2024:DHC:4398-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.05.2024

% ***Pronounced on: 29.05.2024***

\+ **LPA 778/2023 & CM APPL. 61886/2023 -Stay**.

THE STATESMAN LTD. **..... Appellant**

Through: Mr. J.S. Bakshi, Sr. Adv. with Mr. K. Chaturvedi, Mr. Praveen Sharma, Mr. Navroop Singh Bakshi, Mr. A. S. Bakshi and Mr. Pranav Goel, Mr. Samar Bansal, Advs.

Versus

GOVT OF NCT OF DELHI AND ORS **..... Respondents**

Through: Ms. Hetu Arora Sethi, ASC, GNCTD with Mr. Arjun Basra, Advocate
Mr. Vijendra Mahadiyan, Ms. Apurva Singh Mahadiyan and Mr. Abhinav Rathi, Advocates for R-3

\+ **LPA 779/2023 & CM APPL. 61890/2023 –Stay**

THE STATESMAN LTD. **..... Appellant**

Through: Mr. J.S. Bakshi, Sr. Adv. with Mr. K. Chaturvedi, Mr. Praveen Sharma, Mr. Navroop Singh Bakshi, Mr. A. S. Bakshi and Mr. Pranav Goel, Mr. Samar Bansal, Advs.

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CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. At the outset, this Court notes that the appellant in both the appeals is the same and further, both the appeals are arising out of the common impugned judgment dated 18.11.2019[1] passed in W.P.(C) 9497/2015 and W.P.(C) 10534/2015 as also the common impugned review order dated 04.07.2023[2] passed in R.P. No.515/2019 and R.P. No.516/2019 by the learned Single Judge. As such, and also since similar questions of facts and legal issues are arising in both the writ petitions, both the learned (senior) counsels appearing for the parties have advanced similar arguments therein. Consequently, this Court, after hearing them is disposing of both the appeals vide the present common judgment.

2. For ease of reference, it may be noted that the appellant in both the appeals before this Court seeks the following common reliefs therein:-

> "*Set aside the Final judgment/order dt. 04.07.2023 passed by Ld. Single Judge of this Hon'ble Court in Review Petition No. 516/2019 titled as "The Statesman Ltd. v Govt. of N.T.C. of Delhi & Ors." and Final Judgment/order dated 18.11.2019 passed by Ld. Single Judge of this Hon'ble Court in Writ Petition (Civil) No. 9497/2015 titled as "The Statesman Ltd. v Govt. of N.T.C. of Delhi & Ors.*""

[1] Hereinafter referred to as '***Impugned judgment***'
[2] Hereinafter referred to as '***Impugned review order***'

FACTUAL BACKGROUND:

3. The Central Government, in exercise of the powers conferred by *Section 9* and *Section 13* of the Working Journalist & Other Newspaper Employees (Conditions of Service) & Miscellaneous Provisions Act, 1955[3], vide order dated 24.05.2007, formed a Wage Board under the Chairmanship of Justice G.R. Majithia to determine applicable rates of wages for working journalists and non-journalists newspaper employees in Newspaper Establishments (other than the News Agencies). After their acceptance by the Central Government, they were notified as the Majithia Wage Board Award[4] on 11.11.2011.

4. Thereafter, the Majithia Award was challenged before the Hon'ble Supreme Court by way of a spate of writ petitions preferred by various newspaper establishments under *Article 32* of The Constitution of India. The Hon'ble Supreme Court in ***ABP Private Limited vs. Union of India***[5], while rejecting the challenge of the various newspaper establishments, upheld the recommendations made in the Majithia Award and directed that all arrears payable thereunder would be paid to eligible persons in four equal instalments within a period of one year from the date of the order and also that the revised wages would be paid with effect from April, 2014. For ease of ready reference, the relevant extracts of the pronouncement by the Hon'ble Supreme Court in the said ***ABP Private Limited (supra)*** are reproduced as under:-

[3] Hereinafter referred to as '***the WJ Act***'
[4] Hereinafter referred as '***Majithia Award***'
[5] (2014) 3 SCC 327

"71. It is useful to refer Section 12 of the Act which deals with the powers of the Central Government to enforce recommendations of the Wage Board. It reads as under:

> *"12. Powers of Central Government to enforce recommendations of*
> *the Wage Board.—(1) As soon as may be, after the receipt of the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.*
> *(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit—*
> *(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit:*
> *Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or*
> *(b) refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit.*
> *(3) Every order made by the Central Government under this section shall be published in the Official Gazette, together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively, or retrospectively, as may be specified in the order."*

72. Thus, it is the prerogative of the Central Government to accept or reject the recommendations of the Wage Boards.

> *There is no scope for hearing the parties once again by the Central Government while accepting or modifying the recommendations, except that the modifications are of such nature which alter the character of the recommendations and such modification is likely to affect the parties. The mere fact that in the present case, the Government has not accepted a few recommendations will not automatically affect the validity of the entire Report. Further, the Government has not accepted all those suggestions including those pertaining to retirement age, etc. as these are beyond the mandate for which the Wage Boards were constituted. Regarding fixation of pay, assured career development, there have been proposals in the recommendations which are in the manner of providing higher pay scale after completion of certain number of years which cannot be treated as time-bound promotion.*
>
> *73. Accordingly, we hold that the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Consequently, all the writ petitions are dismissed with no order as to costs.*"

5. Therefore, by virtue of the dismissal thereof, the said Majithia Award became final and binding upon all the newspaper establishments like the appellant herein. In essence, and as a result thereof, it was incumbent upon all the newspaper establishments, like the appellant herein, to act in accordance with the recommendations contained in the said Majithia Award and in fact, being bound thereby, pay the arrears/revised wages to its employees in accordance thereto.

6. In the case at hand, the Statesman Mazdoor Union[6] on behalf of the 55 employees and 9 employees respectively working with the appellant, a

[6] Hereinafter referred to as '***respondent no. 3***'

limited Company engaged in the business of printing and publishing of newspaper, filed two separate applications under *Section 17(1)* of the WJ Act before the Competent Authority[7] against the appellant. In both the said applications, the respondent no.3 claimed the arrears of increased wages in terms of the aforesaid Majithia Award in view of the fortification thereof and the law laid down by the Hon'ble Supreme Court in ***ABP Private Limited (supra)***, and also prayed for issuance of a Recovery Certificate in case of refusal or default by the appellant.

7. In response thereto, the appellant contested the said applications filed by the respondent no.3 vide its responses dated 21.07.2014, 11.12.2014 and 08.01.2015 respectively on the ground that it was exempted from making the said payment of the arrears in accordance with the Proviso to *Clause 21* of the said Majithia Award[8], as it had incurred *"heavy cash losses"* during the three preceding financial years 2008-2009, 2009-2010 and 2010-2011.

8. The respondent no.2, while allowing both the applications of the respondent no.3 vide its orders dated 21.07.2015 and 19.08.2015 respectively, directed the appellant to make payments to the employees to the tune of Rs.1,94,63,791/- and Rs.37,69,420/- respectively as arrears

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[7] Hereinafter referred to as '***respondent no. 2***'

[8] *"21. Mode of payment of arrears- The arrears payable from the date of enforcement of the Award, if any, as a result of retrospective implementation, shall be paid in three equal instalments after every six months from the date of enforcement of the Award and the first instalment shall be paid within three' months.*

Provided that-
The newspaper establishments, who suffered heavy cash losses consequently in three accounting years preceding the date of implementation of the Awards, shall be exemption payment of any arrears. However, these newspaper establishments would be required to fix salaries or wages of their employees on notional basis in the revised scales of pay with effect from the date of implementation of the Award i.e. 1st July 2010."

within a period of 30 days and then, due to the non-compliance of the said order by the appellant, vide subsequent orders dated 03.09.2015 and 22.09.2015, issued a Recovery Certificate to the District Collector[9], who, in turn, issued notice to the appellant under *Section 136* of The Delhi Land Reforms Act, 1954.

9. Aggrieved thereby, the appellant then filed the two afore-mentioned writ petitions vis-à-vis the 55 workmen and the 9 workmen respectively under *Article 226* of The Constitution of India before the learned Single Judge of this Court averring that the respondent no.2 had erred in classifying the appellant under Class V and further that the appellant did not have the capacity to pay the arrears and therefore sought the quashing and setting aside of orders dated 21.07.2015 and 19.08.2015 issued by respondent no.2, Recovery Certificates dated 03.09.2015 and 22.09.2015 issued by respondent no.2 to respondent no.4 and notices dated 15.09.2015 and 30.09.2015 under Section 136, Delhi Land Reforms Act, 1954 issued by respondent no.4.

10. The learned Single Judge, finding no merit therein while dismissing both the said writ petitions vide a common impugned judgment upheld both the orders dated 21.07.2015 and 19.08.2015 passed by the respondent no.2 and also held that the appellant could not claim exemption under Proviso to *Clause 21* of the Majithia Award as it failed to fulfil the conditions to establish that it has suffered *"heavy cash losses"* in terms thereof.

11. Not stopping, the appellant aggrieved thereby, sought a review of the said order vide two separate review petitions before the learned Single

[9] Hereinafter referred to as '***respondent no. 4***'

Judge seeking the review of its order dated 18.11.2019 and to render finding on the unadjudicated issues. Needless to say, once again, finding no merit therein as well, the learned Single Judge dismissed both of them vide the common impugned review order.

12. It is under these circumstances that the appellant has, now, preferred the present appeals under Clause X of the Letters Patent seeking quashing/ setting aside of both the impugned judgment as also the impugned review order passed by the learned Single Judge in both the writ petitions as well as both the review petitions filed by the appellant.

ARGUMENTS OF APPELLANT:

13. Learned senior counsel for the appellant at the outset submitted that the learned Single Judge erred in upholding the issuance of the Recovery Certificate even though the same could only be issued if there was no dispute regarding the due amount. He submitted that if any dispute arises regarding the said due amount then the same cannot be adjudicated by way of a summary procedure provided under *Section 17(1)* of the WJ Act. In fact, placing reliance upon ***D.B. Corp. Ltd. vs. State of Maharashtra &Ors.***[10] of the Hon'ble Bombay High Court, he submitted that as per settled law, any adjudication or enquiry into the merits and contentious issues can only be done under *Section 17(2)* of the WJ Act and not under *Section 17(1)* of the WJ Act in case of any dispute regarding the due amount. He further submitted that since such a dispute also arises in the present case, the said Recovery Certificate could not have been issued.

[10] 2018 SCC OnLine Bom 2756

14. Further, relying upon ***Devji Maganbhai Vacheta vs. D.B. Corp Ltd. Through the Authorised Signatory Sharad Mathur***[11], the learned senior counsel submitted that the procedure prescribed under *Section 17(2)* of the WJ Act has to be mandatorily followed where there is any invocation of proceedings under *Section 17(1)* of the WJ Act by anyone like the respondent no.3 herein, especially if a dispute has been raised by the employer like the appellant herein.

15. Learned senior counsel then submitted that the duly audited balance sheets for the financial years 2008-09, 2009-10 and 2010-11, i.e. for the three years preceding the Majithia Award as also the balance sheet for the year 2013-14 alongwith a fresh Certificate dated 15.11.2014 given by Ford Rhodes Park & Co. filed before the learned Single Judge clearly establishes that the appellant suffered massive losses for the relevant time period and that it thus entitled the appellant to avail benefit of exemption under Proviso to *Clause 21* of the Majithia Award. Thus, placing reliance upon ***Avishek Raja vs. Sanjay Gupta***[12] coupled with the aforesaid balance sheets and the fresh Certificate in its favour, the learned senior counsel submitted that the appellant fulfils the requirement of *"heavy cash losses"* as losses were not only crippling but were also consistent over the relevant years.

16. Learned senior counsel further submitted that the learned Single Judge failed to consider that due to the accumulated losses suffered for the concerned time period, the appellant was financially incapacitated to bear

[11] 2018:GUJHC:24072-DB
[12] (2017) 8 SCC 435

the burden of payment of massive lumpsum amounts as arrears to the respondent no.3.

17. Interestingly, though the appellant has pleaded that it's case would fall in Class VI and not in Class V of the classes of 'Gross Revenue' of newspaper establishment as classified under Clause 6 of the Majithia Award for the purpose of wage fixation and also raised a doubt qua the individual amounts claimed by members, however, no arguments qua the same were addressed by the learned senior counsel.

18. Thereafter, in its challenge to the impugned review order, the learned senior counsel, placing reliance upon ***K. Lubna & Ors. vs. Beevi & Ors.***[13], submitted that the appellant is free to make legal arguments at any stage, be it the revisional stage. Continuing with his legal submissions qua the impugned review order, learned senior counsel, after relying upon the settled position of law as laid down by the Hon'ble Supreme Court in ***Jagmittar Sain Bhagat vs. Director Health Services, Harayana***[14], ***Zuari Cement Ltd. vs. ESI Corpn.***[15] ***and Balvant N. Viswamitra vs. Yadav Sadashiv Mule***[16], submitted that the issue of jurisdiction, if it goes to the root of the matter, can be raised for the first time at any stage of the proceedings and the learned Single Judge ought to have permitted the appellant to raise the said issue instead of dismissing the review petitions on the ground of jurisdiction being raised at a belated stage.

19. Before parting with the submissions made by the learned senior counsel, needless to mention, though the appellant has raised various

[13] (2020) 2 SCC 524
[14] (2013) 10 SCC 136
[15] (2015) 7 SCC 690
[16] (2004) 8 SCC 706

grounds of challenge in the pleadings, however, the learned senior counsel has primarily restricted his arguments to three issues, *firstly*, whether the appellant had actually raised any dispute qua the amount whereby the proceedings under *Section 17(2)* of the WJ Act were to be initiated before the respondent no.2?, *secondly*, even otherwise, whether it was open for the appellant to raise the aforesaid contention qua *Section 17(2)* of the WJ Act at a later stage?, and *thirdly*, whether there was any bar for the appellant to raise the aforesaid contention qua *Section 17(2)* of the WJ Act in these proceedings? This Court notes that barring the aforesaid, no other arguments were advanced by the learned senior counsel.

20. In view of the aforesaid, the learned senior counsel sought setting aside of both the impugned judgments as also the impugned review order passed by the learned Single Judge and prayed before this Court to allow the present appeals.

ARGUMENTS OF RESPONDENT NO. 3:

21. *Per contra*, learned counsel for the respondent no.3 at the very outset submitted that both the present appeals have been initiated only with a *mala fide* intention to drag on the proceedings and cause inordinate delay in the implementation of the Majithia Award, which, has since been implemented by almost all the newspaper agencies and whereby all the 55 workmen and also the 9 workmen respectively, involved herein, are well and truly entitled to their rightful dues from the appellant.

22. Learned counsel, then placing reliance upon ***Pathumma vs. Kunthalan Kutty***[17], submitted that the appellant is precluded from raising any fresh defence qua the applicability of *Section 17(2)* of the WJ Act at

[17] (1981) 3 SCC 589

this stage before this Court, more so, since there was no such plea and/ or defence raised by it initially before the respondent no.2, or even before the learned Single Judge.

23. The learned counsel further submitted that the details of all the 55 workmen and also the 9 workmen respectively, involved herein, who are related to the recoverable dues from the appellant after implementation of Majithia Wage Board by it, are very much available with the appellant. As such, there cannot be a chance of any dispute regarding the amount/s payable to them. For this, according to the learned counsel the interpretation of balance sheet/s and/ or ITR/s, being maters of simple calculation/s will not come in the way of the implementation of the order passed by the respondent no.2. He also submitted that in any event, suffering of "*heavy cash losses*" by the appellant does not hold good as the same has already been rejected by both the respondent no.2 as also the learned Single Judge.

24. As regards the impugned review order, learned counsel submitted that since the appellant had all throughout submitted to the jurisdiction of the respondent no.2 by participating in the proceedings before it without ever raising any challenge thereto, the appellant is thus precluded to raise the issue of jurisdiction at this belated stage, and thus the learned Single Judge had rightly dismissed the review petitions on the said ground.

25. Learned counsel further, drawing the attention of this Court to the case of ***ABP Private Limited (supra)***, wherein the Hon'ble Supreme Court has categorically held that "*… …the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the*

Constitution of India.”, submitted that the same leaves no doubt of any kind whatsoever that the appellant is bound to clear the dues of all the 55 workmen and also the 9 workmen respectively, involved herein, as per the Majithia Award.

26. Learned counsel then submitted that the present dispute simply pertains to non-implementation of Majithia Wage Board, qua which the Hon’ble Supreme Court, later on, in ***Avishek Raja (supra)*** has specifically directed that *“29… …henceforth all complaints with regards to non-implementations of Majithia Wage Board or otherwise be dealt with in terms of the mechanism provided under section 17 of the Act. It would be more appropriate to resolve such complaints and grievances by resort to the enforcement and remedial machinery provided under the Act rather than by any future approaches to the courts in exercise of the contempt jurisdiction of the courts or otherwise.”*.

27. In view thereof, the learned counsel appearing for the respondent no.3 sought dismissal of both the present appeals.

ARGUMENTS OF OTHER RESPONDENTS:

28. It goes without saying that the learned counsels appearing for the other respondents have supported the case of the respondent no.3 and thus chose not to address any arguments separately. It is a common ground that they too seek dismissal of both the present appeals.

29. This Court has therefore heard the learned (senior) counsel/s for the parties and perused the documents on record alongwith the judgments cited by them.

REJOINDER ARGUMENTS OF APPELLANT:-

30. Nothing much was canvassed by the learned senior counsel save and except that the very same contentions put forth before this Court were once again reiterated. It was propagated by him that the learned Single Judge has overlooked the factum of a dispute having been raised by the appellant on the very first occasion before the respondent no.2, which, in turn, mandated the following of the procedure under *Section 17(2)* of the WJ Act. In view thereof, the learned senior counsel prayed for setting aside of both the impugned judgments as also the impugned review order passed by the learned Single Judge and allowing of the present appeals.

IMPUGNED JUDGMENT: LEARNED SINGLE JUDGE:-

31. Before proceeding with the analysis and reasonings, it would be appropriate for this Court to first draw out the analysis and reasonings as also the findings rendered by the learned Single Judge in both the impugned judgement and the impugned review order.

32. A perusal of the impugned judgment reflects that prior to drawing the findings based on the factual matrix involved before it, the learned Single Judge culled out the basic issue involved in both the writ petitions before him as under:

> "*1. Has the petitioner suffered heavy cash losses consecutively, for the years 2008-2009, 2009-2010 and 2010-2011, so as to be insulated from the requirement of paying revised wages, in terms of the Majithia Wage Board Award (hereinafter referred to as "the Majithia Wage Board Award"), which was implemented on 11th November, 2011?*"

33. Thus, the primary issue for consideration involved before the learned Single Judge was qua the implementation of the terms of the Majithia Award in view of the "*heavy cash losses*" claimed by the appellant, which, is very different from what the appellant has all throughout pleaded before this Court. Meaning thereby, the appellant has,

before this Court, given up the aforesaid claim. In any event, it is not a matter of dispute that the said claim had already been negated by the learned Single Judge. This Court, thus has no option but to conclude that the case set up by the appellant and the arguments advanced by the learned senior counsel in support thereof here are opposite to what its case actually was and what was actually argued by the appellant before the respondent no.2 as also before the learned Single Judge.

34. Based on the aforesaid issue framed, taking into consideration the factual position before it and the legal position of law, and in view of the arguments addressed by learned counsel/s for all the parties involved, the learned Single Judge in the impugned judgment came to the conclusion that the respondent no.2 was correct in holding that the respondent no.3 was well and truly entitled to the payment of the revised wages and also that the appellant was not entitled to the exemption under the Proviso to *Clause 21* of the Majithia Award as the appellant failed to fall within the ambit of incurring *"heavy cash losses"* and further that the financial incapacity had no relevance in determining the liability of the appellant to pay the arrears as terms of the Majithia Award.

35. For ready reference, the relevant extracts of the impugned judgment passed by the learned Single Judge are reproduced as under:

> *"33. The Supreme Court has, in the paragraphs extracted hereinabove, clarified, in unmistakable terms, that the question of whether any particular establishment had, or had not suffered, "heavy cash losses" could not be decided on the test of whether the requirement of payment of revised wages, in terms of the Award, would result in financial difficulties, to the establishment, or not. The Supreme Court contra distinguished the concept of "heavy cash losses", with that of mere financial difficulties. Para 28 of the report in Avishek Raja makes it clear that an establishment could be treated as having suffered "heavy cash losses", during the years 2008-2009, 2009-2010 and*

2010-2011 – which constitute the three relevant years immediately preceding the publication of the Majithia Wage Board Award – only if the losses suffered by the establishment were (i) crippling and (ii) consistent over the years specified in the Award, i.e. over the aforesaid three financial years 2008-2009, 2009-2010 and 2010-2011.

34. Neither of these requirements, in my view, stands satisfied in the case of the petitioner-establishment.

35. A bare glance at the certificate of M/s Ford, Rhodes, Parks and Company, dated 16th July, 2014 indicates that the petitioner had actually earned profits during the years 2009-2010 and 2010-2011, of Rs.35,60,000/- and Rs.7,41,000/- respectively. It was precisely for this reason that the accumulated losses of the petitioner have fallen, from Rs.2,00,14,000/- in 2008-2009, to Rs.1,64,14,000/- in 2009-2010 and Rs.1,56,13,000/- in 2010-2011.

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37. .... The expression "heavy" has to be interpreted contextually and purposively, and keeping in mind the overall tenor of the Award, in the backdrop of its intent and purpose. Thus interpreted, it is apparent that the Majithia Wage Board Award, in prefixing the word "losses", with "heavy", in the proviso to Clause 21, intended the exception to apply only to cases in which the cumulative and continuous losses, suffered over the period of 3 years immediately preceding the date of implementation of the Award, were so heavy as to render compliance, with its terms, well nigh an impossibility.. Nothing short of this exacting standard, in my view, could permit a newspaper establishment to avoid compliance with the terms of the Award.

xxx xxx xxx

41. Para 29 of the report in Avishek Raja clearly states that determination of this issue, which essentially involves factual analysis ought to be undertaken by the Competent Authority, and is not to be brought before Courts. The Competent Authority has, in this case, arrived at an opinion that the petitioner was not suffering from heavy cash losses as would make it impossible for the petitioner to pay revisedwages, to the members of the Union, in terms of the Majithia Wage Board Award. The certificate, dated 16th July, 2014, issued by M/s Ford, Rhodes, Parks and Company which is also supported by the balance sheets of the petitioner, clearly indicate that the very first test postulated in para 28 of Avishek Raja i.e. that the establishment should have suffered continuous losses over the three financial years preceding the implementation of the Majithia Wage Board Award, itself stands unfulfilled in the case of the petitioner, as it-has admittedly

earned profits during the year 2009-2010 and 2010-2011. In that view of the matter, it cannot be said that the petitioner was continuously in loss over the said three financial years, or that the losses suffered by it were so crippling as to render it impossible for the petitioner to comply with the terms of the award."

IMPUGNED REVIEW ORDER: LEARNED SINGLE JUDGE:

36. Similarly, the learned Single Judge while dismissing the review petitions, vide the impugned review order disallowed the appellant to raise the plea of jurisdiction when it had already acquiesced to the jurisdiction before the respondent no.2. Once again, for ready reference the relevant extracts of the impugned order passed by the learned Single Judge are reproduced as under:-

"18. In view of the aforesaid position, I am not inclined, in the present review petition, to allow the petitioner to raise a plea of jurisdiction or competence of the Authority to adjudicate on the pleas of the respondent-journalists, or on the defence of the petitioner in that regard, predicated on the premise that it had suffered continuous losses for three years prior to the passing of the Award of the Wage Board. The petitioner acquiesced to the jurisdiction of the Authority. In the reply filed by the petitioner, to the applications of the respondents, no contest to the jurisdiction or competence of the Authority to adjudicate on the respondents' claims was raised. Rather, the reply contested the claims on merits. Even before the Authority, no such challenge to the jurisdiction of the Authority was raised. Moreover, even in the pleadings in the writ petition preferred before this Court, or in the rejoinder, there was no contest to the jurisdiction of the Authority to pass the order dated 21st July 2015. Written submissions were filed before this Court in which, too, no such challenge was raised. Rather, the written submissions went to the extent of stating the manner in which, according to the petitioner, the Authority ought to have examined the petitioner's claim of three years continuous loss. The written submissions also adverted to decisions of the Supreme Court which, according to the petitioner, explained the concept of "heavy loss". Copious submissions have been advanced in the writ petition, the rejoinder as well as the written submissions filed by the petitioner, on the merits of the matter, including the question of whether the petitioner could escape its responsibility to make payments to the respondents in accordance with the award of the Majithia Wage Board on the premise that they had suffered three years' continuous loss.

19. Besides, even after judgment was reserved in the writ petition and despite having been granted liberty to file additional written submissions on its asking, the petitioner did not choose to do so.

20. It was in these circumstances that this Court examined the matter on merits and came to a finding that the plea of three years continuous loss, as a defence to complying with the Award of the Majithia Wage Board, could not sustain.

21. At this distance of time, this Court is not inclined to set the clock back and subject the respondent-journalists to further litigation.……..

22. De hors all the above considerations, once the petitioner has consciously chosen to urge the issue of its liability to pay wages to the respondent-journalists in terms of the Majithia Wage Board in copious detail, submitting, on merits, that it had suffered continuous losses for three years prior to the Wage Board Award, and the Court has dealt with the issue on merits, the petitioner cannot legitimately seek a review of the decision on the ground that an alternate plea of jurisdiction of the Authority to adjudicate on the claims of the respondents was not considered."

ANALYSIS AND REASONINGS:

37. Now, adverting to the present appeals before this Court, since the same is challenging both the impugned judgment as well as the impugned review order passed by the learned Single Judge in the same breadth, the celebrated enshrined principle of *doctrine of merger* shall apply as per which and in view of the settled position of law qua applicability thereof, the subsequent impugned review order passed by the learned Single Judge shall stand merged with the previous impugned judgment passed by the learned Single Judge. Thus, under these circumstances, since the subsequent impugned review order passed by the learned Single Judge was passed subsequently in the same proceedings, applying the said principle of *doctrine of merger*, it can be conclusively affirmed that the same has indeed merged into the previous impugned judgment passed by

the very same learned Single Judge. Reference is made to ***Mary Pashpam vs. Telvi Curusumary***[18] ***& Ors.*** and ***Kunhayammed vs. State of Kerala***[19]**.**

38. As such, this Court has to, and in fact, is only allowed to look into and take into consideration the position and the pleadings as they were before, at the stage while the impugned judgment was passed by the learned Single Judge. The subsequent pleadings at the time of passing of the impugned review order passed by the learned Single Judge, being fresh/ new and having no independent status or existence of their own, can neither be looked into nor gone into nor taken into consideration by this Court.

39. Therefore, the appellant under the garb of challenging both the impugned judgment as well as the impugned review order passed by the learned Single Judge cumulatively cannot ask this Court to read into what was never there before the learned Single Judge while passing of the initial impugned judgment.

40. *De hors* the aforesaid, this Court finds that the learned Single Judge, after duly considering all the materials on record as also the settled legal position qua review, has after elaborating them, passed the well-detailed impugned review order giving a clear picture thereof. Reiterating again, though this Court is conscious that the impugned review order independently has no legs to stand on, however, this Court is in complete consonance with the same.

41. Now, before adjudicating the disputes involved and rendering the findings thereon, it is without doubt that the crux of the present

[18] (2024) 3 SCC 224
[19] (2000) 6 SCC 359

proceedings revolves around *Section 17* of the WJ Act[20]. As per *Section 17(1)* of the WJ Act, if there is any amount due to any newspaper employee and which is to be recovered from an employer, then the said newspaper employee can seek recovery thereof from the employer before the concerned State Government. Upon being satisfied of the said specified recovery raised, the concerned State Government shall issue a Certificate to the Collector for recovery, whereafter, the Collector in turn shall proceed to recover the said amount as if recovering the arrears of land revenue.

42. However, as per *Section 17(2)* of the WJ Act, if any kind of dispute qua the quantum of such specified amount claimed by the newspaper employee is raised by the employer, then the concerned State Government '*may*', if it so chooses, can refer the same to a Labour Court. Simply put, the same is a matter of discretion resting with the concerned State Government, and certainly not a matter of compulsion.

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[20]*"17. Recovery of money due from an employer.- (1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.*

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1)."

43. What flows from the aforesaid is that the legislature was very careful in carving out a distinction between *Section 17(1)* of the WJ Act and *Section 17(2)* of the WJ Act as in the considered opinion of this Court, a bare perusal thereof reflects that the provisions contained in *Section 17(1)* of the WJ Act are such that it is in fact a summary procedure in the true sense which requires no adjudication/ trial/ evidence/ lengthy proceedings as there is, *per se*, no basis for that. Thus, the provisions of *Section 17(2)* of the WJ Act are not to be exercised.

44. In the present case, *admittedly*, all the 55 workmen and the 9 workmen respectively who were working with the appellant, were newspaper employees, as the respondent no.3 made two applications before the respondent no.2 for seeking their legitimate claims against the employer-appellant herein in terms of *Section 17(1)* of the WJ Act, wherein, the said respondent no.2 passed two separate orders, also in terms of *Section 17(1)* of the WJ Act in their favour.

45. Moving onto the provisions of *Section 17(2)* of the WJ Act, upon going through the pleadings of the parties, especially those of the appellant filed before the respondent no.2, this Court observes that the appellant had nowhere in its reply before the respondent no.2 raised any specific dispute qua the quantum of the payment to be made to the respondent no.3 by it or qua there being no details of the said respondent no.3 at any stage. On one hand, the respondent no.3 had in its rejoinder before the respondent no.2 categorically stated that "*It has to be noted that the management has not disputed the amount claimed by the workmen.*" whereas on the other hand the appellant in its letter dated 21.07.2014 filed

before the respondent no.2 had only taken the plea that it was suffering from *"heavy cash losses"*.

46. The dispute, *per se*, is not to be *ipso facto* read into and/ or interpreted or something from which a conclusion has to be drawn from the pleadings, rather it has to be categorically mentioned/ stated in clear, specific, precise and conclusive terms in all respects for all purposes before a Court of law without creating any doubt of any kind. The same, was missing in the pleadings filed by the appellant before the respondent no.2 and thus this Court cannot be asked to read into it or give a meaning to what was not there at all.

47. As a necessary corollary thereof, this Court can safely deduce that the appellant had not raised any dispute for reference under *Section 17(2)* of the WJ Act. As a result, there was thus no feasible occasion for initiating the process therefor. Furthermore, and in any event, the proceedings under *Section 17(2)* of the WJ Act is a matter of discretion left to the choice of the concerned State Government as it '*may*' refer the dispute, if any and it is certainly not as a matter of right to refer it. Meaning thereby, the dispute, if any, is to be first verified, i.e. if there is actually a dispute, under what circumstances it can be said that a dispute has actually arisen and when the said dispute is said to have arisen. Thus, it can be safely inferred that *Section 17(2)* of the WJ Act is not a necessary and/ or compulsive corollary to *Section 17(1)* thereof.

48. Cumulatively, in view of the stand of the appellant wherein they had accepted the position of the respondent no.3 without raising any dispute qua the quantum of amount involved before the respondent no.2 coupled with the broad findings of the Majithia Board followed by the

dicta of the Hon'ble Supreme Court in ***ABP Pvt. Ltd. (supra)*** as also that in ***Avishek Raja (supra)***, this Court finds that they are broad enough factors for concluding that no adjudication under *Section 17(2)* of the WJ Act was ever required.

49. In a nutshell, in the considered opinion of this Court, it is abundantly clear that the appellant failed to raise any dispute qua the amount whereby the proceedings under *Section 17(2)* of the WJ Act were to be initiated before the respondent no.2. Even otherwise, had the appellant raised the said dispute it was still within the discretion of the concerned State Government to refer the same to a Labour Court under *Section 17(2)* of the WJ Act thereof. As such, the alleged non-reference of the dispute by the concerned State Government to a Labour Court for the proceedings under *Section 17(2)* of the WJ Act cannot in any event, much less, under the existing circumstances, come to the aid of the appellant.

50. Having missed the bus, the appellant is surely estopped from pleading anything contrary and trying to rake up alternative pleas at this belated stage before this Court, when they have already been rejected by the learned Single Judge while disposing of the two review petitions of the appellant as well. Even as per the settled position of law, the appellant cannot be permitted to take alternate plea/s which were never ever taken previously or were never part of its pleadings before the respondent no.2 and that too after having suffered before the respondent no.2 and twice before the learned Single Judge by introducing jugglery of words much less at the appellate stage. The appellant, in our considered view, cannot be permitted to build up a new case. For the foregoing reasons the case set

up by the appellant can neither be considered under the given factual matrix nor under the settled position of law.

51. Furthermore, no doubt that appellant would've been free to advance legal arguments at any stage i.e. at the appellate stage before this Court as well, but, for that it has to explicitly exhibit that the same is germane to the dispute/s involved and indeed has a direct bearing to the facts involved herein. Alas, the appellant has been unable to show anything of that kind to this Court. Thence, the appellant cannot be allowed to plead a new case by taking recourse to fresh/new legal submissions never taken at any stage before and for which the foundational basis was laid, neither before the respondent no.2 nor before the learned Single Judge.

52. The same being the position with the factual arguments as well, the appellant cannot derive any benefit thereof by setting up a new case contrary to the pleadings as was before. The appellant, having appeared all throughout, participated and filed its response to the Statement of Claim of the respondent no.3 before the respondent no.2 itself shows that it had voluntarily submitted to the jurisdiction thereof. The appellant, thus, cannot be belatedly allowed to raise the issue of jurisdiction at this stage. Reliance in this regard is placed upon ***Pathumma (supra)*** and ***Sohan Singh & Ors. vs. General Manager, Ordnance Factory Khamaria, Jabalpur & Ors.***[21].

53. Continuing further, the appellant can certainly not also be allowed to reagitate, much less, reargue the very same contentions on the basis of the very same pleadings which have already been negated by as many as two Forum/s, being the respondent no.2 and the learned Single Judge, by

[21] 1984 (Supp) SCC 661

way of the present proceedings before this Court. Moreover, since it is no more *res integra* that the appellant has to demonstrate some facts which are against the factual matrix involved or where there is a non-application of mind or which is against the established position of law, this Court finds that the appellant has also not been able to make out any case which warrants any interference by this Court.

54. It is in view of the aforesaid position involved right from the beginning of the present litigation, the appellant is unequivocally barred from by trying to introduce a fresh line of arguments after its earlier/ foremost line of defence has been negated, on such grounds by both the respondent no.2 and the learned Single Judge.

55. Qua the "*huge cash losses*", this Court finds that there are no such losses. Balance Sheet/s and/ or ITR/s showing no profit, more so, hitherto since the basic profit and loss account has been belied and negated, cannot form the basis of the appellant having suffered any such "*huge financial losses*" in any manner whatsoever. Taking that into account, the appellant certainly cannot be allowed to build a mountain of a mole at this stage by way of the present proceedings before this Court.

56. Lastly, this Court is in complete consonance with the deliberations and findings rendered by the learned Single Judge in both the impugned judgment and/ or the impugned review order under challenge. Therefore, there is no reason, cause or occasion for interfering with either of the decisions of the learned Single Judge.

CONCLUSION:

57. Given the factual matrix and also in view of the afore-going analysis, this Court finds that since the fresh contentions raised before this

Court were never pleaded and/ or argued before the learned Single Judge, they cannot be considered by this Court since they were neither pleaded nor argued before the respondent no.2 at the first instance. Thus, since this Court is not in agreement with either the legal submissions or the applicability of the judgments cited by the learned senior counsel for the appellant, neither of them can be taken into consideration.

58. Therefore, based on the afore-going deliberations and analysis, as also what is arising therefrom, coupled with the settled legal position as it stands, particularly the Majithia Award and the subsequent dicta of the Hon'ble Supreme Court in ***ABP Pvt. Ltd. (supra)*** as also that in ***Avishek Raja (supra)***, this Court finds no reason for interfering with the impugned judgment as also the impugned review order passed by the learned Single Judge. In view thereof, this Court has no hesitation in concluding that the appellant has not been able to make out any case and as such, the present appeals are meritless.

59. Accordingly, both the present appeals are dismissed along with the pending applications with the directions to the appellant to comply with the findings of the Competent Authority/ respondent no.2 and those rendered by the learned Single Judge within a period of four weeks. No order as to costs.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

MAY 29, 2024/ rr