

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY  
COMPANY APPLICATION No.972 of 2012

In  
RCC.No.4 of 1997

% 28.01.2015

**Between:**

# M/s Sri Ambuja Petrochemicals Ltd.,  
reptd by the Official Liquidator

**..... Petitioner**

**And:**

\$ N.Prabhakar and another.

**.....Respondents**

< Gist:

> Head Note:

! Counsel for the appellant: Sri M.Anil Kumar

^ Counsel for Respondent No.1: Sri S.Prasada Rao  
(None appeared)

? Cases Referred:  
(2013) 7 SCC 754

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**Between:**

M/s Sri Ambuja Petrochemicals Ltd.,  
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**..... Applicant**

**And:**

N.Prabhakar and another.

**... Respondent**

Counsel for the Applicant: Sri M.Anil Kumar

Counsel for respondent No.1: Sri S.Prasada Rao

(Not appeared)

The Court made the following:

**ORDER:**

This Company Application is filed under Sections-441, 446, 536 and 537 of the Companies Act, 1956 (for short 'the Act') read with Rule-9 of the Companies (Court) Rules, 1959, *inter alia*, for setting aside order, dated 04.07.2012, passed in P.G.Case No.1 of 2011 by the Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Commissioner of Labour, Patancheru, Medak (for short 'the Assistant Commissioner of Labour').

Though Sri S.Prasada Rao, learned counsel, entered appearance for respondent No.1, (hereinafter referred to as 'the workman'), he is consistently absent during the hearing of the case.

I have heard Sri M.Anil Kumar, the learned counsel for the Official Liquidator and perused the record.

By order, dated 10.04.1998, this Court has ordered winding up of M/s Sri Ambuja Petrochemicals Limited in RCC.No.4 of 1997 and the Official Liquidator of this Court was appointed as the Liquidator of the said company. The workman has approached the Assistant Commissioner of Labour under Rule-10 of the Payment of Gratuity (Central) Rules, 1972 read with Section-3 of the Payment of Gratuity Act, 1972 for a direction for payment of gratuity. The Assistant Commissioner of Labour has, thereafter, issued notice to the Official Liquidator. In response to the same, the Official Liquidator has submitted his objections, wherein he has informed the Assistant Commissioner of Labour that by order, dated 10.04.1998, this Court has ordered winding up of the company in liquidation and appointed him as the Liquidator of the said company; that under Section-446 of the Act, when a winding up order has been made or the Official Liquidator has been appointed as the Provisional Liquidator, no suit or other legal proceeding shall be commenced or if the same are pending on the date of the winding up order, they shall not be proceeded with against the company except by the leave of the Court; that in pursuance of order, dated 09.04.2002 in Company Application No.261 of 2002, the Official Liquidator has caused publication by inviting claims from the creditors of the company in liquidation; that the workman has also submitted his claim which was included in the list of 89 workmen and the same was admitted to a tune of Rs.95,900/- towards unpaid wages, gratuity compensation and notice pay against the secured debt and Rs.12,976/- was admitted towards unpaid allowances as an unsecured debt, vide File No.69, dated 22.06.2004; and that the workman was informed that if he is dissatisfied with the decision of the Official Liquidator, he can prefer an appeal before the High Court. It is further

pleaded by the Official Liquidator that the claim of the workman has got crystallized by his order, dated 23.06.2010 and a sum of Rs.32,868/- was paid to the workman through cheque, dated 21.12.2004, towards first dividend and that having accepted the said adjudication, it is not open to the workman to make a claim before the Assistant Commissioner of Labour and that the payment of further dividends to the workman has to be adjudicated vis-à-vis the claims of other secured creditors and that the present Company Application filed without seeking the leave of this Court is liable to be dismissed. After receiving the objections from the Official Liquidator, the Assistant Commissioner of Labour has adjudicated the claim of the workman and quantified the claim for gratuity at Rs.33,749/- and accordingly, directed the Official Liquidator to deposit the said amount in any nationalized bank.

A perusal of the order, dated 04.07.2012, of the Assistant Commissioner of Labour shows that he has made reference to Section-14 of the Payment of Gratuity Act, 1972 and observed that under the said provision, the provisions of the said Act or any rule thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that Act or in any instrument or contract.

Sri M.Anil Kumar, the learned counsel for the Official Liquidator, referred to Section-529(3)(b) of the Act and submitted that the workmen dues, which include the gratuity fund or any other fund for the welfare of the workmen, fall within the scope of adjudication by the Official Liquidator. He has also referred to Section-529A of the Act which was introduced by Companies (Amendment) Act, 1985 and submitted that the said provision has given overriding effect on other provisions of the Act or any other law for the time being in force and

that the workmen's dues are included under the said provision.

Learned counsel has also placed reliance on the judgment of the Supreme Court in ***Bank of Maharashtra Vs. Pandurang Keshav Gorwardkar and others***<sup>[1]</sup> and has, accordingly, submitted that in view of the provisions of Sections-529 and 529A of the Act, it is only the Official Liquidator who is competent to determine the workmen dues and that the Assistant Commissioner of Labour had no jurisdiction to pass the impugned order.

I have carefully considered the submissions with reference to the provisions of the Act.

Section-529 of the Act deals with application of insolvency rules in winding up of insolvent companies.

Sub-section-(3) (b) of Section-529 and Section-529A of the Act, which are relevant for the purpose of adjudication of the present Company Application, read as under:

Sub-section-3(b) of Section-529 of the Act:

“ ‘workmen's dues’ in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely-

- (i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);
- (ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;
- (iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another

company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in Section 14 of the Workmen's Compensation Act, 1923 (8 of 1923) rights capable of being transferred to and vested in the workman all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company."

#### Section-529A of the Act:

- (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company-
  - (a) workmen's dues, and
  - (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 *pari passu* with such dues, shall be paid in priority to all other debts.
- (2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

Section-14 of the Payment of Gratuity Act, 1972 reads as under:

"Act to override other enactments, etc:- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

While the Payment of Gratuity Act was enacted in

the year 1972, Section-529A of the Companies Act, 1956 was incorporated in the year 1985 under the Companies (Amendment) Act, 1985. As Section-529A of the Act being the later enactment, the same prevails over the provisions of the Payment of Gratuity Act, 1972 in general and Section 14 of the said Act in particular. Though a specific plea was raised by the Official Liquidator based on the provisions of Section-529A of the Act, the Assistant Commissioner of Labour failed to advert to the same. Therefore, in view of the provisions of Section-529A of the Act, no authority other than the Official Liquidator has competence to adjudicate upon the dues of the workmen. This aspect is crystallized by the judgment of the Apex Court in ***Bank of Maharashtra*** (supra). The Apex Court while summing up its conclusions, *inter alia*, held as under:

“Section 19(19) of the 1993 Act does not clothe DRT with jurisdiction to determine the workmen’s claim against the debtor company. The adjudication of workmen’s dues against the debtor company in liquidation has to be made by the liquidator. In other words, once the company is in winding up, the only competent authority to determine the workmen’s dues is the liquidator who obviously has to act under the supervision of the Company Court and by no other authority.”

In the light of the analysis made hereinbefore, the adjudication made by the Assistant Commissioner of Labour is without jurisdiction and the same is in the teeth of determination of the claim of the workman already made by the Official Liquidator. Hence, the impugned order is set aside. The Company Application is, accordingly, allowed.

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*JUSTICE C.V.NAGARJUNA  
REDDY*

*28<sup>th</sup> January, 2015*

*Note:*

*LR copies to be marked.*

*B/o*

*DR*

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[\[1\]](#) (2013) 7 SCC 754