

(1993) 05 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

STANDARD MOTOR PRODUCTS OF INDIA LTD.,
PERUNGALTHUR, MADRAS

APPELLANT

Vs

S.JAYAKUMAR

RESPONDENT

Date of Decision : 18-05-1993

Acts Referred:

Citation : 1993 0 NCDRC 109

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN ,
B.S.YADAV J.

Advocate : B.M.RAO , K.B.S.RAJAN

Judgement

1. THE brief facts leading to this Revision Petition are that the persent Respondent had deposited a sum of Rs. 25,000/- on 24th June, 1985 with the present Petitioner, Standard Motor Products of India Ltd. (for short the Company) through its Dealer (who was also a party before the District Forum). There was severe set-back in the operations of the Company and the situation worsened with the labour unrest and the Company was compelled to close its operations completely. According to the petitioner, even the management was prevented from entering the premises of the Company for carrying out its day-to-day administrative work because of the labour problem. When the car was not delivered to the Respondent, he made a demand for refund of his deposit. The Company asked him to reconsider his decision but the Respondent stuck to his decision. When the amount was not refunded to him, the Respondent filed his complaint under the Consumer Protection Act, 1986 before the District Consumer Disputes Redressal Forum, Madurai who vide order dated 18th September, 1991 ordered the Company to pay the sum of Rs. 50,750/- to the Respondent herein. This amount consisted of Rs. 25,000/- deposited for the purchase of the car plus Rs. 25,000/- as interest from 12th July, 1985 plus Rs. 250/- as costs (the total of these items appears to be wrong).

2. THE Company filed appeal before the State Consumer Disputes Redressal Commission, Tamil Nadu at Madras. The State Commission found no force in the

appeal and dismissed the same with no order as to costs. Feeling aggrieved, the Company has come before us by filing Revision Petition. According to the petitioner, the Board for Industrial and Financial Reconstruction (for short BIFR) vide its order dated 23rd January, 1992 had appointed an Operating Agency viz. Industrial Development Bank of India and directed them to investigate into the operation of the Company and prepare scheme for rehabilitation and revival of the Company as the Company had become sick. The Company was reopened only in February, 1992 after the issue of BIFR orders for rehabilitation. It may be mentioned here that on 28th February, 1992 the District Forum had issued a show cause notice in execution of the order passed by it on 18th September, 1991. According to the present petitioner, there is an express bar under Section 22 of the Sick Industrial Companies (Special Provisional) Act, 1985 (for short the Act) against proceedings for execution, distress for the like except with the consent of the BIFR when an inquiry under Section 17 is under preparation or consideration or a sanctioned scheme is under consideration, in the present case, the BIFR, vide its order dated 7th April, 1992 has given protection under Section 22(3) of the said Act to the Company for the implementation of the scheme. The Company, therefore, prays that the orders passed by the District Forum on 15th September, 1991 and the State Commission on 8th September, 1982 be set aside and the show cause notice dated 28.2.1992 issued by the District Forum be quashed.

3. WE have heard the parties. We need not dilate much upon the facts of this case because this case is covered by our decision on the identical question given in First Appeal No. 108 of 1991 titled M/s. Standard Motor Products of India Ltd. v. M. Athithan and Ors. (decided on 11.3.1993), 1993 1 CPJ 134 In the above cited case, this Commission held that when the scheme prepared under the Act was under consideration and also when the BIFR has issued the necessary declaration which was in force at the time the complaint was filed or disposed of. The notice of the suspended contract cannot be taken nor an order about the refund of the advance could be passed.

4. THE petitioner has produced the order passed by BIFR on 7th April, 1992 which reads as follows: "Whereas, we have by our order dated 21st January, 1991 made under Sub-section (4) of Section 19 read with Sub-section (3) of Section 19 of the Sick Industrial Companies (Special Provisions) Act, 1985 sanctioned a scheme for revival/rehabilitation of the sick industrial company, M/s. Standard Motor Products Ltd. 2. And whereas, we consider it necessary to provide the company with the protection contemplated u/Sec. 22(3) of the Act for due implementation of the said scheme. 3. Now, therefore, in exercise of the powers conferred by Sub-section (3) of Section 22 of the aforesaid Act for due implementation of the said scheme, we hereby declare that the operation of all contracts, assurances of property agreements, settlements, awards, standing orders or other instruments in force to which the sick industrial company is a party or which may be applicable to it. Immediately before the issue of this order, shall remain suspended for a further period of one year with effect from

1st March, 1992 and enforcement against the Company of all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder, before the said date shall remain suspended for the said period."

This declaration was in force when the State Commission decided the appeal. It is well settled principle that appeal is a continuation of the original cause. Therefore, the State Commission could not have confirmed the order of the District Forum as by that time the contract, on the basis of which the latter Forum passed the order, stood suspended. The State Commission should have taken notice of this fact. It is not clear if prior to the reproduced declaration issued by BIFR any other declaration was issued. However, at the time the District Forum took up execution proceedings and passed the order dated 28th February, 1992 the above declaration was in force and moreover the scheme had been sanctioned on 21st January, 1991. Hence in view of Section 22(1) of the Act, execution proceedings did not lie as consent of BIFR had not been taken for proceeding with it.

5. HOWEVER , the order of the BIFR which has been reproduced above was for a period of one year w.e.f. 1st March, 1992. The said declaration was in force when, the impugned orders were passed by the District Forum and the State Commission. Therefore, we have no option but to quash the orders of the District Forum and the State Commission as well as the show cause notice issued by the District Forum of the date noticed above. The Revision Petition is allowed as above.