

(1963) 10 BOM CK 0003

In the Bombay High Court

Case No : Company Application No. 36 of 1963 in I.C. No. 266 of 1958

In Re: Shree Madhav Mills Ltd.

Date of Decision : 01-10-1963

Acts Referred:

Companies Act, 1956 — Section 445(3), 451, 457
Industrial Disputes Act, 1947 — Section 2, 25FFF(1)

Citation : AIR 1967 Bom 219 : (1966) 68 BOMLR 551 : (1967) 15 FLR 430 :
(1966) 2 LLJ 827 : (1966) MhLj 833

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : Coun Buch, for Rashtriva Mill Mazdoor Sangh, K.K. Singhvi, R.J. Joshi, for the Appellant; Girish Bhati Solicitor, for the Respondent

Judgement

(1) This Summons is an appeal against the decision of the (Official) Liquidator of Shri Madhav Mills Ltd., dated 19-8-1963, whereby the Liquidator dismissed large parts of claims made by several ex-employees of the company. The ex-employees had claimed retrenchment compensation on the footing that the provisions in Section 25FFF of the Industrial Disputes Act, 1947, were applicable to the facts of their case. The relevant facts are as follows;

The company carried on business of textile mills, Gill and Co. Private Ltd. applied to this Court for a winding up order against the company. Their case was that they had sold and delivered to the company 174 bales and another lot of 74 bales of cotton in September 1958. In respect of the balance of the price due, the company had handed over to the sellers a cheque for Rs. 32,414.45 np. but the same was dishonoured by non-payment. In spite of repeated reminders and Attorneys' correspondence, the company failed to pay the sellers the above amount of Rs. 32,414.45np. Various particulars were mentioned in the petition to show that the company was in huge financial difficulties and unable to pay its debts. By the Order dated 5-8-1959 the company was ordered to be wound up.

2. Prior to the above order for winding up by a notice dated February 25, 1959, Haridas Mundhra, the Chairman of the Board of Directors of the Company,

notified all the employees of the company that the company had

"been incurring heavy losses over a period of about three years owing to the sustained losses and financial difficulties, the Management is unable to continue to run the Mills. further, owing to the winding up proceedings launched in the Bombay High Court by the Elgin Mills Ltd., Kanpur, it has become impossible for the Management to make any effort whatsoever of keeping the Mills running".

(The reference to the Elgin Mills Ltd., ought to have been to Gill and Co-Private Ltd).

3. All the employees were notified that the mill

"will not be working on and from 26th February 1959 and the employees concerned will be treated as laid off. They are further informed that the Management waive the condition that they have to report at the starting time of their respective shifts as required under the provisions of the Industrial Disputes Act. The workers need not call at the Mills until further notice"

4. After the above notice, the undertaking of the mill's company was never worked. As a result of the winding up order, provisions in Section 445 of the Companies Act, 1956, became applicable and in the result the winding up order must be deemed to be notice of discharge to all the employees of the company. The obvious result of the order was that the undertaking became closed as from August 5, 1959, and the service of the employees became terminated also as from that date. On behalf of the various employees of the company, certain statements of claims have been filed before the Liquidator. These are not summarised in the above order. It is sufficient to state that one group of employees made their claims through affidavit of claim filed by Y. V. Chavan, Secretary of Mumbai Girani Kamgar Union dated January 24, 1961. The claims relate to "gratuity", "retrenchment compensation", "one month's notice pay", "wages in lieu of one month's pay." "bonus for the years 1957 and 1958." "compensation for staggering of holidays" and "unpaid wages". The total amount claimed by this group of employees comes to Rs. 6,23,729.66 nP.

5. Another group of employees made their claims through the Secretary of Rashtriya Mill Mazdoor Sangh, but particulars have not been pointed out. From the affidavit of Vasant G. Maneck dated September 21, 1963, it appears that the aggregate amounts claimed by all the ex-employees come to about Rs. 21,00,000/-.

6. The ex-employees' claim for retrenchment compensation is based on the provisions in Section 25FFF and Section 25F of the Industrial Disputes Act, the relevant parts whereof run as follows:

"25FFF(1) Where an undertaking is closed down for any reason whatsoever every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the

provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation:- An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

(2) xx xx xx xx

7. u/s 25F a workman who has been in continuous service for not less than one year under an employer is not liable to be retrenched by that employer except upon service on him of notice of one month in writing indicating the reasons for retrenchment and the workman has been paid, at the time of retrenchment, compensation equivalent to 15 days' average pay for every completed year of service.

8. The case of the employee-claimants before the Liquidator was and in this appeal is that there is nothing to show and no one has contended on the record that the undertaking of the mill's company was closed down on account of unavoidable circumstances beyond the control of the company. In the result, under sub-section (1) of section 25FFF read with the provisions in Sec 25F, all workmen who were employed in the service of the company continuously for not less than one year prior to the closure and retrenchment are entitled to payment of retrenchment compensation equivalent to 15 days' average pay for every completed year of service. By the order in appeal, the Liquidator held that having regard to the provisions in Section 445(3) of the Companies Act, the winding up order must be deemed to be notice of discharge to the employees. According to him, the termination of services of the employees was statutory and was not act of the employer. He therefore held that the termination of services was for reasons beyond the control of the employer and result of the supervening liquidation proceedings instituted at the instance of a creator. He further held that when the services of the employees had not been terminated in the manner prescribed by Section 25F of the Industrial Disputes Act and were terminated as a result of the liquidation proceedings which were beyond the control of the employer, the compensation must be limited to three months average pay under the above proviso to Sub-section (1) of section 25FFF.

9. One more finding he made was that having regard to the provisions in Section 2(s) of the Industrial Disputes Act, the employees drawing wages exceeding Rs. 500/- per month would not be entitled to any retrenchment compensation whatever.

10. Both the above findings are challenged by the appellant in this appeal.

11. It is necessary to state that whilst disposing of complicated claims filed before him, the Liquidator ought to refer to and mention all relevant facts in the orders that he passes. In the order in appeal, except the points of law which were raised, nothing by way of relevant facts is mentioned.

12. On behalf of the interveners, who represent certain creditors, Mr. Joshi and Mr. Bhatt appearing for the Liquidator have argued that the claimants are not entitled to compensation on the footing mentioned in Section 25F because the mill's undertaking was closed down on account of unavoidable circumstances beyond the control of the employer. Now in this connection it must at once be stated that no one made such a contention in the proceedings for adjudication of the claimants' claim before the Liquidator. The contention has been raised for the first time on behalf of the intervening creditors, though there are no facts on record which go to prove the correctness of the contention. I will deal with this question after disposing of the question of true construction of the provisions in Section 25FFF.

13. On a reading of the provisions in sub-section (1) of Section 25FFF, it is clear beyond doubt that in all cases where an industrial undertaking is closed down, every workman who has been in continuous service for not less than one year immediately before such closure is entitled to notice and compensation in accordance with the provisions in Section 25F as if the workman had been retrenched. This right, however, is subject to the provisions in sub-section (2) and the proviso to sub-section (1) of Section 25FFF. Having regard to the clear provisions in sub-section (1), it would be incumbent upon the employer to prove that circumstances mentioned in the proviso exist and for that reason the workman and/or employee is not entitled to compensation as mentioned in the main part of sub-section (1). It would be accordingly incumbent upon the employer to prove if lesser compensation is to be paid to the workman that the undertaking was closed down on account of unavoidable circumstances beyond the control of the employer. In cases in which the employer fails to rely upon the contents of the proviso to sub-section (1) and to prove the above facts, the workman and/or employee would always be entitled to compensation as mentioned in sub-section (1). The Explanation to the proviso must be read in the light of the above correct construction of the provisions in sub-section (1). The Explanation only refers to two particular contingencies in which the Legislature decided that a finding would have to be made that the closure was not due to unavoidable circumstance beyond the control of the employer. In other words, the Legislature laid down that closure merely by reason of financial difficulties or accumulation of undisposed stocks could not be held to be closure on account of unavoidable circumstances beyond the control of the employer.

14. The Liquidator has come to the conclusion that in all cases the closure due to winding up orders made by Court would be on account of unavoidable circumstances beyond the control of the employers. In this connection, he has

relied upon the fact that the winding up order results into statutory notice of termination of services of employees. This conclusion appears to me to be contrary to the intent and purpose of the provisions, in section 25FFF. In all cases of claims for compensation, the only important issue which arises for decision having regard to the provisions in Section 25FFF would be whether the undertakings were closed down on account of unavoidable circumstances beyond the control of the employers. The answer to that question would depend upon diverse circumstances. Petitions for winding up in most cases would be based upon the failure of the companies to discharge their debts in due course of business. In almost all cases, such failure would necessarily result into winding up orders. The winding up orders in such cases must be considered result of financial difficulties of the companies and/or inability of the companies to discharge all their debts in due course of business. In most cases, it would be impossible to make a finding that because the Court has intervened and passed winding up orders, the closure of the undertakings is due to or on account of unavoidable circumstances beyond the control of the employers. On the contrary in those circumstances, the appropriate finding would be that the financial difficulties were in fact result of the companies usual trading activities and were not on account of unavoidable circumstances beyond the control of the companies. It is clear that diverse different facts would have to be examined if the companies raise the question that their undertakings were closed down on account of "unavoidable circumstances beyond the control of the employer".

15. As such a question is now raised not only on behalf of the intervening creditors but also the Liquidator in this case, investigations will have to be made to find out if the winding up order was result of ordinary trading activities of the Company or it was result of what is mentioned in the proviso to sub-section (1) of Section 25FFF as "unavoidable circumstances beyond the control of the employer."

16. The fact that u/s 445(3) of the Companies Act employment of employees stands terminated as a result of winding up order cannot and does not justify the conclusion that the undertaking of the company was closed down on account of unavoidable circumstances beyond the control of the employer. In making his findings on the above basis, the Liquidator has failed to consider circumstances and facts which ought to have been investigated before making the findings.

17. Section 2(s) of the Industrial Disputes Act defines "Workman". The last part of the sub-section runs as follows:

"xxxxx but does not include any such person-

(i) xxxxx xxxxx; or

(ii) xxxxx xxxxx; or

(iii) xxxxx xxxxx; or

(iv) who being employed in a supervisory capacity draws wages exceeding five

hundred rupees per mensem xxxxx."

18. Having regard to the above definition of "workman", it is true that the claimants who were employed in the supervisory capacity and drew wages exceeding Rs. 500/- per mensem could not be "workmen" within the meaning of the provisions in S. 25FFF and could not be entitled to retrenchment compensation on the basis mentioned in that section. It is however necessary to make it clear that the claimants who draw wages exceeding Rs. 500/- per mensem but have not been employed in a supervisory capacity would fall within the definition of "workman" as contained in sub-section (s) of Section 2 of the Act. Such claimants would be entitled to retrenchment compensation on the basis of the provisions in Section 25FFF.

19. It is rightly pointed out on behalf of the intervening creditors that none of the creditors had any notice of the large claims made on behalf of the employee claimants. It was, therefore impossible for these creditors to prove before the Liquidator various facts which would go to show that the undertaking of the mill's company was closed down on account of unavoidable circumstances beyond the control of the company. The Liquidator also was not conscious about the facts which he was bound to investigate before coming to the conclusion that the undertaking of the mill's company was closed down on account of unavoidable circumstances beyond the control of the company. It is, therefore, necessary that the claims of all the claimants appearing in this appeal should be remanded to the Liquidator for further investigations. All objections that the intervening creditors and/or the company desire to raise against the claims filed by the claimant before the Liquidator for showing that the undertaking of the mill's company was closed down on account of unavoidable circumstances beyond the control of the employer will have to be brought in due course before the Liquidator. The liquidator should in this connection give appropriate directions so that the objections are filed within a very short period. The objections must contain all necessary particulars so that the claimants can put forward their case in connection with such objections and can meet with the same.

20. The order in appeal is set aside. The matter is remanded to the Liquidator for further investigations in the light of the above directions. The Liquidator should expeditiously dispose of claims of all the claimants. The Liquidator will pay costs of the Applicant Appellant from out of the company's assets. The Liquidator's costs will come out of the assets. The Appellant's costs are fixed at Rs. 150/-.

AK/JHS/D.V.C.

(21) Order set aside.