(1957) 03 AP CK 0015

In the Andhra Pradesh High Court

Case No : Original Petition No. 18/6 of 1955

Vijay Card-Board Co. Ltd. APPELLANT

Vs

Collector and Others RESPONDENT

Date of Decision : 01-03-1957

Acts Referred:

Companies Act, 1913 — Section 204, 216, 230, 230(1), 230(5)
Companies Act, 1956 — Section 230, 518(2), 530, 530(1)
Industrial Disputes (Amendment) Act, 1953 — Section 25
Industrial Disputes Act, 1947 — Section 2, 25, 25F, 33
Payment of Wages Act, 1936 — Section 2

Citation : (1957) 03 AP CK 0015

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : V.S. Ashok and V.K. Vaidya, for the Appellant; K.S. Swamy Gupta, for the Respondent

Judgement

Satyanarayana Raju, J.—This petition was filed u/s 216 of the since repealed Indian Companies Act, 1913 (corresponding to Section 518 (2) of the Companies Act, 1956) by the Liquidator of the Vijaya Card Board Company for an order setting aside the attachment made by the Collector of Hyderabad against the building bearing No. 1-9-1 in Azamabad belonging to the Company.

2. The 1st Respondent in the petition is the Collector of Hyderabad; the 2nd Respondent is the Labour Commissioner; and the 3rd Respondent is the President of the Vijay Card-Board Company''s Workers'' Union.

3. The material facts giving rise to this petition may be stated: The Vijay Card-Board Company (hereinafter referred to as ''the Company'') was incorporated under the Hyderabad Companies Act. By an order dated the 28th of June, 1952, the Government of Hyderabad refereed: to the Industrial Tribunal a dispute between the workmen and the Company. The issue referred the Tribunal for decision was whether the contemplated lock out of the Company with effect from 1-7-1952 was justifiable and if so to that relief would the workmen be entitled.

By its award dated the 16th of August 1952, the industrial Tribunal held that in the event of the; Company closing down its factory at any that within one year from the date when the award became enforceable, it should pay to each workman-half months'' wage for every completed year of service as compensation.

4. This award was published in the Hyderabad Gazette on the 29th August 1952. At a meeting of the directors of the company held on 23rd of August 1953, a resolution for voluntary winding up of the company has passed and a Liquidator was appointed for up its affairs The Liquidator so appoint-0 flaying resigned, at a meeting of the creditors the Company held on 30-10-1954, the present petitioner was appointed Liquidator. Now, the compensation payable to the workmen by the Company as per the award of it industrial, Tribunal above-mentioned, amount to Rs. 4,709-11-8. The Collector of Hyderabad, can order dated the 31st of October 1955, directed. "the attachment of the building bearing No. V-p-t in Azamabad belonging to the Company and there ordered that if the amount of compensation was not paid on or before the 7th of November; 1955, the said property should be sold for realisation of the amount.

5. In this petition, it is submitted by the Liquidator that ft is only wages of workmen in respect of services rendered to the Company within, the two months next before the date of the commencement of the winding up, that have a1 priority over other debts due by the Company; that the sum claimed by the 2nd Respondent on behalf of the workmen is not for services rendered by the workmen but is a sum awarded by the Industrial Tribunal as compensation for closing down the factory calculated at half month''s wage for every completed year of service and such a de bolas no priority u/s 230 (1) (c) of the Companies Act, 1913 (corresponding to Section 530 (1) XB) of the Companies Act, 1956.

The Liquidator, therefore, sought the following reliefs: (a) that the attachment made by the Collector be set aside; (b) that the Collector be directed to stay the sale by auction of the building, bearing No. 1-9-1 situated at Industrial Area, Azamabad, belonging to the Company; and (c)for directing the workmen of the Company represented by the 3rd Respondent to prove the sums due to, them as any other ordinary creditor and to accept rateably with the other creditors of the Company.

6. It is submitted by the Respondents that the amount of compensation awarded by the In-4ustrial Tribunal to the workmen is entitled to preferential payment u/s 230 (1) (a) of the Companies Act, 1913.

7. on the above contentions the question that falls for determination is whether the compensation awarded by the Industrial Tribunal, Hyderabad, to the workmen for the period when factory was closed, calculated at a half month''s for every completed year of service, should lid sin: priority to all Other debts of the Com-under Section-230 (1)(c) of the Companies Act, now repealed. If, the amount of compensation ''4% not entitled to preferential treatment, the

attachment would not be valid.

8. This petition was filed on 3-11-1955. On that date the Companies Act of 1913 was in force. The Companies Act of 1956 became law on the 18th of January, 1956 and came into force on the 1st of April, 1956. Section 530 of the new Act corresponds to Section 230 of; the old Act. It is provided by Sub-section (9) of Section 530 that it shall not apply in the case of a winding up where the date referred to in Sub-section (5) of EJ. 230 of the Companies; Act, 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 folklore.

The date referred to in Sub-section (5) of Section 230, is, in the case of a company ordered to be wound up compulsorily, which had not been previously commenced to be wound up, the date of the winding up order, and in any other case, the date of the commencement of the winding up. In this case, the date of the commencement of the winding up-'', occurred on the 23rd of August, 1953, before the commencement of the Companies Act of t 1956. Hence the provisions relating to preferential treatment which would apply are those contained in Section 230 of the Companies Act of 1913.

9. The material provisions of that section ran as follows:

1. In a winding up there shall be paid in priority to all other debts -

(e) all wages of any laborer or workman, not exceeding Ave hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the company within the two months next before the said date;

2. The foregoing debts shall .

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

5. The date hereinbefore in this section referred to is:

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and;

(b) in any other case, the date of the commencement of the winding up.

10. The principle underlying Section 230 of the Act of 1913 is that the debts and liabilities enumerated therein should be treated as preferential debts as compared with ordinary unsecured debts.

11. In order to attract the application of Section 230 (1)(c) of the Act, it is

necessary that what is payable must be wages. It must be in respect of services rendered to the Company, and the further requirement, is-that it must be due for a period which is within two months next before the date mentioned in Sub-section (5), Under Sub-section. (5), the material date for the purpose of Sub-section (1)(c) Is the case of a compulsory winding up, which has been, preceded by a voluntary winding up, the date of the commencement of the voluntary winding up, when the re solution for the voluntary winding up was passed.. Where a voluntary winding up is succeeded by a compulsory order, the two months for which a labourer or a workman can claim preferential payment are the two months next before the resolution for winding up.

Under Section 204 of the Companies Act of 1913, It is provided that" a voluntary winding up shall fee deemed to commence at the time of the passing of the resolution for voluntary winding up. In this case, the resolution for voluntary winding up was admittedly passed on the 23rd of August, 1953. Therefore, the period of two months for which the labourer or workman could claim preferential treatment are the two months .next before the 23rd of August, 1953.

12. The contention of the Petitioner is that the amount of compensation payable to the workmen under the award of the Industrial Tribunal is not wages in respect of services rendered to the Company and that the said amount does not appertain to the period mentioned in Sub-section (1)(c) read with Sub-section (5) of Section 230 of the Act; The first of the question which arises for consideration is whether the amount awarded by the Tribunal as compensation is "wages".

13. The term "wages" has not been defined under the Companies Act. Section 2 (rr) of the Industrial Disputes Act defines ''wages'' as meaning all remuneration, capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment, and as including (i) such allowances (including dearness allowance) as the workman is for the time being entitled to, etc. It may be noted here that Section 2 defining ''wages'' has been inserted in the Industrial Disputes Act by the Amendment Act 43 of 1953 and was not part of the statute when the award was made in this case.

14. The definition of the word ''wages'' contained in Section 2 (vi) of the Payment of Wages Act, 1936, is in primavera with the definition of ''wages'' contained in Section 2 (rr) of the Industrial Disputes Act, and it reads:

''Wages'' means all remuneration, capable of being expressed in terms of money, which would if the terms of the contract of employ of express or implied, were fulfilled, be payable, "''whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such -

person by reason of the termination of his employment....

15. In The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghoo and Another, , their Lordships of the Supreme Court had to consider the question whether the claim for house rent allowance of an employee of the railway came within the purview of the definition of ''wages'' contained in Section 2 (vi) of the Payment of Wages Act, which has been set out above. Their Lordships stated thus:

Shorn of all verbiage, ''wages'' as defined In Section 2 (vi) are remuneration payable by an employer to his employee for services rendered accord-tog to the terms of the contract between them.

If that definition were to be applied to the facts of this case, it is clear that after their services have been terminated as a result of the closure of the factory by the Company, no services have been rendered by the workmen.

16. In Nutan Mills Vs. Employees State Insurance Corporation, , a Divisional Bench of the Bombay High Court consisting of Chagall C.J. and Dixit J., had to consider the question whether the lay oft compensation paid to an employee u/s 25 (C) of the Industrial Disputes Act was not ''wages'' as defined in the Employee''s State Insurance Act of 1948.

The learned Judges, after a review of the decisions, bearing on the. question, held as follows:

What the employer pays to his employee by way of compensation for lay-off is not because the employee has fulfilled the contract but the situation that arises on a lay-off is the very antithesis of" the fulfillment of the contract. Not only is the contract not fulfilled, but the contract need not be fulfilled because, the employee is under no obligation to carry out any orders of his employer and he is at perfect liberty to employ himself elsewhere. The very term layoff'' assumes and implies that the employer is not in a condition to offer employment to his employees and therefore he terminates his employment temporarily during the continuance of the emergency and while that emergency continues the employee is unemployed.

The learned Judges also observed:

What must be considered is whether there was an effective and subsisting contract of employment of master and servant at the material date and the material date is during the period of lay-off. If during that period the master cannot command his servant to do his work and if the servant is under no obligation to do the work of the master, then it is difficult to understand how a subsisting contract of employment continued during the period of the lay-off.

Drawing a distinction between wages and compensation, the learned Judges pointed out:

Nothing could have been easier for the Legislature than to have provided that during the period of lay-off the employer shall pay wages calculated in a particular manner. The Legislature, on the other hand, is at pains to emphasise the fact that what the employer is paying during the period of lay-off is not wages but compensation. We cannot possibly overlook the distinction between wages and compensation and when the Legislature advisedly uses one expression rather than the other, we must give to the expression used its proper meaning and connotation." The reasoning and the conclusion of the learned Judges, with which I am in respectful agreement, support the contention of the Petitioner that compensation is not wages.

17 In A.R. Sarin Vs. B.C. Patil and Another, , a Division Bench of the Bombay High Court held that damages claimed by a workman upon his wrongful dismissal did not amount to wages within the meaning of that term as defined in the Payment of Wages Act.

18. In Krishna Iyer v. Official Liquidator, AIR 1952 Ker 99 (D), the question arose as to whether the word ''bonus'' came under the category of ''wages'' within the meaning of Section 230 (Q) (b) of the Companies Act, 1913. Kunhi Raman C, J. and Sankaran J. held that ''bonus did not come under the category of ''wages'' and employees of a company could not be recognized in resects of tonus as prefrontal creditors within the meaning of Section 230.

19. The learned Government Advocate, however, relied up n a decision if the Bombay High Court in A. D. Divekar v. Dinesh Mills, 1955 Lab JW ,-, SOI '' (Bom) (E), where the question arose as to whether the compensation payable to in workmen, whose sea-vices were terminated by the employer on the ground that the mill was being closed, was ''wages'' within the meaning of that term as defined in the Payment of Wages Act,. Bavdekar and Shah JJ. held that the expression ''sums payable upon the termination of the services'' in the definition of ''wages'' contained in Section 2 (vi) of the Payment of Wages Act must be given its wide and natural meaning and there'' could be no doubt that the retrenchment compensation payable to the concerned employees u/s 25F (b) of the Industrial Disputes Act would be sums payable to the employees on termination of their services and hence ''wages''.

20. The definition of ''wages'' contained in the Payment of Wages Act expressly includes .within, its ambit all sums payable to an employee toy; reason of the termination of his employment. But Section2 (rr) of the Industrial Disputes Act, which defines ''wages'', includes only gratuity payable on the termination of an employee''s services within the definition of wages. There is, there-lore, some difference between the definition of wages'' contained in Section 2 (rr) of the Industrial Disputes Act and Section 2 (vi) of the Payment of if Rages Act. '' As I have already stated, it may ascribe noted that Section 2 (rr) defining ''wages'' has been inserted in the Industrial Disputes Act for the first time in 1953 and was not part of the statute when the award was made.:

21 It has to be further noted that Section 230 (c) of the Companies Act, 1913, does not contain the wide definition given to the term ''wages'' either in Section

2 (rr) of the Industrial Deputes Act or in Section 2 (vi) of the Payment of Wages Act but confines it only to wages in respect of services rendered to the Company and not to sums payable upon the termination of services of an employee.

22. On behalf of the Respondents, the Learned Government Advocate contended that What is payable as compensation also comes within the definition of ''wages''. In order to satisfy the requirements of Section 230 (1) (c) of the Companies1 Act, what is payable must be for services rendered by the employee and if, in fact, no services are rendered, the preferential payment provided under this section cannot be availed of.

23. The learned Government Advocate relied upon a decision of a Division Bench of the Madras High Court consisting of Rajamannar C. J. and Panchapakesa Aiyar J., in R.G.N. Price, Official Liquidator of the Andhra Paper Mills Co., Ltd., (in liqn.) Vs. M. Chandrasekharan, President of the Andhra Paper Mills Workers Union, ;. At page 991 the learned Judges dealt with the objection to the priority allowed by the trial Judge in respect of the salary for the two months prior to the date of the winding up order. They observed:

In allowing this priority the learned Judge only, purported to apply Section 230(1) (c) of the Indian Companies Act, under which, all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered o the company'' within the two months next before the date of the winding up order, shall be Paid in priority to all other debts.

The argument on behalf of the Liquidator was that the workmen actually did not render any service to the company during that period as the Mills had been closed from 24 to May 1947.

No direct decision was cited to us on this point; but it appears to have been held in England that when, a .workman; is absent from the-business on .account if illness and with the concurrence; of the - employer, or when an employee is compelled to leave; the service on account of his master''s inability to pay his salary, the right of priority is not lost.

The same principle must apply to this (case of an illegal lockout. We therefore agree with the learned Judge in having allowed priority to this extent.

In the above decision the learned Judges were dealing with the cases of an illegal lockout and they came to the conclusion that in such "a case the wages of a workman were entitled to preferential treatment u/s 230 (1) (c). In the case of an illegal lockout there is no termination of the services of the workmen and they would be entitled to be paid their wages.

24. In a recent decision of the Supreme Court in Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, , their Lordships held that a lockout is neither an alteration to the-prejudice of the workmen of the conditions of service applicable to them within the meaning of Clause (a) nor a discharge or punishment, whether by

dismissal or otherwise, of the workmen within the meaning of Clause (b) of Section 33 of the Industrial Disputes Act, 1947.

25. As has been pointed out by Balakrishna Ayyar J, in Sri Ramachandra Spinning Mills, Pandalapaka v. Province of Madras, AIR 1958 Mad 241 (H), if an employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employee, or generally speaking, when his act is what may be called an act of belligerency there would be a lockout. If the Industrial Tribunal finds that there was an illegal lockout'' the employees would be entitled to be paid their wages because a lockout does not automatically terminate the; services of the workmen and therefore in the case of an illegal lockout the sums payable to the employees may be entitled to preferential treatment u/s 230 (1)(c) of the Companies Act.

But as has been pointed out by the Supreme Court in Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, , the industrial dispute to which the provisions of the Act would apply, is only one which arises out of an existing industry, but where the-business has been closed and it is either admitted or found that the closure is real and bona fide, any dispute arising with reference thereto would fall outside the purview of the Industrial Disputes Act. If so, the sums payable after the closure of the business as compensation by the quondam employer to the employees would not be ''wages'' in respect of services rendered within the meaning of Section 230 of the Companies Act. In any view, this amount which the Industrial Tribunal has awarded to the workmen is not wages in respect of services rendered to the Company within the two months next before the commencement of the voluntary winding up.

26. What had been awarded to the work men by the Tribunal is in the nature of an ex gratia payment dehorns the contract of service It is not payment of remuneration in respect of services rendered to the Company. The question as to whether the workmen are entitled to priority in respect of the amount payable to them under the award of the Industrial Tribunal must be decided with reference to Section 230 of the Companies Act and the language employed in that section is unequivocal and clear. I must therefore, hold that the amount payable to the workmen as compensation is not entitled to preferential payment u/s 230. If so, the attachment made by the Collector must be held to be without jurisdiction.

27. The result is that the petition is allowed with costs against Respondents 1 and 2, and the attachment ordered by the Collector of Hyderabad against the building bearing No. 1-9-1 in Azamabad belonging to the Company, is set aside.

