IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6249 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AUDYOGIK KAMDAR SANGATHAN

Versus

LUCKY LABORATORIES PVT.LTD

Appearance:

1. Special Civil Application No. 6249 of 1994

MR RV DESAI for Petitioner No. 1

MR AJ PATEL for Respondent No. 1

MR RC JANI for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 30/08/2002

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the award of the Labour Court, Kalol dated 28th February, 1994 passed in Reference (L.C.K.) no.1/1986. By the said

award the Reference against respondent no.2 is dismissed, whereas respondent no.1 is directed to pay retrenchment compensation to the petitioner. The present petition has been filed by the registered Trade Union on behalf of some of the workmen of respondent no.1. According to the petitioner, they were working on regular basis with respondent no.1. They were receiving minimum wages meant for Pharmaceutical workers and also special allowance. Over and above that they were also receiving Re.1 per day as ex-gratia. It is the case of the petitioner that respondent no.1 with the aid of police closed down the Laboratory on 1st December, 1984. The workers raised dispute with regard to illegal closing down of the company and for that the conciliation proceedings were commenced. However, respondent no.1 did not remain present. It is further the case of the petitioner that the concern workmen had approached in the month of October, 1987 to respondent no.2. Upon noticing that the premises of respondent no.1 were being cleaned and upon coming to know that respondent no.2 had purchased respondent no.1 they requested respondent no.2 to take them in service. However, the management of respondent no.2 did not accede to their request on the ground that respondent no.1 - Lucky Laboratories had ceased to exist and instead respondent no.2 which had purchased the premises and machinery of respondent no.1 was to start its own concern in the name and style of "Parth Parenterial Pvt. Ltd.". It is the case of the petitioner that attention of respondent no.2 was drawn to the dispute between the workmen and respondent no.1 by writing a letter dated 14th November, 1987. However, no response was received by them. According to the petitioner, respondent no.2 commenced the production in the month of May, 1988 and even when the business activity had commenced the former workers of respondent no.1 were not taken in service. The petitioner has alleged that respondent no.2 at the instance of respondent no.1 had not employed the former workers of respondent no.1. Since the efforts of those workers did not materialis and the resultant conciliation proceedings also failed, their dispute was referred to the Labour Court. Before the Labour Court, respondent no.1 and 2 were both main parties. Two Directors of respondent no.1 has been joined in the proceedings on behalf of respondent no.1.

1.1. The workmen filed their statement of claim wherein all the aforesaid contentions were raised by them. Respondent no.1 chose not to file any reply whereas respondent no.2 contested the Reference by filing its statement at Exh.43. By the said statement

respondent no.2 contended that the Reference filed against respondent no.2 was not maintainable in law and that the workmen did not have any authority to implead respondent no.2 in the said proceedings. It further contended that the Labour Court also did not have any jurisdiction to implead respondent no.2 as party to the said proceedings. It was further contended by respondent no.2 that at no point of time the relationship of master and servant or employer and the employee had come into existence. So far as respondent no.1, 2 and the workers of respondent no.1 are concerned, the reference filed against respondent no.2 was totally under misconception of law. It is further contended that the dispute that existed was between the workers and respondent no.1, it had no connection with respondent no.2. It is the say of respondent no.2 that no Reference directly can be filed against respondent no.2 and on that sole ground the present petition deserves to be dismissed. It is the case of respondent no.2 that respondent no.1 was having its manufacturing activity in the G.I.D.C. estate at Kalol. However, the said company was closed down on 1st December, 1984 and the workers employed by respondent no.1 were rendered without any service. However, according to respondent no.1 in the year 1987 in the auction sale that was held by Gujarat State Financial Corporation, the factory premises and assets of respondent no.1 including machinery were purchased with clear understanding that it will not be required to saddle with the liabilities that had arisen in respect of respondent no.1 and according to respondent no.2, it was a separate entity and it had nothing to do with respondent no.1. He further contended that since respondent no.2 had purchased respondent no.1, during the auction sale that was held sometime in the year 1987 it was not required to shoulder the responsibility to clear all the dues of respondent no.1 and also to satisfy the claims made by the workers on different accounts. It has been submitted that the entire management of respondent no.1 was changed and instead a company incorporated under the provisions of Companies Act, 1956 had come into existence. Hence the liabilities and the claims of the said workers of respondent no.1 were not the liability of respondent no.2. Ultimately, respondent no.2 prayed that reference against it be dismissed.

2. According to the workmen they ought to have been absorbed in the employment of respondent no.2. It is under these circumstances, the Labour Court was called upon to decide this reference. At the trial, the parties adduced oral as well as documentary evidence and upon reaching the conclusion that since respondent no.2 had

not purchased a going concern, and that the same was purchased from G.S.F.C. in auction held by under the provisions of Gujarat State Finance Corporation Act, the reference against respondent no.2 was not maintainable. According to the Labour Court respondent no.2 was not required to discharge liabilities except G.E.B. & G.I.D.C. dues of respondent no.1. So far the dues of G.I.D.C. and G.E.B. are concerned, it was with the clear understanding at the time of auction sale that respondent no.2 would be liable to satisfy the liabilities of respondent no.1. It therefore dismissed the reference against respondent no.2. However, the Labour Court directed respondent no.1 to pay to the concern workmen retrenchment compensation since reinstatement was not possible. In view of the Labour Court's decision, the petitioner has now approached this Court by way of this petition under Articles 226 and 227 of the Constitution of India.

3. Mr.R.V. Desai learned counsel for the petitioner submitted that since respondent no.2 had stepped into the shoes of respondent no.1, it was liable to satisfy the claim of the petitioner. In other words according to Mr.Desai when the workmen of respondent no.1 approached respondent no.2 it was incumbent upon respondent no.2 to give them employment with continuity of service and all the backwages and all other rights and benefits permissible under the law. He has also submitted that even if, respondent no.2 had purchased assets of respondent no.1 in auction sale held by G.S.F.C. it was successor in interest and in that capacity it was required to comply with the request made by the workmen of respondent no.1. He has for that purpose relied on the provisions of Section 18 subsection (3) of the Industrial Disputes Act and has submitted that by virtue of this provision to discharge the liabilities of respondent no.1 it would be the obligation of respondent no.2. He has also contended that since respondent no.2 started its own concern at the same place and with the same machinery, it was successor-in-title of respondent no.1. Not only that respondent no.2 had even employed two workers of respondent no.1 and had denied the job to others and thus it had practiced hostile discrimination qua the petitioning workers. He has submitted that even the direction given by the Labour Court to respondent no. 1 has not been carried out either by respondent no.1 or respondent no.2 and no retrenchment compensation has yet been paid to them. He has therefore, prayed that this petition be allowed and the reliefs claimed therein be granted.

3.1. As against that, Mr.R.C. Jani learned counsel for the respondent no.2 has submitted that the claim of the petitioner against respondent no.2 has rightly been rejected by the Labour Court. He has fully supported the conclusions drawn by the Labour Court while holding that it was not a successor-in-title and hence it was not liable to discharge the liabilities of respondent no.1. He has further contended that there is no nexus between respondent no.1 and respondent no.2. According to him since respondent no.2 had purchased factory premises and machinery of respondent no.1 in auction sale held by G.S.F.C. in all probabilities with a view to recover its dues from respondent no.1 it cannot be termed as having stepped into the shoes of respondent no.1 and, therefore, it was not liable to either give employment to the petitioning workers nor it was required to satisfy the claim that may have arisen against respondent no.1. In support of his contention, Mr. Jani has also placed reliance on the decision of the Apex Court, the reference of which will be made in the course of this judgment. He has therefore, submitted that the reference against respondent no.2 has rightly been rejected by the Labour Court and for the reasons stated above this petition may also be dismissed. So far as respondent no.1 is concerned none has appeared on behalf of the company even though notice has been served on it. Even before the Labour Court it had not contested the reference and had remained absent. In this petition, two Directors of respondent no.1 have been joined in the capacity of their being Directors of respondent no.1. Mr.S.R. Patel learned counsel however, has filed his appearance for respondent no.1/1 i.e. Mr.Chandrakant Amin who was Director of respondent no.1. According to Mr.Patel he had resigned from respondent no.1 - Company since 19th March, 1985, but, it appears that till May, 1986 no steps on his resignation were taken by the Board of Directors. Mr.Patel states that he is appearing for respondent no.1/1 in his individual capacity and not as Director of respondent no.1. He has further submitted that since he had already resigned from the Company he is not liable to discharge any liabilities that may have arisen in respect of respondent no.1.

4. Considering the record of this petition it appears that the concerned workmen were in the employment of respondent no.1 on regular basis. However, respondent no.1 did not carry on its business activity well and it ultimately was closed down in December, 1984. It also appears that respondent no.1 was not able to clear dues of G.S.F.C. and hence its assets were taken into possession by G.S.F.C. under the provisions of State

Finance Corporation Act and ultimately they were put to sale by holding auction in accordance with the provisions of the said Act. Upon the publication of advertisement respondent no.2 decided to participate in the auction and it ultimately succeeded in giving highest bid and purchased the premises alongwith the machineries of respondent no.1. There is no dispute that the auction had taken place almost after a period of three years from the date of aforesaid closure of respondent no.1. At the time when the assets of respondent no.1 were purchased by respondent no.2 a clear condition was imposed upon it that respondent would be required to clear dues of Gujarat Electricity Board as well as Gujarat Industrial Development Corporation, except these no other liability of respondent no.1 was thrusted upon respondent no.2. After the purchase, respondent no.2 commenced its production in the year 1988. Subsequently, with a view to generate more finance it turned into Company under the provisions of Companies Act and also expanded its manufacturing activity. Considering these facts, it is very clear that so far respondent no.2 is concerned, it had come in possession of the assets of respondent no.1 only by virtue of the said auction sale. There was no nexus between respondent no.1 and 2 nor was respondent no.1 a going concern at the time it was purchased by respondent no.2. Except for two employees of respondent no.1 who had applied to respondent no.2 and after considering their merits and efficiency they were taken in the employment of respondent no.2, no other employee was employed by respondent no.2. Even the management in the form of Board of Directors of both these Companies was different. So far as respondent no.1 is concerned, it had closed down its business in December, 1984 and for all purposes it had become defunct company. Respondent no.2 came into possession after a lapse of three years and it started its business activity in the year 1988. Considering these circumstances it cannot be said to be successor-in-interest of respondent no.1.

4.1. So far provisions of Section 18 subsection (3) of the Industrial Disputes Act are concerned they read as under :-

"Section 18 subsection (3) :-

Persons on whom settlement and awards are binding

(1) xxx xxx xxx xxx xxx xxx

(2) xxx xxx xxx xxx xxx xxx

(3) A settlement arrived at in the course of concilation proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3-A) of Section 10-A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforeceable shall be binding on -

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitator] [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishemnt or part.

4.2. These provisions deal with the persons on whom settlement and awards are binding. The aforesaid provision clearly show that award of the Labour Court or Tribunal or National Tribunal as the case may be will be binding on the employer, his heirs, successors or assigns in respect of establishment to which the dispute relates. The facts which have been narrated in the foregoing paragraphs however, clearly show that respondent no.2 will not fall in any of the categories mentioned in clause - c of subsection (3) of Section 18 of the Act.

If that be so, the provisions of Section 18 subsection (3) will not come to the aid of the petitioner. Mr.Desai has placed reliance on the judgment rendered by the Apex Court in the case of Karnataka Power Transmission Corporation Ltd. & Ors. v. Amalgamated Electricity Co. Ltd. & Ors. reported in 2001 Lab.I.C. at page 2140. There cannot be any dispute with regard to the ratio laid down by the Apex Court in that case. However, considering the facts of this case and the facts of the case under consideration of the Apex Court, they totally differ. In that case, the Amalgamated Company was taken over by Karnataka Electricity Board alongwith the entire assets and liabilities of the Amalgamated Company and in that case, the Apex Court said that the workmen of Amalgamated Company were required to join duty by the Karnataka Electricity Board. The Apex Court has further observed that even when the ownership or management of an undertaking is transferred whether by agreement or by operation of law, every workman who had been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F of the Act. Thus, for the purpose of Section 25-F, so far respondent no.2 is concerned the ratio laid down in this case will not apply inasmuch as there is no settlement between respondent no.1 and respondent no.2 whereby respondent no.1 stood transferred to respondent no.2 nor there is any transfer of respondent no.1 on account of operation of law and, therefore, respondent no.2 will not be under any obligation to satisfy the provisions of Section 25-F of the Act qua the workers of respondent no.1. The other cases cited by Mr.Desai also are on the same line, and, therefore, they will not be of any help to the petitioner.

5. So far respondent no.1 is concerned certain direction have been given by the Labour Court. The petitioner will therefore be entitled to prosecute appropriate remedy to recover the dues from respondent no.1 and the persons who were in the management of the same. The contention of Mr.Patel that respondent no.1/1 cannot be held liable since he had ceased to be a Director in the year 1985 cannot be accepted, because there is nothing on record to show that his resignation was duly accepted by the Board of Directors. No record of respondent no.1 either in the form of minutes book meant for the Board of Directors nor any other record has been produced to show that he had ceased to be a Director in the year 1985. Even no document from the office of the Registrar of the Companies has been brought on record

to show that due intimation was given to the office with regard to the resignation of respondent no.1/1 and that in his place some other person was inducted on the Board.

6. For the reasons stated above, I do not find any merit in this petition and it deserves to be dismissed. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

/phalguni/