(1993) 09 SC CK 0136

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 5222 Of 1985

Workmen APPELLANT

Vs

Rohtas Industries Ltd. RESPONDENT

Date of Decision : 08-09-1993

Acts Referred:

Citation : (1995) 7 JT 629 : (1995) 1 SCC 171 Supp

Hon'ble Judges : S. C. Agrawal, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. ROHTAS Industries Ltd. is a large industrial undertaking having units for manufacturing cement, paper, vanaspati, asbestos and vulcanised fibres at Dalmianagar, District Rohtas, in the State of Bihar. It was employing about 10,000.00 workmen when it closed its operations in July, 1984. The said closure led to the filing of this writ petition by the workmen. It appears that proceedings for winding up of the company are pending in the Patna High court and provisional liquidator has been appointed. Having regard to the suggestion made by the learned Attorney General of India to which the counsel for the petitioners also agreed, this court passed an order on 28/10/1987 whereby the Central Government was directed to make a reference to the Board of Industrial and Financial Reconstruction (for short ''BIFR'') constituted under the Sick Industrial Companies (Special Provisions) Act, 1985 for framing a scheme as contemplated under Section 18 of the said Act for revival of the industry. The BIFR submitted a report wherein it was indicated that three of the units of the industry, namely, cement, asbestos and vanaspati could be revived as the same appear to be viable but the paper unit could not be revived. Keeping in view the said report of the BIFR as well as the statements filed on behalf of the State of Bihar and Union of India and the memorandum prepared by the learned Attorney General of India and filed before this court, this court passed the order dated 24/10/1989 wherein this court has observed:

"AS already noted, the company has been closed down for more than five years now. A lot of assets are fast becoming useless and will soon become junk. Several attempts were made to dispose of some of the stocks held by the Official Liquidator but for one reason or the other it has not been possible to complete the sale and though this court had directed that the sale proceeds would be utilised for payment of arrear-wages, that has not been feasible. Claims have been laid against the company and are perhaps awaiting adjudication. If the company is not revived and gets liquidated, the liabilities would turn out to be far in excess of the assets and notwithstanding first or second charge on the assets, the creditors may not appreciably benefit. This court cannot lose sight of the fact that living to about 10,000.00 families has been denied for over five years and apart from national loss, the workmen have been put to serious jeopardy. In these circumstances, we are satisfied that it is of paramount importance that the company in respect of the viable units should be revived and allowed to come into production."

2. THIS court, inter alia, directed as under:

(1 The State of Bihar shall appoint an authorised officer from the Senior IAS cadre with appropriate commercial background to be the Rehabilitation Administrator.

(2 The Provisional Liquidator appointed by the High court of Patna shall hand over to the Administrator all the assets of the company which he has taken over under orders of the court. Such assets of the company which have not yet been taken over by the Provisional Liquidator shall upon the appropriate officer being designated vest in him forthwith and he is clothed with the necessary power under our present orders to take such steps as are necessary to take over possession of such assets of the company.

(3 The State government of Bihar has undertaken to deposit the amount of Rs 15 crores with the Administrator within eight weeks and a similar amount of Rs 15 crores shall be advanced by the Union of India to the State of Bihar from out of plan assistance for the State. The sum of Rs. 15 crores paid by the State Government shall be utilised, in due course, for payment of arrears of wages to the workers and for disbursement of secured loans of financial institutions and other parties for which security of the Company''s assets had been furnished.

(4 Appointment of technical consultants and other competent officers shall be undertaken within two months hence.

(5 The asbestos, cement and vanaspati plants shall be commissioned after effecting such repairs as may be necessary,

(6 Steps shall be taken to explore the viability of the paper unit within three months after the company is recommissioned in respect of the three units.

3. IN accordance with the said directions, the State of Bihar designated an officer who has taken over as the Rehabilitation Commissioner and with his efforts the

necessary repairs have been carried out and the three units were able to start functioning.

4. ON 7/5/1993, this court passed an order wherein, after taking note that four units have started functioning providing employment to about 2900 workers, it was observed:

"WE are of the view that it would not be possible for this court to supervise the matters arising out of these proceedings indefinitely. Before we direct any alternative arrangement for monitoring and controlling these units, we direct the Rehabilitation Commissioner through Mr Sibal to file in this court before 31/7/1993 the unit-functioning reports in respect of each of the units. The reports shall indicate every relevant aspect of all the units. The financial position, workers'' strength, the wages of the workers, the production, sale of the goods produced, profit and loss statement and all other relevant aspects shall have to be included in the report.

MR Sibal further states that in order to keep the units, which are already functioning, as going-concern it is necessary to invest another sum of Rs. 10 crores. He states that he has already requested the State of Bihar and other financial institutions for help in that respect. We have no doubt that keeping in view the urgency of the matter, the State of Bihar will consider the request made by the Rehabilitation Commissioner for the contribution of the funds. Mr B.B. Singh, learned counsel for the State of Bihar states that he would seek instructions from the State government in this respect."

5. ON 20/8/1993, Shri Kapil Sibal, learned Senior Counsel appearing for the Rehabilitation Commissioner, stated that the company has assets worth about Rs 250 crores as on today and the liabilities run up to Rs. 45 crores and that if a sum of Rs. 10 crores is advanced by the State of Bihar, there is a possibility of company''s becoming viable. Mr Sibal also stated that if the State government is not willing to contribute more money then the best course would be to privatise the company in the sense that it be sold as a going-concern. The matter was, therefore, adjourned to enable the counsel for the State of Bihar as well as for the workmen to consider the said proposal and suggest counter-proposals.

6. WHEN the case was taken up on 3/9/1993, an affidavit of Mr S.N. Sinha, Commissioner and secretary, Department of Industries, government of Bihar was filed on behalf of the State of Bihar wherein it has been stated:

"3. That due to resource constraints and financial difficulties, the State Government is not in a position to contribute/advance any amount to the Rohtas Industries for its operation. Further the State government is not in a position to take any liabilities of the company.

4. That the State government have no objection to privatise the Rohtas Industries. State government has decided to invite private entrepreneurs through advertisement for running Rohtas Industries."

7. The learned counsel for the workmen, on the other hand, suggested that the State government should nationalise the industry. The learned counsel for the State government has, however, expressed inability to accept this course.

8. KEEPING in view the circumstances referred to above, we are of the view that the best course would be to dispose of the whole undertaking. In order to ensure that the undertaking fetches an adequate price, it is necessary that it should be disposed of as a running concern. The process of disposal of the undertaking would require issuing of an advertisement inviting offers, processing the offers and negotiations with the prospective buyers. The whole process will take some time. We have been informed that on account of financial constraints all the units are lying closed at present and wages of the workmen have not been paid for the past two months and payment has also to be made to the Bihar State Electricity Board for the supply of electricity. On behalf of the Rehabilitation Commissioner it has been stated that on account of lack of adequate funds he has been unable to pay the wages of the workmen as well as the charges of the Bihar State Electricity Board. It has also been submitted that funds are needed for procuring raw material to run the units. It is stated that the units can be made functional if a sum of Rs. 10 crores is arranged. Since the sale of the undertaking of the company would fetch much better price if it is sold as a running concern we feel that it would be in the interest of the creditors as well as the workmen that the functioning of the units be revived and then the undertaking should be disposed of in a running condition. With that end in view, we consider it appropriate to give the following directions:

1. The State of Bihar shall advance a sum of Rs. 10 crores as loan to the company, for the resumption of the production in the units of the undertaking. The said amount shall be paid by the State government to the Rehabilitation Commissioner within a period of fifteen days from today.

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2. In order to enable the State government to pay the said amount of Rs 10 crores as directed above, the Union of India shall advance to the State of Bihar the sum of Rs. 10 crores from out of the plan assistance for the State or any other account. The said amount shall be paid by the Union of India to the State of Bihar within a period of ten days from today.

3. Out of the said sum of Rs. 10 crores received from the State Government the Rehabilitation Commissioner shall pay the arrears of wages of the workmen for the past two months.

4. Against the demand of the Bihar State Electricity Board, the Rehabilitation Commissioner shall pay a sum of Rs. one crore towards the arrears for period ending 31/8/1993. The charges for the electricity supplied from 1/9/1993 shall be paid regularly.

5. The Rehabilitation Commissioner will have the assets of the undertaking

valued by an approved Valuer within a period of one month of this order.

6. The Commissioner and secretary, Department of Industries, Government of Bihar, shall publish an advertisement in five prominent national newspapers (English language) and three national newspapers (Hindi language) inviting offers for the purchase of the entire industrial undertaking of the company as a running concern. The said advertisement shall be published within 10 days from the date of this order. In the advertisement it should be indicated that the last date for receipt of offers would be 10/10/1993.

7. The offerer would be required to submit a bank guarantee for Rs. 10 crores along with the offer in favour of the Commissioner and Secretary, Department of Industries, government of Bihar.

8. The Rehabilitation Commissioner shall move the court for appropriate directions after the offers have been received in pursuance of the advertisement.

9. We accept the suggestion given by Mr Ranjit Kumar, advocate that while advertising for the sale of the concern, the State of Bihar shall also indicate that it is prepared to extend the incentives which are available to the industries which are set up in the backward area. Mr B.B. Singh, advocate very fairly states that he will persuade the State Government to accept the same. The moratorium is extended by this Court for six months.

10. Out of the amount received by the disposal of the undertaking of the company Rehabilitation Commissioner shall first repay the loan of Rs 10 crores advanced by the State of Bihar in pursuance of these directions, before discharging any other liability of the company. This is to be done to enable the State government to discharge its liability to the government of India.