AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.5068 of 2008

1. The Himalaya Drugs Company Trademark / Registered Trade Mark- M.M.I. Corporation Licence Users, the Himalaya Drugs Company, Head Office Bangalore.

2. Philip Hedan, Managing Director, The Himalaya Drugs Company, Makali, Bangalore.

3. Rakesh Kumar Vachher, Zonal Manager of The Himalaya Drugs Company, 43 W, Duplex, Near Nanda Nagar Church, Indore, At present 6 Madhav Residency, Gaikwad Nagar, Aundh, Pune (M.H.)

4. Sandeep Akolekar, RM of The Himalaya Drugs Company, MIG-2, Shaker Nagar, Raipur.

(Non-applicants)
---- Petitioners

Versus

Shalaj Nathaniel, aged about 37 years, S/o Shanel Nathaniel, R/o Civil Lines, School Compound, Tahsil and Distt. Bilaspur.

(Applicant)
---- Respondent

For Petitioners: Mr. Parag Kotecha, Advocate.
For Respondent: Mr. Harsh Wardhan, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/02/2017

1. Invoking the jurisdiction of this Court under Article 227 of the Constitution of India, the petitioners herein who are a pharmaceutical industry and its officers have questioned the order dated 4-3-2008 passed by the Labour Court, Bilaspur by which the Labour Court has declined to adjudicate the

preliminary objection and directed it to be adjudicated at the time of final hearing and further, questioned the order dated 14-7-2008 by which the application under Order 14 Rule 5 of the CPC for framing additional issue, has been rejected finding no merit.

2. Mr. Parag Kotecha, learned counsel for the petitioners, would submit that the orders passed by the Labour Court rejecting the application for preliminary objection as well as rejecting the application for framing additional issue, are unjustified, as the respondent is not Medical Representative and is not workman, as such duly covered by the decision rendered by the Supreme Court in the matter of **H.R. Adyanthaya etc. etc. v. Sandoz (India) Ltd. etc. etc.**[1]. Therefore, the impugned orders be set aside and the matter be remitted to the trial Court for framing issue and deciding that issue as preliminary issue.

3. Mr. Harsh Wardhan, learned counsel for the respondent, however, would support the impugned orders.

4. I have heard learned counsel for the parties and considered their rival submissions and also gone through the documents available on record with utmost circumspection.

5. The appropriate Government finding the industrial dispute between the workman and the employer, by its order dated 9-1-2007 directed the dispute to be adjudicated by the Labour Court and referred the question as to whether it is legal and

1 AIR 1994 SC 2608

appropriate to suspend the services of respondent workman Shalaj Nathaniel without giving compensation and prior notice and if not, then what help the individual must liable to get and what direction should be given to the employer in this respect.

6. The petitioner employer filed statement of claim and thereafter, during the pendency of said dispute made an amendment incorporating para 8(a) in its statement of claim that the petitioner is a pharmaceutical industry and the respondent was employed as sales promotion employee and in that case, the Sales Promotion Employees (Conditions of Service) Act, 1976 is applicable and therefore, the case is not maintainable and deserves to be dismissed. Immediately thereafter, the petitioner Company also filed a preliminary objection on 10-12-2007 that the objection is not maintainable and therefore suspending the preliminary objection the case be closed and also filed an application under Order 14 Rule 5 of the CPC for faming the issue as to whether the respondent is a workman under the Industrial Disputes Act, 1947 and whether the application is barred by law.

7. The Labour Court by its impugned orders rejected both the applications finding no merit holding that in the schedule referred by the appropriate Government the question is already covered by the dispute referred by the appropriate Government and there is no need to frame additional issue against which this writ petition has been preferred.

8. At this stage, it would be appropriate to notice the object of the Industrial Disputes Act, 1947 for which it is enacted as highlighted by Their Lordships of the Supreme Court in the matter of **S.K. Verma v. Mahesh Chandra and another**[2] as follows: -

> "5. It is trite to say that Industrial Disputes Act is a legislation intended to bring about peace and harmony between labour and management in all industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of 'industry', 'workman', 'industrial dispute', etc. so as not to whittle down, but to advance the object of the Act. Disputes between the forces of labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act. The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all. In Workmen v. Indian Standards Institution[3], this Court had occasion to point out: (SCC para 1, p. 851)
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> > "..., it is necessary to remember that the Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony between management and labour in an 'industry' so that production does not suffer and at the same time, labour is not exploited and discontended and, therefore, the tests must be so applied as to give the widest possible connotation to the term 'industry'. Whenever a question arises whether a particular concern is an 'industry', the approach must be broad and liberal and not rigid or doctrinaire. We cannot forget that it is a social welfare legislation we are interpreting and we must place such an interpretation as would advance the object and

2 (1983) 4 SCC 214
3 AIR 1976 SC 145 : (1975) 2 SCC 847

> purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective."
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> So we adopt a pragmatic and a pedantic approach and we proceed, in considering the question whether development officers in the Life Insurance Corporation are workmen, to first consider the broad question on which side of the line they fall, labour or management and then to consider whether there are any good reasons for moving them over from one side to the other."

9. In the instant case, undisputedly, the Labour Court has initiated proceedings on reference made by the appropriate Government under Section 10 of the Industrial Disputes Act, 1947. Thereafter, the petitioner employer and the respondent employee, both, filed their pleadings and evidence has also started in which it is the case of the claimant that after taking 23 adjournments, the petitioner has not cross-examined the workman and is trying to delay the proceeding and filed this application.

10. Reference under Section 10 of the Industrial Disputes Act, 1947 will be decided as per procedure under Rule 10B of the Industrial Disputes (Central) Rules, 1957. The relevant rules are sub-rules (4) and (5) of Rule 10B of the Industrial Disputes (Central) Rules, 1957 which read as under: -

> "(4) The party raising a dispute may submit a rejoinder if it chooses to do so, to the written statement(s) by the appropriate party or parties within a period of fifteen days from the filing of written statement by the latter.
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> (5) The Labour Court, Tribunal or National Tribunal, as the case may be, shall fix a date for evidence

> within one month from the date of receipt of the statements, documents, list of witnesses, etc., which shall be ordinarily within sixty days of the date on which the dispute was referred for adjudication."

11. The aforesaid Rules clearly do not provide framing of issue but immediately, after filing of return and rejoinder the Court has to record evidence as enumerated in sub-rule (5) of Rule 10B of the Rules of 1957 and as such, framing of issue like in a civil suit which is governed by the Code of Civil Procedure, 1908, is not required but in some cases for the convenience of the parties, the Labour Courts do frame the issues so that parties may understand the issues involving in the case. But there is no specific provision for framing issues like Order 14 of the CPC.

12. So no issue is required to be framed and all the issues have to be decided finally at the conclusion of trying and resolving the dispute. Since no issue is required to be framed as per the Industrial Disputes Act, 1947 and the Rules made thereunder, the Labour Court is absolutely justified in not framing issue on the application filed by the petitioners. Even in a suit, if there are several issues and preliminary issue cannot be decided without recording the evidence, then it ought to have been decided along with other issues. (See Full Bench decision of the M.P. High Court in the matter of **R. Umraomal v. P. Jagannath**[4].)

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4 1979 MPLJ 736 : 1979 JLJ 720

13. The attitude of the employer to protract the Industrial Disputes Act, 1947 in the name of preliminary issue has been considered by the Supreme Court way back in the year 1983 in the matter of **D.P. Maheshwari v. Delhi Administration and others**[5] and it has been observed pertinently by the Supreme Court the attitude of the employer in para 1 as under: -

> "It was just the other day[6] that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tibunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision

5 (1983) 4 SCC 293
6 See (1983) 4 SCC 214

on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

14. Likewise, in **S.K. Verma** (supra), the Supreme Court has clearly held that raising of preliminary objection is fashion on the part of the employer by observing as under: -

"2. There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt

> to avoid adjudication or to indulge in luxurious litigation and drag workmen from court to court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporation will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures."

15. The Supreme Court in the matter of **Ramesh Chandra Sankla and others v. Vikram Cement and others**[7] quoted the decisions rendered by it in **D.P. Maheshwari** (supra) and **S.K. Verma** (supra) with approval and also relied upon the matter of **National Council for Cement & Building Materials v. State of Haryana**[8] wherein Their Lordships have deprecated the practice of the management to raise preliminary issues with a view to delay adjudication of industrial disputes, and held in paragraphs 75, 76, 77 and 79 as under: -

> "75. In our considered opinion, in the present case, it cannot be said that the courts below have committed any error of jurisdiction in not deciding the issue as to the maintainability of claim petitions as preliminary issue. It is well settled that *generally*, all issues arising in a suit or proceeding should be tried together and a judgment should be pronounced on those issues. Before more than hundred years, the Privy Council in *Tarakant Bannerjee v. Puddomoney Dossee*[9] favoured this approach. Speaking for the Judicial Committee, Lord Turner stated: (Moo IA p. 488)
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> > "... The courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a

7 (2008) 14 SCC 58
8 (1996) 3 SCC 206
9 (1866) 10 Moo IA 476

second appeal as well as that of another hearing below. *It is much to be desired, therefore, that in appealable cases the courts below should, as far as may be practicable, pronounce their opinions on all the important points.*"

(emphasis supplied)

The above principle has been consistently followed.

76. This Court dealing with the provisions of Order 14 Rule 2 (prior to the Amendment Act of 1976) in Major S.S. Khanna v. Brig. F.J. Dillon[10], stated: (AIR pp. 502-03, para 18)

"18. ... Under Order 14 Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the curt the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit."

(emphasis supplied)

77. The Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order 14 (before the amendment), the Commission stated:

"This Rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue, the decision of the court on that issue is reversed, the case has to be remanded to the court of first instance for trial on the other issues.

10 AIR 1964 SC 497 : (1964) 4 SCR 409

> This causes delay. It is considered that this delay should be eliminated, by providing that a court must give judgment on all issues, excepting, of course, where the court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force."
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> (emphasis supplied)

> 79. In the case on hand, the contention of the workmen is that the acceptance of the scheme was not with free consent, and even otherwise they were not given all the benefits to which they were entitled under the scheme. Therefore, they continued to remain employees of the Company. The Labour Court felt that the controversy raised by the workmen can only be decided in the light of the evidence before it. The said decision has been confirmed by the Industrial Court as well as by the learned Single Judge. We find no illegality in this approach which deserves interference under Article 136 of the Constitution. We, therefore, see no substance in the contention of the Company."

16. Their Lordships finally held in paragraph 78 that the provisions of the Code do not *stricto sensu* apply to "industrial adjudication", even under the Code, after the Amendment Act, 1976, the normal rule is to decide all the issues together in a civil suit.

17. Thus, in view of the aforesaid analysis, the Labour Court is absolutely justified in rejecting the application for deciding preliminary objection as preliminary issue and in non-framing of issue, and it is wholly unjustified on the part of the petitioner employer to delay the adjudication of industrial dispute which it has partly succeeded, as the reference was made by the appropriate Government to the Labour Court to resolve the industrial dispute as back as on 9-1-2007 and after ten years,

there is no substantial progress in the trial. Accordingly, the writ petition is devoid of merit. Since the matter is pending since 12-3-2007, the Labour Court is directed to conclude the hearing and decide it finally within a period of three months from the date of appearance of the parties before it on 27-2-2016. If required, day-to-day hearing will be held because the matter is pending before the Labour Court since long.

18. With the aforesaid observation and direction, the writ petition stands dismissed. No order as to cost(s).

19. The Registrar (Judicial) is directed to circulate a copy of this order to all the presiding officers of Labour Courts within the State for needful compliance and to see that industrial dispute referred by appropriate Government is decided expeditiously, keeping in view the observations made herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

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HEAD NOTE

Provisions of the Code of Civil Procedure do not *stricto sensu* apply to “industrial adjudication”.

सिविल प्रक्रिया संहिता के प्रावधान औद्योगिक न्यायनिर्णयन में सख्ती पूर्वक से लागू नहीं होंगे।