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SUNIL KR. GHOSH & ORS.

v.

K. RAM CHANDRAN & ORS.

(Civil Appeal Nos. 9921-22 of 2011)

B

NOVEMBER 18, 2011

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Industrial Disputes Act, 1947 – Workmen's rights in case of transfer of an undertaking – On facts, transfer of ownership of a factory to a new employer – Dispute between the Management and the workers – Application by Workers' Union to refer the dispute for adjudication, rejected by the Management – Thereafter, workers asking the Management for Voluntary Retirement Scheme (VRS) since they were not interested in joining the new employer – However, the request not acceded to since the VRS introduced by the Management had lapsed – Writ petition by the workers – Direction by the Single Judge of the High Court to the Management for payment of retirement and retrenchment benefits to the workers – On appeal, held: Without consent, the workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement/retrenchment compensation in terms of the Act – Single Judge of the High Court was conscious of the fact that these workmen failed to avail the VRS within the stipulated time and also did not retire from the service – However, the workmen cannot be compelled to join the transferee company against their wish/consent and all along workers had been fighting for their cause in various forums – Also the Single Judge had passed the said order after hearing all the parties in the nature of mandatory directions to the Management – Thus, the Single Judge was justified in passing the order – Management directed to comply with the directions issued by the Single Judge of the High Court.

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P.I. Company introduced Voluntary Retirement Scheme (VRS) for its workmen in the year 1997. The next year, the Company informed the workers about the transfer of ownership of its factory to 'K' Company. Appellant-workers filed an application under Section 10(2) of the Industrial Disputes Act for referring the disputes for adjudication but the Labour Department, Government of West Bengal refused to refer the same. The appellant-workers asked for VRS from P.I. Company alleging that they did not wish to join the new employer but the request was turned down by the Company on the ground that the VRS had lapsed in 1998. The appellant-workers filed a writ petition before the High Court challenging the refusal to refer and seeking direction for payment of VRS. The Single Judge of the High Court by order dated 08.10.2001 disposed of the writ petition with a direction to the respondent-Management for payment of retirement and retrenchment benefits to the workers. The appellant-workers filed a contempt application alleging violation of the order dated 08.10.2001 and the same was dismissed. The appeal filed by the appellant-workers before the Division Bench of the High Court was also dismissed. Therefore, the appellants filed the instant appeals.

Allowing the appeals, the Court

HELD: 1.1 Inasmuch as while rejecting the challenge made to refer the matter for adjudication before the Labour Court/Tribunal, the Single Judge, in order to protect and safeguard the interests of the workmen, issued such directions taking note of various aspects including several safeguards provided in the Act and also the payment of compensation in case of transfer of an undertaking. No doubt, the Management raised an objection that these workmen neither availed the VRS within the stipulated time nor retired/retrenched from the service due to the transfer of ownership of the Company.

A It is true that the appellants-workers did not avail both the conditions. But at the same time, it cannot be disputed that these workmen resorted to several remedies such as filing a suit, making representation to the Management as well as to the officers of the Labour Department for
B consultation and consideration and finally to the Government for referring the matter to the Labour Court/ Tribunal for adjudication. After several attempts, these workmen filed a writ petition before the High Court. The Single Judge of the High Court took note of proposal for
C transfer between the respondents and Workers' Union and all other subsequent events including the fact that the Company launched VRS to its employees who did not opt to 'K' Company. After noting that the dispute was sought to be raised but the appropriate government
D declined to refer the same, the Single Judge, after considering the rival contentions of the workmen and the Management, declined to interfere with the impugned order therein and dismissed the same. However, the Single Judge, taking note of the fact that the workmen did not give their consent for change of management, issued
E a positive direction about the settlement of retirement benefits with effect from the date of approval of the undertaking to 'K' Company and directed the Company to pay all such retirement benefits payable to the employees as per normal rules and conditions of service
F including the retrenchment benefits within six months. The said order was passed as early as on 08.10.2001 and has become final since neither the Management nor the Government challenged the same before the Division Bench of the High Court or in this Court. [Paras 8 and 9]
G [244-E-F; 245-A-E]

1.2 Without consent, the workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement/retrenchment
H compensation in terms of the Act. In view of the same,

SUNIL KR. GHOSH & ORS. v. K. RAM CHANDRAN & 239
ORS.

the workmen are entitled to the benefit of such direction and it is the obligation on the part of the Management, to comply with the same. The Single Judge was conscious of the fact that these workmen failed to avail the VRS within the stipulated time and also did not retire from the service. However, taking note of the fact that the workmen cannot be compelled to join the transferee company against their wish and without their consent and all along fighting for their cause in various forums such as civil court, Labour Court, the Government and the High Court and even in this Court, Single Judge was fully justified in passing such order. [Para 10] [245-F-H; 246-A-B]

1.3 A perusal of the directions passed by the Single Judge leaves no room for doubt that a mandatory duty was cast upon respondent Nos. 1 and 2 to comply with the same. In such circumstances, it is highly improper on the part of the Management now to turn around and to contend that since the appellants-workmen had neither been retired nor resigned nor retrenched from service, as such, there is no question of any payment or to comply with the directions passed by the Single Judge. [Para 11] [246-B-C]

1.4 The entire genesis of the contempt application pertains to violation of order dated 08.10.2001 passed by the Single Judge of the High Court. The said order was passed by the Single Judge after hearing all the parties in the nature of mandatory directions to respondent Nos. 1 and 2. The High Court in the impugned order, instead of dismissing the contempt application ought to have directed the respondents to implement the order dated 08.10.2001 passed by the Single Judge. [Para 12] [246-D-E]

1.5 The appellants-workmen have made out a case for interference by this Court. Thus, the respondent are

A **directed to comply with the directions made by the Single Judge, within the stipulated period. [Para 13] [246-F-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9921-9922 of 2011.

B From the Judgment & Order dated 25.08.2008 of the High Court at Calcutta in M.A.T. No. 519 of 2008 and order dated 20.06.2008 of the Contemt Court in C.P.A.N. No 539 of 2002.

C Collin Gonsalves, Hiren Dasan, Dharendra Kr. Mishra, Suvendu S. Dash, Sarla Chadra for the Appellants.

Jay Savla, S. Singh, Renuka Sahu, Rameshwar Prasad Goyal, M.V. Deshmukh, Srikanth R. Deshmukh for the Respondents.

D The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

E 2. These appeals are directed against the final judgments and orders dated 20.06.2008 and 25.08.2008 passed by the High Court at Calcutta in CPAN No. 539 of 2002 and MAT No. 519 of 2008 respectively whereby the High Court dismissed the contempt application and the appeal filed by the appellants herein - employees/workers of Philips India Ltd.

F **3. Brief facts:**

G (a) The appellants are the employees/workers of Philips India Ltd. (in short 'the Company') having its Registered office at No. 7, Justice Chandra Madhab Road, Calcutta and its Consumer Electronics Factory at Salt Lake City, Calcutta. In the year 1997, the Company introduced Voluntary Retirement Scheme (in short "VRS") for its workmen and majority of them opted for and accepted the same. On 30.09.1998, the Company entered into an Agreement for Sale of its Consumer Electronics Factory at Salt Lake City with Kitchen Appliances

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SUNIL KR. GHOSH & ORS. v. K. RAM CHANDRAN & 241
ORS. [P. SATHASIVAM, J.]

India Limited, a subsidiary of Videocon International Ltd. as a going concern together with all assets and liabilities. Vide letter dated 12.10.1998, the Company informed the Secretary of Workers' Union about having signed the agreement and also withdrew the Voluntary Retirement Scheme (VRS) launched in the year 1997. For effecting transfer, the Company circulated a Notice for Extra-ordinary General Meeting of its share holders and circulated a Proposed Resolution under Section 293 of the Companies Act, 1956. On 16.11.1998, the Workers' Union filed an application under Section 10(2) of the Industrial Disputes Act, 1947 (in short 'the Act') for referring the dispute to Court of Enquiry, Labour Court/Tribunal.

(b) On 01.12.1998, a Suit being Civil Suit No. 483 of 1998 was instituted in the High Court at Calcutta by two Employees' Unions in representative capacity against the proposed resolution to be passed at the extra-ordinary general meeting of the Company. Vide order dated 16.03.1999, the learned single Judge of the High Court passed an order of injunction restraining the Company from giving effect to the said Resolution and to the Agreement for Sale dated 30.09.1998. Being aggrieved by the order of the learned single Judge, the Company filed an appeal being APO No. 230 of 1999 before the Division Bench of the High Court. Vide order dated 13.09.1999, the Division Bench allowed the appeal filed by the Company. Thereafter, employees' unions filed SLP (C) No. 14274 of 1999 before this Court which was dismissed by this Court on 15.10.1999. Against the same, Review Petition No. 1585 of 1999 was filed which was also dismissed.

(c) On 22.12.1999, both the Company and Kitchen Appliances India Ltd. issued a notice informing the employees that consequent upon transfer of ownership of the Consumer Electronics Factory, the employment of all the workmen has been taken over by the Kitchen Appliances India Ltd with immediate effect and their services will be treated as continuous and not interrupted by the transfer of ownership and the terms and conditions of services will not

A *be in any way less favourable than those applicable immediately prior to the transfer of ownership. Workers' Union filed two title suits being T.S. Nos. 788 and 795 of 1999, inter alia, praying for declaration and permanent injunction restraining the Company from giving effect to notice dated*
 B *22.12.1999. On 29.12.1999, the Workers' Union addressed a letter to the Company submitting their strong protest against the transfer and also stating that the Company has been restrained to give effect to the said notice in view of order dated 23.12.1999 passed by the Civil Judge (Junior Division)*
 C *at Sealdah in Title Suit No. 795 of 1999.*

(d) Workers' Union filed Writ Petition No. 2275 of 1999 before the High Court for early disposal of workers' application for a reference. Vide order dated 19.09.2000, the writ petition was disposed off with a direction to the Labour Commissioner
 D *to pass necessary order either in terms of Sections 12(4) or 12(5) of the Act. On 13.12.2000, Labour Department, Government of West Bengal refused to refer the dispute for adjudication by observing that the interests of the workmen are in no way affected due to transfer of ownership. Aggrieved*
 E *by the said decision, the Workers filed a Writ Petition being No. 12125 of 2001 before the High Court. Vide order dated 08.10.2001, the writ petition was disposed off with a direction to pay retirement/retrenchment benefits to the workers. Contempt Application being No. 539 of 2002 was filed by the*
 F *workers, inter alia, alleging violation of the order dated 08.10.2001 which was dismissed by the single Judge of the High Court on 20.06.2008. On 21.07.2008, the workers filed MAT No. 519 of 2008 before the Division Bench of the High Court which was also dismissed vide order dated 25.08.2008.*

G *(e) Being aggrieved, the Workers' Unions have filed these appeals before this Court by way of special leave petitions.*

4. Heard Mr. Colin Gonsalves, learned senior counsel for the appellants-workers and Mr. Jay Savla, learned counsel for
 H respondent Nos. 1 & 2 –Management.

SUNIL KR. GHOSH & ORS. v. K. RAM CHANDRAN & 243
ORS. [P. SATHASIVAM, J.]

5. The point for consideration in these appeals is whether the workmen are entitled to the benefit of the order dated 08.10.2001 passed by the learned single Judge of the High Court, particularly, in the absence of any appeal or challenge before the higher forum by the Management? A

6. It is the specific case of the appellants-workmen that when the Company informed the workmen about the transfer of ownership of Consumer Electronics Factory at Salt Lake City, to Kitchen Appliances India Ltd., the said move was not acceptable by the appellants-workers and they refused to give their consent. According to the materials placed on record, on 16.11.1998, the Workers' Union filed an application under Section 10(2) of the Act for referring the dispute to Court of Enquiry/Labour Court/Tribunal and on 22.12.1999, the undertaking of the respondent-Management was transferred to Kitchen Appliances India Ltd. Pursuant to the said transfer, 311 employees joined the transferee company and 35 did not agree to join the new employer. On 29.12.1999, on behalf of the declined employees, their Union raised a dispute regarding transfer of ownership of the Company without their consent as illegal. Even on 13.12.2000, Labour Department, Government of West Bengal declined the reference. On 06.03.2001, the workers asked for VRS from Philips India Ltd. alleging that they do not wish to join the new employer and when the same request was turned down by the Company on the ground that the VRS lapsed even in October, 1998, challenging the refusal to refer and seeking direction for payment of VRS, the workers filed petition being Writ Petition No. 12125 of 2001 before the High Court. B
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7. On 08.10.2001, the learned single Judge of the High Court disposed of the writ petition with a direction to the respondent-Management for payment of retirement and retrenchment benefits to the workers. Inasmuch as the workers very much relied on the order of the learned single Judge dated 08.10.2001, it is useful to refer to the directions made therein. While declining to interfere with the order of rejection made for G
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A reference, the learned single Judge of the High Court issued the following directions:

B “However, the petitioners shall be entitled to all retirement benefits with effect from the date of approval of the undertaking to Kitchen Appliances Ltd. and Philips India Limited shall pay all such retirement benefits payable to the employees within six months from this date. Such benefits will be given as per normal Rules and conditions of service including the retrenchment benefit. Such benefits shall be available to the employees upto the date of approval.

C With the aforesaid observations, this writ application is disposed of.”

D 8. It is not in dispute that the order was passed by the learned single Judge on 08.10.2001 after hearing the counsel for the petitioners therein (Workers) and the respondent therein (Management) including the Government counsel. It is also not in dispute that the said order has become final since neither the Management nor the Government challenged the same before the Division Bench of the High Court or in this Court.

F 9. Now, let us consider whether the said order dated 08.10.2001 is acceptable or not. Inasmuch as while rejecting the challenge made to refer the matter for adjudication before the Labour Court/Tribunal, the learned single Judge, in order to protect and safeguard the interests of the workmen, issued such directions taking note of various aspects including several safeguards provided in the Act and also the payment of compensation in case of transfer of an undertaking. No doubt, the Management raised an objection that these workmen neither availed the VRS within the stipulated time nor retired/retrenched from the service due to the transfer of ownership of the Company. It is true that the appellants-workers did not avail both the conditions. But at the same time, it is not in dispute and it cannot be disputed that these workmen resorted to several remedies such as filing a suit, making representation

SUNIL KR. GHOSH & ORS. v. K. RAM CHANDRAN & 245
ORS. [P. SATHASIVAM, J.]

to the Management as well as to the officers of the Labour Department for consultation and consideration and finally to the Government for referring the matter to the Labour Court/Tribunal for adjudication. After several attempts, these workmen filed Writ Petition before the High Court. The learned single Judge of the High Court has taken note of proposal for transfer between Philips India Ltd. and Workers' Union and all other subsequent events including the fact that the Company launched VRS to its employees who did not opt to Kitchen Appliances India Ltd. After noting that the dispute was sought to be raised but the appropriate government declined to refer the same, the learned single Judge, after considering the rival contentions of the workmen and the Management, declined to interfere with the impugned order therein and dismissed the same. However, the learned single Judge, taking note of the fact that the workmen did not give their consent for change of management, issued a positive direction about the settlement of retirement benefits with effect from the date of approval of the undertaking to Kitchen Appliances Ltd. and directed the Company to pay all such retirement benefits payable to the employees as per normal rules and conditions of service including the retrenchment benefits within six months. We have already referred to the admitted fact that the said order was passed as early as on 08.10.2001 and has become final.

10. It is settled law that without consent, workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement/retrenchment compensation in terms of the Act. In view of the same, we are of the view that the workmen are entitled to the benefit of such direction and it is the obligation on the part of the Management-Philips India Ltd., to comply with the same. We are also satisfied that the learned single Judge was conscious of the fact that these workmen failed to avail the VRS within the stipulated time and also did not retire from the service. However, taking note of the fact that the workmen cannot be compelled to join the transferee company against their wish and

A without their consent and all along fighting for their cause in various forums such as Civil Court, Labour Court, the Government and the High Court and even in this Court, we are of the view that the learned single Judge was fully justified in passing such order.

B 11. A perusal of the directions passed by the learned single Judge leaves no room for doubt that a mandatory duty was cast upon respondent Nos. 1 & 2 to comply with the same. In such circumstances, it is highly improper on the part of the Management now to turn around and to contend that since the
C appellants-workmen had neither been retired nor resigned nor retrenched from service, as such, there is no question of any payment or to comply with the directions passed by the learned single Judge.

D 12. The entire genesis of the contempt application pertains to violation of order dated 08.10.2001 passed by the learned single Judge of the High Court. We are satisfied that the said order was passed by the learned single Judge after hearing all the parties in the nature of mandatory directions to
E respondent Nos. 1 & 2. The High Court, in the impugned order, instead of dismissing the contempt application ought to have directed the respondents to implement the order dated 08.10.2001 passed by the learned single Judge.

F 13. In view of the above, we are satisfied that the appellants-workmen have made out a case for interference by this Court. Accordingly, we direct the respondent-Philips India Ltd. to comply with the directions made by the learned single Judge vide order dated 08.10.2001, which we have quoted in earlier paragraphs, within a period of three months from the
G date of the receipt of this judgment.

14. The civil appeals are allowed on the above terms. No order as to costs.

N.J.

Appeals allowed.

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