2010 eGLR_HC 10007045

Before the Hon'ble MR H K RATHOD, JUSTICE

FAG BEARINGS INDIA LIMITED Vs. CHANDUBHAI G CHOVATIYA - RESPONDENT(S)

SPECIAL CIVIL APPLICATION No: 2037 of 2010 , Decided On: 03/03/2010

Nanavati Associates

MR.JUSTICE H.K.RATHOD 1. Heard learned advocate Mr. KD Gandhi for Nanavati Associates on behalf of petitioner.

2. The petitioner has challenged award passed by Labour Court, Baroda in reference no. 638/95 exh 62 decided on 5/11/2009 where reference of workman accepted by Labour Court with a direction to petitioner to reinstate workman in service with continuity of service with 50% back wages of interim period.

3. Learned advocate Mr. Gandhi raised following contentions before this Court in ground "f" which is quoted as under:

" I state that the labor court over looked the payment vouchers produced by the petitioner company from which it is clear that the monthly payments made to the respondent was not fixed, and varied from time to time depending on quantum of entries made in system (Based on piece rate) as he was being paid as per his work done for the Month. Further, the following tabular statement would evidence the fact more clear on this count:

Month Payment made 04.02.1993 Rs. 1,714/- 02.03.1993 Rs. 1,732/- 02.05.1993 Rs. 2,140/- .09.1993 Rs. 2,897/- .10.1993 Rs. 2,270/- Few more vouchers evidencing the above facts are also annexed hereto as Annexure B."

4. He submitted that voucher which has been produced by petitioner has not considered by Labour Court while deciding reference and even that voucher has not been referred in its award. Therefore, according to him, Labour Court has committed gross error in deciding references while ignoring voucher which has been produced by petitioner as per ground "f" of petition.

5. I have considered contention raised by learned advocate Mr. Gandhi. I have also considered observation made by Labour Court in para 4 that petitioner has not produced any written documents means not produced any documentary evidence and oral evidence before Labour Court. This observation has been again made by Labour Court at page 17 where also made it clear by Labour Court that petitioner company has not produced any documentary evidence before Labour Court as well as not examined any person before Labour Court. However, learned advocate Mr. Gandhi submitted that voucher has been produced by petitioner.

6. This Court has to believe whatever record of Labour Court is to be correct and also consider to be conclusive for all purpose. Any affidavit or statement of advocate contrary to record of Labour Court, this Court should not have to be believe it. The view taken by Apex Court in following cases, which are as under:

* In case of Daman Sing and others Vs. State of Punjab and ors reported in AIR 1985 SC 973. The relevant observation made in para 13 is quoted as under:

"13. The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds , obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in inquiring into the question whether , a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not ?"

* In case of Md. Rafique @ Chachu Vs. State of West Bengal reported in 2008 (15) SCALE

15. The relevant para 5 is quoted as under:

5. It would be logical to first deal with the plea relating to absence of concession. It is to be noted that the appellant conceded certain aspects before the High Court. After having done so, it is not open to the appellant to turn around or take a plea that no concession was given. This is clearly a case of sitting on the fence, and is not to be encouraged. If really there was no concession, the only course open to the appellant was to move the High Court in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak (1982 (2) SCC 463). In a decision Bhavnagar University v. Palitana Sugar Mill (P) Ltd. (2003 (2) SCC 111) the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been

wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary. The above position was highlighted in Roop Kumar v. Mohan Thedani (2003) 6 SCC 595)."

* In case of State of Maharashtra Vs. Ramdas Shrinivas Nayak and Ors reported in AIR 1982 SC 1249. The relevant discussion made in para 4 to 8 are quoted as under:

"4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".(1) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error.(2) That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate (I) Per Lord Atkinson in Somasundaran v. Subramanian, A.I.R 1926 P.C. 136. (2) (Per Lord Buckmaster in Madhusudan v. Chanderwati, A.I.R. 1917 P.C. 30. 13 Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

4-A In Rev. Mellor, 7 Cox. P.C. 454 Martin was reported to have said: "we must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity".

5. In King Emperor v. Barendra Kumar Ghose (1): said, ".. these proceedings emphasise the importance of rigidly maintaining the rule that a statement by a learned judge as to what took place during the course of a trial before him is final and decisive; it is not to be criticised or circumvented; much less is it to be exposed to animad version".

6. In Sarat Chandra v. Bibhabati Debi (2) Sir Asutosh Mookerjee explained what had to be done:

"It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment"

7. So the judges, record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else.

8. On the invitation of Mr. Sen, we have also perused the written submissions made by him before the High Court. We have two comments to make: First, oral submissions do not always conform to written submissions. In the course of argument, counsel, often, wisely and fairly, make concessions which may not find a place in the written submission. Discussion draws out many a concession. Second, there are some significant sentences in the written submissions which probabilise the concession. They are: "If in the existing case, the entire Council of Ministers becomes interested in the use of the statutory power one way or the other, the doctrine of necessity will fill up the gap by enabling the Governor by dispensing with the advice of His Council of Ministers and take a decision of his own on the merits of the case. Such a discretion of the Governor must be implied as inherent in his constitutional powers.. The doctrine of necessity will supply the necessary power to the Governor to act without the advice of the Council of Ministers in such a case where the entire Council of Ministers is biased. In fact, it will be contrary to the Constitution and the principles of democratic Government which it enshrines if the Governor was obliged not to act and to decline to perform his statutory duties because his Ministers had become involved personally. For the interest of democratic Government and its functioning, the Governor must act in such a case on his own. Otherwise, he will become an instrument for serving the personal and selfish interest of his Ministers." We wish to say no more. As we said, we cannot and we will not embark upon an enquiry. We will go by the judges record."

*In case of Shankar K. Mandal and Ors Vs. State of Bihar and Ors reported in 2003 (9) SCC 519. The relevant head note is quoted as under:

"It is not open for the appellants to take such stand before the Supreme Court, as they are bound by the observations of the High Court. If there was any wrong recording of the stands or a different stand was taken, the only course open to the appellant was to move the High Court. Statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before the Supreme Court to the contrary. It is also not open to content that a plea raised was not considered."

7. In light of observations made by Apex Court as referred above cases, that record of Labour Court has considered to be conclusive evidence. Any statement or affidavit

contrary to record not to be accepted by High Court. However, apart from that if any document is produced according to petitioner before Labour Court and Labour Court has not considered it then normal reaction of such petitioner is to approach Labour Court by nfiling necessary application to bring notice to Labour Court that this are the documents produced on record not considered by Labour Court. Therefore, let petitioner Company may approach to Labour Court, Baroda by filing such application that voucher have been produced as per ground F before Labour Court, but Labour Court has not considered it.

8. As and when such application is received by Labour Court Baroda let Labour Court may examine it with original record and then to pass appropriate order in accordance with law after giving reasonable opportunity of hearing to respective parties.

9. In view of above observation and direction, present petition is not entertained by this Court. Accordingly, disposed of.

Appeal dismissed