

(2008) 02 GUJ CK 0121
In the Gujarat High Court

Case No : Special Civil Application No's. 2181 of 2007 and 23218 of 2005

Rameshbhai C. Patel

APPELLANT

Vs

M.D. Chauhan, Official Liquidator Visnagar Nagrik Sahkari
Bank Ltd. and Others

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79

Citation : (2008) 1 GLR 756

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Bharat T. Rao, for the Appellant; Notice Served for Respondent Nos. 1 to 3 Dharmesh V. Shah, Kiran Pandey, A.G.P., for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. B.T. Rao on behalf of petitioner, learned Advocate Mr. Dharmesh Shah appearing for respondent No. 1, Official Liquidator and learned A.G.P. Ms. Kiran Pandey appearing for the respondent No. 2.

2. Rule.

3. Learned Advocate Mr. Dharmesh Shah waives service of rule for respondent No. 1 and learned Assistant Government Pleader Ms. Kiran Pandey waives service of rule for respondent No. 2. With consent of all the learned Advocates, matter is taken up for final hearing today.

4. This petition is filed by the petitioner claiming the conveyance allowance from respondent No. 1. Prayer made in this petition at page 24 in Para 20(A), (B), (C) and (D) are quoted as under:

(A) Your Lordship may be pleased to issue appropriate writ of mandamus or any other suitable writ, order or direction which the Hon"ble Court may deem fit, just and proper, quashing and setting aside the order dated 29-3-2006 (Annexure-K) by the respondent No. 3 denying the legitimate rights of the petitioner and the

employees mentioned in Annexure-A getting the amount of conveyance allowance which is arbitrary, illegal, unjust and against the settlement arrived at before the Labour Court and for the reasons stated in the memo of petition and in the interest of justice;

(B) Your Lordship may be pleased to issue appropriate writ of mandamus or any other suitable writ, order or direction which the Hon''ble Court may deem fit, just and proper, directing the respondent No. 1 to disburse the profit of the Provident Fund Trust amongst its all employees in proportion to the total accumulations in their respective P.F. accounts, which has not been done so far and for the reasons stated in the memo of petition and in the interest of justice and fairness of things;

(C) Pending hearing and final disposal of present petition, Your Lordship be pleased to direct respondents to make payment of the conveyance allowance to the petitioner and the employees mentioned in the list at Annexure-A with 12% interest forthwith for the reasons stated in the memo of petition and in the interest of justice and fairness of things;

(D) Any other reliefs, which is deemed fit and proper by Your Lordship may please be granted in the interest of justice.

Affidavit-in-reply is filed on behalf of respondent No. 1 and affidavit-in-rejoinder filed on behalf of petitioner pursuant to the affidavit-in-reply filed by respondent No. 1. This petition is filed by one Rameshbhai C. Patel on behalf of 110 employees of Visnagar Nagrik Sahakari Bank Ltd. whose services are terminated or retrenched by the respondent No. 1 without following the principle of last come first go as prescribed in the Industrial Disputes Act, 1947. According to the petitioner, since the employees concerned are facing very hard time even for their day-to-day survival on account of the illegal and arbitrary action of respondent No. 1, the present petition is filed on behalf of 110 employees who are the beneficiaries of the present petition whose list is annexed at Annexure-A to the present petition.

5. Learned Advocate Mr. Dharmesh Shah appearing on behalf of respondent No. 1 submitted that beneficiaries are not only 110 as referred in the petition, but in all according to him, there are 273 employees whose list is annexed at pages 97 to 102 which covered all 273 employees including the petitioner. Learned Advocate Mr. Dharmesh Shah submitted that the amount which has been mentioned against the name of each employee from pages 97 to 102 is the amount of conveyance allowance due in favour of each employee being undisputed amount between the parties. Learned Advocate Mr. Dharmesh Shah submitted that request was made by the employees to the District Registrar, claiming the said amount of conveyance allowance which was rejected by the District Registrar which order is under challenge dated 29-3-2006 at page 74, Annexure-K. But from Official Liquidator, there is no dispute in respect to payment of due amount as referred from pages 97 to 102.

6. Learned Advocate Mr. Dharmesh Shah also submitted that certain proceedings are pending before the Labour Court filed by some of the employees against Visnagar Nagrik Sahkari Bank Ltd. He referred to page 84 where it is stated that said Union as well as individual employee again approached the Labour Court, Kalol on 19-3-2004 by filing Misc. Civil Application No. 30 of 2004. Today, learned Advocate Mr. B.T. Rao has placed on record the order passed by Labour Court, Kalol in B.I.R. Application No. 1 of 2003 where this application is withdrawn by concerned employee on 28-11-2007 while giving pursis vide Exh. 9. This Order is taken on record. Copy thereof is supplied to learned Advocate Mr. Dharmesh Shah by learned Advocate Mr. B.T. Rao. Therefore, there is no pendency of Misc. Civil Application No. 30 of 2004. He further submitted that T. Application Nos. 3 to 100 of 2004 are filed by the individual employees challenging the termination before the Labour Court which are pending and second group of Misc. C. Application No. 30 of 2004 filed by Mehsana Jilla Sahkari Bank Karmachari Sangh and four employees against the Bank and Liquidator under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946. Except that, there is no pendency of any proceedings against the Bank Liquidator filed by concerned employees. The present petition is filed by the employees, claiming conveyance allowance from the respondent-Official Liquidator. It has nothing to do with pending application against the termination before the Labour Court, Kalol. Therefore, merely pendency of aforesaid application as referred above before the Labour Court, Kalol, Official Liquidator should not deny to pay a due amount of conveyance allowance in favour of petitioners-employees. It is a duty of the Official Liquidator to see that whatever the reason, dues of concerned employees after receiving the charge, if amount are lying then, first he should have to pay such amount to the concerned employee on priority basis. Therefore, after considering the averments made in the present petition and affidavit-in-reply and rejoinder and also considering the annexed documents, according to my opinion, if respondent No. 1, Official Liquidator is directed to pay due amount to each employee whose names are mentioned from pages 97 to 102, an amount of conveyance allowance, which will meet the end of justice between the parties. It is irrelevant whether petition is filed by one employee or filed by 102 employees. But it is a duty of Official Liquidator to comply the provisions of law by making the due payment in favour of concerned employees being an undisputed amount calculating by Official Liquidator mentioned at pages 97 to 102. Therefore, order passed by the District Registrar and Co-operative Societies of State of Gujarat dated 29-3-2006, denying the said benefit of conveyance allowance to the concerned employees is required to be quashed and set aside.

7. In present petition, order passed by the District Registrar, Co-operative Societies, State of Gujarat dated 29th March, 2006 Annexure-K page 74 is challenged by the petitioner. Letter dated 6th November, 2003 was addressed by the Official Liquidator, Visnagar Nagrik Sahakari Bank Ltd. Under Liquidation, Visnagar to the District Registrar, Co-operative Societies to decide the policy matter in respect of the payment of conveyance allowance in favour of the

concerned employees. Letter of proposal of the Official Liquidator dated 6th November, 2003 has been decided by the District Registrar, Co-operative Societies after a period of three years and rejected the same on the ground that earlier, conveyance allowance was kept in abeyance with an assurance that the same will be paid in future. According to the District Registrar, due to weak financial condition of the Bank, the payment of conveyance allowance is stopped, and thereafter, this financial condition has not been improved, and ultimately, the Bank has gone in liquidation, and therefore, after liquidation, it is not proper to pay the conveyance allowance to the concerned employees. Said decision is based on the proposal made by the Official Liquidator dated 6th November, 2003. During this three years' period, financial condition of the Bank, though in liquidation, has been improved and the Official Liquidator has made provision for payment of the conveyance allowance in favour of 273 employees total of which comes to Rs. 1,11,52,000-00. These facts have been made clear by the Official Liquidator in affidavit-in-reply on 26th October, 2007. The amount of conveyance allowance has been kept in separate account by the Official Liquidator and the list has also been prepared by the Official Liquidator which is at pages 97 to 102 where each employee is entitled to how much amount of conveyance allowance is mentioned by the Official Liquidator, therefore, in light of the subsequent development and improvement of the financial condition of the Bank during the liquidation period keeping amount of conveyance allowance of Rs. 1,11,52,000-00 in separate account and also considering the affidavit-in-reply filed by the Official Liquidator, according to my opinion, decision given by the District Registrar, Co-operative Societies dated 29th March, 2006 is required to be set aside. The District Registrar, Co-operative Societies has not given clear reason as to why the proposal made by the Official Liquidator is required to be rejected. He just discussed the issue and narrated facts, but ignored the proposal made by the Official Liquidator having funds for the payment of the conveyance allowance to the concerned employees. Reason of weak financial condition of the Bank for denial of conveyance allowance is not proper as the financial condition of the Bank has already been changed and during the liquidation period, it was not decided by the Board of Directors not to pay the amount of conveyance allowance to the concerned employees, meaning thereby, that the conveyance allowance which was kept in abeyance for some time with an assurance that the same will be paid in future must have to be implemented by the Official Liquidator, therefore, according to my opinion, the decision is not proper and same is contrary to the record of the Official Liquidator. District Registrar, Co-operative Societies has not obtained the details of recent financial condition of the Bank from the Official Liquidator, and therefore, decision of the District Registrar, Co-operative Societies is required to be set aside.

8. It is the contention raised by the learned Advocate Mr. Dharmesh Shah Oh behalf of the Official Liquidator that the petition filed by one Shri Rameshbhai C. Patel on behalf of 108 employees is not maintainable. He also raised contention that in the present petition, payment is to be made in favour of 273 employees

those who are not parties to the present proceedings, such contention is not accepted by this Court as it is purely technical contention raised by the learned Advocate Mr. Shah. If the payment is to be made to the concerned employee as the amount of conveyance allowance is due in their favour, then same must have to be implemented in favour of all the concerned employees those who are entitled for the benefits and on such ground, Official Liquidator cannot make any discrimination and distinction while disbursing the amount of conveyance allowance to the concerned employees. It is not the case of the Official Liquidator that no fund is available with the Official Liquidator for payment of conveyance allowance to the concerned employees. Single petition against the decision of the District Registrar, Co-operative Societies in respect of the concerned employees is maintainable and the writ petition should not be treated at par with civil suits and the rules of joinder, mis-joinder and non-joinder of the parties are not applicable to the writ proceedings. Looking to the facts on record, there is no different cause of action arising in respect of the claim of conveyance allowance in favour of the concerned employees. Further, the Official Liquidator is not disputing the entitlement of each individual employees in respect of the claim of conveyance allowance, and therefore, in such circumstances, single writ petition is also maintainable as per the decision of the Division Bench of the Bombay High Court reported in Shaik Kaisar and Others Vs. Forbes Gokak Ltd. and Others, (Shaik Kaisar v. Forbes Gokak Ltd.). According to my opinion, the Official Liquidator must disburse the amount of conveyance allowance as referred to and mentioned at pages 97 to 102 to all the concerned 273 employees without making any discrimination and distinction amongst them.

9. The Official Liquidator is a statutory authority. He should have to act fairly and reasonably. No doubt, present petition is filed by one petitioner on behalf of concerned employees whose names are mentioned at Annexure-A only. But according to learned Advocate Mr. Dharmesh Shah, there are more employees whose names are mentioned between pages 97 to 102. therefore, there is no application filed by remaining employees before this Court.

10. I have considered his submission, but question is that if any amount is due, according to Official Liquidator in favour of concerned employees, then he should not have to wait for any application or legal proceedings for claiming such benefit from the concerned employees. On the contrary, it is a duty and a legal obligation to disburse the amount in favour of concerned employees which are lying with him. He cannot discriminate amongst the employees for disbursing the benefits of conveyance allowance as names are referred from pages 97 to 102. Therefore, Official Liquidator, respondent No. 1 shall have to disburse the amount of conveyance allowance as mentioned against the name of each employee covered by pages No. 97 to 102 of the employees and not to remain limited up to the names mentioned at Annexure-A to this petition. Meaning thereby, that Official Liquidator is directed to disburse the amount of conveyance allowance to all the 273 employees as referred and mentioned at pages 97 to 102 of the petition.

11. Therefore, it is directed to respondent No. 1, Official Liquidator to pay the amount of conveyance allowance to concerned employees whose names are mentioned and referred from pages 97 to 102 where the name of petitioner is also included, within a period of three weeks from today without fail. This amount is to be paid by the Official Liquidator in favour of 273 employees whose names are referred at pages 97 to 102 by account payee cheque in the name of individual employee. It is made clear that in case if the concerned employee is expired or died, then Official Liquidator shall have to collect the details of their legal heirs and representatives and to verify and after getting the assurance from the Union that these are the legal heirs, then to make the payment in favour of the legal heirs/legal representatives of such deceased/expired employee without fail. It is made clear by this Court that in pending T. Application No. 3 to 100 of 2004 as referred above and Misc. C. Application No. 30 of 2004 in B.I.R. Application No. 1 of 2003 filed by Union and other four employees, in that matter in case if ultimately, such application is allowed by the Labour Court, then in such application, employee is not entitled for the amount of conveyance allowance which has been paid by the Official Liquidator as referred from pages 97 to 102. It is also open to the Labour Court, Kalol to decide said application filed by the concerned employee in accordance with law without being influenced by the order passed by this Court.

12. Accordingly, Order dated 29-3-2006 passed by the respondent No. 3, Registrar of Co-operative Societies is quashed and set aside. Rule made absolute to that extent.

13. In light of the order passed by this Court as referred above, no further order is required to be passed in Special Civil Application No. 23218 of 2005 filed by Official Liquidator. Accordingly, Special Civil Application No. 23218 of 2005 is also disposed of.