(1999) 11 AHC CK 0160

In the Allahabad High Court

Case No : C.M.W.P. No''s. 32845, 32850, 32852 and 32855 of 1999

Swadeshi Cotton Mills, Naini, Allahabad — APPELLANT

Vs

Assistant Labour Commisioner (Central) Allahabad and others — RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

Payment of Gratuity Act, 1972 — Section 3
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 16, 17, 22, 22(1)

Citation : (2000) 1 AWC 591 : (2000) 84 FLR 561 : (2000) 1 LLJ 1221

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : V.B. Singh, for the Appellant; S.C. and Km. Mahima Maurya, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—All the aforesaid matters were heard together as a common point of law stood Involved in all these cases. The present order, accordingly, would cover all the aforesaid petitions.

2. The petitioners run an Industry as a unit of National Textile Corporation (in short, the NTC) at Naini, Allahabad. It is the case of the petitioner that the NTC is an undertaking of the Government of India under the provisions of the Industrial Development Regulation Act and the Swadeshi Cotton Mills Co. Ltd. (Acquisition and Transfer of Undertaking) Act. 1986. The unit became sick and had submitted a reference u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short, the SICA, 1985), before the Board for the also similar objections, as stated above, were raised.

8. In all the writ petitions, the petitioners made a prayer for a writ of certiorari for quashing the impugned orders dated 14.6.1999 and 15.6.1999 and for a writ in the nature of mandamus directing the respondents-from implementing the aforesaid orders towards recovery of the alleged dues. It was asserted in all

these writ petitions that in similar circumstances a large number of writ petitions had been filed before the Allahabad High Court and in all those cases concerning workmen had not vacated official quarters the High Court had recorded orders staying the direction for payment of gratuity unless the workers vacated the quarters. The copies of the orders were annexed with the writ petitions. On behalf of the petitioners it was contended that Section 22 of the SICA, 1985. was a clear bar towards recovery of the dues even for payment of gratuity. This point was seriously contested by the learned counsel for the Union of India who had submitted that when it was a question of payment of gratuity, the bar u/s 22 of the SICA, 1985, would not be applicable.

9. There is no denial that the employees are entitled to gratuity under the Payment of Gratuity Act, 1972. There is also no denial that the Assistant Labour Commissioner was the controlling authority for payment to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years, and this termination might be on his superannuating or on his retirement or resignation or even on his disablement due to accident or death. The Act, however, does not define what was a gratuity, but speaks that for every completed year of service or part thereof in excess of 6 months, an employer shall pay gratuity to an employee at the rate of 5 days wages based on the rate of wages last drawn by the employee concerned. In the case of monthly rated employees, the 15 days'' wages shall be calculated by dividing the monthly rate of wages last drawn by him by 26 and the quotient shall be multiplied by 15. This amount of gratuity is not to exceed Rs. 1,00,000 as per this Act. Although gratuity has not been defined, the scheme discloses that it is related to the period of service and to the rate of wages of an employee.

10. The SICA, 1985, was made in public Interest with a view to secure the timely detection of sick and potentially sick company owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures was determined and for matters connected therewith or incidental thereto. Section 22(1) of this Act reads as follows :

"22. Suspension of legal proceedings, contracts, etc.--(1) Where In respect of an industrial company, an enquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under Implementation or where an appeal u/s 25 relating to an Industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the Industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advances granted to the industrial company shall He or be proceeded with further, except with the consent of the Board or as the case may be, the Appellate Authority.

(2)..........................."

11. It appears that this section applies when an enquiry u/s 16 is pending or a scheme referred to u/s 16 is under preparation or consideration of a sanctioned scheme is under implementation and also when ah appeal u/s 25 relating to an industrial company is pending. If these conditions are fulfilled, then no proceeding for winding up the industrial company or for execution or distress against any of the properties of the industrial company and not even a suit for recovery of money shall lie or be proceeded further except with the consent of the Board or the appellate authority.

12. Only in reference to this provision, the learned counsel for the petitioner submitted that the findings in question had imposed monetary liability on the petitioners and when the petitioners are covered by the SICA, 1985, no recovery in terms of the findings could be made by execution or distress without the consent of the Board or the appellate authority.

13. In this connection, learned counsel for the respondents submitted that this bar was not applicable in cases of payment of gratuity. Learned counsel for the Union of India relied on a decision of the Bombay High Court in support of her contention. The Judgment was delivered in relation to a case between the NTC (South Maharashtra) and B. L. Jalgaonkar 1999 (81) F LR 234 . It was a case of recovery of wages and a question came up for consideration whether the recovery of the wages due to workmen was also barred by the provisions of Section 22 of the SICA, 1985. The Hon''ble single Judge of the Bombay High Court had before him the decisions of the Apex Court In the case of Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, and Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others, and also some other A.W.C. 38 decisions. The question was that if at all Section 22 of the SICA, 1985 was thought applicable to bar recovery of wages of workmen, the workmen would have to approach the BIFR and if such a position was allowed to prevail that would defeat the legitimate claim of'' the workmen for wages and other dues by not payment in the first instance and also forcing them to resort to other remedies. The contention of the NTC was dismissed by the learned Single Judge.

14. The petitioner relied on a decision of the Supreme Court in The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others, . In this case, the proceedings were taken up for recovery of property tax u/s 129 of the Bombay Village Panchayat Act from M/s. Shri Vallabh Glass Works Ltd. which was a sick industry under the provisions of the SICA, 1985, and proceedings under Sections 16 and 17 of the Act were pending. It was held that the proceedings for recovery of property tax could not lie in view of Section 22 of the Act except with

the consent of the Board established under the law.

15. Reliance was also placed by the respondent on a decision of the Allahabad High Court in the case of Poisha Industries u. Collector of Ghaziabad 1998 79 FLR 166. A recovery proceeding was initiated against an industry covered by the SICA. 1985 and the claim related to wages payable to the workmen. The relationship of master and servant between the industrial company and the workman was continuing, the Court held that the employer was bound to pay wages even though no work was taken from them and proceedings for recovery of such wages were not covered by Section 22 of the SICA, 1985.

16. As observed above, the SICA, 1985, is a legislation made in public interest for securing timely detection of sick companies owning industrial undertakings and it was thus a legislation for the benefit of the industries in public interest. The public Interest cannot be looked bereft of the interests of the workmen. The policy behind the labour legislations is aimed at securing justice to the workmen and to avoid exploitation by employers, either by non-payment of wages or by wrongful retrenchment or by withholding payment of wages or the like. Thus, a protection of the interest of an industrial company may not be given an upper hand to the protection of the labourers working therein and, as observed by the Bombay High Court in the case of NTC v. B. L. Jalgaonkar (supra). Section 22 of the S!CA. 1985. must not be allowed to defeat the legitimate claim of the workmen for wages. In fact, this decision was based on the finding of the Apex Court in the case of Dy. Commercial Tax Officer (supra), wherein it had been held that recovery of commercial tax could not be barred u/s 22 of the S1CA, 1985. Gratuity, as observed above, is related not only to the period of employment but also to wages and the payment of gratuity is one of the beneficial measures introduced by labour legislation. To extend the provisions of Section 22 of the S1CA. 1985 to prohibit recovery of gratuity, which is related to wages, would be a negation of a legally accepted right of the workmen. Section 22 must be interpreted not to cover a bar of recovery of payment of wages or gratuity to workmen. Seen in this light, the objection of the petitioners against the impugned recoveries is not tenable.

17. If at all the workmen are holding over possession of the official quarters, there must be some provision in the regulations of the employers to charge a penal rent from the occupiers and mere non-vacation may not be a ground for withholding the payment of gratuity.

18. All the writ petitions are, therefore, dismissed.

