

(2006) 02 KL CK 0063

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20624 of 2005

Basheer

APPELLANT

Vs

Pearl Food Products

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2), 33C(3), 33C(4)
Kerala General Sales Tax Act, 1963 — Section 26B

Citation : (2006) 1 ILR (Ker) 768 : (2006) 2 KLT 346 : (2008) 12 VST 238

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : N.R. Chandrasekharan, for the Appellant; Raju Joseph, Spl.
Government Pleader and M.R. Nandakumar, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Petitioners are two of the workmen of the first respondent, a firm of which respondents 2 to 5 are the partners. The first respondent is an assessee borne on the rolls of the seventh respondent.

2. Going by the counter-affidavit filed on behalf of respondents 6 and 7, an amount of Rs. 14,80,345/- is due from the first respondent firm as sales tax due for the year 2001-02 and 2002-03. Revenue recovery certificates and demand notices were issued periodically to the first respondent firm and its partners. Since the demands were not satisfied, the movables of the firm were attached on 23.7.2003 and sold in auction for Rs. 17,525/-. Apart from seizing the bank account of the firm in the Syndicate Bank, Cherlai, Kochi and Lord Krishna Bank, Eramallur, two items of immovable properties have been attached during the course of the revenue recovery proceedings. The upset price of the land comes to Rs. 35,80,672/- and that of the building comes to Rs. 55,39,180/-. After the immovables were attached, they were brought to sale on 17.6.2005, however adjourned for want of sufficient bidders.

3. While the sale stood adjourned as aforesaid, this Writ Petition is filed by two of the employees of the first respondent contending that they and others have

preferred Ext. P8 application u/s 33C(2) of the Industrial Disputes Act, 1947, hereinafter the "ID Act", for short, before the Labour Court, Kollam as Claim Petition No. 62/2005 and that by virtue of the statutory provisions contained in the ID Act, respondents 1 to 5 are obliged to make payments as claimed in Ext. P8.

4. Ext. P8 claim petition was preceded by a demand by the workmen and refusal by the management. Even the question as to whether the provisions of the ID Act, as contended by the workmen, would apply, is also in dispute, going by Ext. P6 reply issued on behalf of the management to the workmen.

5. Be that as it may, the short issue that arises for decision in this case is whether the State of Kerala is entitled to proceed with the revenue recovery proceedings for dues under the Kerala General Sales Tax Act, 1963 ("KGST Act", for short), or whether the claims of the workmen made in Ext. P8, which are yet to be decided are to be treated as preferential claims and further, whether the workmen, at this stage, can have any claim paripasu with the State, on the face of Section 26B of the KGST Act.

6. It is strenuously urged by the learned Counsel for the petitioners that going by the various decisions of the Apex Court and of this Court, the claims for wages, bonus and other statutory benefits have first priority against all other claims and that no secured or unsecured creditors, including banks or financial institutions are entitled to be paid before the workmen's dues are paid. The sustainability of the claim of the workman for paripasu distribution with the other creditors has been recognised. In support of the said position, the learned Counsel for the petitioners relied on the decisions of the Apex Court in National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, , Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, , Allahabad Bank Vs. Canara Bank and Another, , Andhra Bank Vs. Official Liquidator and Another, and Oswal Agro Furane Ltd. v. Oswal Agro Furane Workers Union 2005 (1) KLT 936 (SC). Relying on the last among the aforesaid decisions, it was urged that the first respondent is not entitled to close down the unit without obtaining the prior permission of the appropriate Government.

7. Per contra, the learned senior Government Pleader for Taxes contended that by virtue of Section 26B of the KGST Act, the State has a first charge on the property of respondents 1 to 5 for the arrears due under the KGST Act and the question whether there has to be a paripasu distribution of assets between the workmen who are the claimants in Ext. P8 petition and the State, would not arise in this case.

8. To resolve the issue of law raised, firstly, a reference to Section 33C(1) of the ID Act would show that where any money is due to a worker from an employer under the different situations enumerated therein, an application can be made to the appropriate Government for the recovery of money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a

certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. Sub-section (2) of Section 33C which is invoked by the petitioners and others by instituting Ext. P8, may, if successful, ultimately lead to the decision, by determination as contemplated under Sub-section (3) of Section 33C, which decision in terms of Sub-section (4) of Section 33C will have to be forwarded to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in Sub-section (1). This means that after the Labour Court comes to the decision as to the amount that is due, the appropriate Government will proceed to recover the same by issuing a certificate to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. The provisions of the ID Act do not provide any charge on the property of the management or other person regarding any of the dues that may become recoverable on the basis of an order u/s 33C(2) following the procedure for recovery provided under Sub-section (1) of Section 33C.

9. However, Section 26B of the KGST Act, which came into effect on 1.4.1999 by its insertion by Act 23/1999 provides as follows:

26B. Tax payable to be first charge on the property. - Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any another person under this Act, shall be the first charge on the property of the dealer, or such person.

10. A plain reading of Section 26B of the KGST Act would show that any amount of tax, penalty, interest and any other amount due under the KGST Act shall be the first charge on the property of the dealer or any other person liable under the Act. The statutory creation of such first charge is eo-instanti the occurrence of the liability to pay tax. The liability to pay tax is automatic and depends upon the charging section. It does not depend upon the adjudication as to the liability to tax, followed by the issuance of any assessment order and demand. Hence, the first charge provided by Section 26B of the KGST Act is one that would run in preference to any of the rights of the petitioners or the other applicants in Ext. P8, who are still prosecuting proceedings which have not culminated in any order u/s 33C(2). Even if it does culminate in an order u/s 33C(3) it could be enforced by recourse to revenue recovery proceedings by force of Sub-sections(4) and (1) of Section 33C. Such right to enforce a recovery cannot be better than the superlative charge available for the State by virtue of Section 26B of the KGST Act.

11. The aforesaid view requires me to refer to the decision of this Court in G. Surendran's case 2003 (3) KLT SN 131 : 2003 (2) KLJ 878 relied on by the learned Counsel for the petitioners, wherein this Court held, on the facts of the said case, that Section 26B of the KGST Act would not apply and the claim of the workers for wages, bonus etc., shall have priority over all other dues. In G. Surendran's case (supra), the employees were laid off prior to 1990 and an

award of the Labour Court passed on a claim u/s 33C(2) of the ID Act had become final. This Court rightly noticed that the claim of the workmen that are fructified into an award was followed by judgment of this Court in writ jurisdiction directing enforcement of the award and that the award passed on 10.6.1991 was much before the introduction of Section 26B into the KGST Act with effect from 1.4.1999. It was in such premise that this Court, having regard to the different decisions of the Apex Court, including a couple among those referred to in paragraph 6 above, came to the conclusion that on a consideration of the entire circumstances, the claim of the workmen for their wages and other benefits has priority on all other claims of the creditors. That decision rests on the facts of that case particularly that the claim of the workmen had fructified into an order u/s 33C(3) of the ID Act even before Section 26B was introduced into the KGST Act. The said decision is, therefore, no precedent applicable to the facts of this case and does not lay down any proposition of law contrary to what has been noticed by me as above.

12. For the foregoing reasons, the petitioners are not entitled to any relief against the revenue recovery proceedings initiated by respondents 6 to 9 against respondents 1 to 5 for arrears under the KGST Act. The Writ Petition, to that extent, fails.

13. As already noticed, the total outstandings under the KGST Act appears to be much below even the upset price for the land and buildings brought to sale. On 12.7.2005, an order of temporary injunction was issued restraining respondents 1 to 5 from alienating or encumbering in any manner, the properties (movable and immovable) belonging to the first respondent and the personal properties (immovable) belonging to respondents 2 to 5. The said order will continue to govern the said respondents till Ext. P8 claim petition is finally disposed of. Having regard to the nature of the case, on production of a copy of this judgment, the Labour Court, Kollam will consider expediting the final disposal of Ext. P8 claim petition No.62/2005.

The Writ Petition is disposed of in the above terms. No costs.