
(1993) 09 GUJ CK 0010
In the Gujarat High Court

Case No : Civil Application No. 67 of 1993 in Special Civil Application No. 1644 of 1992

Textile Labour Association

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 29-09-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(O)

Citation : (1994) 2 LLJ 303

Hon'ble Judges : R.A. Mehta, J;B.J. Shethna, J

Bench : Division Bench

Judgement

Mehta, J.—By this application, the Textile Labour Association has made a prayer for issuance of a direction of payment of salary to the workers for the period they have actually worked and allowed to work and have actually worked and allowed to work and have produced the goods, out of the sale proceeds of the finished goods sold in pursuance of the direction Court. The petition is resisted by respondent no. 3, State Bank of Saurashtra, a secured creditor having first charge on the current assets of the Company which include the finished goods.

2. The petitioner has relied on Article 21 of the Constitution of India and the judgment of the Supreme Court in the case of M/s Rohtas Industries Ltd. and of this Court in the case of Amruta Mills. On behalf of the respondents, it is submitted that these judgments cannot be applied and followed as precedents and the Bank is having legal right as secured creditor and those rights cannot be destroyed unless the law authorises the same and it is submitted that there is no law which requires to ignore the rights of the secured creditors.

3. The workmen of the Mill are about 2700 and it is submitted that the Mill camp to be closed on February 2, 1992 without permission as required by the provisions of the industrial Disputes Act and without paying even the wages for the months of November, December 1991, January and February 1992. It is submitted that the wages for the period of November 1991 comes to Rs.

24,20,000/- for the months of December 1991, it comes to Rs. 32,50,000/- for the month of January 1992, Rs. 34,00,000/- and for February 1992, it comes to Rs. 29,00,000/-. Thus in all Rs. 1,19,75,000/- is the amount of outstanding wages for the period for which the workers have actually worked.

4. In the main petition, prayers are made for declaring that the closure of the undertaking without prior permission u/s 25(0) of the industrial Disputes Act is illegal and void and for a direction to the authority to initiate criminal prosecution against respondent no. 2 for breach of the provisions of section 25(0) of the industrial Disputes Act. Further prayers are made for appointment of a committee for disposal of finished and unfinished goods lying in the mill compound and for direction to make payment of wages to the workers. Interim relief is also claimed for payment of wages for the period for which the workmen and also for the period thereafter on the ground that the closure is illegal.

5. By an earlier order of this Court, the goods have been sold and an amount of Rs. 47,62,721/- has been realised.

6. The learned counsel for the petitioner has relied on the judgment of the Supreme Court in the case of Workers of M/s. Rohtas Industries Vs. M/s. Rohtas Industries Ltd., . It was a petition under Article 32 of the Constitution of India and in that cases, the Supreme Court had directed payment of wages to the workers against the claim made by the secured creditor, financial institution. Para 3 of the judgment is strongly relied upon by the petitioner which requires to be quoted in full because that has been the subject matter of arguments on both sides. It reads as follows :

"3. It is no doubt true that these products the stock of which have been shown in the report and the value of which has been shown by the Liquidator as Rs. 91,77,000/- is pledged with Banks, is a priority in law in favour of the Bank but is also could not be disputed that these stock were the products of this industry before its closure and, therefore, the workers also contributed their labour and it is the result of their hardwork that these stocks could be produced and in our opinion, therefore, it could not be said that the wages and emoluments for the period upto closure would not rank in priority. It is also significant that after the closure in July 1984, till today, inspite of the order passed by this Court, the workers have not been paid. Their subsistence and having is also perhaps of paramount importance and has to rank with highest priority. It is in view of this as it appears that the Government of India is keen to have a scheme of revival of this industry. Learned Counsel for the State of Bihar also frankly conceded that so far as payment to the workers is concerned, the State Government also desires that they should be paid their salaries. It is no doubt true that at present there are no assets available out of which the whole payment of all the dues to the workers from May 1984 till today could be made but from our to these assets, the products which are lying in stocks valued at Rs. 91,77,000/- the salaries and the dues of the workers from May 1984 till the date of closure could be made. It was contended that in case these stocks are liquidated and the

amount collected are paid off to the workers, difficulty may arise as this asset which has been taken into account will not be available for the scheme of restarting the industry. Looking to all the circumstances and taking a broad and humane view of the situation, we are of the opinion that it would be just and proper that these goods which are lying in stock should be sold and out of the sale proceeds the workers should be paid their dues upto the date of closure (from May 1984 to July 1984 i.e. 8th July 1984) so that at least they will get something for subsistence. Learned counsel for the State Bank of India pointed out that his client has paid for the insurance of certain assets and for the loss thereof in whole or in part, the insurance has paid for the loss. The official liquidator may kept that amount separately and allow the State Bank of adjust the same against its insurance. So far as the stock pledged and the priority of the financial institutions are concerned, we have no doubt that they have other sufficient securities and properties of the Company and therefore if this stock of finished products are sold to meet the basic requirement of the workers their interest would not be in jeopardy. Apart from it, we also hope and trust that if the loss of this amount of Rs. 91,77,000/- somehow comes in way of the scheme of re-starting of the industry, the Government of India would find funds to save the situation and help early revival of the Company. We, therefore, direct that these stock which are lying with the industry valued at Rs. 91,77,000/- shall immediately be disposed of and out of this, the wages and other dues of workers for the period from May 1984 till 8th July 1984 shall be met. The balance if any, will be utilised for meeting other pressing demands in the discretion of the official liquidator subject to orders of the Court. We are sure that the Official Liquidator will ensure that the disposal fetches the best of rates. We may also make it clear that issuance of the notification by the Bihar State Government will not come in the way of sale of these assets and payment to the workers. We direct that this shall be completed within two months from today. The case may come for further directions in third week of July."

Relying on this judgment, the petitioner submits that though the goods were pledged with the Bank and though the Bank had claimed priority of payment in favour of the Bank, the Supreme Court had that the stocks were the products of the industry before its closure and the workers had contributed their labour and it was the result of their hard work that these stocks could be produced. The Supreme Court, therefore, held that it could not be said that the wages and emoluments for the period upto closure would not rank in priority. The Supreme Court further observed that their subsistence and living is of paramount importance and has to rank with the highest priority. The Supreme Court, looking to all the circumstances and taking a broad and humane view of the situation observed that it would be just and proper that these goods which were lying in stock be sold and out of the sale proceeds the workers be paid their dues upto the date of closure so that atleast they will get something for their subsistence. The Supreme Court had also observed that it had no doubt that there were other sufficient securities and properties of the Company and, therefore, if this stock of

finished products was sold to meet the basic requirement of the workers, their interest would not be in jeopardy.

7. The judgment was also the subject matter of further discussion in the same case in the Supreme Court in a judgment reported in *Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd.*, . In paras 5 to 7, the Supreme Court observed as under :-

"5. In the order of April 27, 1987, this Court has already indicated the peculiar circumstances of the case. Those considerations were kept in view when the various claims of the financial institutions were brushed aside from immediate consideration and the wages for the limited period were directed to be disbursed. The same considerations are also germane now when the question of meeting the tax liabilities crops up.

6. After the sale proceeds are resolved by the Official Liquidator if he finds that sufficient surplus funds remain in his hands after paying the wages as directed, he would pay the taxes -sales tax and the excise duty. In case there be no surplus, payment of the taxes may be deferred for some time and the Official Liquidator is directed to explore possibilities of tapping other sources for raising funds to meet those liabilities. The workmen have been facing challenge to their lives and this Court on the earlier occasion indicated that in fixing priorities, saving the human lives should be paramount. We endorse that view. That has been the consideration for postponing payment of the public dues, if necessary.

7. Two financial institutions, namely the State Bank of India and the United Bank of India and the United Bank of India have applied for clarifications and modifications of the order dated April 27, 1987. We have no difficulty in saying that that order of this Court was made under peculiar circumstances obtaining in this case and may not be taken as a precedent. Whether the company's assets are sufficient to meet all the liabilities is a matter which is yet to be seen and this Court really intended to say that there were other assets against which the financial institutions could pitch their claims. So far as the remaining prayer of the banks is concerned, they have asked the Court to say that the payments as the workmen should be considered as coming within Section 529 and 529-A of the Companies Act to 1956. Nothing would be said in that behalf now as a proposal for restructuring of the company is very much afoot and if it materialises, that would obviously save the company from being wound up. Therefore, until the eventuality of winding up comes, no orders in that behalf are necessary to be made."

8. The learned counsel for the petitioner submitted that the Supreme Court had reaffirmed its earlier view and after various claimants secured creditors were brushed aside and the wages for the limited period upto the date of closure and for the actual work done by the employees were directed to be paid. When in respect of the said realisation and disbursement, the question had come up for other priority dues of public revenue and tax, the Supreme Court held that the

same considerations would be germane for even brushing aside the claim of public revenue and the Supreme Court directed that only after paying wages as directed, if there is any surplus found, then only the sales tax and excise duty would be paid and if there is no such surplus, the payment of taxes also should be deferred. The Supreme Court further emphasized that the workmen had been facing challenge to their lives and reaffirmed its earlier view that in fixing priorities, the saving of human lives should be paramount and that view was endorsed and that was the consideration for postponement of public dues also with regard to the grievance of the secured creditors that the company's assets were not sufficient to take care of their claim the Supreme Court observed that whether the company's assets were sufficient to meet with the liabilities is a matter which is yet to be seen and the Court intended to say that there were other assets again which financial institutions could pitch their claims.

9. These judgments have been followed by the Division Bench of this Court in the case of Amruta Mills, in Special Civil Application No. 8201 of 1990 decided on March 5, 1991. In that case, it was submitted by this very Union, Textile Labour Association that the workers' right to life and liberty guaranteed under Article 21 of the Constitution of India was to be enforced. The Learned Counsel for the respondents had submitted in that case that the Supreme Court had clarified its earlier order (reported in Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd., by its subsequent order reported in Workers of M/s. Rohtas Industries Vs. M/s. Rohtas Industries Ltd., to the effect that it was passed under particular circumstances and not to be treated as a precedent. The Division Bench observed that those observations were to be read in their entirety and in proper context and held that the Supreme Court had not said that in a given set of circumstances, saving of human life should not be considered paramount and the Supreme Court had not cancelled its earlier observations and on the contrary, the Supreme Court had reiterated that saving of human life should be paramount and following the Supreme Court judgment, the Division Bench had issued a direction for the payment to wages for the period the workers had actually worked from out of the sale proceeds of the property and security. In that case, the wages were apportioned in the ratio of 40 to the workman and 60 to the Bank as agreed by the workmen.

10. On behalf of the respondent-Bank it is submitted that the Supreme Court has not laid down or declared any law by the aforesaid judgment and had expressed mere opinion and it is further submitted that the Supreme Court itself had made it abundantly clear by its subsequent order that it was not to be treated as a precedent as having been passed in peculiar facts and circumstances of the case. It is submitted that when the Supreme Court itself has declared that it should not be treated as a precedent, the High Court should not be treated as a precedent and should not pass any order treating it as a precedent. It is further submitted by the Bank that the secured creditors have their rights as per the law and contract and the same cannot be taken away by the Court in breach of the legal rights of the parties.

11. It is further submitted that the Supreme Court was dealing with a peculiar situation under Article 32 of the Constitution and winding up petition was pending in the High Court; there was also possibility of evolving a scheme of revival and the Supreme Court had also noticed that there were other sufficient securities and the interest of the Bank would not be in jeopardy. It is, therefore, submitted that those were the peculiar and special circumstances of that case and no principle or proposition of law has been laid down in that case. It is submitted that while observing that saving of human life is paramount, the Supreme Court has laid down any proposition of law for the same.

12. It is further submitted that having regard to the fact that the Bank has a claim of Rs. 56, 515,123.89 as on May 31, 1993 and the Bank having the first charge on the current assets of the company this realisation of Rs. 47,62,721/- should be appropriated fully towards their claim because it is the sale proceeds of securities.

13. It is further submitted that the petitioner union itself had offered by letter dated October 19, 1992 to apportion the amount in the ratio of 60 : 40 i.e. 60 for workers and 40 for the Bank and, therefore, in any case, the workers should not be paid more than 60% of the amount on realisation.

14. One basic objection which has been taken is that this petition is not maintainable more particularly against the private parties namely the Mill and the Mills secured creditors. It is submitted that the petitioner is not entitled to any relief against these respondents in a petition under Article 226 of the Constitution and such a petition would not be maintainable against the respondents. It is submitted that the Supreme Court, under Article 32 of the Constitution, or under its plenary powers, may pass the order which has been passed in the case of Rohtas industries. However, the High Court, under Article 226 of the Constitution, has no such authority or jurisdiction to pass such orders against the private parties.

15. On this question the petitioner has relied on the provisions of Articles 21 and 226 of the Constitution.

Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law and it is submitted that under Article 226 of the Constitution, a writ petition is maintainable for enforcement of fundamental rights for any other purpose and the High Court has the power to issue writ to any person.

The said Article 226(1) reads as follows :- "226. Power of High Courts to issue certain writs (1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases, any government within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari or any of the rights conferred by Part III and for any other purpose."

On behalf of the respondent-Bank, it is submitted that the powers of the High Court under Article 226 of the Constitution are not as wide as that of the Supreme Court under Article 32 of the Constitution and Article 21 merely gives a person a right to defend and given him a shield to protect and not a sword to attack and claim any relief. It is further submitted that this right cannot be claimed against a private party. It is also submitted that the exercise of rights of secured creditors in accordance with law results into any hardship to any person that can be no ground for interference by the Court because that is in accordance with the procedure established by law. It is submitted that in a Court of law and within the framework of law if a secured creditor has not done or is not doing anything contrary to law, there is no question of passing any order against such secured creditor in the name of right to life and liberty or saving of human lives or giving consideration to such aspect in breach of law.

16. In view of the express language of Article 21 of the Constitution of India, it is clear that it is not restricted for enforcement against the State only and Article 226 also provided for issuing writ to any person. Therefore, the writ petition under Article 226 of the Constitution for enforcement of fundamental rights can be issued to any person who need not be an authority of the State and it can be a private party.

17. It is submitted that if such a view is taken, any creditor having a money claim against any debtor may contend that his right to life and liberty is deprived of by the debtor and instead of filing a civil suit he can bring his claim to the High Court under Article 226 of the Constitution. This is a far fetched and extreme argument. The paramount consideration mentioned by the Supreme Court regarding saving human lives would be the relevant guideline for exercising power of the High Court in such circumstances. The Supreme Court had exercised the power under Article 32 of the Constitution and that power is only for enforcement of fundamental rights. The question involved in this petition is of right to life and livelihood of 2700 workmen and their families. The Court cannot be oblivious of the fact that on account of closure of numerous mills in Ahmedabad, utterly miserable conditions have resulted for the families of the unemployed workmen. There have been instances of suicides because of utter economic hardships on account of unemployment of such mill workers. There have been cases of premature deaths because of lack of economic support, medical treatment and medicines. Many other undesirable consequences follow even driving the people to criminal activities including prostitution. In such miserable circumstances, if right to livelihood and a bare necessity of human dignity cannot be enforced, though guaranteed by the Constitution, the Court cannot justify its existence for the enforcement of fundamental rights. Article 21 guarantees atleast that minimal.

18. In the present case, it is not in dispute that the workers have worked for these months and are entitled to wages. This fact is not disputed by the employer and cannot be disputed by anyone. When the Supreme Court observed

in the aforesaid case that the workers have contributed their labour and it is as a result of their hard work that the stocks could be produced, therefore, it would rank in priority, the Supreme Court has recognised a kind of lien on the goods in respect of the wages of the workmen in respect of their unpaid wages and the goods produced by their labour. The Supreme Court was not deciding the question of priority in time as to whether this payment was required to be made as a preferential payment in view of its urgency. The contest was between the claim of wages of the workmen and the claim of secured creditors. There was no question about the preference in point of time, but the question was of priority or superiority of the claim and the Supreme Court has held that the subsistence and living of the workmen is of paramount importance and has to rank with highest priority. It is true that the Supreme Court has done this in the peculiar facts of that and by a subsequent order has further stated that it shall not be treated as a precedent. Nonetheless, when the facts are identical if the High Court adopts the same procedure, reasoning and approach, the High Court will be acting perfectly in accordance with law and justice. If High Court were to act otherwise, it would be against law and justice.

19. The learned counsel for the petitioner submitted that the secured creditor is exercising its right in accordance with law in staking the claim to the sale proceeds and in this view of the matter, the High Court cannot give any direction contrary to law. It cannot be said that the directions sought by the petitioner would be contrary to law. The Constitutional law and fundamental rights are part of the law and even within the Constitution, fundamental rights have special importance and within the fundamental rights, right to life and liberty is the most fundamental of such rights. It for enforcement of such right which is the fundamental law of the land anything comes in conflict thereof, it has to give way to see that the fundamental rights guaranteed by the Constitution are not violated.

20. In view of the aforesaid discussion, the contention that the petition is not maintainable has to be rejected.

21. The contention that the peculiar facts of Rohtas Industries case were different has also no merit. It is submitted that in that case, the petition was under Article 32 of the Constitution there was winding up petition pending and a revival scheme was being evolved and the Supreme Court had found that other securities were sufficient and the interest of the Bank would not be jeopardised. These are the differences without distinction. None of these is a material difference. The relevant and material facts are identical, namely that thousands of families of workmen were deprived of their livelihood inspite of having actually worked and produced goods and out of sale proceeds of those goods, they were not being paid their wages. In view of these peculiar and crucial facts, the Supreme Court had passed the order and while doing so, the Supreme Court had brushed aside various claims of financial institutions which were secured creditors. Not only that, the Supreme Court has gone further and brushed aside even the higher priority of dues of public revenue and taxes and directed that the

workmen should be paid their wages first and thereafter if there is any surplus, it would be paid towards the sales tax and excise duty and the claim of the secured creditors would come thereafter and for going to that extent and fixing priorities, the Supreme Court has observed that the saving of human lives should be paramount and that view has been endorsed again in the case of Rohtas Industries, reported in 1987 (Suppl) SCC 462 and it was observed that even the payment of public due has to be postponed for saving human lives.

22. A similar view has been taken by another Mills referred to earlier. In that case also, following the Supreme Court judgment the High had given priority to the payment of wages for the period for which the workers have already worked, over the claim secured creditors.

23. The respondent-Bank has also submitted tat fundamental right to life and liberty has not been alleged or established in the present case and there is no averment as to which particular workman is suffering in terms of life and liberty because of non-payment of wages. It is submitted that some workmen might be gainfully employed in some manner or the other or might be supported by others and therefore, in absence of factual basis for violation of fundamental right, it is not proper for the Court to grant such relief in respect of all workmen and the workmen should be left to seek remedies under ordinary law. If it was a question of an individual claimant there would have been some justification for this argument but the Court cannot ignore the fact that thousands of persons are affected in a single matter as families of 2700 workmen are affected and this is not an isolated case of closure of such a big establishment. There have been several such closures of big establishments in Ahmedabad resulting into "lacs of people being put to untold miseries and hardships and the Court has to take a judicial notice of the situation of unemployment and resultant loss of livelihood and a bare minimum human existence. If in such a mass human problem, the Court were to call upon each workman to prove his hardship that would not only deny justice to him, but the Court will be failing gin its duty to render timely justice and relief which is their fundamental right for human existence.

24. It is next submitted that if any payment is to be made to the workmen, it cannot be more than 60% of the realisation in view of the letter written by the petitioner-union to the employer on October 19,1992 wherein the Union was agreeable to disbursement of the amount to the extent of 60% to the workers and 40% to the Bank. Almost a year has passed and the Bank has not agreed to this proposal. That proposal was made as it is stated in the letter itself, on the ground that in the case before the High Court, decision is likely to be delayed and in view of the fact that Diwali was fast approaching, the workers were keen to get the amount. That Diwali has gone without payment, almost a year has passed thereafter and the Bank has not accepted that proposal and it cannot now be made the basis. The Supreme Court has also not restricted payment in the case referred to above. In the case before the Division Bench of this Court, so far as appointment of the amount was concerned, in that case, the workers had

consented in view of early payment. In the present case, in view of the fact that the very basis for that offer has gone, now it cannot be insisted because at that point of time the workers were in such a miserable position that as Diwali was fast approaching, they were even prepared to forgo their legitimate payment in the hope of getting early payment to relieve their hardships. Since that has gone, now there is no reason why the workers, the needy and the most miserable class should be paid less. Hence, that contention is also rejected.

25. In the result, this Civil Application is allowed and it is directed that the workmen be paid their wages for the period for which they have not been paid though they have worked. It is stated that for the month of November 1991, the wages have already been paid and for the remaining period, the wages shall be paid out of the sale proceeds. As far as the other claims of wages for the subsequent period and the interest on all the unpaid wages is concerned, at present we are not giving any direction in view of insufficiency of funds. Civil Application is allowed accordingly with costs. The respondent-Bank to pay costs quantified at Rs. 1000/-

26. The learned counsel for the Bank prays that this order be stayed for a period of five weeks. The learned counsel for the petitioner Union states that the workmen have been suffering since long and another Diwali is approaching very soon and with a view to add some cheer in their otherwise dull life, the payment should be made at the earliest. In view of the aforesaid and in view of the fact that as far as this question is concerned, it has been decided finally by this Court. We direct that this order be stayed till November 2, 1993 on condition that if by that time, the Bank has not obtained any interim order from the Supreme Court, the payment must be made on the next day.