
(2015) 04 GUJ CK 0070
In the Gujarat High Court

Case No : Special Civil Application Nos. 5014 of 2014 and 1567 of 2015

Lumtex Corporation

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18

Citation : (2016) LabIC 91

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : K.R. Koshti, for the Appellant; K.L. Pandya, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.G. Shah, J.—Both these petitions are arising between the same parties and involve common issue. Therefore, they are heard together and decided by this common judgment. Special Civil Application No. 5014 of 2014 is filed by the employee for direction to the recovery authority being Collector, Ahmedabad to execute the recovery certificate dated 18.2.2009 so as to recover Rs. 96,550/- with 12% simple interest and Rs. 2,000/- towards cost. Whereas, Special Civil Application No. 1567 of 2015 is filed challenging the recovery notice dated 11.12.2014 issued by the Collector, Ahmedabad pursuant to recovery certificate referred herein above.

2. The factual details is to some extent clumsy and needs to be recorded and recollected in proper perspective. Considering the issue raised in the matter, reference of original record of proceeding before the Labour Court was necessary to be scrutinized and, therefore, the same were called for by order dated 20.3.2015.

3. I have heard learned advocate Mr. K.R. Koshti for the petitioner and learned advocate Mr. Hiren Modi appearing for learned advocate Mr. Karna H. Dhomse for

respondent No. 2 at length and perused the original record of Payment of Wages Application No. 332 of 2007, Reference (LCA) No. 942 of 2003 and Misc. Application No. 217 of 2014 (Restoration) received from the Labour Court, Ahmedabad.

4. The issue raised by learned advocate Mr. Koshti is to the effect that there is no award against Lumtex Corporation and, therefore, there cannot be a recovery certificate against such firm and, hence, order in recovery application and recovery notice are bad in law and needs to be quashed and set-aside. He is relying upon provisions of Section 18 of the Industrial Disputes Act and following citations:--

"(1) Sainalabdeen Musliar Vs. District Collector, (1993) 1 ILR (Ker) 575 : (1994) 1 LLJ 529 ;

(2) Nanalal Amardas Nimavat Anr Ors. Vs. State of Gujarat and Others, (1978) 19 GLR 863 ; and

(3) Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others, AIR 1964 SC 1746 : (1964) 9 FLR 101 : (1964) 2 LLJ 460 : (1964) 7 SCR 596

5. Judgment in Nanalal Amardas Nimavat (supra) is conceptual judgment while considering the provisions of Article 226 and general administration, when learned Single Judge of this High Court has held that statement of the petitioner has to be accepted as true when there is no denial or counter allegations by the State Government. While holding so, the learned Single Judge has observed as under:--

"The day in and the day out, persons in the charge of the Administration go on shouting from the public platforms that there are delays in the disposal of the judicial business. But the Judiciary in the present set-up of things in the Nation, is not expected to reply to or retaliate such bald allegations and charges. The instance on hand and many of the type i have come across during my dealing with Special Civil Applications in this Court in the course of the past four weeks constrain me to observe that very little assistance can be had by us from the State executive machinery. The cases of the Government many a time go by default and if proper assistance is rendered, the results adverse to the State can be avoided. In this case, for want of any counter allegations or denial what has been stated by the petitioners as to the substratum of their case has to be accepted as true."

However, with due respect to such cited case, such practice cannot be followed blindly and in all the matters, more particularly, for the simple reason that in fact now-a-days what is necessary is to speed-up the judicial process and affidavit in reply or any other additional pleadings may be necessary only if there is arguable case, otherwise, when there is either no substance in the petition at initial stage, petition can be dismissed summarily or when there is some substance, it may require consideration whereby the respondent would certainly get chance to

submit his pleading, but at admission stage, petition cannot be allowed only because respondent could not file reply.

6. Whereas, the remaining two judgments in the case of Hochtief Gammon (supra) and Sainalabdeen Musliar (supra) are with reference to the provision of Section 18 of the Industrial Disputes Act. But, considering the facts and circumstances, which is explained herein after, neither Section 18 nor these judgments are much relevant at this stage and, therefore, they do not require any consideration at present. Therefore, considering the factual details, which is summarised herein after, petition filed by Lumtex Corporation being Special Civil Application No. 5014 of 2014 cannot be allowed only because affidavit in reply is not filed by the respondent in such petition because in fact when there are cross petitions, practically, there is no need to file a separate affidavit in reply, but a cross petition can be treated as reply in another petition because otherwise also, there would be nothing, but reproduction of the same facts and pleadings, but in different form i.e. in the form of affidavit in reply.

7. After answering such preliminary issues, if we peruse the factual details, it becomes clear that while filing the petition, even Lumtex Corporation has though annexed copy of Exh. 2 and Exh. 11 from the Reference (LCA) No. 942 of 2003, they have suitably and selectively not referred the other documents on record of such reference case being Exhs. 3 to 10. It is true that in Exh. 2 and Exh. 11, copy of which are produced at Annexures A and D respectively in Special Civil Application No. 1567 of 2015, the name of the employer is Lutex Company and not Lumtex Corporation. However, perusal of original record of such reference case makes it clear that except in these two documents, from Exh. 3 onwards, in all documents, the name of company is Lumtex Corporation which includes an intact registered AD post envelope addressed to Lumtex Corporation, which is refused by them and one certificate of posting a letter i.e. UPC which is at page No. 45 in the paper-book, whereby a notice as per Exh. 5 was forwarded to such Lumtex Corporation. Though such notice also discloses the name as Lutex Company instead of Lumtex Corporation, the fact remains that on the record of the Labour Court, except in the documents which are created or generated either by the Labour Commissioner or by the Labour Court, the name of the employer disclosed by the employee is "Lumtex Corporation" and not "Lutex Company". Therefore, it becomes clear that the disclosure of the name of the employer as "Lutex Company" is not by the employee, but by the Labour Commissioner and the Labour Court. Therefore, there is a reason to believe that there is bona fide clerical error by the office bearer of the Union while forwarding the complaint to the Labour Commissioner wherein the word "Lutex" is written instead of "Lumtex" and wherein there is a signature of the employee with signature of the office bearer of the Union. The bare perusal of such filled-up proforma form makes it clear that except the signature, the employee has not filled any column, but it is filled by the office bearer of the Union. Therefore, there is a reason to believe that there is bona fide clerical error, which continues on record by the competent authorities though the employee has repeatedly disclosed the proper

name. At the same time, it can always be said that employee was also negligent in not verifying such clerical error and to correct it at the earliest. However, as and when it has been noticed by the employee, he has tried to correct the same, but probably it was not done in proper manner and in accordance with rules.

8. Such irregularity results into multiplicity of proceedings which drags till this point wherein the Lumtex Corporation has vehemently submitted that they are nowhere in picture and since there is no award against them, the recovery certificate cannot be executed; whereas the employee has submitted that in fact Lutex and Lumtex is the same company owned by the same person and having the same address and, therefore, order of the trial Court, which is in his favour should be executed as it is.

9. I have perused the record of all the cases, which are referred herein above, which makes it clear that pending all such disputes, Lumtex Corporation has now already preferred one Misc. Application for restoration against original reference, which was decided ex-parte, being Misc. Application No. 217 of 2014 in Reference (LCA) No. 942 of 2003 and also filed an application for staying the recovery proceedings. The Labour Court has also issued notice where both the parties have appeared and now filed their respective pleadings.

10. In view of such factual details, it would not be appropriate to enter into the minute factual details at this stage, which would otherwise prejudice the determination of such application by the Labour Court and thereby it would curtail the rights of litigants to challenge such order. However, the fact remains that in fact, there seems to be a bona fide mistake or error or negligence on part of the employee in not correcting the name of the employer in original reference and, therefore, in absence of appropriate steps being taken by the employee i.e. correcting the name in the original award, he should have waited from executing the award, he is in a different name i.e. Lutex Company instead of Lumtex Corporation.

11. It can also not be ignored that even for "Lumtex Corporation", on record, there are two different spellings referred by its owner itself i.e. "Lumtex" and "Loomtex". Therefore, the fact remains that probably there is an error on the part of the office of the Labour Commissioner and that error has been continued by the Labour Court while deciding the reference. When Labour Commissioner has referred the name as "Lutex" though employee has thereafter disclosed the name "Lumtex" everywhere, in fact, it was the duty of the Labour Court also to verify all such documents at initial stage and to see that it has been properly corrected and regularised.

12. However, the Labour Law being beneficial legislation in favour of the employees", such technicality should not come in way of the employees to get justice. Therefore, it would be appropriate to allow the employee to initiate appropriate proceedings before the Labour Court in Original Reference No. 942 of 2003 to rectify the clerical errors. It is evident that one application for restoration

of such award is already pending being Misc. Application No. 217 of 2014 filed by Lumtex Corporation itself. Therefore, both such applications should be heard together by the Labour Court and it should be decided within a period of six months without fail.

13. In view of above observations and findings, practically, at present, prayer 8(D) of Special Civil Application No. 1567 of 2015 needs to be allowed as prayed for, whereas so far as prayer 8(C) is concerned, in fact the record shows that Lumtex Corporation has already deposited the amount in question before the Collector and pursuant to order dated 23.1.2015, when such amount has been forwarded to this Court, the same is required to be invested in FDR so as to earn maximum interest with an observation that principal amount and interest shall be subject to outcome of the Misc. Application No. 217 of 2014 in Reference (LCA) No. 942 of 2003 and application for rectifying the name that may be preferred by the employee in same reference case. For the purpose, Registry is directed to transmit the amount to Labour Court, Ahmedabad for doing the needful as observed and directed herein above.

14. In view of above facts and circumstances, both the petitions are disposed in above terms.