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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 8337 of 2002

COMMISSIONER OF PAYMENTS

..... Petitioner

Through: Mr. Jaswinder Singh, Advocate.

versus

SMT. KISHNI DEVI & ORS.

..... Respondents

Through: Respondent No.2 in person.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

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ORDER
08.02.2010

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

W.P.(C) No. 8337 of 2002 & CM Nos. 9016 of 2006 & 16397 of 2007 (for stay)

1. This petition depicts the plight of two small investors who meticulously saved their hard earned money after toil of several years and decided to place it in the form of fixed deposits with a company, only to be left in the lurch and unable to recover the amounts even four decades thereafter.

2. Respondent No.2 Ganga Dutt Gupta was a labourer who decided to place his savings out of his hard earned wages in fixed deposits (FDs) in the names of his wife Respondent No.2 Smt. Kishni Devi and himself with Ajudhia

Textile Mills Ltd. ('ATML') nearly four decades ago. By today's standards these may be moderate sums but for Kishni Devi and Ganga Dutt Gupta they constituted their entire life's savings. As far as Kishni Devi is concerned, the first FD dated 28th April 1970 was for the principal amount of Rs.6,500. The second dated 7th January 1971 was for the principal amount of Rs.3,136/- and the third dated 3rd February 1971 was for the principal amount of Rs.2,500. Ganga Dutt Gupta's two FDs were dated 19th November 1970 for the principal amount of Rs.6,000/- and 3rd February 1971 for the principal amount of Rs.5,000. The five FDs were to mature exactly one year after their respective dates. They were to be repaid with 12 % simple interest per annum. Little did Kishni Devi and Ganga Dutt Gupta realize that their troubles had just about begun.

3. Unknown to them ATML was sinking and had to be rescued by the central government. By a notification dated 7th June 1971 issued under Section 18 A of the Industries (Development and Regulation) Act, 1971 (ID&R Act) ATML was taken over by the central government. Later it was nationalized under the Sick Textile Undertakings (Nationalisation) Act, 1974 ('STUN Act'). Under Section 17 of the STUN Act a Commissioner of Payments ('Commissioner') was appointed by the Central Government for settling the claims of creditors and depositors of ATML.

4. Kishni Devi and Ganga Dutt Gupta presented their claims before the Commissioner under Section 20 of the STUN Act. More than ten years after they had placed their deposits with ATML, on 4th September 1981 the Commissioner disallowed their claims. He placed their claims under category

VI (b) of the Second Schedule to the STUN Act, i.e. under the category ‘any other dues’. It was held that since the compensation amount in respect of the ATML had already been exhausted by meeting the liability under the higher category I, and therefore the Commissioner was “precluded from examining the claims of any lower category under Section 22(1) of the STUN Act.”

5. Aggrieved by the aforementioned order of the Commissioner, Kishni Devi and Ganga Dutt Gupta filed RCA Nos. 116 and 117 of 1981 in the court of the Additional District Judge (‘ADJ’). This remedy is provided under Section 23 (7) of the STUN Act. In his judgment dated 1st June 1983 , the ADJ noted that in terms of Section 18A of the ID&R Act, the Central Government had authorised the National Textile Corporation of Delhi (‘NTC’) which was designated as ‘Authorised Controller’ to take over the management of the whole of ATML. In terms of Section 5(1) STUN Act “all the liabilities of the said Undertaking/Mill prior to 1st April 1974 less liability falling under Section 5(2) was that of the owner for which separate funds have been awarded to the owner under Sections 8 & 9 of the Act.” It was held that after the date of that notification i.e. 7th June 1971 the owner cannot said to have incurred any liability and that any liability would therefore be under Section 5(2) of the Act which would be that of the Central Government. Consequently, the amounts payable to the owner under Sections 8 and 9 of the Act and placed at the disposal of the Commissioner under Section 18 of the Act could not be appropriated towards Part A of the Second Schedule liability. In other words, no post-take-over management period liability could be adjusted against the compensation awarded to the owner. Consequently, the learned ADJ found that the Commissioner erred in holding that since the

funds for meeting the liabilities under Part A of the Second Schedule had been exhausted the claims of Kishni Devi and Ganga Dutt Gupta could not be entertained. The learned ADJ set aside the orders passed by the Commissioner and asked him to reconsider the claims of Kishni Devi and Ganga Dutt Gupta. The NTC filed a review petition before the ADJ. That was dismissed on 5th November 1985.

6. When the claims cases went back to the Commissioner, Ganga Dutt Gupta himself appeared on behalf of his wife and himself. In two virtually non-speaking orders dated 18th June 1986 the Commissioner Payments merely reiterated what had been already stated by his predecessor on 4th September 1981 without at all referring to the ADJ's judgment dated 1st June 1983 which held the earlier order of the Commissioner to be untenable in law.

7. By now 15 years had passed and for Kishni Devi and Ganga Dutt Gupta the end of the litigation was nowhere in sight. They went back to the learned ADJ with two appeals. For the second time by a judgment dated 8th September 2000, the learned ADJ allowed their appeals. Fortunately, this time they were not sent back to the Commissioner. The learned ADJ held that the liability of the Central Government continued since it arose after the company in question had been taken over on 7th June 1971. The learned ADJ rightly characterised the order of the Commissioner as being "mechanical, non-speaking and without any reasons whatsoever and thus being untenable." After discussing in detail the provisions of the STUN Act it was held that "post-take-over management period liability could not be adjusted by the Commissioner against the compensation awarded to the owner." Resultantly

a decree was awarded in favour of Kishni Devi for the principal sum of Rs.12136/- plus interest up to 31st March 1977 amounting to Rs.9,222/- with the agreed rate of interest at 12% per annum simple interest till its realisation. Ganga Dutt Gupta was awarded the principal sum of Rs.11,000/- plus interest up to 31st March 1977 amounting to Rs.8290/- with agreed rate of interest at 12% per annum till its realisation. It was held that since Ganga Dutt Gupta's hard earned wages as labourer, which he then placed in the FDs, were withheld for no fault of his for more than two decades, costs would follow the event.

8. One would have thought that the Commissioner representing the Central Government would have gracefully accepted the above judgment coming as it did three decades after Kishni Devi and Ganga Dutt Gupta had placed their moneys as FDs with ATML. However that was not to be.

9. When the central government remained unmoved and refused to honour the two decrees in their favour, Kishni Devi and Ganga Dutt Gupta followed the due process of law, and filed two execution petitions on 20th September 2002 in the court of the learned ADJ. On 11th October 2002 an order was passed in both these execution petitions holding that "the disbursement/execution of the order is within the competence of the Commissioner of Payments under Sections 24 and 25" of the STUN Act. The execution petitions were therefore returned against receipt to the Petitioners for presenting before the Commissioner under the STUN Act "for payments of the amounts in question to the Petitioners." A copy of the order was also directed to be sent to the Commissioner. For Ganga Dutt Gupta and Kishni Devi this was the 22nd year

of waiting without the moneys being returned to them. It must be remembered that they had fought two rounds of litigation and ultimately succeeded in establishing that their claims were legitimate and were required to be honoured by the Central Government.

10. The Commissioner filed the present writ petition in this Court on 19th December 2002 challenging the decrees passed by the learned ADJ more than two years after they had been passed. The Commissioner contended under Section 21 STUN Act, the claims in the Second Schedule would have to abide by the principle that “a liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.” Further under Section 22(1) the Commissioner was required to “arrange the claims in the order of priority specified in the Second Schedule and examine the same in accordance with the said order.” It was submitted that since all the funds had been exhausted in meeting the Category I liabilities, there was no occasion to examine any other category. It was claimed that the order passed by the Commissioner was “legally unimpeachable and should not have been disturbed by the learned ADJ in appeal.” By an order dated 20th December 2002, this court stayed the decrees.

11. It must be mentioned here that the petitioner allowed this writ petition to be dismissed in default for non-prosecution on 14th September 2006. In the application for restoration of application, the petitioner did not file process fees for nearly two years. Thereafter Kishni Devi and Ganga Dutt Gupta were served and again dragged back to this Court. While restoring the writ petition

by a separate order passed today, this Court has directed the petitioner to pay Kishni Devi and Ganga Dutt Gupta costs of Rs.10,000/- each within a period of four weeks.

12. Counsel for the petitioner urged that the court should go by the letter of the law, i.e. the STUN Act and hold that no liability attached to the central government once the compensation amount recoverable from the nationalization exercise was exhausted in meeting the liabilities of the “higher” categories of creditors.

13. In other words, this court is asked to uphold, as a matter of principle, the government’s perception that despite it nationalizing a company, if the funds recoverable from the sale of the assets of that company are not adequate to meet its liabilities, in the order arranged by the Commissioner, then it is just too bad for the small investors and depositors. Even if the principal amounts owing to the small investors are just a little over Rs. 23,000 and the government has lost twice in the courts in a period of three decades, the government will refuse to pay by proclaiming that the letter of the law must be upheld at all costs. The small investors like Kishni Devi and Ganga Dutt Gupta should rest content with their paper decrees which are non-encashable at the government’s door.

14. On the questions of law raised, this Court finds absolutely no error having been committed by the two learned ADJs who by their separate but concurring opinions, first in 1986 and thereafter in 2000, held that the claims of Respondents 1 and 2 were admissible and had to be honoured by the

Central Government. Relying on Section 5 (2) of the STUN Act the two ADJs held that if the ATML's erstwhile owner's funds and the funds from the sale of its assets were inadequate to meet all the liabilities, then the central government stepped into the shoes of the debtor for liabilities that accrued after the 'appointed day' i.e. 7th June 1971. This court finds nothing perverse in this reasoning. After the FDs matured Kishni Devi and Ganga Dutt Gupta approached ATML for repayment only to be told that it was being run as a relief undertaking since 7th June 1971 and that by a notification dated 1st February 1973 the liabilities of ATML prior to the takeover stood frozen upto 17th February 1974. Thus neither payment nor renewals were permissible at that stage. No claim against ATML was admissible during this period. The liability therefore became operational only thereafter during the post-takeover period for which in terms of Section 5 (2) STUN Act the central government would be liable. This is a possible view to take and as explained hereinafter a plausible view in the facts and circumstances of the case.

15. Howsoever neat and important the questions of law might be in a case like this, the harsh reality is that two small investors have not been able to recover from the central government their hard-earned life savings for nearly four decades. And for absolutely no fault of theirs. And that too after successfully fighting the government in court battles twice over for three decades. The Central Government cannot hide behind a statute that permitted it to take over the company in question and wash its hands off stating that in its ordering the priorities of claims, once the funds recovered from the owner of ATML and from the sale of ATML's assets stood exhausted in settling the "higher" claims, the claims of 'lower' categories like Kishni Devi and Ganga Dutt

Gupta get wiped out by law. As a principle of law, as an instrument of social and economic justice ordained by the Constitution, this is simply unacceptable.

16. It is unfortunate that instead of repaying their principal sums of Rs. 12,136 and Rs. 11,000/- together with interest owing to them for over four decades, the Central Government dragged Respondents 1 and 2 into further litigation. Compared to what the central government has spent so far on this litigation, the money owed by it to Kishni Devi and Ganga Dutt Gupta does not justify its engaging them in vexatious litigation for over three decades.

17. Today when Respondent No.2 Ganga Dutt Gupta appeared in this Court, he appeared shrivelled by the long years of waiting for justice, worn out by litigation fatigue, and weighed down by the unbearable burden of a vexatious case so mercilessly imposed on him by the mighty Central Government. It was a pathetic sight to behold and signified the failure of the legal system to render timely justice to the weakest among our citizenry. It is the duty of a Constitutional court in a situation like this to ensure that the law is not operated to mete out injustice to a citizen.

18. This petition is accordingly dismissed with costs of Rs.15,000/- each to be paid to Respondents 1 and 2 by the Central Government within a period of four weeks from today. Failure to pay costs within the time granted will attract penal costs of Rs. 20,000 each. The applications are disposed of.

19. Certified copies of this order, and the order passed to day in CM Nos.

16395 and 16396 of 2007, be sent for compliance to the Commissioner of Payments and the Secretary of the concerned Ministry under which the Commissioner functions within seven days.

20. Certified copies of the two orders be also sent forthwith to the Secretary, Delhi Legal Services Authority (DLSA) with a direction that the Secretary will contact Kishni Devi and Ganga Dutt Gupta and give them all possible assistance to pursue the matter further with the Central Government and recover the amounts due to them under the decrees of the ADJs and the costs awarded to them by this Court both in this petition and in the application for restoration of the writ petition. A complete set of the papers in the case be also delivered to the Secretary DLSA to enable the follow-up. If the Central Government defaults in complying with any of the directions, the DLSA will assist Kishni Devi and Ganga Dutt Gupta in filing appropriate proceedings for further directions.

S. MURALIDHAR, J

FEBRUARY 08, 2010

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