

A

M.D., BHADRA SHAHAKARI S.K. NIYAMITA

v.

PRESIDENT, CHITRADURGA MAZDOOR SANGH AND ORS.

OCTOBER 31, 2006

B

[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

*Constitution of India:*

C

*Articles 12 and 226—Co-operative Sugar Factory—Employees—Settlement—Writ petition for direction to implement—High Court directing implementation of settlement and Management to pay 40% back wages to workers since their reinstatement had already been allowed—Held, writ petition against co-operative Sugar Factory was not maintainable—However, in the interest of justice and in the interest of workers, Management is directed to pay 10% back wages for the periods 1992 to 1999.*

D

**Respondent No. 1 Majdoor Sangh in CA No. 4534 of 2004 filed a writ petition before the High Court praying for a writ/direction to the appellant-co-operative sugar factory to implement the settlement stated to have been arrived at between the parties. The High Court allowed the writ petition and directed the Management to pay 40% of back wages to the 51 reinstated workmen. Later, the respondent-Mazdoor Sangh filed a contempt petition, which was rejected. Both the Management as also the Majdoor Sangh filed appeals before the Supreme Court.**

E

F

**It was contended for the Management that the Co-operative Sugar Factory being registered under the Cooperative Societies Act, would not fall within the definition of 'State' under Article 12 of the Constitution of India and, therefore, the writ petition filed by the respondent- Mazdoor Sangh before the High Court was not maintainable.**

G

**Disposing of the appeals, the Court**

**HELD:1. The Writ Petition filed by the respondent-Union against the co-operative sugar factory is not maintainable. [214-D]**

*General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. v.*

H

*Satrughan Nishad & Ors.*, [2003] 8 SCC 639; *Federal Bank Ltd. v. Sagar Thomas & Ors.*, [2003] 10 SCC 733; *Gayatri De v. Mousumi Cooperative Housing Society Ltd. & Ors.*, [2004] 5 SCC 90; *Shrikant v. Vasantrao & Ors.*, [2006] 2 SCC 682 and *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors.*, [2002] 5 SCC 111, referred to. A

2. However, considering the long pendency of the matter before the High Court and this Court and the plight of the workers as also the critical financial situation of the sugar factory, the appellant-Management is directed to pay 10% back wages to the 51 workmen for the periods 1992 to 1999. Since the reinstatement has been ordered by the High Court, the workers will not be disturbed except in accordance with law. [214-F; 215-B-E] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4534 of 2004. C

From the Judgment and Final Order dated 25-2-2003 of the High Court of Karnataka at Bangalore in W.P. No. 13524/1999

Ranjit Kumar, Rajesh Mahale, Gururaj C.B., M.A. Krishnamoorthy, M.A. Chinnaswamy and Krishna Kumar for the Appellant. D

G.V. Chandrashekar, Anjana Chandrashekar, P.P. Singh, Sanjay R. Hegde, Anil K. Mishra, Vikrant Yadav and Sashidhar for the Respondents.

The Judgment of the Court was delivered by: E

DR. AR. LAKSHMANAN, J. Civil Appeal No. 4534/2004.

This appeal was filed by the Managing Director, Bhadra Shahakari S.K.Niyamita against the President, Chitradurga Mazdoor Sangh & Ors. against the judgment dt.25.02.2003 passed by the High Court in W.P. No. 13524/1999. The Writ Petition was preferred by Chitradurga District Mazdoor Sangh calling in question the inaction of the Management in implementing the settlement produced as Annexure-A dt.14.05.1998 and for a consequent direction to the Management to implement the aforementioned settlement. The High Court in para 40 of its judgment observed as follows :- F

“In the result and for the foregoing reasons, we allow the writ petition with costs quantified at Rs. 3000/- payable by the first Respondent to the Petitioner’s counsel within two weeks. A writ of *mandamus* shall issue to the management of the first Respondent sugar factory to implement the settlement Annexure-A dated 14.05.1998 H

A and continue 51 workmen already reinstated into service and pay 40% of backwages, if not already paid, within a period of one month from today.”

Aggrieved against the said order, the appellant-Management has preferred the above Civil Appeal.

B Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellant submitted that the appellant being a co-operative sugar factory registered under the Co-operative Societies Act with a view to earn profit for the members of its society is purely a non-governmental organisation and will not fall within the definition of ‘State’ under Article 12 of the Constitution of India and, therefore, the Writ Petition filed by the respondent-Union was not maintainable. In support of his contention, the learned senior counsel placed strong reliance on the Judgments in *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. v. Satrughan Nishad & Ors.*, [2003] 8 SCC 639; *Federal Bank Ltd. v. Sagar Thomas & Ors.*, [2003] 10 SCC 733; *Gayatri De v. Mousumi Cooperative Housing Society Ltd. & Ors.*, [2004] 5 SCC 90; *Shrikant v. Vasantrao & Ors.*, [2006] 2 SCC 682 and *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors.*, [2002] 5 SCC 111. We have perused the above Judgments. In our opinion, the Writ Petition filed by the respondent-Union against the co-operative sugar factory is not maintainable. We, therefore answer the said issue of maintainability of the Writ Petition in favour of the appellant-Management.

When the matter came up for hearing on the last occasion, considering the long pendency of the matter before this Court and also before the High Court and considering the plight of the workers employed in the appellant-factory, we called for information as to whether it would be possible for the appellant to pay back wages to the respondent-workmen and the extent thereof. Pursuant to our direction, Dr. Iftiqhar, the Managing Director of the appellant placed before us, at the time of hearing, an affidavit duly signed on 26.07.2006. The same is taken on record. We have perused the said affidavit. The appellant also, at the time of hearing, furnished information about the financial commitment required to pay back wages to the respondents in the Civil Appeal. The learned senior counsel has submitted that in view of the financial situation of the appellant being in the red, it is not possible for the appellant to sustain additional financial burden in the nature of back wages to the 51 workmen represented by the respondent-Union. He has also further submitted that it will not be able to make a financial commitment at this stage,

especially when the accumulated loss of the factory is Rs. 4252.85 lacs as on 31.03.2006 and that the payment of back wages to the 51 workmen represented by the respondent-Union at this stage may cause labour unrest, especially since the appellant sugar factory has not been able to pay even monthly wages to its workmen and they have initiated litigations and Contempt Petitions before various courts. As already noticed, the High Court while disposing of the Writ Petition ordered payment of 40% back wages to the workmen by the Management. Considering the critical financial situation of the appellant sugar factory, we feel that a direction for payment of 10% back wages which comes to Rs.9.52 lacs if now ordered would meet the ends of justice. Mr. G.V. Chandrashekhar, learned counsel for the respondents has agreed to receive 10% back wages amounting to Rs.9.52 lacs which represent the back wages for the period 1992 to 1999. We, therefore, in the interest of justice and in the interest of workers, direct the appellant-Management to pay a sum of Rs.9.52 lacs by way of back wages for the period 1992 to 1999. The said amount shall be distributed among 51 workmen as per their dues. The amount shall be distributed within a period of two months by the Management itself.

We also placed on record the statement made by Mr. G.V. Chandrashekhar, learned counsel for the respondent that the workers have already been reinstated in service on 27.09.1999 by virtue of an order passed by the learned Single Judge of the High Court. Since the reinstatement has been ordered by the High Court, the workers will not be disturbed except in accordance with law. The appeal stands disposed of accordingly. No costs.

*C.A.No. 1223 of 2006*

The above appeal was filed by the Chitradurga Mazdoor Sangh against the order passed by the High Court dt.26.05.2005 in C.C.C.No. 1437/2004 dismissing the Contempt Petition filed by the appellant. In view of the Judgment now passed by us in C.A.No. 4534/2004, this appeal has become infructuous and the same is dismissed.

R.P.

Appeals disposed of.