(2004) 01 PAT CK 0086

In the Patna High Court

Case No : C.W.J.C. No. 11532 of 2003

S.K.G Sugar Mill Labour Petitioner Union (Distillery Unit) APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Citation : (2004) 2 PLJR 57

Hon'ble Judges : Ravi S. Dhavan, C.J;Shashank Kr. Singh, J

Bench : Division Bench

Judgement

1. Issue notice.

2. Notices on behalf of State-Respondents have already been accepted by the State Counsel Mr. A.K. Singh, S.C. 3. Steps to effect service of notice on Respondent No. 9 be taken by 25 October, 2003 by both modes.

3. This matter be brought to the notice of the Chief Secretary, Government of Bihar, who in turn will bring this matter to the notice of Hon''ble the Chief Minister, Bihar.

4. Consequent upon the acquisition of the Sugar Mill which closed, the distillery has also closed. This petition has been filed by the workmen. They seek an answer on what exactly will be their fate.

5. Matters like these are engaging the attention of the High Court day in and day out. The matters, relating to dues not being paid to workmen particularly State undertakings are being placed before the High Court virtually as an epidemic. The situation has to be dealt with as a policy.

6. Of any error which may have been done by the erstwhile employer, without prejudice to the case of either parties, each party may take its stand. But, the day the Supreme Court certified that the take over and the acquisition of the properties of the company known as M/s U.B. Distilleries Ltd. formerly known as United Distillers Ltd. Respondent No. 9 was valid, in short, it was clear that the

action of the State of Bihar in exercise of its sovereign power to take over the undertaking was a valid act. After the judgment, clearly the liability lay somewhere, certainly not without erstwhile employer. What will happen to the workmen who were or are on the muster roll of the distillery, now as a State undertaking.

7. This matter is fresh with a fresh problem. The only fortunate part is the decision of the Supreme Court rendered on 18 February, 2003, 2003 (2) PLJR (SC) 101, Shri Kirishna Gyanoday Sugar Ltd. and Anr. v. State of Bihar and Ors. As from the date of the judgment of the Supreme Court, this matter should not be going and joining the ranks of those cases where the disease has afflicted the public sector undertakings of the State of Bihar that it does not know what to do with the retiral benefits to be paid to such public sector undertakings employees.

8. This matter may come before the court after two weeks, i.e. on 6 November, 2003 in the supplementary list.

Order dated 6.1.2004

9. Notice was issued on this petition on 24 October, 2003. The Court had written a considered order and brought the matter to the notice of the Chief Secretary, government of Bihar, who in turn was required to bring this matter to the notice of Hon''ble the Chief Minister, Bihar and we are not reproducing the entire order as it lies on record. Suffice it to say that after the decision of the Supreme Court in re Shri Kirishna Gyanoday Sugar Ltd. and Anr. v. State of Bihar and Ors. 2003 (2) PLJR (SC) 101, referred to in the order of 24 October, 2003, the Court was concerned on what exactly will happen to the workmen who are on the muster roll of the distillery now as a State undertaking. It was the case of the government of Bihar before the Supreme Court that the distillery is an appendage to the Sugar Mill. It was the case of the State of Bihar that acquisition proceedings were valid. The defence of the State of Bihar was accepted. The acquisition was upheld. It was in these circumstances that this Court observed:

This matter is fresh with a fresh problem. The only fortunate part is the decision of the Supreme Court rendered on 18 February, 2003. As from the date of the judgment of the Supreme Court, this matter should not be going and joining the ranks of those cases where the disease has afflicted the public sector undertakings of the State of Bihar that it does not know what to do with the retiral benefits to be paid to such public sector undertakings employees.

10. It appears that no urgency worth the name has been shown by the State of Bihar to the aspect which otherwise was brought to the notice of the State Government at the highest level.

11. No counter affidavit has been filed as of date. Nothing anything has been indicated to the Court that the matter which has seen the finality at the Supreme Court giving the confidence to the State of-Bihar that assets of the company

whether Sugar Mill or the distillery may be its assets. In this matter the Court is concerned with the distillery only. The acquisition action itself was for a purpose to take over the industry whether sugar mill or distillery. Sovereign powers of the State were exercised to acquire it.

12. The question is what will happen to the workmen who are on the muster roll of the distillery. The Court had foreseen the complications. Unless immediate remedial measures are taken these workmen will also join the same category as the-employees in other State public sector undertakings who are going about without salary or without retiral benefits and one cannot rule out the possibility that some such workers may face death in penury. While the State will be merrily shuttling files as was done in the present case on 20 April, 2003 to seek the advise of yet more ministries and departments the immediate problem of the workers has not been addressed. If the purpose is to entangle the problem with knots upon knots and not to solve the problem of workers and their livelihood the Court will take up the concern of workers without their wages. This in fact is the obligation of the State Government. What it does to the public sector undertakings is the business of the government and the public sector management as a whole. It is the business of the state government on how it runs its undertakings and also be concerned business-like what leads to closure and losses.

13. In the circumstances as an ad interim measure the Court directs the State of Bihar that such of those employees who are on the muster roll of the undertaking for 240 days in a year preceding the order of the Supreme Court so that they come within the ambit of continuous service under the Industrial Disputes Act, 1947 will be identified. These employees who will be entitled to their wages fortwith, month to month. Their wages will be paid on or before 6th of every month. The dues as from the date of judgment of the Supreme Court until 31 December, 2003 will be deposited with the District Magistrate-Collector, Gopalganj within two months from today.

14. Admittedly, the plant is closed and the workers may not have their wages for not doing work. In the circumstances, the State of Bihar is free to make use of the work force in compatible trades within the district or adjoining districts.

15. Put up during the week of 9 March, 2004.