
(1996) 03 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 1338 of 1993

Bapu Subboo Chavan

APPELLANT

Vs

National Textile Corporation (S.M.) Ltd.

RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Payment of Wages Act, 1936 — Section 15, 17

Textile Undertakings (Taking Over of Management) Act, 1983 — Section 3, 5

Citation : (1996) 5 BomCR 128 : (1996) 73 FLR 1598 : (1998) 3 LLJ 820

Hon'ble Judges : J.K. Chandrashekhara Das, J;G.R. Majithia, J

Bench : Division Bench

Judgement

Majithia, J.—Challenge has been made to order dated September 11/14, 1992 passed in Appeal No. 1 of 1989 by Court of Small Causes at Bombay, in this petition under Article 226 of the Constitution of India.

2. The petitioner was in the employment of Respondent No. 2. He filed an application under the provisions of Section 15(2) of the Payment of Wages Act, for short "the Act", for payment of wages from March 1, 1978 to September 27, 1980 before the authority appointed under the Act. The first respondent was also made a party to the said application. The authority appointed under the Act allowed the application and directed the respondents to make the payment.

3. Aggrieved against this order, the first respondent filed an appeal u/s 17 of the Act before the Court of Small Causes at Bombay. The appellate Court after examining the case came to the conclusion that the order of the authority appointed under the Act in so far as it has foisted the liability on the first respondent cannot be sustained. The Appellate Court held that the award pertains to back wages for the period from March 1, 1978 to September 27, 1980 and was executable only against the second Respondent. The workman has challenged the appellate order in this writ petition.

4. We do not find any merit in the petition. The dispute is fully covered by the

ratio of the judgment rendered in 1995 IV AD S.C.329, R.M.M.S. v. N.T.C. (S.M.) Ltd. & Ors. The Apex Court interpreted Section 3(7) of the Textile Undertakings (Taking over of Management) Act, 1983 and came to the conclusion that the liability incurred by the textile company in relation to the textile undertaking before the appointed day shall be enforceable only against the concerned textile company and not against the Central Government or the Custodian. The appointed date under this Act is October 18, 1983. The liability mentioned in the application under the Act accrued prior to the appointed date. Consequently the liability has to be discharge by mill-Respondent No. 2 and not by Respondent No. 1.

5. Learned Counsel for the petitioner tried to come out of the ambit of this authority by referring to the Textile Undertakings (Nationalisation) Act, 1995. This Act provides for the acquisition and transfer of the textile undertakings and the right, title and interest of the owners in respect of the textile undertakings, specified in the First Schedule with a view to augmenting the production and distribution of different varieties of cloth and yarn so as to subserve the interest of the general public and for matters connected therewith or incidental thereto. Section 5 of this Act says that every liability, other than the liability specified in sub-section (2), of the owner of a textile undertaking, in relation to the textile undertakings in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation. Section 5(1) of this Act specifically exclude the liability mentioned in sub-section (2). The wages and salary alluded in clause (c) of sub-section (2) of Section 5 only relates to wages and other dues in respect of the period after the management of such undertaking had been taken over by the Central Government. Such liability is required to be discharged on and from the appointed day by the Custodian for and on behalf of the Government. Resultantly sub-section (2) of Section 5 is not applicable to the facts of the present case.

6. For the reasons stated above, writ petition fails. Rule is discharged.