
(2012) 05 GUJ CK 0017
In the Gujarat High Court
Case No : S.C.A. No. 1382 of 2003

Rajkot Textile Mills

APPELLANT

Vs

Mill Kamdar Mandal

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 11, 119D, 42(2), 73A
Constitution of India, 1950 — Article 226, 227
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 22(1)

Citation : (2012) 4 LLJ 534

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Saurabh Mehta for Nanavati and Nanavati, for the Appellant; A.K. Clerk, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice R.M. Chhaya

1. The petitioner-Rajkot Textile Mills, a unit of National Textile Corporation (Gujarat) Limited, has challenged the judgment and award dated

December 20, 2002 passed by Industrial Court No. 2, Rajkot ("the Industrial Court" for short) in Reference (I.C.R.) No. 3/1992 whereby the

Industrial Court partly allowed the reference of the respondent-Union and directed the petitioner-Mills to pay a sum of Rs. 28,06,000/, being 55%

of the amount to be given to 45 workmen along with cost of Rs. 2,500/. The facts which can be carved out from the record of the petition are

summarized as under:

1.1. That the respondent-Union gave a notice of change in Form L u/s 42(2) of the Bombay Industrial Relations Act, 1946 (for short "the Act")

read with Rule 52 of the Bombay Industrial Relations Rules, 1947 (for short "the Rules") whereby a demand was raised by the respondent-Union

to the effect that a tripartite committee should be appointed consisting of ATIRA, mill management and representatives of workmen for

modernization and efficient management after conducting necessary inquiry and suggest suitable measures and according to the suggestions of the

committee, modern machinery should be installed in place of old machinery, funding of which should be arranged from National Textile

Corporation (NTC), the Central Government and the State Government. The said notice was placed for conciliation, however, as the conciliation

proceedings failed, the dispute came to be referred to the Industrial Court at Rajkot and the same was registered as Reference (I.C.R.) No.

3/1992. The respondent-Union filed a statement of claim raising various demands. Paragraph No. 10 thereof reads as under: (translated from

Gujarati to English)

1. to issue such a direction to second party to modernize the plant and machineries immediately and for constituting expert committee comprising of

ATIRA, management and workmen for the said purpose and to implement immediately the recommendation which may be made by the said

Committee.

2. to issue direction to the second party to start immediately to collect the fund for the expenditure which is required to be incurred for

modernization of plant and machineries of the mill.

3. to issue direction to the second party for increasing permanent post, permanent department and permanent shift as per requirement by

modernizing their plant and machineries and for not reducing permanent post, permanent departments and permanent shift in any way as per their

permanent set up till the final disposal of the case.

4. to grant further relief as may be deemed fit and proper in the circumstances of the case and to pass the order for cost of this case to the

applicant from the second party.

1.2. It is a matter of record that the respondent-Union filed an application as contemplated u/s 119-D of the Bombay Industrial Relations Act,

1946, praying for the following reliefs, Paragraph No. 10 thereof reads as under:

(translated from Gujarati to English)

1. Till the final disposal of this and original petition, if the second party intends to implement Voluntary Retirement Scheme 1992, there is no any

objection against making payment of additional amount to the employee who tenders voluntary retirement but, be pleased to hold that the action of

discontinuation of the function of the said post after making payment of additional amount is unlawful, unreasonable and is against the principles of natural justice.

2. to grant such injunction for not abolishing the posts from which the employees retire under Voluntary Retirement Scheme 1992 and restraining

the second party or its manager, supervisor, department officer or agent or other responsible persons from preventing the workmen who become

entitled for functioning on the said post immediately after the said post is vacated or the work of the said post may not be discontinued.

3. to grant further relief as may be deemed fit and proper in the circumstances of the case and to pass the order for cost of this case to the

applicant from the opponent.

1.3. It is a matter of record that the Industrial Court by order dated October 15, 1992 granted interim relief and ordered that the status quo should

be maintained about functioning of the petitioner-Mills till the reply is filed and the matter was fixed for hearing on October 20, 1992.

1.4. It is a matter of record that thereafter the respondent-Union filed an application u/s 119-D of the Bombay Industrial Relations Act, 1946 and,

inter alia, prayed for the following reliefs:

1. to grant such injunction against the opponent that their officers, agents or other any concerned persons may not make any change in any

machineries or any original position or they may not get them changed or they may not shift them from the concerned place or they may not sell

them or not assign to any other person until the final disposal of Ref. I.C. 3/92.

2. to grant other relief as may be deemed fit.

1.5. That the Industrial Court, after considering the written statement filed by the petitioner-Mills wherein even the preliminary

contentions/objections were raised and after hearing the parties, vide common order dated November 12, 1992 passed below Exhibit 4 and

Exhibit 11 was pleased to hold that the reference u/s 73-A of the Act is maintainable and passed the following operative order:

Reference u/s 73-A of the B.I.R. Act being held maintainable, it is hereby ordered that until March 31, 1992 (reviewable and extendable thereafter

as per circumstances then exist), the mill is restrained from abolishing the permanent posts, other than those for whom agreement dated May 9,

1990 is arrived at between the first and second party, and that on such permanent posts, badli workers who is either senior most or is selected to

fill the said post by selection as contemplated in the definition "permanent employee", be allowed to work on such permanent posts in accordance

with standing order. It is further declared that this order in no manner, shall affect the right of the second party to apply closure or lay off in

accordance with law if in any case, it so chooses. With reference to Section 11, it is ordered that the second party mill may not dismantle or shift

or sell the machinery which is integral part of the function of the two shifts, agreed to be worked as per agreement dated May 29, 1990.

1.6 It is the matter of record that the petitioner-Mills being aggrieved by the said award dated November 12, 1992 was pleased to file a writ

petition being Special Civil Application No. 9598/1992 before this Court, which came to be summarily dismissed vide order dated December 23,

1992. It appears that, thereafter the petitioner-Mills filed Misc. Application No. 1/1993 before the Industrial Court for review of the aforesaid

order dated November 12, 1992, which came to be allowed by passing the following order dated October 7, 1993:

Application is allowed.

The operation of the order dated November 12, 1992 passed in Ref. (ICR) No. 3/1992 is revised and ordered restraining the mill from abolishing

permanent post other than those for which agreement dated May 29, 1990 is arrived at between the first and second party is made effective until

the reference is decided but that operation of the order directing the mill to allow badli workers on seniority or selection to work against permanent

post is made inoperative until such time as the production starts.

1.7. It also appears that the order dated October 7, 1993 passed by the Industrial Court in Misc. Application No. 1/1993 came to be challenged

by the respondent-Union by way of filing a writ petition being Special Civil

Application No. 11206/1993 before this Court, which came to be admitted and staying order dated October 7, 1993 passed by the Industrial Court was stayed.

1.8. It transpires from the record that the petitioner-Mills suspended its manufacturing activities from December, 1992 and submitted an application for closure as contemplated u/s 25-0 of the Industrial Disputes Act, 1947 ("the ID Act" for short) on February 1, 2002. It is also a matter of record that the NTC declared a Modified Voluntary Retirement Scheme (MVRS), under which all the permanent, badli and casual as well as clerical, technicians and officers staff submitted their voluntary resignation. It further transpires from the record that vide communication dated April 3, 2002 Government of India, Ministry of Labour, granted permission of closure of the petitioner-Mills w.e.f. May 6, 2002, which came to be notified by the notice dated May 6, 2002 and the petitioner-Mills closed down and all the workers were relieved.

1.9. In view of the aforesaid closure, the petitioner-Mills filed an application being Civil Application No. 4262/2002 in Special Civil Application No. 11206/1993 for vacating the interim relief granted earlier by this Court vide order dated October 29, 1993 and, inter alia, also prayed for granting permission to remove and dispose of the land, buildings, machineries and other movable and immovable properties of the petitioner-Mills, as per the sanctioned scheme by Board for Industrial and Financial Reconstruction (BIFR). By an order dated August 13, 2002 this Court (Coram: P.B. MAJMUDAR) (as he then was) partly allowed the said application and passed the following directions:

It is needless to say that if any application is filed by the applicants for vacating or modifying the interim order regarding vacation of interim relief for the purpose of allowing the applicant to sell the machinery, the same may be disposed of on its own merits after hearing both the sides in accordance with law and whatever observations made in this order may not be taken as the basis for such disposal.

1.10. It transpires that thereafter the petitioner-Mills filed an application for amendment before the Industrial Court (Exhibit 42) to amend the written statement on September 30, 2002, which came to be rejected vide order dated October 3, 2002. It is also an admitted position that the

order of rejecting the said application for amendment of the written statement has become final as the same is not challenged by the petitioner-

Mills.

1.11. The parties before the Industrial Court adduced oral as well as documentary evidence and raised several contentions and the Industrial

Court, after considering the evidence, both oral as well as documentary adduced by the parties, by the impugned judgment and award dated

December 20, 2002 partly allowed the reference as aforesaid. Being aggrieved by the said impugned judgment and award dated December 20,

2002, the petitioner-Mills has preferred the present petition under Articles 226 and 227 of the Constitution of India.

2. This Court (Coram: RAVI R. TRIPATHI, J) vide order dated February 14, 2003 admitted the matter and granted ad interim relief staying

implementation of the impugned judgment and award and passed the following order:

Mr. Nanavati, the learned advocate for the petitioner makes a statement that as ordered by this Court (Coram M.S. SHAH, J.) in Special Civil

Application No. 8942/2002 on September 13, 2002 in para 8(i) an undertaking is already filed and an amount of Rs. 26 lakhs is already kept in a

separate Bank account with the petitioner's Bankers. He further states that undertaking does include a statement that in the event of receipt of the

amount of sale proceeds from the sale of the land and buildings of Rajkot Mills Limited, another amount of Rs. 26 lakhs will be kept in a separate

account.

RULE. Ad interim relief in terms of para 11(B). Direct service is permitted.

3. Heard Mr. Saurabh Mehta, learned counsel for Nanavati & Nanavati for the petitioner-Mills, and Mr. A.K. Clerk, learned counsel appearing

for the respondent-Union.

4. Mr. Mehta, learned counsel for the petitioner-Mills, has taken this Court through the factual matrix of the matter and has raised the following

contentions:

(i) That the Industrial Court has granted relief, which was not prayed for by the respondent-Union in its statement of claim as well as Form-L by

which they have raised demand.

(ii) That the members of the respondent-Union were badli workers and, therefore, they have no right to claim permanency.

(iii) That the petitioner-Mills is a sick unit and hence, benefit u/s 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) is required to be given.

(iv) That no specific/cogent reasons are given by the Industrial Court while passing the impugned judgment and award whereby the petitioner-Mills was directed to pay Rs. 28,06,000/.

(v) That the Industrial Court has failed to appreciate the fact that all the badli workers have availed benefit of the MVRS in full and final settlement of their claim.

5. Mr. Mehta, learned advocate for the petitioner, has further relied upon the following judgments to support his contentions and submitted that the

Industrial Court has committed an error apparent on face of record and, therefore, the petition deserves to be allowed by quashing and setting aside the impugned judgment and award:

(i) Prakash Cotton Mills Pvt. Ltd. Vs. Rashtriya Mills Mazdoor Sangh,

(ii) Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others,

(iii) Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another,

(iv) Tata Davy Ltd. Vs. State of Orissa and Others,

(v) Abad Dairy Vs. Manjibhai Dhanjibhai and Others,

(vi) Bavji Vira Solanki Vs. Rajkot Spg. and Wvg. Mills,

(vii) Morarji Desai Textile Labour Co-operative Industries Ltd. Vs. Thakorebhai Dhulabhai Patel,

(viii) R.A. Potnus v. National Textile Corporation, (2001) 3 CLR 508.

5.1. Mr. Mehta, learned advocate for the petitioner, relying upon the judgment in the case of Prakash Cotton Mills Private Limited v. Rashtriya

Mills Mazdoor Sangh (supra) submitted that the members of the respondent-workman were badli workers and badli workmen can get work only

in the absence, temporary or otherwise, or regular employees and they are not guaranteed right of employment. Similarly relying upon the judgment

of the Apex Court in the case of Manohar Lal (D) by L.Rs v. Ugrasen L.Rs and Others (supra), more particularly the observations made in

Paragraph No. 38 thereof, it was contended that the Court cannot grant any relief, which has specifically not been prayed by the parties. Similarly,

the other judgments which have been specifically relied upon by the learned advocate for the petitioner to bring home his contention that protection

u/s 22 of the SICA applies in the instant case. No further or other contentions are raised on behalf of the learned advocate for the petitioner.

6. Per contra Mr. A.K. Clerk, learned advocate for the respondent-workman, has supported the impugned judgment and award. Relying upon the

statement of claim it was submitted that clearcut demands were raised and it was demanded that there should be no reduction work. It was further

submitted that the demand was raised for all workers and obviously, therefore, would also include the badli workers. It was further submitted that

the petitioner-Mills was not permitted to amend its written statement and the said order has become final as the said order of rejecting the

amendment has not been challenged. Further relying upon the evidence Exhibit 51 and 51 it was submitted that the impugned judgment and award

is based on evidence adduced before the Industrial Court. It was, therefore, submitted that it being a finding of fact, the same should not be

interfered with. It was further submitted that specific claim was raised and reiterated that even the amendment in the written statement was not

permitted and hence, the plea that the Industrial Court has granted relief which was not prayed for in the statement of claim as well as in Form L

cannot be raised at the stage. It was further submitted that provisions of Section 22 of the SICA is not applicable in the instant case. It was further

submitted that it is not in the form of recovery but it is as per the rights crystallized between the parties for which a specific fund has been kept. In

support of the impugned judgment and award it was submitted that the same is based on cogent reasons and from appreciation of evidence on

record. It was further submitted that it is proved beyond the doubt that the petitioner-Mills has not proved or has produced no contrary evidence

and even the muster-rolls have also not been produced. It was further submitted that the impugned judgment and award is from the period prior to

the period of MVRs and the fact that the members of the respondent-workman have availed the benefit of MVRs would not disentitle them to

have benefits of the impugned judgment and award. Lastly, relying upon Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and

Another, it was urged that this is not a fit case for interference and the petition deserves to be dismissed.

7. Before reverting to the submissions made by both learned counsel, as noted aforesaid, a demand has been raised for increasing permanent post,

permanent department and permanent shift as per requirement by modernizing their plant and machineries and for not reducing permanent post,

permanent departments and permanent shift in any way as per their permanent set up till the final disposal of the reference and by an interim order

dated January 12, 1992 passed during pendency of the reference the Industrial Court allowed the badli workers to work on such permanent post

in accordance with standing order and even the order modified thereafter came to be stayed by this Court vide order dated September 13, 2002

passed in Special Civil Application No. 11206/1993. It would be appropriate here to quote the relevant portion of order dated September 13,

2002 passed by this Court (Coram: M.S. SHAH, J) in Special Civil Application No. 8942/2002 filed by the petitioner herein, wherein in

Paragraph No. 8 it is observed thus:

(i) Subject to the condition that the Managing Director of National Textile Corporation (Gujarat) Ltd. files an undertaking before this Court stating

that out of the sale proceeds of the plant and machineries of Rajkot Textile Mills at Rajkot, a sum of Rs. 26 lacs will be kept in a separate bank

account with the petitioner's bankers till December 31, 2002 and similarly out of the sale proceeds of the lands and buildings of the Rajkot Mills

Ltd. at Rajkot another amount of Rs. 26 lacs will be kept in the separate bank account with the petitioner's bankers till December 31, 2002 to

meet with the liabilities of the petitioner-employer, in case the Industrial Court were to pass an award in favour of the workmen in reference (IC)

No. 3/1992 (subject to their right to challenge such award), the interim order dated November 12, 1992 with the subsequent modification passed

by the Industrial Court in the above numbered reference shall stand vacated upon filing of the undertaking.

(ii) The Industrial Court, Rajkot shall hear and decide Reference (IC) No. 3/1992 as expeditiously as possible and in any case latest by December

31, 2002.

(iii) The amount of Rs. 26 lacs to be kept in a separate bank account out of the

sale proceeds of the plant and machineries as well as the amount of Rs. 26 lacs to be kept in the separate account from out of the sale proceeds of the lands and buildings of Rajkot Textile Mills at Rajkot shall not be utilized by the National Textile Corporation (Gujarat) Ltd. till December 31, 2002 or till the date of the award in the above reference, whichever is earlier. It is directed and ordered accordingly.

8. Considering the first contention raised by the learned advocate for the petitioner that the Industrial Court has granted relief which was not prayed for in the statement of claim and that it does not apply to badli workers, therefore, the same is ill founded and deserves to be negated. It further transpires from the record that by an application (Exhibit 42) the petitioner-Mills sought to amend the written statement and as rightly pointed out by the learned advocate appearing for the respondent-Union that by a detailed order dated October 3, 2002 such an amendment in the written statement has been rejected and the said order has not been challenged before the higher forum by the petitioner-Mills and, as noted above, by an order dated September 13, 2002 passed by this Court in Special Civil Application No. 8942/2002 the petitioner-Mills was directed to deposit an of Rs. 26 lacs, to be kept in a separate bank account out of the sale proceeds of the plant and machineries as well as the amount of Rs. 26 lacs to be kept in the separate account from out of the sale proceeds of the lands and buildings of the petitioner-Mills.

9. In view of the above factual background, the ratio laid down by the Apex Court in the case of Manohar Lal (D) by L.Rs. v. Ugrasen L.Rs. and Others (supra) would not apply to the facts of the present case. In the instant case the demand was raised and the same is examined and even the amendment to the written statement was not permitted and, therefore, it cannot be said that the Industrial Court has granted prayer which is not even prayed for. Similarly the ratio laid down by the Apex Court in case of Prakash Cotton Mills Private Limited v. Rashtriya Mills Mazdoor Sangh (supra) would also not apply in the instant case as by specific order passed in the application filed u/s 119-D of the Bombay Industrial Relations Act, 1946 the petitioner-Mills was directed to give work to the badli workers on permanent post. It is also the matter of fact that the said order came to be challenged by the petitioner-Mills by way of filing Special Civil

Application No. 9558/1992, which came to be dismissed

summarily vide order dated December 29, 1992 by Division Bench of this Court (Coram: G.T. NANAVAI & M.S. PARIKH, JJ).

10. As observed earlier, even in the subsequent writ petition, which came to be filed by the petitioner-Mills, specific direction has been given that

amount of Rs. 26 lacs to be kept in a separate bank account out of the sale proceeds of the plant and machineries as well as the amount of Rs. 26

lacs to be kept in the separate account from out of the sale proceeds of the lands and buildings of the petitioner-Mills.

11. Thus, the contention that the petitioner-Mills is a sick company under the provisions of the SICA and, therefore, recovery cannot be initiated is

also misconceived and what is granted by the impugned judgment and award is not in the form of execution of any order but the same is passed as

per earlier order, as noted hereinabove, and, therefore, the judgments cited by the learned advocate for the petitioner that no recovery is made

from the petitioner as it was declared sick unit as per the provisions of the SICA are not applicable to the facts of the present case. It is evident

from the evidence adduced before the Industrial Court and more particularly Exhibit 50, 51, 61, 64, 65 and 66 even the Minutes of Meeting held

as per the directions issued by this Court in earlier writ petition has been brought on record, which establishes that the prayer which is granted by

the impugned judgment and award was part and parcel of the demands raised. On perusing the impugned judgment and award it cannot be

gainsaid that the same is on the basis of presumption and assumption but is based on appreciation of record and findings of fact arrived at by the

Industrial Court on appreciation of the same. It further appears that by way of Exhibit 47 minute details have been produced on record of the

Industrial Court qua each of 45 workmen who are entitled to the benefits of the impugned judgment and award and considering the same the

Industrial Court has come to the conclusion that such workmen represented by the respondent-Union are entitled to 55% of the said amount. It

also transpires from the record that the demand was raised for the prior period before the petitioner-Mills was declared to be a sick unit. It is also

required to be noted that after the petitioner-Mills was declared as sick unit the petitioner-Mills filed Civil Application No. 4262/2002 before this

Court for vacation of the interim relief granted staying the operation of the modified order wherein while allowing the Civil Application and vacating

the interim relief this Court (Coram: P.B. MAJMUDAR, J) vide order dated August 13, 2002 passed the order as aforesaid.

12. As observed earlier the amount of Rs. 26 lacs and further amount of Rs. 26 lacs has been earmarked and set apart as per the order passed by

this Court in earlier petitions. It is also evident from the order of this Court while admitting the matter that an amount of Rs. 26 lacs is already kept

in a separate account with the bankers of the petitioner, which is noted in the order dated February 14, 2003 as observed earlier and, therefore,

the contention that as the petitioner-Mills is a sick unit u/s 22 of the SICA no recovery can be made is misconceived. The issue which is decided

by the lower Court and which was also the subject matter of earlier petitions before this Court at no point of time this issue is raised. Further the

contention raised by the petitioner-Mills to the effect that no cogent reasons are given is also without any basis. In this petition the petitioner-Mill

cannot be permitted to expand the scope and raise further contention. Similarly, the contention raised by the petitioner-Mills to the effect that the

beneficiary of the impugned judgment and award i.e. 45 workmen have derived benefit of MVRS and, therefore, they are not entitled to the

amount which is granted by way of the impugned judgment and award is rightly rebutted by the learned advocate appearing for the respondent as

the said period in consideration is prior to the MVRS.

13. Considering the aforesaid aspect, it cannot be said that the Industrial Court has committed any error, much less any error apparent on the face

of record, which requires interference by this Court in its extraordinary jurisdiction under Article 226 and/or 227 of the Constitution of India. The

petition therefore fails and is hereby dismissed. Rule discharged. Interim relief stands vacated.