
(1967) 11 PAT CK 0007
In the Patna High Court
Case No : A.F.O.O. No's. 263 and 264 of 1961

Tata Iron and Steel Co. Ltd.	Vs	APPELLANT
Sultan Khan Kabuli and Others		RESPONDENT

Date of Decision : 22-11-1967

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28(2)

Citation : AIR 1968 Patna 297

Hon'ble Judges : Mahapatra, J

Bench : Single Bench

Advocate : Chunni Lal and Leila Seth, for the Appellant; Sushil Kumar Mazumdar, Jyotimoy Ghosh and Girjapati Sanyal, for the Respondent

Final Decision : Allowed

Judgement

Mahapatra, J.—These two appeals arise out of an objection filed in two insolvency cases. The objectors are the appellants in both the appeals. After the adjudication of the applicants in the insolvency cases as insolvent, orders of interim attachment were passed in both these cases on the 5th of September 1959 and 15th July, 1958 respectively. Objection was raised against this attachment in respect of the retiring gratuity available to the insolvent. The court below has held that they were attachable and against that these two miscellaneous appeals have been directed.

2. The point involved is whether the retiring gratuity for which provision has been made in the employer company's Retiring Gratuity Rules 1937 would vest in the insolvency court after the workman has been adjudged as insolvent. Strictly speaking there is no question of attachment. u/s 28 of the Provincial Insolvency Act 1920 it has been provided in Clause (2) " on the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during

the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose".

Thus it appears that the effect of the interim order that was passed by the insolvency court was that the property mentioned therein were to vest in the court or in the receiver, one of such properties being the retiring gratuity. The creditors claim, that should also be taken as vested in the court being the property of the insolvent. The objection was that it would not so vest because it does not become the property of the insolvent as long as it is not paid to him; he does not exercise the power of disposal over that gratuity before it is paid out to him by the employer company.

3. The Retiring Gratuity Rules 1937 of the Tata Iron & Steel Company Limited provides in rule 10 that "All retiring gratuities granted under these Rules other than special gratuity to be paid under the provisions of Rule 22 hereof shall be at the absolute discretion of the Company irrespective of whether an employee has or has not performed all or any of the conditions hereinafter stated, and no employee howsoever otherwise eligible shall be deemed to be entitled as of right to any payment under these Rules"

4. On the basis of this rule it is contended on behalf of the appellant company that over the gratuity, until it is actually granted by the company and paid to the employee, the employer company reserves to itself absolute discretion and that the employee cannot have, as a matter of right, a claim to it. It is, however, conceded that once the gratuity is sanctioned and is paid out to an employee it becomes his property and that would vest within the meaning of Section 28(2) of the Provincial Insolvency Act. Before it is actually delivered, it remains in the hands of the employer to be given as bounty or gift. A gift becomes complete either by actual delivery to the donee or by its expression in a registered instrument. In the instant two cases, out of which these two appeals arise, admittedly the company had not paid the gratuities to the two insolvents, although the amounts had been determined and sanctioned for payment. The contention of learned counsel is that as long as actual payment is not made, that is to say, as long as the delivery of the amount to the employee is not made, it does not become the property of the employee and he does not exercise any power of disposal over such amount in spite of its determination or sanction for payment by the company. In support of this contention reliance is placed on the case Secretary of State Vs. Jamuna Das, There, the Railway Company had asked one of the employees as to in which Bank his gratuity could be deposited to his credit. At that stage one of his creditors wanted to attach the gratuity in an insolvency proceeding. It was held that that gratuity had not become a recoverable debt or a completed gift and as such could not be the subject matter of attachment.

To the same effect is the case of Janki Das v. East Indian Rly. Co. ILR (1884) All

634. There, six months' bonus was granted by the Railway Company and was sent to the District Pay Master of the Railway Company for payment to one of the employees, Mr. Kelly, but the money was attached before the actual payment was made. It was held that although the money had been sanctioned and although it had been sent to the District Pay Master with a direction for payment to Mr Kelly, yet it had not become a debt due by Railway Company to Mr. Kelly but was in the nature of a gift of moveable property, which could be effected by actual delivery. In that view the attachment was not allowed. In another case, Usman Abubakar Sani Vs. The Chief Accounts Officer, G.I.P. Railway, a sum of gratuity had been credited to the account of a deceased employee and when that was sought to be attached that was not allowed because the money had not been paid to the deceased, though it had been put after his death to his account. It had not become, before his death, his property.

5. I am inclined to agree with the contention of learned counsel and hold that the gratuity, until it is paid out to the employee, cannot be treated as a property of the insolvent within the meaning of Section 28(2) of the Provincial Insolvency Act, 1920.

6. Learned counsel appearing for the respondent, however, contended that the basis of the decisions in the aforesaid reported cases has already disappeared and the concept of gratuity has now changed. No doubt he says it was considered to be a bounty in the past, but on account of change in the industrial laws of the country and also series of decisions and awards given by the Industrial Tribunals, an employee has now become entitled to receive bonus and gratuity in the nature of retiring gratuity for his benefit on account of his services rendered to the employer. In that view, learned counsel continued, the decisions cited on behalf of the appellant would no longer give a correct approach to the case. He referred to a passage in the case of *The Indian Hume Pipe Co. Ltd. Vs. The Workmen and Another*, which reads as follows, to buttress his contention:

"On the contentions raised in the tribunals below, the principal point which calls for our decision is whether a scheme of gratuity can be framed by industrial tribunals for workmen who are entitled to the benefits of Section 25F of the Act. This question has been frequently raised before industrial tribunals and has generally been answered in favour of the employees. In dealing with this question it is important to bear in mind the true character of gratuity as distinguished from retrenchment compensation. Gratuity is a kind of retirement benefit like the provident fund or pension. At one time it was treated as payment gratuitously made by the employer to his employee at his pleasure, but as a result of a long series of decisions of industrial tribunals gratuity has now come to be regarded as a legitimate claim which workmen can make and which, in a proper case, can give rise to an industrial dispute. Gratuity paid to workmen is intended to help them after retirement, whether the retirement is the result of the rules of superannuation or of physical disability. The general principle underlying such gratuity schemes is that by their length of service workmen are

entitled to claim a certain amount as a retiral benefit."

Learned counsel very much relied upon this observation and urged that since a workman has got a claim on receiving the gratuity from the employer it can no longer be considered as gift or bounty. It becomes a kind of property to which the workman has got his legitimate claim. Broadly speaking this is so. But what kind of claim is that? Is that a claim which can be enforced in the civil court? Is that a claim which can be determined without the intervention of any statute or statutory authority, such as Industrial Disputes Act or Industrial Tribunal? Is that a claim which can uniformly be enforced by every workman against every kind of employer? Answers to these questions are obviously in the negative and therefore, though, there may be a claim on the part of the workman to receive either bonus or gratuity or retrenchment benefit or retiring gratuity from the employer that claim has to be determined with reference to the circumstances of a particular case, the financial ability of the employer, the period of employment of the workman and other relevant facts.

What their Lordships of the Supreme Court observed means that the previous concept that the grant of gratuity was an act of pleasure on the part of the employer had undergone a change, in the increasing socialistic approach to the relationship between the employer and the employee in the progressive industrialisation of the country. I do not think that learned counsel for the respondent is right in his contention that the observation of the Supreme Court as quoted above means that the payment of gratuity is on the same basis as that of salary or wages for, which contracts are entered into between the two parties, employer and employee. In that view of the matter, the retiring gratuity in the instant case could not have been taken to have vested in the insolvency court or could not have been attached by it. The order of the court below is, therefore, set aside and the appeal is allowed, but in the circumstance of the case parties will be their own cost of this Court.