
(2008) 01 MAD CK 0213

In the Madras High Court

Case No : W.A. No. 12 of 2008 and M.P. No. 1 of 2008

Palani Andavar Cotton and Synthetic Spinners Ltd.

APPELLANT

Vs

Solyraj and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 17B, 25N, 9A

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 22, 25

Citation : (2008) 144 CompCas 600 : (2008) 2 LLJ 887

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : V. Raghavachari, for R.K. Chandramohan, for the Appellant; C.K. Chandrasekar, for Row and Reddy., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The appellant, Palani Andavar Cotton and Synthetic Spinners Ltd., (hereinafter referred to as "Company") preferred the writ petition against common award passed by Presiding Officer, Labour Court, Coimbatore, in I.D. Nos. 137/2004 to 197/2004, dated September 20, 2005. By the said award, the workmen, respondents 2 to 62 to the writ petition were reinstated with continuity of service and 25% back wages, their order of termination having declared illegal. In the writ petition, the respondents-workmen preferred a petition, W.M.P. No. 1781/2007, u/s 17B of the Industrial Disputes Act, wherein, by impugned order dated September 27, 2007, learned single Judge, having allowed the application in respect of most of the workmen, except respondents 2, 4, 8, 17, 26, 27, 40, 46, 51, 52, 55 and 60, the present appeal has been preferred by the company against the said order.

2. Learned Counsel appearing on behalf of the appellant challenged the impugned order passed u/s 17B mainly on two grounds, i.e., (i) that most of the workmen are working in other organisations; and (ii) that in view of the fact that rehabilitation of the company, which is sick, being pending before Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR"), and

Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, (hereinafter referred to as "SICA"), the petition u/s 17B was not maintainable.

In reply, the respondents-workmen have denied the allegation that they are working in some other organisation and according to them, the provisions of Section 22 of SICA has no bearing on Section 17B of the I.D. Act. Both the parties referred to one or other judgment of High Courts and Supreme Court, which will be discussed at the appropriate stage.

3. We have heard the parties and noticed the relevant facts as referred to.

It was brought to the notice of the court on behalf of the workmen that the concerned workmen have filed specific affidavit that they are not working in any other organisation except respondents 2, 8, 17, 40, 46, 51, 52 and; 60, on whose behalf affidavit was not sworn. As regards 4th and 27th respondents to the writ petition, it was informed that they had expired and the management has to bring the legal heirs on record. It was also brought to the notice of the Court that as regards respondents 2, 17, 40, 46 and one N. Subramanian, the dispute was dismissed as withdrawn.

4. Learned Counsel appearing on behalf of, the respondents-workmen submitted that the company is a spinning mill; it employed the workmen, who are respondents 2 to 62, for a period ranging from 7 to 31 years. The management of the company was employing more than 350 workmen and they wanted to employ casual labourers to extract regular work. Therefore, the management wanted that the permanent workers should opt for voluntary retirement under V.R. Scheme or to accept for a reduction of 40% of the wages. The union did not agree to the same. Hence, a dispute was raised by the management and notice dated November 14, 2002 (Exhibit M-13) u/s 9-A was issued. The workmen were removed during the pendency of the conciliation proceeding without obtaining permission from the statutory authorities. The conciliation was pending till December 23, 2003, as evident from Exhibits W-5 and W-6. The termination orders were issued between March 28, 2003 and April 9, 2003, which were noticed and having found that the orders were contrary to Section 25N of the I.D. Act, the impugned award, dated September 20, 2005, was passed. It was informed that the workmen were getting salary of about Rs. 4,800/- to Rs. 5,300/- per month. Since their date of termination they were without any work/employment. So 25% of the back wages was allowed by the Tribunal.

5. Learned Counsel appearing on behalf of the appellant produced an unaffidavited certificate dated November 21, 2007, purported to have been issued by the proprietor of one "Ruby Textiles", SF 115, Jeeva Nagar, Udumalpet. Therein, name of the five persons, i.e., respondents 9, 12, 13, 14 and 15 have been shown to suggest that those workmen are working in the said unit intermittently from the year 2003 as daily coolies. It is informed that Ruby Textiles is not maintaining any record for daily coolies.

We are not inclined to accept the document or the argument as made by the

counsel for the management company for the following reasons:

(a) The document placed is not an affidavit document nor any such pleading has been made either in the writ petition or in the appeal;

(b) The so called certificate dated November 21, 2007, has been issued after the order was passed by learned single Judge;

(c) The language of the certificate raises doubt with regard to working of the persons, whose names have been shown therein, as it is informed that they are working in the unit intermittently from the year 2003 as daily coolies, but they are not maintaining any record of daily coolies. If the record is not available, it is not clear as to how a textile mill could give such details. Further, the textile mill, being a factory, cannot say that they are not maintaining any record with regard to daily coolies; and

(d) The counsel for the respondent also informed that "Ruby Textiles" itself has been closed for more than three years and, therefore, nobody could claim that the mill is functional and the concerned respondents are working in the said mills.

6. In the reply affidavit filed on behalf of the company, they have enclosed a chart showing the number of employees working in one or other establishment. Most of them have been shown to be working in T.M. Mills, which cannot be accepted in view of reasons shown in the foregoing paragraph.:

So far as their working in other organisations is concerned, such as GTK Mills, Tiruppur or any security agency, no details of such workman has been shown, such as designation, place of posting, etc., nor any record in support of such statement has been enclosed. Such list also cannot be accepted as it is shown that some of the respondents are doing business, which is also not based on record. If any one or other workman, after termination, for their survival, do menial work, such as selling tea or vending milk, it cannot be held that he is doing business nor come within the definition of "employment" in other organisation.

In some cases it is shown that the workmen have taken VRS from the company, but again working. Learned Counsel for the appellant, to explain the matter, submitted that many persons opted for voluntary retirement and subsequently allowed to join the company with lesser wages.

On the other hand, according to the, counsel for the respondents-workmen, the management, with a view to provide lesser wages to the permanent employees, initially engaged casual labourers for performance of regular work and then forced the permanent workers to opt for VRS or to accept service with reduced wages of 40% of existing wage. This proposal having not been agreed upon by the union, a dispute was raised, as evident from notice dated November 14, 2002 (Exhibit M-13) u/s 9A of the I.D. Act and during the pendency of the conciliation proceeding, without prior permission of the statutory authority, the services of the workmen were terminated in violation of Section 25N of the I.D.

Act. In this background, the Tribunal passed impugned award on September 20, 2005, reinstating the workmen with 25% back wages.

7. We have noticed the certificate dated November 21, 2007, purported to have been issued by the proprietor of one Ruby Textiles, SF 115, Jeeva Nagar, Udumalpet, to suggest that some of the workmen are working in the said textile mill. The said document was never brought on record either before the Tribunal or before the writ court nor filed in the present appeal. In fact, it is procured recently, during the pendency of the appeal, on November 21, 2007.

Learned Counsel for the respondents-workmen submitted that the certificate dated November 21, 2007, cannot be relied upon as the said textile mill is closed since last three years. This was not disputed by the counsel for the appellant. We are not inclined to accept the aforesaid certificate dated November 21, 2007, as it is not filed with any affidavit; issued after the order passed by learned single Judge; Ruby Textiles is stated to be closed since more than three years and the language of the certificate is doubtful, as in the certificate it is mentioned that they are not maintaining any record of daily coolies, though a textile mill, being a factory, is supposed to maintain such record. If record is not available with Ruby Textiles, it is not clear as to how they have given the names of one or other person to say that they are working, that too without giving any specific date since which they are working.

8. Learned Counsel for the appellant while submitted that the order u/s 17B of the I.D. Act cannot be passed in view of protection u/s 22 of SICA, referred to decisions of the High Courts and Supreme Court, as referred to below:

i) Supreme Court decision in Kamla Mills v. Workmen and Anr. 1995 SCC (L&S) 901, relevant portion referred to is quoted hereunder:

3.... We are afraid that this contention forgets the fact that the appellant-Mills which was declared as a sick unit on August 27, 1987 has since closed down and the BIFR had to frame a scheme for reconstituting the company. The appellant authority has placed its seal on the said scheme. In the absence of the agreement in question, the employees represented by the learned Counsel would have been required to stand in queue for their dues even under the old scales of pay and dearness allowance. It is not known what percentage of their dues they would have secured by this process and when. We may also take note of the fact that the Union has been in the field for several years and knows where the interests of the workers lie. They would not have reached the agreement in question if it was not in the interests of the employees....

From the aforesaid judgment it will be evident that Supreme Court has not decided the issue as involved in the present case, i.e., whether power of Section 22 of SICA is also, attracted for passing any order under Section-17B of the I.D. Act.

ii) A Full Bench decision of this Court in Godrej and Boyce Manufacturing Co. Ltd.,

Madras Vs. Principal Labour Court, Madras and Another, . In the said case, the Full Bench merely observed that the power of the High Court under Article 226 of the Constitution is not inhibited by provision of Section 17B and said power cannot be used to destroy the statutory right granted to workmen u/s 17B, but do not answer the question.

iii) Similar in regard to the judgment of this Court in Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and others, , wherein the Bench held that inspite of the provisions of SICA, the management can enter into an amicable settlement with the workmen. This case also do not answer the issue.

iv) Similar with regard to Karnataka High Court Division Bench judgment in Vysya Bank Ltd. Vs. General Secretary, All India Vysya Bank Employees" Union, Bangalore and Others, , which relates to award of lesser amount than the last drawn wages u/s 17B of I.D. Act.

v) In one of the case of Rajnagar Textile Mills No. 1, Ahmedabad Vs. Textile Labour Association, Ahmedabad, a single Judge of the High Court of Gujarat, while noticed the provision of SICA and recovery of arrears of wages during sickness of the company, held that the recovery of wages stand entirely on a different footing from the scope of Section 22 of SICA.

9. From Section 22 of SICA it will be evident that certain proceedings shall not lie, except with the consent of BIFR or AIFR, as evident from relevant portion of Section 22:

22. Suspension of legal proceedings, contracts, etc. (1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

In the present case, as the order passed by this Court under Article 226 for payment of wages u/s 17B neither could be termed to be a suit for recovery of money nor enforcement of any security against the company. Therefore, on plain reading of Section 22, it will be evident that the said provision shall not be attracted for an order u/s 17B of I.D. Act.

10. One may also refer to Section 17B of I.D. Act, which mandates the employer

to pay wages last drawn by workmen, if any award is: passed by a Labour Court/ Tribunal directing reinstatement of any workman and the employer move against such order before the High Court or Supreme Court, as evident from the said provision and quoted hereunder:

17-B. Payment of full wages to workman pending proceedings in higher Courts.- where in any case, a Labour Court, Tribunal or National Tribunal by its award direct reinstatement of any workman and the: employer prefers any proceedings against such awara in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of such pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an. affidavit by such workman has been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been; employed and had been receiving adequate remuneration during any such period or part thereof, the Court snail order that no wages shall be payable under this section for such period of part, as the case may be.

11. The question of grant of wages u/s 17B normally does not arise in case the employer reinstates the workman, but may challenge the award subject to reinstatement or if challenges part of the award, relating to, payment of wages, etc., except reinstatement. Only in case the employer do not implement the award of reinstatement by filing a petition before the High Court or the Supreme Court, the employer is supposed to comply with the mandate of Section 17B. The mandate u/s 17B of I.D. Act cannot be flouted on the ground of Section 22 of SICA.

12. Every authority or person, including company, is bound to comply with the mandate of statutory provisions, such as Section 17B of I.D. Act. In case of non-compliance, High Court or Supreme Court may pass appropriate directions on the authority/person, including company, to comply with such mandate. Apart from the fact that the power of the High Court under Article 226 or that of the Supreme Court do not stand curtailed in view of Section 22 of SICA, direction as may be passed by High Court or Supreme Court for implementation of provisions of Section 17B is also not covered u/s 22 of SICA, as evident from the provision mentioned above.

Similar case fell for consideration before the Delhi High Court in Mideast India Ltd. v. K.M. Unni and Ors. 2002 (4) LLN 169. Therein, the Delhi High Court held that pendency of a proceeding before BIFR cannot be a ground to invoke Section 22 of SICA for granting relief u/s 17B of I.D. Act.

13. In view of our finding, as recorded above, while we are not inclined to interfere with the order passed by learned single Judge, reject the prayer as made in this appeal with further direction to the appellant to pay the concerned

respondents-workmen wages u/s 17B, as per order passed by learned single Judge, within one month from the date of receipt/production of a copy of this order, failing which they will be liable to pay interest on such amount @ 5% p.a. from the date of filing of the writ petition till the amount is paid together with a cost of Rs. 20,000/- (Rupees Twenty Thousand only) to be deposited in favour of Tamil Nadu State Legal Services Authority, Chennai. The writ appeal stands disposed of with aforesaid observations and directions. Consequently, connected miscellaneous petition is closed. But there shall be no separate order with regard to the cost of the appeal.