

(2009) 06 GUJ CK 0008
In the Gujarat High Court
Case No : S.C.A. No. 16063 of 2006

Rameshbhai Dungrabhai Patel

APPELLANT

Vs

Mafatlal Industries Ltd. (Textile Division) and Others

RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42

Industrial Disputes Act, 1947 — Section 2P

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20, 22

Citation : (2009) 4 LLJ 792

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : P.C. Master, for the Appellant; Uday Joshi, for Trivedi and Gupta, for the Respondent

Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties.

2. The petitioner has challenged the order passed by the Labour Court, Navsari dated September 24, 2004 allowing the application Exhibit 13 in T. Application No. 1/2002 of respondent Mill-Company for postponing the proceedings of T-Application No. 1/2002 in view of the proceedings pending before the Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR" for short) and order dated May 6, 2006 passed by the Industrial Court, Surat in Revision Application No. (I.C) No. 25/2004, wherein, the aforesaid order was assailed by the workman and which had been rejected by the Industrial Court confirming the order dated September 24, 2004.

3. Facts in brief deserve to be set out as under:

4. The workman, at the relevant time was serving in the respondent No. 1 Mill Company as a permanent employee from June 1, 1975 in a stamping department as a Clerk and his last drawn salary was Rs. 4462/-. The Mill-Company had without giving notice of change u/s 42 of the BIR Act, closed down the factory from February 22, 2000 to June 4, 2000 and about 2500 employees were made

jobless. The Mill-Company made agreement with the representation union-Majoor Mahajan Mandal. Though it was required to be noted that the respondent Nos. 2 and 3 had created a new representative in the Company for the employees without forming any Union and entered into a settlement u/s 2P of the Industrial Disputes Act, 1947 on May 6, 2000. As the said settlement was against the interest of the representative employees, the said settlement was not signed by the representative Union and one of the conditions in the said settlement was that those employees will be taken back in the service only who signs the undertaking for resuming the duty. The petitioner approached for duty but he was not allowed to resume duties. The petitioner was issued chargesheet along with other employees for not resuming duties. The chargesheet culminated into inquiry proceedings. The petitioner ultimately issued approach letter to the Company. The petitioner was dismissed on November 8, 2001. The petitioner filed T-Application No. 1/2001, wherein, an application Exhibit 13 came to be filed by the Mill-Company respondent for staying the further proceedings in view of the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the "SICA" for short) as proceedings before BIFR was pending. The Civil Application came to be allowed as stated hereinabove vide order dated September 24, 2004, which the petitioner assailed in Revision Application (I.C) No. 25/2004, which was rejected by the Industrial Court vide order dated May 6, 2006. Both these orders are challenged in this petition.

5. This Court (Coram: H.K. RATHOD, J.) vide its order dated August 2, 2006 issued Rule in the matter and it was ordered to be expedited. Accordingly, this matter is listed before this Court for final disposal.

6. Shri Joshi, learned advocate appearing for the respondent No. 1 contended that in the given facts and circumstances, the provisions of Section 22 of SICA have rightly been made applicable for suspending the proceedings of T-Application as the Company is closed since long. The proceedings if permitted, would have caused undue hardship, which would go contrary to spirit and later of SICA itself.

7. Shri Joshi, learned advocate has fairly submitted that in Special Civil Application No. 7225/2007 filed by Bhanubhai Ranchhodbhai Parmor and 10 Ors. v. Mafatlal Industries Ltd. decided on March 12, 2009, this Court has held that the proceedings of T-Application could not have been stayed or postponed.

8. This Court has heard learned Counsel for the parties at length and perused the papers.

9. At the outset, it is required to be noted that the petitioner was serving with the respondent Mill-Company and is without any employment/job since November 8, 2001. As his services came to be terminated by the respondent Company, the petitioner raised Industrial Disputes under the Bombay Industrial Relations Act by submitting T-Application. It appears that the respondent Company approached the Board under the provisions of SICA Act declaring them

as Sick Undertaking, wherein the Scheme has been framed for rehabilitation of the respondent Company. It appears that the T-Application is of 2002 and is still pending and the respondent Company submitted application before the competent Court for staying the proceedings initiated by the petitioner before the Labour Court, Navsari. The learned Judge of the Labour Court vide order dtd. September 24, 2004 allowed the said Application. That being aggrieved by and dissatisfied with the order passed by the Labour Court dtd. September 24, 2004, the petitioner preferred Revision Application (I.C.) No. 25/2004 and the learned Member of the Industrial Court by the impugned order has dismissed the said revision application by confirming the order passed by the Labour Court, Navsari dtd. September 24, 2004 below Exhibit 13 in T-Application No. 1/2002.

10. It is mainly contended on behalf of the respondent Company that in view of the rehabilitation scheme sanctioned by the BIFR the proceedings before the Labour Court initiated by the petitioner by way of T-Application is to be quashed and set aside and/or it is to be suspended till the consent from 1 the BIFR is obtained. It is also required to be noted that the bar u/s 22 of the SICA Act would be applicable only at the time when there will be financial implication and Award is sought to be implemented/executed having] financial implications. In the meantime, the proceedings may go on and only at the time of execution of the Award having financial implications, bar u/s 22 of the SICA Act can be made applicable and at that stage the petitioner/employee may be directed to obtain consent from the BIFR.

11. In the case of Jay Engineering Works Ltd. Vs. Industry Facilitation Council and Another, while considering the Award under Arbitration Act vis-a-vis Section 20 of the SICA Act, the Hon''ble Supreme Court has observed that adjudicatory process on making an Award under the Act of 1993 may not come within the purview of 1985, Act but once an Award is made to be executed shall come into play.

12. In the case of Eagle Flask Industries Ltd. Vs. Talegaon Dabhade Municipal Council and Others, while considering Section 22 of the SICA Act, the Hon''ble Supreme Court has observed that the effect of Section 22 is to be considered only when there is a demand for recovery and the question of recovery would arise only when there is quantified demand on assessment.

13. In view of the two decisions of the Hon''ble Supreme Court, the adjudication by the Labour Court in the aforesaid T-Applications cannot be stayed and the proceedings cannot be suspended. As observed by the Hon''ble Supreme Court only after adjudication and the Award is declared, the effect of Section 22 of the SICA Act can be considered.

14. In view of the judgment of this Court passed in Special Civil Application No. 7225/2007, wherein, the facts are almost identical, so far law point is concerned, it can well be said that the impugned order cannot be said to be sustainable in eye of law.

15. In view of the above the impugned judgment and order passed by the Industrial Court in suspending the proceedings of the T-Application filed by the petitioner deserves to be quashed and set aside and the Labour Court is required to be directed to proceed further with the adjudication of the T-Application and after the Judgment is declared, the effect of Section 22 of the SICA Act can be considered. However, there is no justification to suspend the proceedings before the Labour Court which have been initiated long back and to stay the further proceedings and adjudication thereof.

16. In view of the above, the present petition succeeds. The impugned order passed by the Industrial Court, Surat in Revision Application (I.C) No. 25/2004 is hereby quashed and set aside. Let the Labour Court, Navsari adjudicate upon the T-Application submitted by the petitioner and thereafter when any judgment is declared by the Labour Court, Navsari, the effect of Section 22 of the SICA Act can be considered. The Labour Court, Navsari is hereby directed to decide and dispose of the T-Application No. 1/2002 in accordance with law and on merits at the earliest but not later than six months from the date of the receipt of writ of this order. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.