

(2009) 07 UK CK 0056
In the Uttarakhand High Court

RMI Steels Ltd.

APPELLANT

Vs

Asst. Labour Commissioner and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 22, 25

Citation : (2010) 1 LLJ 19

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—The petitioner is common in all these writ petitions. Apart from this, the subject matter of all these writ petitions is also common, which is the payment of wages to the workers in pursuance of the orders passed by the Assistant Labour Commissioner, Garhwal Region, Dehradun, though pertaining to different periods. For these reasons, all these writ petitions are being decided by a common order.

2. The petitioner is a limited company registered under the Companies Registration Act having its manufacturing unit at Dhalwala, Rishikesh, Dehradun. In the year 2001, the petitioner had approached the BIFR and filed an application for declaring the company as sick under the Sick Industrial Companies (Special Provisions) Act, 1985 (from hereinafter referred to as "SICA"). On the said application, after conducting an enquiry u/s 16 of SICA, the BIFR vide its order dated January 23, 2004 has recommended that the petitioner company should be wound up. Thereafter the petitioner had filed an appeal u/s 25 of SICA before the appellate authority i.e. AAIFR.

3. Meanwhile, according to the petitioner, the workers of the factory went on an illegal strike and occupied the factory on November 2, 2001. On November 17, 2001, the workers snatched the factory keys from the security personnel and between November 2, 2001 to November 17, 2001, the workmen started illegally occupying the staff residential quarters as well. The factory, therefore, could not remain operational as the workmen obstructed the entry of the management into

the factory premises. A suspension of work thus was declared on January 19, 2002 by the workman and in consequence thereof the management of the petitioner company declared a "lay off and the work in the factory was suspended. An F.I.R. was also lodged by the management of the company at Police Station Muni Ki Reti, Tehri Garhwal on January 20, 2002 against certain workmen, etc., etc. Meanwhile, the workers of the factory had approached the Assistant Labour Commissioner, Garhwal Region, Dehradun under the provisions of the Uttarakhand Industrial Peace (Timely Payment of Wages) Act, 1978 (from hereinafter referred to as the "Act"), who is presently impleaded as respondent No. 1. Respondent No. 1, thereafter initiated a recovery against the petitioner under the provisions of the aforesaid Act. For the first recovery of Rs. 77,53,600/- the petitioner had approached this Court and obtained an interim order dated August 5, 2005 in W.P. 852/2005 (M/S). Consequently for the second recovery of Rs. 1,11,59,523/- the petitioner obtained an interim order from this Court on April 30, 2008 in W.P. 2277/2008 (M/S). Third writ petition (bearing No. W.P. 330/2008 (M/S) is also pertaining to the recovery proceedings initiated by respondent No. 1.

4. Although, no counter affidavit has been filed by the workers" union who has been impleaded as respondent No. 3 in the Writ Petition No. 2277/2008, in the Writ Petition No. 852/2005 (M/S) and Writ Petition No. 330/2008 counter affidavit has been filed by the workers" union and the Court is aware of the stand taken by the workers" union. Written statement has also been filed by the petitioner as well as the workers" union.

5. The short question to be decided by this Court is whether under the Act, a recovery proceeding can be initiated against the petitioner in view of Section 22 of SICA which bars initiation of certain proceedings against the company when the matter is pending before BIFR or in appeal without the consent of the Board or the Appellate Authority, as the case might be. The second question would be as to whether on these disputed questions of facts where allegations and counter allegations are being levelled between the management and the workers, a liability can indeed be fixed against the management in a summary nature of proceedings under the Uttarakhand Industrial Peace (Timely Payment of Wages) Act, 1978.

6. Section 22 of SICA reads as follows:

22. Suspension of legal proceedings, contracts; etc.- (I) 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 under Sections 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 the appointment of a receiver in respect thereof (and

no suit for the 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) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2) to (5)....

7. According to the petitioner, the matter of the petitioner is pending before the appellate authority and a decision has to be taken on it and, therefore, any proceeding particularly on the matter of recovery is barred u/s 22 of SICA. On this certain rulings have been cited by the petitioner, namely, Paramjeet Singh Patheja Vs. ICDS Ltd., and Modi Industries Ltd. Vs. State of Uttar Pradesh and others, .

8. The case of the workers' union, on the other hand, is that the Uttarakhand Industrial Peace (Timely Payment of Wages) Act, 1978 is a beneficial legislation for the benefit of workers and merely because the matter is pending before the Appellate Authority under SICA, recovery proceedings against the petitioner under the Act is not prohibited. The argument is that the master-servant relationship between the employer and the workers still survives and since the relationship of master-servant still survives, the master is liable to pay the workers their wages. The workers' union has relied upon a judgment of learned single Judge of Allahabad High Court in Poysha Industries Co. Ltd. v. Collector, Ghaziabad and Ors. 1998 (79) FLR 166 where this point has been considered and the learned single Judge was of the view that such proceedings can be initiated as the master-servant relationship has not come to an end.

9. However, the facts of the present case are somewhat different from that of Poysha Industries Co. Ltd. v. Collector, Ghaziabad and Ors. (supra) as in the present case it is admitted that the factory is closed since January, 2002. Moreover, the factory was closed in consequence of the strike and lay off by the workers and the management respectively and no work was being carried out since January, 2002; Regarding the period the workers have actually worked, their wages have been paid and there is no dispute. The case which is relevant for our purposes is Modi Industries Ltd. v. State of U.P. and Ors. (supra) where in such matters where the wages are disputed and where the master-servant relationship survives, the question which has to be determined as to who was actually responsible for the suspension of work in the factory - the management or the workers! Under these conditions the action which has been taken by the Assistant Labour Commissioner under the Act seems to be way out of his jurisdiction. It is indeed true that in a given case management may try to evade its responsibility and shield behind Section 22 of SICA and try to escape its liability and therefore merely because a matter is pending before the BIFR or Appellate Authority may not be a justifiable consideration in such a case, to deny the workers their legitimate right as indeed SICA is also for the benefit of industries at large and in certain appropriate cases, provisions of Section 22 can also be waived. Yet the question would be whether a contingency of this nature

can be handled in a summary nature of proceeding by the Assistant Labour Commissioner under the Act. In this case, proceedings have been initiated under the Uttarakhand Industrial Peace (Timely Payment of Wages) Act, 1978. The factory is admittedly closed since January, 2002. There is no question of keeping or maintaining peace in a factory which is presently not functioning and since the matter itself was pending before the BIFR, it was not a matter where the proceedings were liable to be initiated under the Uttarakhand Industrial Peace (Timely Payment of Wages) Act, 1978. Keeping also in mind that the liability cannot be fixed on the management in a summary nature of proceedings where this liability is seriously being contested and denied by the management and also where the factory itself has been closed since January, 2002 and the period of wages being demanded and consequently being recovered from the management pertains to a period which is admittedly after such a closure.

10. In the present case, there is indeed a serious dispute between the workers and the management as to how and on whose part the fault actually lies whereby the work in the factory came to an end. There are allegations and counter allegations on this issue between the two parties. The Assistant Labour Commissioner cannot adjudicate on this issue in a summary nature under the Act. This has to be resolved in a proper forum which in view of this Court would be the Industrial Tribunal and, therefore, the Assistant Labour Commissioner ought to have referred the matter to the Industrial Tribunal instead of taking cognizance of the matter under the Act. On this, this Court is of a considered view that since there is a serious dispute about the payment of wages which are to be paid to the workers, the matter in fact should be decided by the Industrial Tribunal or the Labour Court. Therefore, the proceedings initiated by the Assistant Labour Commissioner are liable to be set aside and are hereby set aside. The respondent No. 3 if raises an industrial dispute under the provisions of the U.P. Industrial Disputes Act, as the case may be, the State may refer the matter to the Industrial Tribunal or the Labour Court, as the case may be for speedy adjudication.

11. Consequently, orders passed by the Assistant Labour Commissioner, Garhwal Region, Dehradun dated June 13, 2005, February 5, 2008 and August 22, 2008 impugned in W.P. 852/2005 (M/S), W.P. 330/2008 (M/S) and W.P. 2277/2008 (M/S) respectively are quashed. All these writ petitions are disposed of accordingly. No order as to costs.