

Basavaiah Vs. Sri Krishnarajendra Mills Limited, Mysore (In Liquidation)

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Court : Karnataka

Decided On : Mar-26-2001

Reported in : [2001]44CLA57(Kar); [2001]106CompCas366(Kar); [2001(91)FLR334]; ILR2001KAR3148; 2001(4)KarLJ306; (2001)IILLJ1053Kant

Judge : R.V. Raveendran and ;B.K. Sangalad, JJ.

Acts : [Companies Act, 1956](#) - Sections 441, 446, 446(1), (2), (3) and (4); [Industrial Disputes Act, 1947](#) - Sections 10(1) and 33-C(2); Sick Industrial Companies (Special Provisions) Act, 1985; [Income Tax Act, 1961](#); [Companies Act, 1913](#) - Sections 171

Appeal No. : Company Application Nos. 420, 421 and 422 of 1998 in Company Petition No. 43 of 1988

Appellant : Basavaiah

Respondent : Sri Krishnarajendra Mills Limited, Mysore (In Liquidation)

Advocate for Def. : Sri Thomas V. Peter, Adv.

Advocate for Pet/Ap. : Sri R. Somasundara, Adv.

Judgement :

1. The applicants in these applications were employees of Sri Krishnarajendra Mills Limited, Mysore, now under liquidation. The services of applicants were

terminated by the company on 22-2-1980, 7-3-1980 and 23-1-1979 respectively. The petitioners and other similarly discharged workmen raised a dispute and the State Government referred the matter to Labour Court under Section 10(1)(c) of the [Industrial Disputes Act, 1947](#) (for short, 'I.D. Act'), in Reference No. 132 of 1981. The Labour Court by its award dated 12-10-1989 set aside the termination of petitioners' services and directed the company to reinstate them with full back wages, continuity of services and consequential benefits for which they were entitled to under law.

2. In the meanwhile, on 17-3-1988 Company Petition No. 43 of 1988 was filed by a creditor of the company for winding up. This Court by order dated 27-10-1988 ordered winding up of the company. However, that order was reviewed and this Court by a subsequent order dated 31-7-1991 held that the order of winding up dated 27-10-1988, passed without taking note of the inquiry proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985, pending before BIFR, was void. This Court, however, after the proceedings before the BIFR and AAIFR had ended, reconsidered the matter and passed an order on 31-7-1991, ordering winding up the company.

3. Applicants herein filed Application No. 11 of 1991 before the Labour Court, Mysore, under Section 33-C(2) of I.D. Act to determine the amount due to them in pursuance of the award dated 12-10-1989 made in Reference No. 132 of 1981 and a direction to pay the amount so determined. When the company was ordered to be wound up on 31-7-1991, leave of the Company Court, was not taken to continue the proceedings under Section 33-6(2) of I.D. Act, The Official Liquidator was not made a party to the said proceedings nor notified of the said application. Nor was the Labour Court informed that the company had been ordered to be wound up. The respondent before the Labour Court [the company under liquidation] was not shown as a company under liquidation. None appeared for the respondent and the said application was allowed by the Labour Court by order dated 13-1-1993, directing the company to pay Rs. 1,24,581.86 to Basavaiah, Rs. 1,31,540.26 to Nan-jundiah and Rs. 1,27,287.72 to Madaiah [the three applicants herein].

4. Thereafter, the three applicants filed these applications seeking a direction to the company in liquidation [represented by the Official Liquidator] to pay the said amounts.

5. The Official Liquidator resisted the applications inter alia, on the ground that the proceedings under Section 33-C(2) of I.D. Act were 'legal proceedings' and continuation of such proceedings without obtaining leave of the Company Court, under Section 446(1) of the [Companies Act, 1956](#) [for short, the 'Act'] was illegal and therefore, the order passed in such proceedings is neither valid nor enforceable.

6. Applicants contended that Section 446(1) of Companies Act is inapplicable to proceedings under Section 33-C(2) of I.D. Act. It also pointed out that in one or two similar cases, the Company Court had given effect to similar orders of the Labour Court and directed payment in terms of such orders, even though in those cases, leave had not been obtained under Section 446 of the Act; and therefore they are also entitled to payment as per order of the Labour Court.

7. The learned Company Judge, however, was of the view that orders of Labour Court passed in proceedings under Section 33-C(2) of I.D. Act, in violation of Section 446 of the Act, were unenforceable. Hence, the learned Company Judge has referred the matter to a Division Bench. The question that therefore arises for consideration is whether an order passed by the Labour Court under Section 33-C(2) of I.D. Act against a company which has already been ordered to be wound up, is valid and enforceable, when the order of winding up is not brought to the notice of the Labour Court and permission of the Company Court is not obtained under Section 446(1) of the [Companies Act, 1956](#), to proceed with the matter.

8. Sub-section (1) of Section 446 of the Act provides that when a winding up order has been made, no suit or other legal proceedings shall be commenced or if pending on the date of winding up order, shall be proceeded with, against the company, except by leave of the Company Court. Sub-section (2) of Section 446 provides that notwithstanding anything contained in any other law for the time being in force, the Company Court shall have jurisdiction to entertain or dispose of any suit or proceeding by or against the Company, or any claim made by or

against the Company. Sub-sections (3) and (4) of Section 446 provide that such suit or proceedings (other than those pending in appeal before the Supreme Court or a High Court) may be transferred to and disposed of by the Company Court. An 'other legal proceeding' referred to in sub-section (1) of Section 446 can be defined as any proceeding in a Court or Tribunal, regulated by law, but of a nature which can conveniently and appropriately be dealt with and decided by the winding up Court if transferred to it, in which a judicial decision is given after enquiry (see the decision in *Governor-General-in-Council v Shiromani Sugar Mills Limited (in Liquidation)* , as explained by the Supreme Court in *S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Company Limited (in Liquidation) v V.M- Deshpande, Income-tax Officer, Companies Circle 1(8), Bombay and Another*). To illustrate, an assessment proceedings under the Income-tax Act, 1961 or a reference under Section 10(1)(c) of I.D. Act made to the Industrial Tribunal or any enquiry/investigation by the Government or any Statutory Authority in exercise of statutory powers have been held to be outside the scope of Section 446 vide *Kondaskar's case, supra, B.V. John and Others v Coir Yarn Textiles Limited and R.G.M. Price v M. Chandrasekaran*.

9. Section 33-C(2) of I.D. Act provides for recovery of money due from an employer, by the workman and it is extracted below:

'Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefits should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government, within a period not exceeding three months'.

All the requirements of an 'other legal proceeding' stated in Section 446. are answered by a proceeding under Section 33-C(2). Firstly, it is a claim by a workman for money or benefit capable of being computed in terms of money initiated before a Tribunal (Labour Court). Secondly, the proceeding requires an enquiry which is regulated by law, resulting in a judicial decision. Thirdly, the

proceedings can appropriately and conveniently be dealt with by the winding up Court. We are therefore satisfied that a proceeding under Section 33-C(2) of I.D. Act clearly falls under the term 'other legal proceeding' mentioned in Section 446(1) of the Act.

10. But the applicants contend that Section 446 of Act does not apply to a proceeding under Section 33-C(2) of IA Act, on the following two grounds.-

(a) A proceeding under Section 33-C(2) of I.D. Act is similar to a proceeding under Section 10(1)(c) of I.D. Act. All proceedings under I.D. Act are in public interest, to be tried by Special Tribunal and are not therefore proceedings which can be transferred to and tried by the Company Court. Therefore it does not fall under 'other legal proceedings' under Section 446(1) of the Act.

(b) The Labour Court had already made an award on 12-10-1989 in favour of the applicants in a reference under Section 10(1)(c) of I.D. Act [Ref. No. 132 of 1981] passed prior to the date of winding up order. The proceedings under Section 33(2) of I.D. Act are meant only to quantify the benefits under the said award. Therefore the proceedings are of the nature of an execution proceedings and do not require the leave of Company Court under Section 446 of the Act.

11. The first ground is based on the decision of the Patna High Court in S.K.G. Sugar Limited v Ali Hassan and the decision of the Kerala High Court in B.V. John's case, supra. Both the decisions relied on by the applicants considered the question as to whether a reference under Section 10(1)(c) of I.D. Act attracted Section 446(1) of the Act.

11.1 In S.K.G. Sugar Limited's case, supra, the Patna High Court held that Section 10(1)(c) of I.D. Act imposes a statutory duty on the Government to refer disputes for adjudication for the sake of public interest and for preservation of industrial peace and therefore there is no need for the Government to seek leave of the Company Court under Section 171 of the [Companies Act, 1913](#) [corresponding to Section 446 of the [Companies Act, 1956](#)] for making such a reference.

11.2 In B.V. John's case, supra, the Kerala High Court held that Section 446 does not apply to an industrial dispute referred under Section 10(1)(c) of I.D. Act and pending before the Industrial Tribunal. It was held that if the proceedings is for the enforcement of something in the nature of a personal right against the assets of the company it will be a legal proceedings for purposes of Section 441. But if the proceedings are in public interest, then Section 446 will not be attracted. We may extract the reason given by the Court for such a conclusion:

'Even the 'may' of the body of sub-section (1) of Section 10, it seems to me, gives a power coupled with a duty, and, where in its opinion the necessary conditions exists, the appropriate Government is under public duty to make a reference. The statute provides the duty solely on the appropriate Government, free of any outside control, and apart from that, if this duty were subject to control under Section 446 of the Companies Act, it might become well nigh impossible of performance, it would be strange if a duty that has to be performed in the public interest were to be controlled in order to serve the private interests of the creditors and members of a company....'

The Court held that the object of a reference under Section 10(1)(c) being public interest, that is to ensure fair terms to workmen and to secure industrial peace, the proceedings are valid, even if leave of the Court is not obtained under Section 446(1).

12. But a proceedings under Section 33-C(2) is basically different from an industrial dispute referred under Section 10(1)(c) of I.D. Act. While Section 10(1)(c) relates to adjudication of an industrial dispute which is initiated by reference by the State Government in exercise of a statutory power and adjudication of which is considered to be in public interest, proceedings under Section 33-C(2) are purely for enforcement of personal rights of individual workman. A proceedings under Section 33-C(2) is to obtain a decision from the Labour Court quantifying the amount receivable by an individual workman from the employer, to be enforced against the assets of the company. Therefore any principle laid down in regard to a reference under Section 10(1)(c) of I.D. Act cannot be extended to a proceedings under Section 33-C(2) of I.D. Act.

13. The second contention of the applicant that proceedings under Section 33-C(2) are in the nature of execution proceedings and therefore do not require leave of the Company Court under Section 446(1) of the Act, proceeds on a misconception that execution proceedings are not legal proceedings and that leave of the Company Court under Section 446(1) of the Act is not required for initiating or continuing an execution proceedings.

14. The nature of the power exercised by the Labour Court has been explained by the Supreme Court in several decisions. A proceeding under Section 33-C(2) is a proceeding generally in the nature of an execution proceedings and the jurisdiction of the Labour Court is in the nature of an executing Court. The calculation or computation follows upon an existing right to the money or benefit in view of a previous adjudication, or otherwise duly provided for (See Central Inland Water Transport Corporation Limited v Workmen and Another). But the power under Section 33-C(2) can be exercised by the Labour Court not only in cases where an award is made in a proceedings under Section 10(1)(c) of the I.D. Act but even in other cases. Labour Court has jurisdiction under Section 33-C(2) to determine whether the workman has right to receive the benefit when such right is disputed by the employer and for this purpose interpret awards and settlements on which the workman's claim is based in the same manner in which an executing Court can interpret a decree for purposes of execution (vide Central Bank of India Limited v P.S. Rajagopalan and Voltas Limited v J.M. Demello). We will therefore proceed on the basis that proceedings under Section 33-C(2) are in the nature of execution proceedings.

15. Courts have consistently held that if any execution proceedings are to be initiated or proceeded with after the order of winding up (even in regard to decrees obtained prior to the order of winding up), the leave of the Company Court is required for such initiation or continuation of the execution proceedings [See Bank of Bihar Limited, Patna v Secretary of State and Others , Official Liquidator, Calicut Bank Limited v Nekkath, Ram Achhyavar Singh v J.K. Manufacturers, Industrial Finance Corporation of India v Century Metals Limited and Sarju Thakur v Registrar of Companies]. Therefore proceedings under Section 33-C(2) of I.D. Act, even if they are in the nature of execution proceedings, requires the leave of the

Company Court, under Section 446 of Companies Act.

16. The applicants have not sought leave of the Company Court before proceeding with Application No. 11 of 1991, on the file of the Labour Court, Mysore, filed under Section 33-C(2). The order of the Labour Court is voidable at the instance of the Official Liquidator in such a situation. In this case, the Official Liquidator has refused to accept the order of the Labour Court and has challenged its correctness and validity. Consequently, the order dated 13-1-1993 in Application No. 11 of 1991 passed by the Labour Court, Mysore, is held to be void and unenforceable.

17. The applicants lastly contended that they are poor, ignorant workmen and they were not aware that leave of the Court should be taken for continuing the proceedings under Section 33-C(2) of I.D. Act: and that in some other cases, the Company Court have accepted and acted upon the orders of Labour Court under Section 33-C(2) of I.D. Act, even though no leave had been obtained under Section 446(1) in regard to such proceedings.

18. Section 446 of the Act makes it clear that no suit or other legal proceeding shall be commenced or proceeded with after a winding up order is made, without leave of the Company Court. We have already held that proceedings under Section 33(2) is a legal proceeding, for purposes of Section 446. Even if the said proceeding had been initiated prior to the order of winding up, as the order of winding up was passed during the pendency of such proceeding, it was mandatory for the applicants to have obtained leave of the Company Court. A statutory mandate cannot be avoided on the ground of ignorance or hardship. It should also be noticed that the order was obtained ex parte without impleading the Official Liquidator who represented the company in liquidation. The Official Liquidator has refused to accept the order of the Labour Court. It is therefore not valid and unenforceable. The fact that in some other matters, the relevant contentions were not urged or that the Official Liquidator did not challenge the validity cannot be a ground for ignoring the requirements of Section 446(1). Consequently, these applications are liable to be rejected.

19. The learned Counsel for the applicants submitted that to avoid further delay leave may be granted under Section 446(1) of the Act to enable the quantification of their claim against the company by the Labour Court, after due notice to the Official Liquidator. The learned Counsel for Official Liquidator [respondent] has no objection for such permission being granted in these applications. As applicants, who are workmen, have been litigating for nearly two decades, interests of justice would be served if leave to proceed with the applications under Section 33-C(2) of I.D. Act is granted in these applications, instead of driving them to file fresh applications for leave under Section 446.

20. In view of the above, these applications are disposed of by moulding the relief suitably as follows:

(i) The prayer for a direction to the respondent to make payment in terms of the order dated 13-1-1993 in Application No. 11 of 1991 on the file of the Labour Court, Mysore, is rejected.

(ii) The order dated 13-1-1993 in Application No. 11 of 1991, passed by the Labour Court, Mysore, is held as invalid and unenforceable.

(iii) Leave is granted to the applicants to proceed with Company Application No. 11 of 1991 on the file of the Labour Court, Mysore, under Section 446 of the [Companies Act, 1956](#). Application No. 11 of 1991 is restored to the file of the Labour Court, Mysore and it is directed to proceed with the matter afresh.

(iv) The date of hearing before the Labour Court, Mysore is fixed as 18-6-2001. The respondent-company (in liquidation represented by Official Liquidator) may appear through Counsel without further notice from the Labour Court and file objections if any. The Labour Court shall endeavour to dispose of the application expeditiously.