

(2009) 12 KAR CK 0019
In the Karnataka High Court
Case No : W.A. No. 1382 of 2009

The General Secretary Mysore Division Industrial Workers
General Union

APPELLANT

Vs

The Deputy Commissioner, The Asst. General Manager
Karnataka State Financial Corporation and Karnataka
Industrial Area Development Board

RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Companies Act, 1956 — Section 529, 529 A, 530
State Financial Corporations Act, 1951 — Section 29, 46 B

Citation : (2010) ILR (Kar) 458 : (2011) 1 KarLJ 116 : (2010) 2 KCCR 898

Hon'ble Judges : V. Gopala Gowda, J; B.V. Nagarathna, J

Bench : Division Bench

Advocate : K.B. Narayana Swamy, for M.C. Narasimhan Associates, for the Appellant; B. Rudra Gowda, for R2, P.V. Chandra Shekar, for R3, Vijaya A.D., AGA for R1, for the Respondent

Judgement

B.V. Nagarathna, J.—This writ appeal is filed against the order passed in W.P. No. 3880/2009 and W.P. No. 4527/2009 dated 6.3.2009 by the learned single Judge by the petitioner who was unsuccessful in the writ petition.

2. According to the petitioner, the petitioner is a trade union registered under the Trade Unions Act and has been in operation with regard to some of the industries in Mysore Districts. Mysore Panel & Boards Private Limited is a company and the workmen of the said company are members of the appellant trade union. According to them the said factory closed its manufacturing activities in January 2002 at which point of time there were about 83 workmen who are all represented by the appellants. Consequent upon the closure of the factory at Tandavapura Industrial Area closure compensation, gratuity, bonus and wages of the workers were not paid. Hence the appellant/union authorized by the workmen filed an application u/s 33-C(1) of the Industrial Disputes Act for revenue recovery certificate towards the unpaid statutory dues to be recovered

from the sale of assets of the company as arrears of land revenue. After adjudication the Deputy Labour Commissioner Issued a revenue recovery certificate by order dated 4.3.2005, for a sum of Rs. 4,71,781/- and by order dated 30.8.2005, for a sum of Rs. 16,66,585/- and by order dated 13.9.2005, for a sum of Rs. 7,78,696/- and the total wages payable from 21.11.2001 to 30.1.2002 being Rs. 5,83,141/-, the total outstanding dues being Rs. 35,00,203/-. The Deputy Labour Commissioner pursuant to the revenue recovery certificate issued by him addressed a letter with check list to the respondent No. 1 to take necessary action to recover the amount mentioned as arrears of land revenue and to use the proceeds to liquidate the claims of the workmen. Thereafter the Tahsildar, Nanjangud Taluk addressed a letter dated 8.5.2006 to respondent No. 1 stating therein that since the KIADB had sealed the factory premises and did not know the whereabouts of the concerned Officers, it was not possible to recover the dues payable to the workmen. On the basis of the said letter of the Tahsildar, respondent No. 1 addressed a letter dated 8.6.2006 to the Deputy Labour Commissioner, Region-II, Bangalore expressing inability to recover the amount in view of the factory being sealed by respondent No. 4 and the whereabouts of the concerned officers not being known. Subsequently, the petitioner addressed a letter dated 28.8.2008 to respondent No. 1 referring the various revenue recovery certificates issued by the competent Labour Commissioner and also furnishing the addresses of respondent Nos. 3 & 4 for further action.

3. When things stood thus, respondent No. 3 issued a paper notification published in "Vijaya Karnataka" daily Kannada newspaper dated 9.12.2008 proposing auction of KIADB land in plot Sy. No. 7(A-B) measuring 4 acres 3 guntas together with industrial shed, office building, canteen guest house etc and the proposed auction was held on 17.12.2008 and according to the appellant the said auction has taken place. That, respondent No. 3 has realized the money from the sale of the assets of the factory and is proposing to appropriate the entire amount to itself. According to the appellants, the action of respondent No. 3 appropriating the entire amount of Rs. 24,00,000/- realized from the sale of machinery and other assets would mean that the workers would be left high and dry without any relief, despite the certificates of recovery obtained by them and therefore, being aggrieved by the said decision, they have filed the writ petition before this Court.

4. After service of notice of the writ petition, the second respondent appeared through counsel and stated that since the KSFC had lent money to the company and on account of default it had exercised its power u/s 29 of the State Financial Corporation Act and therefore, its action was in accordance with law. Respondent No. 3 appeared through its counsel and stated that the shed belongs to the KIADB and what was auctioned was only lease hold rights and machinery and the title of the shed remains with the Board.

5. Learned single Judge while taking note of the said submissions held that since

the auction is held and KSFC would realize the sale proceeds towards its dues, if the workmen are entitled to recover the amount, then it is not possible to decide as to who would be entitled for first recovery as these are matters which require proper adjudication. The workmen can exercise the power at the instance of the appellant/union to create a charge to recover the dues towards the workmen from the sale proceeds of auction of lease hold rights and hence held that there was no purpose in stalling the auction or interfering with the said process and accordingly disposed of the writ petition in the above terms. Being aggrieved by the said order, the petitioner has preferred this appeal.

6. We have heard the learned Counsel for the appellant and learned Counsel for respondent Nos. 2 & 3.

7. Learned Counsel on both sides have re-iterated the submissions which have been made before the learned single Judge and the appellants counsel has stated that considering the fact that the workmen's dues are statutory in nature their dues have a priority over all other dues. The learned single Judge ought to have allowed the writ petition and directed that there dues be satisfied at the first instance and thereafter the KSFC could have got its dues satisfied.

8. Counsel for the respondents, however, re-iterated their position by stating that KSFC being a financial institution; it is entitled to recovery its dues by virtue of Section 29 of the State Financial Act and that the dues to the financial institutions over ride all other dues and therefore, the auction proceeds must be realized by the KSFC.

9. Having heard the counsel on both sides, the only point that arises for our consideration is as to whether the workmen of a company are entitled to enforce their charge in respect of the assets of the company as per their entitlement as a priority or entitled to preferential payment as compared to other dues of a company including dues of financial institutions.

10. In this context it is necessary to advert to the various provisions of the Constitution in order to answer the point for consideration. It is necessary to note that our Constitution has shown concern for the workers and given them a pride of place in the socio-economic order envisaged in the preamble and the Directive Principles of State policy. The Preamble contains the profound declaration and hope for millions of peasants and workers that India shall be a socialist democratic republic where social and economic justice will inform all institutions of national life and there will be equality of status and opportunity for all and every endeavour shall be made to promote fraternity ensuring the dignity of the individual. Every one is assured under Article 14 equality before the law and equal protection of the laws and implicit in this provision is the guarantee of equal remuneration for men and women for same work or work of a similar nature. Traffic in human beings and begar and other similar forms of forced labour are prohibited under Article 23 and Article 24 mandates that no child below the age of 14 may be employed in any factory or mine or engaged in any

other hazardous employment. These two Articles came up for construction before this Court in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, Article 38 imposes obligation on the State, albeit unenforceable in a Court of law, to "strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social justice shall inform all the institutions of the national life". This is followed by Article 39 which inter alia obliges the State to direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood, the ownership and control of the material resources of the community are so distributed as best to subserve the common good, the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, there is equal pay for equal work for both men and women and the health and strength of workers, men and women and the tender age of children are not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. The State is directed by Article 41 to make effective provision, within the limits of its economic capacity and development, for securing the right to work and Article 42 requires the State to make provision for securing just and humane conditions of work and for maternity relief. Article 43 provides that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, a living wage, conditions of work ensuring decent standard of life and full enjoyment of leisure and social and cultural opportunities. Then follows Article 43-A which is intended to herald industrial democracy and in the words of Krishna Iyer, J. mark "the end of industrial bounded labour". That Article says that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. The constitutional mandate is therefore clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it.

11. In this appeal we are concerned with the relationship of the workers viz-a-viz the company. The workers or workmen are not mere vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital. According to His Lordship Bhagwati J, the workmen supply labour without which capital would be impotent and they are, at the least, equal partners with capital in the enterprise. In fact the changed concept of a company has been expressed in the case of *Panchmahal Steel Ltd. v. Universal Steel Traders* reported in (1976) 46 CompCas 706 where it has been said that new problems call for a fresh approach and in ascertaining or devising a fresh approach, the objective for which the company is formed may provide a guideline for the direction to be taken. According to Prof. De Woot of Belgium, the company has a three fold reality - economic, human and public - each with its own internal logic. The reality of the company is much broader than that of an association of capital; it is a human working community that performs

a collective action for the common good.

12. In fact in the case of National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, the Supreme Court by a majority Judgment held that it is now accepted on all hands that even in predominantly capitalist countries that the company is not property. Today social scientists and thinkers regard a company as a living, vital and dynamic, social organism with firm and deep rooted affiliations with the rest of the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders. There is another equally, if not more, important factor of production and that is labour. Then there are the financial institutions and depositors, who provide the additional finance required for production and lastly, there are the consumers and the rest of the members of the community who are vitally interested in the product manufactured in the concern. A company, according to the new socio-economic thinking, is a social institution having duties and responsibilities towards the community in which it functions. The Supreme Court further went on to say that in the present times when the entire concept of company has changed and it has been transformed into a dynamic socio-economic institution in which capital and labour are both equal partners, possibly with heavy weightage in favour of labour, and the interest of the public as consumers as also the general welfare and common good of the community constitute a vital consideration. Then the welfare of workmen must be recognized viz-a-viz a company and law must therefore constantly be on the move adopting itself to the fast changing society and not lag behind.

13. In the same case His Lordship Chinnappa Reddy J, has expressed that the public interest element is now quite a predominant factor as far as company is concerned and even in the Companies Act itself there are several provisions in the said Act which take note of the element of public interest. There are a host of other legislations involving employment and welfare of labour to which the management of the companies are subject. He went on to say that "the transformation of a company's character from private to public is going on right before our eyes even as the institution of private property is also losing its diathesis. It is in this context of ferment and development that we must consider the problem before us". He has further quoted Prof. Gower's "The Principles of Modern Company Law" as follows. "The vexed question of the relationship between the employees and the company which employs them is, in fact, a dominant theme in the current debate which flows over from company to labour law".

14. The above decision was in the context of the right of the workmen to be heard in winding up proceedings initiated under the Companies Act. The Supreme Court by a majority of 3: 2 held that workmen have a right to be heard in the case of winding up petitions being filed by companies either voluntarily or by creditors and third parties. After the pronouncement of the Supreme Court in the said case the Companies Act was amended and Section 530 which pertains to

preferential payment was made more emphatic by the amendments made by including or inserting Section 529-A which deals with over riding preferential payments while Section 529 deals with application of insolvency rules in winding up of insolvent companies. The said sections are extracted here for immediate reference:

529. (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to:

- (a) debts provable;
- (b) the valuation of annuities and future and contingent liabilities; and
- (c) the respective rights of secured and unsecured creditors;

as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

[Provided that the security of every secured creditor shall be deemed to be subject to a part passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security,:

- (a) the liquidator shall be entitled to represent the workmen and enforce such charge;
- (b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and
- (c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank part passu with the workmen's dues for the purposes of Section 529A.]

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

[Provided that if a secured creditor instead of relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to pay [his portion of] the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.)

[Explanation: For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in

[(3) For the purposes of this section, Section 529A and Section 530,

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947);

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in Section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of:

(i) the amount of workmen's dues; and

(ii) the amounts of the debts due to the secured creditors.

The value of the security of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.]

[Overriding preferential payments.

529A. (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company:

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under Clause (c) of the proviso to Sub-section (1) of Section 529 pari passu with such dues, shall be paid in priority to all other debts.

(2) The debts payable under Clause (a) and Clause (b) of Sub-section (1) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.]

Preferential payments

530. (1) In a winding up, (subject to the provisions of Section 529A, there shall be paid in priority to all other debts:

(a) all revenues, takes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in Clause (c) of Sub-section (8), and having become due and payable within the twelve months next before that date;

(b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date !***], subject to the limit specified in Sub-section (2);

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in Section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(g) the expenses of any investigation held in pursuance of Section 235 or 237, in

so far as they are payable by the company.

(2) The sum to which priority is to be given under Clause (b) of Sub-section (1), shall not, in the case of any one claimant, [exceed such sum as may be notified by the Central Government in the Official Gazette].

(3) Where any compensation under the Workmen's Compensation Act, 1923 (8 of 1923) is a weekly payment, the amount due in respect thereof shall, for the purposes of Clause (e) of Sub-section (1), be taken to be the amount of the lumpsum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act

(4) Where any payment has been made to any employee of a company,:

(i) on account of wages or salary; or

(ii) to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall:

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company, available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by Clause (d) of Sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the

payment is made.

(8) For the purposes of this Section:

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday; [***]

[(bb) the expression "employee" does not include a workman; and]

(c) the expression "the relevant date" means:

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(iii) in any case where Sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

(9) This section shall not apply in the case of a winding up where the date referred to in Sub-section (5) of Section 230 of the Indian Companies Act, 1913 (7 of 1913), occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed, shall be deemed to remain in full force.

15. On a perusal of the said sections it is noted that proviso to Section 529(1) was added in the year 1985 to state that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein and that in case a secured creditor instead of relinquishing his security and proving his debt opts to realize his security- the liquidator shall be entitled to represent the workmen and enforce such charge and amount realized by the liquidator by way of enforcement of such charge shall be applied to the discharge of workmen dues and so much of the debt due to such secured creditor as could not be realized by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less shall rank pari passu with the workmen's dues for the purpose of Section 529-A. Further for the purpose of Sections 529, 529-A and 530, workmen in relation to a company means the employees of the company being workmen within the meaning of the Industrial Disputes Act.

16. Similarly Section 529(3)(b) defines workmen dues in relation to a company

to mean all wages or salary or accrued holiday remuneration being payable and entitlement under the Workmen's Compensation Act and all sums due to any workmen from a Provident Fund, pension fund, gratuity fund or any other fund for the welfare of the workmen maintained by the company and workmen's portion has been defined to be the "workmen's portion", in relation to the security of any secured creditor of a company, the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of:

- (i) the amount of workmen's dues: and
- (ii) the amounts of the debts due to the secured creditors.

17. Section 529-A also has been inserted by virtue of the Companies (Amendment) Act, 1985 and it begins with a non-obstante clause and it says that in the winding up of company, the workmen dues and debts due to the secured creditor stand a pari passu and they shall be paid in priority to all other debts. Section 530 talks about preferential payments and it is in the case of winding up of a company and subject to provisions of Section 529-A the priority with regard to all other debts are given. But the said section deals with revenues, taxes, cesses etc., and they are all subject to Section 529-A. Therefore, even in a situation of distress where a winding up of a company takes place and in the context of a secured creditor such as the 3rd respondent herein which is a financial institution, the debts that are due by a company to a secured creditor will have to yield in the first instances to the debts that are due to the workmen and the two debts namely the workmen dues and the dues to a financial institutions are ranked pari passu.

At this stage it is necessary to consider Section 29 and Section 46-B of the State Financial Corporation Act. (S.F.C. Act)

29. Rights of Financial Corporation in case of default- (1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement makes any default in repayment of any loan or advance or any instalment thereof [or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern], as well as the [right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section(1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect

to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) [Where any action has been taken against an industrial concern} under the provisions of sub-section(1), all costs, (charges and expenses which in the opinion of the Financial Corporation have been properly incurred) by it (as incidental thereto) shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.)

(5) [Where the Financial Corporation has taken any action against an industrial concern) under the provisions of Sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purpose of suits by or against the concern, and shall sue and be sued in the name of [the concern].

46-B. Effect of Act on other laws- The provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.]

18. u/s 29 of the S.F.C. Act the rights of the Financial Corporation in case of default is enunciated. Section 29(1) states that where any industrial concern is under financial liability to the Corporation, makes default in repayment of loan or advance or any instalment thereof or otherwise fails to comply with the terms of agreement with the financial corporation, in that event, the Corporation has right to take management or possession of both of the Industrial concern, as well as the right to transfer, lease or sale and release the property pledged, mortgaged, hypothecated or assigned to the financial Corporation. The said right is the statutory right found in the Act, which came into effect in the year 1951. Section 46B of the act states that the provisions of this said Act and of any rules or orders made thereunder would have effect notwithstanding anything inconsistent contained in any other law or in the Memorandum of Articles of Association of an industrial concern or in any other instrument having effect by virtue of any law. It also states that the provisions of the Act or in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern. Therefore, it is necessary to harmonize the provisions of the said Act with that of the Companies Act.

19. On a combined reading of the aforesaid provisions and considering the fact that Section 529-A of the Companies Act begins with a non obstante Clause, the same has an over-riding effect against any other provision of the Companies Act

as well as any other law which would obviously include the State Financial Corporation Act. What becomes apparent is that the dues of the workman would have to be met at the first instance and to that extent Section 29 of the State Financial Corporation Act 1951 has to yield Section 529-A of the Companies Act. Thus the workmen's dues which rank *pari passu* with the dues of the secured creditors will have to be paid from the proceeds of sale of the Company's assets including security given to the secured creditors. The State Financial Corporation cannot decide any dispute as to the apportionment between the workmen's dues and its own dues and therefore the right of the Corporation which is a secured creditor to sell the security by itself and outside winding up proceeding is subject only to the *pari passu* claim of the unpaid workmen. It must seek the leave of the Company Court for the limited purpose of ensuring that the *pari passu* charge in favour of the workmen is safeguarded by the imposition of suitable conditions under the supervision of the Company Court, as held in the case of *International Coach Builders Limited v. KSFC* 2003 (114) CompCas 614. Though there is no non-obstante clause in Section 29 of the State Financial Corporation Act, but Section 46-B of the said Act gives overriding effect on all Acts. However, what is to be noticed is that Section 529-A of the Companies Act contains a non obstante-clause. The said provision was inserted by virtue of an amendment made in the year 1985 and therefore, the later amendment in the Companies Act would prevail over Section 29 of the State Financial Corporation Act to that extent only. Therefore, the resultant position is that when sale of the assets of the company in liquidation is made by a secured creditor it should be with the approval of the Company Court only so as to enable it to ensure that the workers dues are taken care of.

20. The analogy which is applicable by virtue of Section 529, 529-A and 530 of the Companies Act in a case where a company is under winding up can also be applied to the facts of the present case where the company has stopped its manufacturing activities and despite there being no proceedings with regard to winding up, the fact remains that the workmen's dues have priority *viz-a-viz* the dues to the financial institution namely the KSFC, and in the instant case whatever amounts are realized, they must be distributed subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion. Therefore, even in the case of closure of manufacturing activity by a company in the context of their being workmen's dues and dues to a secured creditor, it has to be held that the said dues have to be discharged on the analogy of Section 529 and Section 529-A of the Companies Act and as the said section begins with a non-obstante clause therefore, in the instant case the respondents would have to make the payments that are due to the workmen in terms of the Sections 529, 529-A and 530 of the Companies Act and therefore by taking note of the said Sections, we feel that the appeal filed by the appellants in the instant case would have to be allowed and the same has to be disposed of by directing the respondents to comply with the procedure mentioned in Sections 529, 529A, and 530 of the Companies Act and accordingly distribute and discharge dues of the

company to the workmen and also to the financial institutions.

21. For the aforesaid reasons, the writ appeal is disposed of in the above terms. Parties to bear their own costs.