Security Printers of India P. Ltd. Vs Deputy Secretary, Government of India and Others

Court: Allahabad High Court

Date of Decision: Oct. 26, 1978

Acts Referred: Monopolies and Restrictive Trade Practices Act, 1969 â€" Section 2, 26

Citation: (1980) 50 CompCas 690

Hon'ble Judges: R.R. Rastogi, J; N.D. Ojha, J

Bench: Division Bench

Advocate: Jinwala, for the Appellant; Bajpai, for the Respondent

Final Decision: Allowed

Judgement

R.R. Rastogi, J.
By this writ petition under Article 226 of the Constitution, the petitioner, Security Printers of India Private Ltd., Kanpur

(hereinafter referred to as ""the petitioner""), has challenged the order passed by the Deputy Secretary to the Govt. of India, respondent No. 1,

dated September 21, 1976, requiring the petitioner to take steps to get itself registered u/s 26 of the Monopolies and Restrictive Trade Practices

Act, 1969 (hereinafter referred to as ""the Act""), failing which penal action would be taken under the Act.

2. There is not much dispute on the facts of the case and briefly stated they are that the petitioner having its registered office at Kanpur carries on

the business of printing special documents of security nature, such as cheques. This business is also being carried on at Kanpur. Prior to 28th of

August, 1974, 51 per cent. of its equity shares were held by W, W. Sprague and Company Ltd. (W.W.S. Ltd.) which is a 100 per cent.

subsidiary of Metal Box Company Overseas Ltd. (M.B.O. Ltd.). Both these companies are incorporated under the English Companies Act and

they are holding companies. After 28th of August, 1974, the extent of equity shares held by W.W.S. and M.B.O. in the petitioner was reduced to

40 per cent. M.B.O. Ltd. also holds 60.26 per cent. equity shares of Metal Box Company of India Ltd. (M.B. India Ltd.), respondent No. 3,

which in turn holds 50.99% equity shares in Kosmek Plastics Manufacturing Ltd. (Kosmek Ltd.). Both these companies, M. B. India Ltd. and

Kosmek Ltd., are companies incorporated under the provisions of the Companies Act, 1956. M. B. India Ltd. carries on business in the

manufacture of packages from tin plates, aluminium, paper and board, etc., as also packaging machinery. The petitioner"s contention is that never

had the petitioner and M.B. India Ltd. engaged in anything in the nature of a common adventure and that there have never taken place any business

transactions or dealings between them. This fact has not been disputed from the side of the respondents.

3. The assets of M.B. India Ltd. exceeded 20 crores of rupees at all material times as computed in terms of Section 20 of the Act and it made an

application for registration as required u/s 26 of the Act. Correspondingly, the assets of the petitioner were of the value of Rs. 30,00,000, as stated

before us at the bar on behalf of the petitioner.

4. By a letter dated 12th June, 1974, the Secretary to the Govt. of India in the Ministry of Law, Justice and Company Affairs, being of the opinion

that Section 20(a) of the Act was applicable to the petitioner, called upon it to show cause why action should not be taken against it for its failure

to comply with, the provisions of Section 26 of the Act. There was another letter of the same nature addressed to the petitioner by the Joint

Director to the Govt. of India in the same Ministry, respondent No. 2, dated January 14, 1975, by which the petitioner was further required to

furnish certain information. That was followed by another letter dated January 29, 1975. The reason given for the aforesaid view was that the same

limited foreign holding company, M.B.O. Ltd., is controlling more than one-third equity shares in Kosmek Ltd. through M.B. India Ltd. which is its

subsidiary as well as of the petitioner through W.W.S. Ltd. in which it has controlling interest. Thus, the petitioner M.B. India Ltd. and Kosmek

Ltd. are interconnected with each other in terms of Section 2(g) of the Act. The petitioner disputed that stand on the grounds that the Act did not

apply to M.B.O. Ltd. and W.W.S. Ltd. which, as noted above, were incorporated under the laws of England and did not carry on any kind of

activity or business in India or even elsewhere. They were merely holding companies. Further, M.B.O. Ltd. did not exercise or control over one-

third of the total voting power relating to the petitioner and even if it be assumed that it did so it did not exercise or control one-third of the total

voting power with respect to any matter relating to the petitioner and M.B. India Ltd. inasmuch as there was and could be no common matter

relating to both of them.

5. There was some more correspondence on the subject and ultimately on the petitioner"s request it was given a personal hearing on May 17,

1976, and thereafter respondent No. 1 by a letter dated September 21, 1976, informed the petitioner that it had been found that not less than one-

third of its equity shares was held by a subsidiary of the holding company of M.B. India Ltd. and that fact was sufficient to make the petitioner and

M.B. India Ltd. inter-connected undertakings within the meaning of Clause (vii) of Expln. 1 to Section 2(g)(iii)(c) of the Act. Thus, the petitioner

was liable to be registered under the provisions of Section 26 of the Act and it was asked to take necessary steps in that regard failing which penal

action would follow. As noted above this order forms the subject-matter of challenge in the present writ petition and the prayer is that a writ, order

or direction in the nature of certiorari be issued to respondents Nos. 1, 2 and 4 setting aside or quashing the said order as also a writ in the nature

of mandamus commanding them and each of them to forbear from requiring the petitioner to get its undertaking registered u/s 26 of the Act.

6. Before dealing with the submissions made by the parties'' counsel it would be necessary to refer to the relevant provisions of the Act. Chapter

III of the Act deals with ""concentration of economic power"", the object of the Act being : "" An Act to provide that the operation of the economic

system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of

monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto"". Part A of Chap. III applies to certain

undertakings specified in Section 20. An undertaking, if the total value of its own assets or its own assets together with the assets of its inter-

connected undertakings is not less than twenty crores of rupees, is one such undertaking to which this part applies. As noted above in the instant

case M.B. India Ltd. is an undertaking, the total value of whose assets is more than 20 crores of rupees, while the petitioner is not such an

undertaking as the total value of its assets in about thirty lakhs of rupees only. Section 21 deals with expansion of undertakings, Section 22 with the

establishment of new undertakings, Sections 23 and 24 with merger, amalgamation and take-over and then comes Section 26 which is relevant for

our purposes. It is this section which requires registration of undertakings to which Part A applies. These are the only sections occurring in Part A

of this Chapter.

7. In the instant case, the question that falls for our consideration is whether the petitioner is an inter-connected undertaking within the meaning of

Section 2(g) of the Act. The relevant part of this clause reads as under :

2. (g) ''Inter-connected undertakings'' means two or more undertakings which are inter-connected with each other in any of the following manner

namely ;--.....

(iii) where the undertakings are owned by bodies corporate,--.....

(c) if they are under the same management....

8. Prior to the Companies (Amendment) Act, 1974 (Section 43), which came into effect from February 1, 1975, the words ""within the meaning of

Section 370 of the Companies Act, 1956 (1 of 1956)"" occurred at the end of Sub-clause (c) noted above. These words were, however, omitted

by the Amendment Act aforesaid and the provisions of Section 370 of the Companies Act has been physically enacted in the form of Expln. 1. The

relevant part of that Explanation is as under :

Explanation 1.--For the purposes of this Act, two undertakings, owned by bodies corporate, shall be deemed to be under the same

management,--.....

(vii) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or

controlled by the same individual whether independently or together with his relatives or the same body corporate (whether independently or

together with its subsidiaries).....

9. On a plain reading of this clause of Expln. 1, it would appear that the following conditions must co-exist before it can be invoked :

(1) Not less than one-third of the total voting power of two bodies corporate should be exercised or controlled by the same individual or the same

body corporate ;

(2) Such exercise or control of the voting power should be with respect to any matter relating to each of the two corporate bodies, and

(3) Such exercise or control of not less than one-third of the total voting power of the two bodies corporate should be by the same individual or

the same body corporate independently or together with his relatives or its subsidiaries, as the case may be.

10. As for the application of this provision to the facts of the instant case it is not disputed that the petitioner and M.B. India Ltd. are two bodies

corporate. W.W.S. Ltd. can be said to exercise or control more than one-third of the total voting power of the petitioner which in turn is a 100 per

cent. subsidiary of M.B.O. Ltd. M.B.O. Ltd. exercises or controls more than one-third of the total voting power of M.B. India Ltd. The stand of

the respondent is that, that being the position, M.B.O. Ltd. exercises or controls not less than one-third of the total voting power of these two

bodies corporate and, thus, the petitioner and M.B. India Ltd. are inter-connected undertakings. It would be seen that there is an apparent fallacy

in this stand inasmuch as for the application of this provision there is something more which is to be shown and it is that the exercise or control of

not less than one-third of the total voting power should be with respect to any matter relating to each of these two bodies corporate and, further,

M.B.O. Ltd. exercises or controls such voting power independently or together with its subsidiaries. These conditions are very important and

unless they co-exist along with the other conditions, which of course exist in this case, it cannot be said that the respondents could take the aid of

this provision. The expressions ""relating to each of the two bodies corporate ""and"" independently or together"" are very important. Now, how can

an individual or a body corporate exercise or control not less than one-third of the total voting power of the two bodies corporate independently or

together. It can do so only if it in its own right exercises or controls any part of the total voting power or does so together with its subsidiaries. In

the instant case, admittedly, M.B.O. Ltd. has no independent shareholding in the petitioner-company. It cannot be said that it independently

exercises or controls any part of the voting power of the petitioner. The word ""together"" cannot be equated with the words ""along with"" as was

submitted before us by the learned counsel for the respondents.

11. On behalf of the petitioners our attention was invited particularly to the provisions aforesaid. They were analysed, as shown by us, above and it

was submitted that in order to find out whether the voting power is exercised by the shareholders or that it is controlled by the same body

corporate, the relevant documents are the memorandum and articles of association of the body corporate concerned and the register of its

shareholders. As for the manner and extent of exercise of power the memorandum and articles of association are necessary while for the persons

who exercise the voting power the relevant document is the register of shareholders. According to Sri Jinwala, the learned counsel for the

petitioner, the impugned order was passed without examining these two documents. If that had been done, it could have been found out that

M.B.O. Ltd. does not exercise or control any part of the voting power of the petitioner. It does not hold any equity share whatsoever

independently in the petitioner-company. Further, according to the learned counsel, control may be of various kinds, that is, legal or factual,

contractual or otherwise, and hence it is only the register of shareholders which can show the persons who control the voting power. In order to

illustrate his submission the learned counsel invited our attention to two English cases. In IRC v. J. Bibby and Sons Ltd. [1945] 1 All ER 667 :

[1946] 14 ITR 7 certain shares were held by some of the directors of the respondent-company as trustees and the question was whether the

expression ""controlling interest"" occurring in the Finance (No. 2) Act, 1939, referred to the directors'' beneficial interest in the company. The

answer was given in the negative and it was held that the expression referred to the power of controlling by votes the decisions binding on the

company in the shape of resolutions passed at a general meeting. The fact that a vote-carrying share was vested in a director as a trust, was,

therefore, as far as the company was concerned, immaterial. Accordingly, the directors were entitled to include the shares held by them as trustees

in computing the total number of shares held by them for the purpose of ascertaining whether they had a controlling interest in the company. The

view taken was that controlling interest means the extent to which the directors have the power of controlling the decisions of the company by vote

and the share register is conclusive. The company is not concerned with the trusts affecting the share. The same view was taken by the House of

Lords in Kashiram Bhajan Lal Vs. Commissioner of Income Tax, U.P., Lucknow, .

12. As has been noted above the stand taken by the respondents has been that since M.B.O. Ltd., along with its subsidiary, W.W.S. Ltd.,

exercises or controls more than one-third of the total voting power of the petitioner and it independently exercises or controls more than one-third

of the total voting power of M B. India Ltd., the petitioner and M.B. India Ltd. are inter-connected undertaking within the meaning of Clause (vii)

of Expln. 1 to Section 2(g)(iii)(c) of the Act. According to Sri Bajpai, learned counsel appearing for the respondent, the word ""control"" has not

been defined in the Act or in the General Clauses Act and hence it should be given its ordinary dictionary meaning. It is a word of ordinary

parlance and not a word of any technical import and it cannot be taken to mean direct control. It should be taken to mean substantial control and

such is the control exercised by M.B.O. Ltd. in these two bodies corporate. Referring to the purpose of the Act it was emphasised that the word

together"" occurring in Clause (vii) of Expln. I aforesaid means ""along with"" or ""through"". In the opinion of the learned counsel if this interpretation is

not accepted it would lead to an absurd result and the illustration given was that where a body corporate has one share in another body corporate

and its subsidiary has more than one-third shares this provision would apply ; while if it does not hold any share itself but holds more than one-third

shares through its subsidiary according to the interpretation advanced on behalf of the petitioner, this provision would not apply. Such a situation

would lead to an absurd result. Thus, according to Sri Bajpai, commonsense would only bear the interpretation placed by him.

13. We are not inclined to accept the above submission because there is no ambiguity whatsoever in the provision contained in Clause (vii)

aforesaid and hence we cannot take recourse to the preamble of the Act with a view to spell out the intention of the Legislature, As has been

emphasised by us above, it is to be borne is mind that M.B.O. Ltd. and W.W.S. Ltd. are companies registered in England. They are not governed

by the provisions of the Act and even if there is any concentration of economic power to the common detriment by the holding of these companies,

the provisions of the Act have no control over the same. Apart from this, the words used are ""independently"" or ""together"" and we do not think

that the word ""together"" can be taken to mean ""along with"" or ""through"". In a sense, the words ""independently or together"" have been used in

juxtaposition to each other. The word ""independently"" has to be given its own dictionary meaning and so is the word ""together"". ""Independently

can mean only the exercise or control of voting power by an individual or a body corporate in his or its own right, that is, only in the event of the

holding of some shares by such individual or body corporate. The word ""together"" means that such holding may be together with the relatives of

the individual or with the subsidiaries of the bodies corporate. In the instant case, this condition does not exist at all.

14. Another aspect is that the exercise or control of not less than one-third of the total voting power by such individual or body corporate should

be with respect to any matter relating to each of the two bodies corporate. It has been averred very clearly in the writ petition that the petitioner

and M.B. India Ltd. have never been engaged in anything of the nature of a common adventure. No business transactions or dealings have ever

taken place between them (para. 2). Similarly in para. 9 of the writ petition it has been stated that M.B.O. Ltd. does not exercise or control one-

third of the total voting power with respect to any matter relating to the petitioner and M.B. India Ltd., inasmuch as there is and can be no common

matter relating to them. In the counter-affidavit filed by Shri Chandra Kanta Khushal Das, Deputy Secretary, in the Dept. of Company Affairs,

about the averment made in para. 2 of the writ petition what has been stated is that it needs no reply and as for the averments made in para. 9

there is only a general denial and further an inference has been drawn from the fact that the limited foreign holding company has more than one-

third of the equity shares in M.B. India Ltd., and has control over 40 per cent. of the voting power of the petitioner, that the M.B. India Ltd., and

the petitioner are clearly under the same management and inter-connected with each other in view of Expln. 1, Clause (vii), of Section 2(g)(iii)(c) of

the said Act irrespective of the constituents of the said holding company. It would appear, therefore, that there is no assertion made on behalf of

the respondents that there is any matter relating to the petitioner and M.B. India Ltd., which can be said to be common. It cannot be said,

therefore, that M.B.O. Ltd. exercises or controls not less than one-third of the total voting power with respect to any matter relating to the

petitioner and M.B. India Ltd. In our opinion, therefore, the petitioner and M.B. India Ltd. are not inter-connected undertakings within the meaning

of Clause (vii) of Expln. 1 to Section 2(g)(iii)(c) of the Act. Therefore, they are not inter-connected undertakings and since the total value of the

assets of the petitioner is much less than 20 crores of rupees it is not an undertaking to which Part A of Chap. III applies. As such it is not obliged

to get itself registered u/s 26 of the Act. The order under challenge, therefore, is manifestly illegal and erroneous and cannot be sustained.

15. In the result, the petition succeeds and is allowed and the impugned order is quashed. Further, the respondents 1, 2 and 4 are directed not to

require the petitioner to get itself registered u/s 26 of the Act as also not to take any penal action against it for not getting itself so registered. There

will be no order as to costs.