

(2022) 03 OHC CK 0031

In the Orissa High Court

Case No : Writ Petition (Civil) No. 10228 Of 2006

Ramesh Chandra Pani

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Cooperative Societies Act, 1962 — Section 68

Citation : (2022) 03 OHC CK 0031

Hon'ble Judges : Dr. S. Muralidhar, CJ; R.K. Pattanaik, J

Bench : Division Bench

Advocate : Manoj Kumar Mohanty, S.N. Das, A. Mohanty

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. The present petition has been filed challenging two orders, one is an order dated 12th August 2004 passed by the Directorate of Textiles, Orissa ordering that a sum of Rs.14,16,442.40 pursuant to an Award dated 1st November 2003 of the Arbitrator, Directorate of Textiles, Orissa is recoverable from the Petitioner and ordering that recovery from his salary under Rules 182 and 183 of the Orissa Treasury Code (OTC) commencing from the month of August 2004 till his retirement.

2. The further challenge in the present petition is to an order dated 17th April 2006 of the Orissa Administrative Tribunal (OAT), Bhubaneswar in O.A. No.1028 of 2004 whereby the application filed by the Petitioner challenging the above recovery order was dismissed. The OAT held that the absence of any attachment order by a Court of Law as required under Rule 182 of the OTC was a 'mere technicality' and that sufficient opportunity has already been granted to the Petitioner to pay the amount awarded against him. What weighed with the OAT was that the Petitioner never challenged the award which was passed after he

had contested the claim.

3. The background facts are that for the period between 23rd April 1984 and 1st August 1989, the Petitioner worked on deputation with the Orissa State Handloom Weavers' Co-Operative Society Limited, Bhubaneswar (Society). According to the Petitioner, long after he was repatriated to his parent Department in the Government of Odisha, he was informed that some shortage was detected on the basis of an audit report concerning the Society and the shortage was in the sum of Rs.7,92,046.08, which was liable to be recovered from him.

4. The dispute that ensued was referred to the Arbitrator under Section 68 of the Orissa Cooperative Societies Act, 1962 (Act) and was registered as Dispute Case No.2 of 1997. The Petitioner contested the case by appearing before the Arbitrator and making his submissions. On 1st November, 2003, the Arbitrator delivered a judgment/Award holding that the Society was entitled to recover from the Petitioner the aforementioned sum together with the interest @12% per annum from the date of filing of the dispute till the date of its realization.

5. On 22nd March 2004, the Secretary of the Society wrote to the Petitioner stating that in terms of the above Award/ Judgment, he was liable to pay the Society Rs.14,16,442.40 which included the interest amount. When the Petitioner did not respond to the above demand, the first impugned order dated 12th August 2004 was issued by the Directorate of Textiles, Orissa stating that the above amount would be recovered from the salary of the Petitioner under Rules 182 and 183 of the OTC commencing from August, 2004.

6. The Petitioner then challenged the above order before the OAT by filing OA No.1028 of 2004. Till the said petition was disposed of by the second impugned order dated 17th April 2006 of the OAT, there was an interim stay granted by the OAT restraining the Directorate of Textiles and Handlooms, Orissa as well as the Society from making any recovery from the Petitioner's salary pursuant to the order dated 12th August, 2004.

7. When the present petition was listed before this Court on 14th August 2006, while directing notice to issue in the petition, this Court ordered that no recovery would be made from the Petitioner "otherwise than in accordance with law relating to the execution of the award". The said interim order is continuing till date.

8. At the outset, Mr. Mohanty, learned counsel for the Petitioner informs the Court that the Petitioner has since superannuated. The main plank of his submission is that without instituting a proper execution proceeding, the Opposite Party- Society could not seek to recover any amount from the Petitioner pursuant to the Award in terms of Rule 182 of the OTC. Reliance is placed on the decision of this Court in *Swastik Agency v. State Bank of India*, 2009 (II) OLR 201. Mr. Moahnty also relied on the decision in *Competent Authority v. Barangore Jute Factory* (2005) 13 SCC 477 in which it was held that where a statute

required a particular act to be done in a particular manner, it had to be done in that manner alone.

9. Mr. Das, learned Additional Standing Counsel appearing for the State-OpPOSITE Parties points out that the Award dated 1st November 2003 became final. In other words, the Petitioner did not question the Award which required him to pay the Society over Rs.14 lakhs. Since the Petitioner made no effort to make any payment whatsoever, the Society had to resort to recovery by invoking Rule 182 of the OTC. In response to the plea that an execution proceeding should have been instituted, Mr. Das points out that throughout there has been a stay of further steps to be taken by the Society, first by the OAT and then by this Court. Therefore, there was no occasion for execution proceedings to be filed by the Society.

10. The above submissions have been considered. In the first place, it must be noted that the Award dated 1st November 2003 is categorical regarding the liability of the Petitioner to make payment to the Society of the principal sum of Rs.7,92,046.05 together with the interest @12% per annum. The Petitioner does not dispute that as on as 22nd March 2004, he was liable to pay the Society Rs.14,16,442.40. Even today before this Court Mr. Mohanty did not even for a moment suggest that the Petitioner is not liable to pay the Society the aforementioned sum. The burden of his song is only about the procedure. He repeatedly urged that without filing an execution proceeding, no step could be taken by the Society to recover even one paisa.

11. The fact of the matter is for nearly 18 years now and the Petitioner has succeeded in avoiding to make any payment towards the liability of Rs.14,16,442.40 which together with further interest calculated from that date would indeed be a very substantial sum. The Petitioner has superannuated in the meanwhile. Mr. Mohanty glibly states before the Court that he does not know what the net worth of his client is.

12. The Court exercising jurisdiction under Article 226 of the Constitution is also a Court of equity. It will have to be mindful of the interests of justice and ensure that in rigidly applying technical rules of procedure miscarriage of justice does not result. A handloom weavers' cooperative society which is owed over Rs.15 lakhs for over eighteen years has been rendered helpless in seeking to recover even a tiny fraction of the said amount an account of successive interim orders passed first by the OAT and then by this Court. There was no corresponding burden on the Petitioner to deposit at least some part of the said amount as a condition for stay to be granted. Meanwhile, the Petitioner has superannuated and the Court is not informed what his present assets are.

13. Turning to the decisions cited by the Petitioner, it is seen that in *Swastik Agency v. State Bank of India* (supra), the case arose under the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. What appears to have weighed with the Court was that

the property which was put to auction for recovering the dues of the Bank appeared to have been greatly undervalued. This is apparent from the following observation:

"71. It is evident that the property has been assessed at Rs.4.15 lakhs and reserve price was fixed at Rs.3.95 lakhs, but it has fetched the value to the tune of Rs.13.95 lakhs. The difference between the value assessed and value received is more than three times. Therefore, even by stretch of imagination, it cannot be held that the valuation has been made correctly. As a consequence reserve price had been fixed at a lower side and auction on the basis of such report cannot be held to be fair and reasonable as large number of persons who might have indulged in purchasing property of higher value like instant, had been misled and they did not participate. Thus the auction sale is stood vitiated."

14. Even while the Court in the said case set aside the auction sale it put the Petitioner there to terms as it should have while exercising its jurisdiction under Article 226 of the Constitution. It specifically required the Petitioner to deposit the re-computed demand from the Bank within four weeks from the date of receipt "failing which the bank shall be at liberty to proceed against the Petitioner for making full recovery of its outstanding dues in accordance with law." Therefore, even when the Court detected a procedural illegality, the relief was moulded to ensure that equities were balanced and that the defaulting party viz., the Petitioner in that case was not allowed to escape liability by not making any payment whatsoever.

15. The decision in *Competent Authority v. Barangore Jute Factory* (supra) was in the context of acquisition of land under the National Highways Act, 1956. A notification which specified a plot number, a part whereof was intended to be acquired, did not specify that part. It is in that context that it was held that the notification stood vitiated. The Court fails to appreciate how the said decision would come to aid of the Petitioner in the present context which has been outlined hereinbefore.

16. Even today, the Petitioner is not prepared to even make a statement about discharging the humongous liability he owes to the Cooperative Society. The Petitioner has avoided the admitted liability for over eighteen years now. Under Article 226 of the Constitution, the Court does not consider it to be a balance of equities to simply quash the impugned orders requiring recovery to be made from the Petitioner.

17. From the submissions of Mr. Das, learned Additional Standing Counsel, it appears that Opposite Parties are conscious of the requirement of having to comply with Rule 182 of the OTC and it is only because of the interim order of this Court that those steps were not taken.

18. In the circumstances, the Court sees no reason why it should interfere either with the order dated 12th August 2004 or subsequent order dated 17th April 2006 of the OAT. The interim order dated 14th August 2006 stands vacated. The

writ petition is dismissed. But, in the circumstances with no order as to costs..

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