

(2010) 12 CAL CK 0026

Calcutta High Court

Case No: C.A. No"s. 167 of 2008 and 736 of 2010 and C.P. 558 of 1999

Dheklapara Tea Co. Limited (in
Liquidation) and Sri Gopi Nath
Das

APPELLANT

Vs

The Official Liquidator, High
Court and Another

RESPONDENT

Date of Decision: Dec. 20, 2010

Acts Referred:

- Tea Act, 1953 - Section 16B, 16B(2), 16C, 16C(1), 16D

Citation: (2011) 162 CompCas 392

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: Alok Banerjee and A. Sarkar, in C.A. No. 167 of 2008 and Utpal Bose and Anup Mukhopadhyay, in C.A 736 of 2010, for the Appellant; Smita Das De, for the Respondent

Judgement

I.P. Mukerji, J.

Order of the Hon"ble Supreme Court of India has occasioned consideration by this Court, of this application by the Tea Board. It is numbered as C.A. 167 of 2008 connected with C.P. No. 558 of 1999. The order of the Hon"ble Supreme Court was made on 6th August 2010 in, International Union of Food Agricul. and Ors. v. Union of India and Ors. Writ Petition (Civil) No. 365 of 2006 It said as follows:

Interlocutory Application No. 3 is allowed.

Having examined the facts of the case, we find that, since 2006, this writ petition has been pending. No steps have been taken under the provisions of Tea Act, 1953. The Tea Estates have been abandoned by the Tea Companies. The workers are left high and dry. They are living in a pitiable conditions. They have not received their dues. Till date, several meetings have been held. However, there is no outcome. In the circumstances, we direct the Central Government to carry out their statutory duties

under the provisions of Tea Act, particularly, in terms of Sections 16B, 16C, 16D and 16E within a period of six months from today.

Accordingly, the writ petition is disposed of.

2. Dheklapara Tea Company Limited was wound up by this Court on 6th December, 2006. The Official Liquidator of this Court took possession of its assets and other properties. These properties included the 3. Dheklapara Tea Estate situated in the district of Jalpaiguri, West Bengal.

The prayers in the Judge's Summons taken out on behalf of the Tea Board on or about 27th February 2008 are as follows:

(A) Leave may be granted to the Central Government to take over the Tea Estate, namely, Dheklapara Tea Estate with liabilities and to hand over the same with liabilities to a suitable Private entrepreneur to be selected from Express of Interest (EOI) received from the prospective bidders in response to the Public Notice to be issued by the Central Government in leading newspapers;

(B) Official Liquidator be directed to allow the Central Government to take over the tea estate in question viz. Dheklapara Tea Estate and to hand over to a suitable entrepreneur to be selected from Expression of Interest (EOI) received from the prospective bidders along with the liabilities of the said tea estate in response to the public notice to be issued in the leading newspapers by the Central Government;

(C) Injunction restraining the Official Liquidator from taking steps and or further steps and or disposing of and/or further encumbering the tea estate viz. Dheklapara Tea Estate

(D) Ad-interim order in terms of prayer (C) above

(E) Such further and or other order and/or orders and or direction or directions as to Your Lordship deem fit and proper

4. On 8th September 2010 another Judge's Summons was taken out by one Gopinath Das. This application is numbered as C.A. No. 736 of 2010 connected with the same company petition, that is, C.P. No. 558 of 1999. The applicant in the application says that he holds 1,03,000 fully paid up of equity shares in the said company. Such holding constitutes 75.6% of its total issued and paid up share capital. These were transferred to him on 4th April, 2005. Immediately thereafter, on 5th April, 2005 he was appointed a director.

5. Many prayers are made in this application but their substance is that winding up of the company be stayed, possibilities be explored for its revival and no steps be taken for sale of its assets, by the Official Liquidator, pending such consideration.

6. The exact provisions of law applicable to the case will be discussed now.

The Tea Act was enacted in 1953. By Section 4, the Tea Board was constituted.

Section 31(2) places the Board under the directions of the Central Government.

The section of the statute which enables this kind of an application to be made by the Central Government concerning a tea Company under liquidation, is Section 16B(2). It is in these terms:

(2) Where a company owning a tea undertaking is being wound up by or under the supervision of the Court and the business of such company is not being continued, the Central Government may, if it is of opinion that it is necessary, in the interest of the general public, and, in particular, in the interest of production, supply or distribution of tea to investigate into the possibility of running or restarting the tea undertaking, make an application to the Court praying for permission to make or cause to be made, an investigation into such possibility by such person or body of persons as that Government may appoint for the purpose; and, where such an application is made, the Court shall, notwithstanding anything contained in the Companies Act, 1956, or in any other law for the time being in force, grant the permission prayed for.

7. There are several conditions precedent to be fulfilled before exercise of powers by the Central Government under this section. The first is that the company being wound up must own a "tea undertaking". Secondly, such company is being wound up by the Court. The business of such company has stopped. The Central Government has to form an opinion that it is in the interest of the general public or in the interest of the tea industry "to investigate into the possibility" of "running or restarting" the tea undertaking. After formation of such opinion it has to apply to the court for leave to make such investigation. After completion of such investigation, Section 16C(1) permits the Central Government to make directions to "the tea undertaking" for production, distribution and controlling the price of tea.

8. However, Section 16E(1) empowers the Central Government, in case the tea undertaking is continuously closed or the persons in-charge of the Tea undertaking have conducted the business in an undesirable or reckless manner to appoint in the interest of the general public, any persons or body of persons to take over the tea garden.

9. The opening words of this Section 16E(1) are most crucial. The words are "without prejudice to any other provisions of this Act." Therefore, exercise of powers u/s 16E has to be without prejudice to exercise of powers u/s 16B(2) as discussed above.

10. First, there must be formation of an opinion by the Central Government that considering the public interest or the interest of the tea industry an investigation has to be made as to whether such tea undertaking can be restarted. In my opinion, Section 16C making provision for restarting by those who are in-charge of the tea undertaking at that point of time is not applicable in this case as the Official Liquidator cannot be said to be running the undertaking. He is only in custody of it for the purpose of its liquidation.

11. Then comes the application of Section 16E(1) for handing over management to any other person or body of persons.

12. The Supreme Court in its order dated 6th August 2010 has recorded its satisfaction that public interest or interest of the tea industry demands that steps be taken according to the Tea Act, 1953. In view of the observations of the Hon"ble Supreme Court the satisfaction of the Central Government cannot be less or more. I have to proceed accordingly. Therefore, in view of the above Supreme Court order there is absolutely no scope for allowing the prayers of Gopinath Das in his application for revival of the company by creditors and contributors. But the other prayers in his application of stay of winding up and for stay of sale are not in conflict with the prayers of the Tea Board in this application.

13. However, in view of the provisions of the Tea Act discussed above, the prayers made in the Judge's Summons for immediate handover of the Tea Estate to the Central Government is misconceived.

The provisions of the Act discussed above contemplate a stage by stage progress of the Central Government in this regard.

14. The first stage is to be crossed first. A stage cannot be jumped. First an investigation has to be made, then the question of entrusting the tea estate to a person or body to run it, will arise.

15. Both the above applications are disposed of by an order u/s 16B(2) directing the Central Government to make an investigation as provided for in that section. Such report must be placed before this Court within three months from date. In such report the Central Government may also investigate the possibility of running or restarting that Tea Estate u/s 16E(1) by any person or body. In considering the case u/s 16E(1) the Central Government is to consider the ability of the applicant shareholder before me, Gopinath Das holding 75.6% shares in the company, to restart the Tea Estate by himself or with other contributors, creditors and so on. This consideration must be with reasons.

16. After such consideration is complete and report prepared the Tea Board may apply to this Court by way of a fresh application for orders for formal handing over of the Tea Estate to any person or body of persons selected by it for running the Estate.

17. The winding up order will remain but all steps in winding up are to remain suspended till further orders. No sale of any asset of the company in liquidation is to be made or any steps taken for such sale till further orders of this Court. No disbursement to any creditor or contributor should be made till further orders of this Court.

18. C.A. No. 167 of 2008 and C.A. No. 736 of 2010 are disposed of accordingly. Liberty is reserved to the applicant in C.A. No. 736 of 2010 to urge any prayer made

in the Judge"s Summons, not granted now, in the future.

19. Urgent certified photocopy of this judgment/ order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.