HIGH COURT FOR THE STATE OF TELANGANA

***

Company Application Nos.2 and 8 of 2019

In

Company Petition No.108 of 2001

Between:

1. S. Venkateshwarlu and others

… Applicants

AND

1. M/s Allwyn Watches Ltd (In Prov. Liqn)

…. Respondent

Date of Judgment pronounced : 04th November, 2019

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes / No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes / No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes / No

CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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% 04.11.2019

1. S. Venkateshwarlu and others

………Applicants

Versus

$ 1. M/s Allwyn Watches Ltd (In Prov. Liqn)

….. Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Applicants : Sri Jayaram Reddy
Sri R.K. Suri

^ Counsel for the Respondent : Sri M. Anil Kumar

? Cases referred

1) 2000 (99) ComCas 189
2) MANU/MP/0063/1975
3) 1995 LawSuit (Pat) 171
4) 2016 LawSuit (Bom) 9
5) (1986) 3 Supreme Court Cases 450
6) (2006) 5 Supreme Court Cases 469
7) (1994) Supp (3) Supreme Court Cases 580
8) (1997) 11 Supreme Court Cases 752
9) (1999) 2 Supreme Court Cases 91
10) (2001) 2 Supreme Court Cases 695
11) (1995) 2 LLJ 1208
12) 1992 LawSuit (Mad) 99 == 1992 (75) Comp Cas 181
13) (2010) 3 Supreme Court Cases 192
14) 2006 (6) AIIMR 617
15) 2013 LawSuit (Bom) 1715

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

Company Application Nos.2 and 8 of 2019

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Company Petition No.108 of 2001

COMMON ORDER:

The applicants are erstwhile workmen of the company in liquidation-M/s Allwyn Watches Limited. The company was wound up by the orders of this Court dated 11.12.2006, and the company went into liquidation. The major assets of the company were sold in public auction and amounts were realized. Thereafter, the Official Liquidator has invited claims from both secured and unsecured creditors, and adjudicated the claims. Likewise, claims from workmen were also invited and they were also adjudicated by the Official Liquidator in accordance with the Company Court Rules. In view of Section 529(A), workmen's dues have preferential treatment in the order of preference. The Official Liquidator, on adjudication of various claims, after ascertainment of workmen who are entitled to be paid the dues, had determined that, in all, 116 workmen are eligible to receive the amounts in terms of Section 529 and 529(A) of the Companies Act. After adjudication of the claims, as against the claim amount of Rs.12,89,18,803.68, the Official Liquidator had determined on adjudication and submitted that the workmen are entitled to be paid a total consolidated sum of Rs.6,24,56,469.18 and in terms of Annexure-A to Form-69 filed under Rule 163 of the Company Court Rules. The details of individual entitlements are set out in Annexure-A filed by the Official Liquidator in Form 69 dated 20.04.2018. A perusal of Annexure-A discloses that for the purpose of determining the amounts payable to each individual workman, in the individual computation, the components of Wages, Dearness Allowance, Gratuity, Compensation, One month Pay, Bonus at 8.33% were taken. The applicants/workmen filed the present applications seeking disbursal of the amounts as computed in Annexure-A to Form 69.

As per the affidavit dated 11.07.2019, as against the total claim of Rs.12,89,18,803/-, a total sum of Rs.6,24,56,469.18 was payable which included secured payment to the extent of Rs.4,76,24,157; Rs.1,48,12,312.18 as unsecured debt and preferential basis Rs.20,000/-; in all 116 individuals, including one staff member. The detailed components which went into adjudication of the total admitted amounts payable, a question arose whether 'Bonus' would form part of 'Wages'; and whether same is payable in terms of Section 529 and 529(A) of the Companies Act, 1956, particularly while computing workmen's dues as defined under Section 529(3)(B)(1); and in particular, the scope and width of the term 'wages'.

Though in the report filed before this Court the Official Liquidator had submitted that the workmen will be entitled for the entire admitted amount in accordance with the provisions of Payment of Wages Act, however, a doubt was raised by this Court as to whether, in respect of cases of adjudication of claims under Companies Act, 1956, the wider connotation of the term "wages" as provided under the Payment of

Wages Act, which includes the component of "Bonus", would apply for determining the amounts payable to workmen under priority as envisaged under Section 529 and 529A of the Companies Act.

Sri M. Anil Kumar, learned counsel appearing for the Official Liquidator had placed reliance on the judgment of the Gujarat High Court reported in **Textile Labour Association v. Official Liquidator of Jubilee Mills Ltd**[1], that Bonus would not form part of the Wages in terms of Industrial Disputes Act, and as Section 529(3)(B) requires Wages to be computed in accordance with the Industrial Disputes Act, there is no scope to import into the term "Wages", the definition contained in Payment of Wages Act; and thus, the element of Bonus which was erroneously included in computation of amount payable to the Workmen by the Official Liquidator requires to be deducted.

On the other hand, Sri Jayaram Reddy and Sri R.K. Suri, learned counsel appearing for the applicants/workmen, would place reliance on the judgment of Madhya Pradesh High Court in **Junior Labour Inspector (Central) v. Authority under Payment of Wages Act**[2], the authority under the section 39 of the Act would cover within the meaning of word delayed wages, and further opine that bonus is payable if the terms of the contract are fulfilled, that is to say, it will not be payable if the terms are not fulfilled. In the judgment of Patna High Court in **Tata Iron and Steel Company Limited v. Union of India**[3], and the judgment of Bombay High Court in **BIFR v. KMA Limited**[4]**,** the court held that dissenting workmen

[1] 2000 (99) CompCas 189
[2] MANU/MP/0063/1975
[3] 1995 LawSuit(Pat) 171
[4] 2016 LawSuit(Bom) 9

have to be paid dues on basis of their entitlements in law, particularly under section 529 and 529A of Companies Act, 1956, and if there is a consent terms about gratuity between the parties, the dissenting workmen would have to be paid gratuity in accordance with law.

For the purpose of answering the question as to whether 'Bonus' forms part of 'Wages' for the purpose of computing payments admissible to workmen under priority as envisaged under Section 529 and 529A of the Companies Act, it would be appropriate to refer to relevant provisions of Companies Act, Industrial Disputes Act and Payment of Wages Act.

Section 529 of the Companies Act, reads as under:

529. APPLICATION OF INSOLVENCY RULES IN WINDING UP OF INSOLVENT COMPANIES

(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to –

(a) debts provable ;

(b) the valuation of annuities and future and contingent liabilities ; and

(c) the respective rights of secured and unsecured creditors ; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security –

(a) the liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari

passu with the workmen's dues for the purposes of section 529A.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

Provided that if a secured creditor instead of relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realisation by the secured creditor.

***Explanation* - For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.**

(3) For the purposes of this section, section 529A and section 530, -

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) ;

(b)"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 ;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of –

(i) the amount of workmen's dues ; and

(ii) the amounts of the debts due to the secured creditors

Similarly, Section 529A is as under:

529A. OVERRIDING PREFERENTIAL PAYMENTS

(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.

Likewise, the definition of 'Wages' under Industrial Disputes Act, 1947, reads as under:

"9(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes—

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) any travelling concession;

1[(iv) any commission payable on the promotion of sales or business or both;] <u>but does not include</u>—

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;]

Similarly, the definition of Wages under the Payment of Wages Act, reads as under:

(vi) Wages means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of [28] appropriate Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

On a perusal of the above extracted provisions of the relevant Acts, it would be clear that for the purpose of Section 529 and 529A of the Companies Act, the Wages are required to be computed as per the definition given in the Industrial Disputes Act, 1947, and not as per the definition under Payment of Wages Act. There is a difference between the definition of Wages as per the Industrial Disputes Act, and the Payment of Wages Act; and, therefore, recourse to the definition of Wages as given under the Payment of Wages Act, does not arise.

The judgments relied on by the learned counsel for the applicants/Workmen are as under:

(a) Dishergarh Power Supply Co. Ltd. Calcutta and another v. Workmen of Dishergarh Power Supply Co. Ltd. and others[5].

(b) A.P. Foods v. S. Samuel and others[6].

(c) Modella Woollens Ltd. v. Employees State Insurance Corporation and another[7].

(d) Regional Director, Employees State Insurance Corporation and another v. Enfield India Limited[8].

The issue which fell for consideration and discussed in all the above cases relied on by the learned counsel for the applicants/workmen was only in relation to the definition of Wages as contained in Payment of Wages Act; and that too, in the process of discussing of Awards made by the Labour Courts or Industrial Tribunals or in the context of Agreements under the Industrial Disputes Act.

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[5] (1986) 3 Supreme Court Cases 450
[6] (2006) 5 Supreme Court Cases 469
[7] (1994) Supp (3) Supreme Court Cases 580
[8] (1997) 11 Supreme Court Cases 752

So far as the judgments of the Supreme Court in **Modella Woollens** (6 supra), the issue that was under consideration was the definition of Wages under Employees State Insurance Act, 1948.

In **M.C. Mehta v. Union of India and others**[9], the issue is with respect to "shifting bonus" in the context of certain directions issued by the Supreme Court, and there is no such concept of shifting bonus either under the Industrial Disputes Act, or under the Payment of Wages Act. It may also be noted that the directions given by the Supreme Court in **M.C. Mehta** (8 supra) were confined to the case facts therein and they were made in exercise of powers of the Supreme Court under Section 142 of the Constitution of India.

Likewise, the judgment of the Supreme Court in **Managing Director, A.P. State Road Transport Corporation v. Presiding Officer, Industrial Tribunal, Ramkote, Hyderabad and others**[10] was in the context of interpretation of the word *ex gratia bonus*, was referable to a Settlement Agreement dated 08.08.1975 entered into between the employees of the Transport Corporation and its Workmen who were earlier working with TTD. It may also be noted that the issue was the subject matter of judgment of Supreme Court in Civil Appeal No.4693 of 1984, which came to be disposed of on 23.11.1984, and in those circumstances the said judgment has no application as the same is peculiar to the facts of the said case.

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[9] (1999) 2 Supreme Court Cases 91
[10] (2001) 2 Supreme Court Cases 695

In the judgment of Madras High Court in **S. Anthony Raj, A. Shanmugam v. A. Shanmugam, Official Liquidator, High Court**[11], the issue relates to Closure compensation under Section 25FFF of the Industrial Disputes Act, and the specific issues which were considered by the learned single Judge were – (i) whether the workmen, who become secured creditors by operation of law from the date of the winding up order, have a *pari passu* charge over the security which is held by the secured creditors under the contract; (ii) the cut-off date for arriving at the ratio at which the sale proceeds should be divided on a *pari passu* basis as per section 529 of the Companies Act, 1956, should be the date of the winding up order and not the date of sale; and (iii) the workmen are entitled to claim interest from the date of the winding up order till the date of realization of security.

It may also be noted that the observations made in **Anthony Raj** were peculiar to the facts of the said case as is evident from paragraph 30 which reads as under:

> **"30. In the circumstances as above, when the employer stopped the work and thus closed the undertaking before the notice under section 445(3) of the Companies Act, it is unreasonable, in our opinion, for the employer to contend that the workmen should be paid less and only in accordance with the proviso to sub-section (1) of section 25FFF of the Act. We have heard learned counsel for the appellants also to find out whether the company under liquidation has got much assets or not which shall fully cover the claim of the workmen and secured creditors and also leave no unsecured creditors unpaid and even after payment to them leave some assets as the residue for the contributories including the appellants before us. The assets of the company under liquidation in the hands of the liquidator are sufficient to cover almost all the claims of the creditors and the**

[11] (1995) 2 LLJ 1208

contributories and the appellants herein are also expected to receive some residue. When we view in this background the objection raised by the appellants to the payment of compensation to the workmen in accordance with section 25F(b) of the Act, we see it clearly that the contributories including those who are responsible for the winding up of the company alone will be benefited if the workmen are paid less compensation in accordance with the proviso to sub-section (1) of section 25FFF of the Act. The objection in the appeal, thus, are intended only to derive advantage at the cost of the public interest, that is to say, the wages which the employees are entitled to receive."

Thus, the judgment in **Anthony Raj** does not help the case of applicants/workmen.

Yet another judgment of the Madras High Court in **A. Shanmugham v. Official Liquidator, High Court, Madras**[12] was relied upon by the learned counsel for applicants. The issue under consideration in **Shanmugham** was in the context of Section 25FFF of the Industrial Disputes Act, and the claim was in relation to the entitlement of interest and closure compensation. The same is evident from the questions formulated for consideration in the said judgment, which are as under:

"12. The learned Official Liquidator, at the time of hearing, has raised the following two questions of law for my consideration:-

1) **whether the cut off date for arriving at the ratio at which the said proceeds should be divided on a pari passu basis as per Sec.529 of the Companies Act, 1956, should be the date of winding up order.**

2) **If the cut off date is the date of sale, whether the workmen creditor to the extent of workmen dues can claim interest from the date of winding up till the date of payment of dividend or till the date of realisation of security whichever**

[12] 1992 LawSuit (Mad) 99 == 1992 (75) CompCas 181

is earlier and if so the rate of interest payable is a question at large which has to be decided by this Court particularly in the light of the fact that the secured creditor by contrast will be sharing the security with the workmen under Sec.529 of the Companies Act, 1956 and that the secured creditor by contract will be eligible for payment of interest at contracted rate upto the date of realization of security."

Therefore, the judgment in **Shanmugham** has no application to the present issue on hand.

In the judgment in **Harjinder Singh v. Punjab State Warehousing Corporation**[13] and the general observations made therein with respect to the beneficial legislation and social justice have no bearing, and applying those general principles would only result in misplaced philanthropy which is unintended by the Act, and would also be in contravention of the plain interpretation of the provisions.

On the other hand, the judgments of the Bombay High Court in **Engineering Workers, High Court, Bombay Association v. The Official Liquidator**[14], **Vishwanath Namdeo Patil and Others v. Official Liquidator of Swadeshi Mills and Others**[15]; and the judgment of the Gujarat High Court in **Jubilee Mills Ltd (1 supra)**, are directly on the point.

In **Jubilee Mills Ltd.,** the Gujarat High Court, while considering the issue of 'bonus', has held as under:

"On the other hand, on behalf of the secured creditors, it has been submitted that when bonus is expressly excluded from the definition of wages by the provisions of the Industrial Disputes

[13] (2010) 3 Supreme Court Cases 192
[14] 2006 (6) AIIMR 617
[15] 2013 LawSuit (Bom) 1715

Act, that definition must be preferred and not the definition under the Payment of Wages Act.

The court is of the view that there is considerable substance in the contention urged on behalf of the secured creditors. In this connection, the definition of the term "wages" under the Industrial Disputes Act is required to be contrasted with the definition of wages under the Payment of Wages Act, 1936."

Definition of wages (relevant portion) under the Industrial Disputes Act		**Definition of wages (relevant portion under the Payment of Wages Act**
"wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment and includes – (i) such allowances (including dearness allowance) as the workman is for the time being entitled to : …. but does not include- (a) any bonus ; …		"wages" means all remuneration (whether by way of salary, allowances or otherwise expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled be payable to a person employed in respect of his employment, or of work done in such employment, and includes – (a) any remuneration (payable under any award or settlement between the parties or order of a court; … (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name) but does not include – (1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court; … (3) any contribution paid by

		the employer to any pension or provident fund, and the interest which may have accrued thereon; … (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)

It was further observed in **Jubilee Mills Ltd.** as under:

"The wide definition of the term "wages" in the Payment of Wages Act, 1936, was with a definite purpose. The said Act was enacted for the purpose of enabling the workman to recover all his dues from the employer by approaching one and the same authority (except when any specific rights are conferred on a workman under a separate enactment with a separate authority constituted under the said Act such as the Provident Fund Act or the Payment of Gratuity Act) and, therefore, "bonus" payable under the terms of employment or under settlement/award or a court order was also included in the definition of wages. Hence, the wide definition of "wages" under the Payment of Wages Act cannot be applied for all purposes irrespective of the underlying object or scheme of the provisions of the other statutes. The relevant provisions of sections 529 and 529A have been enacted to give priority to the workmen's dues and the said provisions expressly refer to the provisions of the Industrial Disputes Act which contain a narrow definition of "wages". The court must, therefore, proceed on the footing that the Legislature preferred the narrow definition of wages under the Industrial Disputes Act and not the wider definition of wages under the Payment of Wages Act. In view of the fact that the Legislature referred to the provisions of the Industrial Disputes Act regarding payment of compensation and specifically provided for gratuity, provident fund and pension, and also claims under the workmen's compensation but did not include claims for bonus for the purpose of priority payment, this court would not be justified in reading "bonus" as a part of the "wages" covered by the provisions of section 529(3)(b)(i) of the Companies Act.

In view of the foregoing discussion, the judgments referred to by the learned counsel for the applicants/Workmen deal only with the definition of "Wages" as contained in Payment of Wages Act, and they are not in the context of Companies in liquidation, and thus they have no application. On the contrary, the judgment in **Vishwanath Namdeo (14 supra)** (of the Bombay High Court, and the judgment in **Jubilee Mills Ltd (15 supra)** (of the Gujarat High Court) are directly on the point.

In those circumstances, the Company Applications are allowed, with a direction to the Official Liquidator to re-determine the amounts payable to the eligible workmen by deducting the Bonus component, and disburse the amount to the workmen after such re-determination, in accordance with the procedure prescribed in law. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

04th November, 2019

KSM

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

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