

(2008) 12 KL CK 0051

In the High Court Of Kerala

Case No : C.A. No. 829 of 2008 in C.P. No. 2 of 1996

Rajeev Shenoy K.R., Trustee of Premier Cable Provident Fund	APPELLANT
Vs	
Official Liquidator, High Court of Kerala	RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Companies Act, 1956 — Section 529, 529(1), 529(3), 529A, 530
Industrial Disputes Act, 1947 — Section 2, 25O, 25O(8)

Citation : (2009) 152 CompCas 592 : (2009) 3 ILR (Ker) 244 : (2009) 3 KLT 447

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : D. Peethambaran, for the Appellant; K. Moni, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Are the wages for the period after a company suspends the operations of its establishment before an order for winding up, part of workmen's dues entitled to overriding preference in payments in terms of Section 529A of the Companies Act, 1956 (hereinafter "the Act")?

2. The applicant was an employee in the officer cadre in the service of the company under liquidation and is the trustee of the Provident Fund (hereinafter referred to as "the PF Trust"), duly constituted and approved to cover the officer cadre employees of that company, in terms of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the PF Act"). He states that the company had to suspend its operations on January 26, 1991, due to labour unrest and the Board for Industrial and Financial Reconstruction (hereinafter "the BIFR"), declared it a sick unit on September 30, 1991, under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "the SIC Act"). Following the order for its winding up, issued by this Court on June 18, 1998, in C.P. No. 2 of 1996, the assets of the company-in-liquidation were taken over by the official liquidator ("the OL", for short). The claim of the PF Trust for preferential payment of rupees three hundred and twenty-five-lakhs u/s 529A of the Act is stated to be pending before the Division Bench in Company Appeal No.

10 of 2008.

3. According to the applicant, in adjudicating the claims, the OL has illegally allowed wages to the workers for the period from January 26, 1991, the date on which the company suspended the operations of its establishment, to June 18, 1998, the date of the order for winding up, treating such wages as a-secured debt of the company, though no worker had rendered any service to the company during that period. It is contended that Section 529A of the Act stipulates that only wages due for service rendered by the workers is to be treated as secured and that therefore, the OL has exceeded authority in treating the wages to the workers from the date of closure to the date of the order for winding up, that is from January 26, 1991 to June 18, 1998, as a secured debt. It is hence sought that the OL may be directed to stop any further payment of amounts towards wages to the workers for the period of closure before the order for winding up, and to recover such payments already paid by way of first dividend.

4. Learned Counsel for the petitioner argued that in terms of Section 529(3)(b)(i) of the Act, "workmen"s dues", in relation to a company, has to be determined as the aggregate of the amounts mentioned in that clause in respect of "services rendered to the company" and therefore, the eligibility to the "workmen"s dues" under that clause would be attracted only if services were actually rendered. It is argued that such dues cannot be paid when the establishment remained closed after January 26, 1991 and the workmen did not have the opportunity to render any service to the company.

5. Per contra, learned Counsel appearing for the OL, apart from calling to aid the overriding statutory provisions for the preferential payments to be made in terms of Section 529A of the Act, argued that there was no material for the OL to hold that the workmen were not entitled to "workmen"s dues" until June 18, 1998, the date of the winding up order and that the OL had already determined such amounts.

6. Section 529A of the Act reads as follows:

529A. Overriding preferential payments.--(1) Notwithstanding anything contained in any other provisions 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.

7. The afore-quoted statutory provision enjoins overriding preferential payments. The overriding effect so created is a preference that would run notwithstanding anything contained in any other provisions of the Companies Act or any other law for the time being in force. Section 529A of the Act is part of those provisions which govern the winding up, the date relevant for determination of the applicability of those provisions, being the date of the winding up order. The legislative sanction for judicial dissection of the corporate status is an incidence of the winding up order. It is that decision which germinates the process of winding up, ultimately, resulting in the liquidation of the company. Therefore, the date of the winding up order is of prime importance.

8. Section 529A of the Act confers upon a company court, the duty to ensure that the workmen's dues are paid in priority to all other debts in accordance with the provisions of that section. The Legislature has amended the Act in 1985 with a social purpose, viz., to protect dues of the workmen. The effect of Sections 529 and 529A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues, provided there exists secured creditor by contract. The purpose of Section 529A is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues and such charge will be *pari passu* with the charge of the secured creditors. A combined reading of Sections 529A and 529 indicates that notwithstanding anything contained in any other law for the time being in force or in the Companies Act itself, there is a preferential payment provided for workmen's dues and debts due to the secured creditors to the extent such debts rank under Clause (c) of the proviso to Section 529(1) *pari passu* with such dues. Therefore, when the assets of the company are sold and the proceeds realised, the debts by way of workmen's dues and that of the secured creditors have to be paid in full if the assets are sufficient to meet them and if they are not sufficient in equal proportions. For support, see (i) *A.P. State Financial Corporation Vs. Official Liquidator*, , (ii) *Textile Labour Association and Another Vs. The Official Liquidator and Another*, and (iii) *Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another*, .

9. In this context, the phrase "workmen's dues" is of great significance and that is why the Legislature has given a particular definition for the purposes of Sections 529, 529A and 530 of the Act. Clause (b)(i) of Sub-section (3) of Section 529 of the Act provides an extensive definition for the term "workmen's dues". The provisions in Sub-clauses (ii), (iii) and (iv) of Clause (b) of Section 529(3) of the Act are relevant for the purpose of bringing various components to which the workmen are entitled to under the concept of socialism in the Indian Constitution, into the sweep of the process of winding up of the establishment of his employer, which would also be essentially co-terminus with the ultimate liquidation of the company. Sub-clause (iv) of Section 529(3)(b) of the Act brings a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company, also within the term

"workmen's dues". This is sufficient legislative material which would provide intrinsic tool to understand the scope of the words "services rendered to the company" in Sub-clause (i) of Clause (b) of Section 529(3) of the Act. Clause (b) (i) of Section 529(3) of the Act provides that all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission, in respect of "services rendered to the company", is payable as part of "workmen's dues", apart from the other components, including compensation referable to the provisions of the Industrial Disputes Act, 1947 (for short "the I.D. Act"). The words "services rendered to the company" have very wide magnitude and are intended to indicate that whatever, whichever and wherever it is available, that benefit shall come to the workmen. This is a measure of legislative protection in a welfare State with civilized and socialist goals. The wisdom behind this, is that the process of liquidation of a company should not result in the liquidation of the workmen. The Constitution and the laws continue to shower their gaze to ensure that the social security measures available to workmen, are to be protected and honoured, since those measures are extended to a class of socially challenged and under-privileged sector of the society. Therefore, in entertaining any plea as one in hand, the constitutional mandate is that no restrictive approach is to be adopted in the matter. The manner in which Section 529(3)(b)(i) of the Act has to be understood is that, whatever one may call it; wages, salary earnings for time or piece work, wholly or in part; anything to come to the workman as remuneration or for being in employment, has to come to the workman. The employment of the words "services rendered to the company" in Section 529(3)(b)(i) of the Act is only to enlarge the scope of that provision to ensure that nothing escapes from that which is the entitlement of a workman. It can never be understood as a restriction to be read as one legislatively imposed; whereby every claim for wages, salary, etc., would have to be tested on a touchstone as to whether any service has been actually and physically rendered to the company by the workman in question. Any workman in employment could be legitimately forced to the situation of cessation from employment, only by the recognised methods. There is no plea for the petitioner that there was a closure of the establishment by the permanent closing down of a place of employment or part thereof, which is the meaning of the word "closure", in terms of Section 2(cc) of the I.D. Act. He has also no case that Section 25-0 of the I.D. Act was followed for closing down the undertaking of the company. The situation of the workmen being confined to the compensatory provision in Section 25-0(8) of the I.D. Act arises only when the undertaking is permitted to be closed down or closure is deemed to be granted. The petitioner has no such case. Except in cases where there is severance of the relationship between the employer and the workman in terms of the modalities recognised by the labour laws; under Sub-section (i) of Section 529(3)(b) of the Act, the question of refusal of "workmen's dues" would not arise. In the case in hand, the plea of the petitioner is only that the industrial activity of the establishment of the company was suspended. That is why the petitioner pleads in paragraph 4 of his affidavit that the company had to suspend its operation on January 26, 1991,

due to labour unrest. There is no plea that the jural relationship between the workmen of the establishment was legally broken up by any of the recognised methods referable to the provisions of the I.D. Act or otherwise.

10. For the aforesaid reasons, the contention of the petitioner that the workmen of the company, M/s. Premier Cable Company Ltd., were not eligible to be treated as having rendered services to that company between January 26, 1991 and June 18, 1998, is wholly unsustainable. That plea is rejected.

11. In the result, this company application fails and the same is accordingly dismissed. No costs.