AHMEDABAD MANUFACTURING & CALICO PRINTING CO. LTD.

v.

WORKMEN & ANR.

March 12, 1981

[A.D. KOSHAL AND R.B. MISRA, JJ.]

Special leave petition allowed to be withdrawn unconditionally—Whether amounts to a dismissal and, therefore, a bar to entertain a fresh petition under Article 226 of the Constitution on the same facts and grounds taken in the special leave petition.

The Industrial Tribunal, Ahmedabad, on a dispute referred to it under section 10(2) of the Industrial Disputes Act, 1947 took up for consideration four demands for basic wages and adjustment, dearness allowance, gratuity and retrospectivity of the demands of the workmen. The Tribunal gave its award on 30th of November 1971 which was published on 20th January, 1972 in the Maharashtra Government Gazette.

The appellant company, feeling aggrieved by the award, filed in the Supreme Court a petition for special leave to appeal under Article 136 of the Constitution. Pursuant to a notice, the respondent workmen put in appearance and filed a counter affidavit. After some arguments the appellant Company at its request was permitted to withdraw the leave petition as per the order of the Court dated 21st of August, 1972 which reads : "Upon hearing counsel the Court allowed the special leave petition to be withdrawn". Four days thereafter the company filed a petition under Article 226 of the Constitution before the High Court challenging the award. The petition was virtually based on the same facts and grounds as were taken in the special leave petition before the Supreme Court. The learned single Judge who heard the petition determined the circumstances on the basis of the respective affidavits filed by the parties in which the company unconditionally withdrew its special leave petition and in view of those circumtsances equated the withdrawal of the leave petition with the dismissal of the same. Relying on *Vasant Vithal Palse and Ors.* v. *The Indian Hume Pipe Co. Ltd. and Anr.* [1970] 2 LLJ 328, a decision of that court, the learned Judge dismissed the writ petition *in limine*. A Letters Patent Appeal against the said order of dismissal also met the same fate. However, a petition under Article 133 of the Constitution for a certificate of fitness to appeal to the Supreme Court was accepted by the said Division Bench and a certificate was granted and hence the appeal.

Allowing the appeal, the Court

HELD : 1. Permission to withdraw a special leave petition cannot be equated with an order of dismissal. If a non-speaking order of dismissal cannot operate as *res judicata* for entertaining a fresh writ petition on the same facts and grounds taken in the special leave petition, an order permitting the withdrawal of the writ petition for the same reason cannot so operate. [219B,222C-D]

A *Workmen of Cochin Port Trust* v. *Board of Trustees of Cochin Port Trust and Anr.*, [1978][3 SCR 971, followed.

Punjab Beverages Pvt. Ltd. v. *Suresh Chand and Anr.*, [1978] 3 SCR 370; *Hoshnak Singh* v. *Union of India and Ors.*, [1979] 3 SCR 399; *Daryao and Ors.* v. *The State of U.P. and Ors.*, [1962] 1 SCR 574, discussed.

B *Vasant Vithal Palse and Ors,* v *The Indian Hume Pipe Co. Ltd. and Anr.*, [1970] 2 LLJ 328; *Management of Western India Match Co. Ltd., Madras* v. *The Industrial Tribunul, Madras and Anr.* A.I.R. 1958 Mad. 398, distinguished.

2. The order of a court has to be read as it is. If the Supreme Court intended to dismiss the petition at the threshold. it could have said so explicitly. In the absence of any indication in the order itself, it will not be proper to enter C into the arena of conjecture and to come to a conclusion on the basis of extraneous evidence that the Supreme Court intended to reject the leave petition. If the Order of the Supreme Court is read as it is there is not the slightest doubt that the Supreme Court had allowed the company to withdraw the leave petition, in the instant case. The approach of the High Court in having perused the affidavits filed by the parties to know the circumstances under which the leave petition was withdrawn is not correct. [217 C-D]

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1678 of 1973.

From the Judgment and Order dated 4.7.1973 of the Bombay High Court in Appeal No. 142/72.

E *F. S. Nariman, Y. S. Chitale, O. C. Mathur, K. J. John, Sri Narain, Narayan B. Shetya* and *M. Mudgal* for the Appellant.

F. D. Damania, B. R. Agarwala and *P. G. Gokhale* for Respondents 1-2.

F *M. K. Ramamurthy* and *Jatinder Sharma* for Respondent 3.

Janardhan Sharma for the Interveners.

The Judgment of the Court was delivered by

G MISRA, J. The present appeal by certificate is directed against the judgment dated 4th of July, 1973 of the High Court of Bombay in a Letters Patent Appeal arising out of a petition under Article 226 of the Constitution.

The facts leading up to this appeal lie in a narrow compass. H The appellant—the Ahmedabad Manufacturing and Calico Printing Co. Ltd. (hereinafter called the Company)—is predominantly a textile manufacturer but has also factories in Bombay manufacturing

heavy chemicals and engages about 750 workmen in three such factories. A dispute arose between the Company and the said workmen in respect of seventeen demands raised by them through their union. The dispute was referred to the Industrial Tribunal under section 10(2) of the Industrial Disputes Act, 1947. Out of the demands of the workmen the Tribunal took up for consideration only four demands, that is, demands Nos. 1, 2, 15 and 16 respectively for basic wages and adjustment, dearness allowance, gratuity and retrospective effect of the demands. The Tribunal gave its award on 30th of November 1971 and sent a copy thereof to the parties. The award was published on 20th of January, 1972 in the Maharashtra Government Gazette. Under the rules it was to be effective after one month of its publication in the Gazette.

A B C

The Company, feeling aggrieved by the award, filed with this Court a petition for special leave to appeal under Article 136 of the Constitution (the leave petition, for short). Pursuant to a notice, the respondent union put in appearance and filed a counter affidavit. It appears that after some arguments the appellant chose to withdraw the leave petition. As much turns upon the order of this Court dated 21st of August, 1972 permitting withdrawal, it would be appropriate to quote the same :

D

> "Upon hearing counsel the Court allowed the special leave petition to be withdrawn."

E

Four days thereafter the Company filed a petition under Article 226 of the Constitution before the High Court challenging the award. That petition was virtually based on the same facts and grounds as were taken in the leave petition before this Court. The respondent union appeared and filed a counter affidavit urging that the petition be dismissed *in limine*. A rejoinder affidavit was filed on behalf of the Company.

F

On the date of hearing three preliminary objections were raised on behalf of the union respondent. In the present appeal we are, however, concerned only with one of them, namely, that the High Court should not exercise discretion in granting relief to the Company under Article 226 of the Constitution, after the withdrawal of the leave position unconditionally.

G

This objection prevailed with the High Court. The learned Single Judge determined the circumstances on the basis of the respective affidavits filed by the parties, in which the Company

H

A unconditionally withdrew its leave petition and in view of those circumstances he equated the withdrawal of the leave petition with the dismissal of the same. Relying on *Vasant Vithal Palse and Ors.* v. *The Indian Hume Pipe Co. Ltd. and Anr.*(1) he held that it was not a fit case for exercise of the Court's discretionary power to admit the writ petition and accordingly dismissed the same *in limine.*

B

The Company filed a Letters Patent Appeal but the Division Bench dismissed the same and confirmed the order of the learned Single Judge. The preliminary objection which weighed with the High Court was repeated on behalf of the union respondent before the Division Bench in appeal with two contentions : (1) the uncon-
C ditional withdrawal by the Company of its leave petition in the circumstances found by the learned Single Judge is a bar to the competence of the Court to entertain the petition under Article 226 of the Constitution. In other words, the High Court has no jurisdiction to grant *rule nisi* under Article 226 in view of the withdrawal of the petition under Article 136 of the Constitution; (2) The learned
D Single Judge has rightly dismissed the petition *in limine* under Article 226 of the Constitution in the exercise of his discretion on the ground that the leave petition based on the same contention was unconditionally withdrawn. Although the Division Bench discussed the first contention but refused to decide it as it was taken for the
E first time before it in appeal. The second contention was, however, accepted by the Division Bench. The High Court did not consider the other cases cited on behalf of the Company as it thought that the point in question was concluded by a Division Bench of that Court in *Vasant Vithal Palse's case* (supra). The Company thereafter moved a petition under Article 133 of the Constitution for a
F certificate of fitness to appeal to the Supreme Court which was granted by the High Court and this is how the present appeal comes before us.

Two questions arise for consideration in this appeal :(1) Whether unconditional withdrawal of the leave petition would amount to its
G dismissal ? (2) If so, what would be its impact on the petition under article 226 of the Constitution ?

It was contended for the appellant that the order of this Court permitting the appellant to withdraw the leave petition
H should be read as it is and that so read the order only means that

(1) [1970] 2 L.L.J. 328.

the Company had withdrawn the leave petition. It was urged that the mere fact that the appellant chose to withdraw the leave petition after some arguments will not alter the nature of the order and that by no stretch of imagination can it be said that the leave petition had been dismissed by this Court. It may be, it was argued that the Company chose to withdraw the leave petition on the ground that this Court was not favourably inclined to grant it or that the Company chose to avail of a better remedy before the High Court under Article 226 of the Constitution, which had a wider scope.

The High Court perused the affidavits filed by the parties to know the circumstances under which the leave petition was withdrawn, but in our opinion that is not a correct approach. The order of a Court has to be read as it is. If this Court intended to dismiss the petition at the threshold, it could have said so explicitly. In the absence of any indication in the order itself, it will not be proper to enter into the arena of conjecture and to come to a conclusion on the basis of extraneous evidence that this Court intended to rejeet the leave petition. If the Order of this Court is read as it is there is not the slightest doubt that this Court had allowed the Company to withdraw the leave petition, and if that be so, it would be idle to argue that the leave petition had been dismissed at the threshold.

Reliance was placed on behalf of the appellant on *Workmen of Cochin Port Trust* v. *Board of Trustees of the Cochin Port Trust & Anr.*(1) In that case a special leave petition had been dismissed *in limine* with a non-speaking order. This Court dealing with the impact of that order observed as follows :

> "If by any judgment or order any matter in issue has been directly and explicitly decided the decision operates as *res judicata* and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of *res judicata* also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of *res judicata* on that issue is directly applicable."

(1) [1978] 3 S.C.R. 971.

A Then the Court proceeded to consider whether the matter in issue has been either explicitly or implicitly decided. Dealing with that aspect of the matter the Court further observed :

> "Indisputably nothing was expressly decided. The effect of a non-speaking order of dismissal without anything more
B indicating the grounds or reasons of its dismissal must by necessary implication, be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any
C interference. But since the order is not a speaking order, one finds it difficult to accept the argument put forward on behalf of the appellants that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award. A writ proceeding is a different proceeding. Whatever can be held to have been decided expressly, impli-
D citly or even constructively while dismissing the special leave petition cannot be re-opened. But the technical rule of *res judicata*, although a wholesome rule based on public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to
E extend the principle of *res judicata* to such an extent so as to found it on mere guesswork....If the writ petition is dismissed by a speaking order either at the threshold or after contest, say, only on the ground of laches or the availability of an alternative remedy, then another remedy open in law either by way of suit or any other proceeding obviously will not be
F barred on the principle of *res judicata*. Of course, a second writ petition on the same cause of action either filed in the same High Court or in another will not be maintainable because the dismissal of one petition will operate as a bar in the entertainment of another writ petition. Similarly even if
G one writ petition is dismissed *in limine* by a non-speaking order 'dismissed', another writ petition would not be maintainable because even the one-word order, as we have indicated above, must necessarily be taken to have decided impliedly that the case is not a fit one for exercise of the writ jurisdiction of the
H High Court. Another writ petition from the same order or decision will not lie. But the position is substantially different when a writ petition is dismissed either at the threshold or

after contest without expressing any opinion on the merits of the matter; then no merit can be deemed to have been necessarily and impliedly decided and any other remedy of suit or other proceeding will not be barred on the principle of *res judicata*."

If a non-speaking order of dismissal cannot operate as *res judicata*, an order permitting the withdrawal of the leave petition for the same reason cannot so operate. The case in hand stands on a still better footing than the case of *Workmen of Cochin Port Trust* (supra).

Next reliance was placed on *Punjab Beverages Pvt. Ltd.* v. *Suresh Chand & Anr.*(1) In that case one of the contentions raised was that no application for approval was made by the appellant to the Industrial Tribunal and that there was thus contravention of section 33 (2) (b) of the Industrial Disputes Act, 1947. An application for approval was in fact made under section 33 (2) (b), but that was withdrawn and the argument advanced was that the withdrawal was tantamount to refusal of approval, that the ban imposed by section 33 (2) (b), therefore, continued to operate and that the order of dismissal passed by the appellant was void and inoperative. The contention was, however, repelled and this Court observed :

"Where, however, the application for approval under section 33 (2) (b) is withdrawn by the employer and there is no decision on it on merits, it is difficult to see how it can be said that the approval has been refused by the Tribunal. The Tribunal having had no occasion to consider the application on merits there can be no question of the Tribunal refusing approval to the employer. It cannot be said that where the application for approval is withdrawn, there is a decision by the Tribunal to refuse to lift the ban. The withdrawal of the application for approval stands on the same footing as if no application under section 33 (2) (b) has been made at all."

In *Hoshnak Singh* v. *Union of India & Ors.*(2) an earlier petition was dismissed by a non-speaking one word order 'dismissed'. A second petition after pursuing the alternative remedy was filed. A question arose whether the same would be barred by the principles analogous to *res judicata*. This Court held that the second petition would not be so barred because the cause of action was entirely

(1) [1978] 3 S.C.R. 370.
(2) [1979] 3 S.C.R. 399.

different and the dismissal could not stand in the way of the petitioner invoking the jurisdiction of the High Court under Article 226 of the Constitution.

Reliance was next placed on *Daryao & Ors.* v. *The State of U.P. & Ors.*(1) In that case the previous petition for a writ filed by the petitioner before the High Court was withdrawn. The High Court, therefore, dismissed the said petition with the express observation that the merits had not been considered by the High Court in dismissing it and that, therefore, no order as to costs was passed. It was held by this Court that the order dismissing the writ petition as withdrawn could not constitute a bar of *res judicata.*

Counsel for the respondent union has contended that the order of rejection may be either explicit or implicit and that it can be shown from the circumstances of the present case that the leave petition was withdrawn only after full arguments when the appellant found that this Court was not favourably inclined to grant it. In these circumstances it is argued that the order of withdrawal would amount to the dismissal of the leave petition and that in this view of the matter the High Court in the sound exercise of its discretion was justified in dismissing the writ petition *in limine.* In support of this contention the learned counsel relied upon *Shankar Ramchandra Abhyankar* v. *Krishnaji Dattatreya Bapat.*(2) In that case the respondent first filed a revision under section 115 of the Code of Civil Procedure. The revision was, however, dismissed. Thereupon the respondent moved a petition under Articles 226 and 227 of the Constitution challenging the same order of the appellate court. The High Court held that in spite of the dismissal of the revision petition, it could interfere under Articles 226 and 227 of the Constitution on a proper case being made out. This Court, however, reversed the order of the High Court holding that even on the assumption that the order of the appellate court had not merged in the order of the Single Judge who had disposed of the revision petition, a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under section 115 of the Code of Civil Procedure and that if there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of

(1) [1962] 1 S.C.R. 574.
(2) [1970] 1 S.C.R. 322.

the same order of the subordinate court. The facts of that case are materially different from those of the case in hand and that case is not of much assistance in solving the problem before us. A

In *Vasant Vithal Palse's case (supra)* the trade union filed an application for special leave to appeal to this Court and the same was rejected. Thereafter the individual workmen filed a petition under Article 226 of the Constitution challenging the award without disclosing the fact that application for special leave made to the Supreme Court by the trade union had been rejected. The writ petition was dismissed on the grounds : (1) that the material facts had been concealed, and (2) that the leave petition filed by the trade union had been dismissed by the Supreme Court. That case is also distinguishable on facts, firstly because there is no concealment of facts in the present case, and, secondly, the Supreme Court in that case had dismissed the application for special leave. In the case in hand the petition has only been permitted to be withdrawn. It is on the basis of that decision that the High Court had dismissed the petition *in limine*. B C D

Next, reliance was placed on *A. M. Allison* v. *B. L. Sen.*[1] This Court dealing with the writ of *certiorari* observed as follows :

> "A writ of *certiorari* cannot be issued as a matter of course. The High Court is entitled to refuse the writ if it is satisfied that there was no failure of justice. The Supreme Court declines to interfere, in appeal, with the discretion of the High Court unless it is satisfied that the justice of the case requires such interference." E

There is no quarrel with the proposition that a writ of *certiorari* is not issued as a matter of course and that the petitioner has to satisfy the Court that his rights have been infringed so that there has been failure of justice. In the instant case the appellant chose to file a petition for leave to appeal to the Supreme Court but eventually withdrew the petition and thereafter invoked the jurisdiction of the High Court under Article 226 of the Constitution and the High Court in its discretion chose to dismiss the writ petition *in limine* only on the ground that the petitioner had moved an application for special leave before the Supreme Court and withdrew the same unconditionally. In view of the law laid down by this Court in a recent decision in the case of *Workmen of Cochin Port Trust* (supra) the decision in *Allison's case* has lost its efficacy. F G H

(1) [1957] S.C.R. 359.

A In the *Management of Western India Match Co. Ltd., Madras* v. *The Industrial Tribunal, Madras & Anr.*,(1) the Supreme Court had declined to exercise its discretion in favour of the petitioner by grantiug leave under Article 136 of the Constitution against an award of the Industrial Tribunal without giving any reasons. The Madras High Court held that in the circumstances of the case it B would not be a proper exercise of its discretion in admitting the writ petition despite the evidence that the Industrial Tribunal failed to give opportunity to the petitioner to produce evidence and thus violated a principle of natural justice, when the Supreme Court had dismissed the leave petition against the award. In that case the Supreme Court had dismissed the leave petition. The facts were C thus materially different from the facts of the present appeal. Besides, this Court has taken a different view in the recent case of *Workmen of Cochin Port Trust* (supra),

After having analysed the various cases cited, we are of the view that permission to withdraw a leave petition cannot be D equated with an order of its dismissal. We also come to the conclusion that in the circumstances of the case the High Court has not exercised a proper and sound discretion in dismissing the writ petition *in limine* on the sole ground that the application for special leave on the same facts and grounds had been withdrawn unconditionally.

E

We accordingly allow the appeal and set aside the impuged order and the order of the learned Single Judge dated 9th November, 1972 in writ petition No. 583 of 1972 and send the case back to him for considering the writ petition on merits. There is, however, no order as to costs.

F

S.R. *Appeal allowed.*

(1) A.I.R. 1958 Mad. 398.