

(1956) 09 PAT CK 0012

In the Patna High Court

Case No : Misc. Judl. Case No. 392 of 1955

S.K.G. Sugar Ltd.

APPELLANT

Vs

Ali Hassan and Others

RESPONDENT

Date of Decision : 20-09-1956

Acts Referred:

Companies Act, 1913 — Section 171

Industrial Disputes Act, 1947 — Section 10(1), 33, 33A

Citation : AIR 1957 Patna 722 : (1957) 2 LLJ 513

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : A.B.N. Sinha and Krishna Prasad Sinha, for the Appellant; Govt. Pleader, Ranen Roy, Tara Kumar Das and U.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, C.J.—In this case the petitioner, S. K. G. Sugar Ltd., has obtained a rule from the High Court calling upon the respondent to show cause why Miscellaneous cases nos. 26 and 27 of 1955, pending before the Industrial Tribunal u/s 33A of the Industrial Disputes Act, should not be quashed by a writ in the nature of certiorari.

2. Cause has been shown by the learned Government Pleader on behalf of respondents 1 and 2 and the learned Counsel on behalf of the respondents 4 to 23 appearing through the Secretary of the Chini Mazdoor Sangh.

3. It appears that the Gaya Sugar Mills Ltd., which is an incorporated Company under the Indian Companies Act, owned a sugar factory at Guraru in the district of Gaya. On the 4th of November, 1951, there was an order made by the High Court for the compulsory winding up of this Company. On the 1st of February, 1952, the High Court made a subsequent order appointing respondent no. 3, Mr. Dhansukh Lal Mehta, as Liquidator. On the 3rd of December, 1954, the High Court granted permission to the official Liquidator to execute a lease of the sugar factory at Guraru in favour of the petitioner for the period from the 5th of

December, 1954, up to the 14th of November, 1955.

It is said that the petitioner took possession of the sugar factory from the Official Liquidator on the 6th of December, 1954, and commenced working of the factory. It appears that a few days before, that is, on the 2nd of December, 1954, the State Government, had referred an industrial dispute between the Gaya Sugar Mills Ltd. and certain workmen employed in the sugar factory to the Industrial Tribunal u/s 10(1) of the Industrial Disputes Act. The award of the Tribunal was given on the 25th of March, 1955, but there was an appeal taken to the Labour Appellate Tribunal and the appeal was decided on the 31st of August, 1956.

On the 7th of April, 1955, the petitioner received notices from the Industrial Tribunal to the effect that respondents 4 to 23 had filed two miscellaneous cases nos. 26 and 27 of 1955, u/s 33A of the Industrial Disputes Act, alleging that the petitioner had either discharged the workmen or changed their service conditions during the pendency of the adjudication! proceedings.

4. The argument of the petitioner is that the State Government ought to have taken the leave of the High Court u/s 171 of the Companies Act before making a reference of the industrial dispute u/s 10(1) of the Industrial Disputes Act. It was submitted on behalf of the petitioner that an order for the compulsory winding up of the Gaya Sugar Mills Ltd. (to be hereinafter called the "lessor") was made by the High Court on the 4th of November, 1951.

It was submitted that the reference made by the State Government u/s 10(1) was "a legal proceeding" within the meaning of Section 171 of the Companies Act and it was incumbent on the State Government to apply for permission of the High Court before making the reference. The point taken by the petitioner was that the reference made by the State Government was incompetent and the proceedings taken by the Industrial Tribunal were a nullity in the eye of law. It was, therefore, contended that the proceedings taken u/s 33A were also incompetent. The argument of learned Counsel is based upon Section 171 of the Companies Act which is in the following terms:--

"171. Suits stayed on winding up order.--When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall, be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose."

In this connection Counsel on behalf of the petitioner referred to the decision of the Federal Court in AIR 1946 16 (Federal Court) in which it was held by the Federal Court that the expression "or other legal proceeding" in Section 171 should not be confined to original proceedings in a court of first instance, analogous to a suit initiated by means of a petition similar to a plaint. It was observed by the Federal Court that Section 171 must be construed with reference to other sections of the Companies Act and the general scheme of administration of the assets of the Company in liquidation laid down by the Act,

It was held by the Federal Court that the expression "legal proceeding" should not be construed in a narrow sense as the "proceedings in a court of law". It was further held that the expression should be construed as "any proceeding prescribed by law and in pursuance of law or a legal enactment" and, therefore, action taken by the revenue authorities u/s 46(2) of the Income Tax Act would be hit by Section 171 and it was incumbent upon the Income Tax Department to apply to the High Court u/s 171 before taking action u/s 46(2) of the Income Tax Act.

On behalf of the respondents Mr. Ranen Roy relied upon two decisions, namely, *Shukantla v. Peoples Bank of Northern India, Ltd.* AIR 1941 Lah 392 (FB) (B), and *Benares Bank Ltd. Vs. Sashibhushan Misra*, , for the proposition that the expression "legal proceeding" u/s 171 of the Companies Act must be construed ejusdem generis, that is to say, as referring to original proceedings in a court of first instance, analogous to a suit, initiated by means of a petition similar to a plaint. But I can not accept this argument because the decision in AIR 1941 Lah 392 (FB) (B), has been expressly overruled by the Federal Court in AIR 1946 16 (Federal Court) .

The decision of the Patna High Court in *Benares Bank Ltd. Vs. Sashibhushan Misra*, , is also not authoritative, for that decision is based upon AIR 1941 Lat 392 (FB) (B), which, as I have just mentioned, has been expressly overruled by the Federal Court fn AIR 1946 16 (Federal Court) . The decision of the Patna High Court in *Benares Bank Ltd. Vs. Sashibhushan Misra*, , cannot take precedence over the decision of the Federal Court in AIR 1946 16 (Federal Court) , and is, therefore, of very little authoritative value. As I have said the argument of the petitioner is based upon the decision of the Federal Court in AIR 1946 16 (Federal Court) , and it was submitted that the reference made by the State Government u/s 10(1) of the Industrial Disputes Act was in the nature of "legal proceedings" contemplated by Section 171 of the Companies Act. I do not wish to express in this case any concluded opinion on this point, but I shall assume in favour of the petitioner that the reference made by the State Government u/s 10(1) is a legal proceeding within the meaning of Section 171 of the Companies Act. Even on that assumption I do not think that the State Government is compelled to apply to the High Court for leave before making the reference u/s 10(1) of the Industrial Disputes Act. There are important reasons in support of this view. It is necessary at this stage to reproduce Section 10(1) of the Industrial Disputes Act:--

"10. (1) Where the appropriate Government is of opinion, that any industrial dispute exists or is apprehended, it may at any time, by order in writing,

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant

to, the dispute to a Tribunal for adjudication.

Provided, that where the dispute relates to a public utility service and notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced.'''

It should be noticed that u/s 10(1) power is granted to the State Government to make a reference of an industrial dispute to a Tribunal for adjudication "where the State Government is of the opinion that such a dispute exists or is apprehended." The only condition imposed by the statute for making the reference is the opinion of the State Government is that an industrial dispute exists or is apprehended. No other condition is imposed for the exercise of the statutory power. If the dispute relates to a public utility service and a notice of a strike or lock-out, has been given u/s 22. the State Government is under a duty to make a reference under the proviso to Section 10(1).

A statutory duty is imposed, upon the State Government to make a reference if the conditions mentioned in the proviso to Section 10(1) are satisfied. I see no reason why the power of the State Government u/s 10(1) or the statutory duty under the proviso to that sub-section should be controlled by anything in the language of Section 171 of the Companies Act. It is obvious that there is repugnancy or inconsistency between the two statutory provisions. Take a case, for example, of a public utility service where¹ a notice of strike or lockout u/s 22 has been given. A statutory duty is imposed in such a case upon the State Government to make a reference of the Industrial dispute to the Tribunal.

The statutory duty is imposed by the legislature for the sake of public interest and for the preservation of industrial peace. If it is held that Section 171 applies to such a case, it would be necessary for the State Government to make an application for leave to the High Court. If the High Court refuses to grant leave, then the State Government would be placed in a dilemma. If the order of the High Court is obeyed, the State Government would not be able to perform its statutory duty under the proviso to Section 10(1). Such an interpretation would nullify and destroy the very object of the Industrial Disputes Act.

I think that a construction of Section 171 of the Companies Act leading to such a strange and absurd result should be avoided. My conclusion on this point is, therefore, that Section 10(1) of the Industrial Disputes Act is not controlled by Section 171 of the Companies Act and the State Government is not "bound to apply for the leave of the High Court u/s 171 of the Companies Act before" making a reference of an industrial, dispute u/s 10(1) of the Industrial Disputes Act for adjudication of the Industrial Tribunal.

This view with regard to the interpretation of Section 171 is borne out by the decision of the Chancery Court in *In re the Pontypridd and Rhondda Valleys*

Tramways Co. Ltd. (1859) 58 LJ Ch. 536 (D), in which it was held that the corresponding provision in the English Companies Act of 1862 did not apply to an inquiry u/s 42 of the Tramways Act of 1842.

There is a decision to a similar effect in Kaluram Daga Vs. Emperor, . I also rely upon the observation of Rajamannar, C. J. in R.G.N. Price, Official Liquidator of the Andhra Paper Mills Co., Ltd., (in liqn.) Vs. M. Chandrasekharan, President of the Andhra Paper Mills Workers Union, , where the learned Chief Justice says that in his opinion Section 171 of the Indian Companies Act would have no application to enquiries, investigations and orders made either by Government or statutory bodies in exercise of statutory powers.

4-a. The next argument put forward on behalf of the petitioner is that he was not a party to the Industrial dispute which was the subject matter of reference by the State Government u/s 10(1) and, therefore, the petitioner could not be proceeded against u/s 33 or Section 33A of the Industrial Disputes Act. The submission made by the learned Counsel on behalf of the petitioner was that the expression "employer" in Section 33 and Section 33A should be construed to mean as the employer concerned in the industrial dispute which was the subject matter of reference.

It was pointed out on behalf of the petitioner that the reference u/s 10(1) was made by the State Government on the 2nd of December, 1954, and the petitioner had taken lease of the sugar factory from the lessor subsequently, that is, on the 3rd of December, 1954. It was also pointed out that the petitioner was not impleaded as a party before the Industrial Tribunal and it was argued that no proceeding could, therefore, be taken against the petitioner u/s 33 or Section 33A on behalf of the aggrieved workers. I am unable to accept this argument as correct.

The expression "employer" in Section 33 and Section 33A is unqualified and there is no reason why any limitation should be imposed on the plain meaning of the expression. I think that it is not necessary for the application of Section 33 or Section 33A that the employer who discharges or punishes the workmen or who alters the conditions of the service of the workmen should be the identical employer concerned in the industrial dispute which is the subject matter of adjudication. It is, in my opinion, sufficient for the invoking of the provisions of Section 33 or Section 33A that there is the relationship of employer and employee at the time the workman is discharged or punished or at the time his conditions of service are altered to his prejudice.

That is, I think, the correct interpretation to be placed on the language of Section 33 or Section 33A. If the petitioner's argument is right, the award of the Tribunal under section. 33-A could be made only against the lessor and not against the lessee. But the important point to notice is that the lessor was not, in the position of an employer on the date the workmen were discharged or their conditions of service were altered to their prejudice. I see no reason why the

lessor should be saddled with the liability for which he is not in any way to blame.

I do not think such an unjust result could have been intended by the legislature. No such interpretation can, therefore, be placed upon the language of Section 33 or Section 33A. The object of the statute is to protect the workmen against victimisation by the employer and to ensure termination of the proceedings in connection with the industrial disputes in a peaceful manner. This object would be nullified if the interpretation contended for by the petitioner is accepted. In my opinion, the argument of the petitioner on this point must fail.

5. The next question raised by the petitioner was that the Official Liquidator was not made a party to the reference made by the State Government u/s 10(1) of the Industrial Disputes Act. But the order of reference u/s 10(1) (annexure E) shows that Gaya Sugar Mills of Guraru was specifically mentioned as one of the parties in Appendix I. I do not think it is necessary for the State Government to make the Official Liquidator a party. The reason is that the Gaya Sugar Mills continued to be a legal personality though an order for winding up had been made.

The Company had not ceased to exist as a legal entity and, therefore, the Company was properly made a party to the reference u/s 10(1) of the Industrial Disputes Act. Reference was made on behalf of the petitioner to Section 178 of the Companies Act; but do not think that section has any relevance in this connection. An objection was also raised on behalf of the petitioner that no notice was given to the Official Liquidator by the Industrial Tribunal before hearing the reference.

The argument is not right, for annexure E shows, that notice was given to the Official Liquidator on the 11th of January, 1955. It may be that notice was given late, but the award of the industrial Tribunal was made on the 25th of March, 1955, long after the notice. I do not think there was any lack of jurisdiction and the argument of the petitioner on this point must be rejected.

6. For these reasons I hold that there is no case made out on behalf of the petitioner for grant of a writ under Article 226 of the Constitution. In my opinion this application must be dismissed with costs. Hearing fee Rs. 200/- to be shared equally between opposite parties 1 and 2 on one hand and the opposite parties 4 to 23 on the other hand.

Raj Kishore Prasad, J.

7. I agree.