

(2002) 03 DEL CK 0047

In the Delhi High Court

Case No : C.M. No's. 10617/99 and 2644 of 2000 in CWP No. 3327 of 1999

Mideast India Ltd.

APPELLANT

Vs

Shri K.M. Unni and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Citation : (2003) 115 CompCas 184 : (2002) 62 DRJ 537 : (2002) 94 FLR 1059 : (2002) 3 LLJ 971

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant; D.K. Aggarwal and S.K. Singla, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—C.M. No. 2644/2000 is an application moved by the workman u/s 17-B of the Industrial Disputes Act (hereinafter referred to as "the Act"). An award was passed by the Presiding Officer, Labour Court X, directing reinstatement of the workman. It was held that the services of the workman were terminated by the Management without compliance with Section 25F of the Act. The petitioner has challenged this award in the present writ petition filed on 26.5.1999.

2. Notice to show cause was issued in the writ petition on 26.5.1999. Petitioner was required to deposit 50 per cent arrears of back wages as per order dated 11.12.1998 of Labour Court. The Labour Court had ordered the ex parte award to be set aside, subject to the deposit as aforesaid. It is not disputed before me that the said amount was not deposited as a consequence the ex parte award was not set aside and is subsisting.

3. Coming to the application u/s 17-B of the Act, it is not disputed before me that the last drawn wages of the workman/applicant was Rs. 3,000/- P.M.. Writ Petition was filed in last week of May, 1999. Learned counsel for the applicant

states that the respondent-workman is not gainfully employed and is in penury. In the application u/s 17-B of the Act, it was averred that respondent No. 1 is out of employment since 7 years and is having serious financial problems and is unable to find alternative employment. There is an affidavit in support of the application. Further, in a subsequent affidavit dated 9.10.2000, it has been specifically averred that the respondent could not get any alternative employment after termination of service.

4. Learned counsel for the petitioner Mr. D.N. Vohra has objected to any relief being granted to the applicant u/s 17-B mainly on the grounds and objections noted hereinafter.

5. Firstly, the application does not meet the requirements of Section 17-B, inasmuch as no affidavit to the effect that the workman has not been employed in any establishment has been filed by the workman. It is correct that the affidavit in support, does not carry a categorical averment with regard to the respondent not being employed in any establishment. However, the averment in the application is that workman is out of employment for 7 years and is facing serious financial problems and is unable to find alternate employment. This application is supported by an affidavit. A meaningful reading of the application supported by affidavit shows substantial compliance of the provision. Further the workman has also filed a subsequent affidavit dated 9.10.2000, wherein it is clearly averred that he is unemployed after the termination and has not been able to find alternate employment, despite best efforts. The objection by petitioner is without merit.

6. The next objection raised by Mr. D.N. Vohra is that the respondent had voluntarily tendered his resignation as admitted by the respondent while seeking withdrawal of provident fund. In view of this admission, the applicant is not entitled to any relief u/s 17-B of the Act. Reliance is placed on an application moved by the respondent before the Provident Fund Authorities. In the application filed before the Provident Fund Authorities for release of the entire contribution, one of the columns filled is "Self resigned".

The respondent has explained the position with regard to the above. He says that he was in penury, when he met the Assistant Manager of the petitioner, who offered to help him by getting his provident fund dues realised. It is the case of the respondent that he signed the blank form leaving the columns unfilled, which were filled up by the petitioner's representative. It is not necessary to get embroiled into this controversy as the refund for provident fund which has been obtained was in the year 1999, which is a subsequent event much after making of the award, which was passed on 11.12.1998. The petitioner at best can attempt to urge this as a plea in the writ petition, where he has challenged the impugned award. As far as relief u/s 17-B of the Act is concerned, the challenge to the award by petitioner remains in the writ petition. The writ petition is pending before this Court and during the pendency of these proceedings, the applicant is entitled to avail of the relief u/s 17-B of the Act and the so-called

admission, which to my mind, has prima facie even been explained by the respondent cannot come to the aid of the petitioner to deny relief to the respondent u/s 17-B.

7. Learned counsel for the petitioner lastly contended that the petitioner is a sick company and a reference under Sections 15 & 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA" is pending, Therefore, no order directing payment u/s 17-B of the Act can be passed, due to the bar u/s 22 of SICA. An application being C.M. No. 10617/1999 has also been moved for suspension of the writ proceedings. The question, Therefore, to be considered is whether Section 22 of SICA would operate as a bar to the grant of relief u/s 17-B of the Act.

8. Mr. D.N. Vohra, counsel for the petitioner, placed reliance on Real Value Appliances Ltd. Vs. Canara Bank and Others, . Here the orders passed by the High Court of Bombay appointing Receiver to take formal charge of mortgaged properties during the enquiry u/s 16(1) of the SICA, were held to be illegal being in violation of Section 22 of SICA. The Court considered whether on account of non-disclosure of the pending reference under SICA to the High Court and other non-disclosures and unfair conduct, could negate the pending reference proceedings and sustain the orders of the High Court, appointing the Receiver. The court held that the order appointing the Receiver being passed in violation of Section 22 of SICA could not be sustained. The cited case would not advance the petitioner's case in the present set up circumstances, especially in view of the judicial pronouncements, specifically dealing with the question of enforcement of orders for payment of wages during the pendency of reference before the BIFR vis a vis Section 22 of SICA.

9. There is a catena of judicial pronouncements to the effect that Section 22 of SICA would not operate as a bar to the payment of dues of workmen, employees following the adjudication of an Industrial dispute or determination of dues under the provisions of Industrial Disputes Act. Reference may usefully be made to the following decisions:

10. The Rajasthan High Court in Rajnagar Textiles Mills No. 1 vs. Textile Labour Association (1998) 93 Comp Cas 447, following the decisions of the Supreme Court in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association (1992) 75 Comp Cas 440 and Deputy Commercial Tax Officer v. Corromandal Pharmaceuticals (1997) 89 Comp Cas 1, held that the embargo u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, is no impediment against the claim for recovery of wages as cases with regard to the recovery of wages stand on an entirely different footing in the context of the scope of the word "proceeding" u/s 22". Reference may also be usefully made to Gujarat Dairy Development Corporation Ltd. v. Amrutbhai Mohanbhai Desai and Anr. (2001) 105 Comp Cas 61. The Gujarat High Court held while considering the application u/s 22 of SICA as under:

"Under Section 22 of the Sick Industrial companies (Special Provisions) Act, 1985, what is prohibited to be proceeded with are proceedings for execution or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof. There is also prohibition against proceeding with suits for recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any land or advance granted to the industrial company except with the consent of the Board or, as the case may be, the appellate authority. An industrial dispute raised by the workmen for grant of permanent status and consequential benefits and grant of such relief by a competent tribunal is not a proceeding in the nature of execution or the like against the properties of the industrial company nor is it a suit for recovery of money or enforcement of any security against the industrial company. Therefore, the provisions of section 22 do not come in the way of determination of an industrial dispute by the Tribunal."

11. Again the High Court of Karnataka in *Indian Plywood Mfg. Co. Ltd. v. Commissioner of Labour and Ors.* 1999 I LLJ 201, while considering the scope of Section 22 of SICA held:

"What is barred u/s 22 of 1985 Act is the execution of distress proceedings or the appointment of the Receiver in respect of the property of the Company. The recovery of money or for enforcement of any security against the Company or any guarantee in respect of any loan or advance guaranteed to the Company cannot be restored to by way of suit in a civil Court. The impugned notice and recovery certificate cannot be termed to be the recovery of money by way of suit. Being conscious of this position of law, the learned counsel for the Appellant has tried to impress upon us that the amount sought to be recovered was distress and the recovery being effected in execution proceedings was not permissible. The word "distress" used in Section 22 of 1985 Act has to be read ejusdem generis to the words, "no proceeding for winding up, execution, distress or the like against any of the properties of an industrial company." Seen in this context, it transpires that the financial difficulties faced by the Company would not allow the initiation or continuation of proceedings under the Companies Act. "Distress" is a remedy summary in its nature and extraordinary in its character, whereby moveable property is taken from the possession of one to secure satisfaction for a demand. Distress is one of the most ancient and effectual remedies for the recovery of rent. According to the Lexicon it is the taking, without legal process, cattle or goods as a pledge to compel the satisfaction for a demand, the performance of a duty or the redress of an injury. Distress, thus, is not intended to be made a basis for depriving the workmen of the recovery of their wages payable to them under Act. Such an interpretation would defeat the purpose for which the Act was enacted. Section 33-C provides a method by which the workman can claim money which is due to them from employer. We are, Therefore, of the opinion that application filed u/s 33-C(2) for retrenchment compensation is no bar for the Authorities under the Act to proceed notwithstanding the provisions of Section 22 of the 1985 Act. The provisions of

the Act cannot be controlled or intended to have been curtailed by incorporation of Section 22 of the 1985 Act. The provisions of the Act and that of 1985 Act are in no way conflicting, as they are intended to deal with different situations."

12. Reference may also be invited to a decision of the Supreme Court in *Kusum Ingots and Alloys Ltd., etc. Vs. Pennar Peterson Securities Ltd. and Others*, where the Supreme Court while considering the maintainability of the criminal proceedings u/s 138 of the Negotiable Instruments Act vis a vis Section 22 of the SICA observed in para 18 as under:

"18. In our considered view Section 22 SICA does not create any legal impediment for instituting and proceeding with a criminal case on the allegations of an offence u/s 138 of the NI Act against a company or its directors. The section as we read it only creates an embargo against disposal of assets of the company for recovery of its debts. The purpose of such an embargo is to preserve the assets of the company from being attached or sold for realisation of dues of the creditors. The section does not bar payment of money by the company or its directors to other persons for satisfaction of their legally enforceable dues."

13. In view of the judicial pronouncements noted above, there can be no doubt that the pendency of proceedings before the BIFR and invocation of Section 22 of SICA cannot come in the way of the respondent being granted relief u/s 17-B of the Act. Petitioner shall pay to the respondent the last drawn wage at the rate of Rs. 3000/- per month w.e.f. 1.6.1999. The arrears be paid within four weeks from today and the payment be continued to be made month by month by the 7th day of the following month during the pendency of the writ petition. CM. 2644/2000 is allowed in the above terms.

CM. 10617/99 is dismissed.