

CASE NO.:
Appeal (civil) 7990 of 2004

PETITIONER:
Industrial Paper (Assam) Ltd. Emps. Union

RESPONDENT:
Management Assam Industrial Dev. Corpn. Ltd.

DATE OF JUDGMENT: 10/01/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Guwahati High Court dismissing the writ petition filed by the appellant. The writ appeal was directed against the common judgment and order dated 7.5.2002 passed by learned Single Judge wherein the writ petition filed by the respondent No.2 i.e. Management of Assam Industrial Development Corporation Ltd. (in short the 'AIDC') was allowed while dismissing the writ petition filed by the appellant. Both the writ petitions were directed against the Award of the Presiding Officer, Labour Court, Assam, at Guwahati (hereinafter referred to as the 'Labour Court'). The appellant claims to be the Union of employees of M/s Industrial Papers (Assam) Ltd. (in short the 'IPAL'). Learned Single Judge held that there is a clear cut finding in the Award to the effect that workmen were not employees of AIDC, and therefore, the question of giving them benefit as was done by the Labour Court did not arise and consequently that part of the Award was quashed.

Background facts in a nutshell are as follows:

The appellant, being the registered Trade Union, looking after the welfare of its members employed by AIDC in its Extensible Sack Kraft. Paper Project (for sake, called as 'ESKPP') under IPAL, raised a dispute for non-payment of salaries of its members by AIDC after October 1998 on the plea that the members of the appellant were not the employees of AIDC but of the IPAL. Accordingly the appropriate Govt. vide notification dated 20.2.1999 referred the following issues to the Labour Court for adjudication. The issues are quoted below:

"1. Whether the management of Assam Industrial Development Corporation is justified to deny as owner of the Sack Kraft Paper Project of M/s Industrial Papers (Assam) Ltd. (IPAL), though they have signed an agreement with a contractor as 'owner' of the Sack Kraft Paper Project, Dhing District-Nagaon, Assam.

2. Whether the Assam Industrial Development Corporation AIDC is justified to deny to take the responsibility of the Industrial

Papers (Assam) Ltd. employees, though the employees were appointed by the AIDC through the advertisement published in the News Paper.

3. Whether The management of AIDC is justified by not absorbing or engaging the employees of the IPAL, in their other Promoted industries or give them salary regularly though they have failed to install or run the proposed Paper Mill in Dhing, Nagaon.

4. If not, then the said affected employees are entitled for either regular monthly salary from the management or absorption in the other Industrial Units promoted by the Assam Industrial Development Corporation, Guwahati.

5. And the AIOC should not recruit or appoint new employees to say other their Promoted Industries until and unless the employees of the Industrial paper are engaged or absorbed by the Management."

The Labour Court issued notice dated 22.5.1999 to the respective parties to the alleged disputes. In pursuance of the notice, both the AIDC and the appellant filed their respective written statements and additional written statements. AIDC, in their written statement, raised preliminary objection, specifically with the issues under reference, inter-alia, questioning the maintainability of the reference stating that the purported dispute referred to by the Notification is not an industrial dispute within the meaning of Industrial Disputes Act, 1947 (hereinafter called as the Act') and the Notification issued by the Government cannot constitute an industrial dispute because AIDC was not a proper or necessary party and the members of the appellant, being employees of a separate company i.e. IPAL, cannot claim to be employees of AIDC which was only a Promoter Company.

Apart from the preliminary objection so raised as mentioned above, AIDC gave its reply in respect of all other issues. Regarding issue No.1, it was stated that AIDC, being a promotional organization, had also promoted the IPAL by signing various documents and agreements with IPAL since it was in the nascent stage for the project for protection of ESKPP at Dhing. The role of AIDC was merely to assist IPAL as its promoter for setting up its project. AIDC claimed that under no circumstances AIDC could be called as owner of the project because IPAL was a separate Company registered under the Companies Act, 1956 with an independent Board of Directors having its separate Memorandum and Articles of Association. In support of its claim, AIDC mentioned that the Govt. of Assam vide Notification dated 23.2.88 re-constituted the Board of Directors of IPAL Insofar as issue No.2 is concerned, it was stated that since the ESKPP of IPAL was not owned by AIDC, the appellants were the employees of IPAL, and AIDC being a nodal agency of the State Government for implementation of various projects as promoter only, cannot be saddled with any responsibility of the employees of IPAL and the appellant's members were not the employees of AIDC Besides IPAL, the AIDC promoted several other companies like Fertilchem Ltd., Assam Syntex Ltd. Assam Petrochemical Ltd. etc. and those are managed by their independent Board of

Directors. The employees who were claimed by the appellant to be the employees of AIDC, on being appointed in pursuance of the advertisement, were not the workmen as defined under the Act. According to them, none of 11 categories of posts advertised, mentioned in the reference itself, were workmen as defined under the Act and the persons appointed against those posts had not raised dispute. Such dispute had only been raised by the IPAL Employees Union, the appellant, which did not represent the persons appointed as per the advertisement. As regards issue No.3, the contention of AIDC was that they were already overstaffed for which Voluntary Retirement Scheme had already been introduced to reduce excess manpower and as such absorption of employees of IPAL in AIDC did not arise. With regard to issue No.4, AIDC stated that AIDC as a promoter was not liable for payment of salaries to the employees of IPAL which was a separate and distinct Company. On issue No.5, the stand of AIDC was that due to the precarious financial position, the question of fresh recruitment did not come.

The appellant in the written statement alleged that the ESKPP was owned by AIDC inasmuch as ESKPP, being established under the licence obtained from the Central Government under the Industries (Development and Regulation) Act, 1951 (for short, the 'IDR Act'), AIDC cannot claim that they established the said project as a 'Promoter' as they failed to show that the Industrial Licence obtained by it was either transferred or revoked at any stage. According to it, AIDC also admitted that ESKPP was never amalgamated with any other company under the Companies Act and as such, the AIDC remained the 'owner' for the said project even under the Act itself and no further document or any evidence was necessary to prove the same from the appellant's side. Accordingly it was pleaded that issue No.1 should be decided in favour of the appellant holding that AIDC was not justified in denying the ownership of the project. Regarding issue No.2, it was alleged that since AIDC was owner of the project, it could not deny its responsibilities to its employees who were appointed in the project. Insofar as issue No.3 and 4 are concerned, it was claimed that the AIDC, being the owner of the project, was liable to pay regular salaries to its workmen. As regards issue No.5, it was submitted that AIDC should be restrained from recruiting or appointing new employees until and unless the employee of IPAL were engaged or absorbed by AIDC.

The Labour Court in its Award held as follows:

- (A) There was no material on record to show that AIDC had transferred Sack Kraft Paper Project Dhing to the IPAL at any point of time. It was observed that though both parties have approved the appointment of candidates at IPAL and AIDC none of them came within the categories of those post advertised
- (B) The Issue is redundant as members of the Union do not come within the categories of posts advertised.
- (C) It was not incumbent of AIDC to absorb members of the appellant union to any other AIDC industry.
- (D) IPAL could not be run it was incumbent for AIDC to terminate the services of the members of the appellant-Union giving them terminal benefits according to relevant industrial and labour laws.
- (E) Until that was done AIDC was obliged to give the members of the appellant union regular salaries.

As noted above, both the appellant and AIDC filed writ petitions. While the writ petitions filed by the AIDC was allowed and one filed by the appellant was dismissed. Learned Single Judge held that since workmen were not employees of the AIDC, the question of giving them benefit as done by the Labour Court did not arise. The question of employer and employees (of AIDC) was not the subject matter of reference. Writ appeal was filed by appellant before the High Court. The High Court inter alia held while dismissing the writ appeal that AIDC is not the owner of the Extensible Sack Craft Paper Project of IPAL. Being a separate and independent company, the members of the appellant-union are not the employees of AIDC which could not be saddled with the responsibility of these employees. Therefore, AIDC was not liable for absorption or engagement of the employees of IPAL in any other AIDC promoted industry and to give them salaries regularly after the closure of the project.

In support of the appeal learned counsel for the appellant submitted that the Labour Court had taken a practical and pragmatic view. Learned Single Judge and the Division Bench should not have interfered with the findings recorded.

Learned counsel for the respondent AIDC on the other hand submitted that in view of materials placed on record, both learned Single Judge and Division Bench of the High Court was justified in its conclusion and no interference is called for. There is ample material on record to show that employment was for a specific project and on an expiry of that project the question of any claim to be appointed by IPAL much less by AIDC does not arise. According to AIDC the project was closed in 1991 whose assertion is denied by the appellant.

There is no claim that the members of appellant union were employees of AIDC. In the reference IPAL was not a party. It is evident from materials on record that IPAL was promoted by AIDC and was incorporated in 1974. It was not even subsidiary of AIDC.

Learned Single Judge and the Division Bench have categorically found that IPAL was a separate, independent company and the members of the appellant union are not employees of AIDC. That being so the conclusions of learned Single Judge and the Division Bench that AIDC cannot be saddled with the responsibility of those employees is irreversible.

The Memorandum and Article of Association of both AIDC and IPAL as well as the Certificate of Incorporation of IPAL has been referred to by the Division Bench in the impugned judgment. It has, with reference to those come to hold that they have separate independent existence having independent Board of Directors. The Notification dated 22.2.1988 by which Board of Directors of IAPL has also been referred to for the purpose of coming to the conclusion that both the companies have independent existence. AIDC was a nodal agency of the Government of Assam and was acting only as a promotional organization for promoting IPAL at the initial stages. As is rightly pointed out by the AIDC cannot be branded as a owner of the establishment. The expression "Owner" has been defined in Section 3(f) of the Act. It reads as follows:

"(f) "owner", in relation to an industrial undertaking, means the person, who, or the authority which, has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agent shall be deemed to be the owner of the undertaking".

In Black's Law Dictionary 6th Edition, the expression "promoter" has been described as follows:

"One who promotes, urges on, encourage, in cites, advances etc. one promoting a plan by which it is hoped to insure the success of a business, entertainment etc. venture. The person who, for themselves or others, take a preliminary steps to the finding or organization of a corporation or other venture. These person who first associate themselves together for the purpose of organizing the company, issuing its prospectus, procuring subscriptions to the stock, securing a charter etc. From an ordinary reading of the meaning of 'promoter', it can be well deduced that 'promoter' can not be treated as owner."

In the written statement before the Labour Court, AIDC has taken specific stand in the following manner:

"That when the employees were paid regular salary by IPAL Project from its own fund/account at that time no such demand was raised by the employees of IPAL. When they found that the Project is virtually closed and they are not getting salary from their own Project, they demanded that they belong to AIDC for the sake of getting salary from AIDC without doing any job for AIDC. In such situation the employees of IPAL cannot be treated as employees of AIDC. These employees were appointed/recruited against the Project against the Project as per the job specification and as per requirement and sanctioned strength of IPAL while seeking requisition from Employment Exchange the requisition was signed by General manager, Sack Kraft Paper Project as the employer. All the employees have been appointed on behalf of the IPAL Project. They are employees of IPAL governed by all rules and regulations of Industrial Papers Assam Ltd. Under these circumstances stated above the management of AIDC cannot take any responsibility for the employees of IPAL."

Above being the position, the judgment of the Division Bench affirming that of learned Single Judge cannot be faulted and the appeal stands dismissed. Subject to what is stated above, dismissal of the appeal shall not stand in the way of the concerned employees or recognized Unions making claim for arrears of salaries or claims to be due from IPAL.

It has been submitted by learned counsel for the appellant that the committee has been appointed by the High

Court in the matter of arrears of salary and on the question of absorption of various sick public sector undertakings. It needs no emphasis that those are the aspects about which we have not expressed any opinion.

The appeal is dismissed but without any orders as to costs.

JUDIS