

(1995) 04 GUJ CK 0014
In the Gujarat High Court
Case No : S.C.A. No. 901 of 1995

Subhlaxmi Mills Ltd.

APPELLANT

Vs

Dudhabhai Becharbhai

RESPONDENT

Date of Decision : 26-04-1995

Acts Referred:

Constitution of India, 1950 — Article 227

Gujarat Sick Textile Undertakings (Nationalisation) Act, 1986 — Section 5

Citation : (1996) 1 GLR 526

Hon'ble Judges : K.R. Vyas, J

Bench : Single Bench

Judgement

1. The services of the respondent came to be terminated on August 26, 1992 after a departmental inquiry on the ground of gross negligence in his duties resulting in breakage of Card No. 38. Against the said decision, the respondent filed T. Application No. 32/83 before the Labour Court, Nadiad. The Labour Court, Nadiad, by its order dated July 29, 1987 granted reinstatement of the respondent with 75% backwages. The petitioner as well as the respondent filed separate appeals against the said order before the Industrial Court, Gujarat at Ahmedabad. On November 3, 1987, the Appellate Court remanded the matter to the Labour Court. The Labour Court by its order dated March 30, 1993 granted reinstatement to the respondent with 40% backwages. Again, both the parties filed separate appeals before the Industrial Court and on October 29, 1994 both the appeals were dismissed. The petitioner has, therefore, filed the present petition under Article 227 of this Constitution of India against the said judgment and order.

2. On behalf of the petitioner, it is contended that by virtue of Section 5 of the Gujarat Sick Textile Undertakings (Nationalisation) Act, 1986 (Act No. 25 of 1986) which came into force on and from January 1, 1986, no liability of the owner of the sick textile undertaking in respect of any period prior to the appointed day i.e. January 1, 1986 shall be enforceable against the State Government or the 3 Gujarat State Textile Corporation and, therefore, the Courts

below ought not to have decided the application of the respondent.

3. Now, this being a petition under Article 227 of the Constitution. It is not open to raise any new contention for the first time. As can be seen from the facts, neither before the Labour Court nor before the Appellate Court, even after remand, this contention was raised by the petitioner and, admittedly, the same is now raised for the first time before this Court. All questions of law need not necessarily be entertained in a petition under Article 227, if they were not raised earlier when opportunity for raising the same was available. However, since this issue is being raised often in similar matters, it is necessary to set the point at naught. Section 5 of the said Act deals with the liability of the owner and it reads as under :

"5. (1) Every liability of the owner of the sick textile undertaking in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the State Government or the Corporation.

(2) For the removal of doubt, it is hereby declared that -

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability in relation to the sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the State Government or the Corporation;

(b) no liability of the sick textile undertaking or any owner thereof for the contravention before the appointed day of any provision of law for the time being in force, shall be enforceable against the State Government or the Corporation."

Reading the said provisions it is clear that it is the liability of the owner of the sick textile undertaking in respect of any period prior to the appointed day i.e. January 1, 1986 and that liability can be enforceable only against him and not against the State Government or the Corporation. By sub-section (2) of Section 5, for the removal of doubt, it has been declared that save as otherwise expressly provided in Section 5 or in any other section of the said Act, no liability in relation to the sick textile undertaking in respect of any period prior to the appointed day can be enforceable against the State Government or the Corporation. Thus, if the liability of a sick textile undertaking is determined in respect of any period prior to the appointed day i.e. January 1, 1986, it is the liability of the owner who was the owner of the sick textile undertaking prior to the appointed day i.e. January 1, 1986 and it cannot be fastened or enforced against the State Government or the Corporation. In the instant case, it is not in dispute that the rights and/or liabilities were not adjudicated or determined by the competent court prior to the appointed day and it was for the first time on July 29, 1986 the Labour Court decided the rights of the parties and directed reinstatement of the respondent with 60% backwages, thus fixing the liability of the petitioner. Therefore as the services of the respondent were terminated on August 26, 1982, the liability of the owner of the sick textile undertaking in

respect of any period prior to January 1, 1986 cannot be fastened on the petitioner. The petitioner is however liable to reinstate the respondent and pay the backwages in respect of the period after January 1, 1986. To that extent only the petition requires to be allowed.

4. Another grievance made with regard to the direction to pay 40% backwages to the respondent is essentially a matter of discretion of the competent court which it has exercised in favour of the respondent and, therefore, it is not open to the petitioner to raise the said contention in the present petition. The Courts below have proceeded on the fact that the respondent was negligent and had caused damage to the property of the unit and, therefore, by way of imposing some punishment backwages were reduced to 40%. In view of this, I do not see any merit in this contention and it is rejected accordingly.

5. In the result, this petition is partly allowed only to the extent that the liability of the owner of the sick textile undertaking in respect of the wages for the period prior to January 1, 1986 cannot be enforced against the petitioner. Rest of the directions, including that of reinstatement, shall remain intact. Rule is made absolute to the aforesaid extent with no order as to costs. Ad-interim relief stands vacated.

6. On behalf of the respondent, Mr. Mishra, learned Advocate, has stated that the petitioner has in fact paid the amounts of backwages to other similarly situated workmen being the liability of the owner of the sick textile undertaking in respect of the period prior to January 1, 1986 and, therefore, denial to backwages in respect of the period prior to January 1, 1986 to the respondent would amount to the discrimination. He submitted that therefore the petitioner is required to be directed not to deny the said payment to the respondent. If what Mr. Mishra states is correct, I am sure, the Corporation will consider the case of the respondent sympathetically on that line and treat him like other similarly situated workmen, particularly in view of fact that the amount awarded to the respondent is only to the extent 40% and in respect of the period after January 1, 1986 the petitioner is even otherwise liable to make the payment to the respondent.