(2003) 09 KL CK 0062

In the High Court Of Kerala

Case No : O.P. No. 27395 of 1999 (J)

G. Surendran and Others — APPELLANT

Vs

State of Kerala and Others, — RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

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

Citation : (2003) 2 KLJ 878

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : V. Chitambaresh and T.C. Suresh Menon, for the Appellant; M.J. Rajasree (GP), for the Respondent

Judgement

R. Rajendra Babu

1. The petitioners were employees of the establishment M/s. Brothers Pharmaceuticals, Navaikulam and the employees were laid off prior to 1990. The employees approached the Labour Court, Kollam, by filing a claim under Sec. 33C(2) of the Industrial Disputes Act. The Labour Court passed Ext. P1 award directing the management to pay amounts due to the workers. Ext. P1 award had not been challenged or modified and had become final. Later the workers filed O.P. 17164/01 before this court for directing the State to take appropriate steps for implementing Ext. P1 order of the Labour Court. By Ext. P2 judgment this court directed the District Labour Officer to take appropriate steps for enforcing the award. In the meantime the State proceeded against the assets of the employer viz. M/s. Brothers Pharmaceuticals, Navaikulam, for arrears of sales tax. Again the employees approached this court and filed O.P. 27395/ 99 for staying the above proceedings initiated by the State. This court by order dt. 4-11-1999 in CMP 46443/99 permitted the State to proceed with the sale, but the appropriation of the amount was directed to be subject to the further orders of this Court. The State had already sold the properties and the proceeds were

with the State. Both these original petitions were filed by the employees who had been laid off by the employer M/s. Brothers Pharmaceuticals, Navaikulam, for implementing the award passed by the Labour Court in Claim petition No. 49/90 dt. 10-6-1991 (Ext. P1 in O.P. 21158/03). Heard the learned counsel for the petitioners and the learned Govt. Pleader.

2. The question for consideration was whether the claim of the workers for wages and other benefits have a priority over the claim of the State towards arrears of sales tax. The property belonging to M/s. Brothers Pharmaceuticals had already been sold by the State for arrears of sales tax and the money was with the State. Long prior to the proceedings initiated by the State for the sale of the property, the workers approached the Labour Court and obtained Ext. P1 judgment dt. 10-6-1991. By Ext. P1 judgment the workers were found entitled to arrears of salary, bonus, security deposit etc. from the management. Further this court by Ext. P2 judgment dt. 8-6-2001 directed the District Labour Officer to take appropriate steps for implementing Ext. P1 judgment. The learned counsel for the petitioners submitted that the worker''s claim for wages and other benefits from the employer has the first priority over claims of all creditors including the State. The learned counsel for the petitioners placed reliance on the decision of the Supreme Court in Workers of Workers of M/s. Rohtas Industries Vs. M/s. Rohtas Industries Ltd., . There the Supreme Court held:

It is no doubt true that these products the stock of which have been shown in the report and the value of which has been shown by the Liquidator as Rs. 91,77,000/ - is pledged with Banks, is a priority in law in favour of the Banks but it also could not be disputed that these stocks were the products of this industry before its closure and, therefore, the workers also contributed their labour and it is the result of their hard-work that these stocks could be said that the wages and emoluments for the period upto closure would not rank in priority. It is also significant that after the closure in July, 1984, till today in spite of the order passed by this Court the workers have not been paid. Their subsistence and living is also perhaps of paramount importance and has to rank with highest priority. It is in view of this as it appears that the Government of India is keen to have a scheme for revival of this industry.

The Supreme Court further directed the sale of the stock and from the above proceeds the disbursement of the amount due to the workers. The Supreme Court had taken the view that the products are the contributions of workers out of their labour and hard work and that being so, the labourers should have the first priority over all the other claims of creditors. The High Court of Gujarat in Textile Labour Association Vs. State of Gujarat and Others, had taken a similar view. There it was observed :

After the sale proceeds are received by the official liquidator, if he finds that sufficient surplus funds remain in his hands after paying the wages as directed, he would pay the taxes - sales tax and the excise duty. In case there be no surplus, payment of the taxes may be deferred for some time and the official liquidator is directed to explore possibilities of tapping other sources for raising funds to meet those liabilities.

There it was further observed:

When in respect of the said realisation and disbursement, the question had come up for other priority dues of public revenue and tax, the Supreme Court held that the same considerations would be germane for even brushing aside the claim of public revenue and the Supreme Court directed that only after paying wages as directed, if there is any surplus fund, then only the sales tax and excise duty would be paid and if there is no such surplus, the payment of taxes also should be deferred.

The Bombay High Court also had taken the same view in Girni Kamgar Sangharsha Samiti v. Khatau Mackanji Spinning & Weaving Co. Ltd. (1998 II LLJ Bombay 264). There it was observed:

There was no question about the preference in point of time, but the question was of priority or superiority of the claim and the Supreme Court has held that the subsistence and living of the workmen is of paramount importance and has to rank with highest priority.

The Karnataka High Court also had taken the view that the worker''s claim will have a priority over the claims of all other creditors in Mohan Kamalkar Sindgikar v. Joshi Metal Industries (2000 -I LLJ Karnataka 859). The Supreme Court in Allahabad Bank Vs. Canara Bank and Another, held :

The workmen''s dues'' have priority over all other creditors, secured and unsecured because of Section 529-A(l)(a).There is no material before us to hold that workmen''s dues of the defendant company have all been paid. In view of the general principles laid down in National Textile Workers'' Union and Others Vs. P.R. Ramakrishnan and Others, there is an obligation resting on this Court to see that no secured or unsecured creditors including Banks or financial institutions, are paid before the workmen''s dues are paid.

Thus the consistent approach taken by the Supreme Court arid the different courts was that the claim of the workers had priority over all other claims of creditors, whether secured or unsecured, and that would apply when the State also is a creditor. The learned Government Pleader submitted that in view of Sec. 26(B)of the Kerala General Sales Tax Act, any amount of tax, penalty or interest and any other amount payable by a dealer or any other person under the above Act shall be the first charge on the property of the dealer or such person. Relying on the above provision it was argued that notwithstanding anything contained in any other law or the order passed by the Labour Court in Ext. P1 judgment, the State will have the first priority. I do not think that the above provision leave scope for such an interpretation. The above provision was incorporated in the Statute by the amendment Act 23/1999 which had come into effect from 1-4-1999. The above provision does not have any retrospective effect. The claim of the workers had been approved by the Labour Court as early as in 1991 and an order was passed in their favour. Considering all the circumstances I do not think that the priority claim put forward by the State can be accepted. On a consideration of the decisions of the Supreme Court as well as the other High Courts it can be safely held that the claim of the workers for wages, bonus and other statutory benefits have the first priority against all other claims put forward by other creditors including secured or unsecured and inclusive of the claim of the State. The learned Government Pleader placed reliance on the decision of the Supreme Court in Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, to substantiate the argument that the claim for sales tax arrears shall have the first priority. In the above case the claim of the workmen were not considered. But the dispute was in respect of a claim put forward by the State and the bank. There the Supreme Court held:

On the very principle on which the rule is founded, the priority would be available only to such debts as are incurred by the subjects of the Crown by reference to the State''s sovereign power of compulsory exaction and would not extend to charges for commercial services or obligation incurred by the subjects to the State pursuant to commercial transactions.

The Supreme Court had considered only the claim on the basis of some commercial transaction and the right of the State as per the provisions under the Sales tax Act. The claim of workmen was not considered in the above case and as such the above decision cannot have any application in the present case. On a consideration of the entire circumstances and the decisions of the Supreme Court as well as the decisions of the other High Courts, I am of the view that the claim of the workmen for their wages and other benefits has priority over all other claims of creditors, both secured or unsecured, including the claim put forward by the State for arrears of sales tax. Hence respondents 1 and 2 are to be directed to disburse the entire amount due to the workmen as per Ext. P1 order passed by the Labour Court from the sale proceeds kept by the State, within a specified time as their claim had been pending for the last more than 13 years and to appropriate the balance amount towards arrears of sales tax. As Ext. P1 was passed in 1991, the workers shall be entitled to interest at 9% from the date of Ext. P1 order till payment.

In the result both the OPs. are allowed. Respondents 1 and 2 are directed to disburse the entire amount due to the workmen as per Ext. P1 order passed by the Labour Court with 9% interest within three months from the date of production of a copy of this judgment.

