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SUPREME COURT CASES

(2011) 14 SCC

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(BEFORE P. SATHASIVAM AND J. CHELAMESWAR, JJ.)

SUNIL KUMAR GHOSH AND OTHERS .. Appellants; a

*Versus*

K. RAM CHANDRAN AND OTHERS .. Respondents.

Civil Appeals Nos. 9921-22 of 2011<sup>†</sup>, decided on November 18, 2011

**Labour Law — Transfer of Ownership/Management — Workmen not willing to work under new management/owner — Right of such workmen to retirement benefits/retrenchment compensation as per normal rules and conditions of service — Workmen unsuccessfully contested proposed resolution of transferor company for transfer of company as going concern to another company — Workmen failed to avail benefit of VRS floated by transferor company within stipulated time — Afterwards, request of workmen for voluntary retirement on changing hands of company, rejected — Application for reference of industrial dispute also rejected by State Government observing that interest of workmen was in no way affected due to transfer of ownership — High Court while rejecting challenge to refusal of State Government to refer dispute for adjudication, directed payment of retirement/retrenchment benefits to workmen as per normal rules and conditions of service — Held, workmen cannot be forced to work under different management — High Court was justified in issuing directions for retirement/retrenchment compensation to outgoing workmen as per normal rules and conditions of service — Industrial Disputes Act, 1947, S. 25-FF** b  
**(Paras 17 to 19)** c

Appeals allowed PK-D/48950/SL d

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate (Hiren Dasan, Dhirendra Kr. Mishra, Suvendu S. Dash and Ms Sarla Chandra, Advocates) for the Appellants; e  
Jay Savla, S. Singh, Ms Renuka Sahu, Rameshwar Prasad Goyal, M.V. Deshmukh and Srikanth R. Deshmukh, Advocates) for the Respondents.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.**— Leave granted. These appeals are directed against the final judgments and orders dated 20-6-2008 and 25-8-2008 passed by the High Court of 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

**Brief facts** g

2. 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

<sup>†</sup> Arising out of SLPs (C) Nos. 11115-16 of 2009. From the Judgment and Order dated 25-8-2008 of the High Court of Calcutta in MAT No. 519 of 2008 and order dated 20-6-2008 of the Contempt Court in CPAN No. 539 of 2002 h

retirement scheme (in short “VRS”) for its workmen and majority of them opted for and accepted the same. On 30-9-1998, the Company entered into an agreement for sale of its consumer electronics factory at Salt Lake City with Kitchen Appliances India Ltd., a subsidiary of Videocon International Ltd. as a going concern together with all assets and liabilities.

*a* 3. Vide letter dated 12-10-1998, the Company informed the Secretary of the 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 extraordinary general meeting of its shareholders 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 the court of enquiry, Labour Court/Tribunal.

*b* 4. On 1-12-1998, a suit being Civil Suit No. 483 of 1998 was instituted in the High Court of Calcutta by two employees’ unions in representative capacity against the proposed resolution to be passed at the extraordinary general meeting of the Company. Vide order dated 16-3-1999, 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 30-9-1998.

*c* 5. 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 13-9-1999, the Division Bench allowed the appeal filed by the Company. Thereafter, the 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.

*d* 6. 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 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 be in any way less favourable than those applicable immediately prior to the transfer of ownership. The workers’ union filed two title suits being TSs Nos. 788 and 795 of 1999, inter alia, praying for declaration and permanent injunction restraining the Company from giving effect to the notice dated 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 the order dated 23-12-1999 passed by the Civil Judge (Junior Division) at Sealdah in Title Suit No. 795 of 1999.

*e* 7. The workers’ union filed Writ Petition No. 2275 of 1999 before the High Court for early disposal of the workers’ application for a reference.

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Vide order dated 19-9-2000, the writ petition was disposed of with a direction to the Labour Commissioner to pass necessary order either in terms of Sections 12(4) or 12(5) of the Act. On 13-12-2000, the 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. a

**8.** Aggrieved by the said decision, the workers filed a writ petition being No. 12125 of 2001 before the High Court. Vide order dated 8-10-2001, the writ petition was disposed of with a direction to pay retirement/retrenchment benefits to the workers. Contempt application being No. 539 of 2002 was filed by the workers, inter alia, alleging violation of the order dated 8-10-2001 which was dismissed by the Single Judge of the High Court on 20-6-2008. On 21-7-2008, the workers filed MAT No. 519 of 2008 before the Division Bench of the High Court which was also dismissed vide order dated 25-8-2008. Being aggrieved, the workers' unions have filed these appeals before this Court by way of special leave petitions. b

**9.** Heard Mr Colin Gonsalves, learned Senior Counsel for the appellant workers and Mr Jay Savla, learned counsel for Respondents 1 and 2 management. c

**10.** The point for consideration in these appeals is: whether the workmen are entitled to the benefit of the order dated 8-10-2001 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? d

**11.** It is the specific case of the appellant 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 to the appellant 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 the 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. e

**12.** 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, the Labour Department, Government of West Bengal declined the reference. On 6-3-2001, 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. On 8-10-2001, 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. f

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**13.** Inasmuch as the workers very much relied on the order of the learned Single Judge dated 8-10-2001, it is useful to refer to the directions made therein. While declining to interfere with the order of rejection made for reference, the learned Single Judge of the High Court issued the following directions:

a “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 Ltd. 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 up to the date of approval.

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

c **14.** It is not in dispute that the order was passed by the learned Single Judge on 8-10-2001 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.

d **15.** Now, let us consider whether the said order dated 8-10-2001 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 were they retired/retrenched from the service due to the transfer of ownership of the Company. It is true that the appellant 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 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.

e **16.** The learned Single Judge of the High Court has taken note of proposal for transfer between Philips India Ltd. and the workers’ union and all other subsequent events including the fact that the Company launched VRS for its employees who did not opt for 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 8-10-2001 and has become final. a

17. 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 of 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 without their consent and all along fighting for their cause in various forums such as the civil court, the 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 c d

18. A perusal of the directions passed by the learned Single Judge leaves no room for doubt that a mandatory duty was cast upon Respondents 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 appellant 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. e

19. The entire genesis of the contempt application pertains to violation of the order dated 8-10-2001 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 Respondents 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 8-10-2001 passed by the learned Single Judge. f

20. In view of the above, we are satisfied that the appellant 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 8-10-2001, which we have quoted in earlier paragraphs, within a period of three months from the date of the receipt of this judgment. g

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

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