Sarva Shramik Sanghatana (K.V) Mumbai vs State Of Maharashtra And Others on 28 November, 2007

Equivalent citations: AIR 2008 SUPREME COURT 946, 2008 AIR SCW 438, 2008 LAB IC 760, (2008) 2 LAB LN 776, (2008) 1 MAD LJ 137, (2008) 1 SCT 389, 2008 (1) SCC 494, (2008) 3 SERVLR 167, (2008) 2 ALLMR 314 (SC), (2008) 8 SUPREME 657, (2007) 13 SCALE 525, (2008) 1 CLR 335 (SC), (2007) 8 SUPREME 657, (2008) 3 BOM CR 758

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Bench: C. K. Thakker, Markandey Katju

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           CASE NO.:
Appeal (civil)  5458 of 2007

PETITIONER:
Sarva Shramik Sanghatana (K.V) Mumbai

RESPONDENT:
State of Maharashtra and others

DATE OF JUDGMENT: 28/11/2007

BENCH:
C. K. Thakker & Markandey Katju

JUDGMENT:
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J U D G M E N T CIVIL APPEAL NO 5458 OF 2007 [Arising out of Special Leave Petition (Civil) No. 15199/2007] MARKANDEY KATJU, J.

1. Leave granted.

2. This appeal has been filed against the impugned judgment dated 16.8.2007 passed by the High Court of Bombay in Writ Petition No. 1240 of 2007.

3. Heard learned counsel for the parties and perused the record.

4. Respondent No. 3, Century Industries Textiles Limited, is a company registered under the Indian Companies Act, 1956. It had about 7500 employees in its textile mill at Mumbai which suffered heavy loss due to high increase in the cost of production and competition both in the domestic as well as international market. With the object to reduce its operational cost, agreements dated 6.7.2004 and 5.9.2005 were entered into by the company with its recognized union for reducing the

workforce through an offer of Voluntary Retirement Scheme (hereinafter in short 'VRS'). However, there was hardly any success in this exercise, and only about 800 employees opted for the VRS which left with 6700 employees still on its roll. Finally, a highly upgraded VRS was offered to the employees unilaterally by the respondent-company on 13.11.2006 which offer was valid till 12.12.2006. There was an overwhelming response to the said VRS and more than 6300 employees opted for the new VRS, and were accordingly relieved from service on payment of VRS benefits and all other legal dues. Only about 275 employees did not accept the abovementioned VRS and 230 of these were the petitioners before the High Court.

5. The respondent-company further alleged that its manufacturing activities in its textile mill came to an end on 13.12.2006 since it was left with only 275 workers. All supervisors and departmental heads had left after taking the VRS. In these circumstances, the respondent-company was constrained to file an application seeking permission for closure under Section 25-O of the Industrial Disputes Act (hereinafter in short 'the Act') vide application dated 13.2.2007.

6. Before the aforesaid application under Section 25-O could be decided, the respondent-company received a letter dated 5.4.2007 from the Deputy Commissioner of Labour, Mumbai, a copy of which is Annexure P-1 to this appeal. This letter states that as per the directions of the Hon'ble Minister for Labour, Maharashtra Government, a meeting has been convened for discussing the matter in dispute at 11.00A.M. on 9.4.2007 in the Chambers of the Hon'ble Minister in Vidhan Bhavan.

7. In response, the respondent-company wrote a letter to the Hon'ble Minister for Labour dated 11.4.2007 stating that it was willing to discuss the matter in dispute and would attend the meeting. However, in the same letter dated 11.4.2007 the respondent-company also mentioned that under Section 25-O(3) of the Industrial Disputes Act, an application under Section 25-O(1) has to be decided within 60 days, otherwise it would be deemed to have been allowed. Since the application was made on 13.2.2007, the 60 days' limitation was shortly about to expire and then the application would be deemed to have been allowed. However, in order to create a conducive atmosphere for discussing the problems of the remaining employees who had not taken VRS, the respondent-company was withdrawing its application under Section 25-O(1), but reserving its right to move fresh application under Section 25-O as and when necessary. Accordingly, the Commissioner of Labour, Mumbai by his order dated 12.4.2007 allowed the respondent-company to withdraw its application under Section 25-O (1). The respondent-company alleged that it could have very easily pretended to discuss the matter with the workers' Union and bided its time till 13.4.2007 and then claimed the benefit of deemed grant of permission for closure. But, instead of doing so, the respondent-company decided to bona fide explore the possibility of an overall settlement with the remaining employees. Since that could not have been done within the remaining 4 days, the respondent- company withdrew its application under Section 25-O(1) so that an attempt for settlement could be made. Thus, the respondent-company alleged that its conduct was bona fide in seeking withdrawal of its closure application.

8. It appears, however, that the effort for an amicable settlement failed. Hence the respondent-company filed fresh application under Section 25- O(1) on 11.5.2007 before the Commissioner of Labour, Mumbai.

9. The appellant, which represents the workmen concerned, opposed the very entertainment of the second closure application under Section 25-O on the ground that the first application was withdrawn but without liberty from the concerned authority to file a fresh application. The appellant filed a writ petition under Article 226 of the Constitution before the Bombay High Court praying that the Deputy Commissioner of Labour should be directed not to take any further proceedings in relation to the closure application dated 11.5.2007 under Section 25-O. Since that writ petition was dismissed, hence this appeal by way of Special Leave Petition.

10. Learned counsel for the appellant has strongly relied on the decision of this Court in Sarguja Transport Service vs. State Transport Appellate Tribunal, Gwalior and others AIR 1987 SC 88. He has submitted that in that decision this Court has laid down that if a writ petition filed in a High Court is withdrawn without permission to file a fresh writ petition, a second writ petition for the same relief is barred. Learned counsel for the appellant submitted that in the order of the Labour Commissioner dated 12.4.2007, a copy of which is Annexure P-4 to this appeal, it is only mentioned that the applicant company is allowed to withdraw its application under Section 25- O(1) seeking permission for closure of its textile mill, but there is no mention in the said order that the Company is given liberty or permission to file a fresh application under Section 25-O(1). Accordingly, he submitted that the decision of Sarguja Transport case (supra) squarely applies to the present case. He submitted that although the decision in Sarguja Transport case (supra) related to a writ petition, the ratio of that decision was based on public policy, and hence it was also application to proceedings under Section 25-O of the Industrial Disputes Act.

11. We have carefully examined the decision of the Sarguja Transport Service case (supra). In the said decision it is mentioned in paragraph 8 as follows:

> "It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition."

12. In paragraph 9 of the said decision, it is also mentioned as follows:

> "But we are of the view that the principle underlying R.1 of O. XXIII of the Code should be extended in the interest of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics.

13. We are of the opinion that the decision in Sarguja Transport case (supra) has to be understood in the light of the observations in paragraphs 8 & 9 therein, which have been quoted above. The said decision was given on the basis of public policy that, if while hearing the first writ petition the Bench

is inclined to dismiss it, and the learned counsel withdraws the petition so that he could file a second writ petition before what he regards as a more suitable or convenient bench, then if he withdraws it he should not be allowed to file a second writ petition unless liberty is given to do so. In other words, bench-hunting should not be permitted.

14. It often happens that during the hearing of a petition the Court makes oral observations indicating that it is inclined to dismiss the petition. At this stage the counsel may seek withdrawal of his petition without getting a verdict on the merits, with the intention of filing a fresh petition before a more convenient bench. It was this malpractice which was sought to be discouraged by the decision in Sarguja Transport case (supra).

15. On the subject of precedents Lord Halsbury, L.C., said in Quinn v. Leathem, 1901 AC 495:

> "Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it.

Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

We entirely agree with the above observations.

16. In Ambica Quarry Works vs. State of Gujarat & others (1987) 1 SCC 213 (vide paragraph 18) this Court observed:-

> "The ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

17. In Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd (2003) 2 SCC 111 (vide paragraph 59), this Court observed:-

> "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

18. As held in Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:-

> "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid`s theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.
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> In London Graving Dock Co. Ltd. vs. Horton (1951 AC 737 at page 761), Lord Mac Dermot observed:
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> "The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office vs. Dorset Yacht Co. (1970 (2) All ER

294) Lord Reid said, "Lord Atkin`s speech . is not to be treated as if it was a statute definition; it will require qualification in new circumstances." Megarry, J. in (1971)1 WLR 1062 observed:

> "One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament."

And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

> *** *** *** "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."

19. We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the entire decision and the reasoning contained therein. In our opinion, the decision of this Court in Sarguja Transport case (supra) cannot be treated as a Euclid's formula.

20. In the present case, we are satisfied that the application for withdrawal of the first petition under Section 25-O(1) was made bona fide because the respondent-company had received a letter from the Deputy Labour Commissioner on 5.4.2007 calling for a meeting of the parties so that an effort could be made for an amicable settlement. In fact, the respondent- company could have waited for the expiry of 60 days from the date of filing of its application under Section 25-O(1), on the expiry of which the application would have deemed to have been allowed under Section 25- O(3). The fact that it did not do so, and instead applied for withdrawal of its application under Section 25-O(1), shows its bona fide. The respondent- company was trying for an amicable settlement, and this was clearly bona fide, and it was not a case of bench hunting when it found that an adverse order was likely to be passed against it. Hence, Sarguja Transport case (supra) is clearly distinguishable, and will only apply where the first petition was withdrawn in order to do bench hunting or for some other mala fide purpose.

21. We agree with the learned counsel for the appellant that although the Code of Civil Procedure does not strictly apply to proceedings under Section 25-O(1) of the Industrial Disputes Act, or other judicial or quasi-judicial proceedings under in any other Act, some of the general principles in the CPC may be applicable. For instance, even if Section 11 of the CPC does not in terms strictly apply because both the proceedings may not be suits, the general principle of res judicata may apply vide Pondicherry Khadi & Village Industries Board vs. P. Kulothangan and another 2004 (1) SCC

68. However, this does not mean that all provisions in the CPC will strictly apply to proceedings which are not suits.

22. Learned counsel for the appellant has relied on an observation in the decision of this Court in U.P. State Brassware Corporation Ltd. vs. Uday Narain Pandey 2006(1) SCC 479, in paragraph 38 of which it is stated:

> "Order 7 Rule 7 of the Code of Civil Procedure confers powers upon the court to mould relief in a given situation. The provisions of the Code of Civil Procedure are applicable to the proceedings under the Industrial Disputes Act.

23. It may be noted that the observation in the aforesaid decision that the provisions of the CPC are applicable to proceedings under the Industrial Disputes Act was made in the context of Order 7 Rule 7 of the Code of Civil Procedure which confers powers upon the court to mould relief in a given

situation. Hence, the aforesaid observation must be read in its proper context, and it cannot be interpreted to mean that all the provisions of the CPC will strictly apply to proceedings under the Industrial Disputes Act.

24. No doubt, Order XXIII Rule Rule 1(4) CPC states that where the plaintiff withdraws a suit without permission of the court, he is precluded from instituting any fresh suit in respect of the same subject matter. However, in our opinion, this provision will apply only to suits. An application under Section 25-O(1) is not a suit, and hence, the said provision will not apply to such an application.

25. Learned counsel for the appellant has relied upon Section 25-O (5) of the Act which states :

> "An order of the State Government granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties and shall remain in force for one year from the date of such order."

26. Leaned counsel submitted that the order of the Labour Commissioner dated 12.4.2007 allowing the respondent-company to withdraw its closure application dated 1.2.2007 should be deemed to be an order refusing to grant permission, and hence a fresh application under Section 25-O(1) could not be filed before the expiry of one year from the date of the said order. We do not agree. In our opinion, Section 25-O(5) only applies when an order is passed on merits either granting or refusing to grant permission for closure. Since in the present case no order on merits was passed, but only an order permitting withdrawal of the closure application was passed, Section 25-O(5) has no application.

27. For the reasons given above this appeal fails and is hereby dismissed. There shall be no order as to costs.

28. Since it has been alleged by the respondent-company that it is suffering a liability of Rs. 2.84 lakhs per day although the Mill is lying closed and the concerned workers are getting wages for doing nothing for a long time, we direct that the petitioner's application dated 11.5.2007 be decided very expeditiously by the concerned authority in accordance with law, preferably within a period of two months of production of copy of this order to it.