

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.15258 OF 2017

Latur District Sugar Labour Union,
Branch Nalegaon ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

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Shri N.P. Patil Jamalpurkar, Advocate for petitioner
Shri S.Y. Mahajan, A.G.P. for State
Shri Abhishek Kulkarni, Advocate for respondent No.3
Shri H.B. Nandagawale, Advocate holding for
Shri V.G. Sakolkar, Advocate for respondent No.4

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CORAM: PRASANNA B. VARALE AND
MANISH PITALE, JJ.

DATED : 29th AUGUST, 2018.

ORAL ORDER :

1. Heard Mr. Patil, learned counsel for the petitioner and learned A.G.P. for State authorities, learned counsel for the Liquidator and learned counsel for the respondent No.3 Bank. The petitioner is the Union of workers and employees of respondent No.4 sugar factory. It is submitted that, the sugar

factory had gone into liquidation and at present the charge of the sugar factory is with the Liquidator. It is then stated that, the respondent No.4 sugar factory borrowed certain loan amount from the respondent No.3 Bank and that loan amount is outstanding and the Bank initiated process of selling sugar and molasses to recover the amount outstanding against the loan. It may not be necessary to refer to the other factual aspects, suffice to say that the members of the petitioner Union are interested in receiving the salary benefits and other monetary benefits arising out of their service. The prayers made in the petition are :

- (B) To direct the respondent authorities to produce and submit compliance report of order dated 20/06/2017 in Writ Petition No.8028/2017 passed by this Hon'ble High Court.
- (C) To quash and set aside the tender process published and undertaken by the respondent Bank dated 06/12/2017 and 20/12/2017.
- (D) To direct the respondents to submit report relating to the amount adjusted and paid to the employees of the Sugar Factory out of total amount recovered from sale process of Sugar and Molasses and other goods pursuant to the direction given by this Hon'ble High Court in Writ Petition No.12433/2013 dated 03/02/2016.

2. The learned counsel for the petitioner Mr. Patil submits that, he is not pressing the prayer clause (C). Mr. Patil invited our attention to the orders passed by this Court and submitted that, on earlier occasion also the petitioner approached this Court for receiving the amount i.e. the salary benefits. Our attention was invited to the orders of this Court dated 3.2.2016 in Writ Petition No.12433/2013 as well the order of this Court in Writ Petition No.8028/2017, dated 20.6.2017. The facts namely the sugar factory has gone into liquidation, appointment of Liquidator and the claim of the members of Union against their wages are already referred in the order. The Division Bench of this Court, vide order dated 3.2.2016, permitted the petitioner to approach the Liquidator for raising their claims and the Liquidator, in turn, was directed to adjudicate the claim and distribute the amount as per priority claims. The Division Bench, on the statement made by respondent No.3, passed the order on 17.4.2018 and the same reads thus :

(1) The learned Advocate for respondent No.3 submits that respondent No.3 had received an amount of Rs.1,84,00,000/- (Rupees One Crore and Eighty Four Lakhs Only), Rs.32,00,000/- (Rupees Thirty Two Lakhs Only) is paid to the P.F. Department from the said amount. The learned counsel on instructions, further submits that

the demand is made by the Liquidator to pay 10% amount to the petitioner.

(2) Respondent No.4- Liquidator shall file affidavit with regard to the steps being taken by the Liquidator for distributing the amount as per the priority claims.

3. Mr. Patil, the learned counsel appearing for the petitioner invited our attention to certain exchange of communications placed on record along with rejoinder affidavit. The first communication, to which our attention is invited is through Liquidator to the Manager and the competent authority of Maharashtra State Co-operative Bank. The perusal of the communication states that, a representation is received for payment of the unpaid salary and the available sugar in the factory was sold. The sugar quantity sold was to the tune of 9201.6 quintals and the amount received against this sale was to the tune of Rs.184.67 Lakhs. The Liquidator then made a request to provide an amount to the tune of Rs.32.67 Lakhs against the dues towards Provident Fund amount and an amount to the tune of Rs.152 Lakhs for disbursement towards the unpaid salary of the employees. Mr. Patil then invited our attention to the Circular issued through the Director of the Handloom, Powerloom and Textile, Maharashtra State, Nagpur, dated 1.3.2008. As per the said communication, the priorities are fixed

for payment of the amount through the Liquidator. Mr. Patil submitted that, the amount of unpaid salary and emoluments of the employees is at Sr.No.2 in the sequence and he submitted that, the members of the petitioner are entitled to receive this unpaid amount on priority basis. The Liquidator respondent No.4, in response to the order of this Court, also filed the reply affidavit. The Liquidator in that affidavit states that, on priority claim, the Liquidator demanded 10% of the amount of outstanding salary of the employees and in view of that, the Bank has deposited amount of Rs.12,89,299.10 Ps. with the deponent. A categorical statement is made in the affidavit and the same reads that, "I will disburse the said amount."

4. Considering these factual aspects namely, there is no dispute that the petitioners are placed on a higher pedestal in the list of priorities, under the Circular dated 1.3.2008 and this Court undertook the very exercise directing the Liquidator to take decision expeditiously and within a stipulated period, and in view of the fact that the Liquidator is having an amount to the tune of Rs.12,89,299.10 Ps. and is ready to disburse the amount, we are of the opinion that, the petition can be disposed of with directions to the Liquidator and these directions would meet the ends of justice. As it is already stated that a demand was made by the Liquidator for 10% of the amount and the Bank deposited

amount of Rs.12,89,299.10 Ps., we direct that the Liquidator, as an immediate measure, disburse the amount received by him to the members of the petitioner Union equally, verifying their outstanding claim against the salary benefits. This exercise of disbursing the amount be undertaken by the Liquidator within two weeks from today.

5. The communication placed on record along with rejoinder affidavit show that the Liquidator is also claiming an amount of Rs.152 Lakhs against amount of unpaid salary. The Liquidator to take immediate steps to submit his demand before the Bank for rest of the amount. The Liquidator to undertake the exercise of verification of the claim of the members of petitioner Union, quantifying the amount of such members. This exercise be completed by the Liquidator within eight weeks. The Liquidator to personally establish talks with the Bank for the amount claimed by him namely Rs.152 Lakhs against the unpaid salary of the members of the petitioner Union. The Liquidator then, within 12 weeks from the date of order of this Court, to disburse the amount of unpaid salary.

6. Though Mr. Patil, learned counsel for the petitioner submits that, the total amount outstanding against the unpaid salary is running to the tune of Rs.15 Crores, and some quantity

of sugar bags is lying in the sugar factory and the Bank may sale that sugar bags, as such, directions be issued to the Bank to deposit that amount against the sale of the sugar bags and directions be issued to the Liquidator to disburse the amount so received from sale of the bags, at present, we are not inclined to issue such directions. as claimed by Mr. Patil.

7. Mr. Abhishek Kulkarni, learned counsel for the respondent Bank submitted some reply to the communication and invited our attention to one order passed by the learned Single Judge of this Court. It is submitted that, the tender process was initiated by the Bank, which was a subject matter in this Court. The order was passed by learned Single Judge of this Court and the matter was carried up to the Hon'ble Apex Court. In view of these facts, we are not inclined at present to issue such directions as claimed by Mr. Patil. We are keeping the liberty open to the petitioner to approach the appropriate forum including any judicial forum in case the petitioner is having any further claim for the unpaid amount. Mr. Patil makes a statement that the tender is in respect of the earlier sugar bags lying in the factory whereas the learned counsel appearing for the Bank submits that this statement made by learned counsel for the petitioner is not in consonance with the facts. Mr. Kulkarni, learned counsel appearing for the respondent Bank also

submitted that, though the Liquidator forwarded a communication to the Bank, seeking demand of the amount against the payment of unpaid salary, the Bank replied the said communication, raising certain points. As these are disputed facts, we are not inclined to go into these facts. As we have kept liberty open to the petitioner, in our opinion, it is in the interest of parties to take appropriate steps in view of the liberty granted by this Court to the petitioner. Writ Petition is disposed of accordingly.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-