

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 30586 of 2015 (W)

PETITIONER:

M/S. ANDRITZ SEPERATION (INDIA) PVT. LTD. AGED 52 YEARS
A COMPANY REGISTERED UNDER THE INDIAN COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT NO.6
VANAGARAM ROAD, AYANAMBAKKAM, CHENNAI - 600095
REPRESENTED ITS PROCUREMENT HEAD, SEKAR G.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. THE SUPERINTENDENT OF POLICE
ALUVA - 683 501.
3. THE SUB INSPECTOR OF POLICE BINANIPURAM POLICE STATION,
ERNAKULAM DISTRICT, BINANIPURAM - 683 502.
4. BINANI ZINC LTD
REPRESENTED BY ITS EXECUTIVE VICE PRESIDENT
ROSHAN K.MENON, BINANIPURAM - 683 502.
5. COMINCO BINANI ZINC EMPLOYEES UNION
A REGISTERED TRADE UNION REPRESENTED BY ITS GENERAL SECRETARY
MR.N.R.RAGESH KUMAR, BINANI ZINC LTD
BINANIPURAM - 683 502.

6. COMINCO BINANI ZINC EMPLOYEES ASSOCIATION
A REGISTERED TRADE UNION REPRESENTED BY ITS GENERAL SECRETARY
MR.K.V.UNNIKRISHNAN, BINANI ZINC LTD
BINANIPURAM - 683 502.

7. COMINCO BINANI ZINC EMPLOYEES ORGANISATION
A REGISTERED TRADE UNION REPRESENTED BY ITS GENERAL SECRETARY
MR.P.P.JOY, BINANI ZINC LTD, BINANIPURAM - 683 502.

R1 BY ADV. SRI.E.K.NANDAKUMAR (SR.)
R4 BY ADV. SRI.K.ANAND (SR.)
R4 BY ADV. SMT.LATHA ANAND
R4 BY ADV. SRI.M.N.RADHAKRISHNA MENON
R5 -R 7 BY ADV. SRI.N.K.SUBRAMANIAN
R5 -R 7 BY ADV. SRI.S.ANANTHAKRISHNAN
R5 -R 7 BY ADV. SRI.B.A.EASWAR PRASAD
BY GOVERNMENT PLEADER SRI.VIJU THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 30586 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS

- P1 - THE TRUE COPY OF LETTER DT. 10.7.2015 ISSUED BY THE VICE PRESIDENT (PROJECTS) OF THE 4TH RESPONDENT TO THE PETITIONER.
- P2 - TRUE COPY OF THE REPRESENTATION DT. 01.10.2015 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.
- P3 - TRUE COPY OF THE ACKNOWLEDGMENT DT. 01.10.2015 EVIDENCING RECEIPT OF EXT. P2 COMPLAINT BY THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS

- R5(A): TRUE COPY OF REQUEST TO BIFR DT.27.10.15
- R5(B): TRUE COPY OF APPLICATION DT.14.8.15
- R5(C): TRUE COPY OF STATEMENT OF SALARY ARREARS
- R5(D): TRUE COPY OF ORDER NO.1055/15/LAB DT.307.15
- R5(E): TRUE COPY OF JOINT STATEMENT DT.2.10.2015
- R5(F): TRUE COPY OF APPLICATION DT.11.2.15 BY R4 IN BIFR
- R5(G): TRUE COPY OF LETTER 9.9.15
- R5(H): TRUE COPY OF GO(RT)1424/15/LBR DT.16.10.15
- R5(I): TRUE COPY OF AUDIT FINAL REPORT (RELEVANT PAGES).

TRUE COPY

P.A.TO JUDGE

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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W.P.(C).No.30586 of 2015

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Dated this the 30th day of October, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. Though this writ petition is filed seeking directions to provide police protection to remove goods from the premises of the fourth respondent, the company with which the petitioner had entered into a contract; on the basis of the materials on record and submissions, we see that certain issues have been raised at the instance of workmen of the fourth respondent as to whether the transaction between the petitioner and the fourth respondent is predominantly a pure sale of goods governed by the provisions of the Sale of Goods Act or a composite contract which includes components to be performed otherwise than by way of sale, pure and simple, to discharge the obligations under that contract.

2. The fourth respondent, which we will refer hereinafter to as the 'company', is facing proceedings before the BIFR under the

provisions of Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA' for short).

3. The petitioner had entered into a contract for design, engineering, manufacturing, testing and supplying of seven numbers Filter Presses for TAMZINCO Project of the company. Ext.P4 which is the supply/work order also makes reference to the contract with No.8ZL/PROJ/TAM/PO/003. It also specifically states among the 'Notes' that the work spot should be cleaned up by the petitioner at its own cost on completion of the work and all safety measures should be taken while carrying out the job as per the safety provisions attached to the said supply/work order. It appears that though the equipments in relation to which the writ petition is filed were delivered in the premises of the company, they were not erected, tested or commissioned. There was an apparent failure of the project as is also reflected through the pendency of the proceedings before BIFR. Going by Ext.P5, we see that the company is unable to move forward positively with the project and had therefore agreed to return the machineries in its uninstalled condition to the petitioner.

Therefore, it was agreed between the petitioner and the company that the petitioner will take back its goods for stocking/diversion to other customers if possible and the damage component, if any, etc. will also be appropriately considered and reconciled. This content of Ext.P5 and other documents on record unequivocally show that the contract between the petitioner and the company was not one of sale of goods simplicitor that would be a concluded contract; discharged by performance by mere delivery of goods for price. This is so because, though there would be a concluded contract by acceptance of the offer; the performance of which is not mere delivery of goods which will discharge the petitioner from its obligations under the contract and there would be no passing of goods by mere delivery in such a case. The machineries which are designed for the purpose of the company will have to be installed and tested and such work has to be completed by the petitioner also taking all safety measures that are due for such jobs. Ultimately, the work spot will have to be cleaned up by the petitioner at its own cost on completion of work. With these processes being available, as between the petitioner and

the company, we are unable to hold that there was transfer of goods by the petitioner to the fourth respondent of such nature which would result in a fructified contract of sale of goods, by delivery, and that title to goods had passed in favour of the fourth respondent company. We say this more importantly because, even if there is a suggestion on behalf of the contesting workmen's organization that the petitioner and the fourth respondent company are hand in glove, there is no plea by the company asserting any species of title to the goods which are sought to be removed from the premises of the company.

4. The fourth respondent company has also stated in its counter affidavit that it is only entrusting the goods to be kept in the custody of the petitioner to be utilised at any later point of time or otherwise adjusted. That obviously shows that the company does not make any claim over the goods and that the ultimate object sought to be achieved by the arrangement reached at between the petitioner and the company is to ensure that the machineries are not subjected to further vagaries of nature and thus get destroyed and turned useless.

5. The learned counsel appearing for the contesting respondents, which are the organizations of the workmen, points out that huge amounts are due to the workmen on various grounds and in the proceedings before the BIFR such issues are being raised shortly. Obviously, going by the different provisions of law which stand in favour of the workmen, their entitlements will have to be protected. Their eligibility to have so, in so far as the goods in question is concerned, cannot be finalised when we hold that prima facie there is no material to conclude that the transaction between the fourth respondent and the petitioner is not one of sale of goods, pure and simple. Yet, we would note that if the petitioner is to return any amount to the fourth respondent on account of the deal in question, such amount would necessarily be the amounts coming into the hands of the fourth respondent company which is an undertaking presently subjected to the proceedings under SICA. Therefore, it is hereby directed that if the petitioner is to return any amount to the fourth respondent with reference to the contract in question, it would be so returned to the fourth respondent only upon it providing the petitioner appropriate clearance in that

regard from BIFR or AAIFR as the case may be. We issue this direction more particularly because the petitioner stands to say that it has received an amount of Rs.74.5 lakhs and another amount of Rs.5.5 lakhs from the fourth respondent and the fourth respondent has pleaded that it has paid to the petitioner Rs.69 lakhs.

6. With the aforesaid clarification, we see that the private respondents do not have any right to physically obstruct the removal of the articles in question by the writ petitioner from the premises of the fourth respondent. Hence, without prejudice to any proceedings before BIFR or AAIFR or in other jurisdictions, this writ petition is eligible to be allowed issuing an order directing the jurisdictional police to accord protection to the petitioner to remove the goods in question from the premises of the fourth respondent.

7. We hasten to add that we are issuing this judgment taking into consideration all the relevant facts and factors of this peculiar

case and it is not intended for any general application at the instance of the fourth respondent.

In the result, this writ petition is allowed directing respondents 1 to 3 to provide adequate and effective police protection to the petitioner and its personnel to remove and transport the filter presses and other accessories from the project site of the fourth respondent, including by use of trailers and cranes.

Thottathil B.Radhakrishnan, Judge

Anu Sivaraman, Judge