
(2012) 10 AHC CK 0184

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9066 of 2000

M/s. Muir Mills

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(A), 25O, 26(L)(B)(i), 33C(2), 39
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2013) 5 ADJ 381 : (2013) 138 FLR 801

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : D.P. Singh, for the Appellant; Ajit Singh, B.N. Singh and R.D. Khare, for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—By means of this writ petition, the petitioner M/s. Muir Mills Limited, U.P., Kanpur is challenging the award of the labour Court dated 15.3.1999 passed in Adjudication Case No. 109 of 1994. The facts of the case, in brief are that the petitioner is a Textile Mill a unit of the National Textile Corporation (U.P.) Limited, Kanpur. The Mill was declared a Sick Textile under the Sick Textile Undertakings (Nationalisation) Act, 1974. The National Textiles Corporation (U.P.) Limited, Kanpur is a public limited company wholly owned and controlled by the Central Government and is a subsidiary of the National Textiles Corporation, New Delhi. The petitioner is engaged in manufacturing and sell of cotton textiles.

2. The case of the petitioner is that the machinery of the Mill had become very old and ultimately production activity had completely stopped w.e.f. August, 1991 and since, there was no production in the Mill the workers were being paid their wages without doing any work. The Central Government also introduced a voluntary retirement scheme and most of the workers and even officials have taken the benefit of voluntary retirement scheme and have been retired from

their post.

3. It is also contended that a rehabilitation package is under consideration to revive the petitioner Mill and the matter has been referred to the Board for Industrial and Financial Reconstruction (B.I.F.R.) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and the matter is still pending. According to the petitioner, in view of the specific provision of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, no proceedings for implementation of any award etc. can take place during the pendency of proceedings before the B.I.F.R.

4. So far as, the respondent No. 2 is concerned, the case of the petitioner-Mill is that Devi Dayal, respondent No. 2 was never an employee of the Mill. He was only engaged for a very short period from time to time, as per requirement of work and in the year 1986 he was not given any work.

5. Aggrieved, the respondent No. 2 raised an industrial dispute being Adjudication Case No. 163 of 1987 vide reference order dated 26.8.1987, wherein, the reference order was whether dispensing the services of the Devi Dayal w.e.f. 25.8.1986 by the employer Mill was legal and valid. The reference order was for three persons including the respondent No. 2, Devi Dayal. The dispute was ultimately decided by the Labour Court in terms of an agreement arrived at between the petitioner and the Union. The agreement dated 15.4.1988 was made part of the award dated 29.4.1988. Under the award, Devi Dayal respondent No. 2 was treated as a casual labour only. The petitioner's case further was that after the said agreement, the respondent No. 2 was engaged by the Mill only on casual basis as per requirement of work and he was paid Rs. 20/- per day, which was later on revised to Rs. 30/- per day.

6. The case of the petitioner further is that the respondent No. 2 raised an industrial dispute in the year 1990, for declaring him permanent on the post of the Plant Operator. A reference was made by the State Government by reference order dated 23.1.1990 and the matter was referred to the Industrial Tribunal-III, U.P. Kanpur and numbered as Adjudication Case No. 91 of 1990. Ultimately, the respondent No. 2 was not engaged as casual labour any further after August, 1993.

7. Aggrieved, the respondent No. 2 raised a fresh industrial dispute which was referred by the State Government by reference order dated 16.3.1994, to the labour Court-I, U.P., Kanpur and was registered as Adjudication Case No. 109 of 1994. The reference was whether dispensing with the services of workman Devi Dayal w.e.f. 3.8.1993, was legal and just and if not what relief was he entitled to? It is also stated that the earlier Adjudication Case No. 91 of 1990 was also transferred to the labour Court-I, U.P., Kanpur and was re-registered as Adjudication Case No. 170 of 1997. Both the adjudication case, namely, Adjudication Case No. 109 of 1994 and 170 of 1997 were heard together and decided by a common award dated 15.3.1999, which is under challenge in the

present writ petition.

8. I have heard Sri D.P. Singh, learned counsel for the petitioner and Sri Amit Singh, learned counsel for the respondent No. 2 and the learned standing counsel for respondent Nos. 1 and 3.

9. The first submission of Sri D.P. Singh, learned counsel for the petitioner is that the Muir Mills being a subsidiary unit of the National Textiles Corporation is wholly owned and controlled by the Central Government. It is only the Central Government which is the appropriate authority to refer the matter to the Industrial Tribunal. Appropriate Government is defined in Section 2(A) of the Industrial Disputes Act, 1947 which means any industry carried on by or under the authority of the Central Government. The submission of Sri D.P. Singh is that the Central Government being the controlling authority of the National Textiles Corporation of which M/s Muir Mills, the petitioner is a subsidiary unit, if at all, there was any industrial dispute, the same could only have been referred to the Industrial Tribunal by a reference order made by the appropriate Government, namely, the Central Government and therefore, any reference made by the State Government as in the present case would render the entire proceedings from the date of reference till the award, totally ab initio void. In this context, Sri D.P. Singh has referred to a decision of this Court in Muir Mills, a unit of National Textile Corporation (U.P.) Ltd. Vs. Presiding Officer, Labour Court-Vth and Sri Hari Karan, . A specific reference has been made to paras 11, 16 and 17 of the said judgment which read as follows:

11. A perusal of declaration given by the workman shows that he had categorically declared that no amount under any head was due against the Mill and he had voluntarily snapped the link of master and servant. He has also declared therein that he would not raise any claim whatsoever, the workman has not denied the execution of the aforesaid declaration but has explained that at the time of signing the document was not aware that full ex-gratia amount has not been paid. His counsel has also contended before the Authority and before this Court that in view of the award of the Labour Court, he would be deemed to be in service from the date of the retrenchment and, therefore, he is entitled for ex-gratia taking into account the years in which he could not work due to the retrenchment. The ex-gratia cannot be claimed by any workman as a matter of right nor it is covered by any rules, statutory or otherwise. The ex-gratia is paid by the Management as a reward to his employees for satisfactory work. A perusal of the scheme, which is on record, shows that ex-gratia was payable to only those employees, whether temporary or daily wagers, who had worked at least for 30 days in a year. It is not denied that the workman did not work even for a single day for the period between 1984 to 1987. The workman had exercised his option, under the Scheme with his eyes wide open, cannot now turn around to challenge the scheme itself because it postulates "actual working.

16. it is urged that as the petitioner Mills which is a unit of the National Textile Corporation is entirely owned and controlled by the Central Government, it is

only the Authority appointed by the Central Government under the Industrial Disputes Act could entertain any application u/s 33-C(2) of the appropriate Government was the Central Government.

17. The specific allegation made in the objection filed before the Authority and also before this Court to the effect that the entire shares are held by the Central Government and even wages paid to the employees of the Mills and provided by the Central Government which owns and controls it, has not been denied. A Constitution Bench of the Apex Court in the case to Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , has held that if the industry is being carried on by an authority of the Central Government, the Central Government will be the appropriate authority. Similar view has been expressed by a learned Single Judge of this Court in the case of National Tex-tile Corporation (U.P.), Limited and another v. State of U.P. and others, (Writ petition No. 45538 of 2003 decided on 14.9.2004). The counsel for the workman has failed to point out any decision to the contrary. Thus, this argument of the petitioner has also to be accepted.

10. The next judgment relied upon by Sri D.P. Singh, is the decision reported in CMWP No. 45538 of 2003 (National Textile Corporation, U.P. Limited Kanpur v. State of U.P. and others) judgment dated 14.9.2004, wherein, this Court placing reliance upon another decision of this Court in the case of Suti Mills Mazdoor Union and Another Vs. Union of India (UOI) and Others, , has quoted the relevant paragraph 13 of the said judgment which reads as follows:

13. Viewed in this background, it is seen that the parent company i.e. National Textile Corporation Limited which is the parent company controls every movement of its subsidiary National Textiles Corporation (U.P.) Limited which does what the parent company says. Thus, they cannot be treated separately. It is not disputed that 100% shares of the parent company are held by the Central Government. Thus, for the present purposes, it can be held that in fact more than 51% shares of the National Textile Corporation (U.P) Limited are held by the Central Government. It is covered u/s 26(L)(B)(i) of the Section 25-O of the Central Act is maintainable.

11. This Court in the case of National Textiles Corporation Limited and another v. State of U.P. and others (supra) has held as follows:

The appropriate Government in the present case being the Central Government, as observed above, the reference could have been made only by the Central Government. The plea of the respondents that State Government exercised the delegated power u/s 39 of Industrial Disputes Act, 1947 which found favour with the Presiding Officer, Industrial Tribunal, is unsustainable. The reference made to the Industrial Tribunal itself being incompetent, the award falls on the ground due to the said reason. It having been found that the reference itself was incompetent, it is not necessary, for this case, to consider and decide other submissions raised by the counsel for the petitioners. This writ petition deserves

to be allowed on the decision taken on the first submission of counsel for the petitioners.

In result, the writ petition is allowed, the reference order and consequential proceedings thereon including the award dated 27th September, 2002 are quashed.

Parties shall bear their own costs.

12. The second submission of Sri D.P. Singh is that even otherwise, an agreement had been arrived at between the petitioner and the Union on 19.4.1988, which had formed part of the award dated 29.4.1988 (filed as Annexure 2 to the writ petition) and the agreement itself is at page 36 of the writ petition and in para 3, therefore the Tribunal itself specifically stated that Sri Devi Dayal's name was never entered in the muster roll of the petitioner Mill but in view of the agreement arrived at between the petitioner and the Union, the said Devi Dayal would be taken back on work as a casual labour on the Solar Energy Plant, as and when work was required and there would be no further claim in respect of Sri Devi Dayal respondent No. 2.

13. Sri D.P. Singh, therefore, submitted that in view of the agreement arrived at between the parties, Devi Dayal the respondent No. 2 having been taken back on work as a casual labour as and when work was required was not appointed against any particular post and he remained a casual labour and, therefore, his claim for being declared as appointed on the post of Plant Operator was in the circumstances wholly misconceived.

14. Sri D.P. Singh, further submitted that in the petitioner Mill, there are four categories of workmen.

(I) Temporary.

(II) Substitute.

(III) Probationer.

(IV) Permanent.

15. Since, as per the agreement between the parties arrived at on 15.4.1988, the respondent No. 2 was to be treated as casual labour, and the question of him being treated as a temporary status employee also did not arise.

16. Rebutting the submission made by Sri D.P. Singh, Sri Amit Singh, learned counsel for the respondent No. 2 submitted that the respondent No. 2 had worked in the petitioner establishment and had completed 240 days, therefore, his termination on 3.8.1993 was absolutely illegal and was rightly set aside by the Labour Court. Referring to the written statement filed by the respondent No. 2 before the Labour Court, Sri Amit Singh submitted that even though, he was taken back on work on 19.4.1988, but his name was not entered in the register but rather his name was entered in a separate register maintained for casual

labours and he was paid daily wages as admissible to a daily wager. However, it is to be noted that in para 5 of his written statement, filed as Annexure 5 to the writ petition, the respondent No. 2 has admitted that he was continuously requesting that he may be granted temporary status but the same was not granted, which clearly shows that the respondent No. 2 was throughout working as casual labour and was never granted temporary status.

17. From a reading of the impugned award, it will be seen that the labour Court has not considered the fact that the said Mill was a subsidiary unit of the National Textiles Corporation Limited, which is wholly owned and controlled by the Central Government and therefore, the labour Court has no jurisdiction to adjudicate the matter. In the rejoinder-affidavit filed on behalf of the Mill the agreement dated 15.4.1988, was specifically referred to and it was stated that in terms of the agreement, the respondent No. 2 was only to be taken back as a casual labour as and when there was requirement of work. The Labour Court has also failed to take into consideration the averments made in para 3 of the rejoinder-affidavit, filed before the Labour Court that w.e.f. 1991, the production work in the Mill was completely closed and the matter had also been referred to the B.I.F.R. and employees were being given wages without any work. The Labour Court, however, ignoring the various objections raised by the petitioner Mill has held that the respondent No. 2, on the basis of the payment voucher produced by him had worked from January, 1992, till June, 1993 had paid wages at Rs. 30/- per day, therefore, his termination by order dated 3.8.1993 was illegal as he had completed 240 days. The Tribunal has further directed that the respondent No. 2 be reinstated in service and be given the designation of a permanent Plant Operator and has further awarded 50% back wages.

18. On a consideration of the submissions made by the learned counsel for the petitioner and the law laid down by this Court in respect of the petitioner-Mill, it is now legally settled that the petitioner Mill is a subsidiary unit of the National Textiles Corporation Limited, New Delhi and is wholly owned and controlled by the Central Government. Therefore, the reference of an industrial dispute could only have been made by the Central Government as the appropriate Government as defined in Section 2(A) of the Industrial Disputes Act, and in the present case, the reference having been made by the State Government, the entire proceedings from the date of reference till the date of the impugned award are therefore ab initio void. The award dated 15.3.1999 is therefore quashed. The writ petition is allowed. There shall be no order as to cost.