Hindustan Lever Mazdoor Sabha

Vs

Hindustan Lever Ltd. and Another

Civil Appeal No. 8898 of 1996 with Contempt Petition No. 90 of 1996 in Ca No. 1865 of 1982

(Faizanuddin, Kuldip Singh JJ)

29.08.1996

ORDER

1. The appellant filed a complaint in the year 1984 against the respondent-Management complaining unfair labour practices under Item 9 of Schedule IV to the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (hereinafter called "the Act"). The main grievance made in the complaint was that the conditions of service of the field staff were unilaterally altered to their disadvantage by the order of the Management dated 30-6-1975 which was contrary to the settlement reached between the parties in the year 1971. It was further stated that the 1971 settlement was based on an agreement reached between the parties during the year 1957. The main thrust of the complainant was that the unilateral change in the conditions of service by the 1975 order was against the 1971 settlement which was based on the 1957 agreement. The Industrial Court, Maharashtra framed the following 4 issues :

> (1) Does complaint prove that the respondent has committed unfair labour practice under Item 9 of Schedule IV by committing failure to implement settlement, dated 27-1-1971 and the agreement arrived at under the correspondent entered into with the complainant in 1957 ?
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> (2) Whether the case is barred by limitation ?
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> (3) Whether the complaint is barred by principle of res judicata ?
>
> (4) What order ?

2. Issue I was decided against the Management and it was held by the Industrial Tribunal that the field staff was entitled to the benefits accrued to them under the 1971 settlement. The other three issues were also decided against the Management. On Issue 2 the Industrial Tribunal came to the conclusion that the complaint filed by the appellant was within limitation. The conclusion of the Industrial Tribunal is based on the following reasoning :

> "It is significant to note and remember that sometime in the year 1970 the Bombay Centre of the Sabha preferred a charter of demands with the respondent-Company not only pertaining to the members of the Bombay Branch field force but also to the other clerical workmen employed in the respondent-Company's Bombay office establishments which came to be referred to the Industrial Tribunal for adjudication, and the status of the field force came to be, for the first time, disputed by the Company as not being 'workmen' under the provisions of the ID Act, which reference

was to be numbered as Ref. (IT) No. 203 of 1970. The said reference was decided on 6-1-1975. During the pendency of the said reference the respondent-Company entered into All-India settlement on the charter of demands on behalf of the members of the field force, but did not implement the same as far as Bombay Branch field force was concerned since the dispute was pending adjudication before the said Industrial Tribunal. Copy of the said All-India settlement, dated 27-1-1971, in the charter of demands pertaining to the members of the field force all over India is produced at Annexure 'C' to the complaint.

Ref. (IT) No. 203 of 1970 was adjudicated upon against the workmen declaring that they were not 'workmen'. It seems that the said judgment was challenged in the higher courts, but in vain.

It is undisputed that some other developments have taken place after the pronouncement of the order of Industrial Tribunal of Shri M. G. Chitale in January 1975. It is not necessary to refer to the said developments as necessary care in that regard can be taken in the lower part of this order as and when necessary.

However, it is necessary to mention that during the period of all these developments the respondents terminated the services of Sabha's working President without any domestic enquiry. It was challenged before the Delhi Industrial Tribunal. In that proceeding also the management has taken a stand that the reference was not maintainable because the said employee was not a 'workman' under the Industrial Disputes Act. The submissions made by the management found favour with the Tribunal. Being aggrieved and dissatisfied by the said order, the Union had knocked the doors of the Hon'ble Supreme Court by way of writ petition. The Hon'ble Supreme Court decided the said writ petition on 5-1-1984. It has been reported in Workmen v. Hindustan Lever Ltd. [(1984) 1 SCC 728 : 1984 SCC (L&S) 183 : (1984) 1 LLJ 388] While deciding the validity and binding nature of the agreement of 1957, the Hon'ble Supreme Court has made observations that the correspondence, Annexure 'A' to the complaint i.e. letters dated 24-1-1957, 24-4-1957 and 1-5-1957 amounts to agreement. The Hon'ble Supreme Court has condemned the stand taken by the Company for disowning the said agreement. The Hon'ble Supreme Court has observed that no Court of Justice can ever permit such a thing to be done. Necessary care about the contents of the said agreement or correspondence (Annexure 'X') will be taken later on while considering Issue 1.

Suffice to state that even though the Company did not implement the settlement dated 27-1-1971 as far as Bombay Branch field force was concerned on the ground that dispute was pending adjudication before the Industrial Tribunal, and even though Ref. (IT) No. 203 of 1970 was decided against the employees concerned, still the cause of action to claim the implementation of the said agreements or settlement had arisen for the first time after the decision given by the Hon'ble Supreme Court of India in Workmen [(1984) 1 SCC 728 : 1984 SCC (L&S) 183 : (1984) 1 LLJ 388]. Therefore, the complaint filed on 4-4-1984 cannot be said to be barred by limitation at all.

Had the Hon'ble Supreme Court not declared the correspondence (Annexure 'A') to be agreement in between the parties, the controversy about the field force being not

> workmen had already come to an end. But, because of the Supreme Court decision, it had become crystal clear that the stand taken by the Tribunal in Maharashtra, and the Tribunal in Delhi holding the employees of field force not workmen, was not justified. Consequently, the refusal on the part of the employer to implement the settlement dated 27-1-1971 and to give benefits thereunder to the employees of field force situated at Bombay, on the ground that their reference was pending for adjudication before the Industrial Tribunal, is proved to be erroneous. Therefore, the field force employees will be perfectly justified in initiating the present complaint, praying for remedying the wrong committed by the company on certain assumption. Thus it is crystal clear that the right to file the present complaint had accrued in the employees concerned or the complainant Sabha for the first time after the decision was given by the Hon'ble Supreme Court of India on 5-1-1984. In that sense of the matter the present complaint cannot be said to be barred by limitation.
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> Considering the present controversy from another angle, we will find that even otherwise the present complaint cannot be said to be barred by limitation. A valid settlement dated 21-1-1971 had taken place. The management had refused to implement the same in favour of employees of the field force Bombay Branch on one or the other ground. Nor is it found that the said refusal was unjustified, illegal, and unsustainable in law and in fact. Therefore, by refusing to give benefit under the said settlement to the employees concerned, the management went on committing errors everyday. It was a continuous cause of action on the part of the employees to claim benefits thereunder. Hence, the complaint cannot be said to be barred by limitation."

3. The management challenged the order of the Tribunal by way of a writ petition before the Bombay High Court. The High Court upheld the finding of the Tribunal on Issue 1 but despite that allowed the writ petition and set aside the order of the Tribunal on the short ground that the complaint filed by the appellant was barred by limitation. The High Court reached the said finding on the following reasoning.

> "It is evident that there is a delay of more than 12 years and it is also conceded that there was no sufficient explanation for that delay and in Ref (IT) No. 203 of 1970 the main issue, viz., whether the member of the field staff is a workman or not had been agitated and considered by the Tribunal. On a careful reading of the impugned order it can be seen that the Industrial Court was under a misconception that the judgment of the Supreme Court gives a fresh cause of action to the first respondent to make the present complaint. Paragraph 20 of the impugned order reads as follows :
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> 'Suffice to state that even though the Company did not implement the settlement dated 27-1-1971 as far as Bombay Branch field force was concerned on the ground that dispute was pending adjudication before the Industrial Tribunal, and even though Ref. (IT) No. 203 of 1970 was decided against the employees concerned, still the cause of action to claim the implementation of the said agreement or settlement had arisen for the first time after the decision given by the Hon'ble Supreme Court of India in CA No. 1865 of 1982 dated 5-1-1984. Therefore, the complaint filed on 4-4-1984 cannot be said to be barred by limitation at all.
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> Had the Hon'ble Supreme Court not declared the correspondence (Annexure A) to be agreement in between the parties, the controversy about the field force, being not

workmen had already come to an end.'

The judgment of the Supreme Court does not give any cause of action to the first respondent. The Supreme Court only interpreted the three letters and affirmed the rights of the parties emerging from those letters. In other words, the Supreme Court has upheld the view of the first respondent as regards the interpretation of three letters are concerned. Therefore, the observations of the Industrial Court that the Supreme Court judgment gives the first respondent a fresh cause of action cannot be accepted. As we pointed out earlier, the Supreme Court judgment may give some impetus to file the complaint in question before the Industrial Court. It is common knowledge that a judgment of a court will not give a cause of action to a litigant. Cause of action for a litigation arises out of a wrong committed by the opposite party. Moreover, a judgment of a court cannot infuse life to cause of action which was already dead. It is a cardinal principle of law of limitation that once the limitation starts to run nobody can stop it unless and until a competent court stops its running. So also a cause of action once obliterated by operation of law of limitation cannot be rebuilt. In this context we cannot appreciate the finding of the Industrial Court that the non-implementation of a settlement is a continuing process. It is clear from the facts of this case, but for the Chitale's Award and consequent rejection of the SLP by the Supreme Court, perhaps Industrial Court may be right in making such observations. But when a competent court has given a finding, rightly or wrongly, and the parties have accepted it for a long time, one cannot conceive of a position that it is a continuing wrong. In the absence of a valid explanation for keeping the matter in cold storage for 13 years from 1971 to 1984 the present complaint is barred by limitation before the Industrial Court. As observed by the Industrial Court but for the Supreme Court decision the entire matter would have been considered as closed. Merely because Supreme Court has made the observation first respondent cannot have limitation.

As is well known the object of statutes of limitation is founded on public policy. It is to compel the litigants to prosecute their case diligently. Such a policy is necessary to secure quiet and repose of the community. Another consideration is that one should not be complacent on his own rights. The old maxim 'interest reipublicae ut sit finis litium' is quite relevant in these days also. A party who is insensible to his remedies or who does not assert his own claims with promptitude has no right to seek the aid of the State.

When we closely watch the conduct of the first respondent it can be seen that there was no room for any doubt that it has acquiesced on the award of Mr Justice Chitale by keeping silent for a long time. The doctrine of acquiescence is based on the conduct of the parties with knowledge of its legal rights. Acquiescence amounts to absolute or positive waiver of the rights of a person who acquiesced. Though it is quite different from delay or laches, but in the factual context of the case it is very relevant here. If a person having a right, stands by and sees another deal with the right inconsistent with that right and watched it for a considerably long time say, 12 years or more, he cannot afterwards complain. Under Indian Law of Limitation generally even rights over immovable property loses after 12 years where it was not properly exercised. Here the complainant knows that under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices

> Act, 1971, period of 90 days was prescribed for ventilating their grievance. No explanation worth consideration has been put forward by the first respondent. According to us, the Industrial Court committed serious miscarriage of justice in disposing of the issue of limitation. Under the circumstances we have no doubt that the complaint of the first respondent is barred by limitation."

4. We have heard learned counsel for the parties. We are of the view that the High Court was not justified in reversing the finding of the Tribunal on the issue of limitation. It is obvious from the above-quoted reasoning of the High Court that it proceeded primarily on the events which happened during the period from 1975 to 1984. The High Court has taken the history of the events during the said period of about 10 years as the basis for reaching the conclusion that the complaint was barred by limitation. We are of the view that the High Court failed to appreciate the effect of this Court's judgment delivered in the year 1984. The said dismissal (sic decision) gave a fresh cause of action to the complainant to agitate the matter which was unilaterally blocked by the management by its order of June 1975. We have given our thoughtful consideration to the reasoning of the Industrial Tribunal and also that of the High Court. We have no hesitation in holding that we agree with the reasoning of the Industrial Tribunal and we hold that the High Court was not justified in reversing the well-reasoned order of the Tribunal on the issue of limitation.

5. We allow the appeal, set aside the judgment of the High Court and restore that of the Industrial Tribunal. We leave the parties to bear their own costs.

6. The contempt petition is dismissed as not pressed.