

(1999) 07 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 3957 of 1999

Reliance Silicones (India) Ltd. and Another

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

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

Citation : (1999) 2 LLJ 1083

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : Milind Sathe, instructed by Kanga and Co, for the Appellant; A.D. Shetty and D.G. Talwar, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Deshmukh, J.—By this petition the petitioner challenges an order passed by the Industrial Tribunal declining to stay the proceedings which are pending before it on account of a reference made. The reference is for grant of reinstatement with back wages to the employees who are respondents.

2. A reference made by the petitioner is registered before the B.I.F.R. Therefore, an application u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, was made. That application has been rejected by the Industrial Tribunal and therefore, the present petition has been filed.

3. The learned counsel relying on several judgments of this Court as well as the Supreme Court submits that the purpose behind enacting Section 22 is to keep the assets of the company intact. In the submission of the learned Counsel, therefore, since in the present proceedings, an order for reinstatement along with back wages can also be made, Section 22 will apply and the proceedings would be required to be stayed.

4. The learned Counsel relies on the observation of the Supreme Court in its judgment in the case of Maharashtra Tubes Ltd. v. State Industrial and

Investment Corporation of Maharashtra Ltd. reported in 1993 78 Company Cases, page 803. The Supreme Court observed thus: -

"We are, therefore, of the opinion that where an inquiry is pending u/s 16/17 or an appeal is pending u/s 25 of the 1985 Act, there should be cessation of the coercive activities of the type mentioned in Section 22(1) to permit the B.I.F.R. to consider what remedial measure it should take with respect to the sick industrial company. The expression "proceedings" in Section 22(1), therefore, cannot be confined to legal proceedings understood in the narrow sense of proceedings in a Court of law or a legal Tribunal for attachment and sale of the debtor's property".

In the submission of the learned Counsel, therefore, Section 22 will apply in relation to the proceedings, which are pending before the Industrial Court. The learned Counsel appearing for the respondents on the other hand relying on a judgment of this Court in the case of Automobile Products of India Ltd. v. T.G. Alexander and Anr. reported in 1998 II CLR 407, submits that Section 22 will not apply to the present proceedings.

5. After having heard learned Counsel for both sides and after going through the judgments relied on by both the sides, in my opinion, the point of time at which the application was preferred by the petitioner before the Industrial Tribunal was premature. It is clear from the judgment of the Supreme Court that when the reference of a company is registered and the matter is pending before the B.I.F.R. an endeavour has to be made to protect the assets of the company till the B.I.F.R. frames a scheme and that scheme is implemented. In the present case, it is in the discretion of the Tribunal either to grant back wages or not to grant back wages. In case there is an order of only reinstatement in favour of the employees and there is no direction to pay back wages, Section 22 will not apply at all. However, in case there is an order of payment of back wages, then the question of application of Section 22 may arise. It is pertinent to note here that it is true that this Court in its judgment in API's case has said that even proceedings for recovery of backwages u/s 22 is not permitted. However, in my opinion, it is debatable. In any case so far as the present case is concerned, as there is no order made by the Tribunal casting any financial burden on the petitioner, the application at this juncture would not have been considered by the Industrial Tribunal and therefore, in my opinion, it has been rightly rejected because the application at this juncture is premature. Therefore, in my opinion, there is no reason to disturb the order of the Industrial Tribunal. Petition is rejected.