

# **SUPREME COURT OF INDIA**

Super Bazar Karamchari Dalit Sangh

Vs.

Union of India

SLP(Civil)No.8398-8399 of 2005

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

26.09.2018

## **JUDGMENT**

**Dr.D.Y.Chandrachud,J.,**

1. The genesis of this set of proceedings dates back a decade, when steps were initiated for protecting the interests of the employees and other stakeholders of Super Bazar, a Multi-State Cooperative Society, through a revival scheme under the supervision of this Court. Super Bazar incurred huge losses on account of irregularities in management and was unable to make payments towards arrears of wages, pensions and other benefits to its employees. It was unable to discharge its liabilities towards other stakeholders as well. Pursuant to an order dated 5 July 2002 issued by Central Registrar of Co-operative Societies, Super Bazar went into liquidation. The order of liquidation was challenged by the Employees' Union before the Delhi High Court. Eventually, proceedings came to this Court by way of Special Leave Petitions. In order to preserve the interests of all the stakeholders, this Court constituted a three-member committee to prepare and submit a comprehensive scheme for revival. The Committee identified three bidders. Out of them M/s Writers & Publishers Pvt. Ltd. ("WPL") was recommended by the Committee for managing the affairs of Super Bazar. On 26 February 2009, this Court accepted the report of the Committee. The bid document submitted by WPL set out its financial capacity and the funds which it would infuse for revival. Under the revival plan, WPL proposed to invest an amount of Rs. 504 crores, comprising of Rs. 102 crores towards share capital, Rs. 276 crores towards working capital and Rs. 126 crores for revival and revamping.

2. The revival scheme was intended to obviate an order of winding up. On 7 May 2008, this Court recorded that all the unions representing the workmen had identified and agreed that the outstanding dues payable to workers amounted to Rs. 54.31 crores, as on 31 December 2007. On 14 July 2009, WPL took over charge of the administration of Super Bazar and began managing the affairs.

3. In a subsequent order dated 13 August 2010, this Court observed thus:

“(ii) In terms of our order dated 7th May, 2008, an amount of Rs.54.31 crores, being arrears of wages up to 31st December, 2007, was directed to be disbursed by the highest bidder. Rs.55 crores stand deposited by the highest bidder. The sum of Rs.20 crores out of Rs.55 crores which lies with the Registry of the Supreme Court, will be disbursed by the Official Liquidator and the nominee of the Central Registrar Co-operative Societies in the presence of one Union representative of each Union within four weeks from today. The representative of the highest bidder will also remain present in the said meeting. It is made clear that the workers will sign the receipt of payment, which will be adjusted towards the arrears of Rs.54.31 crores.

(iii) As far as the balance amount is concerned, we are directing the highest bidder to file an affidavit containing an Undertaking that within a period of eight weeks, from the date of constitution of the Board of Directors after the elections, the balance amount will be disbursed to the workers. This will cover arrears of wages up to 31st December, 2007.”

4. In accordance with the terms of the revival plan, WPL gave re-employment to the employees of Super Bazar in October 2009 for a duration of 3 years. Subsequently, in September 2015, an I.A. was filed on behalf of the Union of India stating that neither WPL nor the management of Super Bazar had submitted a revival plan before the Central Registrar of Cooperative Societies. As a result, no revival could take place in accordance with the provisions of the Multi-State Cooperative Societies Act, 2002.

5. On 29 March 2016, a two-Judge Bench of this Court was constrained to observe that despite earnest efforts made by the Court since the acceptance of the bid of WPL, it was not possible to give effect to the terms of revival. Accordingly, this Court indicated that it had sought suggestions to terminate the arrangement:

“Despite earnest efforts made by this Court ever since the acceptance of the bid of M/s Writers and Publishers Ltd., and despite a series of hearings in the matter ever since 2009, it came to be realised, that it would not be possible to give effect to the terms of revival. It is in the above view of the matter, that this Court sought suggestions from the rival parties, how the arrangement could be terminated.”

In order to give effect to the process of terminating the arrangement for revival under the management of WPL, this Court by its order dated 29 March 2016, directed a refund of the entire investment made by WPL, along with interest at the rate of 6 per cent per annum, subject to deduction of profits made during the period when the arrangement subsisted. The Court further directed that these deductions shall be made only after verification by an auditor nominated by the Comptroller and Auditor General of India (“CAG”). The determination by the auditor was required to be verified by the CAG, upon which it was made binding upon by the parties concerned. In order to give effect to the process of refund and terminating the arrangement, WPL was directed to hand over all the movable and immovable properties of Super Bazar to the Official Liquidator. The directions of the Court were in the following terms:

“Having heard learned counsel, we are satisfied in recording, that M/s Writers and Publishers Ltd. should be refunded the entire investment made by them, along with interest at the rate of 6% per annum (though it was suggested, that the rate of interest could be at 9% per annum), subject to deduction of profits made during the period when the arrangement subsisted M/s Writers and Publishers Ltd. will be entitled to, on the filing of an appropriate application, withdrawal of Rs.14.84 crores (along with interest accrued thereon), which was deposited by it in the Registry of this Court. Likewise, M/s Writers and Publishers Ltd. will also be entitled to a refund of Rs.8.07 crores (along with interest accrued thereon), which was deposited by it, with the Regional Commissioner, Employees' Provident Fund Organization, Wazirpur, Delhi, on the filing of an appropriate application. The above amounts payable to M/s Writers and Publishers Ltd., shall be deducted from the principal amount payable to it, while refunding the payments due.”

6. The order dated 29 March 2016, assigned the following role to the CAG:

“In order to effectuate the refund referred to hereinabove (to M/s Writers and Publishers Ltd.), we consider it just and appropriate to direct the Comptroller and Auditor General of India, to nominate an Auditor, to verify the income and expenditure incurred by M/s Writers and Publishers Ltd., and also, the profits earned by it from the Super Bazar establishment, during the period under consideration. The determination so made by the Auditor, will be verified by the office of the Comptroller and Auditor General of India, whereupon, the same shall be binding on all the parties including M/s Writers and Publishers Ltd. Needless to mention, that all interested parties shall have the liberty to appear before the nominated Auditor, and canvass their respective claims.”

7. WPL was allowed to withdraw an amount of Rs. 14.84 crores deposited by it in the Registry of this Court, in addition to a sum of Rs. 8.07 crores (with interest) deposited with the Regional Commissioner, Employees' Provident Fund Organization (EPFO), Delhi. The above amounts were to be deducted from the principal amount payable to WPL, while refunding the payments due. The Official Liquidator was directed to proceed with the process of liquidation only after discharging the entire liability of WPL.

8. In pursuance of the directions issued in the order of this Court, the CAG submitted its report dated 1 September 2017. In response, WPL filed its objections to the report.

9. In the meantime, by its orders dated 21 November 2016 and 27 April 2017, this Court allowed the Official Liquidator an extension of time to settle the dues of WPL. The Court further directed the Official Liquidator to sell the properties of Super Bazar and disburse the amount to WPL after deduction of administrative and other permissible charges.

10. Thereafter, contempt proceedings were instituted by WPL against the Official Liquidator for seeking refund of the principal amount along with interest at the rate of 6 per cent and release of the amount of sale consideration. When the proceedings together with the report of

CAG were taken up by this Court an order dated 17 May 2018 was passed, accepting two objections of WPL to the CAG report: firstly, WPL was held to be entitled to interest at 6 per cent on the entire investment, which includes share capital; and secondly, losses accrued not as a result of the business were not required to be deducted. The Contempt Petition was disposed of by the order dated 17 May 2018. Subsequently, WPL preferred an application on 17 May 2018 for refund of the entire investment. The Official Liquidator by an order dated 18 May 2018, released an amount of Rs. 35 crores to WPL. The Deputy Director, in the Department of Consumer Affairs, Government of India wrote a letter dated 20 May 2018, prohibiting the Official Liquidator from releasing any payment to WPL; stating that the matter is under examination, in consultation with the Department of Legal Affairs and Ministry of Finance. The letter was copied to the Branch Manager, Andhra Bank, Connaught Place, New Delhi with a request not to release any payment against cheque signed by the Official Liquidator, A.K. Mishra issued by him after 15 May 2018. Subsequently, the Official Liquidator wrote a letter dated 21 May 2018, informing WPL that after the release of Rs 35 crore on 18 May 2018, no subsequent payment can be made by him in view of the direction issued in the above letter dated 20 May 2017.

11. Contempt Petition Nos. 1207-1208 before this Court have been filed by WPL for non-compliance of the order dated 17 May 2018 alleging that the refund of the entire investment along with the interest has not been made to it. WPL has prayed for the release of Rs 102.82 crores by disposing of the assets of Super Bazar.

12. WPL has also prayed for setting aside the letters dated 20 May 2018 and 21 May 2018 for releasing the amount of Rs 35 crore to it.

13. In response to the present petition, the Union of India has filed an I.A. raising objections to the maintainability of the earlier contempt proceedings initiated by WPL on which this Court issued directions on 17 May 2018. The proceedings initiated have been challenged on the ground that the report of the CAG was not placed before this Court in a fair and proper manner and a contempt petition was not maintainable. Another ground of challenge is that as a consequence of the non-joinder of necessary parties such as the CAG and the Central Government in the Contempt Petition, true facts could not be brought to the attention of this Court. The former Official Liquidator alone was made a party to the Contempt Petition. Objections were also raised in relation to the non-issuance of notice to the CAG and the Central Government before the issuance of the directions on 17 May 2018.

14. We have taken note of the issues raised by Union of India in response to the present Contempt Petition. Our attention has been drawn to the fact that the Official Liquidator, A K Mishra gave written instructions to Senior Counsel and Assisting Counsel representing Super Bazar not to appear before this Court. Further, it is stated that he issued a cheque to WPL allowing it to withdraw an amount of Rs 35 crores even after the expiry of his term as Official Liquidator. It has been submitted by the Union of India that when the earlier proceedings were heard by this Court, there was no representation on the part of the Union Government or Super Bazar, due to which several important facts and documents could not be brought to its notice. The relevant averments in that regard are extracted below:

“32. ...It is submitted that the former Official Liquidator issued instructions to the Senior Counsel who was representing Super Bazar along with junior counsel on 01.05.2018, not to appear before this Hon’ble Court on 02.05.2018 and in fact on that date when the orders were reserved, there was no representation on part of the Government or Super Bazar, due to which correct facts could not be brought to the notice of this Hon’ble Court. It is humbly submitted that the facts which are borne from the records not brought to notice of this Hon’ble Court....

42. It is submitted that, there is a further shocking state of affairs that when the matter was listed on 09.07.2018 before this Hon’ble Court the former Official Liquidator engaged a Senior Advocate Mr. Sajjan Povvaiya, who made the statement before this Hon’ble Court that the former Official Liquidator is still holding charge and the [Sr. Advocate] is representing him [former O.L.] and further the cheque in question was issued legally.... The misdemeanour of the former Official Liquidator would be clear from the fact that former issued instructions to the Senior Counsel who was representing Super Bazar along with junior counsel on 01.05.2018 not to appear before this Hon’ble Court on 02.05.2018 and in fact on that date when the orders were reserved, there was no representation on part of the Government or Super Bazar, due to which correct facts could not be brought to the notice of this Hon’ble Court.”

15. Next in sequence is Contempt Petition Nos. 866-867 filed on behalf of the Creditors Welfare Association. The applicant represents persons who were engaged in supply of goods to Super Bazar. The applicant had earlier filed a contempt petition for seeking payment of Rs. 25 crores which was due from Super Bazar for goods supplied, which was disposed of by this Court by an order dated 27 April 2017. The applicant alleges that Super Bazar owes a payment of Rs 25 crores. The applicant has contended that the Government through the Central Registrar did not provide an opportunity to be heard to all the interested parties including the applicant and the workers’ union contrary to the directions given by this Court in its order dated 10 May 2013.

16. Last in the present batch are three MAs which have been filed on behalf of three stakeholders of Super Bazar which are relevant for the instant matter. The first is MA Nos. 677-678 of 2018 filed on behalf of Dr. A.K. Mishra, former Official Liquidator of Super Bazar, seeking withdrawal of the orders dated 25 July 2016 and 4 October 2016 issued by the Employees’ Provident Fund Organisation for recovery of Rs 27,83,01,725 charged on account of dues relating to provident fund, employees’ pension fund, insurance fund contribution and administrative charges under provisions of the Employees’ Provident Fund & Miscellaneous Provisions, 1952; and for release of pension of all outgoing employees of Super Bazar. MA Nos. 1862-1863 is an application for impleadment filed on behalf of 240 employees of Super Bazar as their dues towards salary and other benefits have not been paid. In the third group, MA Nos. 1394-1395 of 2017 have been filed on behalf of the employees of Super Bazar seeking arrears of wages and other benefits in light of this Court’s order dated 29 March 2016. It has been contended by the employees that WPL carried out amendments to the bye-laws of the society which ousted the old shareholders from the management of

Super Bazar in contravention of the provisions of the Multi State Cooperative Societies Act 2002.

17. The review of the accounts of Super Bazar for Financial Years 2009-10 to 2015-16 was conducted by an auditor nominated by the CAG, SPMG & Co. in accordance with this Court's order dated 29 March 2016. The determination made by SPMG & Co. in respect of claims made by WPL was verified in the CAG report dated 1 September 2017. Mr. Harin P. Raval, learned Senior Counsel appearing on behalf of the present Official Liquidator has submitted that an amount approximately of Rs 44 crores, represents inadmissible losses as pointed out by the CAG in its report. In his written submissions, Mr Raval points out that the CAG report reflects serious infirmities in the accounts of Super Bazar during the above years when WPL was in management. Some extracts from the report of the CAG adverting to significant infirmities in the accounts of WPL have been extracted below:

“FY 2009-10

SL.

No. M/s SPMG & Co., Chartered Accountants Report CAG Audit Term remarks

3. We would like to submit our observations in the form of a report as mentioned below:

1. Writers & Publishers Private Limited introduced only Rs 35 crores during the Financial Year 2009-10 against Rs 102 crores mentioned in terms of revival as share capital. Further out of that amount of Rs 35 crores introduced by them against Share Capital. Rs 28 crores was converted into Fixed Deposits with Bank as per the Books of Accounts and bank records produced before us as on 31.03.2010. The fresh induction of money in the Facts and figures verified

form of Share Capital was required to be invested into enhancing the business activity of the Super Bazar, which was not done during the first year of induction of money. Out of seventy-three stores which were planned to be reopened as per the terms of the agreement, only one store at Sanjay Gandhi Memorial Hospital was made operational in January 2010. The total sale of that store was Rs 15 lacs (approx.) till 31.03.2010.

9. 7. There are expenses amounting to Rs 67,92,216 (Annexure 3 for FY 2009-10 attached) which were incurred for the renovation of building. However, no quotation/ tender/ work order was floated. The invoices attached against the above-mentioned expenses doesn't seem to be proper as proper tax is not charged. Further advance payments were made and accounts were settled on last days of the financial year. No certification/ photograph/ documentary evidence is available on record to justify the work done against these expenses.

Agreed with the remarks of the nominated auditor and Rs. 60,87,954 may be debited to M/s WPL and included in redrafted balances.

F.Y. 2010-11

SL.

No. M/s SPMG & Co., Chartered Accountants Report CAG Audit Term remarks

1. Our firm M/s SPMG & Co., Chartered Accountants was assigned the task to conduct the review of the Super Bazar Cooperative Stores Limited for the F.Y. 2010-11 in

compliance of the order passed by Hon'ble Supreme Court. We would like to submit our observations in the form of a report as mentioned below:

An advance of Rs 20 crores was given to a vendor namely Premier Industries India Limited in the month of January 2011. Neither interest was charged on the above said amount nor any purchases were made till 29.03.2011. On 30.03.2011 a purchase of Rs 23,93,820/- were made and simultaneously same goods were sold to the same party on that particular date itself for Rs 24,18,000/- earning a net profit of Rs 24,180/-. No justification was available for giving an advance of Rs 20 crores without interest just to trade for Rs 24 Lacs (approx.) and that too without any implications of any flow of funds. An interest loss of Rs 36,73,973 should be debited to party and credited in income so as to make good the loss incurred on account of giving interest free advance without business purpose. Agreed with the remarks of the nominated auditor.

However nominated auditor has worked out interest for 77 days on 15 crores i.e. 28.48 lakh whereas per CAG audit team interest should be computed for 78 days i.e. Rs. 28.85 lakh. No difference in interest for balance 5 crore (Rs. 8.26 lakh).

Interest loss of Rs. 37.11 lakh (Rs. 28.85 lakh + Rs. 8.26 lakh) may be debited to the party, which is

included in redrafted balances. The onus of its recovery may lie with M/s WPL

8. There are expenses amounting to Rs 83,34,434 (Annexure 3 for FY 2010-11 attached) which were incurred for the renovation of building. However, no quotation/ tender/ work order was floated. The invoices attached against the above-mentioned expenses doesn't seem to be proper as proper tax is not charged. Further advance payments were made and accounts were settled on last days of the financial year. No certification/ photograph/ documentary evidence is available on record to justify the work done against these expenses.

Agreed with the remarks of the nominated auditor and Rs. 78,39,333 is debited to M/s WPL and included in redrafted balance as Annexure 3.

It has been further submitted by the learned Senior Counsel that with respect to Financial Year 2011-12, it was observed that 67 per cent of the turnover was recorded by book entries only. Further, in 2012-13 an attempt was made to show a turnover out of which 50 per cent was only by book entries without actual movements of goods. It has been stated that no dispute is raised with regard to interest but the amount on which the interest is payable has to be reworked by the nominated auditor and verified by the CAG. It has been contended that A K Mishra, who was the former Official Liquidator, remained a mute spectator and did not permit the counsel to present the real facts before this Court. Moreover, it has been submitted that the amount claimed as loss by WPL is ineligible and an unclaimable expense not supported with any documentary proof.

18 Learned Counsel for WPL has also filed a note of submissions in pursuance of the directions of this Court in its order dated 12 September 2018. It has been stated that when WPL took over possession of Super Bazar, permission had to be obtained from various statutory authorities. Moreover, the properties were in a dilapidated condition and needed renovation and restoration. There were also outstanding statutory dues. It has been submitted that under the orders of this Court, WPL was called upon to revive Super Bazar and it had to make investments for the revival. In a situation, where WPL was not able to proceed with the

proposed revival scheme, it was held to be entitled to the return of its investment with interest of 6 per cent, after reduction of any profits made by WPL during the period it was in management. It has also been submitted that the transfer of money between different accounts of Super Bazar was only done to take advantage of higher interest rates.

19 In considering the rival submissions, several important facets of the case which were brought to the notice of this Court need to be set out. This Court supervised the revival scheme over a length of time with the object of protecting the interest of all the stakeholders of Super Bazar. However, Super Bazar could not be revived back to its halcyon days. WPL claimed that it had invested a large amount of money, in spite of which no significant improvement resulted. The scheme of revival was not executed in the manner envisaged by this Court. Prima facie we find that verification made in the CAG report is pertinent to the present matter and has to be given careful consideration. The glaring irregularities in accounts pointed out by the auditors and verified by the CAG require careful scrutiny. The absence of an opportunity to the Union of India before this Court on the earlier occasion and the written instructions issued by the former Official Liquidator preventing the counsel from appearing have effectively prevented full facts being placed before this court. The affairs of Super Bazar implicate the interests of diverse stakeholders and the public interest. Full facts must be placed before the Court to enable it to decide.

20 Moreover, the conduct of the earlier Official Liquidator in purporting to issue instructions for the release of Rs. 35 crores to WPL, after he had ceased to hold charge is a circumstance pressed in aid of the submission that there was a calibrated effort to prevent full facts from emerging before this Court. In our view, the interests of justice require that a full hearing be given to the Union of India, the CAG, the present Official Liquidator and to WPL as well before a final determination is made of what, if any amount is due to WPL. Other stakeholders including the employees' union and the association of creditors should also be heard. We are satisfied from the material on record that vital interests of all stakeholders are involved and that a full perspective of the matter was not presented to the court as a result of the written instructions given by the earlier Official Liquidator to the Counsel not to appear. Whatever may have been his motive in doing so, full facts should, but have not emerged before the court as a result of the absence of key stakeholders. In such a situation, it is the duty of the Court to prevent a miscarriage of justice and to set down proceedings for hearing afresh on the basis of the position as it obtained before the passing of the order dated 17 May 2018.

21 Hence, we are of the view that the order dated 17 May 2018 of this Court should be recalled. We order accordingly.

22 In view of the fact that the order dated 17 May 2018 stands recalled, the Contempt Petitions filed by WPL for non-compliance of the said order do not survive. Contempt Petition (Civil) Nos. 1207-1208 of 2018 in Special Leave Petition (Civil) 8398-8399 of 2005 stand dismissed. Further, I.A. No. 125885 in Contempt Petition (Civil) No. 1207-1208 of 2018 in Special Leave Petition (Civil) 8398-8399 of 2005 filed on behalf of Union of India is accordingly disposed of to the extent that it seeks recall of the order dated 17 May 2018.

CJI

[Dipak Misra]

J

[A M Khanwilkar]

J  
[Dr Dhananjaya Y Chandrachud]  
New Delhi;  
September 26, 2018