Philips Electronics India Limited Vs Workmen Employed

Court: Bombay High Court

Date of Decision: May 7, 2014

Acts Referred: Constitution of India, 1950 â€" Article 226
Evidence Act, 1872 â€" Section 10(4), 92

Citation: (2014) 142 FLR 698 : (2014) 4 LLJ 7

Hon'ble Judges: V.M. Kanade, J; G.S. Kulkarni, J

Bench: Division Bench

Advocate: Vinod Bobde, Senior Counsel and V.P. Sawant, Advocate for the Appellant; Arsahad Shaikh i/b Sanjay Udeshi and Co, Advocate for the Respondent

Judgement

V.M. Kanade, J.
Appellant - Original Petitioner has filed this Letters Patent Appeal (""LPA""). challenging the judgment and order dated

07/06/2010 passed by the learned Single Judge in Writ Petition No. 4795 of 2009 who had, in turn confirmed the judgment and order passed by

the Industrial Court. The Industrial Court had directed the Petitioner to pay the workmen difference in commuted amounts paid to them as lump-

sum and the amount as shown in the annexure to the Award due to them under VRS-MUMBAI-2001 and the Memorandum of Settlement dated

10/12/2001 with 18% interest from the date of the amount due till the date of realization thereof. Pursuant to the reference which was made to the

Industrial Tribunal, parties filed their pleadings. Preliminary objection was raised regarding jurisdiction of the Tribunal to hear the reference on the

ground that Respondents herein are not workmen. Preliminary objection was dismissed. The said order was challenged before the learned Single

Judge of this Court by filing Writ Petition No. 4795 of 2009. The said Writ Petition was also dismissed on 07/06/2010. Against this judgment, an

SLP was filed by the Petitioner vide Civil Appeal No. 2271 of 2011. The said SLP is pending in the Apex Court. Brief facts which are relevant for

the purpose of deciding this LPA are as under:

2. A Memorandum of Understanding (""MOU"") was signed between the Appellant and the Respondent - Union in November, 2001. It was agreed

by the Appellant that the Appellant would pay maximum amount of Rs. 14.50 lacs in four installments from 01/12/2001 to 02/05/2002 and that

VRS would be announced by the Company and it would be called as VRS-Mumbai-2001. Again, fresh negotiations had taken place in respect of

other demands of the Union. According to the Appellant, on 07/12/2001, the Appellant - Company framed Voluntary Retirement, 2001 for its

employees. Thereafter, on 08/10-12-2001, Memorandum of Settlement was signed between the Company and Union regarding voluntary

retirement. On 10/12/2001, the Company paid an advance of Rs. 25 crores to LIC towards the purchase of annuity for pension scheme of the

workmen. The VRS thereafter was made applicable to the workmen, who accepted the Scheme. Dispute arose between the parties and the Union

started disputing quantum of amount paid to the workmen towards the value of commuted pension and monthly pension by sending letter to the

Company. Since the dispute was not resolved, finally, at the instance of the Union demands of the Union came to be referred to the Industrial

Court for adjudication being Reference (IT) No. 29 of 2005.

3. Both the parties filed their pleadings before the Tribunal. The Union filed their Settlement of Claim and the Written Statement was filed by the

Company. Thereafter, both the parties led oral evidence before the Tribunal. The Union examined Mr. Dinesh Malekar and the Company

examined Mr. Sharad Sahastrabuddhe and Mr. Thanawala. The bone of contention between the parties was that the Union contended that since

the offer was not fully accepted, they were entitled to register their withdrawal from the VRS and, as a consequence, they were seeking

reinstatement with full back wages, continuity of service and other consequential benefits and also damages for hardship caused to them and, lastly,

in the alternative, for a direction, directing the Appellant to pay the workmen difference in commuted amounts paid to them as lump-sum and

amounts equivalent to 1/3rd of the total amount due to them under VRS, 2001 and for difference in the monthly payment with penal interest

thereon @ 21% from the date of short payment.

4. So far as demands of withdrawal from VRS, reinstatement with full back wages and payment of damages were concerned, the Tribunal rejected

the said three demands made by the Union. This was not challenged by the workmen and, therefore, to that extent, the Award passed by the

Tribunal has become final.

5. The only issue which remains to be decided is : whether the workers were entitled to get the difference in the commuted amounts paid to them

as lump-sum and the amount as shown in Annexure "A" to the Award due to them under VRS Mumbai 2001 and the Memorandum of Settlement

dated 10th December, 2001 alongwith interest?.

6. According to the Appellant - Company, it was agreed between the parties that the Company would offer them VRS and, accordingly, the said

offer was made on 07/12/2001. It is the case of the Appellant that in the said offer which was given on 07/12/2001, it was in terms stated that the

workers would be getting commuted value of pension which was to be decided taking into consideration the actuarial factors including discounting

facility given by the LIC. It is the case of the Appellant that in addition to the VRS offer which was given by the Company on 07/12/2001, a

Settlement was signed between the Company and the Union in respect of other disputes which were also resolved between the parties. The case

of the Appellant - Company therefore is that the Memorandum of Settlement of 08/10-12-2001 was in addition to VRS document dated

07/12/2001 and that the Memorandum of Settlement had to be read alongwith the offer document dated 07/12/2001 and it was, therefore,

contended that if both these documents were read together, the intention of the parties was apparent. Alternatively, it was submitted that even if the

document dated 07/12/2001 was not taken into consideration, a proper reading of the Memorandum of Settlement dated 08/10-12-2001 clearly

revealed that the workers were to get commuted value of not the entire lumpsum amount.

7. On the other hand, the contention of the Union/workers was that the document dated 07/12/2001 -the alleged VRS, 2001 was not in existence

and the settlement between the parties could be gathered from the Memorandum of Settlement arrived at between the parties dated 08/10-12-

2001. It was contended that perusal of the Memorandum of Settlement revealed that the Company did not have any right to deduct any amount

from the amount which was payable to the workers under the VRS. The controversy between the parties, therefore, lies within a narrow compass.

8. It was urged by Mr. Vinod Bobde the learned Senior Counsel appearing on behalf of the Appellant - Company that the Industrial Tribunal had

committed a jurisdictional error by holding that VRS-Mumbai-2001 did not exist. It was submitted that the Industrial Tribunal had erred in holding

that VRS-Mumbai-2001 did not exist when the Terms of Reference postulated undisputed existence of VRS-Mumbai-2001. It was contended

that the Industrial Tribunal could not go behind the Terms of Reference which made a specific reference about existence of VRS-Mumbai-2001. It

was contended that, secondly, after having held that VRS-Mumbai-2001 was not in existence, yet, the Tribunal granted relief as sought under

VRS-Mumbai-2001. Thirdly, it was contended that the learned Single Judge proceeded on the basis that the Memorandum of Settlement dated

08/10-12-2001 was VRS and further held that VRS-Mumbai-2001 did not hold the field. It was contended further that the learned Single Judge

had committed jurisdictional error by still upholding the order of Industrial Tribunal grating the relief claimed under VRS-Mumbai-2001 as per

Point-4 of the order of reference. Lastly, it was contended that the learned Single Judge had committed jurisdictional error by going into the

evidence and doubting the calculations made on actuarial factors when the dispute was neither raised nor referred under section 10(4) and was not

made incidental to the dispute referred. It was contended that the dispute was whether there could be deduction at all in the commuted value of

1/3rd lump-sum of pension.

9. Both, the learned Senior Counsel appearing on behalf of the Appellant and the learned Counsel appearing on behalf of the Respondent - Union

argued the matter at length. They have taken us through the Terms of Reference, the impugned Order passed by the Industrial Tribunal and the

Judgment of the learned Single Judge and the relevant documents which have been brought on record. They have also taken us through the various

judgments on which reliance has been placed by them. They have also tendered written submissions.

10. We are, however, not persuaded by the erudite submissions made by the learned Senior Counsel appearing on behalf of the Appellant. We

are, therefore, not inclined to interfere with the judgment and order passed by the learned Single Judge while exercising our appellate jurisdiction

under Letters Patent for the following reasons:

11. Before taking into consideration the rival submissions, it would be useful to refer to the Terms of Reference which were framed, before the

matter was referred to the Industrial Tribunal and the Operative Part of the Order passed by the Tribunal. The Terms of Reference and the

Operative Part of the Order passed by the Tribunal read as under:

Terms of Reference

1. To register their withdrawal from the VRS owing to the offer not having been fully accepted by you, manifested in the short payment made to

them including the short fall in commuted amounts.

2. To reinstate to them in service with full back wages, continuity in service and other consequential benefits w.e.f. the date they were rendered

unemployed by your conditional acceptance of their offer till the date they actually taken back in service and

3. To pay them damages for the hardships caused to them during the period of their referred unemployment.

4. In alternative to demand No. 1 and 2 above to pay the workmen difference in commuted amounts paid to them as lump sum and amount

equivalent to 1/3 of the total amount due to them under VRS Mumbai 2001 and/or difference in the monthly payment with penal interest thereon

@ 21% from the date of short payment.

Operative part of the Order of Tribunal

Order

i) The reference is answered partly in affirmative accordingly.

ii) The demand Nos. 1 to 3 of the second party union are hereby rejected as not justified.

iii) The demand No. 4 of the second party union is hereby granted.

iv) The first party company is hereby directed to pay the workmen difference in commuted amounts paid to them as lump sum and amount as

shown in Annexure "A" to this Award, due to them under VRS Mumbai 2001 and settlement dated 10th December, 2001, with 18% interest from

the date the amount was due till the date of actual realization of the amount.

v) Remaining prayer of the second party union is hereby rejected.

vi) Parties to bear their own costs.

12. The Industrial Tribunal, therefore rejected demand Nos. 1 to 3 of the Union. However, the Industrial Tribunal allowed the reference in terms of

demand No. 4.

13. Before we proceed any further, it will be profitable to examine the jurisdiction of the Tribunal in industrial disputes. The said issue is quite well

settled by the Apex Court. The Apex Court has time and again held that the jurisdiction of the Tribunal in industrial disputes is limited to the points

specifically referred for its adjudication and the matters incidental thereto and the Tribunal cannot go beyond the Terms of Reference made to it.

The Apex Court in reference between Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, has observed in para 10 as under:

10. Two questions were argued before the High Court: Firstly, whether the Tribunal had jurisdiction to question the propriety or justification of the

closure and secondly, whether they had jurisdiction to go into the question of retrenchment compensation. The High Court had held on the first

question that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters

incidental thereto and that the Tribunal cannot go beyond the terms of the reference made to it. On the second question the High Court has

accepted the respondent"s contention that the question of retrenchment compensation has to be decided under S. 33-C(2) of the Central Act.

Division Bench of this Court in reference between Sitaram Vishnu Shirodkar Vs. The Administrator, Government of Goa and others, agreed with

the observations made by the Full Bench of Delhi High Court on similar issue which was considered in para 6 of the said judgment. Relevant

portion of para 6 of the said judgment read as under:

6....."It is settled law that the jurisdiction of the Labour Court/Industrial Tribunal in industrial dispute is limited to the points specifically

referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference.....It exercises such

jurisdiction and power only upon and under the order of reference limited to its terms. It cannot travel beyond the terms of reference except for

ancillary matters. Making of an order of reference is undoubtedly an administrative function, but even that is amenable to judicial review in the

proceedings under Art. 226 under certain facts and circumstances. An order of reference is open to judicial review if it is shown that the

appropriate Government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to

have taken into consideration.....We are of the view that the existence of lock-out itself being the real dispute between the management and its

workmen, the term of reference proceeds on the assumption that there was lock-out with effect from January 1, 1981. There is a very thin line of

distinction between closure and the a lock-out. The real dispute between the parties was whether there was at all a lock-out or whether there was

violence by the workmen and for that reason there was suspension of the working of the restaurant with effect from January 2, 1981 and whether

the closure of the restaurant from February 18, 1981 was proper and for that reason the termination of the services of the workmen was justified

and legal. The appropriate Government has failed to take into consideration the entire set of circumstances brought out by the management in the

two notices displayed and the replies furnished to the Delhi Administration to come to the conclusion whether it was lockout or closure. Whether in

fact there was a closure or lock-out is the real dispute which can more appropriately be determined in industrial adjudication. The Industrial

Tribunal cannot go into that question as the real dispute has not been made the subject matter of the order of reference.

After quoting the observations made by Full Bench of the Delhi High Court, the Division Bench of this Court then observed in para 8 as under:

8.....The Tribunal could not travel beyond the reference and decide the question whether the respondent No. 4 had abandoned his services.

That the petitioner had terminated the services of the respondent No. 4 was an act fastened on the petitioner by this reference and the only

question left open for decision was whether the termination was legal and proper. In this view of the matter, in our opinion, the reference itself was

bad and has to be quashed.....

14. Keeping in view the aforesaid settled position in law, it has to be seen whether the Tribunal or the learned Single Judge had committed

jurisdictional error in allowing the demand made by the Union in terms of Clause-4 of the reference.

15. So far as the order passed by the Tribunal is concerned, it has been urged that industrial dispute is confined by section 10(4) to the points in

dispute and it has been further urged that the reference postulated undisputed existence of VRS-Mumbai-2001. It is, therefore, contended that the

Industrial Tribunal had erred in coming to the conclusion that VRS-Mumbai-2001 did not exist and yet, granted the relief sought under VRS-

Mumbai-2001. It is contended that the terms of reference, more particularly Point No. 4 in the reference makes express reference to the existence

of VRS-Mumbai-2001. It is urged that there being a specific reference made in the Terms of Reference to VRS-Mumbai-2001, the Tribunal could

not have held that the said VRS-Mumbai-2001 did not exist.

16. In our view, the said submission, though at the first blush, appears to be very attractive, on closer scrutiny, it can be seen that the said

submission cannot be accepted. The Tribunal has, in para 1, reproduced the order of reference. Thereafter, the Tribunal has made reference to

Part-I of the Award passed by the Tribunal. The Tribunal, thereafter, made a reference to the facts alleged by the Union. In para 21, case of the

Union has been briefly summarized. According to the Union, employees had opted for voluntary retirement on the basis of terms of settlement

which they had approved. According to the Union, the employees had not retired voluntarily under any scheme because no scheme existed at that

time and that no copy of VRS-Mumbai-2001 had been provided to the Union till then. The Tribunal, thereafter, has reproduced the submissions

made by the Company. According to the Company, an offer for Voluntary Retirement Scheme was made on 07/12/2001 and that offer was

accepted by all employees and, therefore Voluntary Retirement Scheme dated 07/12/2001 had to be read with the Memorandum of Settlement

dated 10/12/2001 and if both the documents are read together, the said two documents indicated that only commuted value was payable to the

employees. Alternatively, it was urged that even if the Memorandum of Settlement was taken into consideration even then on the basis of

construction and interpretation of documents as settled by various judgments of Privy Council and this Court and Supreme Court the only

interpretation of the said Memorandum of Settlement would be that the employees had agreed to accept the commuted value. Detailed

submissions also have been made as to the meaning of commuted value with reference to dictionary meaning of the said word as is found in various

dictionaries. The Tribunal, thereafter, has taken into consideration the oral and documentary evidence which has been brought on record and,

thereafter, has recorded a finding that there was no Scheme of Voluntary Retirement introduced prior to the Memorandum of Settlement. The

contention of the learned Senior Counsel Mr. Vinod Bobde that the said finding is outside the purview of the Terms of Reference cannot be

accepted since the Tribunal, after going through the entire documentary and oral evidence on record, came to the conclusion and recorded a

finding of fact that the alleged offer of Scheme of Voluntary Retirement dated 07/12/2001 on which reliance has been placed by the Company was

not the VRS Scheme but the Memorandum of Settlement included the VRS Scheme. The submission of the learned Senior Counsel appearing on

behalf of the Appellant therefore that Tribunal had committed jurisdictional error is without any substance. The said finding has been given on

account of specific rival contentions raised by both the parties. According to the employees there was no other VRS-2001. There was a

Memorandum of Settlement. Whereas, it was the case of the Company that the document at Exhibit C-25 was the VRS Scheme which was

accepted by the employees. In his cross-examination, the actuary has stated as under:

I have seen exhibit C 25 Scheme submitted by the company for the first time in the Court. The scheme of the company submitted to the Court, is

totally different than the scheme prepared and submitted to the company by me. It is true that the certificate which I have issued to the company

are not based on as per the scheme of the company submitted in the court. As per certificate, I have mentioned the entitlement of pension by

individual employee as per the scheme prepared by me.

17. In our view, Tribunal having come to the said conclusion after appreciating the oral and documentary evidence on record, it cannot be said that

the Tribunal had travelled out side the purview of the reference.

18. It has been then urged by Shri Vinod Bobde, the learned Senior Counsel appearing on behalf of the Appellant that the learned Single Judge

had erroneously proceeded on the ground that the Memorandum of Settlement (For short ""MOS"") was the VRS and the VRS-Mumbai-2001 did

not hold the field and still upheld the order of Industrial Tribunal granting the relief claimed under VRS-Mumbai-2001 as per Point No. 4 of the

Terms of Reference. We have gone through the judgment and order passed by the learned Single Judge. The learned Single Judge has

independently, after going through the material on record, held that the contention of the Company that the document dated 07/12/2001 was the

VRS Scheme had not been established and the learned Single Judge came to the conclusion that MOS itself was the VRS. Both, the Tribunal and

the learned Single Judge, therefore, have held that the document which the Company claimed to be the VRS-2001 viz document dated

07/12/2001 had not been established. The learned Single Judge also, after independently going through the evidence, arrived at a conclusion that

the MOS itself contained VRS-Mumbai-2001 and therefore, granted relief in terms of reference by giving a finding that MOS itself being the VRS-

Mumbai-2001 and confirmed the order of the Tribunal.

19. The learned Senior Counsel appearing on behalf of the Appellant has relied on the judgment of the Apex Court in T.C. Basappa Vs. T.

Nagappa and Another, and the Judgment of the Apex Court in Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal

Naidu and Others, . He has then relied on the judgment of the Apex Court in Deputy Inspector General of Police and Another Vs. K. Ravinder

Rao, . The first judgment in T.C. Basappa v. T. Nagappa (supra) has been relied on for the purpose of pointing out the power and scope of the

High Court under Article 226 in issuing writ of certiorari. The second judgment in Joint Registrar of Co-operative Societies, Madras and Others v.

P.S. Rajagopal Naidu, Govindarajulu and Others (supra) also has been relied upon for the purpose of pointing out the power of the High Court

while exercising writ jurisdiction under Article 226. The Apex Court in the said judgment had observed that the High Court cannot act as an

appellate court and re-appreciate and re-examined the relevant facts and circumstances of the case. The third judgment in Deputy Inspector

General of Police and Another v. K. Ravinder Rao (supra) also has been relied upon for the purpose of pointing out that the High Court while

exercising its writ jurisdiction could not interfere with the concurrent finding of fact by re-appreciating the evidence as if it was a court of appeal.

There cannot be any dispute regarding the ratio of the judgments on which reliance has been placed by the learned Senior Counsel appearing on

behalf of the Appellant. The said principles are quite well settled.

20. In the present case, in our view, the learned Single Judge has not re-appreciated the evidence but has in fact, confirmed the finding given by the

Tribunal by examining the issue from various angles and finally thereafter arrived at the same conclusion that MOS itself included VRS-Mumbai-

2001. The contention of the learned Senior Counsel appearing on behalf of the Appellant that the learned Single Judge had re-appreciated the

evidence, therefore, is unacceptable.

21. The next submission of the learned Senior Counsel appearing on behalf of the Appellant is that the learned Single Judge had committed

jurisdictional error in going into the evidence and doubting the calculations made by the actuary when such a dispute was neither raised nor referred

under Section 10(4) and was not a matter incidental to the dispute referred. In our view, the said submission, again, is also without any merit. From

the judgment and order passed by the learned Single Judge, it can be seen that the learned Single Judge has examined the contention of the

Company from all angles and has thereafter rejected the said contentions. The learned Single Judge, therefore, while giving his reasons, has

considered all aspects and issues raised by the learned Counsel appearing on behalf of the Company and while doing so has made the said

observations. That being the position, it cannot be said that the learned Single Judge has travelled beyond the scope of reference, Even before us

the meaning of the word ""commuted value"" had been argued at length by making reference to the word ""commute"". A compilation of excerpts from

dictionaries and material from inter-net was submitted to explain the word ""commutation"". It is not necessary to refer to the said definition referred

to in the said compilation. In our view, the learned Single Judge had rightly held that MOS itself included VRS Scheme and in which no reference

has been made to commutation. Reference also has been made to the Halsbury"s Laws of England, 4th Ed. Vol. 3, page 112, para 151 and also

various other judgments of the Privy Council and judgments reported in English Reports. It has then been contended that in view of the bar of

Section 92 of the Evidence Act, no evidence could have been led to prove that VRS-Mumbai-2001 could have existed as held by the Industrial

Tribunal. Again, the said submission is without any substance since the issue before the Court was whether the document which the Company

claimed to be VRS-Mumbai-2001 dated 07/12/2001 was VRS Scheme or whether MOS included VRS Mumbai Scheme of 2001. The Tribunal,

therefore, under the circumstances, had to consider whether the said document dated 07/12/2001 was the VRS document or not. The bar under

section 92, therefore, would not apply in such case. It has been then contended that the learned Single Judge had erred in holding that there is no

right to deduct in computing the commuted value of 1/3rd lumpsum pension and had erred in law in deciding the said issue which was contrary to

well-settled principles of interpretation of commercial contracts. Number of judgments have been relied upon in support of the said submission. In

our view, the said submission also is without any substance and the law on interpretation of commercial contracts would not be applicable to the

facts of the present case and, therefore, we do not deem it necessary to refer to the said judgments on which reliance has been placed by the

learned Senior Counsel appearing on behalf of the Appellant. Reliance also has been placed on the judgment of the House of Lords in ICS v.

West Bromwich 55 (1998) 1 ALL ER 98 at 114-115. Reliance is then placed on the judgment in Towne v. Eisner 62 L.Ed. 372 at 376. Reliance

is also placed on the judgments of the Apex Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and in Sasadhar

Chakravarty and Another Vs. Union of India and Others, . All these judgments, in our view, do not have any application to the facts of the present

case. We, therefore, do not propose to refer to these judgments.

22. We are not inclined to interfere with the judgment and order passed by the learned Single Judge or by the Tribunal. Appeal is therefore

dismissed. Since the appeal itself is disposed of, Civil Application No. 120 of 2012 does not survive and the same is also accordingly disposed of.