(2015) 10 KAR CK 0095

In the Karnataka High Court

Case No : Writ Petition No. 36766 of 2015 (GM-TEN)

The General Manager, HMT Machine Tools Limited — APPELLANT

Vs

The Deputy Commissioner, Bangalore Urban District and Others — RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Payment of Gratuity Act, 1972 — Section 14, 7(3A), 7(7)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 22

Citation : (2015) 147 FLR 925 : (2016) 1 LLN 693

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Rajaram T., Advocate for RSBG Law Firm, for the Appellant; Vijaykumar A. Patil, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner and the learned counsel for the respondents.

The petitioner represents M/s. Hindustan Machine Tools Limited, a company incorporated as a Public Limited Company in the year 1953 and it was engaged in the manufacture of machinery and tools.

2. It transpires that the petitioner - company was unable to withstand the global competition and was declared as a sick unit and was later referred to the Board for Industrial and Financial Reconstruction (BIFR) and a revival plan was submitted envisaging multi-dimensional strategy to put the company back on rolls. It was declared as a sick industry in the year 2006 and in the hearing conducted as on 19.2.2015, there was a direction to the State of Karnataka clearly mandating to exempt the company from levy of taxes during the period of 7 years from the date of sanction of the Scheme. There was also a direction to exempt the company from payment of stamp duty on equitable mortgage to be created in favour of the bank for reduction of interest rate on cash credit loan

and waiver of property tax amounts due to the Bruhat Bengaluru Mahanagara Palike. The company was also exempted from payment towards the demand raised in respect of pre-deposit for filing appeals, which are finally decided.

It is claimed that there is inquiry under section 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 (Hereinafter referred to as the ''SIC Act'', for brevity) pending before the BIFR.

Therefore, the present petition is filed primarily questioning the proceedings initiated by respondent Nos. 1 to 3, at the instance of the several erstwhile workmen claiming gratuity amount before the competent authority, which was directed to be paid and the petitioner - company had indeed paid the entire gratuity amount due to the workmen.

3. It however transpires that the payments were made belatedly and by virtue of Section 7(3A) of the Payment of Gratuity Act, 1972 (Hereinafter referred to as the ''PG Act'', for brevity), the interest was payable in respect of such delayed payments. It is in recovery of such payments, that proceedings had been initiated by impleading the workmen and notice having been issued against the petitioner - company calling upon the petitioner - company to show-cause why the amounts should not be recovered as arrears of land revenue, the present proceedings are filed.

4. The primary contention of the learned counsel for the petitioner is that it is not in dispute that the petitioner -company is declared as a sick industry and is governed by the provisions of the SIC Act. Particularly Section 22 places an embargo on any proceedings for the execution, distress or the like any of the properties of the company and that no proceedings could be initiated in that regard and therefore, the proceedings initiated by respondents 1 and 3 seeking to recover monies payable as arrears of land revenue is clearly in violation of the said provision and hence seeks restraint of such action and for appropriate orders.

5. Incidentally, 50% of the amount claimed by the impleading applicants has been deposited pursuant to the directions of this court. The impleading applicants have therefore sought for withdrawal of the said amount subject to the result of the writ petition. The same was permitted provided the workmen offered security in respect of such withdrawal.

6. The respondents however have come back before this court to claim that they are not in a position to provide any of the security as they are retired workmen with no source of livelihood and whatever properties are possessed by them are already encumbered and hence plead helplessness in providing any security.

7. Since this court was inclined to permit the workmen to withdraw the amounts, the learned counsel for the petitioner has sought to urge the merits of the case itself as the primary contention is with reference to section 22 of the SIC Act.

8. The learned counsel for the respondent however draws attention to a decision

of this court in the case of Cement Corporation of India v. Regional Labour Commissioner Central), Bangalore, 2008(1) LLN 650, wherein a learned Single Judge of this court was considering the question whether in case of a sick industry, a deposit demanded under the Proviso to Section 7(7) of Payment of Gratuity Act, 1972, for filing an appeal could be suspended in respect of a sick industry. In the case on hand, it is seen that the petitioner - company had specifically obtained an order from the BIFR insofar as the waiver of making any such deposit before preferring an appeal. It is significant to note that insofar as the order for payment of Gratuity is concerned, the order has been allowed to become final and there is no challenge to the same by the petitioner. The question is only as to the liability to pay interest on the delayed payment of gratuity. This is not in dispute, as it is statutorily provided. The petitioner is bound to pay the same. The contention that Section 22 of the SIC Act is a total embargo on such proceedings cannot be readily accepted, for the reason that the court has specifically granted exemption or waiver in respect of particular amounts such as the stamp duty, payment of property taxes and other liabilities, including pre-deposit to be made in the event of challenging any orders in appeal. There is no specific order restraining the workmen, who are entitled to interest or the operation of the provisions of the PG Act.

9. As held by the learned Single Judge in Cement Corporation of India, supra, section 22 though does place a general embargo on proceedings being initiated, Sub-section (2) of Section 22 specifically refers to orders being passed by the Board to declare the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, being kept under suspension. There is no specific order passed insofar as the operation of the provisions of the PG Act is concerned. There can be no embargo. In fact, under Section 14 of the PG Act, there is a similar provision which overrides the provisions of other acts insofar as payment of gratuity is concerned. Therefore, the question of reconciling these two provisions does not arise. Both are independent Acts and operate in different fields, as held by the learned Single Judge in Cement Corporation of India, with which I am in respectful agreement.

The petition is without merit and is dismissed. The respondent - workmen is entitled to withdraw the amount in deposit and the petitioner is liable to reimburse the amount.

