(1997) 04 MAD CK 0062

In the Madras High Court

Case No : W.M.P. No''s. 2013 and 2014 of 1997 in Writ Petition No. 1198 of 1997

Madras Labour Union and another — APPELLANT

Vs

Management of Binny Ltd. and another — RESPONDENT

Date of Decision : 12-04-1997

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 25, 26, 3(1)

Citation : (1998) 1 CompLJ 305

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Miss P. Vaigai, for M/s. Row and Reddy, for the Appellant; R. Muthukumaraswamy, for T.S. Gopalan and Co., for the Respondent

Judgement

Sathasivam, J.—Against the order of the second respondent dated January 12, 1996, holding that the first respondent company has ceased

to be a sick industrial undertaking, the petitioners, Madras Labour Union and B and C Mills Staff Union, have filed the present writ petition to

quash the said order and also for further direction directing the second respondent to exercise due powers of supervision and control over the first

respondent for the proper implementation of the rehabilitation scheme dated June 13, 1994.

2. By order dated January 30, 1997, this court has admitted the above writ petition and ordered notice to the respondents. The petitioners have

also filed W.M.Ps. Nos. 2013 and 2014 of 1997 for appropriate direction and stay of the impugned order of the second respondent respectively.

On the date of admission, this court has ordered notice in the said W.M.Ps.

3. When the above applications came up for further hearing after service of notice to the first respondent, even though the first respondent has filed

a counter-affidavit in the main writ petition, learned counsel appearing for the petitioners insisted on orders only in the above mentioned writ

miscellaneous petitions for the present. Hence, arguments were advanced only for disposal of the writ miscellaneous petitions.

4. The case of the petitioners is briefly stated hereunder :

The petitioners who are labour unions of the first respondent company challenge the decision of the Board for Industrial and Financial

Reconstruction (BIFR) by which it closed its proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985, with reference to

the first respondent company by holding that the company has ceased to be a sick industrial undertaking. According to the petitioners, the

aforesaid order is patently erroneous and mala fide. It is also contrary to the admitted stand of the company itself that it is sick and also the

provisions of the aforesaid Act. It is contended that under a scheme for rehabilitation dated June 13, 1994, framed by the second respondent

Board for rehabilitation, the company has received reliefs/concessions of nearly Rs. 100 crores from public financial institutions/banks and

Governments. Therefore, the scheme envisaged monitoring of its implementation by the Board for ten years from 1994, when the scheme would be

in operation. Under the impugned order, since the Board has closed its proceedings, the company now is taking several actions that run counter to

the rehabilitation scheme. On account of such actions, the company has illegally closed its major unit, Buckingham and Carnatic Mills at Madras

from June 15, 1996. The earlier rehabilitation scheme as directed by the Supreme Court was approved by the Division Bench of this court in W.P.

No. 5118 of 1994. The scheme envisages periodical review and monitoring of its implementation by the BIFR. Hence, the impugned order of the

BIFR is contrary to the aforesaid judgment of this court, which has only approved of a scheme with periodical monitoring by the BIFR over the

implementation of the Scheme.

5. It is further contended that the petitioners initially opposed the proceedings before the BIFR, in view of the direction of the Supreme Court and

approved by this court, the said scheme has to be continued in the interest of the first respondent company as well as the workers of the

petitioners'' unions. The scheme is in operation from 1994 to 2004. The scheme provided that the promoters and co-promoters cannot undertake

any new project or make any investment or acquire any equipment on loan without the prior approval of the banks and institutions during the

course of their assistance. When such is the position, the impugned order of the second respondent is patently erroneous and illegal as well as

contrary to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. Further, the petitioners were parties to the scheme, the

present order of the second respondent without giving an opportunity to the petitioners cannot be sustained. With these averments, both the unions

have approached this court to quash the order of the second respondent dated January 12, 1996, and also further direction to the second

respondent to exercise due powers of supervision and control over the first respondent company for proper implementation of the rehabilitation

scheme dated June 13, 1994.

6. Even though in W.M.P. No. 2013 of 1997, initially the petitioners have prayed for injunction, it is seen that subsequently the petition has been

corrected as interim order of direction to the first respondent company not to take any further action contrary to the BIFR scheme dated June 13,

1994, in Case No. 48 of 1993, pending disposal of the writ petition. Except the correction in the petition, there are no corresponding corrections

in the original affidavit, nor in the copies of the petition and affidavit. The other petition, viz., W.M.P. No. 2014 of 1997, is for stay of operation of

the impugned order of the second respondent dated January 12, 1996.

7. The first respondent, namely, Binny management, have filed counter-affidavit in the main writ petition. The contentions raised in the counter-

affidavit of the first respondent are briefly stated hereunder :

8. In the year 1981-82, the first respondent company started a new line of business, viz., dealing in real estate and a real estate division was

created. As a result, the real estate of the first respondent company was treated as stock in trade and formed part of the assets in reckoning the net

worth. When the company made the reference to BIFR on July 7, 1993, on the basis of the materials placed before it, the second respondent, on

October 15, 1993, made a declaration that the first respondent was a sick company within the meaning of section 3(1)(o) of the Sick Industrial

Companies (Special Provisions) Act, 1985. When the company was declared sick on October 15, 1993, the second respondent appointed the

IDBI as the operating agency to consider and suggest measures to make the unit viable and to submit a scheme for rehabilitation of the company.

Accordingly, a rehabilitation scheme was prepared. The scheme of rehabilitation was approved by the second respondent on June 13, 1994, and it

was confirmed by the order of a Division Bench of this court dated August 26, 1994, in W.P. No. 75118 of 1994. The rehabilitation scheme

envisaged that the net worth of the first respondent company would become positive in the year 1995-96. It did become positive in the accounting

year ended March 31, 1995. When once the net worth became positive in the accounting year ended March 31, 1995, the first respondent

company ceased to be a sick industrial company within the meaning of section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act,

1985. By the impugned order dated January 12, 1996, the second respondent has only confirmed the status which the first respondent had already

acquired, namely, that it had ceased to be a sick industrial company. Further, any person aggrieved by the order of the second respondent made

under the Act has been given a right of appeal to the appellate authority u/s 25 of the Sick Industrial Companies Act. Hence, if the petitioners have

any grievance, they have to agitate their grievance before the BIFR, the appellate authority under the Act. Further, the impugned order of the

second respondent was passed on January 12, 1996, and the present writ petition, coming as it does after a period of one year, should be

dismissed on the ground of delay and laches. Further, as per section 26 of the said Act, no order passed under the Act is appealable except as

provided therein and no injunction can be granted in respect of any action taken in pursuance of any power conferred by or under the Act. Hence,

this court has no jurisdiction to pass an order of injunction or stay against the order of the second respondent.

9. In the additional counter-affidavit the first respondent company contended that the settlement dated July 16, 1996, entered into between the

petitioners and the first respondent as well as the order dated September 5, 1996, of the Commissioner of Labour directing the first respondent to

reopen the mills on November 1, 1996, were challenged by the first respondent in W.P. No. 15547 of 1996 and W.P. No. 15889 of 1996 and by order dated November 29, 1996, both the writ petitions were dismissed. Thereafter, the first respondent preferred Writ Appeals Nos. 127 and

136 of 1997. On February 19, 1997, the Bench of this court has passed orders, among other directions that the Government of Tamil Nadu

should convene a meeting of all the parties to find a solution to the pending issues. Accordingly, on February 23, 1997, a meeting was convened

by the Hon''ble Chief Minister of Tamil Nadu in whose presence, an understanding was reached. As per the terms of the understanding, the mills

will be reopened on March 1, 1997, the Government will appoint a Special Officer, who will run the mills for four months and if during the said

period of four months, the mill was not able to achieve the level of production as was obtaining in April and May, 1996, the matter will be referred

to the decision of the court, whose decision will be binding on the parties. The said understanding also envisages that working capital funds

required for recommencing the Perambur mill shall be raised by seeking a loan from the banks by creating a second mortgage and for the purpose

of raising the said loan, the management shall provide 25 per cent of margin money. In the light of the above said understanding, the issue involved

in the present writ petition has lost its relevance. Therefore, they prayed that no interim orders should be granted as claimed by the petitioners.

10. In the light of the above pleadings, I have heard the arguments of Miss R. Vaigai, learned counsel for the petitioners, and Mr. R.

Muthukumaraswamy, learned counsel for the first respondent company.

11. As stated earlier, both counsel advanced their elaborate arguments even for disposal of the above said writ miscellaneous petitions. Now, I

shall consider whether the petitioners have made out a case for direction as well as an order of stay of operation of the order of the second

respondent dated January 12, 1996.

12. Learned counsel for the petitioners has taken me through the rehabilitation scheme framed by the second respondent, the order of the Supreme

Court with reference to the order of the BIFR and the order of the Division Bench of this court approving the scheme framed by the second

respondent. Since those proceedings are part of the records, I am not incorporating them once again in the present order. However, learned

counsel for the petitioners highlighted the salient features of the rehabilitation scheme framed by the second respondent and the approval order of

this court dated August 26, 1994. Learned counsel by pointing out the impugned order submitted that the first respondent has not at all made out

any case for coming out from the BIFR scheme and the consequential order of the second respondent passing an order that the first respondent

company has ceased to be a sick industrial undertaking within the meaning of section 3(1)(o) of the Sick Industrial Companies (Special Provisions)

Act, 1985, is illegal, improper and opposed to all canons of justice. On the other hand, learned counsel for the first respondent submitted that the

main writ petition itself is not maintainable, since the petitioners have effective alternative remedy u/s 25 of the Sick Industrial Companies (Special

Provisions) Act, 1985 (hereinafter referred to as ""the Act""). When the petitioners have effective alternative remedy under the provisions of the Act,

the petitioners cannot maintain the present writ petition in this court. Further, subsequent to the impugned order dated January 12, 1996, on the

direction of the Bench of this court, a tripartite meeting was convened in the presence of the Hon''ble Chief Minister of Tamil Nadu and a

settlement was arrived at by all the parties concerned in which the petitioners were also signatories. In pursuance of the said agreement, the first

respondent has reopened the Perambur mills with effect from March 1, 1997; hence in view of the subsequent developments as stated above, the

main writ petition itself becomes infructuous. He also submitted that the second respondent after considering the net worth as per section 3(1)(o) of

the Act and after satisfaction, passed the impugned order. Finally, learned counsel has also submitted that inasmuch as the second respondent has

passed the impugned order on the basis of the auditor''s report, as per the provisions of the Sick Industrial Companies (Special Provisions) Act,

1985, as well as the Companies Act, this court exercising power under article 226 of the Constitution of India cannot go into the said factual

findings arrived at by the second respondent.

13. I have carefully considered the rival submissions.

14. In order to appreciate the rival contentions, it is useful to see the impugned order of the second respondent and the relevant portions are

extracted hereunder :

Whereas the company has submitted its latest audited accounts and the balance-sheet for the financial year ended March 31, 1995, along with

unaudited financial results for six months ended September 30, 1995, and urged that on account of its net worth having become positive as on

March 31, 1995, it may be released from the purview of the provisions of the Act being no longer a sick industrial undertaking; and

Whereas on consideration of the foregoing we find that as a result of improved performance the company has succeeded in making its net worth

exceed the accumulated losses as on March 31, 1995, when its net worth stood at Rs. 4,321.24 lakhs (equity share capital of Rs. 2,211.14 lakhs

and free reserves of Rs. 2,110 lakhs) as against its accumulated losses of Rs. 2,716.04 lakhs;

Now, therefore, we find that the company has ceased to be a sick industrial undertaking within the meaning of section 3(1)(o) of the Act and its

reference is no longer required to be dealt with by BIFR and the proceedings in the case are accordingly closed. We also hereby discharge the

special director appointed by us on the board of directors of the company.

15. No doubt, a reading of the above portions of the order of the second respondent above that the first respondent company has submitted its

latest audited accounts and the balance-sheet for the financial year ended March 31, 1995, as well as unaudited financial results for six months

ended September 30, 1995. On the basis of the above records, the first respondent urged before the second respondent that since its net worth

having become positive as on May 31, 1995, it may be released from the purview of the provisions of the Act being no longer a sick industrial

undertaking. The impugned order further shows that the first respondent company has succeeded in making its net worth exceed the accumulated

losses as on March 31, 1995, when its net worth stood at Rs. 4,321.24 lakhs as against its accumulated losses of Rs. 2,716.04 lakhs. It is seen

that the second respondent was satisfied with the above statement and, thereafter, passed the impugned order releasing the first respondent

company from the purview of the provisions of the Act. At this juncture, Miss R. Vaigai by pointing out the various statements of the auditor''s

reports submitted that prima facie the impugned order cannot be sustained.

16. On the other hand, Mr. R. Muthukumaraswamy, learned counsel for the first respondent, also took me through the auditor''s report, balance-

sheet, etc., and submitted that since the first respondent had proved its comfortable position before the second respondent, the order of the second

respondent releasing the first respondent company from the purview of the Act cannot be said to be either erroneous or improper. No doubt for

the sake of repetition, I am pointing out that both counsel took pains to demonstrate the status and financial position of the first respondent

company by placing many materials before me. After carefully considering their submissions, in the light of the above said particulars, I am of the

view that without deciding the main writ petition, it would not be proper on the part of this court to give any finding even the prima facie finding at

this stage in the above said writ miscellaneous petitions. I hereby give the following reasons for my above conclusion.

17. There is no dispute that the order of the second respondent is dated January 12, 1996. Though learned counsel for the petitioners submitted

that the petitioners were not given any opportunity by the second respondent before passing the impugned order, learned counsel for the first

respondent brought to my notice that the impugned order of the respondent has been communicated to both the petitioners. In those

circumstances, I do not understand why the petitioners have not approached this court immediately if they have any grievance against the impugned

order either before this court or before the appellate authority as per section 25 of the Act. The fact remains they have filed the present writ

petition only on January 28, 1997, after nearly one year. While considering the interim order as claimed by the petitioners, it is useful to mention the

subsequent developments that had taken place after January 12, 1996. It is seen that the first respondent company suspended its operation from

June 15, 1996, and made an application for closure before the competent authority. By a settlement dated July 16, 1996, entered into between the

petitioners and the first respondent as well as by the order dated September 5, 1996, the Commissioner of Labour directed the first respondent to

reopen the mills on November 1, 1996. The said order was challenged by the first respondent in Writ Petitions Nos. 15547 of 1996 and 15889 of

1996. It is further seen that by order dated November 29, 1996, both the writ petitions were dismissed. The first respondent preferred Writ

Appeals Nos. 127 and 136 of 1997, before the Division Bench of this court. While considering the prayer in the civil miscellaneous petitions in the said writ appeals, the first Bench of this court keeping the interest of the workers and the first respondent company directed the Government of

Tamil Nadu to convene a meeting of all the parties to find a solution to the pending issues. In pursuance of the directions of the Bench of this court

on February 23, 1997, a meeting was convened by the Hon''ble Chief Minister of Tamil Nadu in whose presence, an understanding was reached.

As per the terms of the understanding, the mill will be reopened on March 1, 1997, and the Government of Tamil Nadu will appoint a Special

Officer, who will run the mills for four months and if during the said period of four months, the mill was not able to achieve the level of production

as was obtaining in April and May, 1996, the matter will be referred to the decision of the court, whose decision will be binding on the parties. It is

also very relevant to note the understanding or agreement reached by all the parties concerned in the presence of the Hon''ble Chief Minister of

Tamil Nadu and the same is extracted hereunder :

* * *

18. The above referred tripartite agreement was signed on February 23, 1997, wherein the representatives of the workers as well as the Labour

Commissioner, Madras, have signed in token of their agreement. It is also admitted that in pursuance of the said tripartite agreement, the first

respondent has reopened the Perambur mills on March 1, 1997, and as on date, the same is functioning. Nearly a month has gone after reopening

of the mills and all the parties to the tripartite agreement are taking their efforts for smooth running of the above said mills. In such circumstance,

knowing that the very same petitioners were also parties to the above said amicable agreement dated February 23, 1997, this court is not inclined

to interfere or disturb the said functioning of the mills. This court also apprehends that if any interim order is given with reference to the impugned

order of the second respondent dated January 12, 1996, and the position prior to January 12, 1996, is restored, there is a possibility of altering the

present situation. In those circumstances, in the interest of all the parties concerned, I am not inclined to go into the merits and demerits of the

elaborate contentions made by both the parties for the disposal of the said writ miscellaneous petitions. It is needless to mention that the court has

to consider the subsequent developments also, more particularly, when the petitioners themselves after deliberation and participation agreed for an

amicable solution as seen from the tripartite agreement dated February 23, 1997, and it is not safe to pass any order in the above said

miscellaneous petitions. Reserving all the contentions raised by both the petitioners as well as the first respondent, the interest of justice would be

set by fixing an early date for the disposal of the main writ petition instead of passing any order in the writ miscellaneous petitions.

19. Under these circumstances, and in view of the reasons stated above, reserving all the contentions raised by learned counsel for the petitioners

as well as the first respondent, I hereby direct the registry to post the main writ petition along with W.M.Ps. Nos. 2013 and 2014 of 1997 for final

hearing on June 23, 1997.

