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IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: 4th July, 2023

+ REVIEW PET. 516/2019 and CM APPL. 53531/2019, CM APPL. 12275/2022 in

W.P.(C) 9497/2015

THE STATESMAN LIMITED

..... Petitioner

Through: Mr. Samar Bansal, Mr. Madhav Gupta and Mr. Vedant Kapur, Advs.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Dr. Vijendra Mahdiyan, Ms. Apurva Mahndiyan and Ms. Krati Sharma, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

04.07.2023

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REVIEW PET. 516/2019

1. This Review Petition, at the instance of the Statesman Ltd., being the original petitioner in WP (C) 9497/2015, seeks review of judgment dated 18 November 2019, passed by me in the said writ petition.

2. The only ground on which the present Review Petition has been filed, and was argued, is that the judgment dated 18 November 2019



does not address the issue of jurisdiction of the Authority under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, (“the Working Journalists Act”) to pass the order dated 21 July 2015 forming subject matter of challenge in WP (C) 9497/2015.

3. The order dated 21 July 2015 disposes of the application by certain members of the Statesman Mazdoor Union, preferred under Section 17(1) of the Working Journalists Act, whereby the said applicants had sought payment of arrears as recommended by the Majithia Wage Board. The petitioner-Statesman contested their liability to make payment to the applicants in terms of the Wage Board on the ground that they had suffered heavy cash losses in three years prior to the implementation of the recommendations of the Wage Board which, therefore, exempted them from the requirement of payment of arrears. The order has examined the case of the applicants in detail and rejected the stand of the petitioner that it was not responsible to make payment to the applicants as recommended by the Wage Board. Para 7 of the said order dated 21 July 2015 refers to the reply filed by the petitioner-Statesman before the Authority:

“7. The management of Statesman in their reply dated 11/12/14 submitted that they are exempt from making payment of arrears in view of the exemption provided for in proviso to para 21 of the Majithia Award whereby the companies which suffered heavy cash losses in the three years prior to the implementation of the award are exempted from making payment of arrears as directed by the Hon'ble Supreme Court of India.”

4. Clearly, therefore, no contest, to the jurisdiction of the



Authority to adjudicate on the claims of the applicants-workmen was ever raised by the petitioner-Statesman before the said authority. The petitioner acquiesced to the jurisdiction of the Authority and contested its liability to make payment to the applicants-workmen on merits. Having lost before the Authority, the petitioner approached this Court by means of the present writ petition.

5. Even in the present writ petition, there is not a whisper of a challenge, at any point therein, to the competence of jurisdiction of the Authority to adjudicate on the claims of the workmen and pass the order dated 21 July 2015. Rather, detailed and copious submissions have been made, seeking to establish that the petitioner was, in fact, suffering heavy losses for three years prior to the recommendations of the Wage Board and was not, therefore, required to make payments to the applicants-workmen in accordance therewith.

6. Consequent to filing of counter affidavit by the respondents, the petitioner filed a rejoinder in the writ petition. Even in the rejoinder, there is no averment that the Authority was not competent to decide the applications of the journalists. Rather, the rejoinder sets out the manner in which, according to the petitioner, the said objections ought to have been decided by the Authority.

7. Written submissions were also filed by the petitioner before this Court in the writ petition on 15 October 2015, through Mr. Samar Bansal, Counsel who argued the writ petition as well as the review petition. The written submissions run into ten pages. Paras 1 to 4



merely set out the circumstances in which the Majithia Wage Board gave its recommendations. Para 5 sets out the relevant paragraph of the recommendations of the Wage Board. Paras 6 and 7 set out precisely the state of the case of the petitioner before the Authority, and deserve to be reproduced in extenso thus:

“6. Petitioner's case before the Respondent No. 2 Authority was that it was exempted from paying arrears as it was covered by the Proviso having suffered heavy losses in three accounting years preceding date of implementation of the Award. The impugned order dated 21.07.2015 essentially deals with this aspect and erroneously decides it against Petitioner.

7. Petitioner placed on record duly audited Balance Sheets for the years 2008-09 (Page 195 of Petition), 2009-10 (Page 211 of Petition), 2010-11 (Page 227 of Petition) & 2013-14 (Page 243 of Petition), veracity of which was never challenged. Petitioner also filed certificate dated 15.11.2014 (Page 194 of Petition) from its auditors showing further losses, over and above balance sheets, that had to be included in various assessment years as a result of an adverse order passed by Calcutta High Court. Veracity of this certificate has also been accepted by Respondent No. 2 in the impugned order.”

Thus, it is an admitted and acknowledged position, in the written submissions filed by the petitioner, that no objection, to the jurisdiction of the Authority to adjudicate on the claims of the workmen, was ever raised by the petitioner before the Authority. Rather, the claims of the workmen were contested on merits on the ground that, for three years prior to the recommendations of the Wage Board, the petitioner had sustained heavy losses.

8. Paras 8, 9 and 10 of the written submissions summarise the order dated 21 July 2015, passed by the Authority and read thus:

“8. After holding cursory proceedings that only dealt with the issue of applicability of Proviso to Clause 21 of the Award,



Respondent No. 2 passed the impugned order against the Petitioner. The Respondent No. 2 concluded that Petitioner cannot be said to have sustained heavy losses on the sole ground that a comparison of its annual Losses for the years 2007-08, 2008-09 & 2009-2010 with the figures of 'Net Current Assets' for the corresponding years, as recorded in the Balance Sheets for those years, reveals that the losses are not such as to put the company in a precarious financial position or affect its capacity to pay. The entire reasoning is contained in a single paragraph, namely paragraph 13 (Page 44 of the petition).

9. Having incorrectly held Proviso to Clause 21 to be inapplicable. Respondent No. 2 compounded its error by going on to decide the two consequential issues of (i) which Class of employer (Class V or VI) does Petitioner fall in & (ii) veracity of amounts claimed by workmen, without giving Petitioner an opportunity to address these points, as is clear from the order sheet.

10. As amounts adjudicated under the Act are recoverable as arrears of land revenue. Respondent No. 2 issued impugned Recovery Certificate dated 03.09.2015 to Respondent No. 4 for execution against Petitioner, pursuant to which Respondent No. 4 issued impugned. Notice dated 15.09.2015 under Section 136 of Delhi Land Reforms Act for recovery against Petitioner.”

9. Para 11 sets out the infirmities in the order dated 21 July 2015 under the head “Grounds for Setting Aside Impugned Order”. The petitioner has, in the said paragraph, first set out why, according to it, it had actually suffered losses for three years; thereafter, why the net current assets of the petitioner could not be treated as a consideration while deciding whether the losses suffered by the petitioner were heavy and, thirdly, has referred to decisions of the Supreme Court which, according to the petitioner, laid down the principles for determining the aspect of “heavy losses”. Following this, the submissions conclude thus:

“Thus, it will be seen that Respondent No. 2 should have applied the principles and factors indicated in the above and other judgments to determine whether losses sustained were 'heavy' or



not. If the above factors had been considered based on Balance Sheets submitted by the Petitioner, it would have been found by the Respondent No. 2 Authority that Petitioner was squarely covered by each of these Supreme Court judgments and losses should be said to be 'heavy' in terms thereof. To take one example, several judgments indicate extent of General Reserves as an indicative factor for comparing whether loss is heavy. The 'General Reserve' in all of the Balance Sheets remained constant at Rs. 70,23,126/- (See for example Page 197 of Petition) which was much less than the year on year losses which were running into crores of rupees, as indicated above.

In accordance with settled law relating to writs of certiorari the order deserves to be set aside as Respondent No. 2 has based his reasoning on irrelevant and illogical reasoning (comparing Losses with 'Net Current Assets') and has ignored relevant material (audited Balance Sheets and CA letter) as indicated by the various Supreme Court judgments above. Petitioner was entitled to the benefit of Proviso to Clause 21 of Majithia Wage Board Award.

In addition to the above, impugned order also suffers from vice of failure of natural justice as Petitioner was never given an opportunity to present its case on the consequential aspects of its classification as per Award and correctness of individual claims. The Order Sheet reveals that the only discussion that occurred was with regard to applicability of Proviso to Clause 21 (Pages 179 to 193 of Petition) and Petitioner was under a bona fide belief that once this question is decided and it is determined that Petitioner has to pay arrears, only thereafter the issue of extent of such arrears would be taken up. As such, Petitioner had not presented any material on these issues which led Respondent No. 2 to conclude that it has nothing to say. Matter needs to be remanded to give Petitioner an opportunity to present this evidence as well.”

10. *The written submissions, therefore, do not merely fail to raise any challenge to the competence or the jurisdiction of the Authority to decide the applications filed by the applicant-journalists, but also go to the extent of averring that the Authority ought to have decided the applications in a manner other than the manner in which it proceeded to do so. There is, therefore, a positive assertion with respect to the competence and jurisdiction of the Authority to decide the application*



of the journalists.

11. It is worthwhile to mention that, against an interim order of pre-deposit of the amount awarded to the respondent-workmen, the petitioner had filed LPA 162/2017, which came to be decided by order dated 16 March 2017, without expressing any opinion on the main challenge in the LPA but with a request to the Single Judge to dispose of the present writ petition expeditiously. Against the said order, the petitioner carried the matter to the Supreme Court by way of SLP (C) 36133/2015. The Supreme Court did not interfere with the direction, of the learned Division Bench, to decide the writ petition expeditiously, and merely modified the order of pre-deposit by reducing it to ₹ 30 lakhs. This indicates that the argument of want of jurisdiction of the Authority to adjudicate on the claims of the respondent-workmen was not canvassed either before the Division Bench or even before the Supreme Court.

12. Arguments in the writ petition were concluded, by both sides, on 26 November 2018 and judgment was reserved. On the said date, learned Counsel for the petitioner sought liberty to file additional written submissions within a week. That, however, was never done. To satisfy myself that submissions might have been filed but inadvertently not put up before, or omitted to be noticed by, me, I perused the “Case History” link on the website of this Court. The case history of WP (C) 9497/2015, on the website of this Court also indicates that, between 26 November 2018, and the date of pronouncement of judgment in W.P.(C) 9497/2015, no filing was



done by the petitioner in the writ petition.

13. As such, in the only written submission filed in the writ petition, no challenge to the competence or jurisdiction of the Authority to adjudicate on the claims of the respondent-workmen was taken.

14. *Thus, the competence or jurisdiction of the Authority to adjudicate on the claims of the respondent-journalists was not challenged before the Authority himself, or in the writ petition, or in the rejoinder, or in the written submissions filed by the petitioner. Per contra, in the written submissions filed before this Court, the petitioner made specific averments regarding the manner in which, according to it, the Authority ought to have dealt with the matter, and went to the extent of asking for a remand to ensure that the matter was re-adjudicated by the Authority properly. The contention that the Authority was not competent to decide the respondents' applications cannot share friendly space with these averments; in fact, they are fundamentally opposed to each other.*

15. It goes without saying that the petitioner cannot seek to argue the case in a manner totally foreign – and, in fact, opposed – to the case that it has sought to make out in writing.

16. It was in these circumstances that, in the judgment under review, this Court did not return any findings regarding the competence of the Authority to pass the order dated 21 July 2015.



17. The present review petition avers that, in failing to address the challenge, raised by the petitioner to the jurisdiction and competence of the Authority to pass the order dated 21 July 2015, the judgment under review suffers from an error apparent on the face of the record. Accordingly, the petitioner now seeks adjudication of the said challenge.

18. In view of the aforesaid position, I am not inclined, in the present review petition, to allow the petitioner to raise a plea of jurisdiction or competence of the Authority to adjudicate on the pleas of the respondent-journalists, or on the defence of the petitioner in that regard, predicated on the premise that it had suffered continuous losses for three years prior to the passing of the Award of the Wage Board. The petitioner acquiesced to the jurisdiction of the Authority. In the reply filed by the petitioner to the applications of the respondents, no contest to the jurisdiction or competence of the Authority to adjudicate on the respondents' claims was raised. Rather, the reply contested the claims on merits. Even before the Authority, no such challenge to the jurisdiction of the Authority was raised. Moreover, even in the pleadings in the writ petition preferred before this Court, or in the rejoinder, there was no contest to the jurisdiction of the Authority to pass the order dated 21 July 2015. Written submissions were filed before this Court in which, too, no such challenge was raised. Rather, the written submissions went to the extent of stating the manner in which, according to the petitioner, the Authority ought to have examined the petitioner's claim of three years



continuous loss. The written submissions also adverted to decisions of the Supreme Court which, according to the petitioner, explained the concept of “heavy loss”. Copious submissions have been advanced in the writ petition, the rejoinder as well as the written submissions filed by the petitioner, on the merits of the matter, including the question of whether the petitioner could escape its responsibility to make payments to the respondents in accordance with the award of the Majithia Wage Board on the premise that they had suffered three years’ continuous loss.

19. Besides, even after judgment was reserved in the writ petition and despite having been granted liberty to file additional written submissions on its asking, the petitioner did not choose to do so.

20. It was in these circumstances that this Court examined the matter on merits and came to a finding that the plea of three years continuous loss, as a defence to complying with the Award of the Majithia Wage Board, could not sustain.

21. At this distance of time, this Court is not inclined to set the clock back and subject the respondent-journalists to further litigation. In so holding, the Court also places reliance on the following short order of the Supreme Court in *Sohan Singh v. General Manager Ordinance Factory*¹:

“This is an appeal by certificate under Article 133(1)(a) of the Constitution as it stood before the Thirtieth Constitution (Amendment) Act from the order of the Madhya Pradesh High

¹ 1984 Supp SCC 661



Court passed in Miscellaneous Petition No. 280 of 1970 filed by the respondents. The appellants had filed seven applications before the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur under Section 33-C(2) of the Industrial Disputes Act, 1947. The applications were allowed and certain directions were given by the Labour Court for quantification of the claims of the appellants. The High Court in the writ petition filed by the respondents has not examined the merits of the order of the Labour Court. It has set aside that order on the ground that on the facts and circumstances of this case the applications under Section 33-C(2) were not entertainable by the Labour Court. We think that the view taken by the High Court on the facts of this case is not correct because the jurisdiction of the Labour Court was not challenged by the respondents in that Court. Issue 4 settled for trial by the Labour Court was in the following terms:

“Whether the applicants were transferred to Ordnance Factory, Khamaria on same terms and conditions of service which they had at Meerut and they willingly accepted the reduced pay and a new-assignment in Khamaria Ordnance?”

The High Court seems to have taken the view that the trial of such an issue was beyond the competence of the Labour Court; but it has rightly been pointed out on behalf of the appellants that instead of challenging the competence or the jurisdiction of the Labour Court to try Issue 4, the respondents went to trial, submitted to its jurisdiction and when a decision was given against them by the Labour Court, they, for the first time, challenged its jurisdiction to try that issue in the High Court. On the facts of this case, therefore, we are satisfied that the High Court ought not to have entertained the point of jurisdiction urged on behalf of the respondents and set aside the order of the Labour Court on that ground alone.

2. We therefore allow this appeal, set aside the order of the High Court, remit the case back to it with a direction to rehear the miscellaneous petition on merits and dispose it of according to law. There will be no order as to costs.”

22. *De hors* all the above considerations, once the petitioner has consciously chosen to urge the issue of its liability to pay wages to the respondent-journalists in terms of the Majithia Wage Board in copious detail, submitting, on merits, that it had suffered continuous losses for

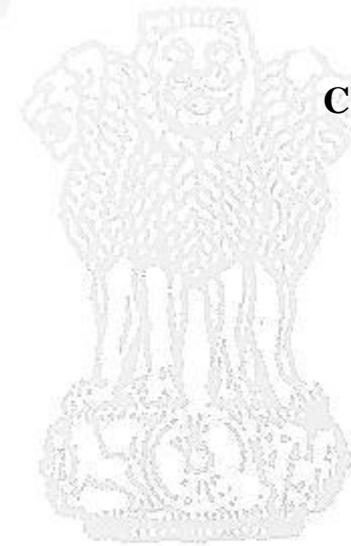


three years prior to the Wage Board Award, and the Court has dealt with the issue on merits, the petitioner cannot legitimately seek a review of the decision on the ground that an alternate plea of jurisdiction of the Authority to adjudicate on the claims of the respondents was not considered.

23. For all these reasons, the present review petition is dismissed. Miscellaneous applications are accordingly disposed of.

JULY 4, 2023/kr

C. HARI SHANKAR, J.



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