
(2014) 03 RAJ CK 0151
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10192 of 2012

R.I.I.C.O. Ltd.

APPELLANT

Vs

Judge, Labour Court

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Companies Act, 1956 — Section 529, 529A, 529-A
Constitution of India, 1950 — Article 226, 227, 32
Industrial Disputes Act, 1947 — Section 25F, 25-FFF, 33-C, 33-C(2)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3
State Financial Corporations Act, 1951 — Section 29

Citation : (2014) 143 FLR 450 : (2014) LabIC 3062 : (2014) 2 LLJ 709 : (2014) 4 RLW 2895

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Sanjeet Purohit, Advocate for the Appellant; R.S. Saluja, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—These cases as per Schedule annexed, are being disposed of by this common order. These writ petitions have been filed by the petitioner-Rajasthan State Industrial Development & Investment Corporation ("R.I.I.C.O." for short), against the order of learned Labour Court, Bhilwara, passed u/s 33-C(2) of the Industrial Disputes Act, 1947, ("Act of 1947" for short) dated 14.06.2012. The brief facts, leading to filing of the present writ petitions by R.I.I.C.O. are like this.

2. A limited company incorporated under the Companies Act, 1956, known as Rajasthan Processors Engineering Ltd., Ajmer Road, Bhilwara (Employer/company), was the employer of the respondents/workmen. The said Employer/company, however, defaulted in repayment of the loans to the present petitioner-R.I.I.C.O. and in exercise of its statutory powers u/s 29 of the State Financial Corporations Act, 1951 (Act of 1951), the petitioner R.I.I.C.O., took over the

assets mortgaged with it and sold the same to one Kanchan (India) Pvt. Ltd. in the year 2007. The sale proceeds of the assets to the extent of approximately Rs. 2.51 crores, still fell short of the outstanding dues of the petitioner-R.I.I.C.O. and co financial company, viz. Rajasthan Financial Corporation (RFC) against the defaulter, R.P.L. (I) Ltd., Bhilwara.

3. The respondents/workmen, approached the learned Labour Court for payment of their dues of salary and wages, which was not paid to them, for the year 2000 when the said company was running and by the impugned order the Labour Court, Bhilwara, such dues have been determined by the Labour Court in the case of individual workmen by the impugned order and which total up to Rs. 14.90 lacs approx. The petitioner-R.I.I.C.O. was also impleaded as a party-respondent before the learned Labour Court along-with defaulter company R.P.L. (I) Ltd., who remained ex parte and did not defend or refute the said claim of the respondents/workmen u/s 33-C(2) of the Act of 1947; and the petitioner R.I.I.C.O. denied the said claim, inter-alia, on the ground that R.I.I.C.O. was not the "Employer" of the workmen and secondly, the R.I.I.C.O. was not liable to pay the said dues of workmen u/s 33-C(2) of the Act of 1947 as they were never a party to the Tripartite settlement of due salary and wages to the workmen. The said settlement dated 29.11.2000 was relied upon by the learned Labour Court for determining the said dues in favour of workmen. The three parties of the said settlement between the workmen were, (1) workmen through their Union, (2) Employer-Company R.P.L. (I) Ltd. and (3) Deputy Labour Commissioner, and the present petitioner-R.I.I.C.O. was not a party to the said settlement/agreement at all.

4. By the impugned order dated 14.06.2012, the learned Labour Court, however, has held that dues of the workmen determined u/s 33-C(2) of the Act of 1947, are liable to be paid by both the respondents, the company R.P.L. (I) Ltd. and the petitioner-R.I.I.C.O. and to the extent aggrieved by the same, the petitioner-R.I.I.C.O., has filed the present set of writ petitions before this Court under Articles 226 and 227 of the Constitution of India.

5. Elaborating the submissions before this Court, Mr. Sanjeet Purohit, learned counsel for the petitioner R.I.I.C.O. has urged that the Trade Union representing the cause of the respondents/workmen, namely, "Mahamantri, Bhartiya Processors Shramik Sangh, Bhilwara", has filed a writ petition before this Court, being S.B.C.W.P No. 4791/2006-Bhartiya Processors Shramik Sangh, Bhilwara v. State of Rajasthan and Others, including the company and the petitioner (R.I.I.C.O.) and in the said pending writ petition, an interim order has been passed by the learned Single Judge of this Court on 07.02.2007 to the effect that the petitioner-R.I.I.C.O., may proceed with finalizing the sale of the unit acquired by it, however, appropriate sale proceeds interest of the workmen (Petitioners of C.W. No. 4991/2006) may be safeguarded. The said writ petitioner representation by Mr. R.S. Saluja, is also being disposed of today in terms of this judgment. The said interim order dated 07.02.2007, is quoted herein below for

ready reference:

By order dt. 1.9.2006, notice to show cause as to why the writ petition be not admitted was ordered to be issued. Notices have been served. The matter comes up for orders on stay petition. Heard learned counsel for the petitioner and the learned Deputy Government Advocate appearing for the respondent State on stay petition. No one appears for the contesting respondents No. 2 to 5. During the pendency of the writ petition, the R.I.I.C.O. may proceed with finalizing the sale of unit acquired by it. However, while appropriating the sale proceeds, the interest of the petitioner may be safeguarded. The stay petition accordingly disposed of.

6. The petitioner-R.I.I.C.O. being aggrieved by the interim order dated 07.02.2007 filed intra-court appeal before the Division Bench of this Court being D.B.S.A.W. No. 301/2007-R.I.I.C.O. v. Bhartiya Processors Shramik Sangh, Bhilwara and Others, which however came to be disposed by the Division Bench of this Court, headed by Hon'ble the then Chief Justice, on 13.04.2007 upholding the said interim order in the following terms:

This appeal is directed against the order of the learned Single Judge dated 7.2.2007 in S.B. Civil Writ Petition No. 4791/2006. The relevant part of the order runs as under:

During the pendency of the writ petition, the R.I.I.C.O. may proceed with finalizing the sale of unit acquired by it. However, while appropriating the sale proceeds, the interest of the petitioner may be safeguarded.

We do not find any error in the order. While implementing the order it is open to the appellant R.I.I.C.O. to take appropriate decision with respect to the workers represented by Bhartiya Processors Shramik Sangh keeping in view of their interest as far as possible in accordance with law. It goes without saying that if the decision is adverse to the workers, it is open to them to seek remedy according to law.

With this observation the appeal is disposed of.

7. In the meanwhile, the Trade Union, had also filed a contempt petition for the alleged breach of interim order by R.I.I.C.O., which Contempt Petition No. 399/2007 in C.W. No. 4971/06-Bhartiya Processors Shramik Sangh, Bhilwara v. State and Others, however, was dismissed by the learned Single Judge of this Court on 17.03.2008 holding that the interim order dated 07.02.2007, upheld by the Division Bench on 13.04.2007 had left it open for the R.I.I.C.O. to take appropriate decision keeping in view the interest of the workmen as far as possible in accordance with law; and therefore, there was no breach either willful or deliberate disobedience of the non-compliance by the authorities of the R.I.I.C.O.. The short order dismissing the said contempt petition on 17.03.2008 is also quoted herein below for ready reference:

By the order dated 7.2.2007 an interim direction was given to the effect that the

R.I.I.C.O. may proceed with finalizing the sale of unit acquired by it, however, while appropriating the sale proceeds, the interest of the petitioner may be safeguarded. A challenge to the order aforesaid was given by the Rajasthan State Industrial Development and Investment Corporation Ltd., by way of filing a special appeal before the Division Bench of this Court and that came to be decided on 13.4.2007 in following terms:

Already quoted above.

While submitting the instant contempt petition it is alleged by the petitioner Union that the respondents have not adhered the directions given by learned Single Judge on 7.2.2007.

I have perused the order and also examined all relevant facts. The Division Bench by the order dated 13.4.2007 while affirming the order dated 7.2.2007 left it open for the R.I.I.C.O. to take appropriate decision represented by Bhartiya Processors Shramik Sangh keeping in view their interest as far as possible in accordance with law. It was also left open for the workmen that if they have any grievance with the decision taken, may seek remedy according to law. On consideration of the facts available on record I am of the view that whatever action taken by the respondents is not a willful or deliberate non-compliance of the direction given by this Court. The rights of the members of the petitioner-Union are yet to be adjudicated, as such, it is not a case where contempt proceedings be initiated against the respondents.

Accordingly, the contempt petition is dismissed.

8. Mr. Sanjeet Purohit, learned counsel for the petitioner-R.I.I.C.O. has also brought to the notice of the Court that in similar proceedings in the case of one workman, namely, Rajesh Jain, u/s 33-C(2) of the Act of 1947, (I.D. Case No. 49/2006 LC), the same Labour Court, Bhilwara, vide its order dated 09.03.2007 had clearly held that the petitioner - R.I.I.C.O. was not liable to square up the dues of the workmen u/s 33-C(2) of the Act of 1947 as it was not the Employer of the said workmen and only the Employer/company was so responsible and liable to pay these dues. He, however, submitted that the earlier order of the Labour Court, Bhilwara, dated 09.03.2007 exonerating the R.I.I.C.O. to pay the dues, unfortunately was not even noticed by the Presiding Officer of the Labour Court, Bhilwara, while passing the presently impugned order in respect of workmen on 14.06.2012.

9. It would be relevant to reproduce the findings of the Labour Court in its order dated 09.03.2007 with respect to present petitioner-R.I.I.C.O. in the following terms:

Vernacular matter omitted.

10. The Labour Court, Bhilwara, while passing the impugned order dated 14.06.2012 even though noticing the orders passed by this Court, affixed the liability to pay these dues on the petitioner-R.I.I.C.O., by allegedly placing

reliance on the orders passed by this Court and also the constitutional provisions, however, without specifying any statutory provision or constitutional provisions in the impugned order. The reasons assigned by the learned Labour Court in the impugned order dated 14.06.2012 may be extracted herein below for ready reference:

Vernacular matter omitted.

11. The learned Labour Court while passing the impugned order has thus relied upon the provisions of Section 25-FFF of the Act of 1947, which was quoted in the impugned order also, and is again quoted herein below for reference; and at the same time the provisions of Section 33-C of the Act of 1947, which are also relevant for this purpose are also quoted below herein below:

25FFF. Compensation to workmen in case of closing down of undertakings.-(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

[Explanation. --An undertaking which is closed down by reason merely of -

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

[(1A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if--

(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative

employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1B) For the purposes of sub-sections (1) and

(1A), the expressions "minerals" and "mining operations" shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).]

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [completed year of continuous service] or any part thereof in excess of six months.]

33C. Recovery of money due from an employer. [33C. Recovery of money due from an employer.-(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of 4 [Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer: Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; [within a period not exceeding three months:]

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such

period by such further period as he may think fit.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other 47 circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.--In this section "Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

12. Mr. Sanjeet Purohit, learned counsel for the petitioner, also urged by placing on record a communication dated 29.09.2007 addressed by the petitioner-R.I.I.C.O. to the President of Bhartiya Processors Shramik Sangh, Bhilwara, that the sale consideration of the mortgaged fixed assets of the company, R.P.L. (I) Ltd., was not even sufficient to satisfy the term loan even to the first charge holders, namely, R.I.I.C.O. and the R.F.C., and after the apportionment, there is no surplus amount available with the Corporation. The said communication is also quoted herein below for ready reference in extenso along-with details given for realization of dues of the first charge holders, R.I.I.C.O. and R.F.C.:

Dated: September 29, 2007

The President,

Bhartiya Processors Shramik Sangh,

11/97, Bhopalganj,

Bhilwara-311001 (Rajasthan)

Re: R.P.L. (India) Ltd., Ajmer Road, Bhilwara.

Sir,

Kindly refer to D.B. Civil Special Appeal (Writs) No. 301/2007 filed by R.I.I.C.O. before the Hon"ble Rajasthan High Court, Jodhpur.

In this regard, please find enclosed herewith the Order of the competent authority of the Corporation u/s 29 of the State Financial Corporations Act, 1951,

in respect to appointment of sale proceeds of fixed assets of R.P.L. (India) Ltd. Bhilwara. The residual amount of sale consideration of the fixed assets of R.P.L. (India) Ltd., Bhilwara, was even not sufficient to satisfy the term loan dues of first charge holders, namely, R.I.I.C.O. & R.F.C., hence after apportionment there is no surplus amount available with the Corporation. This is for your information.

Thanking you,

Yours faithfully,

Sd/-

(A.K. Gupta)

General Manager

Encl: As above.

13. Learned counsel for the petitioner also pointed out that after this communication, the aforesaid contempt petition was filed before this Court, which however came to be dismissed by the learned Single Judge of this Court and, therefore, the petitioner-R.I.I.C.O. could not be held responsible for paying the dues of the workmen, as has been held by the Labour Court in the impugned order.

14. He also brought to the notice of the Court that as per the provisions of Section 33-C(2) of the Act of 1947, dues are recoverable from the Employer only as the arrears of land revenue upon the certificate of that amount issued by the Collector, and therefore, the said recovery process as arrear of land revenue cannot over-ride the exercise of powers of R.I.I.C.O. u/s 29 of the Act of 1951, a Central legislation, and that process having been completed, way back in the year 2007, and the amount so realized, having been apportioned against the outstanding term loan of the first charge holders, namely, R.I.I.C.O. and R.F.C., the learned Labour Court, Bhilwara, has erred in still holding the petitioner is liable to be square up these dues of the workmen for the year 2000, determined u/s 33-C(2) of the Act of 1947 as the petitioner-R.I.I.C.O. has no concern with such dues of the workmen at this stage.

15. He also informed the Court that in the recent past, the Collector, Bhilwara, has sold some of the other assets of said defaulting company, R.P.L. (I) Ltd., for which the newspaper reports indicate that auction bid of Rs. 70.11 lacs has been made in the month of January, 2014 only and therefore, he urged that the dues of the workmen u/s 33-C(2) of the Act of 1947, can at best be satisfied by the Employer/company or by the learned Collector, Bhilwara, out of such realization of sale of said assets of the defaulting company, for which the petitioner-R.I.I.C.O. has no concern. He also relied upon the decision of the Hon''ble Supreme Court in the case of Central Bank of India Vs. Siriguppa Sugars and Chemicals Ltd. and Others, , which are also quoted herein below for ready reference:

There is no dispute that the sugar was pledged with the appellant Bank for securing a loan of the first respondent and the loan had not been repaid. The goods were forcibly taken possession of at the instance of the revenue recovery authority from the custody of the pawnee, the appellant Bank. In view of the fact that the goods were validly pawned to the appellant Bank, the rights of the appellant Bank as pawnee cannot be affected by the orders of the Cane Commissioner or the demands made by him or the demands made on behalf of the workmen. Both the Cane Commissioner and the workmen in the absence of a liquidation under Sections 529 and 529-A of the Companies Act, 1956, stand only as unsecured creditors and their rights cannot prevail over the rights of the pawnee of the goods. Thus, the rights of the appellant Bank over the pawned sugar had precedence over the claims of the Cane Commissioner and that of the workmen. The High Court was, therefore, in error in passing an interim order to pay parts of the proceeds to the Cane Commissioner and to the Labour Commissioner for disbursal to the cane growers and to the employees. Further, pending the writ appeals, the High Court ought not to have passed such an interim order of consequence especially in the light of the legal principles settled by the Supreme Court. Hence, the impugned order of the High Court, directing payment out of parts of the sale proceeds to the Labour Commissioner and to the Cane Commissioner is set aside. The appellant as the pawnee, is entitled to the amount in satisfaction of its debt to secure which the goods had been pawned, and to appropriate the sale proceeds towards the debts due and only if there is surplus, to make it available for disbursal to the Cane Commissioner and to the Labour Commissioner.

16. Learned counsel for the petitioner also relied upon the decision of Hon''ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, for the proposition that question of entitlement of the workmen about these dues claimed u/s 33-C(2) of the Act of 1947, cannot be adjudicated upon the Labour Court and it can only determine the dues upon a dispute being raised and the quantum thereof, can be so decided u/s 33-C(2) of the Act of 1947. He, therefore, urged that question of fixation of liability to pay these dues and entitlement of the workmen to recover the same from the petitioner-R.I.I.C.O. could not be even gone into by the Labour Court and thus is was without its jurisdiction to do so. The relevant extract of the judgment cited at Bar by the learned counsel for the petitioner in the case of Municipal Corporation, Delhi v. Ganesh Razaak and Others (supra) is quoted herein below for ready reference:

Where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the

entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. The power of the Labour Court u/s 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests. In the present case the claim of the respondent workmen who were all daily-rated/causal workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. Therefore, the applications made u/s 33-C(2) of the Act by these respondents are not maintainable.

17. Learned counsel for the petitioner also urged that there is no occasion of the workmen to make recovery pari-passu the claim of secured creditors, like the present petitioner and the provisions of Section 529 and 529A of the Companies Act, 1956, cannot be invoked here as to the best of his knowledge, no winding proceedings against the said defaulting company, are pending either before this Court or before the Company Law Board and, therefore, the said judgments which touch this aspect of the matter, are not relevant here and not applicable to the case in hand before this Court.

18. Mr. R.S. Saluja, learned counsel appearing on behalf of respondents/workmen has produced certain documents along-with additional affidavit. He submits that the petitioner-R.I.I.C.O., has already been in touch with learned District Collector, Bhilwara, for settling the dues of the workmen, which are determined to be Rs. 14.90 lacs, and out of the sale realizations of Rs. 70 lacs, from the sale of the land of the defaulting company, R.P.L. (I) Ltd., and the balance of the amount of Rs. 55.10 lacs has been asked by the R.I.I.C.O. from the District Collector so that same may be appropriated towards their still outstanding and balance amount of term loan, for the secured creditors i.e. R.I.I.C.O. and the R.F.C., as already stated above. Learned counsel for the

respondents/workmen also relied upon the communication dated 15/16.01.2014 (Annex.R/1/7 to C.W. No. 10548/2012) of the Chief General Manager, R.I.I.C.O., addressed to the learned District Collector, Bhilwara, which is quoted herein below for ready reference:

SPEED POST

F&R/R-834

15/1/14

The District Collector,

Bhilwara

(Rajasthan)-311001

Sub: Recovery of deficit term loan dues in cases of R.P.L. (India) Ltd.-Bhilwara.

Dear Sir,

It has been brought to the notice of the Corporation that land of the company is proposed to be auctioned at Rs. 70 lacs in accordance with orders of labour court against labour dues of Rs. 14.90 lacs. R.I.I.C.O. and R.F.C. had also granted term loan to the company and inspite of recovery from sale of the factory premises of the company there is still a substantial shortfall against term loan dues.

It is therefore requested to transfer the balance amount after adjustment of labour dues realised in the auction i.e. Rs. 55.10 lacs to R.I.I.C.O. so that the same may be appropriated as per policy between R.I.I.C.O. & R.F.C. towards satisfaction of their dues.

Thanking you,

Yours sincerely,

Sd/-

(A.K. Gupta)

Chief General Manager.

19. Mr. R.S. Saluja, learned counsel for the respondents/workmen also urged that some gratuity payments are also due to the workmen and the District Collector, should be directed to satisfy all the dues of the workmen out of such sale proceeds.

20. I have heard the learned counsel for the parties and perused the record and carefully considered the submissions made at Bar. It may pointed out here that the respondent, defaulting company, is not represented before this Court and the company had remained ex parte even before the Labour Court, hence, after hearing the learned counsel for the petitioner-R.I.I.C.O. and the learned counsel for the respondents-workmen, the present set of writ petitions are being

disposed of ex parte qua the defaulting employer/company, R.P.L. (I) Ltd.

21. On a careful consideration of the entire material before this Court, it is clear that the petitioner-R.I.I.C.O. cannot be said to be the "Employer" of the respondents/workmen at any point of time as defined under the provisions of the Act of 1947. Admittedly, the petitioner-R.I.I.C.O. was also not a party to the settlement dated 29.11.2000 (Tripartite agreement between the workmen, Employer/company and the Deputy Labour Commissioner, Bhilwara). As a matter of fact, the petitioner-R.I.I.C.O., was not in the scene in the year 2000 at all for which the purported dues of the workmen have been now determined by the learned Labour Court, Bhilwara, by the impugned order dated 14.06.2012. It seems that the petitioner-R.I.I.C.O. has been arrayed as respondent before the learned Labour Court only because in the year 2007, it had taken over the assets of the defaulting Unit of R.P.L. (I) Ltd., in exercise of its statutory powers u/s 29 of the S.F.C. Act, 1951, and had even sold the same to one Kanchan (India) Ltd., and the sale consideration still falling short of the dues of the first charge holders, namely, R.I.I.C.O. and the R.F.C. vide the above quoted communication of the petitioner-R.I.I.C.O., addressed to the Bhartiya Processors Shramik Sangh, Bhilwara. This Court, in the orders cited supra, in the interim order as well as in the contempt petition, had only protected the interest of the respondents/workmen, which were available with them, in accordance with law. No specific liability to square up these dues was fixed upon the petitioner-R.I.I.C.O. by the interim order of this Court, which was upheld by the Division Bench and for the alleged breach of which, the contempt petition was also dismissed by the learned Single Judge of this Court.

22. Therefore, reliance placed by the learned Labour Court on the orders passed by this Court for affixing the liability of paying the dues of the workmen on the petitioner-R.I.I.C.O. u/s 33-C(2) of the Act of 1947, is rather misplaced. The learned Labour Court has also referred the constitutional provisions without specifying any such specific provision of the Constitution of India for affixing the liability on the present petitioner. The right of life, wages, works etc. per se would not affix the liability on a public body, like R.I.I.C.O., which acted in exercise of its statutory powers in taking over the secured assets and selling the same u/s 29 of the S.F.C. Act, 1951.

23. The reliance placed by the learned Labour Court, Bhilwara, on the provisions of Section 25-FFF of the Act of 1947, is also equally misplaced. The provisions specifically provide for a contingency of payment of dues of the workmen even in the cases of closure of the unit for compelling reasons, including financial difficulties and financial losses to the extent of 3 months' wages under the parameters for payment even in the contingency of closure of the unit and deeming applying Section 25F of the Act of 1947 in the cases of closure of unit. That provision is of little help to the workmen in the present case, whose dues were determined u/s 33-C(2) of the Act of 1947. As held by the Hon'ble Supreme Court in the case of Municipal Corporation, Delhi v. Ganesh Razaak and

Others (supra), the question of entitlement and fixing of liability to pay those dues, are not even the questions, which could be adjudicated upon by the Labour Court, within the four corners of the ambit and scope of Section 33-C(2) of the Act of 1947.

24. Therefore, it is clearly borne out that the learned Labour Court, Bhilwara, has fallen into error in deciding this question of entitlement of the respondents/workmen to realize these dues from the petitioner-R.I.I.C.O., which was neither the "Employer" of the respondents/workmen, nor was a party to the settlement between the workmen and the Employer/company dated 29.11.2000; and thus has no concern with the dues of the respondents/workmen in the proceedings u/s 33-C(2) of the Act of 1947 before the Labour Court, the axe of liability could not fall upon it.

25. The provisions of Section 33-C(2) of the Act of 1947, has no application in fastening the liability to pay the dues of the workmen, on a third party like the present petitioner-R.I.I.C.O. who in exercise of its statutory powers u/s 29 of the S.F.C. Act, 1951, which is another central legislation, has taken over the assets of the defaulting unit of the Employer/company and realized its own dues by sale in auction of such assets. The provisions of Section 33-C(2) of the Act of 1947 refer only to the workmen, employer and the settlement award, and under the provisions of Chapter V-A and V-B of the said Act. The method of realization of the dues provided in these provisions is only as arrears of land revenue through the concerned Collector, without prejudice to any other mode of recovery.

26. These words "without prejudice to any other mode of recovery", does not entitle the workmen to get the same realized from the sale realization of the assets of the secured creditors in exercise of its powers u/s 29 of the S.F.C. Act, particularly, when that exercise of such powers has already been completed way back in the year 2007, much before the impugned order was passed by the learned Labour Court on 14.06.2012. It would be clearly contrary to the decision of the Hon'ble Supreme Court in the case of Municipal Corporation, Delhi v. Ganesh Razaak and Others (supra) and to permit the Labour Court to decide such question of entitlement of the workmen to recover these dues u/s 33-C(2) of the Act of 1947 from the third party like the present petitioner-R.I.I.C.O. while deciding this question under the provisions of Section 33-C(2) of the Act of 1947, therefore, this part of the impugned order cannot be sustained.

27. This Court is also unable to appreciate the reasons given by the learned Labour Court in the impugned order dated 14.06.2012, which is clearly in conflict with the earlier precedent of the same Court between the same parties, and same was available before it in respect of same company, R.P.L. (I) Ltd., in its order dated 09.03.2007, quoted above. But, it seems to be a bona fide lapse.

28. Thus, this Court finds no ground to sustain the said reasonings given by the learned Labour Court in the impugned order affixing this liability on the present petitioner-R.I.I.C.O. to pay the dues of the workmen u/s 33-C(2) of the Act of

1947. The way out for the respondents/workmen seems to be to approach the learned District Collector, Bhilwara, for making recovery of such dues as arrear of land revenue as provided in Section 33-C(2) of the said Act of 1947. As stated above and agreed by both the learned counsels, that in the recent past, the District Collector, appears to have sold some of other assets of the said defaulting unit of R.P.L. (I) Ltd., and might have realized some amount on account of such sale. If it is so, and some funds on account of sale of other assets of the said company, over which the petitioner-R.I.I.C.O. or R.F.C. had no charge, and never took over such assets, like land or any other assets, then it is for the learned District Collector to settle the dues of the workmen u/s 33-C(2) of the Act of 1947 or gratuity etc. and other dues of the workmen.

29. It is also open for the respondents/workmen to realise their dues from the defaulting company-R.P.L. (I) Ltd. itself or its Director(s) or Promoters who might have stood as guarantor for the said company's liabilities. The District Collector, Bhilwara, is thus directed to consider the claims of the respondents/workmen for settling the dues out of the sale proceeds from the other properties/assets, over which the petitioner-R.I.I.C.O. and the R.F.C. have no charge. The recovery of such dues from the other parties is, however, not the subject-matter of the present writ petition before this Court filed by the petitioner-R.I.I.C.O.

30. Therefore, on a consideration of the entire facts and legal position in the aforesaid case, this Court is of the considered opinion that the present set of writ petitions filed by the R.I.I.C.O., deserve to be allowed and the same are accordingly allowed and the impugned order dated 14.06.2012 of the learned Labour Court, Bhilwara to the extent it affixed the responsibility and liability on the petitioner-R.I.I.C.O. to pay the dues of the workmen determined u/s. 33-C(2) of the Act of 1947, is quashed and set aside qua the present petitioner-R.I.I.C.O.. The remaining part of the order of Labour Court, is however upheld. Resultantly, the present writ petitions of R.I.I.C.O. are allowed. No costs. A copy of this order be sent to the concerned parties forthwith.