

(2001) 09 PAT CK 0072
In the Patna High Court
Case No : C.W.J.C No. 10804 of 2001

H.M.P. Sugars Limited

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(3)

Citation : (2001) 4 PLJR 589

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Y.V. Giri, Jyoti Sharan and Raju Giri, for the Appellant; Uma Shankar Pradhan, for Commissioner, S.K. Sinha and K.K. Sinha for Bank, for the Respondent

Judgement

Aftab Alam, J.—The Petitioner is a company incorporated under the Indian Companies Act, 1956. It has a sugar mill at Bagaha in the district of West Champaran and it is the fining of the mill which appears to be at stake in this case.

2. The Petitioner has filed this writ petition seeking to challenge an order of attachment dated 23.7.2001 (Annexure-7) issued by the Employees Provident Fund authorities. The attachment order has been issued for realisation of the arrears of employer's contribution for the period October, 1994 to December, 1998. After making adjustment of certain payment made by the Petitioner, the total demand is for a sum of Rs. 1,54,94,068.00 paise, the break up of which may be stated as follows:

1. Dues of Employer's- contribution towards the Provident Fund Rs. 1,03,09,497.75 paise
2. Statutory interest - Rs. 8,24,662.00 paise
3. Penal damages - Rs. 43,11,165.00 paise

Rs. 1,54,94,068.00 paise

3. On the face of it the demand made by the Employees Provident Fund authorities is perfectly valid and legal. But in the given facts and circumstances of this case if the EPF authorities are left free to recover their demand by adopting coercive means against the Petitioner company, the consequences are likely to be highly detrimental to the cane growers, apart from the workers of the sugar mill (in whose interest and on whose behalf the authorities may be proceeding) and others who may be dependent on the running of the Mill. Hence, this Court feels compelled to intervene in this matter in the larger interests of justice.

4. Some basic facts which are not in dispute need to be stated here in brief; the sugar mill is struggling to get back on its legs. It is sick and the matter of its rehabilitation is pending before the Board of Industrial and Financial Reconstruction (BI & FR in short) which is also in seisin of the issue of the Provident Fund dues against the Petitioner.

5. In the recent past the sugar mill has been facing grave law and order problems. Two years ago the Cane Manager of the sugar mill was killed within the mill premises by some anti socials. On 28.5.2000 the Accountant of the sugar mill was assaulted in the mill premises and the occurrence gave rise to a criminal case instituted at the Bagha P.S. Faced with financial stringencies and law and order problems the sugar mill issued a notice on 28.5.2001 declaring lock out. But the State Government prohibited the lock out by notification dated 16.6.2000 issued in exercise of the power u/s 10(3) of the Industrial Disputes Act, 1947. The writ Petitioner sought to challenge the government notification, dated 16.6.2000 before this Court in C.W.J.C. No. 7770 of 2001. this Court disposed of the writ petition by order dated 6.7.2001, declining to interfere with the government notification prohibiting the lock out in the sugar mill. So far as the law and order problem was concerned this Court made the following observations:

Having heard learned Counsel for the parties and having considered the facts and circumstances, this Court is of the opinion that the Petitioner should move the appropriate authority under the Police Act, namely, D.G.P./I.G. for police protection and security, whereupon the authority concerned shall consider the matter and take appropriate steps with all promptness so that the Petitioner may not face any difficulty in carrying out the direction of the Government issued in exercise of the power u/s 10(3) of the Act, vide Annexure-1.

6. Thus left with no option but to run the sugar mill, the Petitioner entered into an agreement with the representatives of the cane growers, Mill workers and others in a meeting held on 19.7.2001 and presided over by the District Magistrate, West Champaran. The minutes of the meeting and the terms and conditions of the agreement are to be found at Annexure-4. The agreement provides that the sale proceeds of the sugar in stock will be divided in the ratio of

81% and 19%; 19% of the sale proceeds of the sugar in stock will be used by the Mill Management for payment of wages to the workmen, repairs and maintenance of the Mill and other incidental expenses while the balance 81% of the sale proceeds of the sugar in stock will go towards the payment of cane suppliers for the year 2000-2001. On the basis of the agreement an statement of account has been worked out at Annexure-5 to the writ petition which presents the following position:

1. Sugar Stock in Godown 2. Total Value of Sugar @ 1350/- per Qts 44039 Qts.
Rs. 5,94,52,650.00

3(a) As per agreement dated 19.7.2001, 81% of the sugar sold to be paid to the cane growers i.e. Rs. 4,81,56,646.50

(b) 19% of the sugar sold to be paid for workers salary & wages, repairs & maintenance, Chemicals, parts and other expenses i.e. Rs. 1,12,96,003.50

7. It is thus to be seen that practically every penny of the sale proceeds of the sugar in stock is accounted for and until the next crushing season starts from December, 2001 the Petitioner will not be in a position to raise any further mc for payment of other dues, including demand of the Employees Provident Fund authorities as contained in Annexure-71 this writ petition.

8. In these circumstances if demand is allowed to be realised by attachment of property or by other measures it is likely to lead to the for closure of the sugar mill. This in turn] result into grave adversity to the who will be deprived of their monthly wages, apart from the cane growers and appliers who will face great difficulties in fitting payment for the supplies made by (Sic) during the year 2000-2001.

9. Having regard to these facts and distances this Court suggested (on the previous occasion) when this case was taken up for hearing the desirability to evolve a scheme that should not only muse the payment of the past dues of the Employees Provident Fund authorities but also the survival of the Mill on which were dependent the livelihood of the workers, the cane growers and others. this Court is pleased to note that the suggestion was received positively by the unties of the Employees Provident and today Mr. Pradhan, learned Sr. counsel appearing on their behalf filed a parliamentary counter affidavit in which a is suggested for realisation of the in instalments. The plan as stated in paragraph 10 of the supplementary counter affidavit is as follows:

10. That thus on consideration of entire facts the Respondents are agreeable to relax coercive measures if the Petitioner agrees to the following proposal:

(i) 20% down payment of the total assessed dues within a week.

(ii) Balance amount to be paid in equal instalments by 31st March 2002, flling which recovery officer will be free to take coercive steps.

(iii) All dues for the retired/terminated employees be deposited forthwith.

(iv) All arrears and current dues be for the retiring/other employees simultaneously with their order of superannuation/termination to the Respondents that their claims may be settled at the earliest.

10. It is thus to be seen that the EPF authorities are only willing to give the Petitioner six months time (three months from the next crushing season) to clear off all dues.

11. Though this Court appreciate? the concern of the authorities to recover their dues as much and as early as possible, it regretfully notes that the scheme of payment suggested by the authorities is wholly impracticable in the facts and circumstances as stated above.

12. It is noted above that till the start of the next crushing season from December, 2001, every penny of the sale proceeds of the sugar in stock is accounted for and in terms of the agreement, dated 19.7.2001 the Petitioner has no control over the money. 81% of the sale proceeds of the sugar in stock is to be paid to the cane growers under the control and supervision of the District Administration and an officer is to be posted at the Mill to keep a watch over the sale of the sugar in stock and the distribution of the sale proceeds as per the agreement. The Petitioner, therefore, are not in a position to make payment of 20% of the past dues within a week.

13. Having given my due consideration to the scheme suggested by the Employees Provident Fund authorities and having heard Mr. Y.V. Giri, learned Sr. Counsel appearing for the Petitioner and Mr. Pradhan, learned Sr. Counsel appearing for the Authorities, I propose to make the following scheme for payment as an order of the court:

(a) The Petitioner company will make payment, within 15 days from today, of the Employer's contribution in respect of all employees of the sugar mill who have retired from service and whose claims for payment of Provident Fund dues are pending before the authorities.

(b) Similarly the Petitioner will pay the employer's contribution in respect of all workmen/employees, who may retire in future, on or before the date of their retirement.

(c) As regards the past dues, the payment of the penal damages amounting to Rs. 43,11,165.00 paise may await and abide by the decision given by the BIFR or the Central Board of Trustees of the Employees Provident Fund, whom the Petitioner may move by filing a representation for waiver/reduction of the penal damages.

(d) The balance dues (comprising the actual dues of the employer's contribution plus the statutory interest thereon) calculated till 30.11.2001 will be paid by the Petitioner company in 72 equal instalments. The payment of first instalment will fall due on 1.12.2001 and the succeeding instalments will be paid by the 7th day of the next succeeding months. The Provident Fund Authorities will work out the

amount of the actual employer's contribution plus the statutory interest accruing thereon upto 30.11.2001 and give a copy of the statement to the Petitioner within six weeks from today

(e) The payment of dues in instalments will be subject to accrual of statutory interest on the unpaid balance till the entire dues are cleared off.

(f) A sum of Rs. 28 lacs being slightly over 25% of the dues shown in annexure will be paid by 31.3.2002.

(g) Apart from the past dues the payment of which shall be made in the manner indicated above the Petitioner will also be liable to pay the current dues of employer's contribution from 1.1.2002. The current payments will be made as and when those payments are due.

(h) The impugned attachment order, as contained in Annexure-7, will remain in abeyance as long as the Petitioner adheres to the mode of payment indicated by this Court. In case of failure on the part of the Petitioner to comply with any of the directions made above, the Authorities will be free to realise the dues by attachment or by any other coercive means as may be permissible in law.

14. This writ petition stands disposed of with the aforesaid observations and directions.