

(2002) 08 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 1320 of 1991

Surrendra Industries Ltd.

APPELLANT

Vs

A.L. Alaspurkar, Member Industrial Court and Others

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(3), 33C(2)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 32, 50

Citation : (2003) 2 BomCR 113 : (2003) 1 MhLj 970

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : P.K. Rele, R.P. Rele and Vinod Tayade, instructed by Suresh S. Pakale, for the Appellant; Sanjay Sanghavi, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner company is aggrieved by the order dated 8th February 1991 passed by the Industrial Court, Thane in Complaint (ULP) No. 46 of 1983 filed by the respondent No. 2 employee, u/s 28 read with Section 30 and Item 9 of Schedule IV of the M.R.T.U. and PULP Act, 1971 praying for a declaration that the respondents in the complaint had engaged in the unfair labour practice of failure to implement the award dated 31st December 1981 in Reference (IDA) No. 589 of 1976 and for a direction to desist from engaging in the unfair labour practice complained of. The reference was between the original employers, viz., Esskay Steel Rolling Mills and the workman Shri Mangli. The petitioner is the company which according to the workman is the successor in interest of the original employer and is liable to implement the award against the original employer. For the sake of convenience the parties will be hereinafter referred to as "the petitioner company" and the "original employer" i.e. (Esskay) and the workman. In the complaint before the Industrial Court in addition to the original employer, its manager, Shri S. P. Sharma as the partner of the original employer and the petitioner company were arrayed as the respondent Nos. 1, 2,

3 and 4. It appears that the respondent Nos. 1, 2 and 3 did not contest the complaint after the interim orders were passed and it was the petitioner company that contested the complaint till the end and it is doing so even before this Court. The respondent No. 3 in the petition i.e. the original employer is absent even before me though duly served.

2. The workman succeeded before the Labour Court on 31st December 1981 to get the order of his termination passed by the original employer on 21st November 1975 set aside and to get the order against them to reinstate him with full backwages and continuity of service. In spite of his herculean efforts, he has been as yet, even after the turn of the century, not able to taste the fruit of his successful award. According to Shri P. K. Rele, the learned Sr. Counsel, the petitioner is not liable to implement the award against the original employer as the petitioner was not successor in interest of the said original employer and did not step in the shoes of the original employer. The original employer and its partners are liable to implement the award, argues the learned Counsel. They are not contesting even from the stage of the Industrial Court and they are absent here also, purposely, says Shri Rele. According to the petitioner it had merely purchased "the used and old plant and machinery along with its shed and structure as is where is condition situated at Surendra Industries Compound, 2nd Pokhran Road, Thane" for a sum of Rs. 8,34,300/- as reflected in the Bill No. 2505 dated 22nd January 1981 of the original employer. It is their emphatic case that they had not stepped in the shoes of the original employer as transferee of the whole undertaking and they had never accepted any other liabilities, including those of the employees of the original employer. They have point blank and flatly denied any liability to implement the said award. Shri Rele further submitted that the original employer had closed down its business at Thane and had shifted its activities at Tarapur and therefore the workman should enforce his award against them and not against the petitioner. According to Shri Rele the Industrial Court had no jurisdiction to decide the complicated issue whether the petitioner could be held to be successor in interest and to be liable to implement the award passed not against them but against the original employer under an executory and limited jurisdiction under Item 9 of Schedule IV of the Act. Shri Rele further submitted that except an interested version of the original employer that the petitioner was their successor in interest, there was no evidence to substantiate the said plea of the original employer taken only to shift the burden of the award on the petitioner. It was not a case of transfer of a running concern as contemplated u/s 25FF of the I. D. Act, says Shri Rele. Therefore, no liability of any nature was shifted to nor was it accepted by the petitioner and nor was there any oral or documentary evidence to that effect adduced by the original employer.

3. Shri Singhavi, the learned Counsel for the workman has wholly supported the impugned order as legal, proper and valid. He submitted that the Industrial Court was right in deciding the complaint, holding both the original employer and the petitioner as successor in interest of the original employer u/s 18(3)(c) of the I.

D. Act as liable to implement the award. Shri Singhavi, further added that the Industrial Court was well within its jurisdiction and had rightly decided the question of liability of the petitioner on the basis of sufficient material on record and that this Court need not interfere with the impugned order under Article 226 of the Constitution of India, which is meant for doing justice and the Industrial Court has done justice in this case. He also relied on the two material letter in support of his submissions. In a letter dated 20th November 1980 addressed by the petitioner to the President of the Union stating that the workers of the Esskay Steel Rolling Mills were taken by their units, and a letter addressed by the Esskay on 30th October 1980 to the Government of Maharashtra u/s 25FFA of the I.D. Act to inform the authority its intention to close the factory. In the said letter columns 8 and 9 are important to which my pointed attention was drawn by the learned Counsel. He further submitted that though the concerns are said to be different, all were situated in the compound named after the petitioner and that they are closely interlinked and that one partner in the original employer was a director of the petitioner company. He further made a serious grievance that all the documentary evidence was with the original employer and the petitioner and none produced before the Court to discharge their respective burden and that the workman had primarily proved his case against both of them that both were jointly and severally liable to obey the order of the Court, but the workman was thrown by them at each other like a shuttle cock.

4. As far as the liability of the original employer is concerned, it is absolute and neither the original employer as the partnership firm nor its partners can escape the liability to implement the award as the original employer of the workman. Even if the petitioner company is held to be liable to pay to the workman as per the impugned order and if it thinks that under the mutual contract or understanding inter se it is not liable to pay to the workman, it can file a suit for recovery of that amount from the original employer and/or its partners.

5. In any case the original employer and its, partners are liable to implement the award and the Industrial Court has held that they have engaged in the unfair labour practice under Item 9 of the Schedule IV of the M.R.T.U. Act and they have to be desisted from doing so and that they have to be directed to pay to the workman all his dues arising out of the award as held in the impugned order of the Industrial Court. It is not disputed that they are carrying on their business activities at Tarapur. The workman shall compute his total dues under the impugned order and shall apply to the Industrial Court u/s 50 of the Act for recovery certificate to the Collector to recover the money as arrears of land revenue from the original employer or from the partners, even by attaching their personal property, if required. The Industrial Court shall issue such certificate within four weeks from the receipt of this order. And the collector shall recover the money under the recovery certificate within 3 months from the receipt of the certificate by taking every necessary action, even against the partners personally and their properties in accordance with the law. The workman shall give all the required information to the collector to enable him to expedite the effective steps.

6. It is further needless to mention that in case the original employer and their partners are of the opinion that they are not liable but the petitioners are liable to pay as their successors, it would certainly be open to them to recover that, amount from the petitioners in accordance with law.

7. Now I will deal with the questions raised by Shri Rele, the learned Sr. Advocate for the petitioners. According to him the Industrial Court had no jurisdiction to decide the issue whether the petitioners were the successors in interest of the original employer and whether they were liable to implement the award that was against the original employer and not against them, I am not able to agree with the submissions of Shri Rele that the Industrial Court had no jurisdiction to entertain and try the complaint against the petitioner company. The complaint was filed against the original employer and its partner for implementation of the award against them. They filed their written statement to disown their entire liability and to shift it to the petitioner company. Para 4 of the written statement is reproduced hereinbelow :--

"Without prejudice to the preliminary contention raised as above, this respondent further begs to submit as under :--

It is submitted that this respondent ceased to be the owner of the establishment named Esskay Steel Rolling Mills located at Pokhran Road, Thane, since 30-10-1980. This respondent which was carrying on its business activities in the name of Esskay Steel Rolling Mills located at Pokhran Road, has closed down its business since 30-10-1980 and all its assets including plant and machinery and also all liabilities as on that day including the liabilities of the employees have been taken over by M/s Surendra Industries Private Ltd., respondent No. 4 in this complaint. It is not only the place and the machinery at the aforesaid place was taken over by M/s Surendra Industries Private Ltd., but also the liabilities of the employees who were employed by Esskay Steel Rolling Mills at the time of its" closing down on 30-10-1980. Therefore the respondent No. 1 has been functioning as successor in interest of this respondent mills at Thane since 30-10-1980. All liabilities including the liability arising out of the decision in Reference (IDA) No. 589 of 1976 in respect of the complaint also is that a respondent No. 4 and not of respondents No. 1, 2, and 3. As already stated this respondent company has closed down its business activities where the complainant was employed and the closure became effective since 30-10-1980. Respondent No. 4 stepped into the place of respondent No. 1 since then for all purposes. Therefore this respondent is not liable for implementing the award of the honourable Labour Court dated 31-12-1981. It is, therefore, prayed that this honourable Court be pleased to hold that the respondents Nos. 1, 2 and 3 are not liable for implementing the award of the Labour Court and therefore they have not committed any unfair labour practice as wrongly contended in this complaint."

They have also relied on a letter dated 25-11-1980 written by the petitioner company to the union which reads as under :--

"We wish to inform you that the workers of Esskay Steel Rolling Mills are taken by our units, Surrendra Industries (Bombay) Pvt. Ltd. and Surrendra Tubes and Steels Pvt. Ltd. and accordingly they will be reporting for duty in these units w.e.f. 27-11-1980. They will be taken back by Esskay Steel Rolling Mills when the power supply to Esskay Steel Rolling Mills will be started."

They have also relied on their notice of closure dated 30-10-1980 u/s 25FFA(1) of the I.D. Act given to the State Government to inform them the intention of closure of the undertaking. Columns 8 and 9 of the said notice are relevant for our purpose which read as under :--

8.

Arrangement for payment of legal dues to the workmen and date of payment proposed.

It is agreed by the management of Surrendra Industries (P) Ltd. to take over the services of the workmen and hence there is no payment involved.

9.

Number of workmen on roll Categorywise number of workmen affected by the closure :

41 permanent workmen. No workman is affected by the closure as the plant and machinery and the services of the workmen have been agreed to be taken over by Surrendra Industries (B) Pvt. Ltd. and their Associates.

From the above documentary evidence it is sufficiently established that the petitioner company has not only purchased the Plant and Machinery with the shed and structure of the original employer as reflected in the Bill No. 2505 dated 22-1-1981 but also the whole liability including the employees as clearly shown in the above referred documents including the affidavit filed by one Shri Pranam S. Sharma, a partner of the original employer that the petitioner company had stepped in the shoes of the original employer having taken over the whole concern, very soon after its alleged closure. They have produced very strong material to substantiate their case against the petitioner - before the Industrial Court. To rebut this evidence the petitioner company has not produced any good and reliable evidence. If the petitioner did not take over the concern of the original employer, it ought to have produced the agreement between them. It cannot be believed that such transactions are not reduced in writing. Assuming that there was an oral understanding or arrangement the Director of the petitioner, Shri Satpal Sharma who was also the partner of the original employer ought to have stepped in the witness box to swear on oath that they had not taken over the original employer as running concern and that they had not accepted the liabilities of the original employer and that they had not accepted the liabilities of the employees including the one under the award. The other partner Shri Pranam Sharma had filed the written statement and had sworn on oath in his affidavit that the petitioner company had taken over and accepted the

liabilities of the employees of the original employer. As against this strong prima facie case, the only evidence that could answer it was the evidence of Shri Satpal Sharma who was a very strong common link between the two concerns. In the absence of his evidence an inevitable adverse inference is inescapable that the petitioner company stepped in the shoes of the original employer in every respect. With the same assets and with the same set of the workers of the original employer the petitioner company appears to have continued the business activities of the original employer. The Industrial Court was, therefore, right in holding that the petitioner company had become the successor in interest of the original employer and was, therefore, bound by the award under question as contemplated by Section 18(3)(c) of the I.D. Act which reads as under :--

18(3)(c) : Where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates.

8. I am also of the opinion that the Industrial Court does have jurisdiction to decide and it has rightly decided the issue as to who is liable to implement the award. It was a purely an issue arising out of the matter in the complaint as to fix the implementing liability of the Award. The Courts are empowered u/s 32 of the M.R.T.U. and PULP Act to decide such questions for final and complete decision of the complaints. Section 32 reads as under :--

"Power of Court to decide all connected matters :-- Notwithstanding, anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act."

9. Shri Rele has relied upon the following two judgments of the Supreme Court :--

1. Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, ; 2. Central Inland Water Transport Corporation Limited Vs. The Workmen and Another,

Shri Rele has stressed the principles laid down by the Supreme Court in para 9 of the judgment in the case of Anakapalle Co-op. Agricultural and Industrial Society (supra). The said para 9 reads as under :--

"The question as to whether a purchaser of an industrial concern can be held to be a successor in interest of the vendor will have to be decided on a consideration of several relevant facts. Did the purchaser purchase the whole of the business? Was the business purchased a going concern at the time of the sale transaction? Is the business purchased carried on at the same place as before? Is the business carried on without a substantial break in time? Is the business purchased carried on at the same or similar to the business in the hands of the vendor? If there has been a break in the continuity of the business, what is the nature of the break and what were the reasons responsible for it? What is

the length of the break? Has goodwill been purchased? Is the purchase only of some parts and the purchaser having purchased the said parts purchased some other new parts and started a business of his own which is not the same as the old business but is similar to it? These and all other relevant factors have to be borne in mind in deciding the question as to whether the purchaser can be said to be a successor in interest of the vendor for the purpose of industrial adjudication. It is hardly necessary to emphasise in this connection that though all the facts to which we have referred by way of illustration are relevant, it would be unreasonable to exaggerate the importance of any one of these facts or to adopt the inflexible rule that the presence or absence of any one of them is decisive of the matter one way or the other. If industrial adjudication were to insist that a purchaser must purchase the whole of the property of the vendor concern before he can be regarded as a successor in interest, it is quite likely that just an insignificant portion of the property may not be the subject matter of the conveyance and it may be urged that the exclusion of the said fraction precludes industrial adjudication from treating the purchaser as a successor in interest. Such a plea, however, cannot be entertained for the simple reason that in deciding this question, industrial adjudication will look at the substance of the matter and not be guided solely by the form of the transfer. What we have said about the entirety of the property belonging to the vendor concern, will apply also to the goodwill which is an intangible asset of any industrial concern. If goodwill along with the rest of the tangible property has been sold, that would strongly support the plea that the purchaser is a successor in interest; but it does not follow that if goodwill has not been sold, that alone will necessarily show that the transferee is not a successor in interest. The decision of the question must ultimately depend upon the evaluation of all relevant factors and it cannot be reached by treating any one of them as of overriding or conclusive significance."

10. Shri Singhavi also seeks support from the said para and submits that the decision of the Industrial Court is well within the four corners of the said judgment. I am inclined to agree with Shri Sanghavi as there has been sufficient material on record to support the conclusions of the Industrial Court that the petitioner company was liable to implement the award as the successor of the original employer. I have wholly considered the entire record and material on record to hold that the petitioner company is liable to implement the award as contemplated u/s 18(3)(c) of the I. D. Act. I have also considered how significant and pertinent was the absence of the oral evidence of Shri Satpal Sharma who was the Director of the petitioner company and was the partner of the original employer. He alone could have thrown light on the nature of the transaction between the two entities. He has deliberately kept himself away from the witness box where the oath is the barrier which he did not dare to touch even remotely. This conduct on his part lends support and credibility to the statements made by the other partner Shri Pranam Sharma in the written statement supported by his affidavit. Shri Satpal Sharma did not want to controvert or deny the averments

made by his partner. I have been able to read the truth in between the lines.

11. Shri Rele has also relied on the judgment of the Central Inland Water Transport Corporation (*supra*) to stress his point that the issue of successor in interest, could not be decided in a complaint of unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. Act. According to the learned Counsel the jurisdiction of the Industrial Court is of executory nature and therefore, the issue of successor in interest could not be decided in such proceedings. Unfortunately there has been a misgiving that the proceedings under this Act are of summary in nature and the jurisdiction very limited or restricted and very tight where the Courts do not have even an elbow space to move. If one reads the whole Act carefully one would certainly shed away such misgiving. The Courts are empowered to decide all the complaints of unfair labour practices and issue appropriate orders/directions as prescribed u/s 28, Section 30 and Section 32 of the Act. Under Item 9 the Industrial Court certainly can decide as to who is liable to implement the award and who has failed to do so. The Court can certainly decide who is the employer and who are his "heirs/successors" or assigns in respect of the establishment to which the dispute relates, as contemplated u/s 18(3)(c) of the I.D. Act. In the present case nothing more was required to be investigated or adjudicated to deny or to oust the jurisdiction of the Industrial Court while considering the simple issue as to whether the petitioner was liable to implement the award. The jurisdiction of the Industrial Court while considering the complaint under Item 9 cannot be said to be only akin to that of an executing Court, nor can it be equated with the jurisdiction u/s 33-C(2) of the I.D. Act where the claimant has to establish his existing right to claim money due from the employer. The jurisdiction under the M.R.T.U., and PULP Act is of adjudicatory nature and the proceedings are to decide the substantive rights of the parties except, of course, Section 50 which is for the purpose of recovery certificate. Furthermore, the law laid down to consider the jurisdiction u/s 33-C(2) of the I.D. Act cannot be compared with the jurisdiction of the Industrial Court under the M.R.T.U. and PULP Act dealing with item 9 of Schedule IV of the Act as it includes even violation of the statutory provisions within its wings which is not the position in respect of Section 33-C(2) of the I.D. Act. A workman can successfully challenge an action of retrenchment in breach or violation of Section 25F of the I.D. Act under Item 9 of the M.R.T.U. and PULP Act and can get the whole relief of reinstatement and backwages as under this jurisdiction the legality of the retrenchment being in violation of Section 25F can be decided and the consequential reliefs can be granted. In an application u/s 33-C(2) of the I.D. Act, the Labour Court cannot first decide the regality of that order and then determine and compute the wages as a consequential relief. Therefore, the law laid down in the Central Inland Water Corporation's case cannot be applied in the present case. There, however, cannot be quarrel with the law laid down by the Supreme Court in respect of the parameters of Section 33-C(2) of the I.D. Act, 1947.

12. Shri Singhavi's reliance on the Judgment of N. J. Chavan v. P. D. Sawarkar

1957 BLR 993 is misplaced as the facts in that case were entirely different. It was a case prior to amendment of Section 25FF of the I.D. Act.

13. I, therefore, agree with the order of the Industrial Court that the petitioner is liable to implement the award as it had stepped in the shoes of the original employer - Esskay as successor u/s 18(3)(c) of the I. D. Act, 1947. I am also of the opinion that even the Esskay as the original employer continues to be liable to implement the award. As already observed hereinabove, both would mutually inter se would decide about their liability under their agreement or oral understanding as the case may be, in accordance with law. In no case can it be held that the petitioner is not liable to implement the award as successor of the Esskay. I, however, fail to understand why the union did not execute the order against the Esskay when the Industrial Court held it also to be liable to implement the award. Shri Sanghavi, however, makes a statement under instructions from the union to which the concerned employee belonged that no reinstatement would be pressed and that some compensation in lieu of reinstatement should be provided. I am not inclined to grant any compensation in lieu of reinstatement as he would even otherwise get full backwages for the whole period without doing any work. The petitioner shall be liable to implement the award as far as the award of wages only as the respondent employee has given up his demand of reinstatement against the petitioner.

14. In the light of the above discussion I do not find any merit in the petition which stands dismissed with no orders as to cost. Rule is discharged.

15. The Industrial Court shall issue recovery certificate u/s 50 of the M.R.T.U. and PULP Act after computing the dues under its order within four weeks from the receipt of the writ of this Court and the Collector shall recover the amount under the said certificate from the petitioner company within three months from the date of the receipt of the certificate from the Industrial Court. The petitioner would be at liberty to recover the said amount from the original employer by filing a civil suit in accordance with the law, if it is entitled to recover, as already mentioned by me hereinabove.

16. C.C. is expedited. Writ to be sent forthwith to the Industrial Court. All concerned to act on a copy of this Order duly authenticated by the Sheristedar.

17. This order is stayed for a period of four weeks at the request of Shri Rele for the petitioner company.