
(1985) 04 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 399 of 1985

Stretch Fibres (India) Limited and Others	APPELLANT
Vs	
Sharad Dudhat and Others	RESPONDENT

Date of Decision : 16-04-1985

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 119D, 3(14), 42, 46(1), 78
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1985) 2 BomCR 540

Hon'ble Judges : M.M. Qazi, J

Bench : Single Bench

Advocate : M.C. Bhangde, for the Appellant; S.D. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Qazi, J.—The petitioner is a Public Limited Company registered under the provisions of the Indian Companies Act, 1956. Petitioner No. 2 is the Chairman-cum-Managing Director of the said Company and petitioner Nos. 3 to 5 are the Directors of the petitioner No. 1 company. Petitioners are the manufacturers of Nylon yarn and its factory and is at Nagpur.

2. The respondents are the elected representatives of the employees.

3. There is no dispute that the manufacturing activities of the petitioner company are completely stopped with effect from October 1983. According to the petitioner company the production is stopped for the following reasons :

- i) Heavy increase in the cost of raw material i.e. Polycaprolactum i.e. imported chips on account of increase in import duty from the year 1983;
- ii) Non-availability of raw material at competitive price from other sources;
- iii) Acute shortage of finance on account of higher cost of raw material as compared to the realisation of the finished products; and

iv) On account of non-completion of polymerization plant, the financial assistance was not received by the company as promised and sanctioned by the financial institutions.

The employees could not be paid their wages since according to petitioner Company, no funds were available with the petitioner No. 1. The respondents filed an application u/s 78 and 79 of the Bombay Industrial Relations Act (hereinafter referred to as the "Act" for short) before the Labour Court at Nagpur. The case was registered as BIR Case No. 64/ 1984. According to respondents, the petitioner company almost completely stopped its activities from October 1983 and the wages of the workers were not paid since March, 1984 onwards. According to them, the workmen employed in the company are governed by the Bombay Industrial Relations Act, 1946 and that as per the standing orders applicable and the provisions of the Bombay Industrial Relations Act, 1946 the workmen are entitled to get regular work and be regularly their wages as per contract of employment. According to the service conditions applicable any change that the employer wishes to make in the service conditions of the employees, cannot be done by him without following the procedure laid down under the Act. They further contended that in order to enforce unfavourable service conditions on the workers the petitioner locked out the factory and thus without following the provisions of the Bombay Industrial Relations Act, they resorted to an illegal lock-outs of the factory. They also submitted that the actions of the petitioner company are covered by Item Nos. 1, 3, 5, 7, 8, 9 and 11 of Schedule 11 of the Bombay Industrial Relations Act, 1946 and before embarking on these changes the petitioners should have given a notice of changes u/s 42 of the B.I.R. Act, 1946. They further stated that the actions of the petitioner were in contravention of the standing orders, and, therefore, the actions of the petitioners constitute an illegal change within the meaning of section 46 of the B.I.R. Act, and all these actions are liable to be set aside and declared as such accordingly. The petitioners contested the claim of the respondents by filling written statement on 21st July, 1984. The petitioners denied that they committed any change much less any illegal change within the meaning or section 46 of the Act. According to them, the relationship of master and servant continues throughout even though production activities have been stopped from October 1983. Thus according to them, the application under sections 78 and 79 of the Act is not maintainable. It appears, almost simultaneously the respondents filed an application u/s 119-D of the Act for interim relief. This application was also opposed to by the petitioners by filing a reply on 21st of July, 1984.

4. The application u/s 119-D of the Act came up for hearing before the First Labour Court, Nagpur and it disposed it of by order dated 27th August, 1984. The trial Court found that the company effected changes in items 1, 3, 8, 9 and 10 and Item 9 of schedule II of the Act. It further found that the changes are illegal in view of sections 46(2)(4) of the Act for want of notice u/s 42(i) of the Act. It has also held that practically for all purposes the company had effected

closure of the factory and that the closure was an illegal closure u/s 42(i) of the Act and, therefore , taking into consideration all these aspects the trial Court directed the petitioner company and the Directors to deposit in the Court due wages since March, 1984 to July 1984 within 7 days from the date of the order. This order was challenged u/s 85 of the Act by way of revision before the Industrial Court, Nagpur. According to Industrial Court the granting of an interim relief was a discretionary matter and, therefore, no interference was called for in the matter. The Industrial Court further observed that the employees still continue to be in the employment of the company that the employment of the company inasmuch as their names continue to be on the muster roll and they have not been paid their wages since March 1984. Therefore, according to the Industrial Court the Petitioners must be said to have committed default in making disbursement to these employees, which under the standing orders, are due on 7th of the month following and this change making disbursement prima facie, according to it fell at any rate under Item No. 9 of schedule II of the Act. The Industrial Court has also referred to section 42 of the Act wherein notice of change was necessary under Item No. 9 of schedule II of the Act. It has also referred to section 46 which forbids an employer to make any change in the Industrial matter mentioned in schedule II. The Industrial Court has also negated the argument advanced on behalf of the petitioners that the circumstances in which the factory had been closed were really beyond the control of the employer. Thus in the result the revision of the petitioners was dismissed.

5. It appears that the petitioners also filed review petition u/s 84 of the Act before the Industrial Court. According to the petitioners, certain grounds which were raised at the time of the hearing were not discussed by the learned Member of the Industrial Court. The review petition has been disposed of by the Industrial Court vide order dated 30th January, 1985. According to the Industrial Court since the question of limitation as well as the question of liability of the Directors was not raised before the Labour Court, the same could not have been taken at the revisional stage for the first time at the stage of argument. The Industrial Court further observed that the revision had arisen out of an order passed by the Labour Court on the application for interim relief and since the main application is still pending it would not be proper to adjudicate the points which were being raised for the first time at the stage of argument. The Industrial Court further observed that it was open to the petitioners to raise the same points before the Labour Court with the leave of the Court and obtain its finding thereon. With these observations it rejected the review petition and it is in these circumstances that the matter has come up before this Court.

6. Mr. Bhangde, the learned Counsel appearing on behalf of the petitioners has addressed an elaborate argument. His primary contentions are as follows :-

1. There is no prayer in the application dated 2-7-84 u/s 119-D of the Bombay Industrial Relations Act for payment of wages and yet the Labour Court granted

the relief which was never asked for.

2. The application dated 2-7-84 u/s 78 and 79 of the Bombay Industrial Relations Act, was itself barred by time since the same was filed after the period of 3 months in view of section 79(4) of the B.I.R. Act.

3. The petitioners Nos. 2 to 6 who are the Directors of the company cannot be made liable under law.

4. No notice of change is required to be given u/s 42 of the Act in the matter of non-payment of wages.

7. As regards the first challenge, there is no dispute that the employees are still in the employment of the company inasmuch as their names continue on the muster-roll and that they have not been paid wages since March 1984. It is obvious that they have approached the Labour Court because their wages are not paid and they are almost on the brink of starvation and, therefore, they asked for interim relief. Apart from the form of the application and the language used, there can be no doubt that parties understood what the real controversy was. The wordings of section 119-D of the Bombay Industrial Relations Act, 1946 read thus :---

"In any proceedings before it under this Act, the Industrial Court, a Labour Court or a Wage Board may pass such interim orders as it may consider just"

Thus the section, in my view gives absolute discretion to the trial Court to pass such orders as it deems fit in the facts and circumstances of a particular case to relieve the party from the hardship. In my view the trial Court was perfectly justified in passing the impugned order. The objection is too technical and hence rejected.

8. Coming to the next submissions of Mr. Bhangde about the limitation, it may be mentioned at the outset that this challenge was raised for the first time at the stage of the hearing, before the Industrial Court. Therefore, the revisional Court refused to consider and in my view rightly. There is no whisper either in the written statement or in the reply to the application for interim relief that the application u/s 78 and 79 of the B.I.R. Act filed by the respondents was barred by time. In this context Mr. Bhangde has relied on section 79(4) of the Act which reads thus :--

"79(4). An application in respect of a matter falling under Clause (c) of paragraph A of sub-section (1) of section 78 shall be made within three months of the commencement of the strike, (lock-out, closure or stoppage) or of the making of the illegal change, as the case may be : (Provided that the Labour Court may, for sufficient reasons, admit any application for a declaration that a change is illegal under this Act, after the expiry of three months from the date on which such change was made :

Provided further that when an application is admitted after the expiry of three

months under the preceding proviso the employer who made the change shall not be liable to the penalty provided u/s 106)".

Ordinarily the question of limitation has to be decided on the basis of a factual date that may be placed by the parties at the trial stage. In order to decide the question of limitation there are several factors which are required to be taken into consideration namely as to when the cause of action accrued and as to whether it was continuing one etc. As I have pointed out above, since the question was not raised by the petitioners in their written statement, the respondents could not place any material which perhaps they would have, had they known the case of the petitioner. It might be possible for them to show that either their application was not barred by time or even if it was so, there was sufficient grounds for the condonation of the delay. The case of the respondents in brief, is that the petitioner company has stopped its production activities from October 1983, as a result of which about 400 employees have been rendered jobless. Though they are marked as present on duty, they are not paid their wages since March 1984 onwards till the date of application. According to the respondents this action on the part of the petitioner company amounts to and constitute an illegal change within the meaning of section 46 of the Act. It has been contended that the petitioners have locked out the factory without following the provisions laid down in the B.I.R. Act. The respondents have also contended that the action of the petitioner company amounts to closure of the factory without payment of any compensation and without following the procedure and, therefore, their action fell in the category of illegal closure for which no payment or compensation has been paid. According to Mr. Thakur, all this would constitute a continuing cause of action and hence there could be no question of any limitation. I see much substance in the submission of Mr. Thakur and prima facie in my view there could be no question of limitation in the facts and circumstances of the present case. Thus in my view there is no substance even in the challenge on the ground of limitation.

9. Mr. Bhangde, then argued that the order of the trial Court directing the Directors of the company to pay the wages is wholly without jurisdiction inasmuch as the Directors cannot be made liable for the payment of wages. Even this ground was raised for the first time at the stage of argument before the revisional Court and, therefore, the revisional Court refused to consider the same. Even this challenge may require certain factual data to be placed on record and since there is no challenge in the written statement nor such challenge was raised before the trial Court, the respondents had no opportunity to meet the same.

10. Mr. Bhangde invited my attention to certain decisions and also to certain provisions from the payment of Wages Act in support of his contention that the order of the Labour Court is not tenable against the Directors. I have prima facie examined this aspect as well in order to satisfy as to whether the impugned order could be said to be wholly without jurisdiction or untenable. He has invited

my attention to section 3 of the Payment of Wages Act, 1936, the relevant portion of which reads thus :-

"3. Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act

(a) in factories, if a person has been named as the manager of the factory under Clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 then the person so named and the employer jointly and severally."

11. According to Mr. Bhangde, the liability could be fastened only against the Manager of the factory if he is so named. According to him, the Directors cannot be termed as employers and, therefore, they cannot be made liable for the payment of wages. He fairly concedes that the liability would be entirely of the company and the respondents are free to take such steps as they may deem fit, against the company for the realisation of their wages. He has also invited my attention to the definition of "employer" as given in section 2(ia) of the Payment of Wages Act which reads thus :---

"employer" includes the legal representative of a deceased employer :"

According to Mr. Bhangde it is either the employer or the legal representative of the employer who would be responsible for the liability of the company under Payment of Wages Act or the manager if so named. He has also invited my attention to a decision reported in 1963 B.L.J.R. 127 M.P. Agarwalla and another v. Union of India and others. The proceedings in this case arose out of a suit in which the plaintiffs had claimed damages from the defendants for failure of the defendants to take delivery of the consignment of one wagon of soft coke which had been booked by defendants Nos. 1 and 2 for being delivered to defendant No. 3. Mr. Bhangde has particularly invited my attention to para 2 which reads thus :

"This second appeal is preferred on behalf of defendants 1 and 2 against the decree now granted by the lower Appellate Court. On their behalf it was submitted by learned Counsel that defendants 1 and 2 are the directors of the limited company, defendant No. 2(a), namely, the North Bastacolla Colliery Co. Ltd. and the consignee as mentioned in the risk note was the limited company, and, therefore, the directors are not liable to pay the damages claimed by the plaintiff. In my opinion, this argument is well founded and must prevail. It is well established that a limited company has separate legal personality from that of its directors who cannot, therefore, be made liable for the legal liability incurred by the limited company."

12. Another decision that has been relied upon by Mr. Bhangde is reported in 1965 B.L.J.R. 341 Bejai Singh Dugar v. Certificate Officer. The relevant portion thereof (para 4) reads thus :

"It has been held in a series of decisions that execution of a certificate by putting the managing director of any company or, for the matter of that, any authority of

the company, for the dues of the company cannot be resorted to any certificate debt payable by an incorporated company can be realised only by seizing the assets of the company and not by putting in prison the managing director or any other officer of the company."

13. He has also relied upon 1976 L.I.C. 95 Kamal Kishore Jhunjhunwala v. The Prescribed Authority, City Magistrate, particularly para 9 thereof :

"The prescribed authority framed an issued to the effect as to who was responsible for payment of wages to the workmen. While dealing with that issue, it recorded a finding that there was dispute between the directors themselves and no manager had been designated but since the papers produced before it indicated that the petitioner exercised control over the affairs of the company he was responsible for payment of wages to the workmen. It was on these findings that the decree for payment of wages and compensation was passed against the petitioner. As noted earlier, the petitioner was only an Executive Director while the respondent No. 4 was the occupier. In the absence of a Manager designated u/s 7 of the Factories Act, respondent No. 4 was the Manager of the Factory under the deeming provisions of sub-section (5) of section 7 of the Factories Act, therefore, the responsibility for payment of wages was that of the respondent No. 4 who was the occupier of the factory. The definition of occupier itself indicates that it is he who has the ultimate control over the affairs of the factory. Respondent No. 4 was notified as occupier, since he had not appointed any Manager, the prescribed authority was not competent to hold that the petitioner was responsible for wages on the basis of certain unspecified documents. When the law fixes the responsibility for payment of wages on the occupier or manager, it is not possible to fasten the responsibility to the petitioner. The prescribed authority committed a patent error of law in holding the petitioner responsible for payment of wages to the respondent workmen."

14. The last case that has been relied upon is reported in 1984 M.L.J. 117 Suresh Tulsidas Kilachand and others v. Collector of Bombay and others. Mr. Bhangde has particularly invited my attention to paras 6, 7, 18 and 19 of the above decision, in support of his contention.

15. As against this, it is submitted by Mr. Thakur that all these cases are not at all relevant. According to him, these are the cases which are either under the Employees State Insurance Act or under the Payment of Wages Act or under some other enactments and that none of the decisions cited supra are under the Bombay Industrial Relations Act. According to Mr. Thakur, employer has been defined differently under differently enactments. According to him, the definition of employer a given under B.I.R. Act alone is relevant for the purposes of the present cases, since the workmen employed in the company are governed by the B.I.R. Act and the standing orders. He has invited my attention to section 3(14) of the Act, the relevant portion of which reads thus :

"(14) "employer" includes-

- (a) an association of a group of employers;
- (b) any agent of an employer;

According to Mr. Thakur the definition is inclusive and comprehensive. According to him, the directors would be covered under "an association of a group of employers". As I have observed above I am examining these aspects only with a view to find out as to whether prima facie the directors could be held liable. In my view, the directors may be covered under "agent of an employer". As I have already pointed above all these questions can be decided only on the basis of factual data. It will have to be found out as to what role the directors played in the stoppage of the production, as a consequence of which the employees were not paid their wages. The Industrial Court has rightly and fairly observed that it would be open to the petitioners to amend their written statement with the leave of the Court and raise all these challenges so that respondent get full opportunity to meet the case.

16. As regards the decisions relied upon by Mr. Bhangde, suffice it to say that they are either under Payment of Wages Act or under the Employees State Insurance Act or under other enactments. None of the decisions are under the Bombay Industrial Relations Act, wherein the definition of the word "employer" is in the widest possible terms. There is yet another aspect of this case. It is an admitted position that about 400 employees are still in the employment of the petitioner company and their names still continue to be on the muster roll and they are actually marked present, and yet they have not been paid their wages since March 1984. This action of the petitioners would prima facie amount to and constitute a change as held by the courts below. I am in full agreement with the courts below that at any rate this would fall under Item 9 of Schedule II of the Act, and, therefore, it was necessary for the petitioners to have issued notice u/s 42 of the Act before they could effect any change and hence section 46(1) of the B.I.R. Act is certainly attracted and renders the action of the petitioners illegal. If the respondents ultimately succeeds in proving before the Labour Court that the petitioners have committed either illegal lock-out/illegal closure/illegal change, then surely the Labour Court would be within its rights in directing the petitioner to withdraw such change in view of the wide powers given to it u/s 78 referred supra. It also enables the Labour Court to direct the petitioner to withdraw temporarily any such change, which it may prima facie find that the employer is guilty of. Therefore, it is difficult to accept that the original application under sections 78 and 79 of the B.I.R. Act is not maintainable at the threshold.

17. Lastly Mr. Bhangde contended that no notice of change is required to be given u/s 42 of the Act in the matter of non-payment of wages. He has invited my attention to Item 9 of Schedule II. This item, according to him, deals with the mode of payment of wages or the period for which the wages are to be paid. According to him, the present case is one where no wages are being paid for the reasons beyond the control of the petitioners and hence the present case would not fall under Item 9, Schedule II. I see no substance in this submission. Prima

facie the reasons given by the courts below that there is an illegal change, appears to be correct. I find no substance in the petition and the same is dismissed with costs. Rule is discharged accordingly.

18. Mr. Bhangde has requested that the trial Court should be directed to decide the matter within 3 months. I think the request is most reasonable, I direct the trial Court that the petitioner should be disposed of as expeditiously as possible and preferably within 3 months. Time to make payment is extended upto the end of this month.