
(2011) 10 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Company Appeal No. 26 of 2004 (O and M)

Raj Kumar and others

APPELLANT

Vs

M/s. Ravindra Pharmaceuticals Pvt. Ltd. and others

RESPONDENT

Date of Decision : 05-10-2011

Acts Referred:

Companies Act, 1956 — Section 529, 529(3), 529A, 530
Compensation Act, 1923 — Section 14, 14A, 14B
Constitution of India, 1950 — Article 38, 43
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11, 11(2), 7A, 7Q, 8
State Financial Corporations Act, 1951 — Section 46B

Citation : (2013) 2 ACC 112 : (2013) ACJ 326 : (2012) 2 ILR (P&H) 1

Hon'ble Judges : Hemant Gupta, J;G.S. Sandhawalia, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—Challenge in the present appeal is to an order passed by the learned Company Judge of this Court on 9.9.2004, whereby the claim of the appellants for satisfaction of Award of compensation under the provisions of the Workmen's Compensation Act, 1923 (for short `Act'), in its entirety was dismissed holding that the dues of the appellants stand satisfied on pari passu basis with the dues of the other secured creditors.

2. The appellants are legal heirs of six workmen, who were amongst 8 workmen who died in an accident in the factory of the respondents on 26.12.1989. In an application to claim compensation under the Act, the Commissioner under the Act awarded to the appellants total sum of Rs. 5,34,298/- with interest as per the Award dated 20.12.1993.

3. On the other hand, the unit of respondent No. 1(for short `the Company') was taken up by the Haryana Financial Corporation in exercise of the powers conferred u/s 29 of the State Financial Corporation Act, 1951, on account of defaults committed by it in not discharging its liability. The respondent-Company was also ordered to be wound up on 4.2.1994 and the Official Liquidator

attached to this Court, had taken over the assets of the Company.

4. In the process of settling the claim of secured creditors, the claim of the workmen was ordered to be satisfied on pari passu basis by the learned company Judge in his order dated 10.8.1999. The Corporation deposited the payment of said compensation on pari passu basis. The appellants filed an appeal against the said order passed by the learned Company Judge for the reason that the appellants have not been heard before passing such order. Such appeal was decided on 3.10.2000, when the following order was passed:-

Learned counsel appearing on behalf of the applicantappellants prays for permission to withdraw the appeal and the application for condonation of delay in filing the appeal, with liberty to move the Company Court for payment of compensation awarded to the deceased workmen, without prejudice to the plea that they are entitled to payment independently and not pari-passu with dues of the other creditors.

Leave and liberty granted.

The application and appeal are dismissed as withdrawn.

5. The appellants claimed preferential payment in terms of Section 14-A of the Act through a separate application. The learned Company Judge has passed an order dated 9.9.2004 on such application filed by the appellants declining the claim of the appellants for satisfaction of workman's claim in its entirety. The present appeal is directed against such order.

6. Learned counsel for the appellants has vehemently argued that the Commissioner under the Act has awarded a total sum of Rs. 5,34,298/- on 20.12.1993 i.e. prior to the winding up order passed by this Court on 4.2.1994. Since the payment of compensation to the legal heirs of the deceased-workmen, is part of the social welfare legislation, therefore, the same will prevail over the general law contained in Sections 529 and 529-A of the Companies Act, 1956. Section 14A of the Act contemplates that in case of transfer of assets of an undertaking without satisfaction of the claim of the workmen, the amount of compensation shall be first charge on that part of the assets so transferred. Since, the sale of the assets of the Company is without satisfying the claim of workmen, therefore, such transfer shall not affect the right of the workmen to claim the compensation amount in its entirety.

7. On the other hand, Shri Kamal Sehgal, learned counsel for the Haryana Financial Corporation, has argued that the workmen's dues rank pari passu in terms of Section 529A read with Section 529 of the Companies Act, 1956. The workmen dues include the compensation awarded to the workmen under the Act in terms of Clause (iii) of Section 529 of the Companies Act, 1956. Since such provisions have been inserted vide Companies (Amendment) Act 35 of 1985 i.e. much later than insertion of Section 14-A in the Act vide Act No. 8 of 1958 with effect from 1.6.1959, therefore, the provisions of latter statute, i.e. Companies

Act shall prevail over the provisions of the Act. It is also argued that in terms of Section 46-B of the State Financial Corporation Act, 1951 inserted by the Act No. 56 of 1956 on 1.10.1956, the dues of the Corporation have to be paid in priority, notwithstanding any other law in force, which includes the provisions in the Act i.e. Section 14-A. It is contended that keeping in view the constitutional scheme, if two Central Statutes have been given overriding effect, it is the latter statute, which prevails, as the legislature, while enacting such latter statute is deemed to have legislated the same, considering the earlier law.

8. Before, we discuss the respective arguments of the learned counsel for the parties, certain statutory provisions are required to be reproduced:-

Section 46B of the State Financial Corporation Act, 1951

(w.e.f. 1.10.1956 vide Act No. 56 of 1956)

Effect of Act on other laws.-The provision of this Act and of any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.

Section 14A of the Workmen's Compensation Act, 1923

(w.e.f. 1.6.1959 vide Act No. 8 of 1958)

Compensation to be first charge on assets transferred by employer.- Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.

Sections 529 and 529-A of the Companies Act, 1956

(with effect from 24.5.1985 vide Act No. 35 of 1985)

9. The relevant object and reasons of such incorporation of such provisions, read as under:-

Another announcement made by the Finance Minister in his Budget speech relates to the decision of the Government to introduce necessary legislation so that legitimate dues of workers rank *pari passu* with secured creditors in the event of closure of the company and above even the dues to Government. The resources of companies constitute a major segment of the material resources of the community and common good demands that the ownership and control of the resources of every company are so distributed that in the unfortunate event of its liquidation, workers, whose labour and effort constitute an invisible but

easily perceivable part of the capital of the company are not deprived of their legitimate right to participate in the product of their labour and effort. It is accordingly proposed to amend sections 529 and 530 of the Companies Act and also to incorporate a new section in the Act, namely, Section 529A (vide clauses 4, 5 and 6 of the Bill).

529A. Overriding preferential payment.-Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company-

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section

(1) of section 529 pari passu with such dues,

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.]

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(ii) For the purposes of this section, section 529A and section 530,-

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923) rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of-

(i) the amount of workmen's dues; and

(ii) the amounts of the debts due to the secured creditors.

10. We have heard learned counsel for the parties at some length and find that there is no dispute with the argument raised that in case of two Central Statutes covering the same field and having overriding effect over all other laws, it is the latter statute, which will prevail. Section 14A in the Act has been inserted later than Section 46B in the State Financial Corporation Act, 1951 and that the

amendment in the Companies Act is subsequent to the insertion of Section 14A in the Act.

11. The issue in the present case is not simplicitor earlier or latter statute, but it needs to be examined whether the Act is a special legislation enacted for the welfare of the workmen and in case of the deceased workmen, for their dependents viz-a-viz the Companies Act more particularly Section 529A of the said Act and if so whether the provisions of Section 529-A of the Companies Act, 1956 shall give way to the provisions of the special statute i.e. Workmen Compensation Act, 1923?.

12. The Companies Act, 1956 is a Statute governing private and public limited Companies and the procedure for incorporation and winding up. It also deals with the preferential creditors and the manner of distribution of the assets amongst the secured and unsecured creditors and also the shareholders. Similarly, the State Financial Corporation Act, 1951 gives a right to a State Financial Corporation under the aforesaid Act to help industrialization in the State with the financial assistance and also to recover the financial assistance through a speedy and efficient manner from all classes of borrowers, who have availed financial assistance from the State Financial Corporations. The question whether a statute is a General Statute or Special Statute is required to be examined in the context of purpose and objectives of such statutes. Therefore, a provision in a statute can be a Special vis-à-vis another provision in another Statute.

13. The Hon'ble Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, was dealing with the conflict between two statutes i.e. Industrial Disputes Act, 1947 and the Life Insurance Corporation Act, 1956. The Supreme Court found that the Industrial Disputes Act, is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. It was held as under:-

To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperilled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful coexistence, to the benefit of both-not a neutral position but restraints on laissez faire and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its spirit, but also its sense.

14. The Hon'ble Supreme Court in R.S. Raghunath Vs. State of Karnataka and

another, has held that General Law does not abrogate an earlier Special Law by mere implication. Reference was made to the latin maxim "Generalia specialibus non derogant", i.e. where there are general words in a latter Act, capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, the earlier law is not to be held special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so. The Court held to the following effect:-

xxx The non-obstante clause is sometimes appended to a section or a rule in the beginning with a view to give the enacting part of that section or rule in case of conflict, an overriding effect over the provisions or Act mentioned in that clause. Such a clause is usually used in the provision to indicate that the said provision should prevail despite anything to the contrary in the provision mentioned in such non-obstante clause. But it has to be noted at this stage that we are concerned with the enforceability of special law on the subject inspite of the general law. In Maxwell on the Interpretation of Statutes, Eleventh Edition at page 168, this principle of law is stated as under:-

A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words," where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the s pecial Act.

(Emphasis supplied)

15. In Maharashtra State Co-operative Bank Ltd. Vs. The Assistant Provident Fund Commissioner, the Supreme Court held that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short the EPF Act) is a social welfare legislation intended to protect the interest of the weaker sections of the Society i.e. the workers employed in factory and other establishments, therefore, it is imperative for the Courts to give a purposive interpretation to the provisions contained therein keeping in view the Directive Principles of State Policy embodied in Articles 38 and 43 of the Constitution. In the aforesaid case, the controversy was whether the assets of the Sugar Mills pledged by the borrower in favour of the appellant-Bank could be attached and sold for realization of the provident fund dues payable by the employer under the EPF Act. The Court was considering Section 11(2) of the EPF Act inserted vide Act No. 40 of 1973 with a non-obstante clause. The Court referred to earlier judgment in Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, and held to the following effect:-

31. We shall now consider the question whether the provision contained in Section 11(2) of the Act operates against other debts like mortgage, pledge, etc. Answer to this question is clearly discernible from the plain language of Section 11. The priority given to the dues of provident fund, etc. in Section 11 is not hedged with any limitation or condition. Rather a bare reading of the section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression "all other debts" in both the sub-sections. This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as non statutory and secured as well as unsecured debts including a mortgage or pledge. Sub-section (2) was designedly inserted in the Act or ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. It is, therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by sub-section (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all types of debts.

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63. At the cost of repetition, it is apposite to mention that Section 11 is declaratory in nature. Sub-section (2) thereof declares that any amount due from an employer shall be deemed to be first charge on the assets of the establishment and shall be paid in priority to all other debts. For recovery of the amount due from an employer which is treated as arrear of land revenue, the Recovery Officer or any other authorized officer has to take recourse to the provisions contained in Section 8 read with Sections 8-B and 8-F.

16. The Court also held that even the interest payable in terms of Section 7-Q of the EPF Act and the damages imposed u/s 14-B of the Act, are also inclusive of the provisions of Section 11(2) of the Act. It was observed that the legislature was also aware that in case of delay, the employer is statutorily liable to pay interest in terms of Section 17 of the Act. Therefore, there is no plausible reason to give a restricted meaning to the expression "any amount due from the employer" and confine it to the amount determined u/s 7-A or the contribution payable u/s 8. The Court rejected the contention that the amount of interest does not form part of the amount due from the employer for the purposes of Section 11(2) of the Act.

17. In *Central Bank of India Vs. State of Kerala and Others*, , the provisions of Section 14A of the Act vis-?-vis the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short the "DRT Act") and Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (for short the "Securitization Act"), came up for consideration. The Court found that neither the DRT Act nor the Securitization Act can be invoked for declaring that the first charge is created in favour of Banks, Financial Institutions and other secured creditors for recovery of their dues or enforcement of security, as the case may be as such provision is not in tune with Section 14-A of the Act. It was held that such Acts do not create first charge in favour of the Bank, financial institutions or other secured creditors and the provisions contained in Section 35A of the Bombay Act are not in consistent with the provisions of DRT Act or Securitization Act, so as to attract a nonobstante clause contained therein.

18. Recently in *Offshore Holdings Private Ltd. v. Bangalore Development Authority and others*, 2011(3) Supreme Court Cases 139, the Constitution Bench of the Supreme Court, while considering the conflict between the Bombay Development Act and the Land Acquisition Act, observed as under:-

64. It is an established principle of law that an Act should be construed as a complete instrument and not with reference to any particular provision or provisions. "That you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it", said Lord Halsbury. When a law is impugned as ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do so one must have regard to the enactment as a whole, to its object and to the scope and effect of its provisions. It would be quite an erroneous approach to view such a statute not as an organic whole but as a mere collection of sections, then disintegrate it into parts, examine under what head of legislation those parts would severally fall and by that process determine what portions thereof are intra vires, and what are not [Reference can be made to A.S. Krishna's case (supra)].

19. The provision contained in Section 14A of the Act, is part of a social welfare legislation enacted to protect the interest of the workmen and their dependents in case of an accident during the course of the employment of the workmen. No other statute deals with such rights of the workmen enacted to compensate the injuries or loss of life during the course of their employment. Neither the Companies Act nor the State Financial Corporation Act, deals with such rights of the workmen. Therefore, though the Section 14A has been inserted prior to insertion of Section 529A of the Companies Act, 1956, but is a special legislation.

20. In respect of the compensation payable to the workmen or their dependents in the case of an unfortunate event of losing life by the workmen, priority has been given to the payment of such compensation u/s 14-A of the Act. Though sub-section (3) of Section 529 of the Act, deals with the workmen dues which includes the amount due in respect of compensation or liability for compensation under the said Act, but if workmen's dues are payable to the workmen in terms of the Award prior to sale of assets, such dues have to be given priority in terms

of Section 14-A of the Act. The definition of the workmen's dues as contained in Section 529(3) includes the compensation payable to the workmen even after sale of assets of the Company but the preference is to the Award before the sale of assets of the Company. Such special provisions will prevail over the general provisions of the Companies Act. The expression employer in Section 14A shall include its transferees" such as State Financial Corporation, therefore, in terms of such provisions, the liability accrued prior to transfer of asset has to be met from the asset alone.

21. The Companies Act, 1956 was amended in the year 1985 vide Central Act No. 35 of 1985 whereby Section 529-A and sub section (3) was inserted in Section 529. Such provisions were inserted to protect the rights of the workmen to claim their dues from the assets of the industrial concern having charge in favour of a secured creditor(s). The wages or the salary payable to the workmen in the absence of the provisions of Section 529A would not get preferential payment in the event of sale of the assets secured by the secured creditors. But in respect of the dues of the workmen on account of loss of life during the course of employment, Section 14A protected the rights of workmen. The provisions of Section 529A if strictly applied acts to the detriment of the dependents of the deceased and injured workmen. The intention of the law makers was to protect the rights of the workmen and not to curtail their rights.

22. In view of the purpose of the Act and the legislative history of the different provisions of the statutes, we are of the opinion that the workmen's dues as defined in sub-section (3) (iii) to Section 529 of the Act, will not include the compensation awarded under the Workmen's Compensation Act prior to the sale of the assets of the company. The measures introduced by Section 529-A, cannot be extended to abate the claim of the dependants of the deceased workmen. The Act gives priority of payment in terms of Section 14-A of the Act. Such contextual meaning has been extended keeping in view the provisions of preferential payment to the workmen's dues.

23. In view of the said fact, we accept the present appeal by setting aside the order passed by the learned Company Judge and direct that the respondent No. 2-M/s Haryana Financial Corporation shall pay the entire amount of compensation payable to the dependents of each of the workmen with interest as awarded by the Commissioner under the Act. Such payment shall be paid within three months.