

(2006) 06 OHC CK 0034

In the Orissa High Court

Case No : Writ Petition (Civil) No. 15328 of 2005

Sri Subas Chandra Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Citation : (2006) 1 OLR 939 Supp

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Advocate : Srinivas Mohanty, Saswati Routray, B.D. Panda and D.K. Mohapatra, for the Appellant; S.C. Parija, Pravakar Behera, M.R. Tripathy for O.P. No. 5, Sisir Das, A.K. Mohanty, A. Das, S.R. Mohapatra, A.K. Tandi for O.P. No. 6, Manas Mohapatra, L.N. Sahoo, S.K. Routray, S. Prusty, S. Mohanty, R.P. Kar, N. Ray, S.K. Mohapatra for O.P. No. 4 and A.G.A. for O.Ps. 1, 2, 3, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—The Petitioner who is the General Secretary of Chini Silpa Shramik Sangha, Sunapal, Baramba, Cuttack has challenged the legality of the sale and purchase agreement with regard to the assets and business of Co-operative Sugar Industries Limited, Baramba annexed to the writ petition as Annexure-10 and has also prayed for a direction to the opp .parties 1, 2 and 3 to execute the sale deed with respect to the above sugar industry in favour of the employees union on the same terms and conditions as has been settled, on which the said industry is to be sold to M/s. Balaji Sugars and Allied Industries Ltd. opp. party No. 5. It has also been prayed by the Petitioner to direct investigation into the matter of sale of the above industry by the C.B.I.

2. Though this matter was listed for fresh admission on 19.6.2006, but as pleadings are completed, learned Counsel for the respective parties advanced argument on the merit of the case in extenso. We, therefore, after conclusion of the hearing, reserved the matter for delivering the judgment. However, on 20.6.2006, learned Counsel for the Petitioner made a mention before us that as

the matter was listed for fresh admission, the same should be listed under the heading "To be mentioned" for further hearing. He also submitted that he is filing a memorandum to that effect. Since the matter was already heard at length on 19.6.2006, we did not feel that there is any necessity to list the matter further under the heading "To be mentioned".

3. The facts disclose that with the co-operation of the State Government, the sugar industry of Baramba in the Co-operative sector was established to encourage the local farmers to adopt alternative crop, i.e., sugar-cane cultivation in place of paddy as the land in the locality was fit for cultivation of sugar-cane. Accordingly, Baramba Co-operative Sugar Industries Limited with few members was registered in the year 1982 as a Co-operative Society and thereafter on preparing the feasibility report etc. a Sugar Industry of 1250 TCD capacity extendable to 2000 TCD was established by the aforesaid Co-operative Society. The State Government financed the said industry in shape of share capital, loan and as guarantor for obtaining loan from other financial institutions/banks to the tune of 99% of the total investment for running the said industry. Unfortunately, the said sugar industry failed to be viable and incurred heavy losses which led to financial burden on the State Government and the financial institutions/banks pressurized the Government to clear their dues for which the Government was a guarantor. A decision was thereafter taken in the year 2000 to privatize the said sugar industry so that it can run and the local farmers can be benefited as per Section 14-B of the Orissa Co-operative Societies Act (hereinafter referred to as "the Act"). On compliance of the provisions of Section 14-B of the Act, M/s. Shakti Sugar Limited which is a Tamilnadu based company, took over the industry initially for a period of ten years by executing an agreement on 9.1.1991. The said period was subsequently extended till 30.9.1994, M/s. Shakti Sugar Limited failed to make payment of the amount as per the agreed conditions and finally left the industry unilaterally on 30.9.1994. Consequent thereto, cases filed by various financial institutions and banks, such as, IFCI, ICICI, IDBI and SBI for recovery of their dues were settled between the said institutions and the Government and the Government paid their dues whereupon various proceedings pending before the Debts Recovery Tribunal and other adjudicating forums were disposed of. Thus, the industry became free from financial liability to the financial institutions. After such development, a decision was taken to sell the unit and the opp. party No. 5 being the successful bidder was selected in the process of sale.

4. Mr. S. Mohanty, learned Counsel for the Petitioner vehemently argued that the impugned agreement under Annexure-10 cannot be sustained as it contravenes the provisions of Section 14-B of the Act which stipulates that both assets and liabilities of the industry can be sold and not assets and business as has been done in the instant case. According to Mr. Mohanty, this stipulation of transferring the "assets and business" and not "assets and liabilities" is in gross violation of the provisions of Section 14-B of the Act. Mr. Mohanty further contended that though Section 14-B of the Act is an non-obstante provision and it prescribes

that if a Co-operative Society in which majority of the shares have been subscribed or liability by way of guarantee for borrowing loan exceeding 50% of the per centum of the working capital of the society have been undertaken by the State Government which has become sick and not possible to be rehabilitated or run in a viable manner, can be transferred by the Government by order of the Registrar of the Co-operative Societies, provided prior to such transfer, opportunity is given to the General Body of the Society, creditors, depositors, employees of the society and any other person concerned to state their objections or make representations within such time as may be specified by the Registrar in the notice. Placing strong reliance on the said provision of the Act, Mr. Mohanty submitted that the said Section 14-B of the Act specifically provides that such order can be passed with regard to transfer of "assets and liability" and not "assets and business". He, therefore, contended that the employee's liability should have been taken over by the proposed purchaser opp. party No. 5 and no such term exists in the impugned agreement for sale and purchase under Annexure-10.

5. Mr. S.C. Parija, learned Counsel appearing for the purchaser opp. party No. 5, on the contrary, submitted that the opp. party No. 5 is a bona fide purchaser of the unit and the erstwhile employees of the said industry are forcibly not allowing the opp. party No. 5 to run the industry for which law and order situation has crept in.

6. A counter affidavit has been filed on behalf of opp. party No. 4. Managing Director of Baramba Co-operative Sugar Industries Ltd. Sunapal, Baramba, Cuttack. Mr. Manas Mohapatra, learned Counsel for the opp. party No. 4 relying upon the counter affidavit, submitted that the Petitioner has suppressed material facts in the writ petition and, as a matter of fact, sale in favour of the opp. party No. 5 for the above Sugar Industry has been completed after following the provisions of the Act and strictly comply to the same the sale deed has been executed in favour of the opp. party No. 5 on 27.6.2005. He further submitted that, in fact, all the dues of the financial institutions/banks have already been cleared by the Government of Orissa and the erstwhile employees of the said industry have absolutely no dues to be paid to them. He drew attention of the Court to various correspondences made between the authorities and the notices issued by the Registrar of Co-operative Societies in compliance with the provisions of Section 14-B of the act which has been annexed to the counter affidavit filed by the O.P. No. 3, and more, specifically, he referred to Annexure-F/3 which is an order dated 31.5.2005 passed by the Registrar, Co-operative Societies u/s 14-B of the Act. Perusal of the said order clearly shows that provisions of Section 14-B of the Act have been complied with and it was ordered that a sale deed is to be executed in favour of opp. party No. 5 in terms of the sale and purchase agreement vide Annexure-10. Clause-11 of the said agreement governing the matters of the erstwhile employees is quoted hereunder:

11.1. The Seller and the DPE shall use their best efforts to communicate with employees of the seller to ensure that employees are informed about the sale of the Assets and Business.

11.2. The employees matters shall be governed by PE Department Resolution No. 3929 dated 26.11.2002 as follows.

A. All the existing employees of the Badamba Co-operative Sugar Industries Limited, Baramba will be asked to give their consent on;

(a) Whether they are willing to work under the New Management, if selected or opt for Voluntary Separation Scheme (VSS) straightaway and;

(b) Whether they would like to avail VSS benefits if not selected by the New Management;

B. Those employees who opt for VSS straightaway will be offered the benefits under the scheme;

C. Lists of employees who exercise option to work under the New management will be furnished to the Purchaser to select number of employees as per requirement. Those who are not selected and who have given consent to avail VSS at A (b) above will be given VSS benefit.

D. Those who neither opts to work under New Management or for VSS, will be retrenched as per law/staff regulations.

E. Employees, who have given consent and are selected by the New Management, will be sent to the New Management with following safe guards:

a. Terms of conditions of service are not less favourable to the employees than those which they enjoyed under Co-operative management;

b. The service of the employees is not interrupted for the purpose of reckoning length of service;

c. The period of service with the Co-operative management is deemed to be service with the New Management;

d. There shall be no retrenchment at least for a period of one year from the date of take-over of operation by the Purchaser.

Mr. Mohapatra further strongly relied upon Annexure-V/4 annexed to the counter affidavit filed on behalf of opp. party No. 4 which is a memorandum of settlement signed by and between the management of M/s. Baramba Co-operative Sugar Industries Limited, Sunapal and their workmen represented through Chini Shilpa Shramik Sangha in Form "K" which is also a prescribed statutory Form under the Act and the Rules framed thereunder. Relying upon the said memorandum, he submitted that when the present writ Petitioner is the signatory to the said memorandum and the contentions raised before this Court in the present writ petition were never raised by the Petitioner by way of objection before entering

into the said memorandum of settlement, the Petitioner is estopped from alleging that the sale effected in favour of the opp. party No. 5 convertavenes the provisions of Section 14-B of the Act at this belated stage.

7. On perusal of the said annexure, we find that the said settlement was arrived at between the Management of the Industry and the Petitioner-Union on the following terms:

xxx.....xxx.....xxx

1. The management is agreeable to pay the arrear V.D.A. from October, 2004 to January, 2005.

2. The employees had received one months goodwill pay from M/s. Shakti Sugars Ltd. which covered the pay of September, 2004. On the request of the employees Union, the management had already cleared P.F. of September, 2004 in order to regularize of their service. However, to build up a better industrial harmony, the management is agreeable to pay the balance salary for the month of September, 2004.

3. The Baramba C.S.I. has earned a nominal profit during the year 2004-05 and it is agreed to pay production bonus as per law to the eligible employees and the other employees will be paid incentive allowance in lieu of bonus.

4. The Baramba C.S.I. has already paid the salary for the month of July, 2005 and the notice period was over by 28.7.2005. In order to regularize the services of the employees, it is mutually agreed that the period from 01.08.2005 to 15.8.2005 is treated as no work no pay without affecting the service continuity of the employees.

5. It is also agreed that there will be no claim of leave salary encashment and over time payment during the management period of Baramba C.S.I. Ltd.

6. Both the parties agree that there is no other arrears on the Baramba Co-operative Sugar Industries management. Both the parties agreed that this settlement is fair, amicable and reasonable and has been arrived at the best interest of parties concerned. Both the parties have put their signature on their free volition and without any threat, coercion or under influence whatsoever.

7. It is agreed that the payment shall be made within fifteen days of signing of settlement, i.e., by 30.12.05.

...xxx.....xxx.....xxx.

It further transpires that the said memorandum of understanding was arrived at before the Assistant Labour Commissioner who is the signatory to the same.

8. Considering all aspects of the matter, we are of the view that the provisions of Section 14-B of the Act has been complied with by the concerned authority before transferring the industry in favour of O.P. No. 5 and the Petitioner - union having entered into the memorandum of settlement before the Labour Court as

per Annexure-V/4, on the terms and conditions quoted above, the Petitioner can have no grievance with regard to the sale of the above sugar industry in favour of opp. party No. 5 and there is absolutely no reason for this Court to interfere in the matter and grant the relief as prayed for by the Petitioner.

9. In the result, the writ petition is dismissed being devoid of merit, but in the circumstances, without costs.

B.P. Das, J.

10. I agree.