

(2003) 11 BOM CK 0026

In the Bombay High Court

Case No : Appeal No. 431 of 1995 in Writ Petition No. 214 of 1995

Ramesh Daji Jadhav

APPELLANT

Vs

National Textile Corporation (Maharashtra North) Ltd., Unit
Kohinoor Mills (UC) and S.L. Mehendale, Member, Industrial
Court Maharashtra

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(4), 78
Industrial Disputes Act, 1947 — Section 2, 33C(2)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17, 22, 22(1)
State Financial Corporations Act, 1951 — Section 29, 31

Citation : (2004) 1 ALLMR 732 : (2004) 1 BomCR 4

Hon'ble Judges : R.M. Lodha, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : N.M. Ganguli, for the Appellant; Meena Doshi, for the Respondent

Final Decision : Allowed

Judgement

Smt. Nishita Mhatre, J.—This Appeal challenges the order of the learned Single Judge confirming the order of the Industrial Court, dismissing the complaint filed by the appellant under Item 9 Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (For Short, hereinafter referred to as "MRTU & PUPL Act") on the ground that the relief claimed by the appellant could not be granted as the company was declared a sick unit and consent of the Board for Industrial and Financial Reconstruction (for short, hereinafter referred to as "BIFR") had not been obtained.

2. The facts giving rise to the present appeal are as follows:

The appellant was working in the Grey Winding department of Kohinoor Mill since 1979. On 18.1.1982, a strike was declared in the textile industry. The appellant was not assigned any work although he reported for duty during the strike period. The appellant, therefore, filed an application before the Labour Court u/s

78 of the Bombay Industrial Relations Act. The Labour Court directed the appellant to be reinstated with 50% backwages w.e.f. 15.1.1985 on which date the appellant had sent an approach letter u/s 42(4) of the Bombay Industrial Relations Act (For short, hereinafter referred to as "BIR Act"). An appeal which was preferred by Respondent No. 1 u/s 84 of the BIR Act was dismissed by the Industrial Court. A Writ Petition bearing No. 1692 of 1991 filed against the order of the Industrial Court met with the same state. The SLP filed before the Apex Court by Respondent No. 1 was also dismissed. Therefore, the order of the Labour Court dated 2.9.1987 in Application (BIR) No. 679 of 1985 was confirmed and became final. Respondent No. 1 did not comply with this order and, therefore, the appellant was constrained to file Complaint (ULP) No. 209 of 1992 before the Industrial Court under Item 9 of Schedule IV of the MRTU & PULP Act. The main contention raised by Respondent No. 1 before the Industrial Court while resisting the complaint was that the unit had been declared sick under the Sick Industrial Companies (Special Provisions) Act, 1985 (For short, hereinafter referred to as "SICA") and proceedings u/s 17 of that Act had been commenced. It was, therefore, pleaded that by virtue of Section 72 of the SICA, the complaint was required to be stayed and no orders could be passed therein. By an order of 30.9.1994, the Industrial Court came to the conclusion that Respondent No. 1 had committed an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act as there was a failure on the part of Respondent No. 1 complying with the order passed by the Labour Court. However, the Industrial Court was of the view that Section 22(1) of SICA prevented the appellant from getting any relief as no consent had been obtained by him from the BIFR and, therefore, the complaint was rejected. Being aggrieved by this, the appellant preferred a writ petition before this Court. The learned Single Judge confirmed this order of the Industrial Court and rejected the writ petition. It is against this order that the present appeal has been preferred.

3. The only question that we are called upon to consider is whether Section 22(1) of the SICA would bar the appellant from question the relief sought in the complaint. The Industrial Court has already come to the conclusion that Respondent No. 1 has committed an unfair labour practice by not implementing the order of the Labour Court in Application (BIR) No. (SIC) of 1985.

4. Mr. Ganguli, learned Counsel appearing for the Appellant, contended that a complaint filed under the MRTU & PULP Act is not a proceeding as contemplated u/s 22 of the SICA as the only proceedings which were covered u/s 22(1) as it stood when the complaint was decided were proceedings for winding up of the industrial companies or for execution, distress or the like against any of the properties of the industrial companies or for appointment of a Receiver. He submits that after the amendment to the SICA in 1994, the intention of the Legislature is made very clear as the words "and no suit for the recovery of money or for the enforcement of any security against the industrial company or of or of any guarantee in respect of any loans or advance granted to the industrial company have been added. It is only in the case of such proceedings

as mentioned in Section 22(1) that the consent of the BIFR is required before any proceedings can be prosecuted against the sick industrial unit.

5. He relies on the judgment in the cases of Baburao

(SIC)811, Modistone Ltd. v. Deputy Commissioner of Labour, Mumbai and Ors. 1999 2 CLR 371 and Ralliwolf Limited v. The Regional Provident Fund Commissioner-I for Maharashtra & Goa and Ors. 2001 I CLR 85, which are judgments of three learned single Judges of this Court. He also submits that the Apex Court in Kailash Nath Agarwal and Others Vs. Pradeshia Industrial and Investment Corporation of U.P. Ltd. and Another, has interpreted Section 22 as amended.

6. On the other hand, Mrs. Doshi, learned Counsel appearing for Respondent No. 1, submits that the judgment of the Apex Court in the case of Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, makes it amply clear that the proceedings such as a complaint would fall within the meaning of the expression "proceedings for distress or the like". She submits that a complaint under Item 9 of Schedule IV of the MRTU & PULP Act is a coercive action taken by the appellant against the Respondent-company and, therefore, the provisions of Section 22 are attracted. She, therefore, submits that the appeal be dismissed. Mrs. Doshi, in support of her contentions, cited the judgment in the case of Morarji Desai Textile Labour Co-operative Industries Ltd. Vs. Thakorebhai Dhulabhai Patel, . She then submits that assuming the complaint is maintainable and the bar of Section 22 does not operate, the appellant-workman was a badli workman, and therefore, it would be difficult to reinstate him especially since no badli workers were given work by the respondent-mill once it restarted. She further submits that the quantum of backwages in any event cannot be calculated as it is only when a badli worker is given work that he is paid for the days of work put in by him, and, therefore, the order passed by the Labour Court in the BIR application has not been implemented.

7. Section 22(1) of the SICA, as it stood when the complaint was heard, reads thus:

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 shall lie or be proceeded with further, except with the consent of the Board, or as the case may

be, the Appellate Authority."

8. This section has thereafter been amended on 1.2.1994 and certain other proceedings have been incorporated in the section, namely, a suit for 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, for the bar u/s 22 to operate. In Maharashtra Tubes (supra), the Apex Court considered whether the State Financial Corporation can take recourse to Sections 29 and 31 of the State Financial Corporations Act notwithstanding the bar of Section 22 of the SICA when an industrial concern makes any default in repayment of any loan or advance or any installment thereof or otherwise fails to meet its obligations under the terms of the agreement with the Financial Corporation. The Apex Court came to the conclusion that both the Act of 1951 and the Act of 1985 were special statutes dealing with different situations. However, the Apex Court observed that the expression "proceedings" in Section 22(1) must be widely construed and it could not be confined to legal proceedings understood in a narrow sense of proceedings in a Court of Law or a legal Tribunal for attachment and sale of the debtor's property notwithstanding the use of that expression in the marginal note. The Apex court in this case was not dealing with dues payable to the workmen or proceedings contemplated under the labour laws.

9. In the case of Baburao P. Tawde v. Hes Ltd. Bombay and Ors. 1995 II CLR 81, a learned Single Judge of this Court (B.N. Srikrishna, J. as his lordship then was) dealt with Section 22 of the SICA in juxtaposition with Section 33-C(2) of the Industrial Disputes Act and held that the bar of Section 22(1) of the SICA applies only to such proceedings which are not required for the day to day running of the sick industrial company under the sanctioned scheme or otherwise. The learned Single Judge after considering the judgments in the cases of Maharashtra Tubes (supra). Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, ; Modi Industries Ltd. v. Additional Labour Commissioner, Ghaziabad and Ors. 1993 II CLR 963 has observed thus:

11. ... I am in respectful agreement with the views expressed by the learned single Judge in Modi Industries case (supra). No construction can be put upon the provisions of Section 22, which could result in a situation of exploitation of human beings, contrary to the provisions of our constitutional directives. I am, therefore, unable to accept the contention that the payment of earned wages to the workmen (it cannot be disputed that payment under settlement would be "wages" within the meaning of Section 2(rr) of the industrial Disputes Act) was intended to be defeated by invoking the bar u/s 22(1) or to drive the workmen to run to New Delhi for seeking the consent of the BIFR, every time their monthly wages were required to be paid. That, surely, was not the Parliament's intention, in my view. The reconciliation suggested by the learned Judge in Modi Industries case (supra) appeals to me and, therefore, the bar in Section 22(1) of SICA must be held to apply only to such proceedings which are not required for the day-to-

day running of the sick industrial company, even under a sanctioned scheme or otherwise. Any other interpretation would lead to a ludicrous and unintended result."

10. In *Modistone Ltd. v. Deputy Commissioner of Labour, Mumbai and Ors.* 1999 II CLR 371 the learned single Judge (A.P. Shah, J.) has observed that Baburao P. Tawde's case (*supra*) was approved in the case of *Girni Kamgar Sanghatana Samiti and Ors. v. Khatau Mackanji Spinning and Weaving Co. Ltd. and Ors.* in Writ Petition No. 97 of 1998 dated 28.1.1998 and that the SLP filed against this order was rejected by the Apex Court. Another learned Single Judge of this Court (D.Y. Chandrachud, J.) in the case of *Ralliwolf v. Regional Provident Fund Commissioner and Anr.* has taken an overview of all the earlier judgments and has held that the bar u/s 22(1) would not operate for recovery of provident fund dues.

11. In the case of *Kailash Nath Agarwal and Others Vs. Pradeshia Industrial and Investment Corporation of U.P. Ltd. and Another*, , the Apex Court considered the provisions of Section 22(1) of SICA and held that the words "suit and proceeding have not been used inter changeably. They have further come to the conclusion that the judicial interpretation of the word "suit" as used in Section 22(1) would only mean that it is some form of curial process. However, this judgment dealt with the provisions of section after their amendment on 1.2.1994.

12. After considering the aforementioned judgments, we are of the view that the relief sought in a complaint filed under Item 9 Schedule IV of the MRTU & PULP Act would not be barred u/s 22 of the SICA. The only proceedings which were barred prior to the amendment by this section are: i) Proceedings for winding up of the industrial company: ii) for execution, distress or the like against the properties of an industrial company: or iii) for the appointment of a Receiver in respect of the properties.

13. We are unimpressed with the submission of the learned Counsel for Respondent No. 1 that a complaint filed under the MRTU & PULP Act would also be barred u/s 22 of the Act. A complaint filed under Item 9 of Schedule IV of the MRTU & PULP Act by no stretch of imagination could be a proceeding for winding up of the industrial company or for execution, distress or the like against the properties of an industrial company or for the appointment of a Receiver in respect of those properties. It is inconceivable that a complaint seeking declaration that an unfair labour practice has been committed is barred by Section 22 of the SICA. We are fortified in our view by the observations made by the Division Bench of this Court in Writ Petition 97 of 1998 (*supra*). The appellant-workman had already succeeded in the application filed u/s 78 of the BIR Act whereby the Labour Court directed his reinstatement with 50% backwages. This order was challenged all the way upto the Apex Court, unsuccessfully by the Respondent. All that the appellant-workman sought before the Industrial Court in the complaint filed under Item 9 of Schedule IV of the MRTU & PULP Act was a declaration that the Respondent Mill had committed an unfair labour practice by

not implementing the orders passed under the BIR application. We do not see how the proceedings or a complaint filed for a declaration of an unfair labour practice would be covered by the bar operating u/s 22(1) of the SICA.

14. We do not agree with the reasoning in the case in the Morarjee Desai Textile Labour Cooperative Industries Ltd.'s case (supra) and approve of the view taken by the learned Single Judge of our court in the cases of Baburao Tawde (supra), Modistone Ltd. (supra) and Ralliwolf (supra).

15. Mrs. Doshi then sought to submit that although the mill restarted in 1984, there was no work assigned to the Badli workmen and in fact even permanent workmen were being paid idle wages. She, therefore, submitted that the appellant, being engaged as a badli workman, would have a right to backwages only if he is allotted work and not otherwise. This submission is made too late in the day in view of the fact that the order passed in the BIR application had been challenged unsuccessfully by the Respondent in appeal under the BIR Act and thereafter in a writ petition filed before this Court. An appeal filed before this court from the writ petition and subsequently SLP before the Apex court have also been dismissed. The judgment and order of the Labour Court in the BIR Application has now attained finality. The order of the Labour Court granting reinstatement with 50% backwages has not been modified or varied at any stage in any of the proceedings adopted by Respondent No. 1 to challenge that order. Therefore, the submission is unsustainable.

16. The Industrial Court in the complaint (ULP) No. 709 of 1992 has already come to the conclusion that there is an unfair labour practice committed by Respondent No. 1 by not implementing the order passed in Application (BIR) No. 679 of 1985. The only reason for rejecting the complaint was that Section 22(1) is a bar to the complaint. We have already held that this finding of both the Industrial Court and the learned Single Judge is incorrect and must be set aside. However, the finding as regards the unfair labour practice having been committed by the respondent mill is upheld.

17. Appeal is, accordingly, allowed with costs.