(1995) 09 BOM CK 0051

Bombay High Court

Case No: Writ Petition No. 1539 of 1995

Candy Filter (India) Ltd. and Another		APPELLANT
	Vs	
Assistant Commissioner of Labour and Others		RESPONDENT

Date of Decision: Sept. 25, 1995

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33C

Citation: (1996) 1 LLJ 1113

Hon'ble Judges: D.R. Dhanuka, J

Bench: Single Bench

Judgement

D.R. Dhanuka, J.
Heard learned counsel on all sides. Heard forthwith for final hearing.

2. Prior to the 13th March 1992, a sum of Rs. 14,61,991.65 was due and payable by petitioner No. 1 company to the workmen in terms of the award made by the Industrial Court in Reference (IT) No. 18 of 1988. The said amount was due and payable in respect of wages for the lock out period i.e., 28th September 1987 to 28th February 1990.

3. On or about 13th March 1992, respondent No. 4 Union and the petitioner No. 1 employer filed consent terms before the Industrial Court in Complaint (ULP) No. 720 of 1991 connected with the implementation of the said Award. By clause 1 of the said consent terms it was provided that the respondent No. 4 were agreeable to accept a sum of Rs. 7 lacs in full and final settlement of their claim for the lock out wages. By clause 2 of the said consent terms it was provided that the petitioner No. 1 company shall pay the said amount of Rs. 7 lacs by three installments as set out therein.

(a) Rs. 2.5 lacs by cheques dated 10th day following the date of signing of this settlement;

(b) Rs. 2.5 lacs by cheques post-dated 28th February 1992;

(c) Rs. 2.00 lacs by cheque post-dated 31st March, 1992.

A Schedule was annexed to the said consent terms setting out the names of various employees/workmen who were entitled to receive the said amount. By clause 5 of the said consent terms it was provided that the petitioner No. 1 shall hand over all the cheques to the respondent No. 4 Union on the date of signing of the settlement. By clause 7 of the consent terms, it was provided that in the event of any of the above payments not being realised, the settlement shall stand abrogated and the earlier order would stand revived. By clause 8 of the consent terms, it was provided that on realisation of the last installment of the payments, all the cases pending in any Courts shall stand withdrawn, more specifically Complaint (ULP) No. 920 of 1989 and Complaint (ULP) No. 720 of 1991.

4. It is the case of the petitioner No. 1 company that the amount of first installment payable under the said consent terms amounting to Rs. 2,24,990.10 was paid by the petitioner No. 1 to the various workmen and the cheques issued in favour of 21 workman in the aggregate amount of Rs. 2,24,990.10 were in fact cleared. The petitioner No. 1 did not pay the amounts due and payable in respect of the second installment in time. There was abnormal delay and some of the payments were made in the years 1993 and 1994 as set out in the statement tendered by Shri Kothari, learned counsel for petitioner No. 1 himself at the bar. The petitioner No. 1 thus committed default at any rate in respect of the amounts due and payable by petitioner No. 1 towards the second installment. The amount was paid but the same was not paid in time. Similarly, the petitioner No. 1 did not pay the amount of third installment in time. Various payments were made on account of the third installment in the year 1995 even though the amounts were payable by March 1992. The statement tendered by Mr. Kothari is admitted in evidence and marked Exhibit ''A'' collectively. Thus the petitioners are in default and the original liability of petitioner No. 1 for Rs. 14 lacs & odd is enforceable after deduction of payments actually made. Clauses 7 and 9 of consent terms are relevant.

5. There is no dispute that in all the petitioner No. 1 has by this time paid an aggregate amount of Rs. 7 lacs to respondent No. 4 or the workmen concerned. The dispute between the parties is to the effect as to whether the petitioner No. 1 is liable to pay the balance amount of Rs. 7,61,991.65 or whether the petitioner No. 1 is entitled to a declaration that the petitioner No. 1 has paid the above referred amount of Rs. 7 lacs to the respondent No. 4 or the workmen concerned in full and final settlement or their claim computed at Rs. 14,61,991.65. The respondent No. 4 rightly relies on the various clauses of the consent terms and submits that the petitioners have committed default by not making the payments towards the

installments agreed upon in time. It is not disputable that on several occasions cheques issued by petitioner No. 1 were bounced.

6. In this situation, the respondent No. 4 approached the Industrial Court by filing Complaint (ULP) No. 720 of 1991 for further directions of the Court. On 1st March 1993, the Industrial Court passed an order directing the petitioner No. 1 to deposit a sum of Rs. 14,61,991.65 in terms of the order of the Industrial Court in Reference (IT) No. 18 of 1988. It is not necessary to refer to the other part of the said order. It is recorded in the said order that the advocate for the petitioner company had passed a withdrawal purshis. The said order was erroneous to a limited extent. The industrial Court ought to have been told by respondent No. 4 that credit should be given to the petitioner No. 1 for the payment of Rs. 2,24,999.10 which amount was already paid by petitioner No. 1.

7. On 22nd April 1993, the respondent No. 4 made an application to the Deputy Commissioner of Labour under sub-section (1) and (4) of Section 33C of the Industrial Disputes Act, 1947. In view of the order passed by the Industrial Court on 1st March 1993, the necessary certificate was issued by the Assistant Commissioner of Labour authorising the respondent No. 4 to recover the entire amount of Rs. 14,61,991.65. The certificate issued by the Assistant Commissioner of Labour was also erroneous to a limited extent in as much as the credit was not given for the sum of Rs. 2,24,999.10.

8. In view of the serious default on the part of petitioner No. 1 and in view of the fact that the workmen were struggling to recover their dues for a period ending from September 1987, attachment proceedings were pursued. The assets of petitioner No. 1 were attached. Notice of sale was issued by respondent No. 3 on 29th July 1995.

9. The learned counsel for the petitioners has raised two main contentions across the Bar.

10. The learned counsel for the petitioner has contended that the proceedings should be remanded to the industrial Court or to the Assistant Commissioner of Labour for hearing the petitioner on two points :-

(a) That credit should be given to the petitioner for aggregate sum of Rs. 7 lacs admittedly received by respondent No. 4 and the workmen up-to-date.

(b) The learned counsel has submitted that 11 workmen have issued letters to petitioner No. 1 on different dates, copies whereof are Exhibit ''C'' to the affidavit in rejoinder made by Shri Sushi Morarka on 11th September 1995 stating therein that the said 11 workmen have already received their dues from petitioner No. 1 in full and final settlement and no amount was due and payable by petitioner No. 1 to these 11 workmen. Copies of letters Exh.''C'' to the affidavit in rejoinder are letters dated 9/12/94, 26/12/94, 9/12/94, 31/1/95, 12/12/94 and November 1994, etc. The

petitioners submit that the delay on the part of the petitioner in making payments towards the 2nd and 3rd installments thus stands condoned by respondent No. 4 in respect of payment of these installment. The learned Counsel submits that this aspect of the controversy should also be directly investigated by the industrial Court or by the Assistant Commissioner of Labour.

11. Both parties have traced the chequered history of this litigation. It is time now that the litigation between the parties is closed once for all as far as practicable. The Court shall endeavour to render substantial and complete justice to the parties instead of passing an unnecessary order of remand.

12. As regards the credit for payment of Rs. 7 lacs including the payment of Rs. 2,24,999.10 is concerned, the respondent No. 4 is agreeable that the subsisting recovery proceedings should continue only in respect of the balance of the amount due and payable by petitioner No. 1 to respondent No. 4 i. e, Rs. 7,61,991.65. The recovery certificate issued by the Assistant Commissioner of Labour stands modified in terms aforesaid. It follows that the petitioner No. 1 shall not suffer any prejudice as a result of continuation of recovery proceedings for balance amount and the proceedings herein need not be unnecessarily remanded back to the authorities below for re-computation of the amount and for amendment of the recovery certificate. It is well settled law that no order of remand should be passed by the writ Court as a matter of course and the Court is entitled to exercise its judicial discretion by rectifying the error committed by the authorities below and deliver on the spot justice to the parties.

13. As regards the operation or non-operation of clauses 7 and 9 of the consent terms is concerned, it is obvious that the petitioner No. 1 committed the default by not making payment of amounts due and payable towards second installment and the third installment. Even if a few workmen out of distress or otherwise have given full and final receipts to the petitioner No. 1 while accepting the installment offered to them after years, it does not follow that the petitioner No. 1 is entitled to a judicial order to the effect that the legitimate claim of the workmen for Rs. 14,61,991.65 stands settled for a sum of Rs. 7 lacs. It was also provided by the said consent terms that the petitioner No. 1 shall hand over all the cheques to the union. It was not open to petitioner No. 1 to arrive at the settlement with few of the workmen individually. The petitioner No. 1 is thus trying to create confusion and cause further delay by raising technical and hyper-technical points. It is well settled law that the writ court need not grant relief in favour of a party even if the impugned order suffers from minor procedural irregularity if the substantial justice is not on the side of the party who invokes the writ jurisdiction. In this case, clearly the substantial justice is not on the side of the petitioner. I did inquire from the learned counsel for the petitioners as to whether the petitioners were willing to deposit the balance amount of Rs. 7,61,991.95 in the Industrial Court as a condition precedent to the proceeding being remanded for the purpose aforesaid. This was a query of the

Court during the course of argument. The learned counsel for the petitioners frankly told the Court that the establishment of petitioner No. 1 is already closed and it is not possible for petitioner No. 1 to deposit any amount. The learned counsel for respondent No. 4 vigorously argued the matter and endeavoured to satisfy the Court that on several occasions cheques issued by petitioner No. 1 were dishonoured and there was no justice in the case of the petitioner. Unless all the installments were paid in time, the question of the claim being marked as fully satisfied on payment merely of Rs. 7 lacs does not arise.

14. After taking an overall view of the matter, I have reached the conclusion that no case is made out for judicial intervention by this Court under Article 226 of the Constitution of India. Subject to the above, the authorities below to pursue the recovery proceedings only in respect of the balance amount of Rs. 7,61,991.65. The recovery certificate herein is modified in terms aforesaid.

15. Subject to the above the writ petition fails. The writ petition is dismissed.

16. The attachment levied by respondent No. 3 shall continue. Ad-interim order passed by this Court on 17th August 1995 stands vacated with immediate effect.