

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 8684 OF 2010

ASSTT. GENERAL MANAGER,
KARNATAKA STATE FINANCIAL CORPORATION Appellant(s)

:VERSUS:

GENERAL SECRETARY, MYSORE DIVISION
INDUSTRIAL WORKERS GENERAL UNION AND ORS. Respondent(s)

O R D E R

Heard Ms. Kiran Suri, learned counsel for the appellant in support of this petition and Mr. Raghupathy, learned counsel appearing for the respondent Trade Union.

2. This special leave petition seeks to challenge the judgement and order dated 16.12.2009 rendered by a Division Bench of the Karnataka High Court in Writ Appeal No.1382/2009 whereby the writ appeal filed by the respondents was allowed, and the order passed by the learned Single Judge of the High Court dismissing Writ Petition No.4529/2009 filed by the respondent was set aside.

3. The short facts leading to the present special leave petition are this wise: The respondent No.1 is a Trade Union registered under the Trade Unions Act, 1926 and was representing the workmen of the industrial concern known as Mysore Panel and Boards Pvt. Ltd. This company closed down its manufacturing activities sometime in January, 2002, leaving some 83 workmen jobless. Consequent upon the closure of the said company, there were various statutory and legal dues of the workmen, and for that purpose they filed Applications under Section 33-C of the Industrial Disputes Act, 1947 as well as under the Payment of Gratuity Act. Those applications were allowed by the concerned authorities. Thus, one Application was allowed by order dated 4.3.2005 for a claim of Rs.4,71,781/-, another Application was allowed by the order dated 30.8.2005 for a claim of Rs.16,66,585/- and the third Application filed under the Payment of Gratuity Act was allowed by order dated 13.9.2005 for a sum of Rs.7,78,696/-, resulting into total dues of Rs.29,17,062/-. Having waited sufficiently, the respondent Trade Union wrote to the Deputy

Commissioner of the Mysore District, Mysore by its letter dated 28.8.2008 seeking recovery of these amounts.

4. It so transpired that the Deputy Commissioner, Mysore District was not quick enough in taking the necessary steps, whereas the petitioner Corporation which had its claim against this company, proceeded to sell the leasehold rights of the company for realizing the amount of Rs.24,00,000/-. The claim of the workmen as aforesaid was for Rs.29,17,062/-. Fearing that the amount recovered by the sale of the leasehold rights of the company will seriously erode the dues of workmen, the respondents filed a writ petition before the High Court. The first prayer in the writ petition was for issue of a writ of mandamus or direction to the Deputy Commissioner, Mysore District to take immediate steps to proceed against the Company for recovery of statutory and legal dues of the workmen as arrears of land revenue by selling the assets of the Company. Prayer (b) of the writ petition was to seek writ of mandamus or direction or order to the Karnataka State Financial

Corporation, which is the petitioner herein, not to appropriate the sale proceeds from the sale of machinery and other assets (realized pursuant to the public auction) and to apportion the same to satisfy the claims of the workmen in accordance with law.

5. The learned Single Judge of the Karnataka High Court dismissed this writ petition, though the appeal therefrom was allowed by a Division Bench of the High Court. Being aggrieved by the judgment and order passed by the Division Bench of the High Court, the present special leave petition has been filed by the petitioner.

6. The submission of Ms. Kiran Suri, learned counsel for the appellant Corporation is that under Section 29 of the State Financial Corporations Act, 1951, the Financial Corporation has a right to take over the management or possession of the properties or both of the industrial concern, and this right has precedence over all other claims. She relies upon Section 31 of the said Act which gives special provisions for enforcement of the claims of the Financial Corporation. Ms. Suri criticises the

judgment of the High Court which looked into the proviso to Section 529 of the Companies Act, 1956 under which the dues of the workmen are given a precedence. The submission of Ms. Suri was that unless the liquidation proceedings are taken, the rights of the workmen under Section 529 of the Companies Act cannot fructify, and until then those rights cannot have any precedence over the rights of the State Financial Corporation under Sections 29 & 31 of the State Financial Corporations Act, 1951.

7. The learned counsel relies upon a few decisions of this Court. Firstly, on Central Bank of India vs. Sriguppa Sugars & Chemicals Ltd. and Ors., (2007) 8 SCC 353. In that case, this Court has held that the rights of the appellant Bank had precedence over the workmen's dues and the statutory rights, like that of the Cane Commissioner. She relies upon particularly paragraphs 16 and 17 of the said judgment where it has been held that the rights of the appellant Bank cannot be affected by the orders of the Cane Commissioner and both the Cane Commissioner, and the workmen, in the absence of a liquidation, stand only as unsecured creditors and

their rights cannot prevail over the rights of the workmen. She has also relied upon the decision of this Court in the case of Union of India and Ors. vs. Sicom Limited and another, (2009) 2 SCC 121, and particularly paragraphs 16 and 23 thereof. In paragraph 23, Section 46-B which deals with the rights of the State Financial Corporation, has been referred to, and it is held that the non obstante clause in that Section will not only prevail over the contract but also other laws.

8. We may we refer to Section 46-B of the State Financial Corporations Act, 1951 which reads as follows:

"46B. Effect of Act on other laws.- The provision of this Act and of any rule 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." (emphasis supplied)

9. The two authorities relied upon by Ms. Suri will have to be looked at in a proper perspective. As far as the judgment of this Court in Central Bank of India (supra) is concerned, the Court has not discussed the provision of Section 46-B and particularly, the later part thereof, which specifically lays down that the provisions of the State Financial Corporations Act, 1951 shall be applicable in addition to, and not in derogation of any other laws for the time being applicable to an industrial concern. Similarly, the judgment in Sicom Limited (supra), though refers to the provision of Section 46-B of the State Financial Corporations Act, 1951, does not deal with the effect thereof.

JUDGMENT

10. In the present case, as we have noted above, the workmen had their rights adjudicated way back in the year 2005, and the Court concerned had held that they were entitled to their dues under Section 33-C of the Industrial Disputes Act, 1947 as well as under the Payment of Gratuity Act. Unfortunately, the Labour Commissioner had not proceeded with the proceedings for realizing the claims of the workmen

which he was expected to realize from the sale proceeds of the assets of the company. Merely because the appellant Financial Corporation subsequently sold the properties, that by itself cannot destroy the rights of the workmen which they had under the orders passed by the competent Courts. Under Section 46-B, the provisions of the State Financial Corporations Act shall be applicable in addition to, and not in derogation of any other law for the time being applicable to an industrial concern. The High Court compared the claim of the petitioner with the claims of the workmen where a company goes into liquidation and held that the dues of the workmen shall have preference. The comparison has to be seen with proper perspective and that has to be seen on the backdrop of Section 46-B of the Act. We do not find any error in the order passed by the High Court. This special leave petition is, therefore, dismissed.

.....J
(H.L. GOKHALE)

.....J
(RANJAN GOGOI)

New Delhi;
April 03, 2013.