

(1996) 11 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 6912 of 1996

Gujarat Trade Union Manch		APPELLANT
	Vs	
Gujarat State Textile Corporation		RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 113, 115A, 66, 78(1)(A)(C), 95
Constitution of India, 1950 — Article 12, 14, 21, 226, 254
Industrial Disputes Act, 1947 — Section 25
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20

Citation : (2000) 99 CompCas 461

Hon'ble Judges : Gurudas Datta Kamat, C.J.;C.K.Thakker, J

Bench : Division Bench

Advocate : Mukul Sinha, for the Appellant; Kirit N. Raval, P.J. Davawala, S.N. Shelat, Dhaval C. Dave, B.R. Shah and D.S. Vasavada, for the Respondent

Judgement

G.D. Kamat, C.J.

Rule.

1. By consent of the advocates appearing for the parties, who waive service of rule on behalf of the respective respondents, taken up for final hearing.
2. This petition is instituted by the Gujarat Trade Union Manch and by the Gujarat Mazdoor Sabha against the Gujarat State Textile Corporation, State of Gujarat and Textile Labour Association, claiming public interest and praying therein for an appropriate writ, direction and/or order for quashing and setting aside a settlement-cum-award dated September 3, 1996, and all other similar awards and consequential actions, being contrary to law, null and void. A prayer is also made to declare that the State Government and/or the Textile Corporation has no power, authority or jurisdiction to impose conditions in the impugned agreement dated August 31, 1996, and the Industrial Court has had no jurisdiction to pass the award on the basis of such an agreement. The thrust of the petition, therefore, is that the agreement as well as the award are illegal,

unconstitutional and without any legal effect whatsoever.

3. By a draft amendment moved, the constitutional validity of sections 66, 78(1)(A)(C), 95, 113, 115A read with item No. (7)(i) of Schedule III to the Bombay Industrial Relations Act, 1946, is also challenged on the grounds that those provisions are inconsistent with and repugnant to the provisions of section 25-O of the Industrial Disputes Act, 1947, and further being violative of articles 14, 21 and 254 of the Constitution of India. The further prayer, therefore, is to restrain the respondents from enforcing and implementing the agreement dated August 31, 1996, and the award dated September 3, 1996, and from taking any action thereunder.

4. Tersely put, the case of the petitioners is that the first petitioner is a Manch, formed by several Central trade unions, like, INTUC, AITUC, GITU, GSTC Officers" and Technicians" Union, NTC Officers" and Technicians" Union, etc. It is averred that the object of the Manch is to campaign against closing down of textile mills owned, managed and run by the Gujarat State Textile Corporation (for short "GSTC"). It is claimed that petitioner No. 2 is a registered trade union, having members both in the engineering as well as textile industries and is directly interested in the outcome of the present petition.

5. Gujarat State Textile Corporation is an "authority" under article 12 of the Constitution of India and, therefore, partakes of the character of Government, which, at present, runs several textile mills taken over by the Government of Gujarat under the Textile Mills (Special Provisions) Act, 1985. It is the case of the petitioners that respondent No. 3 - Textile Labour Association is a party to the agreement, entered into between GSTC and Textile Labour Association, which has finally culminated in an award made by the Industrial Tribunal, Gujarat State at Ahmedabad, in Submission Application (IC) 1 of 1996, dated September 3, 1996. A so-called voluntary retirement scheme was notified by the first respondent-Corporation for the workers of the mills owned, managed and controlled by it. This scheme is held out to be contrary to law and against the provisions of the Industrial Disputes Act by the petitioners as being arbitrary, and what is more, unreasonable. According to the petitioners, it adversely and prejudicially affects innumerable workmen, who are not in a position to protect their rights and that the respondent-Corporation clearly intends to close down textile mills under the so-called voluntary retirement scheme, which, in substance and reality, is nothing but compulsory termination of services of the workmen by bypassing and not following the provisions of section 25-O of the Industrial Disputes Act and, hence, the same is illegal and unlawful. It is asserted that the petitioners, with a view to protect and safeguard the rights of workmen, are, therefore, constrained to file the present petition pro bono publico. It is otherwise set out that prior to 1985, several mills became sick and they were thus closed down rendering thousands of workmen unemployed. With a view to rehabilitate the textile units, the Government of Gujarat promulgated an Ordinance in the year 1985, to acquire all textile mills, which were lying closed.

The Ordinance was subsequently enacted as an Act, known as the Textile Mills (Special Provisions) Act, 1985, with two objects, viz.

- (i) To ensure maintenance of production of cloth; and
- (ii) To protect the workmen employed in textile mills.

6. After taking over 15 textile mills, several textile mills were restarted by the first respondent-Corporation, but as the affairs of those units were not properly managed, it resulted into heavy loss. According to the petitioners, a reference was, therefore, made to the Board for Industrial and Financial Reconstruction ("the BIFR", for short) and the BIFR ordered winding up of those mills. It is claimed in the petition that there are about 17,000 workmen presently employed by the first respondent-Corporation in various mills owned and managed by it and as and when the textile mills are to be closed, it would seriously prejudice the rights of those employees. It is in these circumstances that the petitioners have challenged the vires of section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985, by filing a separate petition, being Special Civil Application No. 6837 of 1996, which is pending.

7. To make the challenges in this petition good, Mr. Sinha, learned counsel for the petitioners, has raised the following contentions :

- (1) The provisions of sections 66, 78(1)(A)(C), 95, 113 and 115A and item No. (7)(i) of Schedule III of the Bombay Industrial Relations Act, 1946, are ultra vires section 25-O of the Industrial Disputes Act, 1947, as also ultra vires articles 14, 21 and 254 of the Constitution of India;
- (2) The settlement said to have been arrived at between the Textile Labour Association and the Gujarat State Textile Corporation is illegal, unlawful, inequitable and prejudicial to the rights and interests of the workmen;
- (3) The award passed by the Industrial Court, Gujarat State, at Ahmedabad, on September 3, 1996, pursuant to the compromise arrived at between the Textile Labour Association and the GSTC is illegal, unlawful and cannot be enforced;
- (4) Neither respondent No. 1 nor respondent No. 2 has power, authority or jurisdiction to enter into an agreement with respondent No. 3 by way of settlement or otherwise and thereby, depriving the members of the petitioner-association of the rights available to them;
- (5) Respondent No. 3 is not a representative union and it had no authority to enter into compromise or settlement with respondent No. 1 or respondent No. 2; and
- (6) The action of the respondents is mala fide and malicious. There was unholy haste on the part of the respondents in entering into the agreement and getting the settlement converted into an award. The terms and conditions of the so-called settlement and in particular clauses (2), (11) and (12) are in the nature of unfair labour practice. No choice was left to the workmen and they were forced

to sign the settlement. There is coercion and threat. Resignations are not voluntary.

8. It is upon these contentions and grounds the action is said to be illegal and ultra vires.

9. These petitions are vehemently opposed on behalf of respondent No. 1. Mr. Kirit Raval, for the respondent-Corporation, while supporting the action, has urged that it is not possible to run the textile units and, therefore, a reference was made to the BIFR and after careful consideration of the facts and circumstances, a recommendation was made to close down the units and accordingly, a fair action was taken. It was submitted by him that in reaching the decision to settle the matter, the larger interest of workers was taken into consideration and that is how a settlement was entered into between the workmen and the third respondent-Textile Labour Association, which is otherwise valid and legal and which finally culminated in an award. He, therefore, canvassed that the petition is liable to be dismissed.

10. B. R. Shah, learned counsel appearing for respondent No. 3-association, also, supported the impugned action and relying upon the affidavit of Mr. Joshi, Legal Incharge and Executive Member of the Association, submitted that considering the overall circumstances, the action taken is more beneficial to the workmen and there is no scope for questioning the scheme envisaged, which culminated into an award. He urged that the agreement was voluntary, lawful and what is more, equitable to the workmen.

11. In opposing the petition, Mr. Shelat, learned additional advocate general, submitted that a stage had come, where the Government was forced to prevent huge financial loss year by year. According to him, the financial burden was unbearable as far as the State of Gujarat is concerned and, therefore, the settlement has been fairly reached. He says that more than 90 per cent. of the workmen agreed and that is how the package deal has been arrived at. He contended that there is no "closure", as contemplated by the petitioners and the provisions of the Bombay Industrial Relations Act or the Industrial Disputes Act have no application. In so far as the validity of the Bombay Industrial Relations Act is concerned, Mr. Shelat submitted that, in the instant case, the question does not arise and the court need not decide that question in the present petition.

12. The question indeed arises whether, in the facts and circumstances of this case, a case has been made out by the petitioners so as to exercise the extraordinary jurisdiction of this court under article 226 of the Constitution of India and that too, treating this petition as and by way of public interest litigation. In our opinion, there is no justification for doing so.

13. Qua the constitutional validity of sections 66 and 78(1)(A)(C) of the Bombay Industrial Relations Act, it was contended that they are ultra vires article 254 of the Constitution of India. According to learned counsel for the petitioners, the provisions are also repugnant to section 25-O of the Industrial Disputes Act,

1947, and for that matter, section 113 of the Bombay Industrial Relations Act read with item (7)(i) of Schedule III is also ultra vires and unconstitutional inasmuch as it confers a blanket and uncontrolled power on the part of the Government and the Government is enabled to add or delete any entry in the said Schedule in respect of closure and compensation. It was, therefore, pleaded that such a piece of excessive delegation of power to the executive by the Legislature is unconstitutional. An argument was also advanced that the Industrial Disputes Act is a special legislation governing the relationship between the employer and the employee and such a relationship must be governed only under that Act and, therefore, no action can be taken either under the Companies Act, the Bombay Industrial Relations Act, the Sick Industrial Companies (Special Provisions) Act, or any other law. For this purpose, reliance was placed on the decision of a learned single judge of the High Court at Bombay in the decision of *Bombay Metropolitan Transport Corporation Ltd. v. Employees of B. M. T. C. (CIDCO)* [1990] 69 Comp Cas 465.

14. In answer, counsel for the respondents submitted that, in the present case, the question of the constitutional validity of any law does not arise nor is the court required to enter into larger questions. It was strongly contended that the settlement had been arrived at between the Corporation and the association, which was accepted by a majority of the workmen. The said settlement was produced before the Industrial Court, which made an award on the basis of the settlement and which cannot be now brushed aside. In the light of those facts, it is urged that there is no scope to invoke the provisions of section 25-O of the Industrial Disputes Act on the ground that the action amounts to retrenchment. It was contended that whether or not section 25-O of the Industrial Disputes Act is a special or general legislation is not necessary to be decided as it pales into a mere academic issue and, therefore, such a question does not arise and the question of the court expressing any opinion on the same equally does not arise.

15. In any case, it was pointed out that the submission that section 25-O of the Industrial Disputes Act is a special legislation, whereas the Bombay Industrial Relations Act, the Companies Act, the Sick Industrial Companies (Special Provisions) Act, 1985, are general legislations is ill-founded. It was forcefully contended that the Industrial Disputes Act is a general law and other statutes have been enacted with a view to meet particular types of situations and, hence, they are special legislations. In so far as reference to the decision of the learned single judge of the Bombay High Court in *Bombay Metropolitan Transport Corporation Ltd. v. Employees of B. M. T. C. (CIDCO)* [1990] 69 Comp Cas 465 is concerned, it was pointed out that the decision rendered is no longer good law as in appeal, a Division Bench of the same High Court has reversed the same. The appellate decision is *Bombay Metropolitan Transport Corporation Ltd. v. Employees of Bombay Metropolitan Transport Corporation Ltd. (CIDCO)* [1991] 71 Comp Cas 473 (Bom).

16. We see not only considerable force but merit in the argument of the

respondents. In our opinion, the package deal offered by the first respondent-Corporation was in consultation with the second respondent-State Government and the same has been accepted by the majority of the workmen. The voluntary settlement has been arrived at and signed by all parties. Therefore, an application was made to the Industrial Court and the settlement has been made into an award of the court. In view of that fact, in our judgment, the larger question regarding the constitutional validity of the provision of the Bombay Industrial Relations Act does not arise in the present case and we need not express our opinion thereon

17. Coming to the affidavit-in-reply filed on behalf of respondent No. 3, it is stated that the Corporation has sustained financial loss, approximately Rs. 515 crores up to March, 1995, which has now reached Rs. 610 crores in March, 1996. Mr. Shelat, learned additional Advocate-General, stated that there is a recurring loss of Rs. 5 crores per month and the total loss to the exchequer is to the extent of Rs. 611 crores. He also stated that the GSTC has become a sick industrial company and, therefore, a reference was made to the BIFR in June, 1993. All efforts were made for revival of sick industrial mills by the BIFR, but they did not meet with any success. The BIFR was, therefore, left with no alternative but to recommend winding up of the GSTC. The resultant effect naturally would be that all officers and employees are bound to be discharged on closure of textile mills. Taking into consideration these facts and with a view to protect and safeguard the interest of workers and the State economy, attempts were made and the third respondent-association was requested to arrive at an appropriate settlement so that the workers get terminal benefits at the earliest. The Government also agreed to such a formula and as a special measure, and in the light of the directive principles of State policy, a package deal was brought into existence, under which various benefits are granted to the workmen. The assertion of the third respondent that in case of ordinary closure in accordance with law, it was doubtful whether employees would get such benefits, which they are now getting under the settlement, which has become the award of the Industrial Court seems to be justified as there are innumerable cases where workers do not get their terminal benefits for years and years and for decades. A chart is annexed to the affidavit-in-reply, pointing out as to how the employees are availing of benefits. It is also suggested and to some extent, justifiably, that those workmen were not entitled to all such benefits. The State of Gujarat thought it fit to grant some additional benefits with a view to minimise the hardship of the workmen.

18. It is otherwise common ground that out of about 14,000 workers more than 13,000 have accepted the settlement and have shown their readiness and willingness to abide by the agreement. It is also common ground that the majority of the workmen have already received compensation by now and chosen their own path. The petitioners are not recognized unions and, admittedly, they do not have the majority of workers with them and regard being had to the fact that the majority of the workers having accepted the package

deal pursuant to the settlement, which has become an award, in our opinion, it is impermissible to allow the minority to challenge the same and that too, in the nature of public interest litigation.

19. By now it is clear having looked at the figures, which have been furnished along with the affidavit-in-reply, that more than 90 per cent. of the workmen have agreed to such a settlement and the settlement has been made an award by the Industrial Court. At the time of the hearing of the petition, we were told across the Bar that out of total workers of 13,974, 13,150 workers have already signed and accepted the settlement. Thus, it is clear that a thin minority of 824 workers are against the settlement. In these circumstances, in our opinion, this is not a fit case where, in exercise of extraordinary jurisdiction, any interference is called for and/or justified.

20. Mr. Sinha indeed contended that voluntary resignation said to have been given by the workmen, though by a majority of them, is not really "voluntary", as understood in law, for, according to him, virtually it is a closure. He says that first the decision was taken to close down and wind up the textile mills contrary to law. He also points out that there was undue haste on the part of the authority in getting the BIFR proceedings culminating into a final order and thereafter, under coercion, duress and compulsion, resignations were sought. These resignations cannot come in the way of the petitioners unions in challenging the validity thereof, asserts Mr. Sinha. For that matter, he also drew our attention to various clauses of the agreement. In that, he submitted that 2 per cent. of the benefits are sought to be deducted in favour of the third respondent-association, which is illegal. He stated that the State Government and the Central Government had made declarations from time to time that all sick units will be revived and no workmen would be made unemployed and that the rehabilitation scheme is prepared only with that object in mind and, therefore, it was clearly incumbent on the respondents to run the so-called sick undertakings. He, therefore, says that the respondents cannot be permitted to close down the mills under the excuse that the units were and are running in losses and that the BIFR had passed an order of winding up the companies. Considering the facts and figures, we are, however, of the view that the action of the respondent authorities cannot be termed either arbitrary or unreasonable. On the contrary, we are satisfied that in spite of efforts made, the units could not be revived. It is common ground that majority of the mills were already lying closed and the State Government was made to pay idle wages to the workmen. The units could not be revived and the loss incurred by the Corporation accumulated day-by-day, running into crores of rupees. When proceedings under the Board for Industrial and Financial Reconstruction Act were initiated, the Board has taken the view that there is no alternative but to wind up the units. Needless to say, the decision of the Board is that of an expert body. Ordinarily, a decision of such a body is not interfered with unless it is palpably wrong or is such that no reasonable man of ordinary prudence would reach such a decision. On the facts and circumstances of this case, we are satisfied that the expert body could not have reached any

decision other than the one reached by them. Seen in this light, the action taken does not seem to be unlawful or otherwise arbitrary and/or unreasonable. Respondent No. 3-association is a representative union of the majority and the majority of the workers have already accepted the proposal and settlement and have, that way, accepted the compromise. We have also seen and satisfied ourselves that the terms and conditions incorporated in the compromise are not adverse to the interests of the workmen. On an overall assessment of the situation, we also find that the agreement seems to be fair and what is more, when the parties approached the Industrial Court, the court put its seal and the settlement became an award of the Industrial Court. A clear inference, therefore, arises that the Industrial Court was satisfied about the legality and validity of the settlement or the package deal. There is another way of looking at the whole matter. We are told by Mr. Shelat that the State Government has to disburse Rs. 5 crores per month and the large part of this amount has to be disbursed as and by way of idle wages to workers because the mills are lying closed. In any case, therefore, in public interest, the State Government cannot be made to suffer substantial sum of Rs. 5 crores per month from the public exchequer. In our judgment, therefore, this is not a fit case, where interference is required in the extraordinary jurisdiction under article 226 of the Constitution of India in public interest litigation.

21. Though we are dismissing this petition, in our view, some directions are required to be given so as to safeguard the interest of the workers, who have so far not taken the benefit of the settlement-cum-award dated September 3, 1996, and who may yet choose to do so. Mr. Sinha, learned counsel appearing for the petitioners, had himself asserted at the time of the arguments that he will have no objection if workmen, on their own, opt for this package deal and his thrust was that it should not be forced upon unwilling workers. We are sure that if workers do not want to avail of the benefits of the award, they can surely seek redress in an appropriate forum, as advised. The fact, however, remains that under clause (11) of the settlement and award, dated August 31, 1996/ September 3, 1996, it was made a condition that those workers who want to resign to get the benefit under the award, must do so on or before September 12, 1996. Indeed this petition was instituted prior to that date. We did not grant interim relief, making it clear that at the time of final hearing, appropriate equitable relief could be considered even in the event the petition is to be dismissed. It may be possible that some of the workers may yet opt for the package deal. We have, therefore, no difficulty in directing respondent No. 1-Corporation to accept resignations until December 10, 1996, and afford to such workers the benefit under the award in the event they so choose and in no event, the benefit shall be denied to them if they come forward with their applications on or before December 10, 1996. This position will also be available to those who had applied but have so far not accepted the payment under the award.

22. For the foregoing reasons and subject to the aforesaid directions, the petition

is dismissed. Rule is discharged with no order as to costs.