(1999) 11 BOM CK 0014

In the Bombay High Court

Case No : O.O.C.J. W.P. No. 862 of 1999

Girni Kamgar Sangharsha Samiti APPELLANT

Vs

Matulya Mills Ltd. and Others RESPONDENT

Date of Decision : 22-11-1999

Acts Referred:
Constitution of India, 1950 — Article 21, 32

Citation : (2000) 85 FLR 843 : (2000) 2 LLJ 343

Hon'ble Judges : S. Radhakrishnan, J;M.B. Ghodeswar, J

Bench : Division Bench

Advocate : Colin Gonsalves and Gayatri Singh, for the Appellant; J.P. Cama, F. Divertre and Birendra Saraf, instructed by M.K. Ambalal and Co. For Respondent Nos. 1 and 2, R.V. Govilkar and D.Y. Chandrachud and C. Dantas, instructed by Satpute and Co., for the Respondent

Judgement

1. Heard the learned Counsel for the Petitioner and various Respondents. Perused the Auditor''s Report dated September 20, 1999 obtained by the Operating Agency viz. Industrial Development Bank of India. Also perused the affidavit of Respondent No. 5 dated October 26, 1999 with regard to the aforesaid Auditor''s report. In the said affidavit in para 4, it is very clearly pointed out that almost a sum of Rs. 592 lakhs have been paid, which payments/ entries apparently appear to be of doubtful nature. The said affidavit also points out various deviations committed by the Respondent Nos. 1 and 2, as per Auditor''s report.

2. Mr. Gonsalves, the learned Counsel for the petitioner has brought to our notice the order of B.I.F.R. dated February 13, 1996 wherein the Promoters have categorically undertaken to induct the deficit in the required funds for implementation of the scheme from their own sources to ensure that the projections of the scheme are strictly adhered to. The said order also records that the Company''s representative had agreed to the same and also confirmed that the Company''s performance is gradually improving and its cash losses are

going down.

3. Mr. Gonsalves, the learned Counsel for the Petitioner also brought to our notice the relevant provisions in the sanctioned modified rehabilitation scheme of the B.I.F.R. wherein it is also provided that in case of any delay in realisation of sale proceeds of the flats, the Promoters will ensure that adequate funds required as per provisions of the scheme are inducted from their own sources so that implementation of the scheme as per stipulated time framed is not affected. Hence, we issue Rule.

4. From time to time, directions are given for the payment of wages of the workmen. The learned Counsel for the petitioner, Mr. Gonsalves states that the workmen have been paid wages only upto May 1999 and for the subsequent period the workmen have not been paid wages.

5. The learned Counsel Mr. Cama for Respondent Nos. 1 and 2 has pointed out the financial inability of Respondent Nos. 1 and 2 to pay the wages of workmen.

6. Mr. Gonsalves, the learned Counsel for the petitioner has also brought to our notice an order dated January 28, 1998 passed by this Court in Writ Petition No. 97 of 1998 - Girni Kamgar Sangharsha Samiti and Ors. v. Khatau Mackanaji Spinning and Weaving Co. Ltd. and 8 Ors. wherein also the B.I.F.R. was seized of the matter and the workmen were not being paid their wages. He also brought to our notice the judgment of Gujarat High Court in Textile Labour Association Vs. State of Gujarat and Others, and the judgment of the Supreme Court in the case of Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd., .

7. The Supreme Court in the aforesaid judgment in the case of Workers of Rohtas Industries v. Rohtas Industries Ltd. (supra) in Paragraph No. 6 has held as under:-

"6. 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 sometime and the Official Liquidator is directed to explore possibilities of tapping other sources for raising funds to meet those liabilities. The workmen have been facing challenge to their lives and this Court on the earlier occasion indicated that in fixing priorities, saving of human lives should be paramount. We endorse that view. That has been the consideration for postponing payment of the public dues, if necessary."

The Gujarat High Court in the aforesaid case of Textile Labour Court Association v. State oj Gujarat, (supra) in Paragraph Nos. 20, 21, 24 & 25 has held as under:

"20. The question involved in this petition is of right to life and livelihood of 2700 workmen and their families. The Court cannot be oblivious of the fact that on account of closure of numerous mills in Ahmedabad, utterly miserable conditions have resulted for the families of the unemployed workmen. There have been instances of suicides because of utter economic hardships on account of unemployment of such mill workers. There have been cases of premature deaths because of lack of economic support, medical treatment and medicines. Many other undesirable consequences follow even driving the people to criminal activities including prostitution. In such miserable circumstances, if right to livelihood and a bare necessity of human dignity cannot be enforced, though guaranteed by the Constitution, the Court cannot justify its existence for the enforcement of fundamental rights. Article 21 guarantees at least that minimal".

21. In the present case, it is not in dispute that the workers have worked for these months and are entitled to wages. This fact is not disputed by the employer and cannot be disputed by anyone. When the Supreme Court observed in the aforesaid case that the workers have contributed their labour and it is as a result of their hard work that the stocks could be produced, therefore, it would rank in priority, the Supreme Court has recognised a kind of lien on the goods in respect of the wages of the workmen in respect of their unpaid wages and the goods produced by their labour. The Supreme Court was not deciding the question of priority in time as to whether this payment was required to be made as a preferential payment in view of its urgency. The contest was between the claim of wages of the workmen and the claim of secured creditors. 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. It is true that the Supreme Court has done this in the peculiar facts of that case and by a subsequent order has further stated that it shall not be treated as a precedent. Nonetheless, when the facts are identical, if the High Court adopts the same procedure, reasoning and approach, the High Court will be acting perfectly in accordance with law and justice. If High Court were to act otherwise it would be against law and justice.

24. The contention that the peculiar facts of Rohtas Industries case were different has also no merit. It is submitted that in that case, the petition was under Article 32 of the Constitution, there was a winding up petition pending and a revival scheme was being evolved and the Supreme Court had found that other securities were sufficient and the interest of the Bank would not be jeopardised. These are the differences without distinction. None of these is a material difference. The relevant and material facts are identical namely that thousands of families of workmen were deprived of their livelihood inspite of having actually worked and produced goods and out of sale proceeds of those goods, they were not being paid their wages. In view of these peculiar and crucial facts, the Supreme Court has passed the order and while doing so, the Supreme Court had brushed aside various -claims of financial institutions which were secured creditors. Not only that, the Supreme Court has gone further and brushed aside even the higher priority of dues of public revenue and taxes and directed that the workmen should be paid their wages first and thereafter if there is any surplus, it would be paid towards the sales tax and excise duty and the claim of the secured creditors would come thereafter and for going to that extent and fixing priorities,

the Supreme Court has observed that the saving of human lives should be paramount and that view has been endorsed again in the case of Rohtas Industries (supra), and it was observed that even the payment of public dues has to be postponed for saving human lives.

25. A similar view has been taken by another Division Bench of this Court in the case of Amruta Mills referred to earlier. In that case also, following the Supreme Court judgment, the High Court had given priority to the payment of wages for the period for which the workers have already worked, over the claim of secured creditors."

8. In view of the observations in the aforesaid judgments we are of the prima facie view that where the wages of the workers are undisputedly due, the financial inability of the Company is of no defence for non-payment of wages of workers.

9. Hence, we direct the Respondent Nos. 1 and 2 to pay the wages of the workmen for the month of June, 1999 onwards and continue to do so. This should be done within a period of six weeks from today, through the no lien account of Punjab National Bank in favour of the Prothonotary and Senior Master, High Court, Bombay, in order to pay the wages of the workers.

10. We also direct the Respondent No. 6 B.I.F.R. to proceed with all the applications, pending before it and decide the same within a period of 12 weeks from today.

11. Liberty to the parties to move this Court is granted.

12. Court Stenographer is permitted to issue an ordinary copy of this order.

13. Parties to act on an ordinary copy of this order duly authenticated by the Associate.

