

Supreme Court of India

Workers Of M/S. Rohtas Industries ... vs M/S. Rohtas Industries Ltd. on 2 May, 1994

Equivalent citations: AIR 1994 SC 2211, 1994 2 CompCas 385 SC, (1995) IILLJ 98 SC, 1994 (2) SCALE 762, 1994 Supp (2) SCC 359, 1994 (1) UJ 730 SC

Bench: K Singh, S Agrawal

ORDER

1. M/s. Rohtas Industries Ltd. [hereinafter referred to as 'the Company'] owns an industrial complex at Dalmianagar in the State of Bihar having units for manufacturing cement, paper, vanaspati, asbestos and vulcanised fibres. It was employing about 10,000 workers. The company started having troubles in 1982-83 and ultimately the industrial units were closed with effect from September 9, 1984. The workmen moved this Court by filing this writ petition under Article 32 of the Constitution. This is how this Court has been concerned with the affairs of this undertaking.

2. Proceedings for the winding up of the company have also been started and the same are pending before the Patna High Court wherein a Provisional Liquidator has been appointed. During the pendency of this petition, the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the Act') came into force which provide for the establishment of the Board for Industrial and Financial Reconstruction (for short 'the Board') with power to enquire into and determine the incidence of sickness in industrial companies and devise suitable remedial measures through appropriate schemes or other proposals and for proper implementation thereof. On October 28, 1987, the Court passed an order whereby the Central Government was directed to make a reference to the Board for framing a scheme as contemplated under Section 18 of the Act for revival of the company. The Board submitted a report wherein it was indicated that three of the units of the company, viz, cement asbestos and vanaspati could be revived as the same appear to be viable but the paper unit could not be revived. Keeping in view the said report of the Board as well as the statements filed on behalf of the State of Bihar and the Union of India and the memorandum prepared by the learned Attorney General and filed before this Court, the Court passed an order dated October 28, 1989 whereby the State of Bihar was directed to appoint an Authorised Officer from the senior IAS cadre with appropriate commercial background to be the Rehabilitation Administrator and the State Government agreed to deposit a sum of Rs. 15 crores to enable him to pay the arrears of wages to the workers and for disbursement of secured loans of financial institutions and the parties for which security of company's assets had been furnished. By the said order it was directed that the asbestos, cement and vanaspati units shall be commissioned after effecting such repairs as may be necessary and steps shall be taken to explore the viability of the paper unit within three months after the company is recommissioned in respect of three units. The considerations which weighed with the Court in passing this order were that a lot of assets of the company were fast becoming useless and will soon become junk and though several attempts were made to dispose of some of the stocks held by the Provisional Liquidator but for one reason or the other it had not been possible to complete the sale and if the company is not revived and gets liquidated the liabilities would turn out to be far in excess of the assets and notwithstanding first and second charge on the assets, the creditors may not appreciably benefit. The Court also took note of the fact that living to about 10,000 families has been denied for over five years and apart from national loss, the workmen have been put to serious jeopardy and that it was of paramount

importance that the company in respect of the viable units should be revived and allowed to come into production. In accordance with the said directions, the State of Bihar designated an officer who took over as the Rehabilitation Commissioner and paid a sum of Rs. 15 crores. The necessary repairs were carried out and three units, viz., cement, asbestos and vanaspati plants were able to start functioning which started providing employment to about 2,900 workers. But viability of the units could not be achieved and losses have continued to mount. When the matter was taken up on May 7, 1993, Shri Kapil Sibal, learned senior counsel appearing for the Rehabilitation Commissioner, stated that in order to keep the units which are already functioning as going concern, it is necessary to invest another sum of Rs. 10 crores and the Court expressed the hope that keeping in view the urgency of the matter the State of Bihar will consider the request made by the Rehabilitation Commissioner for the contribution of the funds. On September 3, 1993, an affidavit of Shri S.N. Sinha, Commissioner and Secretary, Department of Industries, Government of Bihar, was filed wherein it was stated that due to resource constraints and financial difficulties, the State Government is not in a position to contribute/advance any amount to the Rohtas Industries for its operation and that the State Government is not in a position to take any liabilities of the Company. It was further stated that the State Government have no objection to privatise the Rohtas Industries and that the State Government has decided to invite private entrepreneurs through advertisement for running it. The learned Counsel appearing for the State Government expressed the inability of the State Government to nationalise the industry. Having regard to the aforesaid stand of the State Government, the Court on September 8, 1993 passed an order wherein it was observed that the best course would be to dispose of the whole undertaking but in order to ensure that the undertaking fetches an adequate price it is necessary that it should be disposed as a running concern. Keeping in view the need of the Rehabilitation Commissioner for funds for making, the units functioning, the Court directed the State of Bihar to advance a sum of Rs. 10 crores as a loan to the company for the resumption of the production in the units of the undertaking and in order to enable the State Government to pay the said amount of Rs. 10 crores it was directed that the Union of India shall advance to the State of Bihar a sum of Rs. 10 crores from out of the Plan Assistance for the State or any other account. By the said order, it was also directed that the Commissioner and Secretary, Department of Industries, Government of Bihar shall publish an advertisement inviting offers for the purchase of the entire industrial undertaking of the company as a running concern. In pursuance of the said order Rs. 10 crores have been made available to the Rehabilitation Commissioner. An advertisement was also published and in response to the same 14 offers were received. The maximum offer was for Rs. 15 crores for the entire complex. Since the total assets of the company have been assessed by the Rehabilitation Commissioner at about Rs. 250 crores, the Court in the order dated March 3, 1994 observed that it is not possible for the Court to even consider any of the 14 offers received by the State of Bihar. Thereafter on March 28, 1994 a proposal has been submitted by the Rohtas Industries Workers Cooperative Society Ltd. to purchase the industrial undertaking with its allied and sister concerns and to run the same on the moratorium basis for three years only through the Workers Cooperative Society which postulates grant of certain exemptions, reliefs and concessions as provided under Section 18 of the Act.

3. On April 25, 1994, Shri B.B. Singh, learned Counsel appearing for the State of Bihar, placed before us a statement indicating the line of action for revival of the Rohtas Group of Industries which has been agreed upon during the course for discussion that was held at Patna by Shri B.B. Singh with the

Chief Minister of Bihar in the presence of the Chief Secretary to the Government of Bihar, the Principal Secretary to the Chief Minister of Bihar, the Industrial Development Commissioner, the Rehabilitation Commissioner and the Director Technical Development. The said line of action as agreed upon at the said discussion is as under:

- i) Considering the valuation of the Rohtas Group of Industries, it was felt that no viable offer is likely to be received for outright purchase as it evident from the offers received so far.
- ii) The State Government have already indicated to the Hon'ble Supreme Court that the State was not in a position to take over the responsibility of managing the affairs of Rohtas Industries either as a Government or Public Undertaking, nor it is in favour of running it through its officers on deputation.
- iii) It was felt that Public auction of assets or liquidation of the company also do not offer any viable solution particularly from the stand point of the interest of the workers as also the running of this complex.
- iv) It was agreed that the only viable option currently available is to entrust the management of Rohtas Industries on a long term lease basis to some reputed industrial house/entrepreneurs.
- v) It was decided that in order to identify the industrial house/entrepreneur/workers cooperative etc. to manage and run the Rohtas Industries on long term management lease, newspapers advertisement should be taken out inviting suitable offers. Personal contract/negotiation should also be carried out to identify and to evolve an appropriate revival package.
- vi) It was indicated that the exercise should be completed by the Committee already constituted by the Hon'ble Supreme Court in January, 1994 comprising the Chief Secretary, Industrial Development Commissioner and Rehabilitation Commissioner. It was further agreed that Development Commissioner and Financial Commissioner, Government of Bihar should also be included in the Committee with the approval of Hon'ble Court.
- vii) It was agreed that the Committee would complete the exercise and present its recommendations in regard the choice of the industrial houses/entrepreneurs as well as the terms of lease before the Hon'ble Court within three months.

4. According to the Status Note as on March 31, 1994 submitted by the Rehabilitation Commissioner on April 18, 1994 none of the units is in operation presently and the total number of ex-employees who were employed on January 15, 1994 was 3108. The salaries of the workmen for the months February and March have not been paid. A sum of Rs. 553.52 lakhs is lying as balance and stocks of raw material/finished goods valued at Rs. 259.52 lakhs are lying. The current liabilities are to the tune of Rs. 490.90 lakhs.

5. On a careful consideration of the whole matter we are of the opinion that the best course would be to revive the reference which was made to the Board by the Central Government in pursuance of the

order of the Court dated October 28, 1987 because the Board which is an expert body, would be in a better position to examine in matter in its various aspects and form an opinion about the viability of the various units of the industrial undertaking and the possibility of their revival, and if the Board comes to the conclusion that the units are viable and can be revived it can frame a scheme in accordance with the provisions of the Act. It is, therefore, directed that the reference that has already been made by the Central Government to the Board in pursuance to the directions given by this Court in the order dated October 28, 1987, be revived and a report be submitted by the Board to the Court in relation to the following matters:

- a) Whether the company is capable of being rehabilitated in a manner that it can operate profitably so that its net wealth would ultimately become positive and the units become financially stable and self supporting.
- b) The short-term measures, if any, which can be taken immediately.
- c) The long-term measures required to rehabilitate the company.

6. Questions regarding matters (b) and (c) would arise only if the Board is satisfied on question (a) that the company is capable of being rehabilitated. As a short-term measure, the Board may consider whether it will be advisable to grant all or some of the units to some promoters on a leave and licence basis for running the units with the promoter paying a fixed licence fee with or without a further share in profits and obtaining the unit on licence for a fixed period without taking over the past liabilities. For long-term, the Board may consider rehabilitating the unit either on a 'stand alone' basis, or by an amalgamation with some healthy company or by a sale of some of the units. The proposal submitted by the Rohtas Industries Workers' Cooperative Society may also be considered by the Board. The Board shall submit its report to the Court within a period of three months.

7. In the meanwhile it is directed that:

- (1) The Rehabilitation Commissioner shall continue in office till an order relieving him is passed by the Court.
- (2) The Rehabilitation Commissioner shall pay the wages of the employees for the months of February and March, 1994 which remain unpaid as well as the wages for the months of April and May, 1994. No wages will be aid for the period subsequent to May 31, 1994.
- (3) The units which are lying closed may be operated till May 31, 1994. The finished goods and the raw material left on May 31, 1994 be sold in the market.
- (4) The Rehabilitation Commissioner shall maintain the essential services such as:-
 - (a) security for the maintenance of the Units against any pilferage and/ or theft;

(b) electricity supply to the quarters of the workers and maintenance of office/factories;

(c) maintenance of essential infrastructure for the office and the industrial complex.

(5) The moratorium against the units of the company which had been extended till March 8, 1994 is further extended for a period of six months from that day till September 8, 1994.

8. The matter be listed after three months. A copy of this order be sent to the Secretary of the Board.