
(2000) 07 AHC CK 0120
In the Allahabad High Court
Case No : C.M.W.P. No. 23719 of 1999

Stallion Shox Ltd.

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2000) 4 AWC 2612 : (2000) 86 FLR 801 : (2001) 1 LLJ 103

Hon'ble Judges : Ratnakar Dash, J; Palok Bas, J

Bench : Division Bench

Advocate : Kushal Kant and Rahul Anand Gaur, for the Appellant; S.C., U.S. Awasthi and S.C. Rai, for the Respondent

Final Decision : Dismissed

Judgement

Palok Basu and Ratnakar Dash, JJ.—M/s. Stallion Shox Limited has come up to this Court under Article 226 of the Constitution of India with the prayer that the citation dated 18.5.1999 Issued by the Tehsildar, Gautam Budh Nagar for realisation of a sum of Rs. 1,44,000 plus collection charges from the petitioner be quashed. The allied prayers have also been made.

2. The dispute in the writ petition relates to the application of the opposite party No. 4, Pratap Chand who admittedly was a workman of the petitioner and went to the Tribunal under the relevant industrial law which passed an award in his favour directing payment of back wages to the opposite party No. 4 and that is how a sum of Rs. 1,44,000 and odd is now sought to be recovered from the petitioner through the present citation.

3. When the writ petition was filed on 3.6.1999. an interim order was passed staying the recovery from the petitioner. The opposite party No. 4. workman has put in appearance and has filed a counter-affidavit to which a rejoinder-affidavit has also been filed. The State of U. P. and the recovering officials have been

served through the standing counsel. Mr. Kushal Kant, assisted by Sri R. A. Gaur, learned counsel for the petitioner, Sri S. C. Ral, learned standing counsel for the State and its recovering officers and Mr. U. S. Avasthi, learned counsel for the workman concerned, i.e., respondent No. 4 have been heard at length and the entire record has been examined.

4. The only controversy revolves round the question as to whether the citation now Issued which is under challenge, can be validly executed against the petitioner or not.

5. The opposite party No. 4 was terminated by the petitioner in the year 1987 with the result that he took his dispute to the Tribunal. The Tribunal in turn passed the award on 25.10.1996. That order was put in execution by the opposite party No. 4 and citation was issued. The petitioner appears to have objected before the Magistrate at Delhi which had issued the initial citation. Upon objections raised, an order was passed by the Magistrate at Delhi, recalling the recovery certificate, a copy of the said order dated 21.1.1999 has been filed as Annexure-4 to the writ petition. It is this order dated 21.1.1999 which has been made sheet anchor of the argument of the petitioner by his counsel Sri Kushal Kant. The argument proceeded that since the petitioner had in the meantime become a sick unit within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985, a rehabilitation proposal was held to be Invoked by the B.I.F.R., it was not open to the opposite party No. 4 to pray for the Magistrate to issue a citation for a said sum of Rs. 1,44,000. Apparently the order dated 21.1.1991 Indicates that the Magistrate at Delhi took the view that since the petitioner was registered with the Board for Industrial and Financial Reconstruction (B.I.F.R.) on 6.7.1994 and the rehabilitation scheme as sanctioned by the B.I.F.R. was under Implementation. Section 22 of the aforesaid Act did not permit the said recovery proceedings to be Initiated against the petitioner.

6. Mr. Awasthi, on the other hand, argued primarily on two points vehemently. The first was that In so far as the wages are concerned, there was absolutely no warrant for the argument that the recovery of the back wages should remain stayed u/s 22 even if the unit has gone sick. He has placed reliance on the decision of this Court in the case of Modi Industries Ltd. v. Addl. Labour Commissioner and others. 1994 ALJ 630, and Poysha Industries Co. Ltd. v. Collector Ghaziabad and others. 1996 FLR 166. The first case held that the recovery proceedings under the Timely Payment of Wages Act cannot be stopped by resorting to any expression used in Section 22 of S.I.C. Act. Similar is the view expressed in the second case, wherein identical view has been expressed. With respect to the learned Judges, the aforesaid view is fully supported by the provisions contained in Section 22 of the S.I.C. Act and, therefore, the said views are accepted with due respect. The reasons set out in both the Judgments are also adopted and need not be repeated in this judgment.

7. The second argument of Mr. Awasthi was that having come to know of the

order dated 21.1.1999 which was apparently illegal, the opposite party No. 4, workman rushed to the Magistrate concerned and made an application for recalling of that order and passing of a fresh citation. In this connection, the attention of the Court was drawn by Mr. Avasthi to the averments made in paragraphs 19 and 20 of the counter-affidavit which for the ready reference are quoted below :

"19. That the contents of paragraph 17 of the writ petition are denied. It is submitted that the recovery certificate was withdrawn by the respondent No. 3 on the false representation of the petitioner that recovery proceedings are liable to be stayed u/s 22 of the Sick Industrial Companies (Special Provision) Act, 1985, but when it was represented before respondent No. 3 that Section 22 of the Act is not applicable with regard to the payment of dues of a workman under the orders of the labour court. The Impugned recovery certificate has been issued as per the law.

20. That the contents of paragraph 18 of the writ petition are wrong and hence denied. It is absolutely wrong that respondent No. 2 has no Jurisdiction to issue citation. It is submitted that the Sub-Divisional Magistrate issued a fresh recovery certificate No. 18/MW/98-99/1374 dated 20.4.1999 to recover the said amount of Rs. 1,44,000 from the petitioner company."

Mr. Awasthi then drew the attention of the Court to the averments made In paragraphs 19 and 20 of the rejoinder-affidavit filed by the petitioner which also are quoted below for ready reference :

"19. That the contents of paragraph No. 21 of the counter-affidavit are denied as false. It is submitted that the fresh recovery certificate issued by the Sub-Divisional Magistrate is illegal and without jurisdiction.

20. That in reply to the contents of paragraph No. 22 of the counter-affidavit. It is submitted that the show-cause notice dated 15.5.1998 as well as recovery certificate dated 27.5.1998 had not been served or sent to the petitioner. It is pertinent to mention that the respondent No. 4 concealed this fact that the respondent No. 3 had issued recovery certificate dated 11.11.1998 in pursuance of recovery certificate dated 27.5.1998 and on representation by the petitioner, the respondent No. 3 withdrew the recovery certificate vide its order dated 21.1.1999. The petitioner already submitted in the preceding paragraphs that the fresh recovery certificate issued by respondent No. 3 is illegal and without jurisdiction."

8. In view of the admission existing in paragraphs 19 and 20 of the rejoinder-affidavit, it is no more in doubt that the respondent No. 4 approached the Magistrate concerned for passing a valid order supportable by provisions existing in Section 22 of the S.I.C. Act. This being the factual position, there is ample force in the argument of Shri Awasthi that the second recovery certificate was issued by the Magistrate concerned with full application of mind after considering the objections raised vis-a-vis the order dated 19.1.1999, therefore, the citation

was correctly issued by the Recovering Officer, Gautam Budh Nagar.

9. It should be pointed out that when the workman who was denied the rightful wages and had the order in his favour from the Tribunal which has already passed the award which has become final between the parties, this Court should be most reluctant in interfering with the recovery proceedings relating to the said award by exercising its extraordinary Jurisdiction under Article 226 of the Constitution of India : on the facts of this case, that power is not being exercised by this Court.

10. Mr. Kushal Kant could not bring to the notice of the Court any fact or law which could dispel the argument of Mr. Awasthi.

11. In view of the above, the writ petition fails and is dismissed accordingly. The Interim order dated 3.6.1999 is hereby vacated. The parties shall bear their own costs.