

(1987) 02 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No"s. 6741 of 1986 etc.

M. Lingaraju

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-02-1987

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 72, 72 (3)

Citation : (1987) ILR (Kar) 1788

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : H. Subrahmanya Jois and K. Subba Rao, for the Appellant; N. Santosh Hegde, General, S.G. Sundaraswamy and G.S. Ullal, Bhoopalam Associates, N. Basavaraju, Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Chandrakantaraj Urs, J.—These petitions are disposed of at the stage of preliminary hearing after notice to respondents. They are disposed of by this common order as questions of law, and to some extent the questions of facts are common to all the petitions.

2. In Writ Petition No. 6896/1986, the petitioners are workmen of Gouribidanur Sahakara Sakkare Karkhane Limited, represented by the employees Union, both of the workers as well as the officials. In Writ Petition No. 6897/1986 the petitioners are workmen of Gouri Industries (Distillery) represented by Gouri Sugar Factory (Distillery) Employees' Union, by its President. The respondents are State of Karnataka, the Director of Sugar and Additional Registrar of Co-operative Societies in Karnataka, Sri R.L. Jalappa, Minister for Co-operation, Government of Karnataka the Management of Gouribidanur Sahakara Sakkare Karkhane (in Liquidation), the Management of Gouri Industries (Distillery) represented by its partners, the Union of India, New Delhi and the Chief Director of Sugar, New Delhi.

3. In Writ Petitions Nos. 6741 to 6830 of 1986 one M. Lingaraju and 89 others are the petitioners and they are the workers of the third respondent Sri Mahadeswara Sahakara Sakkare Karkhane Limited of Kunthur, Kollegal in Mysore District. Respondents are the State of Karnataka, the Director of Sugar and Additional Registrar of Co-operative Societies in Karnataka, the Management of Sri Mahadeswara Sahakara Sakkare Karkhane Limited (in liquidation) and its liquidator. Similarly in Writ Petition No, 7249 of 1986, the petitioners are the workmen of Sri Mahadeswara Sahakara Sakkare Karkhane Limited represented by Employees' Union, Kunthur, Kollegal.

4. Essentially in all the petitions, the prayer is to quash the order of liquidation passed in respect of these two Cooperative Sugar Factories.

The additional prayer of the workers of the Co-operative Sugar Factories questioning their retrenchment need not be gone into by this Court, as it amounts to by-passing the particular legislation which governs the act of retrenchment in industry. Anything said, would otherwise prejudice the workers' right to agitate independently that question in the appropriate manner and in accordance with procedure prescribed by the Industrial Disputes Act.

5. In the result, what essentially falls for determination in these cases, which are disposed of by this common order, are the following questions :

1. Whether the workers have a right to be heard before an order of liquidation is passed by the Registrar of Cooperative Societies, u/s 72 of Karnataka Co-operative Societies Act (hereinafter referred to as "the Act") ? and if so, whether the impugned orders of liquidation passed by the second, respondent in Writ Petitions Nos. 6896 and 6897 of 1986 (Annexure-A) and in Writ Petition No. 7249/1986 (Annexure-B) are to be quashed?

2. Whether the delay in passing the order in the case of Gouribidanur Sahakara Sakkare Karkhane Niyamita, vitiates that order (Annexure-A in Writ Petitions Nos. 6896 and 6897 of 1986).

3. Whether the said order at Annexure-A in the first mentioned Writ Petitions is vitiated as the same is instigated by the Government and the Minister for Co-operation the third respondent, and therefore, is an order resulting from malafide exercise of power?

4. Whether, as a consequence to the impugned orders at annexures "A" and "B" in the above petitions, the termination of the workers' services is vitiated, and therefore, should be declared void? and,

5. Whether, this Court, exercising its jurisdiction under Article 226, may rehabilitate the Co-operative Society and set aside the liquidation?

6. Some of the facts are not in controversy. Such matters which are in controversy shall be adverted to with reference to the pleadings such as the statement of objections filed by the respondents or the records made available

by the State.

7. Mr. Subba Rao, who has submitted the arguments, which indeed have been adopted by Mr. H. Subramanya Jois and others, has derived much support in furtherance of the contention raised in the first question mentioned above, on the decision of the Supreme Court in the case of National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, , National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, In that case, the Supreme Court has undoubtedly ruled that the workers of a company (registered under the Companies Act, 1956) are entitled to appear at the hearing of the winding up Petition, whether to support or to oppose it so long as no winding up order is made by the Court. It is, therefore, contended that the orders at Annexure-A and B now impugned in these Petitions, as earlier indicated by the orders, are made without hearing the workers of the Cooperative Sugar Factories, run and managed by the respective co-operative societies, and therefore, the orders are opposed to the Rules of natural justice and the inherent rights of the workers.

8. To accept this contention, this Court has a number of limitations. The first of them may be mentioned as that limitation is statutory. Section 128 of the Act expressly prohibits the application of the provisions of the Companies Act (sic) to the Co-operative Societies incorporated or registered under the Karnataka Act. Section 128 reads as follows :

"128 Companies Act, 1956, not to apply-The provisions of the Companies Act, 1956 (Central Act 1 of 1956), shall not apply to Co-operative Societies."

9. The plain and categorical language of the Section does not require any judicial elucidation. The Court must adhere to the legislative mandate. Even otherwise, the circumstances under which the Supreme Court has ruled in favour of the workers being heard in National Textile Workers Union's Case supra, are totally different from the facts of the cases on hand. A liquidation of a company incorporated under the Companies Act is by the Court. That is, the Company Court. Elaborate procedure is prescribed for the winding up of a company. One such step in procedure prescribed is the publication of the fact of the filing of the petition in the Company Court being advertised for notice of the public. An order made by the Company Court in the winding up proceedings under the Companies Act is a Judgment in Rem as it binds all who are affected by the winding up of the company. The company's business may affect a multitude of people. Some times, it may be in public interest when the winding up is at the instance of a creditor who is entitled to move for such winding up. Some time, it may not be in public interest to do so despite the case made out for winding up. But opportunities are given to the creditors and others to participate in the proceedings either in support of the winding up order or in opposition to it. That procedural right is what is declared in favour of the workers in the National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, In fact, the Supreme Court has taken the precaution to say emphatically that where the winding up order has been made by the Company Judge, the workers have no

right to be heard. It is only before such an order is made and when the workers have approached the Court for being heard, they are required to be heard. The Company Court is also under no obligation to issue notices to the workers of its own or at the instance of others. Therefore, that decision does not lay down any clear proposition of law that in all winding up cases, whether they are under the Companies Act, the Co-operative Societies Act, or any other law, which provides for winding up or liquidation of a registered body corporate, the worker or workers of such body corporate are entitled to be heard. Therefore, the impugned orders have not violated any rules of natural justice as nothing is required to be complied with on the facts of these cases.

10. The next question which falls for determination is really confined to the Writ Petitions Nos. 6896 & 6897 of 1986. That is the question of delay in passing the order. The argument advanced by Mr. Subba Rao was that the Co-operative Society in question had been superseded as early as on 5-11-1981 and an Administrator appointed by the Government in exercise of the powers of the Registrar u/s 30 of the Act. Thereafter, there was investigation u/s 64 and inspection u/s 65 of the Act and only five years after supersession the liquidation Order had been passed which itself would be fatal to the validity of the order.

11. I do not think the contention is founded on correct statement of facts. The impugned order itself discloses that in addition to the supersession u/s 30 of the Act, the Gouribidanur Sahakara Sakkare Karkhane Niyamita had been declared u/s 3 of the Karnataka Relief undertaking (Special Provisions) Act, 1977, as a sick unit. Even earlier in the year 1980 itself, the Joint Registrar of Co-operative Societies, Bangalore Division, had been appointed as an Enquiry Officer and in his report submitted on 28-8-1984, he had observed several irregularities committed by the Karkhane i.e. the sugar factory. It was, thereafter, that an inspection was ordered u/s 65 of the Act on 22-8-1985. Soon after the inspection, the order has been passed directing liquidation. Therefore, I do not see any delay in the passing of the order which could be said to establish some motivation or malafide intention resulting in the illegality of the order. Therefore, the second question also must be answered in favour of the respondent-State.

12. The third question is again peculiar only to the petitioners in Writ Petitions Nos. 6896 and 6897 of 1986. It is alleged that the third respondent Sri Jalappa who is a Cabinet Minister at the relevant time and continues to be so, having contested the election to the Lok Sabha from a constituency of which Gouribidanur is a part, not having secured the support of the workers, has wrought vengeance by having the factory liquidated so that the workers are without work. He is said to hold the portfolio for Co-operation.

13. Normally such a vague allegation would not have been countenanced by this Court much less dealt with. The concerned Hon"ble Minister has filed an affidavit denying the allegations and pointing out how he has, despite the odds, as the Minister for Co-operation, assisted in securing financial assistance of over 80 lakhs to the Co-operative Society that runs the factory in order to see that it was

rehabilitated. He has asserted with facts and figures of all the help and assistance that he rendered, which was of no consequence in so far as rejuvenation of the Sugar Factory was concerned. Therefore, it is difficult to believe that the third respondent had any thing to do with the liquidation of the Gouribidanur Sahakara Sakkare Karkhane Niyamita. Nor can the Government be said to have instigated the passing of the impugned order at Annexure-A. The instigation is said to be a letter written by the second respondent on 19-2-1986, less than a month before the impugned order was passed. It refers to the liquidation of the two Co operative sugar factories with which we are concerned. The Government has done no more than informing by that letter that it has no objections for the Director of Sugar and the Additional Registrar of Cooperative Societies, to pass an order of liquidation. Having regard to the fact that the Government itself had taken over the management in 1981, in order to put one of the factories on an even keel, and despite its attempt, failed to do so, can lead to no other conclusion but that out of helplessness the Government expressed its "no objection" to the winding up. In all probability it was consulted in regard to the liquidation because the State Government was the largest creditor of both the sugar factories. Therefore, such indication of no objection cannot be equated with what Mr.Subba Rao calls instigation. Therefore, that question also must be answered in favour of the respondents and against the petitioners.

14. I have already stated that the fourth question is a matter which should be agitated by the petitioners not under Article 226, under the provisions of the Industrial Disputes Act, 1947. If they raise a dispute and the Government refers such dispute, the appropriate Tribunal will give adequate opportunities to the workmen to make out their case as to how termination at Annexure-N in Writ Petitions Nos. 6896 and 6897 of 1986 and Annexure-C in other Writ Petitions amount to illegal termination, I, therefore, do not propose to examine that question at all in these proceedings where no evidence may be recorded and where that is certainly not permitted normally.

15. Therefore, what remains to be answered is the last question, i.e., whether this Court may rehabilitate the two co-operative sugar factories in exercise of its jurisdiction under Article 226 of the Constitution. Mr.Subba Rao has argued that the powers of the High Courts are wide and do not preclude the Court from initiating steps that would rehabilitate the factory to ensure work to the workers. He relied on the observations of the Supreme Court in the case of E.I.D. Parry (India) Ltd. v. State of Tamilnadu AIR 1985 SC 73. In the said case, the Nellikuppam Sugar Factory, owned by the appellant, therein had been closed as it was unable to make any profits despite certain attempts made to improve the profitability of that factory which was one of the oldest sugar factories in South India. The workmen there had raised certain disputes based on settlements reached with the management. The matter had gone before the Tribunal. The Tribunal had made an award by which it justified the closure. The same was challenged in the Supreme Court. It is in that context that the Supreme Court, in exercise of its jurisdiction under Article 42, disposed of the same providing for a

scheme of rehabilitation of that factory. On facts, the case on hand and the case before the Supreme Court are not similar. In E.I.D. Parry's case, the sugar factory was one of the many factories or other undertakings of the Company. The Company was not in liquidation. It only closed down one of its establishments. Therefore, the Supreme Court had no difficulty in proposing a scheme of rehabilitation which was acceptable to both the parties. Here, at no point of time, was there a scheme proposed by the petitioners for scrutiny and acceptance of the Court much less its implementation. Therefore, however laudable it may be to resurrect and rehabilitate a sick unit which provides employment for a large number of people, and therefore to a large number of families, it cannot be done in vacuum. In any event, from the records it is seen that the liability incurred by these two sugar factories runs into several crores of rupees and the Government itself has found it unable to rehabilitate the two factories with all the vast resources it has. Therefore, the question of this Court exercising jurisdiction under Article 226, wide as it may be, to rehabilitate the factories, does not arise in the absence of any concrete proposal nor even the disclosure of the sources of funds which the petitioners seek to generate by which the rehabilitation becomes possible.

16. In any event, it is always open to them to approach the Registrar u/s 72(3) of the Act, to recall the order of liquidation on giving him such satisfaction as may be necessary which may induce him to cancel the order made for winding up the Co-operative Societies.

17. In any event, this Court must notice once again that provision has been made to lodge an appeal, but none have appealed. For all these reasons it is not possible for this Court to embark on the examination of the feasibility of a rehabilitation programme assuming that this Court has power to do so under Article 226. Therefore, the matter must be left there and no more.

18. Mr. Subramanya Jois appearing for the workers in the latter mentioned petitions has pointed out that the unit has now been sold by the liquidator and some entrepreneur has purchased the same and he has infact rehabilitated the factory. If that is so, all laws in aid of the employees who had lost job will automatically come into play and those rights of those employees cannot be denied if they seek to enforce them in the appropriate forum. Even in regard to the employees of the Gouribidanur Sahakari Sakkare Karkhane Niyamita, it must be observed that in the event of any rehabilitation of that unit, the Government will ensure employment to those who were originally employed there and take all such necessary steps to do so at the appropriate time.

19. In so far as the plea against the lessee of the Gouribidanur Sahakari Sakkare Karkhane Niyamita, the 5th respondent is concerned, the lease itself is an asset in the hands of the liquidator and it is for him to decide whether the lease should continue or should be discontinued. Therefore, this Court is unable to see how he is a necessary party or how the order of liquidation impugned in the first of the two petitions is liable to be set aside, particularly when his lease was granted

some years ago i.e. in the year 1979 before the Gouribidanaur Sahakari Sakkare Karkhane Niyamita came Under the Administrator u/s 30 of the Act. The liquidator in deciding the fate of all assets is bound to act in good faith and best interests of the Co-operative Society (in liquidation) and certainly in accordance with law.

20. For all the above reasons these are not cases in which this Court is able to give relief. The petitions are misconceived. The petitions are, therefore, rejected.