(2005) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No. 587 of 2003

Mazdoor Sangh (INTUC) and Another APPELLANT

Vs

State of M.P. and Another RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:
Constitution of India, 1950 — Article 21
Provisions of Gratuity Act, 1972 — Section 25(N), 25(O), 7(3A)

Citation : (2005) 4 MPHT 16

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : S.H. Moyal, for the Appellant; L.R. Bhatnagar, Government Advocate, for the Respondent

Judgement

N.K. Mody, J.—Vide order dated 6-10-2004, this Court has passed the order as under :- Shri Moyal contended that in absence of any order u/s 25(O) or 25(N), the workers continue to be in the employment of the Mill even today and are entitled for the wages but looking to the financial difficulties, workers are willing to forego their wages from 1-4-2000 provided they are paid their bonus, leave encashment and salary upto 31-3-2000. It was also contended that financial difficulties is not a defence for the non payment of the wages and other dues payable to the workers. Shri Trivedi is, therefore, granted four weeks time to examine the whole matter and to submit proposal to indicate how the Govt. is going to meet the dues of the workers. In the meanwhile petitioner shall also submits it proposal to the Managing Director of the Shri Sajjan Mills Limited. The Office bearers of the representative Union shall meet the Principal secretary, Commerce and Industry and the Managing Director within two weeks to work out the solution.

2. Vide order dated 8-11-2004, it was directed that "respondent No. 1 is granted time till 6-12-2004 to take final and concrete decision on the compromise proposal statement of the petitioners which has been filed alongwith D.O. dated

12-10-2004. It is made clear that if no decision is taken on the said compromise proposal by the Government by the next date of hearing, this Court shall be constrained to pass some orders on the said compromise proposal". In spite of considerable time, since no concrete proposal was submitted, therefore, vide order dated 7-3-2005, last opportunity was given to the respondents to submit the concrete proposal in compliance of the order passed earlier by this Court.

3. On 5-3-2005 the reply of the petition has been filed, but no concrete proposal was submitted. Thereafter on 23-3-2005, the proposal has been submitted by the respondents which reads as under :-

"1. State Government will endeavour to settle the over dues with the banks and financial institutions with whom the assets are mortgaged in a period of 60 days maximum. Once the bank''s and financial institution''s dues are settled, the State Govt. will pay the settled amount out of its own resources.

2. Once the bank''s dues are settled the property of SSML will be out of mortgage and the State Govt. proposes to sell the assets by constituting an apex level empowered committee. The assets sale committee will formulate the guidelines for sale and try to conclude the sale of assets of SSML in a maximum of six months. The Government has decided that the workers dues amounting to Rs. 7.28 crores will be met out of the sale proceeds of assets.

3. The claims of all unsecured creditors including Govt. dues and dues of the Govt. undertakings would be settled from any surpluses after settling the workers dues."

4. Vide amendment application I.A. No. 3143/05, permission is sought to amend the proposal by reducing the figure from 7.28 crores to Rs. 705.28 lacs.

5. Learned Counsel for the petitioner Shri S.H. Moyal submits that in spite of taking considerable time, no concrete proposal have been submitted by the respondent No. 1. It was further submitted that in the order dated 6-12-2004 itself it was made clear that financial difficulties is not a defence for non-payment of wages and other dues payable to the workers. Learned Counsel for the petitioner placed reliance on a decision reported in AIR 2005 SC 926, Kapila Hingorani v. State of Bihar, wherein the matter of non-payment of salary for years of Employees of Public Sector Undertakings Hon''ble Supreme Court has observed that it is the Constitution obligation towards a section of citizens, viz., the employees of the public sector undertakings who have not been paid salaries for years. It was further observed that the directions to the State of Bihar asking for payment of salary to the employees have been made on the premises that they are not bound to pay the salaries of the employees of the public sector undertakings but on the ground that the employees have a human right as also a fundamental right under Article 21 which the States are bound to protect. It was also observed that the direction which has been issued is in furtherance of the human and fundamental rights of the employees concerned and not by way of any enforcement of their legal right to arrears of salaries. The amount of salary

payable to the concerned employees or workmen would undoubtedly be adjudicated.

6. Learned Counsel for the petitioner submits that the amount of salary and other benefits which are payable amount to Rs. 3375 lacs up-to-date but instead of claiming of that amount only an amount of Rs. 705.28 lacs payable on 15-9-1999 is claimed. If it is paid to the employees of the petitioner/Union immediately, the petitioner gave that offer. Since the amount has not been paid in time, therefore, the said offer is no more in force and the employees of the petitioner/Union are entitled to recover the entire amount. Learned Counsel for the petitioner further submits that out of the amount of Rs. 705.28 lacs an amount of Rs. 17.5 lacs is the outstanding towards gratuity which carries interest u/s 7(3A) under the Provisions of Gratuity Act, 1972 for which a reliance has been placed on 2003 SCC 257 (H. Ganga Hanume Gowda v. Karnatak Agro Industries Corporation Ltd.). It was further submitted that the amount of Rs. 705.28 lacs which has not been paid to the employees of the petitioner which was due as arrears on 15-9-1999 towards bonus, leave encashment, retrenchment compensation and gratuity.

7. The properties of Sajjan Mill Limited have been taken over by the respondent No. 1, therefore, it is the responsibility of respondent No. 1 to make the payment of dues which are payable to the petitioner.

8. Since the proposal which has been submitted by the respondent No. 1 is not satisfactory. This petition is disposed of with the following directions :-

(1) The respondent No. 1 shall make the payment as admitted on 15-9-1999 for Rs. 705.28 lacs to the petitioner. Out of which Rs. 17.5 lacs which is the amount of gratuity shall carry interest as per Section 7(3A) of Payment of Gratuity Act, 1972.

(2) An amount of Rs. 148 lacs being arrears of the salary of the employees for the period from January, 1999 to 15th of September, 1999 will be paid by the respondent No. 1 to the petitioner/Union on or before 30th June, 2005. The balance amount of Rs. 557 lacs shall be paid by the respondent No. 1 to the employees of petitioner/Union within a period of 8 months from today alongwith interest on the amount of gratuity.

(3) If the amount is not paid in the aforesaid stipulated time then the amount shall carry interest @ 6% per annum.

(4) It will be the responsibility of the Officers who were present before the Court on 24-3-2005 that the order of this Court has been complied with in letter and spirit. Even if the matter is not settled between the State Government and the Bank or the property is not sold then the amount can not be withheld.

9. With the aforesaid observations, this, petition is disposed of. No order as to cost.

