HIGH COURT OF SINDH AT KARACHI

H.C.A Nos.169 and 170 of 2020

Before:
Yousuf Ali Sayeed &
Arbab Ali Hakro, JJ

Appellants	:	Pakistan Airline Pilots Association & others, through Muhammad Ali Lakhani & Mujtaba Sohail Raja, Advocates.
Respondent No.1	:	Federation of Pakistan. Syeda Wajiha, Advocate, holding brief for Zahrah Sahar Vayani, AAG.
Respondent No.2	:	Pakistan International Airlines Corporation Limited, through Khalid Mehmood Sidiqui, Advocate.
Dates of hearing	:	07.08.2024 and 01.10.2024

ORDER

YOUSUF ALI SAYEED, J - The captioned appeals emanate from Suit No.538 of 2020 instituted by the Appellants before this Court on the Original Side, impugning (i) a Notification dated 28.04.2020 issued by the Ministry of Interior under Section 3 of the Pakistan Essential Services (Maintenance) Act, 1952, declaring all classes of employment in the Pakistan International Airlines Corporation Limited ("**PIACL**") to be classes of employment to which that Act applied, for a period of six months with immediate effect, and (ii) a Letter/Notice dated 30.04.2020 issued by PIACL so as to notify the Pakistan Airline Pilots Association ("**PALPA**") that except for the Collective Bargaining Agent certified under Section 19 of the Industrial Relations Act 2012, no other union, society or association was henceforth recognised as representative of its employees and that all agreements signed with any such entity stood terminated with immediate effect.

2. Two of the Applications that came to be filed in the Suit were CMA No.4391/2020 preferred by the Appellants/Plaintiffs under Order 39 Rule 1 & 2 CPC seeking suspension of the impugned Notification and Letter/Notice, and CMA No. 4437/2020 preferred by PIACL under Section 34 of the Arbitration Act, 1940 to stay the proceedings of the Suit. They were decided in tandem by a learned Single Judge through an Order dated 29.07.2020 (the "**Impugned Order**"), whereby the former application was dismissed while the latter was allowed, thus giving rise to these Appeals.

3. PALPA, the Appellant No.1 in both Appeals, is a body ostensibly registered under the Societies Registration Act, 1860, whereas, the remaining Appellants are individual Pilots, claiming to be its members. As the facts and circumstances otherwise underpinning the matter have been meticulously recorded at great length in the impugned Order, it is unnecessary to burden this judgment through a further reproduction of the same, other than to state that by impugning the aforementioned instruments and seeking the suspension, the Appellants essentially sought to preserve and enforce a Working Agreement of 2011-2013 executed between PALPA and PIACL.

4. Proceeding with his submissions, learned counsel for the Appellants presented his arguments in the same vein as recorded in the Impugned Order, submitting that the Working Agreement did not contain a termination clause and was even otherwise of such a nature as could not have been terminated unilaterally. Furthermore, attention was drawn to Paragraph 6 of the Impugned Order, the relevant excerpt from which reads as follows:

> "However, after issuance of notice on this application the Plaintiffs and filing of counter affidavits both by the Plaintiffs' counsel as well as Defendants' Counsel, the Court has been informed that since in this matter the legality as well as validity of the Notification dated 28.04.2020 under the 1952 Act is also involved and this per se is a legal and Constitutional question, therefore, in view of the dicta laid down in the case reported as K-Electric Limited and another v. Federation of Pakistan and others (PLD 2014 Sindh 504), this Court has jurisdiction to decide such issue, whereas, according to the learned Counsel for PIA, the rest of the dispute may be referred to Arbitration. Insofar as the learned Counsel for the Plaintiffs is concerned, he has consented to the first issue regarding validity and legality of the Notification dated 28.04.2020; however, as to referring the matter to Arbitration, he has contended that in that case this Court shall exercise its jurisdiction under Section 41 of the Arbitration Act, 1940 by suspending the impugned Notice dated 30.04.2020 issued by PIA and then the Plaintiffs would be willing and agreeable to join the Arbitration proceedings."

5. With reference to that excerpt, learned counsel submitted that even if the injunction application was found to have been devoid of force, the Suit ought to have been allowed to proceed to the extent of the legal question, with respect to which it had been conceded that the same fell outside the scope of the Arbitration Clause encapsulated in the Working Agreement, hence jurisdiction in that regard lay with the Court. He argued that even if the dispute as to termination of the Working Agreement was to be referred to arbitration, the Suit ought to otherwise have been allowed to proceed in consonance with the aforementioned noting and observation, whereas the Application under Section 34 of the Arbitration Act had contrarily been allowed without any significant discussion in that regard.

6. Conversely, learned counsel for PIACL submitted that the Impugned Order had been correctly made as per the facts and circumstances marking the proceedings, and sought dismissal of the Appeals.

7. Having perused the Impugned Order and heard the arguments advanced, it merits consideration from the standpoint of the application for interlocutory injunction that the decision to grant or refuse such relief is a discretionary exercise, and an appellate court must not interfere solely because it would have exercised the discretion differently. As such, the scope of inquiry in the exercise of appellate jurisdiction is not to second-guess the exercise of judicial discretion by the trial Court, but to merely be satisfied that such exercise was judicious, in terms of being reasonable. On that very score, a learned Divisional Bench of this Court observed in the case reported as Roomi Enterprises (Pvt.) Ltd. v. Stafford Miller Ltd. and others 2005 CLD 1805 that:

> "The Court at this stage acts on well-settled principle of administration on this form of interlocutory remedy which is both temporary and discretionary. However, once such discretion has been exercised by the trial Court the Appellate Court normally will not interfere with the exercise of discretion of Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court has ignored certain principles regulating grant or refusal of interlocutory injunction. The Appellate Court is not required to reassess the material and seek to reach a conclusion different from one reached by the Court below solely on the ground that if it had considered the material at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner, same should not be interfered in exercise of appellate jurisdiction."

8. That judgment was followed by subsequent Division Benches (of which one of us was a member) in the cases of Syed Hamid Mir through Attorney and another v. Board of Revenue Sindh through Member/Secretary Land Utilization Department and 9 others 2021 YLR 1629 and Pakistan Telecommunication Company Limited v. Province of Sindh & others SBLR 2024 Sindh 32, with reference also being made Hadmor Productions Ltd. v. Hamilton [1983] 1 A.C. 191, where, whilst considering the function of an appellate court, it was observed that:

> "An interlocutory injunction is a discretionary relief and the discretion whether or not to grant it is vested in the High Court judge by whom the application for it is heard. Upon an appeal from the judge's grant or refusal of an interlocutory injunction the function of an appellate court, whether it be the Court of Appeal or your Lordship's House, is not to exercise an independent discretion of its own. It must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only.
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> It may set aside the judge's exercise of his discretion on the ground that it was based upon a misunderstanding of the law or of the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes be sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons, that it becomes entitled to exercise an original discretion of its own."

9. The same view was taken in Garden Cottage Ltd. v. Milk Marketing Board (1984) 1 A.C. 130, where the House of Lords was seized of a matter where the Court of Appeal had interfered with the refusal of the commercial judge to grant an injunction in the exercise of his discretion. Again, Lord Diplock observed that an appellate Court must defer to the trial Judge's exercise of discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. Whilst discharging the injunction granted by the Court of Appeal, it was reiterated that:

> "... The function of an appellate court is initially that of review only. It is entitled to exercise an original discretion of its own only when it has come to the conclusion that the judge's exercise of his discretion was based on some misunderstanding of the law or of the evidence before him, or upon an inference that particular facts existed or did not exist, which although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstance after the judge made his order that would have justified his according to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes by sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so abhorrent that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons, that it becomes entitled to exercise an original discretion of its own."

10. As such, it is manifest that where on a consideration of the respective cases of the parties and the documents laid before it, the Court of first instance has granted or refused an injunction, an appellate Court ought not to interfere with the exercise of discretion unless such exercise is found to be palpably incorrect or untenable. In other words, as long as the view of the trial Court is a possible view, the Appellate Court ought not to interfere with the same. In the matter at hand, the reasons that weighed with the learned trial Court, as noted, were grounded in law and do not indicate that the view taken for granting an injunction on the application of Appellants was capricious or untenable.

11. As is apparent from a reading of the Impugned Order, the learned Single Judge has taken pains to meticulously examine the submissions made before him on the injunctive aspect and has dealt with the same at considerable length while addressing all the relevant points arising for consideration, while properly weighing the matter and setting out cogent reasons for declining relief to the Appellants, with it being noted inter alia that the subjects of the Notification and Letter were distinct and had been unnecessarily conflated; that the Working Agreement was for a defined term, which had lapsed, hence the question of termination was rendered moot; and the absence of a specific termination clause was not of significance as a contract did not normally operate in perpetuity and could even otherwise be terminated by notice for proper cause. As such, it appears that discretion has been exercised judiciously and it is not open to us on appeal to substitute our view in that regard.

12. Turning then to the aspect of the Application under Section 34 of the Arbitration Act, it falls to be considered that the operation of the Notification dated 28.04.2020 was for a period of 6 months and at the time that the Applications were heard and decided the same was still in the field, which is no longer the case. No subsisting Notification on the subject has been brought to our attention and even if such an instrument is prevalent, the same would give rise to a fresh cause of action and could be challenged through an appropriate action. Therefore, it would serve no useful purpose to continue the proceedings of the Suit against the particular Notification under challenge, which has run its course so to speak.

13. In view of the foregoing the Appeals are found to be devoid of force and stand dismissed accordingly.

JUDGE

JUDGE