

**(1998) 08 GUJ CK 0026**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 7543 of 1997**

Firestone Employees Union

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision : 19-08-1998**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation : (1999) 1 GLR 89**

**Hon'ble Judges : S.D. Pandit, J**

**Bench : Single Bench**

**Advocate : A.K. Clerk, for the Appellant; S.P. Hasurkar and Singhi and Buch Asso., for the Respondent**

## **Judgement**

S.D. Pandit, J.—Rule - In facts and the circumstances of the case and with the consent of parties the petition is taken for final hearing. Mr. Buch, learned advocate for respondents 3 and 4 waives service of notice of Rule and Mr. Hasurkar, learned Addl. Government Pleader waives service of notice of rule on behalf of respondents 1 & 2.

2. Firestone Employees Union, representing 18 workmen in the Ahmedabad Branch of Respondent no. 3 namely Modistone Limited, has filed the present petition. It is the claim of the petitioner that 18 members of the petitioner-union are working for nearly 30 years. They were also being paid regularly till June 1997. But for July 1997 they were paid wages on 31.7.97. But no wages were paid since August 1997. The respondent No. 3 had not also terminated the services of any of the members of the petitioner. But respondent no. 3 is not giving work to them since August 1997. The respondent no. 3 had not also obtained sanction of any authorities for closure of unit. In the Annual Reports of the respondent no. 3 for the year 1995-96 it has been mention that the Board of Directors of respondent no. 3 as well as Board of Directors of respondent no. 4 had agreed to have merger of respondent no. 4. But no consent of the workmen was obtained. On the contrary, coercive actions were taken against the

employees. The petitioner therefore raised an industrial dispute which is referred after failure of Conciliation and it is bearing No. 14/1997. In the said Reference No. 14/1997 petitioner has filed an application of interim relief and an ex-parte order of maintaining status-quo as regards the services of workmen is passed.

3. But the respondent no. 3 has not also filed any application for seeking an order of closure. The respondent did not pay wages since August 1997. The petitioner lodged complaints with respondent no. 2 by giving applications on 4.9.97, 30.9.97 and 8.10.97. But no action is taken by respondent no. 2 against the respondent no. 3 for failure to pay wages. The respondent also with supervisory staff and the functioning of the Ahmedabad unit is brought to standstill. The unit is having a stock of goods worth Rs. 12.4 lakhs has no sale is effected and stock is lying in godown. They are also to get nearly Rs. One Crore towards the goods sold. The amount of Rs. 6.50 lakhs lying in the Bank Account at Ahmedabad is transferred to Head Office Delhi in September 1997. Towards the amounts payable and due to respondent no. 3 cheques and drafts worth Rs. 22.25 lakhs are received in the office but as no Supervisory staff is attending they are lying without credited them in the Bank Account as they are lying with the members of the petitioner.

4. By pleading above stated facts, petitioner has come before this court with the following prayers :

"A - Directing the respondent Nos. 1 & 2 to prosecute the Directors and other officers of the respondent no. 3 company for violation of the labour laws."

"B - Directing a Sale Committee to be constituted or a Court Commissioner to be appointed for the purpose of effecting sale of the stock of goods for the purpose of making payment of salaries to the members of the petitioner union."

"C - Constituting a Committee and/or appointing a Commissioner to take custody of the demand drafts and to deposit the same in a separate Bank Account and directing the payment to salaries of the members of the petitioner union from the said amount."

"D - Restraining the respondent no. 3 and/or respondent no. 4 company from disposing of any of the assets including office premises at Salapas Road, Sarkhej Godown in any manner whatsoever or from disposing of the stock of goods or other movable assets of the company in any manner whatsoever."

"E - Granting such other and further reliefs and passing such other and further orders as may be necessary in the facts and circumstances of the case."

"F - Awarding costs of the petition."

5. Respondent no. 3 has filed affidavit-in-reply as well as additional affidavit-in-reply to contest the claim of the petitioner. The first contention raised by the respondent no. 3 is that neither the respondent no. 3 nor respondent no. 4 is a "STATE" within the meaning of Article 12 of Constitution of India. Hence the

present petition under Article 226 is not maintainable. The petitioners have got the efficacious remedy to approach the authorities under the Payment of Wages as well as other labour laws. It is further contended that the workmen at their factory at Mumbai started threatening and stopping the workmen engaged by the company to load the tyres, tubes and flaps for dispatch to their District offices as well as the customers. Hence the work of dispatch came to standstill since 23-8-97 resulting into serve financial loss. From October 1997 the factory and district office are under lock out. They could not lock out the District office at Ahmedabad as the petitioner union had approached labour court and had obtained status-quo order as regards their jobs. It is also contended that the respondent no. 3 has already approached BIFR under Sick Industrial Companies (Special Provisions) Act. Hence there could not be any order for payment of money by coercive method, in view of provisions of S. 22 of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter to be referred as SICA). Thus it is contended that the petition be dismissed with costs.

6. Neither respondent no. 1, respondent no. 2, nor respondent no. 4 have filed any affidavit-in-reply.

7. Mr. Buch the learned advocate for the respondent no. 3 vehemently urged before me that the respondent no. 3 is a company. It is neither a State or Authority within the meaning of Article 12 of Constitution of India and hence the present petition under Article 226 is not maintainable. At the outset it must be stated that the petitioner has nowhere claimed that the respondent no. 3 or respondent no. 4 is a State within the meaning of Article 12 and therefore the petition is maintainable. What is averred is that in view of facts and circumstances there is a justification to entertain this petition under Article 226 and give relief to the petitioner. The petitioner is seeking a writ of Mandamus under Article 226. Issue of writ of mandamus is not confined only against the State authorities or instrumentalities it can be issued against any person who is performing a duty in which public interest is involved. It could also be issued if there is any violation of the fundamental rights of the citizen. The powers of the High Court under Article 226 could be utilised to protect the fundamental rights of the citizens as well as their protection from illegal oppression and the protection of their rights if the public interest demands the same. The power of the High Court is wide and consequently even a private person could be brought under it's ambit even if another remedy is available if the facts, the circumstances and situation demanding the public interest the intervention at the hands of the High Court. The power of the High Court under Article 226 is more pervasive in the sense that it can issue writs for enforcement of fundamental rights as well as non-fundamental rights. It can ask the opposite party to perform it's public duty. The nature of the duty in question must be such that there must be a positive obligation must be owned by the private individual or body or authority to the affected party. It is not necessary to consider as by what means the duty is imposed. The duty might have been imposed by Constitution of India or by common law or by custom or even contract. Only thing to be

considered is that the duty or obligation must be a positive and some public element/interest is present.

8. The respondent no. 3's contention is that the petition can go before the Labour Authorities for getting their wages. But if the provisions of section 1(4) and 1(6) of the Payment of Wages Act 1936 are considered then as out of total 18 members of the petitioner, 16 members are drawing wages of more than Rs. 1600/- per month they cannot take aid of said Act of 1936 to recover their wages. The petitioner has averred that they had made representations on 4.9.97, 30.9.97 and 8.10.97 to the respondent no. 2 but no action was taken on their representation. The said claim is not controverted by any of the respondents. Similarly it is not the claim of the respondent no. 3 that it had filed any proceeding before the authorities seeking permission to close their unit or to declare lock out and that their representation is decided in their favour. Similarly it is not disputed that the petitioner's members are not paid their wages since August 1997 and that no electric bills of the premises being paid since August 1997 and no transaction for the sale or distribution of stock in hand is effected since August 1997 inspite of the stock in hand and on the contrary the balance in hand of the amount lying in the Bank balances is transferred to the Head Office Delhi. In view of the above stated facts and circumstances, will it be proper to ask the petitioner to go before the labour authorities ? It is settled law that merely because another efficacious remedy is available, it could not be said that the High Court had no jurisdiction to entertain a writ under Article 226.

9. Here the employer has not paid wages to his employees and too by remaining totally inactive. Though employer has stock for sale and there is no obstruction to effect sale. Employer is removing it's monetary assets out of Ahmedabad. When the employer has engaged employees he is duty bound to make payment of wages. By denying wages the respondent no. 3 is not only failing in performing it's statutory duties and obligation but he is directly denying the workmen the fundamental right of life. By denial of wages there will be lack of economic support. It will not be possible for the employees and their families to even meet the bare human necessities of livelihood. When the employees will be deprived of the right to life on account of not meeting the bare necessities of food or clothing due to respondent's failure to perform the statutory duty and obligation, they are entitled to approach this court under Article 226. The activity of the industry taken by the respondent no. 3 is in the economic interest of the State. The existence and survilance of industry is in the interest (economic interest) of the State. Therefore the function of the respondent no. 3 is in the public interest and is having a public element.

10. Thus as discussed above, in view of the powers of the High Court under Article 226 and facts and circumstances stated above the present petition under Article 226 is to be entertained.

11. The learned advocate has cited before me cases of Tekraj v. Union of India AIR 1998 S.C. 469 , Chander Mohan Khanna Vs. The National Council of

Educational Research and Training and other[OVERRULED], and Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, (para no. 44) in support of his submission that the respondent no. 3 is not a State and therefore this petition should not be entertain. In all these three cases there was a question of the infringement of a statutory right of an individual. There was no involvement of public element and public interest and therefore the Apex Court had refused to entertain a writ petition under Article 226. Therefore on facts these cases are not applicable to the case before me. In the recent decision of K. Krishanama Charyulu & Ors. v. Sri Venkateswara Hindu College of Engineering & Anr. 1997 1 CLR 1133 , the Apex Court has allowed the consideration of claim of teachers in Private Educational Institute to get pay in par with the pay of teachers in Governmental institute under Article 226 by holding that the management owe an obligation in favour of the teachers and that there was involvement of public element in matter. In the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, The Supreme Court has held that the issue of writ of mandamus is not confined against statutory authorities and instrumentalities. These above cited two cases of K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, support the view taken by me. The view taken by me was also earlier taken by the Division Bench of the Court in case of Textile Labour Association v. State of Gujarat 1995 (1) G.L.R. 12 and the Single Judge in case of A. B. Bhutaiya v. Amreli District Central Co-op. Bank 1998 (1) G.L.R. 846.

12. The contention of the respondent no. 3 that he could not declare lock out as the status-quo order was obtained by the petitioner has no force at all. As a matter of fact no proceeding was/is initiated till this date to that effect.

13. The next contention raised is that the petitioner is not entitled to get the relief in view of section 22 of SICA. In support of this contention reliance is placed on annexure III at page 55 filed along with additional affidavit of respondent no. 3. If the annexure III is seen then it will be quite clear that it shows that State Bank of Bikaner and Jaipur has approached BIFR. It further state that their reference is registered as Reference No. 32/98. If the provisions of section 15(2) of SICA are considered then it will be quite clear that a financial institute can also make reference. Therefore the contention of Shri Clerk, learned advocate for petitioner that there is no valid reference could not be accepted. But if the provisions of section 22 of SICA are seen then it would be quite clear that any coercive action for recovery of debt after the company is before BIFR is suspended. But respondent no. 3 is before BIFR sometime in January 1998 as the reference is bearing No. 32/98. If the coercive action is already taken earlier then that will not be affected by subsequent reference u/s 15 of SICA. In the instant case the amount of Rs. 22,27,819.59 lakhs of cheques and drafts is already attached as per the order of this court passed on 16.10.97. Then by subsequent order of 23.10.97 they are paid wages for month of August to October and by order dated 24.6.98 they are paid 50% of wages till June 1998.

As the amount in question was already attached by this Court on 16.10.97 if the same is disbursed it would not be in the contravention of section 22 of SICA. The same will be the case of stock in hand. The sale of the stock is already permitted with a direction to deposit the sale proceeds in the same account in which Rs. 22,27,819.59 were deposited as per earlier order.

14. The respondent no. 2 has not taken any action on the representations made by the petitioner. He will have to investigate the said representation and then take necessary action according to law and to inform the petitioner accordingly.

15. Similarly the respondent no. 3 cannot voluntarily transfer any of it's property and create a situation which will result in forcible lock out without obtaining a permission from the authorities.

16. Thus I hold that the present petition will have to be allowed. The respondent no. 3 is directed and ordered to pay outstanding wages of the members of petitioner from November 1997 from the original amount of Rs. 22,27,819.59 and the amount of the sale proceeds of the goods in stock to be credited in the said Current Account no. 5163 of Canara Bank, Bhadra, Ahmedabad till the said amount is exhausted and till it's liability to pay wages to the members of petitioner is brought to an end by the order of competent authority. The respondent no. 2 to investigate the representation made by the petitioner on 4.9.97, 30.9.97 and 8.10.97 and to take appropriate action on the same according to law and to intimate of it's decision and action to the petitioner. The respondent no. 3 is further directed and ordered not to voluntarily disposed of it's property in Ahmedabad without obtaining a permission of any authority. As regards the arrears payable till 30th June, 1998 be paid on or before 31.8.1998 and the remaining arrears till 31.7.98 be paid alongwith wages for August 1998 on or before 14.9.98. Rule is made absolute on above terms. Parties are directed to bear their respective costs.