

(2009) 03 BOM CK 0133
In the Bombay High Court
Case No : Case No. 1 of 2009

In Re: Various Companies (In Liqn.)

Date of Decision : 17-03-2009

Acts Referred:

Citation : (2009) 5 BomCR 393

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : A.A. Kumbhakoni and Molina Thakur, C.U. Singh and P. Ramarao, Official Liquidator, for the Appellant;

Judgement

A.M. Khanwilkar, J.—Heard Counsel for the parties.

2. Preliminary objection is taken by the Counsel representing the employees (in all 57) working in the Office of the Official Liquidator as Company Paid Staff. According to Mr. Kumbhakoni, the direction prayed in the report of the Official Liquidator dated 7th January 2009 cannot be considered, much less, granted, as it would be in excess of the scope for exercising review jurisdiction.

3. The argument though attractive at the first blush, overlooks the basic distinction that the present proceedings are essentially governed by the provisions of the Companies Act r/w Company Court Rules. The inhibition regulating review jurisdiction specified in Order 47 of the CPC will have no bearing on the present proceedings. Significantly, the order of which clarification is sought by the Official Liquidator was passed in Chambers on the report presented before the Company Judge. The concerned employees were not heard at all.

4. Be that as it may, I am also in agreement with the submission canvassed on behalf of the Official Liquidator that the subject report dated 7th January 2009 is essentially in continuation of the direction given by this Court on 3rd October 2008 and not a review of that order as such. Indeed, the subject report refers to the decision of the Apex Court which is pronounced subsequently on 4th November 2008 and invites the attention of the Company Judge to consider the

relief/direction now sought. Thus understood, it is not a case of review of the order dated 3rd October 2008 as such. The said order dated 3rd October 2008 was passed on the report submitted by the Official Liquidator dated 30th September 2008. It is not a speaking order at all. It merely approves the direction sought by the Official Liquidator in the said report in terms of prayer clauses (a) and (b) thereof, which reads thus:

(a) Whether this Hon"ble Court may be pleased to permit the Official Liquidator to revise the pay of the Company Paid Staff working in this office in terms of the recommendations of the VIth Pay Commission with effect from 1st January 2006;

(b) If order in terms of prayer (a) above is in the affirmative, whether this Hon"ble Court may be pleased to permit the Official Liquidator to calculate the pay on revised rates w.e.f. 1st January, 2006 and submit a further report to this Hon"ble Court seeking sanction of payment.

5. Significantly, the latter part of prayer Clause (b) is indicative of the fact that the direction given in prayer Clause (a) was to remain in inchoate situation till the final sanction was accorded by the Company Judge on submission of further report. If that is the purport of the direction given, it does not result in vesting of any right in the employees as such. The question of vesting of any right would have arisen only if it were to be a final direction or sanction accorded on the further report to be submitted by the Official Liquidator in terms of order dated 3rd October 2008.

6. It is not in dispute that before submission of the further report, the Apex Court had occasion to examine the question, interalia, as to whether the Company Paid Staff can claim parity with the regular staff working in the Office of the Official Liquidator. The Apex Court has ruled in its decision dated 4th November 2008 in Civil Appeal No. 2985 of 2007 in the case of Official Liquidator Vs. Dayanand and Others, that the employees who are working in the Office of the Official Liquidator as Company Paid Staff are not entitled to have their pay fixed in the regular scales and other monetary benefits at par with regular employees working in the same office. This is obviously a statement of law which will bind not only this Court but even the Company Paid Staff working in the office of the Official Liquidator, High Court of Bombay.

7. Indeed, Counsel for the Company Paid Staff submits that in the past, benefits similar to one derived by the regular staff was extended by this Court to the Company Paid Staff. It is submitted that, therefore, it would be inappropriate to discontinue that regime for the future and fix the pay-scale of the Company Paid Staff at a lower scale than that of the regular employees or deny them benefit of 6th Pay Commission. The argument clearly overlooks that the benefit which was extended to the Company Paid Staff in the previous years was for the relevant period only. For future period, the question will have to be now tested on the basis of the decision of the Apex Court.

8. I am conscious of the fact that in the same decision the Apex Court has given

liberty to the concerned Official Liquidators to move the respective Company Courts for increasing the emoluments of the Company Paid Staff and such request should be sympathetically considered by the Courts and the emoluments of the Company Paid Staff be suitably enhanced and paid subject to availability of the funds. Taking clue from the said observation, the Official Liquidator has submitted a Scheme regarding fixing the pay of the Company Paid Staff as indicated in Exhibit C to the said report. The Official Liquidator has suggested that the Company Paid Staff can be offered package which would suitably compensate them. At the same time, not recognise them on par with the regular employees. Even the Counsel for the employees submits that at least two other High Courts have already finalised such Schemes giving benefit of 6th Pay Commission to the Company Paid Staff working in the respective Offices of the Official Liquidators attached to that Court. In the first place, those decisions are not produced before me. Therefore, I do not have the advantage to comment upon as to whether the same view can be taken even by this Court.

9. Moreover, to my mind, the fact that other High Courts have already granted benefit to the Company Paid Staff as per the 6th Pay Commission cannot be the sole basis to straight away accept the claim of the said employees. For, several aspects will have to be factored-in before evolving a package to be offered to the Company Paid Staff and keeping in mind the exposition of the Apex Court that they cannot claim parity with the regular employees. Even for this reason, the argument of the Company Paid Staff does not commend to me. Notably, the Counsel for the Official Liquidator has rightly invited my attention to the observation of the Apex Court (in Paragraph 72 of the unreported Judgment), which has explicitly ruled that the approach adopted by the High Courts in fixing the pay of the Company Paid Staff on par with the regular employees was clearly erroneous and directions given for bringing about parity between the Company Paid Staff and regular employees in the matter of pay, allowances are liable to be upset. Keeping in mind, the said dictum, the Company Paid Staff employees working with the Official Liquidator cannot be allowed to contend to the contrary.

10. Having regard to the fact that the Apex Court has already directed the Government of India to frame a Scheme for absorption of eligible and suitable employees against Group D posts, which Scheme ought to be modelled on the 1999 Scheme, ideally, for the same reason, it would be appropriate that the Government of India should evolve a Policy with regard to the principle that should be adopted to offer pay package to the Company Paid Staff, keeping in mind the observations of the Apex Court that the Company Paid Staff are not entitled to have their pay fixed in the regular scales and claim for other monetary benefits at par with the regular employees. If the Government of India were to evolve such a Policy and Scheme that would apply across the board to all the Company Paid Staff working in the different Offices of the Official Liquidator attached to the respective High Courts throughout India. That would obviate the possibility of further litigation on the ground of equal pay for equal work. It is for this reason instead of straight away accepting the recommendation of the Official

Liquidator founded on the plan indicated in Exhibit C to this report, to my mind, the appropriate course is to direct the Official Liquidator to seek instructions from the Government of India as to whether the Government of India would be inclined to consider framing of a policy or scheme regarding the pay package to be offered to the Company Paid Staff working in the Offices of the Official Liquidator in different States throughout India. It is for this limited purpose, I would defer passing of any direction as is sought on the subject report dated 7th January 2009.

11. Copy of this order be forwarded to the Secretary, Ministry of Corporate Affairs forthwith, who, in turn, shall issue necessary instructions to the Official Liquidator within two weeks from its receipt so that further directions can be issued, as may be advised. The Official Liquidator assures to transmit copy of this order to the Secretary, Government of India on fax/e-mail. That assurance is accepted.

12. Needless to observe that till final order is passed by this Court on the issue of fixation of pay and allowances, etc. of the Company Paid Staff, the direction given in order dated 3rd October 2008 shall remain in abeyance. This observation is necessitated as I am informed that employees working as Company Paid Staff have issued notice to the Official Liquidator threatening to invoke contempt action against him.

13. The matter be now listed on 9th April 2009 at 3.00 p.m.