
(1990) 09 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 3320 of 1986

National Textile Corpn. (South Maharashtra) Ltd.

APPELLANT

Vs

Bhagirathi Gopal Martal and Others

RESPONDENT

Date of Decision : 13-09-1990

Acts Referred:

Coking Coal Mines (Nationalisation) Act, 1972 — Section 9

Citation : (1991) 62 FLR 601 : (1992) 2 LLJ 111

Hon'ble Judges : T.D. Sugla, J; Sujata V. Manohar, J

Bench : Division Bench

Judgement

Sugla, J.—The challenge in this petition is to the legality and validity of the order dated September 23, 1986 passed by the Industrial Court and Appellate Authority under the Payment of Gratuity Act, 1972 in Appeal (PGA) No. 50 of 1985.

2. One Shri Gopal Laxman Martal (since deceased) was employed as a workman in the Textile Mill of the original Opponent No. 1 since April 1, 1944. He retired on April 1, 1983. His salary, at the time of retirement, was about Rs. 1150/- per month. As gratuity due to him was not paid by the Textile Mill, he filed application (P&A) 253 of 1983 on June 6, 1983 before the Controlling Authority under the Payment of Gratuity Act, 1972 (for short, Gratuity Act). On October 18, 1983, the management of the Textile Mills was taken over by the Central Government under Textile Undertakings (Taking Over of Management) Act, 1983 (Act No. 40 of 1983), (for short the "Taking Over Act"). On March 8, 1984 he made an application for taking the petitioner Corporation a party Opponent No. 2. The application was allowed and thereafter the present petitioner Corporation was impleaded as Opponent No. 2.

Shri Martal died during the pendency of the claim application before the Controlling Authority. As a result, his wife and the only legal heir was substituted in his place as applicant. On November 8, 1985, the Controlling Authority passed the order. However, he allowed the claim as against the Textile Mill only and

dismissed the claim as against the petitioner Corporation.

The substituted claimant as stated above filed Appeal (PGA) No. 50 of 1985 against the order of the Controlling Authority. She claimed that her application should have been allowed against the Opponent No. 2. (petitioner herein) also. The Appellate Authority accepted the claim and by order dated September 23, 1986 held that in the event of Textile Mill failing to deposit the decretal amount in respect of gratuity etc. in the Court, the amount shall be recoverable from the petitioner Corporation to the extent it had taken over the assets and other properties of the Textile Mill.

3. On behalf of the petitioner Corporation it is contended by Mrs. Doshi that in view of Section 3(7) of the Taking Over Act, the decretal amount in respect of gratuity cannot be recovered from the petitioner. She pointed to the finding by the authorities below that the liability in respect thereof had accrued long before the appointed day i.e., on April 1, 1983 when late Martal retired. In this context, she relied on the judgment dated August 31, 1990 of this Court in the petitioner's own case against Shramik Janata Union and Others, in Writ Petition No. 2179 of 1986. It is stated that all points taken by the Appellate Court are dealt with in the judgment and the decision is that the liability accruing prior to the appointed date, i.e. October 18, 1983 on which the management of the Textile Mill was taken over by the petitioner Corporation under the Taking Over Act cannot be enforced against the Central Government or the Custodian in view of the specific provisions of Section 3(7) of the Taking Over Act. According to Mrs. Doshi, the petitioner Corporation was not the "Employer" within the meaning of Section 2(f)(iii) of the Gratuity Act and in any event Section 7 of the Taking Over Act was non obstante as against all laws then in force.

4. Shri Gokhale, the learned counsel for Respondent No. 1 (original claimant/applicant) took us through the scheme of the Gratuity Act. He emphasised that the gratuity could not longer be treated as ex gratia payment. The workman earned it during the course of employment. The workmen get pension and/or gratuity as a matter of right and not by way of charity. In support he referred to certain other provisions of the Gratuity Act to point out that gratuity and pension cannot even be attachable. They represent the workman's property and that is why in exceptional cases such payments due could, if at all, be confiscated. Fairly admitting that he was bound by this Court's decision in Writ Petition No. 2179 of 1986 referred to and relied upon by Mrs. Doshi, he pointed out that this Court had very fairly left the question of gratuity liability open. The question as regards liability in respect of gratuity as such has not been considered in the said judgment. The gratuity, according to him, stands on a different footing and required to be considered independently.

He then placed reliance on the provisions of Section 2(f) (iii) of the Gratuity Act to show that whoever was managing the factory (in this case, Textile Mill) was or required to be treated employer for the purpose of payment of gratuity. At the time the Appellate Court passed the impugned order, the Custodian was

admittedly in control of the Textile Mill. The Custodian is thus, an employer and therefore liable to pay gratuity. He then referred to Section 14 of the Gratuity Act and stated that the provisions therein were overriding provisions expressed in the widest possible terms. Whatever might have been the position u/s 3(7) of the Taking Over Act, the provisions of the Payment of Gratuity Act in view of Section 14 thereof should and would prevail.

5. By our judgment dated August 31, 1986 in Writ Petition No. 2179 of 1986 (to which both of us have been parties), it has already been held by us that liabilities incurred by a Textile Mill before the appointed date i.e., the date of taking over of the management cannot be enforced against the Central Government or the Custodian in view of Section 3(7) of the Taking Over Act. It may be true that unlike Section 9(2) of the Coking Coal Mines Nationalisation Act (Act No. 36 of 1972), Section 3 (7) of the Act does not specifically exclude liability in respect of gratuity or pension. However, that fact by itself, in our view, will not help the workman. The reason is that Section 9(1) of that Act referred to every liability of the owner. Section 9(2) was to remove the doubt if any. Therefore, the legislature considered it necessary to elaborately refer to the types of liability about which there could be possibly be any doubt. In the present case the word liability does not figure in Section 3 of the Taking Over Act at all, except in sub-section (7) thereof. As a matter of fact, section 3 of the Taking Over Act provides for taking over the management of the Textile Mill. Throughout the reference in Section 3(1) to 3(6) is to the assets that the Central Government was taking over for the purpose of managing the Textile Mill. There is no whisper about liabilities in the section. In its anxiety to see that the sick mills management of which was taken over could be run smoothly, the legislature felt that mere fact that nothing was said in the Act about the liabilities of the Textile Mills might not be sufficient. There might still be scope for doubt about the liabilities. That is why in order to remove any scope for doubt, the legislature provided by means of sub-section (7) of Section 3 of the Taking Over Act that liabilities accrued prior to the appointed date shall not be enforceable against the Central Government and/or Custodian. In other words, the liability accruing prior to the appointed date shall continue to be the liability of the Textile Mill.

6. As regards the other contention of Shri Gokhale that u/s 2(f)(iii) of the Gratuity Act, the petitioner Corporation could be treated "employer" and be fastened with the liability to make payment of gratuity, it is necessary to refer to the provision itself. The provision reads thus :

"(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i)

(ii)

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation,

port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, on managing director or by any other name, such person."

The Textile Mill herein will come in the category of factory. The employer in the first instance is a person who has ultimate control over the affairs are entrusted to any other person, then such person called by any name, be treated as employer. In the present case when the workman retired, the owners of the Textile Mill were certainly the persons who were in ultimate control over the affairs of the factory. It is they who were the employers. Assuming for the sake of arguments that the Custodian herein could also be treated "employer" and made liable to make payment, in the absence of a dispute that the liability in respect of the gratuity accrued prior to the appointed date, Section 3 (7) of the Act will still apply. It may not be out of place to mention here that the lower authorities have given categorical findings that the employer was the Textile Mill and the liability had accrued prior to the appointed date. These findings are neither seriously challenged before us nor are we inclined to interfere with them in writ jurisdiction.

7. No doubt, Section 14 of the Gratuity Act is a non-obstante provision and is couched in a very wide language. However, Section 7 of the Taking Over Act is also a non-obstante provision and is couched in an equally wide language. The Gratuity Act is a general Act, applicable to all categories of establishments falling therein; whereas the Taking Over Act is a special Act applicable to sick textile mills only the management of which is taken over by the Central Government under that Act. That apart, the Gratuity Act is an enactment of 1972, whereas the Taking Over Act is an enactment of 1983. It has been held by the Supreme Court in the case of Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, that where there are non-obstante clauses in two enactments, the latter in point of time should prevail. Further it cannot be overlooked that the object of Taking Over Act is to ensure the smooth running of the Mills. For this purpose the Act provides for a number of powers which the Central Government is entitled to exercise including nullifying or modifying the effects of a number of Acts including Minimum Wages Act. The whole idea is that the Mill should run so that the workmen continue to remain employed. Thus in view of the policy of the Taking Over Act as well as the fact that in point of time of time the Taking Over Act is latter we hold that non-obstante clause of Section 14 of the Gratuity Act, assuming it was applicable, will not apply because of sub-section (7) of Section 3 read with Section 7 of the Taking Over Act.

8. Accordingly, the petition is allowed. The order dated September 23, 1986 in Appeal (PGA) No. 50 of 1985 passed by the Appellate Authority to the extent it makes the petitioner Corporation also liable is set aside.

9. No order as to costs.