IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 19.03.2024
Orders pronounced on : 01.04.2024

Coram

THE HON'BLE MR.SANJAY V.GANGAPURWALA , CHIEF JUSTICE,
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY
AND
THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.39563 of 2004

V.Syril Sundararaj ... Petitioner

-Versus-

1.The presiding officer,
Labour Court,
Thirunelveli

2.The Managing Director,
State Express Transport Corporation,
Chennai – 600 002.

3.The General Manager,
State Express Transport Corporation,
Nagarcoil Division,
Meenakshipuram,
Nagarcoil,
Kanyakumar District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for Writ of Certiorarified Mandamus calling for the records of the first respondent in I.D.No.14 of 2000 and quash the order dated 30.12.2003 passed therein and direct the 2nd, 3rd and 4th respondent to reinstate him as a driver in the 2nd

respondent Corporation with back wages, seniority and all service benefits.

For petitioner : *Mr.K.Koteswara Rao, for Mr.Mohammed Farook*

For Respondents 2 to 4 : *Mr.L.S.M.Hasan Fizal*

ORDER

(Order made by the Hon'ble Mr Justice V. LAKSHMINARAYANAN)

This Full Bench has been constituted to answer the following question:

> *"Whether the Management is precluded from initiating disciplinary proceedings against its driver on the allegation that he had caused the accident due to his rashness and negligence in driving the vehicle, in view of the contrary stand taken before the Motor Accident Claims Tribunal, wherein the Management had taken a plea that the driver was neither negligent nor rash in driving the vehicle?"*

2. Facts leading to the reference:

2.1. W.P.No.39563 of 2004 came up for hearing before the Hon'ble **Mr.S.Nagamuthu, J.** on 29.03.2012. At the time of hearing, a judgment of a Division Bench in ***Tamil Nadu State Transport Corporation and Another vs.***

S.Karuppusamy, (2008) 3 LW 90, was cited before him. It was the contention of the learned counsel for the petitioner that the Management had filed a counter in MCOP.No.498 of 1993 on the file of the Motor Accident Claims Tribunal, Srivilliputhur that the accident had happened, only due to the negligent and rash driving on the part of the driver of the Matador van, in which the claimants were travelling and that, the writ petitioner had driven the bus belonging to TNSTC in a slow and careful manner. On the basis of this counter, the writ petitioner argued before the learned Single Judge that as the Management had contended that there was no mistake on the part of the writ petitioner/driver of the bus before the Motor Accident Claims Tribunal, it is precluded from initiating any disciplinary proceedings.

2.2. Doubting the view taken by the Division Bench, while being conscious of the fact that he cannot disagree or dissent from the same, the learned Single Judge referred the matter to Hon'ble The Chief Justice to place the same before the larger bench. For this purpose, the learned Single Judge had relied upon paragraph 12(2) of the Judgment of the Constitution Bench of the Supreme Court in ***Central Board of Dawoodi Bohra Community vs. State of Maharashtra, (2005) 2 SCC 673.*** Accordingly, Hon'ble The Chief Justice had referred the matter to a Full Bench for answering the aforesaid question

framed by the learned Single Judge. Thus, the matter is before us.

3. It is the case of the writ petitioner that he was given the duty of driving a bus belonging to the State Express Transport Corporation from Trichirapalli to Nagercoil. While the bus was proceeding to Virudhunagar, a Matador goods van bearing Registration No.TNV 4441, which was proceeding from Tiruchendhur to Coimbatore, colluded with the bus driven by the writ petitioner. In this accident, five persons have lost their lives and five persons including the writ petitioner were injured.

4. Immediately after the accident, a charge memo had been issued to the writ petitioner, for which he gave an explanation. A domestic enquiry was conducted on 25.04.1992 and a report was submitted by the enquiry officer finding the writ petitioner guilty. The second show cause notice was issued on 17.07.1992, for which a reply was given on 08.09.1992.

5. Considering the circumstances of the case, the respondent/ Management took a decision to terminate the writ petitioner from service. This was challenged by him before the Labour Court in I.D.No.14 of 2000. The

Industrial Dispute was dismissed by an order dated 30.12.2003 and since there was no other remedy for the petitioner, he filed the present writ petition.

6. As stated above, the stand of the writ petitioner is that since the second respondent/State Express Transport Corporation has stated in their counter before the Motor Accident Claims Tribunal in MCOP.No.498 of 1993 that the writ petitioner had driven the bus slowly and carefully with strict compliance of traffic rules and the accident had occurred due to the rash and negligent driving of the deceased driver of the Matador van, it estops the Management from taking a different view regarding the nature of accident in the disciplinary proceedings as well as in the Industrial Dispute proceedings before the Labour Court.

7. We have heard Mr.K.Koteswara Rao, learned counsel for Mr.Mohammed Farook for the petitioner, Mr.L.S.M.Hasan Fizal, learned Standing Counsel for the Management/respondents 2 to 4 and Mr.K.M.Ramesh, learned Senior Advocate learned *Amicus Curiae* in the matter.

8. Mr.K.Koteswara Rao submitted that the Management should take the

same stand in both the proceedings. According to him, a legal stand having been taken that the driver is not responsible, it is not open to the Management to initiate the disciplinary proceedings. He would point out from his pleadings that he had specifically taken this stand before the labour court as well as in the writ petition. It was unfortunately rejected by the Labour Court. He would state that the disciplinary proceedings had been initiated even before the counter had been filed and since a stand had been taken in the counter that the petitioner is not responsible, proceeding with the action initiated before filing the counter, causes prejudice to the writ petitioner. He would state that as a model litigant, the State Express Transport Corporation should stand by the defence that has been taken before the Motor Accident Claims Tribunal. He would submit that the judgment of the Division Bench lays down the correct position of law.

9. Mr.L.S.M.Hasan Fizal would submit that the counter filed by the Management in the Motor Accident Claims Tribunal cannot be treated as admission by pleadings. He would state that the counter filed by the Management is based on the statement that is made by the driver to supervisor, who visited the spot soon after the accident. He would argue that a plea of estoppel does not arise in the present case and that, the judgment reported in

Karuppusamy's case, (2008) 3 LW 90 cited *supra,* requires reconsideration.

10. Learned *Amicus Curiae* would support the contention of the writ petitioner and would state that as the Management had taken a stand before the Tribunal, it should not be permitted to resile from the same and the law laid down in Karuppusamy's case is required to be upheld.

11. We have carefully considered the submissions made by the learned counsel.

12. At the outset, we have to state that we are not entering into the merits of the dispute, but would confine this judgment only to the question that has been referred to the Full Bench.

Estoppel – If applicable

13. As to what constitutes “estoppel” has been discussed by the Supreme Court in several judgments. We would refer to only one of them, namely in the case of ***Chhaganlal Keshavlal Mehta Vs. Patel Naranda Haribhai, (1982) 1***

SCC 223. The scope of estoppel has been laid down in paragraph 23 of the said judgment, which we extract hereunder:

> ***23.*** *To bring the case within the scope of estoppel as defined in Section 115 of the Evidence Act : (1) there must be a representation by a person or his authorised agent to another in any form — a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises de futuro or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel; (8) only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead*

estoppel in his own individual character and not as a representative of his assignee.

14. In order to apply estoppel, it requires a representation by one person to another and that representation must have been relied upon by the other party. On the basis of that reliance, the latter should have altered his position to his prejudice or his detriment. In order to get the benefit of estoppel, the person should prove that he was not aware of the truth or the real state of affairs. When once such facts are shown to exist, then the former is estopped from acting otherwise. Therefore, we have to see whether there has been a representation by the Management, which was acted upon by the writ petitioner resulting in a change in position to his detriment.

15. In a MACT proceedings, where the Government or TNSTC is a respondent, the driver is not made as a party. The parties to such proceedings are the injured or representatives of the deceased and the Transport Corporation. It is possible that the driver might be called as a witness. By the very nature of proceedings, a MACT only decides the issue of fastening of liability. In such a proceeding, the State Transport Corporation being a corporate body, cannot be aware as to the nature and the manner of the

accident. It is here, the submission made by Mr.L.S.M.Hasan Fizal becomes relevant. The stand taken by the Management is based on the statement that was given by the driver as to what transpired at the time of the accident. In other words, there is no representation by the Management to the workman, but the state of affairs stated by the workman is captured in the counter and filed as a defence in the MACT proceedings. This shows that there is no representation from the side of the Management to the workmen. In fact, if there has been a representation by one person, it is the representation of the driver to the Management and not vice versa. Without a representation from the Management, which is *sine qua non,* for applying the rule of estoppel, the said principle cannot be made applicable here.

16. Secondly, a person who knows the truth, cannot plead estoppel. This position is as ancient as the hills and we would rely upon the following judgments for the said proposition:

(i) ***Muhammad Shafi and others vs. Muhammad Said and others ILR 52 Allahabad 248***

(ii) ***R.S.Maddanappa (Deceased) rep. by his legal representatives vs. Chandramma & Another, (1965) 3 SCR 283.***

17. The driver of the vehicle cannot plead that he was not aware of the truth about the accident. The accident by the very nature of this had taken place due to the act of one of the drivers. The driver being aware of the truth cannot plead estoppel. He would certainly be entitled to let in evidence during the time of enquiry and if permissible during the time of trial before the Labour Court as regards what transpired at the time of the accident. He certainly cannot state that he was not aware of the truth. Therefore, even on this ground, the plea of estoppel does not apply.

18. In the MACT proceedings, the counter that is filed on behalf of the Management is based on the claim petition filed by the claimant. As pointed out above, in this proceedings, the driver is not a party. Therefore, if at all there is a representation, it is by the Management to the claimant and not to a third party, viz., the driver. If there is no representation, then the foundation of the estoppel is not satisfied.

Legal defence – Whether constitutes estoppel?

19. Apart from the fact that the principle of estoppel is inapplicable, a

legal defence that has been taken by one party cannot be treated as an estoppel by a stranger to the said proceedings. A party is entitled to take contradictory pleas even in the same proceedings, which he is defending. The only condition is that at the time of trial, he has to elect one of those defences.

20. We only have to refer the judgment of the Full Bench of Bombay High Court in ***Rayachand Wanmalidas v. Sheth Maniklal Mansukhbhai*, AIR 1946 BOM 266 (FB).** The learned Judges had held that a party may raise inconsistent pleas in the same suit. However, such a party has to elect one of the pleas during the course of the proceedings. Even if the party does not choose one of the pleas, it is always open to him to lead evidence on both pleas and it is for the court to decide whether is entitled to succeed on them. To complete the narration, the view taken by the Full Bench had been approved by the Supreme Court in ***Chapsibhai Dhanjibhai Danad v. Purushottam*, AIR 1971 SC 1878.**

21. That the legal defence do not operate as estoppel, has been succinctly laid down by the Division Bench of Karnataka High Court in the ***Corporation of City of Bangalore and others vs. Sudha V.Reddy and others, ILR 2004***

KAR 504. We are extracting the relevant paragraph in the said judgment hereunder:

> ***"10.****There is another aspect to the case in so far as the respondents' learned Counsel has filed before us statement of objections filed by the Corporation in W.P. No. 22713/1993 and it is true that in this case the Corporation has virtually equated the expression 'choultry' with that of 'Kalyana Mantap.' Mr. Holla's submission is that a public body cannot be allowed to adopt conflicting contentions before different Courts and in different proceedings and that there is required to be a level of consistency which includes defence in judicial proceedings and he submits that the Corporation is bound by the stand adopted by it in the earlier proceedings. Mr. Holla has almost equated the Corporation's position with a situation in which the bar of legal estoppel is being pleaded against the body. The appellants' learned Counsel submitted that the case in which those contentions were taken up related to a dispute under Section 343 of the Karnataka Municipal Corporation's Act wherein the question arose as to whether in the case of a Kalyana Mantapa a licence is required or not because catering activity or in other words, serving of food and drink is part of the celebrations. His submission was that some stray submissions that were made in another proceeding*

cannot fetter the legal defence which the Corporation is eligible to plead in this case and we need to record that this position is correct in so far as there can be no estoppel in law against the Corporation in a situation such as the present one. It matters little as to what was the submission canvassed either orally or in writing in that case because the function of this Court is limited to considering the legal validity and tenability of the arguments canvassed before us dehors what is taken up any other proceeding and having done so, we have absolutely no hesitation in holding that a Choultry cannot even for the remotest of reasons be legally equated with a Kalyana Mantap or a Kalyana Mandir.

Holding out – if applicable

22. The other principle which arises out of the aforesaid judgment of the Supreme Court is that there must be a holding out by the Management to the driver. We have held that filing of the counter in the MACT proceedings is not a character of holding out to the driver. Therefore, even on that ground, the application of the principle of promissory estoppel does not arise.

23. To reiterate, a party filing a counter is taking a position that avoids

the legal liability that might be fastened on it. In such a proceeding, the party is entitled to take all the defences that are available to it. In order to defeat the claim that has been made against it, the Corporation takes a stand in the MACT proceedings. We must not forget that the Transport Corporation deals with public funds and an officer who is in-charge of the Transport Corporation in case he does not take all the available stands which are permissible by law, he might be accused for not taking adequate steps to protect the dissipating of funds of the public institution. In a litigative world, one cannot apply the concept of model employer. The Transport Corporation is yet another litigant and therefore, if any plea of estoppel were to apply, we will be placing a bar on the right of the institution to file a counter. In fact, if the truth has to be stated, it has to be stated by the driver who has been given responsibility of driving the vehicle. As pointed out above, it is his stand which is captured in the counter. Therefore, if any statement is made in the counter of the Management, it is only as a litigant who is attempting to resist the claim made against it and such a defence cannot operate as a estoppel.

24. A proceeding before the MACT is only for the purpose of avoiding its liability as the tort-feaser. The proceedings between an employer and

employee are initiated in terms of the Standing Orders or the Rules which govern the relationship between them. When such proceedings are initiated, by no stretch of imagination, the nature of defence taken in the MACT can be telescoped into the other. If an employer is satisfied that the conditions for initiation of disciplinary proceedings are available, it is always free to do so.

Karuppusamy's case - discussion

25. Turning to the judgment of ***Karuppusamy's*** case referred to *supra*, the Division Bench had relied upon two judgments of the Supreme Court in (a) ***Kali Prasad vs. Dy. Director of Consolidation, AIR 2000 SC 3722 and (b)Venkatappa alias Moode vs. Abdul Jabbar, (2006) 9 SCC 235*** to reach the conclusion it did.

26. Insofar as the judgment in ***Venkatappa's case, (2006) 9 SCC 235*** referred to *supra* is concerned, it was a situation where the defendant had taken a particular stand in the written statement filed before the trial court. When the matter wound up on its way to the Supreme Court, the very same defendant projected a new case. Under those circumstances, the Court held that the party is bound by the pleas that he takes in the suit and cannot turn around and take a new position before the Supreme Court. The relevant paragraph of the said

judgment is extracted hereunder:

> ***"13.*** *The first defendant Venkatappa admitted the plaint averment that he (the first defendant) had sold an extent of 2.75, 2.75 and 2.75 guntas (in all 8.25 guntas) of land in Survey No. 622/2 to Venkatamma, Siddhayya and Manchayya under sale deeds dated 7-9-1949, 7-9-1949 and 30-9-1963 (in para 6 of the written statement). But in the special leave petition filed before this Court, the LRs of the first defendant are putting forth a wholly different case. They are contending that 8 guntas of land was allotted to the first defendant and 8 guntas of land was allotted to the sons of Manchamma. But they now allege that what was sold by Venkatappa (the first defendant), under the three sale deeds dated 7-9-1949, 7-9-1949 and 30-9-1963 was only 4 guntas and he had retained 4 guntas. This is contrary to the pleadings and evidence. The appellants herein are bound by the pleadings in the written statement filed by the first defendant and cannot be permitted to put forth a new case."*

27. Insofar as the other judgment in **Kali Prasad**'s case ***AIR 2000 SC 3722*** referred to *supra* is concerned, the Supreme Court had laid down that the findings recorded in the civil court on a jurisdictional fact, is binding on the parties.

28. We are unable to see as to how the said judgments apply to the facts as in the present case. The MACT, which has the power of a civil court, is not possess of jurisdiction to give a finding that the driver is not liable so as to interfere with the power of the employer to take action against its employee. If we were to hold so, then we would be enlarging the scope of MACT not only deciding the liability between the victim and the tort-feaser, but also giving it a power to render a finding between the employer and employee. Such a situation is beyond the scope of Motor Vehicles Act. We are not dealing deep into this aspect. If we were to go into the merits of the case, it would prejudice the parties. Suffice to say that the judgment in **Kali Prasad**'s case ***AIR 2000 SC 3722*** does not improve the case of the writ petitioner on the question that has been framed for us to answer.

Counter as admission of facts

29. In fact, even if we were to treat the counter as a statement of admission under Section 17 of the Indian Evidence Act, then the admission can only be a piece of evidence and it can be explained under Section 21 of the said Act. An admission has to be proved against the party to the suit as per Section 19 of the Act. Proof implies that the matter goes for trial. If the judgment of ***Karuppusamy'***s case is to be applied, then the question of proof does not arise

at all.

30. During the course of enquiry or before the Labour Court, it is always open to the driver to confront the witness, that may be presented by the Management, with the counter affidavit and when the witness is so confronted, it is always open to the said witness to explain the so called admission. That does not preclude the Management from initiating proceedings as against the labourer under its Standing Orders. The relationship between an employer and employee depends upon the standing orders and therefore, to read the judgement of ***Karuppusamy***'s case is a bar to initiate disciplinary proceedings, is to read a bit too much into the same.

31. In the light of the above discussion we would answer the question as follows:

(i) That the Management having filed a counter in the MACT proceedings defending its driver, it does not preclude it from initiating disciplinary proceedings against the driver.

(ii) The position to the contra as laid down in ***TNSTC vs. Karuppusamy*** stands over ruled.

32. Having answered the question, we place the matter before the learned Single Judge to deal with the merits of the case.

(S.V.G., CJ.) (D.B.C., J.) (V.L.N., J.)

01.04.2024

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order

THE HON'BLE CHIEF JUSTICE,

D.BHARATHA CHAKRAVARTHY, J.

and

V.LAKSHMINARAYANAN, J.

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