

(1982) 12 GUJ CK 0032
In the Gujarat High Court

The Anil Starch Products Ltd.

APPELLANT

Vs

The Gujarat Labour Welfare Board and Another

RESPONDENT

Date of Decision : 06-12-1982

Acts Referred:

Bombay Labour Welfare Fund Act, 1953 — Article 7, 2(10), 2(10)
State Financial Corporations Act, 1951 — Section 31, 32

Citation : (1983) 2 GLR 1082

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—In all these revision applications, the question that arises is as to what is the nature of the suit filed by the petitioners original plaintiffs and under which provision of the Court-Fees Act, the amount of Court-Fees is chargeable ? Shortly stated, a pure and simple question of fact arises and that is, read the plaint and reliefs claimed therein and find out what is the subject matter of the suit. The next question is, whether this subject matter of the suit is susceptible to monetary evaluation ?

2. The plaintiffs filed suit for declaration and injunction to the effect that certain provisions of the Bombay Labour Welfare Fund Act, 1953 (as adopted and applied by the State of Gujarat) and certain provisions of the Rules framed thereunder are illegal and void and the notice issued by the Labour Welfare Commissioner calling upon them to pay the amount of unpaid accumulation be also declared illegal and void, and further prayed that the defendants be restrained from enforcing the notice of demand by issuing permanent injunction. The Bombay Labour Welfare Fund Act, 1953 ("the Act," for short) was enacted by the then State of Bombay with an object to provide for the constitution of a Fund for financing, promoting and conducting labour welfare activities and for certain other objects. After the bifurcation of the bigger bilingual State, the Act was adopted by the State of Gujarat in the year 1960. The constitutional validity of the said Act was challenged earlier before the High Court of Bombay and thereafter it was again challenged before this High Court also on certain other

grounds. Ultimately the employers lost their battle before the Supreme Court in the year *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, . Inter alia it was held by the Supreme Court that the amount of unpaid accumulations defined u/s 2(10) of the Act was the liability of the employers and it was not their property. Unpaid accumulations as defined under the Act would mean all payments due to the employees but not paid to them within a period of three years from the date on which they became due. This would include amount of unpaid wages and gratuity, but not amount of P. F. contribution made by the employees. Since this amount of unpaid accumulations, which runs into lakhs, was not paid to the appropriate authority by the various Mill Companies as required under the provisions of the Act, the Labour Welfare Commissioner issued notice dated October 8, 1976 and called upon them to pay the amount of unpaid accumulations.

3. The petitioners-original plaintiffs filed civil suits in the City Civil Court, Ahmedabad, on October 21, 1976 and prayed for declaration to the effect that certain provisions of the Act and rules and the demand notice be declared illegal and void and also prayed for injunction restraining the defendants from enforcing the demand notice. The plaintiffs also prayed for certain other ancillary reliefs. Thus, it would be seen that, despite the fact that the constitutional validity of the Act was upheld by the Supreme Court and there were two previous rounds of litigation which went up to Supreme Court, the employers, i. e. the plaintiff-Mill Companies, resorted to the remedy of civil suit and prayed for the aforesaid reliefs. The plaintiffs also moved the trial court for ad interim injunction praying that the defendants be restrained from recovering the amount of unpaid accumulations under the impugned provisions of the Act, the Rules and in pursuance of the Demand Notice. The suits were decided by the trial court some time in the month of September 1978 and they were ordered to be dismissed. First Appeals filed by the plaintiffs in this High Court have also been dismissed. But we are not directly concerned with this aspect in these cases and hence no further reference is necessary.

4. It appears that during the time when the suits were pending, the Inspecting Officer, Court-fees, filed a report u/s 12 of the Act and submitted that the suit was not properly valued. It was stated in the report that the suit was valued at Rs. 300/- without referring to any provisions of the Act. The amount of Rs. 30/- as court-fees was paid on the ground that the subject matter of the suit was not susceptible to monetary evaluation. However, as per the report proper court-fees payable was as provided under Article 7 of Schedule I of the Act inasmuch as the notice calling upon the plaintiffs to make payment of unpaid accumulations was capable of being evaluated in terms of money. Hence it was prayed that the amount of court-fees payable should be ad valorem on the amount sought to be recovered. Alternatively it was submitted that the suit would be governed by the provisions of Section 6(iv)(a) of the Act inasmuch as the declaration sought was pertaining to adjudication against recovery of money from the plaintiffs and therefore as per this provision one fourth of ad valorem of the court-fees was

required to be paid.

5. The trial court passed an order on August 14, 1978 and directed the plaintiffs to disclose the amount of unpaid accumulations and further directed that on such disclosure further inquiry if necessary may be made. The plaintiff-Mill Companies did not make disclosure and hence the Inspecting Officer, Court-fees, was asked to collect the necessary information from the Gujarat Labour Welfare Board. It may be noted that the plaintiff-companies are public limited companies. This amount of unpaid accumulations must have been reflected in their balance-sheets. Still, however, this information was not given to the court in response to the notice issued by the trial court. Ultimately the amount was ascertained in each case and the amount involved in each case has been mentioned in each of the judgment separately. Except the difference in figure of the amount involved in each case and the amount of court-fees required to be paid, there is no substantial difference in the judgment passed by the trial court.

6. The trial court held that the amount of court-fees payable was as per the provisions of Article 7 of Schedule I to the Act and directed that the court-fees should be paid ad valorem on the amount of unpaid accumulations claimed by" the. respondent-Board and further directed that the deficit court-fees be paid within a period of three months from the date of order, i.e., September 29, 1980, failing which necessary recovery certificate as provided u/s 12(6) of the Act was ordered to be issued. It is against this order passed by the trial court that these revision applications have been filed by the plaintiff-Mill-Companies. Since the question involved in all the matters is the same, at the request of the counsels appearing for both the sides, all the matters have been heard together and they are being disposed of by this common judgment.

7. As stated hereinabove, the suits were for declaration and injunction. The plaintiffs sought the following declaration and decree.

(a) It be declared and decided that the provisions of Section 3, 6A(1) of the Bombay Labour Welfare Funds Act, 1953 and Rules 3 and 4 of the Bombay Welfare Fund Rules, 1962, and the demand notice issued by the Defendant calling upon the Plaintiff-Company to pay the unpaid accumulations are illegal, void unconstitutional and without legislative competence and hence not binding on the Plaintiff-Company.

Thus prayer in Clause (a) is two-fold. It is in respect of the provisions of the Act and Rules and also with respect to the demand notice issued by the competent authority. Even if one reads relief Clause (a) only, it becomes clear that the subject matter of the suit is not only the provisions of the Act and Rules but also the demand notice issued by the competent authority. For this purpose a reference may be made to certain averments made in the plaint. In paragraphs 1 and 2 the description of the parties is given. From paragraph 3 to 6 reference is made to the various provisions of the Bombay Labour Welfare Funds Act. the history of the enactment is given and thereafter certain provisions have been

referred to and it is averred as to when the Act came into force in the State of Gujarat. In paragraph 7 certain provisions of the Act and Rules have been reproduced. Averments in paragraphs 8 to 11 pertain to the submissions with regard to the provisions of the Act and it is mentioned as to how the provisions of the Act and Rules, according to the plaintiffs, are illegal, void and unconstitutional. The averments in paragraph 12 refer to the notice dated October 8, 1976 by which the plaintiff companies have been called upon to pay the unpaid accumulations. It is averred in this paragraph as follows:

The plaintiff craves leave to refer to and rely upon the same notice. The Plaintiff Company further submits that the demand made by the defendant-Board is, therefore, contrary to the provisions of the said Act as well as violative of the principle of natural justice.

Again in paragraph 16 of the plaint, it is averred that the issuance of the notice by the defendant-Board calling upon the plaintiff-Company to pay the amount of unpaid accumulations was without any authority of law and illegal. In paragraph 17 it has been mentioned as follows:

The cause of action to file the present suit has arisen within the jurisdiction of this Hon'ble Court on 8-10-1976, when the Defendant issued Notice referred to above, calling upon the Plaintiff-Company to pay the amounts of unpaid accumulations.

In paragraph 18 Clause (b), the alternative prayer claimed is as follows:

(b) It be declared and decreed that any demand of the unpaid accumulations by the Defendant Board from the plaintiff Company for a period prior to February 5, 1963 is illegal and unauthorised and contrary to the provisions of the Bombay Labour Welfare Fund Act, 1953 and rules of natural justice.

In Clause (c) prayer for injunction is made which reads as follows:

(c) The Defendant, its servants and agents be permanently restrained by an injunction from enforcing the provisions of the said Act and the Rules made thereunder and the Demand Notice referred to above against the Plaintiff Company or otherwise implementing the provisions of the said Act, the Rules made there-under and the Demand Notice against the Plaintiff Company." From what has been stated hereinabove, it should be clear that the subject matter of the suit is also the demand notice. The very suit is based on the demand notice. The cause of action has arisen on account of the demand notice. In this connection reference may be made to the Notice of Motion taken out by the plaintiffs on the date of filing of the suit itself. In the Notice of Motion, the prayer is that pending bearing and final disposal of the suit, the defendant be restrained from recovering the amount of unpaid accumulations and the defendant be further restrained from taking out any criminal prosecution on account of non-payment of unpaid accumulations.

9. In view of the aforesaid pleadings of the plaintiffs, the relevant provisions of

the Act may be looked into. Section 6(iv)(j) reads as follows:

6. The amount of fees payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

(j) In suits where declaration is sought, with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act-thirty rupees; In all suits under Clauses (a) to (i), the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation.

10. It is contended by the plaintiffs that this provision of the Act would govern their case. According to the plaintiffs, the subject-matter in dispute is not susceptible of monetary evaluation and therefore this particular provision of the Act would be applicable. In the plaint, in paragraph 19, it is stated as under:

Since the subject matter of the suit is not susceptible to monetary evaluation, the suit is valued at Rs. 300/- for the purposes of Court fees, suit valuation and jurisdiction and a Court Fee Stamp of Rs. 30/- is affixed on the plaint.

It is contended by the petitioners that the relief with regard to notice demanding unpaid accumulations is merely a consequential relief and it is not a substantive relief. Further it is contended that the subject matter with regard to notice was not capable of being evaluated in terms of money.

11. The counsel for the petitioners submitted that only prayer (a) and in the alternative prayer (b) is the substantive prayer and the relief of injunction claimed in paragraph 18(c) is the consequential relief and that only pertains to the injunction with regard to the demand notice. The reading of prayer (a) which has been reproduced hereinabove makes it abundantly clear that even in prayer (a) declaration is sought to the effect that the notice issued by the respondent calling upon them to pay the unpaid accumulations be declared illegal, void and unconstitutional. The notice is also challenged on the ground that it was issued before adjudication and that it was violative of principles of natural justice as well as the provisions of the Act. Therefore, the contention of the counsel for the petitioners that prayer with regard to notice is not a substantive relief cannot be accepted.

12. The contention that since no particular amount is mentioned in the notice and hence it is not susceptible of monetary evaluation may be examined. As interpreted by this Court in the case of Premchand Gordhandas Valia v. Rajpipla Nagrik Sahkari Bank Ltd. and Anr. reported in XX GLR 389 the phrase "susceptible of monetary evaluation" means "capable or admitting of monetary evaluation." The same meaning is given to the word "susceptible" in Websters New 20th Century Dictionary also. As stated earlier, the plaintiffs in these revision applications are the public limited companies. The amount of unpaid accumulations which they are called upon to pay would be that figure which would have been shown in their own account books and even in their

balancesheets. The notice issued did not demand the amount of unpaid accumulations workerwise. The demand made in the notice was that of the total amount of unpaid accumulations. It is not even suggested that the plaintiff-companies could not or were not in a position to ascertain this amount from their account books. As a matter of fact the Inspecting Officer, Court-fees, has ascertained this amount and on the basis of this ascertainment, the deficit amount of court-fees is claimed. It is not even contended that what has been ascertained by the court is incorrect. In this connection reference may be made to the provisions of the Labour Welfare Fund (Gujarat) Rules, 1962. Rule 3 of the said Rules enjoins upon the employer to collect and pay by cheque, money order or cash to the Labour Welfare Commissioner all fines realised from the employees and all unpaid accumulations held by the employer. The employer is required to collect the amount of fine as agent of the Board and is also required to make periodical payments and submit a periodical statement showing requisite details. The exact amount of fines and unpaid accumulation? would be within the knowledge of the plaintiff-companies who would have collected the amount of fines and unpaid accumulations as agent of the Labour Welfare Board. The plaintiff -Companies as the employer as per the provisions of the Act and Rules were required to pay the said amount either by cheque, demand draft, money order, or in cash to the Labour Welfare Commissioner and were also required to submit statements giving particulars of amount collected to the Board. Thus as per the statutory provision and even by the very nature of things, it would be within the knowledge of the plaintiff-companies as to how much amount of fines and unpaid accumulations they were required to pay.

13. The plaintiff-companies did not perform the duty cast upon them under the Act and the Rules. They collected the amount of fines, they retained the amount of unpaid accumulations, they did not submit necessary details to the competent authority, even when the trial court directed them to furnish the particulars, they did not furnish these particulars. If the plaintiffs do not submit the returns as required under the provisions of the Act and the Rules, how can the Welfare Commissioner mention the figure of total amount payable by the plaintiffs ? The plaintiffs have put the Labour Welfare Commissioner in such a situation that he would not be in a position to know the exact figure of unpaid accumulations. Having created this situation, the plaintiffs say, because the figure is not mentioned in the notice, the notice should not be treated as capable of being evaluated in terms of money. Such argument can never be accepted. The only question is whether the notice which is also the subject matter of the suit is capable of being admitted to monetary evaluation ? In this case the plaintiff companies could have with least possible effort, known as to what is the total amount demanded from them. They could have immediately known the exact figure by merely looking at their own books of accounts and that would be the monetary evaluation for the purposes of court-fees. As a matter of fact the Inspecting Officer, Court-fees, could do this. He has ascertained the exact figure of the total amount of unpaid accumulations. It is not even contended that the

figure arrived at by the Inspecting Officer, Court-fees, is an incorrect figure. In this view of the matter, the second contention raised by the plaintiffs also fails.

14. It was contended by the counsel for the plaintiffs that for determining the real nature of the suit and the subject matter in dispute, only the submissions in the plaint and the relief clause should be seen. It was contended by the counsel for the plaintiffs that the substantive relief is contained in prayer (a) or (b) and what is claimed in Clause (c) is only a consequential relief and that part only pertains to notice. The other declarations sought for in the suit are with regard to the provisions of the Act and the Rules and admittedly the other declarations are not susceptible of monetary evaluation. Therefore it is contended that the prayer with regard to the Act and the Rules only is the substantive prayer and the prayer with regard to notice is only a consequential relief.

15. The argument requires to be mentioned only for the purpose of being rejected. Prayer (a) of paragraph 18 of the plaint has been reproduced hereinabove. By this prayer, declaration with regard to notice of demand has been sought. Reading the plaint as a whole it is very clear that the suit is directed against the provisions of the Act and Rules as well as against the notice. Notice is challenged not only on the ground that certain provisions of the Act and Rules are ultra vires the Constitution but also on the ground that the notice of demand has been issued before adjudication and that the principles of natural justice have been violated. Thus it is clear that prayer with regard to notice is a substantive prayer. This conclusion is irresistible even if the plaint alone or only the relief paragraph is read. However, it may be stated that for the determination of the correct nature of the suit and the nature of the subject matter in dispute, the plaint as a whole is required to be read.

16. It was then contended that only the form of the plaint and the prayer should be looked at, and not the substance, for determining the amount of court-fees payable by the plaintiffs. This contention is based on the observations of the Supreme Court made in the case of Gujarat State Financial Corporation v. Natson Mfg. Co. Private Ltd. reported in 19 G.L.R. 1106, which read as under:

...Let it be recalled at this stage that if the Court-fees Act is a taxing statute its provisions have to be construed strictly in favour of the subject litigant vide State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others, . In a taxing statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability (vide The Joint Commercial Tax Officer, Harbour Division, II-Madras Vs. The Young Men's Indian Association (Regd.), Madras and Others, . If it is a free, the enormity of the exaction will be more difficult to sustain. While we do not pronounce, we indicate the implication of the High Court's untenable view.

17. The above observations are made by the Supreme Court while determining the question with regard to the correct nature of the proceedings taken by a Financial Corporation under the provisions of Sections 31 and 32 of the State

Financial Corporations" Act, 1951. In that case the question arose as to what would be the amount of court-fees payable on an application preferred by the Financial Corporation under the provisions of Section 31 of the aforesaid Act. From these observations it cannot be spelt out that the nature of the suit or the nature of the subject matter in dispute for the purpose of determination of amount of court fees has to be decided on the basis of the form of the plaint or the relief claimed. The Supreme Court in that case was considering the question of the applicability of the particular provision of the court-fees Act, to the application made under the provisions of Section 31 of the aforesaid Act. The question in that proceedings was as to what relief the Corporation could have prayed for in an application u/s 31 of the aforesaid Act, and whether that relief would be a substantive relief so as to prevent monetary loss or to seek repayment of the amount of loan paid. Moreover, the last lines of the observations clearly indicate that the Supreme Court has not pronounced any opinion on the question itself but it was indicated only for the purpose of showing the enormity of the exaction, if the view taken by the High Court was to be upheld. In this view of the matter, the above observations relied upon by the counsel for the plaintiff-companies do not help them.

18. In this connection reference may be made to the decision of the Supreme Court in the case of *Shamsher Singh Vs. Rajinder Prashad and Others*, . In paragraph 4 of the judgment it has been observed to the effect that the court, in deciding the question of court fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. In this case the substance of the subject matter in dispute is that the plaintiff-Companies challenged the legality and validity of the notice calling upon them to pay the total amount of unpaid accumulations. Therefore the total amount of unpaid accumulations would be the basis for the payment of court-fees.

19. Here reference may be made to a reported decision of this High Court in the case of *State v. Kantilal Pratapji* reported in 19 GLR 417. In that case the plaintiff claimed declaration that the promissory notes executed by him in favour of the defendant were void as the same were obtained by fraud or coercion and were without consideration. On this basis it was contended that it was liable to pay court-fees an amount of Rs. 30/- as provided u/s 6(iv) (j) of the Act and not liable to pay the ad valorem court-fees as provided under Article 7 of Schedule I of the Act. The Court (Coram : M. P. Thakkar, J; as he then was) in the course of the judgment has observed as follows:

...In the present case a declaration is sought to the effect that the promissory notes in question are void by reason of the fact that the same have been obtained by fraud or coercion and the same have been executed without consideration. In substance, therefore, (and we are concerned with the substance and not with the form as per the law declared by the Supreme Court

in *The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P.*,), the plaintiff wants immunity from the liability to pay the amount expressed on the face of the promissory note. The suit is therefore, one for substantive relief which is capable of being valued in terms of prevention of monetary loss within the meaning of Article 7 of the First Schedule.

20. The counsel for the plaintiffs has placed reliance on a decision of this Court in the case of *Fakirchand Makandas v. Jagadguru Shankaracharya and Ors.* reported in 11 GLR 686. Reliance is placed on the observation to the effect that the valuation of the suit cannot be made on the basis of the contention raised in the written statement of the defendants. The valuation of the suit should be made on the basis of the averments and allegations made in the plaint itself. There is no dispute with regard to this proposition laid down in the aforesaid decision. This is what has been exactly done by the trial court. More-over as stated hereinabove, it has been pointed out that having regard to all the averments in the plaint and having regard to the nature of the reliefs claimed, it cannot be said that the amount of court-fees payable in this case would be as per the provisions of Section 6 (iv) (j) of the Act.

21. At this stage, reference may be made to the provisions of Article 7 of Schedule I of the Act. As per this provision if in a plaint or application for which there is no provision elsewhere, a substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss is made, the amount of the monetary gain or loss to be prevented would be the basis for levying the ad valorem court-fees as prescribed under Article 7 of Schedule I of the Act. In this case the plaintiffs claimed the relief of declaration to the effect that the demand notice is illegal and further prayed that the defendants be restrained from enforcing the notice. This is the substantive prayer. If the prayer is granted, they would not be required to pay the amount as claimed in the notice. This would be the monetary gain or at any rate the prevention of monetary loss. Therefore the amount claimed in the notice, that is, the total amount of unpaid accumulations, is the basis for claiming the court-fees under the provisions of Article 7 of Schedule I of the Act. No other contentions were advanced by the counsel for the plaintiffs.

22. I am in full agreement with the reasoning given by the trial court. Hence for the aforesaid reasons and for the reasons given by the trial court, all these revision applications are rejected. Rule is discharged with cost.