

(2004) 11 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No's. 4411/98 and 10202 of 2001, C.P. No's. 38 of 1984, 96 of 1989 and 339 of 2003, WMP No's. 18558 of 2001 and 299 of 2003 and C.A. No. 1768 of 2003

Vasanth Mills Limited

APPELLANT

Vs

The Board for Industrial Financial Reconstruction and Others

Sree Rangammal Educational Trust and Others Vs
Vasanth Mills Ltd.

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B
Industrial Disputes Act, 1947 — Section 12(3), 18(1)
Jagir Abolition Act — Section 17, 17(1), 20

Citation : (2006) 133 CompCas 292 : (2007) 80 SCL 19

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : R. Krishnamoorthy S.C. for Srinath Sridevan, for the Appellant; K.S. Sundar, for R. 3, V. Prakash, for R. 4 and M. Sriram, for R. 5, for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—Writ Petition No. 10202 of 2001 has been filed for the issue of a writ of certiorarified mandamus calling for the records of the second respondent pertaining to order dated 20.3.2001 and the consequential order dated 23.3.2001 made in Appeal No. 53 of 1990, quash the same and direct the second respondent to reconsider the Appeal on merits.

2. C. P.No:38 of 1984 has been filed by Sree Rangammal Educational Trust represented by its President and four others against Vasanth Mills Limited for winding up of the company for non payment of liability to the extent of Rs. 6,81,092/-.

3. C.P. No:96 of 1989 has been filed by M/s. Lakshmi Trading Company, represented by its Partner against the same Vasanth Mills Limited for winding

up of the company for non payment of the liability to the extent of Rs. 3,42,800.88.

4. C.P. No: 339 of 2003 has been filed by (1) Gomatha Enterprises and (2) Jawarilal Shantilal and Company, represented by their respective Power of Attorney Holders against the same Vasantha Mills Limited for winding up of the company for non payment of the liability to the extent of Rs. 10,44,570/=.

5. The brief facts of the contention of the writ petitioner is as follows:-

The petitioner-company, Vasantha Mills Ltd., was founded in the year 1930. It changed many hands and came under the control of one Arvind Kikani. Due to mismanagement, the company incurred huge debts and ultimately it came to be referred to the BIFR. The BIFR initially found that there was no chance of rehabilitating the company and recommended winding up of the company. The promoters filed an appeal before the AAIFR which came to be dismissed. At this stage, the present promoter, Mr. K.C. Palaniswamy entered the picture and filed a W.P. No. 199 of 1992 challenging the order of the AAIFR and presenting a viable scheme for rehabilitation. The High Court by order dated 8.1.1992 in WPMP. No. 269 of 1992 directed the AAIFR to consider the K.C. Palaniswamy's scheme of rehabilitation. By order dated 27.9.1993, AAIFR approved the Scheme of rehabilitation. Thus by order dated 27.9.1993 AAIFR passed an order approving the scheme of rehabilitation and disposed the appeal accordingly. The persons who were entitled to be paid under the Scheme are as follows:-

- (i) Banks and Financial Institutions
- (ii) workers
- (iii) State Government (Sales Tax)
- (iv) State Government (Urban Land Tax)
- (v) Suppliers
- (vi) Provident Fund Department.

6. In pursuance of the scheme of rehabilitation a settlement was arrived at between the recognised trade Unions and the Management u/s 12(3) of the Industrial Disputes Act whereunder the workmen agreed to make certain sacrifices in terms of gratuity, arrears of wages etc., In consideration of such sacrifice, the Management also undertook to make certain payments. Under the Scheme, a large extent of land was to be sold to fund the rehabilitation process. For the sale of this land a clearance under the Urban Land Ceiling Act (as was then in force) was required. This was obtained in the year 1997. When the process of sale was about to be commenced, one Trade Union filed a Writ Petition No. 18330 of 1997 and got an injunction restraining alienation of the company lands. The writ petition was also ultimately allowed.

7. The petitioner company filed W.A. No. 669 of 2000 before a Division Bench

and the Writ Appeal also came to be allowed directing the workmen to raise all their claims before the AAIFR. Thus the matter resumed before the AAIFR once again. The AAIFR wanted Vasantha Mills Limited to pay for the airfare for the trade union leaders for each hearing. Though Vasantha Mills Limited was willing to do so, for one occasion the company missed to make payment. This non payment of the flight tickets and for a few other hypertechnical reasons the AAIFR dismissed the company's appeal on 20.3.2001 stating that reasons would follow. Thereafter it passed a detailed order on 23.3.2001. As against the said order this Writ Petition is filed. The three Company Petitions are filed by creditors.

8. The contentions of the petitioner is that the order of AAIFR dismissing the appeal on 20.3.2001 is unsustainable in law because the day on which the order has been passed does not contain any reason i.e., it has not passed a speaking order. The Scheme stood approved on 27.9.1993. It was only at the stage of monitoring by the AAIFR or BIFR. On 20.3.2001 the AAIFR dismissed the Appeal stating the following reasons: -

"Certain directions were given by us on the last date of hearing on 1.2.2001. Inter alia, the appellant was directed to make payments of Rs. 6,000/- to Shri Kupuswamy and Rs. 16,000/- to Shri W.R. Varadharajan towards expenses incurred by them for coming to Delhi for their attending the hearing on that day. Both are also present today. They state that these payments have not been made so far. Another sum of Rs. 1,69,000/= was payable to SBI who is acting as Monitoring Agency (MA), which has also not been made so far. Learned Counsel for the appellant seeks adjournment on the ground that Shri K.C. Palanisamy Chairman of the Company, could not come to day nor he has given instructions to him for today's hearing. A separate application for adjournment has also been filed wherein it is stated that Shri K.C. Palanisamy could not come because "elections to the State Legislative Assembly have been announced and Shri Palanisamy is actively engaged in political affairs" and has sought adjournment in the month of June 2001. Shri Kuppuswamy and Shri Varadharajan who have come from Tamil Nadu state that so far elections to the State Legislative Assembly have not been declared. We are not satisfied with the grounds seeking the adjournment. Request for adjournment is declined. We have given opportunity to the learned Counsel for the appellant to address the arguments in the appeal. He expresses his inability to address the arguments. The appeal is dismissed. Detailed order will follow."

9. The above order of dismissal was passed only for the non prosecution by the promoter K.C. Palanisamy on the date of hearing i.e., 20.3.2003. In fact Shri K.C. Palanisamy could not go to Delhi because of the elections to the State Legislative Assembly have been announced and he was actively engaged in political affairs and has sought adjournment in the month of June 2001. But the representatives of the respondent/trade unions who have come from Tamil Nadu represented that so far elections to the State Legislative Assembly have not been declared and therefore the appeal filed by the promoter was dismissed stating

that a detailed order will follow. Generally, elections are due once in five years. The Election Commission of India announces election schedule much later than the activities of the political parties with regard to alliances of political parties or selection of candidates is being processed and announced. Persons belonging to political affairs would be very busy once the elections are due. The announcement of election schedule, dates for filing nominations, last date for withdrawal of nominations, date of polling, date of counting will be notified by the Election Commission only later, whereas persons connected with political affairs start their activities much earlier than the elections. The elections were said to be due during April/May 2001. As already stated, the promoter being a politician was unable to attend the hearing on 20.3.2001 before the AAIFR. Though he has paid the air fare to the trade union leaders on other occasions, for one occasion he has failed to meet the air fare. For these two flimsy grounds, the appeal itself was dismissed without assigning other reasons. The reasons were given later by an order dated 23.3.2001. Whether the AAIFR can dismiss the appeal summarily without assigning reasons is a point strongly canvassed by the learned Senior Counsel Mr. R. Krishnamurthy. Except the Hon"ble Supreme Court, the High Courts and Tribunals should pass speaking orders giving reasons. Orders cannot be passed without assigning reasons stating that reasons will follow later.

10. In *Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others*, The Supreme Court has held as follows:-

"80. Before we part with the case it would be appropriate to note some disturbing factors. The High Court after hearing the appeal directed its dismissal on 26.12.2003 indicting in the order that the reasons were to be subsequently given, because the court was closing for winter holidays. This course was adopted "due to paucity of time". We see no perceivable reason for the hurry. The accused were not in custody. Even if they were in custody the course adopted was not permissible. This court has in several cases deprecated the practice adopted by the High Court in the present case."

81. About two decades back this court in *State of Punjab and Others Vs. Jagdev Singh Talwandi*, had inter alia observed as follows:-

"30. We would like to take this opportunity to point out that serious difficulties arise on account of the practice increasingly adopted by the High Court, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. Suppose, for example, that a final order without a reasoned judgment is announced by the High Court that a house shall be demolished, or that the custody of a child shall be handed over to one parent as against the other, or that a person accused of a serious charge is acquitted, or that a statute is unconstitutional or, as in the instant case that a detenu be released from detention. If the object of passing such orders is to ensure speedy compliance with them, that object is more often defeated by the

aggrieved party filing a SLP in this court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the reasoned judgment."

"82. It may be thought that such orders are passed by this court and, therefore, there is no reason why the High Courts should not do the same. We would like to point out that the orders passed by this Court are final and no further appeal lies against them. The Supreme Court is the final court in the hierarchy of our courts. Order passed by the High Court are subject to the appellate jurisdiction of this Court under Article 1376 of the Constitution and other provisions of the statutes concerned. We thought it necessary to make these observations so that a practice which is not a very desirable one and which achieves no useful purpose may not grow out of and beyond its present infancy.

11. In *Vajesingh Salambhai Naik and Others Vs. State of Gujarat and Another*, the Supreme Court has held thus:-

"6...On a consideration of the language of Section 17(1) of the Jagirs Abolition Act and in the context of Section 20 of the Jagirs Abolition Act we are of the opinion that it is obligatory on the part of the Tribunal to decide an appeal on merits even though there is default in the appearance of the appellants and to record its decision regarding the merits of the appeal. If an appeal is dismissed for want of prosecution it cannot be said that the Tribunal has decided the appeal and recorded its decision within the meaning of Section 17 of the Jagirs Abolition Act. It is important to notice that Section 20 of the Jagirs Abolition Act makes a decision of the Tribunal in appeal as final and conclusive and not to be questioned in any suit or proceeding in any court. In the context of Section 20 and in view of the express language of Section 17(1) of the Jagirs Abolition Act, we are of the opinion that the Tribunal has no power to dismiss an appeal for non prosecution but it is obligatory on its part to decide the appeal on merits and to record its decision even though there is default on the part of the appellant to appear in the appeal."

12. The AAIFR, a quasi judicial body set up under a socio-welfare statute is bound to adjudicate cases only on merits. It is not entitled to dismiss cases on hypertechnical reasons which will defeat the very purpose of the statute itself. The AAIFR having decided the course of action by its order dated 20.3.2001 cannot bolster it or support it by subsequent reasons. Under the Sick Industrial Companies Act very reference goes through three stages viz.,

(i) Registration: At this stage the BIFR/AAIFR can either admit the reference or reject it as not eligible under the Act.

(ii) Inquiry: At the end of this, the BIFR/AAIR may either frame a scheme or reject the reference and recommend winding up of the company.

(iii)Monitoring: The BIFR/AAIFR can take steps to ensure compliance of the scheme.

13. Thus, when the AAIFR has approved the Scheme by order dated 27.9.1993, it is only in the stage of monitoring. Since it has crossed the stage of adjudication, the lis is no longer open for inquiry. At this stage what remains is whether the scheme is being properly complied with.

14. In this case, there are six classes of creditors whose repayment required monitoring. They are: (1) Labour-workers (2) Banks and Financial Institutions (3) State Government (Sales Tax) (4) State Government (Urban Land Tax) (5) Suppliers and (6) Provident Fund Department.

15. Admittedly, the promoter has settled all the workmen u/s 18(1) of the Industrial Disputes Act on 20.12.2002 and payments have been made to all the workmen in pursuance of the settlement. More than 600 workmen have received payments and only five workmen challenged the settlement u/s 18(1) Industrial Disputes Act by filing W.P.No:2020/2003 to restrain the company from implementing the settlement. Though interim injunction was granted at the initial stage, the said injunction was subsequently vacated by this court and no appeal has been preferred by the workmen. It is pertinent to reproduce a portion of the order dated 16.9.2003 in W.V.M.P. No: 232 of 2003 in W.P.No:2020 of 2003.

"5. The only point for consideration in this petition is, whether the petitioner Sangam has made out a prima facie case for continuing the injunction granted on 22.1.2003. Though the petitioner Sangam has claimed that it represents substantial majority of the workers of the first respondent Mill, except the averment, the same has not been substantiated before this court. On the other hand, it is the specific case of the first respondent mill that the overwhelming majority of the workmen namely 650 out of 680 are supporting the Mill in its settlement effort and there are only five persons, namely (1) Mrudhachalam, (2) Ganesan, (3) Venkatachalam (4) Palanisamy and (5) Balaraman, who alone are dissenting workmen. It is further stated that the remaining 25 are untraceable or reported dead. To prove the fact that the overwhelming majority of the workmen are supporting the Management, the first respondent-Management has produced the proof that 625 workmen have received payments from the Management in pursuance of the 18(1) Settlement in full quit of their claims. The xerox copy of those receipts duly signed by the workmen concerned find in 2 volumes running into several pages. The first respondent-Management has produced those receipts before this Court in support of their stand. In the light of the claim made by the petitioner Sangam, I have perused all the receipts duly signed and issued by the workmen concerned and I am satisfied that the management has established the claim that 625 workmen have received payments pursuant to the settlement in full quit of their claims. I am also satisfied that excepting the five persons mentioned above, all others have accepted the settlement and received their claims. The Management has also made a statement that the remaining 25 who are either dead or untraceable and the management is in the process of

working out the rights and entitlements of the legal representatives. They also specifically stated that in accordance with the Scheme presented before the BIFR, they cleared the entire provident fund, sales tax dues as well as the dues of one of the lenders, namely IDBI has also been cleared. I have already referred to the fact that against the rejection of the proposal, the management also filed a writ petition and obtained an order of stay. Mr. A.L. Somayaji, learned senior counsel for the Management has brought to my notice that Chapter XV of the Settlement u/s 18(1) empowers the first respondent-Management to sell the movable and immovable properties of the Mills. I have already referred to the consent given by 625 out of 680 workmen in respect of the settlement arrived. It is also brought to my notice that the immovable properties have to be sold to clear the dues of SBI, Income tax, Property Tax and other creditors. The Management has also produced a copy of the agreement entered with one Subramaniam of Maruthi Textiles in respect of the sale of machinery and superstructure. With the materials furnished, I am of the view that the first respondent-Management has established that the properties to be sold only to settle the remaining creditors and in such a circumstance, absolutely no loss or hardship will be caused to any one. The Management has also produced details to the effect that they sold machineries in pursuance of the 18(1) Settlement and raised a sum of Rs. 245 lakhs by the sale of the machineries. They also furnished break-up figure distributing the said sum of Rs. 245 lakhs in the following manner.

- 1) Payment to Workers Rs. 130 lakhs
- 2) Provident Fund Rs. 30 lakhs
- 3) Sales Tax Rs. 12 lakhs
- 4) IDBI dues Rs. 65 lakhs

After sale of the machineries and disbursement of the amount to the workers and statutory dues including the loan amount due to IDBI now the management wants to dispose of the immovable properties to clear the dues of SBI, Income Tax, Property Tax and other creditors which cannot be faulted with.

6. In the light of what is stated above, more particularly, in the light of the particulars furnished, the steps taken by the management with the approval of the majority of the workmen, the settlement of their dues to the statutory amounts, repayment of the loan amount the financial institution etc., and in the absence of acceptable materials to show that the petitioner Sangam is representing the majority members of the Union in the first respondent Mill, I am satisfied that petitioner has not established prima face case and the balance of convenience is also not in their favour. On the other hand, the first respondent Management has established their case for sale of the movable and immovable properties by placing acceptable materials. Accordingly I do not find any valid reason to continue the interim order. Interim injunction granted on 2.1.2003 is vacated. WVMP. No: 232 of 2003 is allowed. WPMP. No. 2520 of 2003 is

dismissed."

16. From the findings of the above order, it is clear that the promoter has paid Rs. 130 lakhs to the workers, Rs. 60 lakhs to the Provident Fund Department, Rs. 12 lakhs to Sales Tax Department and Rs. 65 lakhs to the Industrial Development Bank of India, totalling a sum of Rs. 237 lakhs. The debts due to the Banks have been paid and all the cases have been closed and thus the net worth of the company has become positive. The Banks were remained ex parte in the Writ Petition and according to the Writ Petitioner the Banks having chosen to remain ex parte in the Writ proceedings because of full settlement of all the claims.

17. As regards liability of Sales Tax, in pursuance of a Best Judgment Assessment made by the Sales Tax Department, the claim made as against Vasantha Mills Limited in W.P. No: 33701 of 2003, by order dated 30.9.004, a Division Bench of this Court has set aside the assessment and remanded the matter for fresh assessment. The relevant portion of the said order is as follows:-

"3.1 The assessing officer passed the assessment order dated 27.8.2001 made in TNGST No. 1821893/9-98 for the assessment year 1997-98 holding that the turnover of Rs. 3,34,08,876/= attracts tax liability of Rs. 13,02,213/= and penalty of Rs. 28,87,029/=.

3.2 Against the said order of assessment dated 27.8.2001, the assessee preferred an appeal in M.P. No. 1012 of 2002, which was dismissed by the Additional Appellate Assistant Commissioner on 15.3.2002 holding that the appeal is not maintainable in law as the petitioner did not file proof of payment of admitted tax of Rs. 15,35,625/= before the expiry of the time limit.

3.3. Thereafter, the petitioner preferred a further appeal before the Sales Tax Appellate Tribunal, Coimbatore in CTA. No. 549 of 2002. The Tribunal by its order dated 5.2.2003 refused to entertain the appeal observing that the assessee has paid the admitted tax after the order of the Additional Appellate Assistant Commissioner. Hence the assessee preferred .P. No. 621 of 2003 before the Tamilnadu Taxation Tribunal, Chennai which confirmed the orders of the appellate authorities dated 15.3.2002 and 5..2003 by an order dated 30.9.2003, which is impugned in the above writ petition. Hence the above writ Petition.

xx xx xx xx 6. However, since the counsel for the petitioner submits that the petitioner suffers with an exparte assessment order and agrees to pay the tax components and 50% of the penalty, we are inclined to interfere with the assessment order dated 27.8.201 and accordingly the same is set aside and the petitioner is directed to produce the relevant records before the assessing authority on 18.10.2004. On such production of records, the assessing authority after giving fair and reasonable opportunity to the assessee shall frame the assessment afresh in accordance with law."

7. The above indulgence is granted to petitioner on a condition that the petitioner

pays the entire tax components with 50% of the penalty as demanded in the assessment order dated 27.8.2001, which is now set aside within a period of two weeks from the date of receipt of a copy of this order."

18. It is alleged that the Sales Tax Department is now making up old claims of the year 1983 and earlier which were not placed before the AAIFR. If these claims were made earlier by the Sales Tax Department, AAIFR would have covered these also in the Scheme. Having remained silent at the time of approval of the Scheme in the year 1993, the Department is raising anterior claims for the period of 1983 and earlier.

19. As regards the Provident Fund Department, its main claim is for damages. Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act will be available to all contributions due during the period in which the scheme was under monitoring. The Vasantha Mills Limited has filed W.P.Nos:7664 and 7665 of 2004 claiming benefits u/s 14B of the Act and the writ petitions are pending.

20. In respect of sundry creditors it is the contention of the learned senior counsel that the creditors who were the suppliers have subsisting claims for which they have filed two Company Petitions based on which prayer has been made to wind up the company. In C.P. No. 96 of 1989, the petitioner is a supplier of cotton and the principal amount claimed is Rs. 3,40,800/= with a demand of interest at 18% per annum. As far as the principal amount is concerned since the entire amount has been paid, the interest remains to be paid. Now the learned counsel for the petitioner in the Company Petition has agreed to receive 9% interest for the principal amount from the date of due. In C.P.No:38 of 1984, the principal amount is Rs. 5,95,000/=. The learned counsel for the petitioner in the said Company Petition has agreed to receive the principal amount with 9% interest. As far as C.P. Nos. 96 of 1989 and 38 of 1984 are concerned, the promoter is prepared to pay the principal amount with 9% interest. The petitioner is willing to settle the claim made in C.P.No:339 of 2003 also. All Claims in the said CPs to be settled in three months. All subsequent events have to be taken note of by the court while passing orders as has been held in 2003 (4) CTC 731.

21. The non speaking order of AAIFR, dated 20.3.2001, as already stated, cannot be sustained in the eye of law. Being a quasi judicial body it has to adjudicate the cases only on merits and cannot dismiss the cases on hypertechnical reasons. More over the issue has reached the monitoring stage and what remains to be seen is only to monitor whether the scheme is being properly implemented. The AAIFR cannot supply reasons subsequently which will not cure the earlier order. As already held, only the Hon''ble Supreme Court has the power to pass an order without reasons and supply reasons later. Thus the order of AAIFR is bad since dismissal on technicalities cannot be done by a quasi judicial tribunal like AAIFR that too at monitoring stage.

22. In this case all the claims of the workmen have been worked out in W.P. No. 2020 of 2003 and they are bound by the order of this court. All the dues of the Banks have been settled. Since the Company's net worth has become positive and the scheme has been implemented, this court is of the considered opinion that no purpose will be served in remitting the matter to the AAIFR. Therefore the Writ Petition is allowed. Accordingly, the proceedings before the AAIFR are closed. Consequently all the company Petitions and Miscellaneous Petitions are dismissed. No costs.

23. As regards W.P.No:4411 of 1998, the same has been filed to forebear the respondents from taking any Distress or other recovery proceedings against the petitioner Mills for the recovery of a sum of Rs. 14,42,191/= towards arrears of Urban Land Tax and penalty for the Faslies 1388 to 1406 pursuant to the respondent's Final Notice issued in Na.Ka.SR.125/94/A4 dated 28.11.1997 except with the consent of the Appellate Authority for Industrial and Financial Reconstruction, New Delhi. It is contended by the petitioner that clearance under the Urban Land Ceiling Act has already been obtained in 1997 and only thereafter portion a of a land was sold by the petitioner Mills and tax liability which is under challenge was already stayed by this court. No arguments were made by either of the parties in this W.P. No. 4411 of 1998. Therefore, no final order is passed as far as this Writ Petition is concerned. The parties are at liberty to pursue the writ petition.