

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.01.2016

Delivered on : 12.01.2016

Coram:

THE HONOURABLE Mr.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

Writ Appeal (MD) No.1122 of 2015

and

M.P.(MD)Nos.1 and 2 of 2015

S.Ramesh, General Secretary,
Cethar Vessels Thozhilalar Sangam,
No.74-A, Maris Nagar, Muthu Post,
Kulathur Taluk,
Pudukottai-622 515.

...

Appellant/4th Respondent

vs.

1.M/s.Cethar Ltd.,
rep.by its Managing Director N.K.Pothiraj,
No.4, Dindigul Road, Trichy-1.

...

Respondent-1/Writ Petitioner

2.The District Collector,
Pudukottai District, Pudukkottai.

3.The Superintendent of Police,
Pudukottai District, Pudukkottai.

4.The Inspector of Police,
Mathur Police Station,
Pudukkottai District.

...

Respondents 2 to 4/Respondents 1
to 3

5.Selvaraj, General Secretary,
Center of Indian Trade Unions (CITU),
8, Ayyanarpuram 3rd Street,
Pudukottai-622 001.

6.India Bharat Energy (UTKAL) Ltd.,

rep.by its President MNV Sudhakar ... Respondents-5&6/Respondent-

Writ Appeal filed under Clause 15 of Letters Patent, against the order, dated 16.10.2015, made in W.P.(MD)No.10685 of 2015.

For Appellant	: Mr.V.Prakash, Senior counsel for Mrs.Lakshi Gopinathan.
For Respondent-1	: Mr.K.Govindarajan for Mr.T.Antony Arul Raj
For Respondents 2 to 4	: Mr.N.Manoharan, Spl.Govt.Pleader.

JUDGMENT

V.RAMASUBRAMANIAN,J

The writ appeal arises out of an order passed by a learned Single Judge in a writ petition filed by the Management of a Company, seeking a mandamus to provide police protection for the removal of the goods from their factory premises, which is under lockout.

2. We have heard Mr.V.Prakash, learned senior counsel appearing on behalf of Mrs.Lakshmi Gopinathan, learned counsel for the appellant and Mr.K.Govindarajan, learned counsel appearing for the first respondent and Mr.N.Manoharan, learned Special Government Pleader appearing for respondents 2 to 4.

3. The appellant is the General Secretary of the Trade Union of Workers, employed in the first respondent Company. The first respondent filed an application with the Government for permission to layoff. But, by G.O.Ms.No.85, dated 04.08.2014, the request for layoff was turned down

by the Government.

4. Thereafter, the management failed to pay salary to the workers from January, 2015. Hence, the workers started staging a protest inside the factory premises.

5. In a peace committee meeting held on 17.03.2015, the management agreed to pay salary to the workers. However, the salary for January, 2015 alone was paid.

6. Thereafter, the management declared a lockout on 4.04.2015. The appellant union raised an Industrial Dispute on 06.04.2015, claiming that the lockout was illegal. The Deputy Commissioner of Labour, Trichy, initiated conciliation proceedings, but the same ended in failure.

7. Thereafter, the first respondent management gave a representation on 17.06.2015, seeking police protection for the removal of the goods on the ground that the goods belonged to their customers. Within a week of giving such a representation, the management came up with a writ petition in W.P.(MD)No.10685 of 2015 seeking the issue of a writ of mandamus to direct the police to provide protection to enable them to remove the materials.

8. Unfortunately, the management did not implead the trade union as a party to the writ petition, though the grant of the relief prayed for in the writ petition would have been to the detriment of the workers. But, fortunately, the General Secretaries of two trade unions filed applications in M.P.(MD)no.1 of 2015 and got impleaded as respondents 4 and 5. Thereafter, one of the customers of the first respondent

management also got impleaded as the 6th respondent to the writ petition.

9. On 21.07.2015, a learned Judge of this Court passed an interim order appointing an Advocate Commissioner to take an inventory of the raw materials and to hand-over the raw materials to the suppliers of the first respondent management. But, this order was passed on the basis of an undertaking that arrears of salary would be paid.

10. However, the Advocate commissioner filed a Report on 07.08.2015 indicating that out of the four customers of the first respondent management, only one was present during the inspection and that even the said customer did not bring the amount payable to the first respondent company. There was also a dispute as to whether the material lying in the premises were raw materials or not. But, the company, which was impleaded as the 6th respondent to the writ petition came up with a demand draft for a sum of Rs.14,25,027/- as the value of their goods, which they wanted to remove.

11. On the basis of the said Report, another interim order was passed on 03.09.2015, directing the Advocate Commissioner to assess the value of the materials found in the factory premises of the first respondent company, with the help of experts from BHEL. A further direction was issued to the Advocate Commissioner to deposit the demand drafts collected from the suppliers with this Court. The Registry was directed to deposit the same in fixed deposit.

12. Thereafter, the Advocate Commissioner deposited four

demand drafts of the total value of Rs.61,82,321.00, with the Indian Bank, High Court Branch. He also made an attempt to make a second inspection. But, he was requested by the counsel for the first respondent company not to proceed with the inspection, in view of the subsequent development that had allegedly taken place. BHEL also did not depute any expert to assist the Advocate commissioner in valuing goods. Therefore, the Advocate commissioner filed a Report on 22.09.2015. Thereafter, the writ petition was taken up by a learned Judge and was allowed, by a final order dated 16.10.2015, subject to the condition that the total amount of around Rs.80,00,000/-, available partly with the Indian Bank and available partly with the Advocate commissioner shall be disbursed to the 130 permanent employees of the company with the assistance of the learned counsel for the Union. The learned Judge held that the workers have no right to take the law into their hands and obstruct the goods being taken out, thereby infringing the rights of third party customers. In that view, the learned Judge directed the police to give protection to the management to remove the materials. Aggrieved by the said order, the Trade Union has come up with the above appeal.

13. Two paragraphs of the order of the learned Judge, which contain its operative portion, read as follows:

"18.The products in the custody of the company is stated to be the product of the customers, who have placed orders. Whether it is the product of the company or the product of the customers, the employees have no right to obstruct the products being taken out from the

premises of the company, more especially when the claim for salary has been settled as agreed to by the petitioner.

19. There is no undertaking on the part of the employees that the employees will not interfere, if the products are taken out. The respondent only insisted upon the valuation to be done by the Commissioner. They respondents have no right to take the law into their hand and obstruct the products being taken out, which would affect the rights of the third party customers. Under such circumstances, the respondents 1 to 3 are directed to render sufficient police protection to the petitioner to remove the material from the premises as stated in the petition."

14. But, what is stated in the above paragraphs does not reflect the correct position in law. As rightly contended by Mr.V.Prakash, learned senior counsel for the appellant, strike is a weapon in the hands of the workers and lockout is a corresponding weapon in the hands of the management. The validity of the lockout is in question in an industrial dispute and the conciliation proceedings have already failed. In such circumstances, the management does not have an absolute right to take away all the materials. After all, any product manufactured in a factory has several inputs such as capital, labour, raw materials and services rendered by various parties. When the salary payable to the workers has not been paid, even for the period immediately preceding the date of the lockout, the management cannot claim any absolute right to take away the goods. As a matter of fact, even when companies go into liquidation, the dues payable to the workers is granted a *pari passu* charge in terms

of Section 529-A of the Companies Act, 1956. Therefore, the statement of law in paragraphs 18 and 19 of the impugned order of the learned Judge may not be fully correct.

15. Mr.V.Prakash, learned senior counsel appearing for the appellant is right in contending that the management did not come to court with clean hands. In the first instance, the management attempted to get an order behind the back of the workmen, even though the workmen had raised an industrial dispute with regard to the lockout. Fortunately, the workers got themselves impleaded. In the second instance, the management did not allow the interim directions issued by the learned Single Judge to the Advocate Commissioner to work themselves out. The warrant to the Advocate commissioner could not be fully executed, as the management did not allow the Advocate Commissioner to proceed, on the ground that certain developments had taken place. Therefore, the management was not entitled to the equitable relief under Article 226 of the Constitution of India. Hence, the writ appeal deserves to be allowed and the order of the learned Single Judge is liable to be set aside.

16. But, before we do that, we must address ourselves to one question. An amount of around Rs.80,00,000/- (Rupees eighty lakhs) payable to the workers is now lying in deposit. Admittedly, this represents the salary payable by the management to the workers for the months of February and March, 2015. The lockout was declared only on 04.04.2015. Therefore, this amount now lying in fixed deposit is an

undisputed amount, payable without any valid objection to the workers. The payment of this amount would not even depend upon the outcome of the industrial dispute, as the same represents the wages for the period prior to the lockout. As a matter of fact, the management is liable for prosecution under the provisions of the Payment of Wages Act, for non-payment of the salary for February and March, 2015.

17. In any case, the management has removed part of the goods on the basis of the interim orders passed by the learned Single Judge while appointing an Advocate Commissioner. Therefore, the management cannot any more lay a claim for an amount of around Rs.80,00,000/- now lying in fixed deposit, as it represents not only the salary payable to the workers for the undisputed period but also represents the value of the goods removed, pursuant to the interim orders passed by the learned Single Judge. It is needless to point out that a person who enjoyed the benefit of an interim order, is liable to compensate the other party, when the main case is decided against him. Moreover, it was a conditional order in this case.

18. Therefore, the writ appeal is disposed of to the following effect.

(i) The order of the learned Judge in W.P.(MD)No.10685 of 2015, dated 16.10.2015, is set aside.

(ii) The Advocate Commissioner appointed by the learned Judge during the pendency of the writ proceedings shall stand discharged. He shall be paid an additional amount of Rs.25,000/- by the first

respondent /writ petitioner.

(iii) The amount of around Rs.80,00,000/- together with interest lying thereon shall be disbursed to the workmen by the Deputy Registrar (Administration) of this Court upon the filing of a claim by each of the individual workman with the Deputy Registrar (Administration). The claim filed by each of the workmen shall be certified by Mrs.Lakshmi Gopinathan, learned counsel appearing for the Trade Union. Claim Forms shall be filed within two weeks from the date of receipt of a copy of this order. The disbursement shall be made within two weeks from the date of expiry of the period stipulated for the workmen to file claim form.

(iv) All other issues relating to validity of lock out etc., are left open to be decided by the labour court.

No costs. Connected miscellaneous petitions are closed.

Index:yes/no
Internet:yes/no
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(V.R.S.,J) (N.K.K.,J)
12.01.2016

To:

- 1.The District Collector,
Pudukottai District, Pudukkottai.
- 2.The Superintendent of Police,
Pudukottai District, Pudukkottai.
- 3.The Inspector of Police,
Mathur Police Station,
Pudukkottai District.

V.RAMASUBRAMANIAN,J
and
N.KIRUBAKARAN,J

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Judgment in
W.A.(MD)No.1122/2015 &
MP(MD)Nos.1&2 of 2015

Dated:12.01.2016