Court, in 1995. In that case, the employees of the transport corporation, whose services had been terminated on charges of misconduct, filed suits for declaration that the termination orders were illegal and for further declaration that they must be deemed to have continued with all consequential benefits. The suits were decreed by the Trial Court. The first and second appeals were dismissed by the District Court and the High Court respectively, forcing the transport corporation to go before the Supreme Court.

14. When those appeals filed by Rajasthan SRTC came up before a two Member Bench of the Supreme Court, the corporation relied upon paragraphs 23 and 24 of the decision in Premier Automobiles and also upon the decision in Jitendra Nath Biswas. But, the two Member Bench was confronted with another order passed in a SLP in S.L.P.(C) No. 9386 of 1988 dated 18.10.1989 by another two Member Bench, holding a civil suit concerning a similar dispute, as maintainable. Therefore, the two Member Bench before which the appeals of Rajasthan SRTC came up, referred the matter to a Bench of Three Judges. The decision rendered by this Three Member Bench in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , can be referred to as Rajasthan SRTC-I. Ever since this decision, Rajasthan SRTC appears to have contributed a great deal, to the development of law

on this issue, irrespective of whether it has contributed to the development of road traffic or not.

15. In the decision in Rajasthan SRTC-I, the Supreme Court considered (i) the scope of Section 9 of CPC; (ii) the statement of objects and reasons behind the Industrial Disputes Act; (iii) the entire scheme of the Industrial Disputes Act; (iv) the purport of the Industrial Employment (Standing Orders) Act, 1946; and (v) the various decisions rendered till then. The court first pointed out (i) that Certified Standing Orders cannot be elevated to the level of statutory provisions or as having statutory force; (ii) that where a right or obligation is created by the Industrial Disputes Act, the disputes relating to such right or obligation can be adjudicated only by the forums created by the Act, as laid down in principle No. 3 in Premier Automobiles; and (iii) that the only question that posed perennial problems to courts is as to whether the jurisdiction of the civil court is barred even in respect of a dispute that involves the recognition, application or enforcement of Certified Standing Orders or not. Thereafter, the Bench summarised the principles of law in paragraph 35 of its decision in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, as follows:

35. We may now summarise the principles flowing from the above discussion:

(1) Where the dispute arises from general law of contract i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an ''industrial dispute'' within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946-which can be called ''sister enactments'' to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object

of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly i.e. without the requirement of a reference by the Government-in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to ''statutory provisions''. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

16. It is of interest to note that though Jitendra Nath Biswas was delivered without reference to Premier Automobiles, the three Member Bench in Rajasthan SRTC-I approved the ratio laid down in Jitendra Nath Biswas. But, the issue was not given a decent burial in Krishna Kant. After enunciating the legal principles that flow out of its decision, in paragraph 35, the Supreme Court left a small cleavage in paragraph 37, with regard to the application of those principles to pending matters. Paragraph 37 of the decision in Krishna Kant reads as follows:

It is directed that the principles enunciated in this judgment shall apply to all pending matters except where decrees have been passed by the Trial Court and the matters are pending in appeal or second appeal, as the case may be. All suits pending in the Trial Court shall be governed by the principles enunciated herein-as also the suits and proceedings to be instituted hereinafter.

17. Despite all the above three decisions, two by a Three Member Bench and one by a two Member Bench, the legal ingenuity did not allow the issue to get settled.

Therefore, yet another case came up before the Supreme Court, with the same issue taking a different avatar. It was in Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, . In this case, the Supreme Court was concerned with an appeal arising out of a decree passed by the civil court setting aside the termination of services of a conductor, who was on probation. The Transport Corporation filed an appeal before the Supreme Court and the Supreme Court held that in such cases, the only remedy available to the workmen was by way of reference under the Industrial Disputes Act and not by way of a suit. It was pointed out therein that where an Act created an obligation and enforced performance in a specified manner, the performance cannot be enforced in any other manner. The Court also held that if a court has no jurisdiction, the jurisdiction cannot be conferred by any order of court.

18. The aforesaid decision was reiterated by the Supreme Court in R.S.R.T.C. and Others Vs. Ramdhara Indoliya, , wherein it was held that the civil court had no jurisdiction to try the suit for reinstatement of a daily wager, whose services were terminated by the Corporation.

19. But, the same issue was raked up once again before another Three Judge Bench in Rajasthan State Road Transport Corporation and Another Vs. Khadarmal, . In this case, the Court referred to Krishna Kant and Zakir Hussain and held that the civil court had no jurisdiction to adjudicate a dispute relating to the termination of services of a probationer.

20. Within a few days of the above decision in Khadarmal, another three Member Bench of the Supreme Court considered the question whether civil court has jurisdiction to entertain a suit for setting aside an order of termination and to grant consequential declarations or not. Holding that the issue was no longer res integra, the three Member Bench pointed out in Rajasthan SRTC Vs. Ugma Ram Choudhary [2006 (1) SCC 61] that even if the suit had been filed much before Krishna Kant and even if the Trial Court had decreed the suit much before the decision in Krishna Kant, the decree could not be upheld. The Court also held that despite the principles of prospective overruling indicated in paragraph 37 of Krishna Kant, it is not possible to divest the consequences that flow out of lack of jurisdiction of a civil court.

21. In other words, the prospective overruling indicated in Krishna Kant, was neutralised in Zakir Hussain, Khadarmal and Ugma Ram Choudhary. Therefore, the issue again came up for consideration in Rajasthan SRTC and Others Vs. Mohar Singh, . In that case, the driver of the corporation had been dismissed from service in pursuance of disciplinary proceedings initiated against him. He successfully challenged his dismissal before a civil court and the decree of the civil court declaring his dismissal to be null and void was confirmed by the Appellate Court and the High Court. When the corporation landed up before the Supreme Court, it was argued that there was a conflict between the decisions of two Three Member

Benches, one in Krishna Kant and another in Khadarmal and that one civil appeal had already been referred to a Larger Bench. But, a two Member Bench proceeded to hear the appeal in Mohar Singh and dismissed the same, after holding that "when a right accrues under two statutes vis-a-vis common law right, the employee concerned will have an option to choose his forum". The Court pointed out the distinction between a right, which is conferred upon an employee under a statute for the first time and also providing for a remedy and the one which is created to determine the cases under the common law right and held that it is only in the case of the former that the civil court''s jurisdiction can be held to be barred by necessary implication. More importantly, in paragraph 20 of its decision, the Supreme Court pointed out that "the Courts ordinarily do not adopt an interpretation which takes away the jurisdiction of the court". Since Rajasthan SRTC was also a "State" within the meaning of Article 12, the Court further held that if the action on the part of the State is found to be violative of Constitutional provisions or mandatory requirements of a statute or statutory rules, the civil court would have the jurisdiction to direct reinstatement with full backwages.

22. As I have pointed out earlier, at the time when Rajasthan SRTC Vs. Mohar Singh was decided by a two Member Bench, it was pointed out that already a reference made by another two Member Bench was pending before a three Member Bench for resolving the purported conflict between the decisions in Krishna Kant and Khadarmal. But, the two Member Bench proceeded to dispose of Mohar Singh, independent of the reference pending before a Three Member Bench.

23. However, within a year, the reference to the Three Member Bench was also decided in Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, . While considering the reference, the Supreme Court found in Bal Mukund Bairwa, that the question as to whether in a case where violation is alleged as regards compliance of principles of natural justice, either on common law principles or in terms of statutory regulations framed by a statutory corporation, which is a Fundamental Right in terms of Article 14 of The Constitution, a civil suit will be maintainable or not, had not been decided in any of the earlier decisions.

24. One more important aspect is that the Three Member Bench pointed out in Bal Mukund Bairwa that the presumption in regard to jurisdiction of the civil court and interpretation of a statute involving plenary jurisdiction of a civil court had also not been taken into account in the earlier cases. Therefore, after considering various decisions, the Supreme Court held in paragraphs 23 and 24 as follows:

If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman

within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Order certified under the 1946 Act ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in Rajasthan SRTC and Others Vs. Mohar Singh, . The question as to whether the civil court''s jurisdiction is barred or not must be determined having regard to the fact of each case.

If the infringement of Standing Order or other provisions of the Industrial Disputes Act are alleged, the civil court''s jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court''s jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.

Where the relationship between the parties as employer and employee is contractual, right to enforce the contract of service depending on personal volition of an employer, is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely (1) when an employee enjoys a status, i.e., his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof.

..... There is another aspect of the matter which cannot also be lost right of, namely where the conditions of service are governed by two statutes, the effect thereof on an order passed against an employee/workman in violation of a rule which would attract both the statutes. An attempt shall be made in a case of that nature to apply the principles of ''Harmonious Construction''.

When there is a doubt as to whether civil court has jurisdiction to try a suit or not, the courts shall raise a presumption that it has such jurisdiction.

Again in paragraphs 28 to 30, the Court held as follows:

In a case where no enquiry has been conducted, there would be violation of the statutory regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid

down by the statutory regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others (supra) shall prevail.

An assumption on the part of this Court that all such cases would fall only under the Industrial Disputes Act or sister laws and, thus, the jurisdiction of the civil court would be barred, in our opinion, may not be the correct interpretation of Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others (supra) which being a three-Judge Bench judgment and having followed Dhulabai Vs. State of M.P. (supra), which is a Constitution Bench judgment, is binding on us.

We may also observe that the application of doctrine of prospective overruling in Rajasthan State Road Transport Corporation and another Vs. Krishna Kant and Others (supra) may not be correct because either a court has the requisite jurisdiction or it does not have. It is well settled principle of law that the court cannot confer jurisdiction where there is none and neither can the parties confer jurisdiction upon a court by consent. If a court decides a matter without jurisdiction as has rightly been pointed out in Rajasthan State Road Transport Corporation and others Vs. Zakir Hussain (supra) in view of the seven-Judge Bench decision of this Court in A.R. Antulay Vs. R.S. Nayak (supra), the same would be nullity and, thus, the doctrine of prospective overruling shall not apply in such cases. Even otherwise doctrine of prospective overruling has a limited application. It ordinarily applies where a statute is declared ultra vires and not in a case where the decree or order is passed by a Court/Tribunal in respect whereof it had no jurisdiction.

25. From the decision of the Supreme Court in Bal Mukund Bairwa, the following principles seem to emerge:-

(i) if an employee intends to enforce his Constitutional Rights or a right under a statutory regulation, the civil court will have jurisdiction;

(ii) if he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws, the civil court will have no jurisdiction;

(iii) the civil court''s jurisdiction is not ousted merely because a plaintiff in a suit is also a workman within the meaning of the Industrial Disputes Act or that his conditions of service are otherwise governed by Certified Standing Orders;

(iv) if the complaint is one of infringement of Standing Orders or the other provisions of the Industrial Disputes Act, the civil court''s jurisdiction may be barred. But, if the suit is based on violation of principles of common law or Constitutional provisions or on other grounds, the civil court''s jurisdiction is not barred;

(v) where the relationship between the parties is contractual, the right to enforce the contract of service depending on personal volition of an employer, is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963, subject, however, to the four exceptions;

(vi) where there is a doubt about the jurisdiction of the civil court, there arises a presumption in favour of the existence of such a jurisdiction; and

(vii) if no procedure has been followed either as laid down by statutory regulation or as required by common law or as required by the principles of natural justice, the civil court would have jurisdiction.

Fortunately, Bal Mukund Bairwa appears to be the last episode in the mega serial presented by Rajasthan SRTC, starting from Krishna Kant in 1995. Therefore, I can safely take, at least as of now, that the principles laid down in Bal Mukund Bairwa, have to be applied.

26. Keeping the above principles in mind, if we now have a look at the plaint, it is seen that the only grievance of the respondents/plaintiffs is that though they went on a strike from 30.8.2012, they withdrew the strike on 14.12.2012 and reported for duty on 17.12.2012. But, the management did not permit them to join duty. According to the respondents/plaintiffs, so long as the services of the plaintiffs have not been terminated in accordance with law, they are entitled either to work and earn their wages or to have their wages paid, if the employer does not wish to extract work from them. In other words, the claim of the respondents/plaintiffs is that when the relationship of master and servant, either as governed by the common law principles or as governed by the terms of the contract, has not so far been severed, they are entitled to a declaration and injunction and the suit is maintainable in the civil court. 26. But, Mr. R. Viduthalai, learned Senior Counsel for the applicant/defendant submitted that the suit is not maintainable in view of the following:-

(a) The industrial dispute raised by the respondents/plaintiffs with regard to the termination of services of 110 security personnel had already been referred by the Government under G.O.Ms. No. 292 dated 9.7.2013 for adjudication by the Labour Court. The questions referred therein, cover the reliefs sought by the respondents/plaintiffs in this suit and hence, they cannot maintain the suit.

(b) In any case, what the plaintiffs are seeking to enforce, even if taken merely to be the terms of the contract of employment, would fall within the purview of the model standing orders under the Industrial Employment (Standing Orders) Act. The industrial establishments, which do not have Certified Standing Orders of their own, are required statutorily to follow the Model Standing Orders. Consequently, the Model Standing Orders constitute the terms of the contract between the employer and the workmen and hence, what the plaintiffs are seeking to enforce, under the tag of "contractual rights", are nothing but the rights flowing out of the Model

Standing Orders. Therefore, the suit will have to be viewed actually as one for the enforcement of model Standing Orders and hence the jurisdiction of the civil court should be taken as having been ousted.

(c) At any rate, the plaintiffs cannot get a decree for specific performance, as it is prohibited by Section 14(1)(b) of the Specific Relief Act, 1963. If at all they want their case to fall within the 4 exceptions to the bar u/s 14(1)(b), the plaintiffs may have to seek a fresh reference of their dispute, provided their dispute is not covered by the reference already made by the State Government.

27. I have carefully considered the above 3 submissions of the learned Senior Counsel for the applicant/defendant.

28. The first contention of the learned Senior Counsel for the applicant/defendant may not detain us for a long time. The reference made by the Government under G.O.Ms. No. 292 dated 9.7.2013, actually related to the termination of the services of about 110 security personnel. The questions referred for adjudication are as follows:

29. Though the first question referred for adjudication is about the justification of the strike resorted to by the respondents/plaintiffs from 30.8.2012, it has nothing to do with what the respondents/plaintiffs allege to have happened from 17.12.2012.

30. To be precise, the first question referred for adjudication, when translated into English, would read as follows:

Whether the strike resorted to by the workmen from 30.8.2012 is justified ? If not, to what relief they are entitled?

31. As a matter of fact, the second part of the first question is wrongly worded. If the strike is found to be justified, the workers, who were resorting to strike may be entitled to some relief. If the strike was found to be unjustified, the workers are not entitled to any relief. But, the second part of the first question, gives a wrong impression as though the workers will be entitled to relief, if the strike was found to be unjustified.

32. Anyway, I do not wish to go into the semantics or the syntax of the question referred for adjudication. Assuming for a minute that the Labour Court answers the first question in favour of the workmen, then the workmen will be entitled to some relief. If the first question is answered in the negative, the workmen may not be entitled to any relief.

33. But even if the first question is answered in favour of the workmen to the effect that the strike was justified, all that the Labour Court can do, is only to award wages for the period of the strike. But, the period of the strike was only from 30.8.2012 upto 14.12.2012. According to the respondents/plaintiffs, they reported for duty on 17.12.2012. The strike call had been withdrawn from 17.12.2012. Therefore, even if the Labour Court answers the first question in favour of the workmen, the Labour

Court cannot grant anything more than the wages for the period from 30.8.2012 to 14.12.2012 to the workmen.

34. That is why the respondents/plaintiffs have come up with a suit praying for reliefs with effect from 17.12.2012 and not upto the date prior to 17.12.2012, when they were on strike. In such circumstances, it is impossible to conclude that the subject matter of the present suit is already covered by the reference made by the Government to the Labour Court. Hence, the first contention of the learned Senior Counsel for the applicant/defendant is rejected.

35. The second contention of Mr. R. Viduthalai, learned Senior Counsel for the applicant is that in the absence of Certified Standing Orders, the Model Standing Orders would apply and that therefore, any dispute touching upon the contract of service, would also come within the purview of the Model Standing Orders. Once the entire contract of service is governed by the Model Standing Orders, any dispute complaining of breach of the contract would virtually be a dispute complaining of violation of the Standing Orders. Therefore, the learned Senior Counsel contends that the suit, which seeks to enforce the terms of the contract and which virtually amounts to enforcement of the Standing Orders, cannot lie before a civil court.

36. But, the answer to the above contention of the learned Senior Counsel is two fold. The first is that in Bal Mukund Bairwa, the Supreme Court had carved out one exception to the General Rule that any dispute arising out of violation of the Standing Orders Act, is not maintainable in a civil court. The exception is that of cases, where no procedure, as prescribed either in common law or under the Standing Orders or by the principles of natural justice have been followed. Therefore, I have to see if the case of the respondents/plaintiffs falls under one of those exceptions.

37. According to the respondents/plaintiffs, their services have not been terminated either before or on or after 17.12.2012. The relationship of master and servant, according to the respondents/plaintiffs, has not been severed so far.

38. Unfortunately, the applicant/defendant has not come out with a categorical assertion as to whether there has been a termination or not. In the affidavit in support of the application to reject the plaint, the applicant has not come up with any assertion as to whether the relationship of master and servant is severed or not. The only assertion made in the affidavit, on this particular aspect, is (i) that the plaintiffs deliberately absented themselves from attending work without any cause or reason from August 2012; and (ii) that most of the plaintiffs are casual labourers, who had not worked for the required number of days in a year to claim themselves as workmen. The relevant portion of paragraph 3 of the affidavit of the Additional Secretary of the applicant club is extracted as follows:

Admittedly, the respondents herein have deliberately absented themselves from attending the work without any cause or reason from the month of August 2012

onwards. There was no intimation for absenting and not attending the work. Among the plaintiffs listed in the suit plaint, most of them are casual labourers who have not worked for the required number of days in a year to claim themselves as workman and most of them have left the work on their own long back.

39. It is clear from the portion extracted above that on facts, the applicant/defendant has taken the following position:

(i) that the respondents/plaintiffs have absented themselves without intimation and without any reason from August 2012;

(ii) that most of them have already left the services of the applicant, on their own, long back; and

(iii) that most of them are casual workers, who have not worked for the required number of days in a year to claim themselves as workmen.

40. If all the above three statements made by the applicant/defendant in their affidavit, are converted into legalistic terms applicable to the Labour Law Jurisprudence, the defence of the applicant/defendant to the above suit could be succinctly put in two sentences namely (i) it is a case of non renewal of the contract of employment of casual workers within the meaning of Section 2(oo)(bb); and (ii) the respondents are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

41. In other words, it is clear that if I reject the plaint asking the respondents/plaintiffs to invoke the machinery under the Industrial Disputes Act, 1947, the respondents/plaintiffs are going to face the formidable task of (i) establishing whether each of them is a workman within the meaning of Section 2(s); (ii) whether each of them had been in continuous service for not less than one year; and (iii) whether their case would not fall within the exceptions u/s 2(oo)(bb) of the Industrial Disputes Act, 1947. To put it differently, the defence taken by the applicant/defendant as seen from paragraph 3 of the affidavit in support of the above application is something that would strike at the very root of the jurisdiction of the Labour Court to grant any relief to the respondents/plaintiffs. In such circumstances, I do not think that I am entitled to non suit the plaintiffs at the threshold, on the ground that they have a remedy before the Labour Court, when such remedy appears obviously to be an illusory one, in view of the stand that the applicant has indicated.

42. As reiterated by the Supreme Court in Bal Mukund Bairwa, a presumption arises in favour of the existence of jurisdiction of this Court, even in cases where there is a doubt. Today, it is not made out very clearly by the applicant/defendant that I do not have jurisdiction at all. On the contrary, the stand taken by the applicant/defendant indicates that as and when the respondents go to the Labour Court, even the jurisdiction of the Labour Court to grant any relief will be questioned. There is no

difficulty in accepting the fact that a party to a dispute is entitled to raise all kinds of defence available under law. But they cannot be allowed to keep all cards close to their chest and non suit the workers from the civil court, only with a view eventually to non suit them even from the labour court. If the applicant had at least come up with a positive stand that they have terminated the services of the workers with effect from 17-12-2012 or from any other date, I would have had no difficulty in asking the workers to go before the labour court. But they do not wish to take such a stand. It is to be noticed that in all Rajasthan SRTC cases decided by the Supreme court, there was no dispute as to whether the services had been terminated or not. But in this case, the plaintiffs claim that there was no termination and the defendant does not either agree or dispute its correctness. Therefore, the benefit of doubt, as held in Bal Mukund Bairwa should go in favour of the workmen on the question of jurisdiction, as the civil court exercises plenary jurisdiction. Hence, the second contention of the applicant/defendant cannot also be accepted.

43. The third contention of the applicant/defendant is pitched on Section 14(1)(b) of the Specific Relief Act. What is prohibited by the Specific Relief Act is only the enforcement of the contract of personal service. There is no bar for the grant of damages. In the ultimate event of the suit going for trial, this Court may award damages instead of reinstatement or even the plaintiffs may seek amendment. That option cannot be shut out at this stage by rejecting the plaint under Order VII Rule 11.

44. In any event, the Supreme Court has indicated, even in the decision in Bal Mukund Bairwa, the existence of four exceptions to the bar u/s 14(1)(b). The question as to whether the case of the respondents would fall within one of those exceptions, has to be examined only at the time of trial and disposal. In an application under Order VII Rule 11, I cannot presume that the case of the plaintiffs would not fall within any one of those exceptions. As a matter of fact, a bare reading of the plaint shows that the case of the plaintiffs would fall under one of the exceptions to Section 14(1)(b). By leading evidence, it may be open to the applicant/defendant to show that the case does not fall within one of those exceptions. That stage has not reached. Therefore, the third contention cannot also be accepted.

45. That leaves me with one more question as to whether the plaint is properly valued and proper court fee paid or not. Before examining the said question, it must be pointed out that even if I find the suit to have been not properly valued, I cannot throw the plaint out, without giving an opportunity to the plaintiffs to pay proper court fee. Keeping this in mind, let me examine the said contention now.

46. As pointed out earlier, the reliefs sought in the plaint are as follows:

(a) For declaration declaring the action of the defendant in denying the plaintiffs access to the place of work, viz., The Madras Race Club, Post Box No. 2639, Guindy,

Chennai-600032 and thereby not paying them wages from 17.12.2012 to be illegal;

(b) For permanent injunction restraining the defendant from denying the plaintiffs wages for the period from 17.12.2012 onwards; and

(c) Directing the defendant to pay to the plaintiffs the costs to the suit.

47. The valuation of the reliefs, as indicated in para 10 of the plaint, is as follows:

The plaintiffs values the relief in para 11(a) at Rs. 25,01,000/- and pays the court fee of Rs. 28535/- u/s 25(d) of the Tamil Nadu Court Fee and Suit Valuation Act and in para 11(b) at Rs. 1,64,000/- and pays the court fee of Rs. 1640/- u/s 27(c) of the Tamil Nadu Court Fee and Suit Valuation Act. Details regarding the court fees and jurisdiction have been given separately in the schedule hereunder. Total value of the suit is Rs. 26,65,000.00 and total court fee is Rs. 30175/-.

48. The particulars for the purpose of court fees and jurisdiction, as indicated in the statement included at the end of the plaint read as follows:

Reliefs prayed for Jurisdiction	Rs.	Court fee Rs.
Plaintiffs value relief: (a) For the relief of declaration: court fee paid thereon u/s. 25(d) of the Act XIV of 1955	164 X 15250 = 25,01,000.00	28535
Plaintiffs value reliefs: (a) For the relief of permanent injunction court fee paid thereon u/s. 27(c) of the Act XIV of 1955	164 X 1000 = 1,64,000.00	1640
Total	26,65,000.00	30175

49. The contention of Mr. R. Viduthalai, learned Senior Counsel appearing for the applicant/defendant is that there are 164 plaintiffs, each of whom has a separate cause of action and that therefore, the suit ought to have been valued in respect of each plaintiff separately. While doing so, if the valuation in respect of each one of them is less than the minimum value of pecuniary jurisdiction of this Court, this Court would not have pecuniary jurisdiction to try the suit. The learned Senior Counsel further contended that though in paragraph 10 of the plaint, the plaintiffs have valued the reliefs sought in total, at Rs. 25,01,000/-, which is just a little above the minimum value of the pecuniary jurisdiction of this Court, the plaintiffs have

valued the reliefs in respect of each one of them only at Rs. 15,250/- and Rs. 1,000/- respectively in the statement annexed to the plaint. Therefore, according to the learned Senior Counsel, the plaintiffs appear to have first chosen the valuation at little over the minimum prescribed as the pecuniary jurisdiction of this Court and thereafter divided the same among all the plaintiffs. This, according to the learned Senior Counsel for the applicant, is an improper method of valuation.

50. In order to test the correctness of the above contention, we must have a look at the provisions of the Tamilnadu Court Fees and Suits Valuation Act, 1955. Therefore, let us now see some of the important provisions of the said Act. Though Court fee is charged on the Original Side of the High Court, in terms of the High Court Fees Rules, 1956, the valuation is only in terms of the Tamil Nadu Court Fees and Suits Valuation Act. Therefore, it is enough to make a reference to the Act and not to the High Court Fees Rules.

51. Section 25 of the Act deals with suits for declaratory reliefs, with or without consequential reliefs. While Clause (a) of Section 25 deals with the prayer for declaration and possession, Clause (b) relates to a prayer for declaration and injunction. Clause (c) relates to a prayer for the plaintiff''s exclusive right to use property in the form of any mark, name, book, picture, etc. Clause (d) of Section 25 is a residual provision, which relates to cases where the subject matter of the suit is incapable of valuation.

52. Section 27 deals with suits for injunction. While Clause (a) of Section 27 deals with cases involving a right to immovable property, Clause (b) deals with cases involving the plaintiff''s exclusive right to use any trademark, etc. Clause (c) of Section 27 is again a residual provision similar to Section 25(d).

53. The applicant/defendant does not have any quarrel with the following facts, namely (i) that in respect of the declaratory relief, the subject matter of the suit is incapable of valuation and hence, the case would fall u/s 25(d); and (ii) that in respect of the relief of permanent injunction also, the subject matter does not have a market value and hence, the same would fall u/s 27(c). In other words, the applicant/defendant has no quarrel with regard to the valuation and payment of court fees u/s 25(d) read with Section 27(c).

54. The only objection that the applicant has, is as to whether or not each of the 164 plaintiffs ought to have valued the reliefs independently and also in a manner that would make the suit maintainable, had they come up with 164 independent suits before this Court. Though the applicant has not indicated the provision of law on the basis of which such an objection is taken, I could trace it to Section 6 of the Tamilnadu Court Fees and Suits Valuation Act, 1955.

55. Section 6 of the Tamilnadu Court Fees and Suits Valuation Act, 1955, stipulates that in any suit, in which, separate and distinct reliefs are sought, based on the same cause of action, the plaint shall be chargeable with a fee on the aggregate

value of the reliefs. The method of valuation, when more reliefs than one, based upon the same cause of action are sought, and when a relief is sought only as ancillary to the main relief, are also provided in Section 6. Section 6 reads as follows:

6. Multifarious suits-(1) In any suit in which separate and distinct reliefs are sought based on the same cause of action, the plaint shall be chargeable with a fee on the aggregate value of the reliefs;

Provided that, if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees liable on the reliefs.

(3) Where a suit embraces two or more distinct and different causes of action and separate reliefs are sought based on them, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees with which plaints would be chargeable under this Act if separate suits were instituted in respect of the several causes of action;

Provided that, where the cause of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of the fees chargeable on them.

Nothing in this subsection shall be deemed to affect any power conferred upon a court under Rule 6 of Order II of the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) The provision of this Section shall apply mutatis mutandis to memoranda of appeals, applications, petitions and statements.

Explanation-For the purpose of this Section, a suit for possession of immovable property and for mesne profits shall be deemed to be based on the same cause of action.

56. A careful perusal of the entire scheme of the Tamilnadu Court Fees and Suits Valuation Act would show that by and large, the valuation is directed to be made under the various provisions of the Act, either with reference to the nature of the reliefs prayed for or with reference to the market value of the property involved or with reference to the consideration for the contract or with reference to the income. There appears to be no provision in the Act, which requires valuation to be made on the basis of the number of plaintiffs. For instance in a suit for specific performance of a contract of sale, court fee is computed in terms of Section 42(a), only on the amount of consideration, even if there are two or more plaintiffs, who happen to be agreement holders. We can take another instance of a suit by one or more landlords of a single property, covered by Section 43. Court fee is computed in such cases on

the amount of rent and not on the basis of the number of plaintiffs.

57. Keeping the above in mind, if we now go back to Section 6, it could be seen that it deals with suits (i) in which several reliefs are sought on the same cause of action; (ii) in which one relief is sought as ancillary to the main relief; (iii) in which one relief is sought as an alternative to another relief; and (iv) in which several reliefs are sought either alternatively or cumulatively, on the basis of two or more different and distinct causes of action.

58. It is only when a suit is covered by Section 6(3), on account of the same embracing two or more distinct and different causes of action, that the plaint will be chargeable with the aggregate amount of fees with which plaints would be chargeable, if separate suits were instituted in respect of the several causes of action. Though neither the applicant/defendant nor the learned Senior Counsel for the applicant contended that the case on hand would fall u/s 6(3), I would nevertheless examine it, in view of the fact that the only provision in the Act, to which the contention of the applicant could be traced, is in Section 6(3).

59. In order to make a case come within Section 6(3) of the Tamilnadu Court Fees and Suits Valuation Act, 1955, two conditions are to be satisfied. They are (i) the suit should embrace two or more distinct and different causes of action; and (ii) separate reliefs should have been sought, based on them.

60. Keeping those two fundamental requirements of Section 6(3) in mind, if we now look at the plaint, it could be seen that the only cause of action that the plaintiffs had, to come up before court, is the alleged refusal of the management to allow them to work and earn their wages from 17.12.2012. Though this cause of action could be said to have given rise to a claim, for each one of the 164 workers, the same would not make the cause of action, distinct and different for each one of them. In case the management had terminated the services of each one of the workers, either for the same reason or for different reasons, each of the workers could be said to have had distinct and different causes of action. But, the applicant does not wish to disclose whether there has been a termination of the services of the workmen or not. The management has not even come up with a positive stand that the services of these workers stand terminated at least orally, with effect from 17.12.2012. In such circumstances, the cause of action is singular and also common for all the 164 workers, in as much as the refusal of the management to allow them to work and earn their wages, is indivisible in the absence of a termination of their services.

61. Interestingly, Labour Law recognises concerted action, on the part of the workers. Therefore, as a corollary, it is possible that a singular act of omission or commission on the part of the management, could give rise to a single cause of action for the workers. In simple terms, a strike is a concerted refusal on the part of the workers to perform their obligations. A lay off, lock out or closure, is a singular

act on the part of the management, that could give rise to a single cause of action for the workers to take up.

62. Whenever the managements of factories or industrial establishments seek protective orders from civil courts at the time of labour unrest, for the safe removal of the stock in trade or for the safe passage of management category employees, they value the reliefs sought, on the basis of the fiction that the concerted action on the part of the workers has given rise to a single cause of action. Otherwise, they would be called upon to value the reliefs separately as against each workmen. This does not happen, on account of the recognition of the fact that a concerted action gives rise to a single cause of action.

63. Therefore, the very first requirement of Section 6(3) is not satisfied in this case. Even assuming that it is satisfied, the second requirement would certainly not be satisfied. The second requirement of Section 6(3) is that separate reliefs should have been sought in the suit. This has not happened. Therefore, when both requirements of Section 6(3) are not satisfied, it is not possible to accept the contention that the plaintiffs ought to have valued the reliefs as if there had been 164 suits.

64. Lastly, inviting my attention to the industrial disputes raised by three individuals, who are plaintiff Nos. 36, 79 and 152, Mr. R. Viduthalai, learned Senior Counsel for the applicant/defendant contended that at least as per the doctrine of election, the plaint should be rejected.

65. It appears from a set of documents filed by the applicant/defendant that three persons by name R. Srinivasan, P. Sureshkumar and G.R. Selvam, have filed petitions before the Conciliation Officer II, u/s 2A of the Industrial Disputes Act. The addresses given in those petitions, tally with the addresses of the plaintiffs 36, 79 and 152. Therefore, in the course of hearing of the above application, Mr. V. Prakash, learned Senior Counsel appearing for the respondents/plaintiffs submitted that their names could be struck off the plaint.

66. But, I do not think that I can go on the basis of the concession extended by the learned Senior Counsel for the respondents. It must be remembered that I am dealing with an application under Order VII Rule 11. A plaint can be rejected under this provision, only on the basis of the averments contained in the plaint and the documents filed along with the plaint. A plaint cannot be rejected either on the basis of the averments contained in the written statement or on the basis of the documents filed by the defendant. There is also no reference to these three documents in the affidavit filed in support of the above application under Order VII Rule 11. Therefore, as a civil court, I cannot even take notice of these documents. In view of the above, I do not agree that the suit is barred by law, so as to invoke Order VII Rule 11(d). The case does not even fall under Order VII Rule 11(c), to enable me to call upon the respondents/plaintiffs to pay proper court fees. Therefore, this application is dismissed. No costs.