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WORKERS' VOICE IN THE WINDING UP OF A COMPANY

by

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A company, in a welfare state, is a socio-economic institution geared to public utilities in which apart from the investors, the creditors and the public in general the workers, without whose labour it cannot carry on its functions, have greater stakes. The workers of a company have direct and substantial interest in its efficient, profitable and continuous functioning. In fact, it is their daily labour which is encashed by the company and through it by the investors in the form surplus value. The workers constitute the most important human element in the organization and the regular functioning of the company. Capital, which is nothing but the accumulated surplus value, is unproductive by itself and impotent without labour. But in a capitalist economic system this most important humanelement gets only the status of a commodity, worthy of exploitation by those in control of the means of production. Though India became a "Socialist" Republic.1 Seven years ago, thanks to our ruling classes for this ingenious concession, the capitalist economic system continues unhindered and the status and the standards of living of the

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working class have not changed for the better. The workers have no part in the ownership of a business organisation which survives and thrives on their sweat and toil. They are not regarded even as equal partners with capital in the enterprise. They have no say in the management of the enterprise, notwithstanding Article 43-A of the constitution which mandates the workers' participation in the management of every industry. There is no law providing for worker directors or worker share holders. The workers have no right to continue in employment despite Article 41 which obligates state to ensure right to work for all citizens. Article 19(1) (g) of the Constitution guarantees to every citizen a fundamental right to carry on any business or trade and by implication to close down any business or trade according to his whims, unmindful of the consequent involuntary unemployment of any number of workmen. Though technically this fundamental right is not available to a company, it being not a citizen,<sup>2</sup> the shareholders of a company who are citizens enjoy this right and the Companies Act 1956 provides for the winding up of a company at the whims of the share holders by just passing a special resolution to that effect.<sup>3</sup> These provisions fail to take the interests of the workers into account. Thus the existing laws are not worker oriented.

#### Winding up and workers' voice :

Winding up of a company results in the cessation of the businesses carried on by it and an order of winding up shall be deemed to be notice of discharge of the officers and employees of the company.<sup>4</sup> The Companies Act 1956 does not expressly confer any right on the workers of a company to participate in the decisional process of winding up the affairs of that company. It is really unfortunate that Indian Parliament did not consider it necessary to associate the workers, whose well being is closely linked up with the continuous functioning of the company, the decision making of liquidating the company. Winding up of a company may either be voluntary without the interference of court or compulsory under an order of the court. In the former the discretion is entirely left with the shareholders of the company and they may at any time by passing a special resolution put an end to the life of the company. It is not necessary that the workers should even be consulted before such a resolution is passed. Since such a decision is

outside the court's perview the question of workers asking for a right to hearing before the Court does not arise. So when the directors or those it control want the company to be liquidated the winding up may proceed on voluntary basis and no consideration of workers' interest is taken into account. Clearly the directors would much prefer a members' winding up, for this means, that through their defacto control, their nominee is likely to be appointed (Commonly the company's secretary or accountant) (as liquidator) and he will probably not investigate their past conduct too closely.<sup>5</sup> So, as the law stands at present there is no way of representing the workers' view point in all the cases of voluntary winding up.

A Company can be ordered to be wound up by Court in circumstances specified in Section 433 of the Companies Act 1956. This is also known as compulsory winding up. It is generally the creditors who resort to this method by filing a petition before a company court. Sometimes even a members or members may resort to this method where a special resolution cannot be secured, for the other members may not be willing for this drastic step, or even where a special resolution is passed but the members have no faith in the present management and they wish the winding up to proceed under the control of the Court. Such a petition may also be presented by the Registrar of Companies or any person authorised by the Central Government on specific grounds. When such a petition comes up before the Court praying for an order to wind up the company, the court has to take into account the interests of the workers, the contributories, the creditors and the public in general.<sup>6</sup> But the traditional view has been that the workers have no right to partake in the proceedings before the court in determining the question whether the company should be wound up or not. That means the workers had no right to be impleaded as parties to the winding up petition or that they had no locus standi to appear and claim that they should be heard by the company court before it orders the company to be wound up, although such an order results in their being thrown out of employment. The workers, who might be deprived of their means of livelihood, has helplessly watch the proceedings as outsiders. This was the "natural justice" available to the workers so far! This position of law has taken a turn in favour of workers when the Supreme Court, true to its insistence, of late, on the "Socialist republic" in the preamble and the Socialist Policies in the Directive principles of state

policy, held recently in National Textile workers' union vs. P.R. Ramakirshnan and others.<sup>7</sup> That the above traditional view no more holds good and the workers have a right to appear and be heard in a winding up petition. Refusal of workers' right to appear and be heard in a winding up petition was based, firstly, on the absence of any statutory provision granting them such a right. Secondly, it was based on the statement of the law on this point contained in the leading text books on company law by palmer,<sup>8</sup> Buckley<sup>9</sup> and Halsbury's Laws of England<sup>10</sup> to the effect that it was only the company, the investors and the creditors who are entitled to be heard in a winding up petition and no other persons had such a right to be heard. These statements of law were themselves based on an old English decision in Re Brandford Navigation Co.<sup>11</sup> Unhindered by this background the Supreme Court in National Textile Workers' Union v. P.R. Ramakrishnan and others recognised by an ingenious interpretational process, the workers' right to be heard in a winding up petition and also to appeal against the order of the court to wind up the company. Justice Bhagwati, known for his progressive pronouncements, has gone to the heart of the matter when he referred, in his judgement, to the transformation that the concept of company has undergone over the years. Emphasising this point the learned judge observed:

"The concept of company has undergone radical transformation in the last few decades. The traditional view of a company was that it was convenient mechanical device for carrying on trade and industry.... a more legal frame work providing a convenient institutional container for holding and using the powers of company management. The company law was at that time conceived merely as a statute intended to regulate the structure and mode of operation of a special type of economic institution called a company. This use the view which prevailed for a long time when in juristic circles..... That was the time when the doctrine of laissez faire held sway and it dominated the political and economic scene..... But gradually this doctrine was eroded by the emergence of new social values ..... With this change in the socio-economic thinking the developing role of companies in modern economy and their increasing impact on individuals and groups, through the ramifications of their activities, began to be increasingly recognised. It began to be

realized that the company is a species of organization..... a company is now looked as a socio-economic institution wielding economic power and influencing the life of the people."

The court further said that the traditional view that the company is the property of the share holders is now an exploded myth. The share holders can no more say that it is their company and so they can do whatever they like with it. The identification of the ownership of the company with those who brought in capital was the outcome of the property minded capitalist society. The above views expressed by the Supreme Court represent a reorientation of thinking as to the concept of a company, its ownership and its responsibilities. The contribution and the extent of interest of workers vis-a-vis the owners of capital in a company has been highlighted by Mr. Bhagwati J. in the following words :

"In fact, the owners of capital bear only limited financial risk and otherwise contribute nothing to production while labour contributes a major share of the product. While the former invest only a part of their moneys, the latter invest their sweat and toil, in fact their life itself. .... They are not mere vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital - nay, very much more. They supply labour without which capital would be important and they are, at the least, equal partners with capital in the enterprise."14  
May the wish of Supreme Court come true in this "Socialist republic!"

Thus recognising the socio-economic realities, the majority judgements pressed into services the preamble and Directive principles of state policy, Article 43-A in particular, is an aid for socialist interpretation of provisions of the Companies Act - 1956 with regard to the workers' voice in winding up. A right to be heard in a winding up proceeding is the minimal of social justice to the workers of a company. Such a right may not mean much by itself, but it can definitely be a starting point for securing the constitutional mandates contained in the Directive Principles of state policy, such as socio economic justice to the oppressed sections of our society, adequate means of livelihood, equitable distribution of material resources of the community, avoidance of concentration of wealth and means of production,

right to work, just and humane conditions of work, a living wage, conditions of work ensuring decent standard of life and full enjoyment of leisure and social and cultural opportunities and securing the participation of workers in the management of industries. Only when all the above socialist goals are implemented can we call our republic a socialist republic. Until then India remains the rich man's republic and it cannot become the people's democracy.

Then the court adverted to the University of the principles of natural justice. Audi alteram partem must be applicable to all judicial proceedings without exception. Courts cannot conveniently avoid this basic principle of natural justice by holding that it is only applicable to administrative proceedings. It amounts definite denial of justice and fair play if a winding up court refuses to hear the workers before making a winding up order, which has the effect of bringing about the termination of the services of the workers.

Refusing to be persuaded by the old British decision in *Re Bradford Navigation Co.* rendered more than a century ago, the court, speaking through Justice Bhagwati rightly observed :

"We can not allow, a dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values."15

The court than took into account the fact that there is no express provision in the Companies Act 1956 which forbids the workers from appearing at the hearing of the winding up petition. No doubt the Companies Act does not confer a right on workers to petition for winding up the company. Such a right is not necessary for the workers as no interest of theirs will be served by the dissolution of the company, which is the source of their livelihood. From this omission the court refused to imply that the workers have no right to appear and oppose the petition, as the minority judges held, discloses class bias, may be an unconscious one. In this connection Chinnappa Reddy J. in his separate concurring judgement observed :

"It is said that the Companies Act does not contemplate a hearing to workers. Only contributors and creditors may be heard it seems.

Workers may not be allowed to throng the court, only those who buy, sell and control and the users, the stock brokers and the brokers. Those who invest money may be heard, those who invest their lives may not be heard. No. The Companies Act does not prohibit a hearing to the workers." 16

This historic decision goes only half way in securing the interests of workers. The right of workers to be heard in a winding up petition can be invoked only in case of winding up by court. Still the workers are completely left out of the decision making in the case of voluntary winding up, where the matter does not come up before the court, although the consequences as far as the workers are concerned are no different. The shareholders have complete freedom to pass a special resolution and wind up the company without the intervention of the court. This anomalous position of law was emphasised by the dissenting judgements of Venkatramiah and A.K. Sen JJ.17

To secure the legitimate interests of workers in a company drastic changes in the Companies Act are imperative. The court has done its bit. It is now for the legislature and executive to act in proper direction to discharge their constitutional obligations. The changes in the company law must be in the direction of securing workers' participation in the ownership and management of the Companies. Compulsory workers' directors and worker share holders is one definite solution. The Government must come forward to take over the companies which are proposed to be wound up or enable the workers to run it on co-operative basis, with full assistance from the Government.

From the view point of workers the problem at heart is not merely securing a right to oppose a winding up petition. This is part of the struggle of the working class, constantly becoming more intense, for a higher general human welfare a movement towards socialism. In the words of Justice Chinnappa Reddy:

"The historical processes continue at work. The movement is now towards socialism. The working class, all the world over, are demanding workers Control and "industrial democracy." They want security and right to work to be secured. They want the control and direction of their lives in their own hands and not in the hands of industrialists, bankers and brokers."18

FOOT NOTES :

1. By 42nd Amendment the word 'Socialistic' is inserted in the preamble.
2. State Trading Corporation vs. C.T.O. (AIR 1963 SC 1811).
3. Section 484 (1) (6) (Voluntary winding up) of the Companies Act, 1956.
4. Section of the A Companies Act 1956.
5. Gowris principles of Modern Company Law. 4th Edn. page 723.
6. Balachandra Dharmajee Makajee vs. Alcock Ashdown and Co. Ltd; (1972) 42 Com Cas. 190.
7. AIR 1983 SC 75.
8. Palmer's Company Precedents (17th Edn.)
9. Buckley on Companies Act (14th Edn).
10. Halsbury's Laws of England 4th Edn. Vol.7, page 614.
11. (1870) 8 Ch. APP. 600. 12. Ibid. note 7.
13. Abid Note 7 page 81, para 4.
14. Ibid note 7 page 83, para 6.
15. Ibid - Page 87 - para 9.
16. Ibid - page 89 - para 13.
17. Ibid - page 97, and 106.
18. Ibid - page 89 - Para 14-A.