

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 348 OF 2020
(Arising out of SLP (Cr1) No. 9789 of 2018)

JIJAMATA SAKHAR KAMGAR SANGHATANA ... Appellant(s)

VERSUS

BULDANA URBAN COOPERATIVE CREDIT SOCIETY & ORS. ... Respondent(s)

O R D E R

We find that the order dated 14.02.2005 passed by the High Court of Judicature at Bombay, Nagpur Bench Nagpur in Writ Petition No.636 of 2004 had attained finality. In the said judgment, the Bombay High Court observed, thus :-

"In so far as the claims of the members of the petitioner-Union regarding the provident fund dues etc. are concerned, since we have already observed herein that the claim towards the salaries and wages has to be treated as first charge, we expect the respondent no.4 to finalise the issue regarding entitlement and payment of provident fund dues of the employees working in respondent No.2, Karkhana. Shri R.S. Sundaram, the learned Standing Counsel appearing on behalf of the respondent No.4 has fairly conceded that as soon as the forms duly filled in by the employees and duly certified by the employer are received by the respondent No.4, the respondent No.4 shall take appropriate decision on top priority. We, therefore, direct the petitioner-Union to submit necessary forms to respondent No.2. The respondent No.2 after receipt of the said forms and after due verification and certification would forward the same to the respondent No.4 within a period of six months. On receipt of such forms duly certified by the respondent No.2, the respondent No.4 shall take appropriate decision and also make the payment within a period of six months therefrom.

14. Shri M.M. Agnihotri, the learned Counsel for the petitioner has placed on record a letter dated 26th August, 2004 wherein it has been stated that the salary dues for the period August, 1996 to September, 1998 have already been verified and finalized by the respondent No.2 Smt. N.S. Jog, learned AGP has no instructions on the said letter. However, if the respondent No.2 has already finalized the entitlement of the members of the petitioner-Union for the aforesaid period, there should be no impediment in making the payment towards the dues for the said period without any delay. We do expect the respondent No.2 to also consider this aspect from human angle and not to permit any technicalities to sit over the rightful claims of the employees."

From the aforementioned observations, it is amply clear that the direction issued by the High Court regarding the salary dues of the employees who are the members of the appellant-Union for certain period are not paid to the employees. The direction was issued by the High Court to disburse the entire dues of the employees as a first charge. For the said purpose, the employees' Union had to approach the Liquidator inasmuch as the factory was under liquidation. It is brought to the notice of this Court that the Liquidator has been discharged in the year 2012 since the liquidation proceedings were closed because of lapse of statutory period.

All the assets and liabilities of the factory had been handed over to the creditor-bank, i.e. Respondent No.4. since the judgment in writ petition No.636 of 2004 was not complied with, appellant-Union approached the High Court once again in Contempt Petition No.59 of 2006 which came to be disposed of on 05.08.2019 with the following observations :-

"6. It appears that Respondent No.2 could not follow the direction, as the Sugar Factory itself came under liquidation and, therefore, it fell upon the official Liquidator to perform the obligation. As all the assets and liabilities of the Sugar Factory have been handed over to the Creditor Bank, the role of fulfilling this obligation now would have to be performed by the Creditor Bank. The Creditor Bank is not a party before this Court, but, the Creditor Bank can always be reminded of its role which it has to play in the context of application to it by the Petitioner - Union. The Petitioner - Union, for that purpose, would have to approach the Creditor Bank and remind the Creditor Bank about transferred obligation created under the Judgment dated 14th February, 2005 rendered in Writ Petition No.636 of 2004.

7. We find that now this Contempt Petition in its present form deserves to be dismissed, keeping the right of the Petitioner - Union intact to approach this Court once again, in case the obligation is not fulfilled and discharged by the entity which is supposed to do it in the new set of facts and circumstances. Writ petition is dismissed in these terms. No order as to costs."

A bare perusal of the aforementioned observations make it clear that it is for the employees to approach the Creditor Bank and the Creditor Bank should comply with the judgment passed in Writ Petition No.636 of 2004.

It is brought to the notice of this Court that the appellant-Union had not approached the Creditor Bank as on this day. However, in the meanwhile, the Sugar which was kept in the Sugar Factory was ordered to be shifted to the respondent-Society by the impugned order. This Court, while issuing notice, stayed the impugned order. Consequently, the sugar is still lying in the sugar factory. We do not know what is the plight of the sugar as

on this day inasmuch as sugar is perishable. Be that as it may, since it is brought to the notice of this Court by learned counsel for the First Respondent that the sugar is *in tact* and is not spoiled, we deem it appropriate to direct the Creditor Bank to sell the sugar in public auction and keep the auction proceedings in a fixed deposit. Thereafter, the employees who are the members of the appellant-Union shall be paid their dues in accordance with the directions issued by the High court in W.P. No.636 of 2004 as the first charge.

With these observations, the appeal stands disposed of. There shall be no order as to costs.

....., J.
(Mohan M. Shantanagoudar)

....., J.
(R. Subhash Reddy)

New Delhi;
February 25, 2020.

ITEM NO.14

COURT NO.13

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 9789/2018

(Arising out of impugned final judgment and order dated 21-06-2018
in CRLWP No. 880/2017 passed by the High Court Of Judicature At
Bombay At Nagpur)

JIJAMATA SAKHAR KAMGAR SANGHATANA

Petitioner(s)

VERSUS

BULDANA URBAN COOPERATIVE CREDIT SOCIETY & ORS.

Respondent(s)

(IA No. 153120/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

Date : 25-02-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Petitioner(s) Mr. Gunjan Singh, Adv.
Ms. Anupradha Singh, Adv.
Mr. Satya Mitra, AOR

For Respondent(s) Mr. Chinmoy Khaladkar, Adv.
Mrinal Gopal Elker, AOR

Mr. Samrat Shinde, Adv.
Mr. Sachin Patil, AOR

Mr. M. Y. Deshmukh, AOR
Ms. Manjeet Kirpal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal stands disposed of in terms of the signed order.
There shall be no order as to costs.

(GULSHAN KUMAR ARORA)
AR-cum-PS

(R.S. NARAYANAN)
COURT MASTER

(Signed order is placed on the file)