

1992 (0) GLHEL-HC 219309

GUJARAT HIGH COURT

Hon'ble Judges:D.G.Kariya and M.B.Shah JJ.

Sarabhai Machinery Versus Regional Provident Fund Commissioner

SPECIAL CIVIL APPLICATION No. 1396 of 1992 ; *J.Date :- FEBRUARY 24, 1992

Equivalent Citation(s):1999 (3) LLJ 467 : 1993 (2) LLJ 485

JUDGMENT :-

1 . Mr. Nanavati, learned advocate appearing on behalf of the petitioner, submitted that the petitioner is a sick undertaking and, therefore, under Clause (ii) of the Notification dated May 17, 1989, the petitioner is entitled to get the benefit. No such contention was raised by the petitioner before the competent authority. In their written reply dated February 6, 1992, Annexure 'B' to this petition) the petitioner sought the benefit of Clause (iii) and not Clause (ii). The petitioner never contended that the petitioner-Company is a sick company. However, to enable the petitioner to produce the necessary order passed by the Board for Industrial and Financial Reconstruction the matter was adjourned. The learned advocate for the petitioner states that the petitioner's application under Sec. 15 is rejected by the Board for Industrial and Financial Reconstruction. Therefore, this contention would not survive.

2 In our order dated April 16, 1992 after considering the balance-sheet of Sarabhai Machinery Limited, which was produced on record for our perusal we have observed as under :

"Considering the balance-sheet of Sarabhai Machinery Limited produced on record, it is apparent that he conditions laid down in the Notification dated May 17, 1989 are not fulfilled. It is not pointed out that petitioner company was having, at the end of the financial year, accumulated losses equal to or exceeding its entire net worth, i.e. the sum total of paid up capital and their reserves and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year. From the balance-sheet, it is apparent that for the year 1989-90 there was profit of Rs. 23,11,226.00 and for the year 1990-91 there was profit of Rs. 25,39,500.00 . However, our attention was drawn to the deficit brought forward which indicates that in the year 1990-91, deficit brought forward was Rs. 3,79,30,959.00 . As against this, the balance-sheet itself indicates that the assets of the company is worth Rs. 10,19,32,232.00 .

3 In view of the aforesaid fact, aid-interim relief granted by this Court is vacated. However, at the request of the learned Advocate for the petitioner, further hearing is adjourned to April 21, 1992.

4 Hence, the petitioner company has earned the profit of Rs. 25,39,500.00 in they year 1990-91 as per the balance-sheet. Therefore, there is no question of applying Clause (iii) of the aforesaid Notification which reads as under :

"(iii) any other establishment which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth, that is, the sum total of paid up capital and free reserves, and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year.

Explanation. For the purposes of Clause (iii), "cash loss" means loss as computed without providing for depreciation."

5 At the end of financial year 1991 the total deficit brought forward was Rs. 3,79,30,959.00 . In the balance-sheet itself it is stated that the assets of the company are worth Rs. 10,19,32,887.00 . No case was made out by the petitioner before the competent authority that the petitioner has suffered loss equal to or exceeding its entire net profit. i.e. the sum-total of paid-up capital and free reserves.

6 However, the learned advocate for the petitioner has lastly submitted that the petitioner company is having two establishments, one at Baroda and another at Ranoli, and the establishment at Ranoli which is a manufacturing unit is undergoing loss and, therefore, the petitioner is entitled to get the benefit of the aforesaid notification. In our view, this submission devoid of any substance because the petitioner. Sarabhai Machinery, Ranoli is a manufacturing unit which is an establishment of Sarabhai Machinery Limited which is a Registered Company. The petitioner establishment is not having any separate entity other than Sarabhai Machinery Limited which is a Registered Company. The petitioner establishment is not a separate Registered Company having its own paid-up capital and free reserves. Therefore, Clause (iii) would have no application to the petitioner establishment because it cannot be said that the petitioner has suffered loss to the extent of its sum-total of paid-up capital and free reserves. The petitioner is not having any separate paid up capital and the paid up capital would be that of Sarabhai Machinery Limited.

7 In this view of the matter, it cannot be said that the order, Annexure "E", passed by the Regional Provident Fund Commissioner, Baroda is in any way illegal or erroneous. Therefore, the petitioner is bound to pay 10% as Provident Fund contribution as per the notification dated May 17, 1989 (Annexure "A").

8 The petition is, therefore rejected. Notice discharged. Ad-interim relief stands vacated.