

(2001) 10 CAL CK 0050

Calcutta High Court

Case No: Writ Petition No. 13860 of 1993

Mining and Allied Machinery
Corpn. Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Oct. 18, 2001

Acts Referred:

- Bengal Public Demands Recovery Act, 1913 - Section 14, 6, 7, 9
- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 22

Citation: (2002) 108 CompCas 396

Hon'ble Judges: M.H.S. Ansari, J

Bench: Single Bench

Advocate: Ashok Banerjee, Saptangshu and Udayan Sen, for the Appellant; Tarun Roy and Dinesh Ch. Nandy, for the Respondent

Judgement

M.H.S. Ansari, J.

The petitioner is a company. It has been declared sick under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 ("the Act") by the Board for Industrial and Financial Reconstruction (BIFR) on 7-1-1992, Annexure B.

2. It is the case of the petitioner that u/s 22 of the Act, there is a bar to initiating any proceedings, inter alia, for execution, distress or the like against any of the properties of the company except with the consent and/or approval of the BIFR. No such consent or approval having been obtained by the respondent-society, the certificate proceedings under Sections 4 and 6 of the Public Demand Recovery Act are bad in law and liable to be quashed and set aside.

3. On behalf of the respondent-society, an application was filed for vacating the interim order of injunction passed by N.K. Mitra, J. (as his Lordship then was) dated 9-11-1993. It is the case of the respondent-society that the petitioner-company is owing more than Rs. 2 crores taking into account the interest at the rate of 12 per

cent per annum although the interest at the rate of 14 per cent per annum is due on the said outstanding dues to the respondent-society. The amounts due to the society including interest at 12 per cent per annum as on 31-3-1999, are as under :

| | (Rs.) |
|---|------------------|
| "Principal amount outstanding up to 1998-99 Accumulated interest at 12 per cent per annum as on 31-3-1999 | 1,12,77,944.26 |
| | <hr/> |
| | 1,01,84,177.99 |
| Total | 2,14,62,122.25." |
| | <hr/> |

It is further stated that by two cheques dated 18-9-1999 and 25-11-1999, an aggregate amount of Rs. 15 lakhs was paid and a further sum of Rs. 1 lakh has been paid on 31-12-1999.

4. In the affidavit-in-opposition affirmed on behalf of the Society by Subodh Kumar Dasgupta, the case made out is that respondent No. 4 is a primary Co-operative Credit Society established under the welfare scheme of the employees as per the arrangements and agreements executed by the members of the said co-operative society. Their employer being the petitioner-company is legally bound u/s 58 of the State Act to deduct from the salaries or wages or gratuity payable to those members by the petitioner-company, the amount as may be specified in the agreement and to pay the amount so deducted to the cooperative society in satisfaction of the debts

and other demands against its members. The dues of the co-operative society are liable to be recovered as an arrear of land revenue under the Public Demands Recovery Act. It is further stated that the certificate officer under the Public Demands Recovery Act has filed the certificate in his office u/s 6 and certificate notice u/s 7 of the said Act was served upon the petitioner-company (Annexure H).

5. It was the contention of Mr. Tarun Roy appearing along with Mr. Dinesh Nandy on behalf of the respondent-society that u/s 58 of the State Act, the petitioner-company has a statutory liability to make payment to the co-operative society. There is a corresponding right u/s 58 of the State Act to recover the amounts due to the society as an arrear of land revenue in terms of Section 58 and for that purpose to take resort to the Public Demands Recovery Act, 1913.

6. It was strenuously urged on behalf of the society by their learned counsel Mr. Tarun Roy, that the provisions of Section 25 could not be of any avail to the petitioner. Insofar as the certificate case under the Public Demands Recovery Act is concerned under which the said society was seeking to recover its dues u/s 58 of the State Act, and, therefore, the provisions of Section 25 cannot be a legal bar to such certificate case.

7. The Co-operative Societies Act containing Section 58 being a State Act was enacted by the Legislature of West Bengal pursuant to its legislative power conferred by entry 32 of the State List of the Seventh Schedule to the Constitution. Therefore, it is contended that being within the exclusive power of the State to legislate in respect of the co-operative society in terms of entry 32 of the List II (State List), as such, the provisions of Section 58 of the State Act shall prevail within the State of West Bengal irrespective of any law of Parliament, the provisions of which may come into conflict with the same.

It is, therefore, strenuously urged that the State legislation and provisions of Section 58 of the Societies Act shall prevail over the provisions contained in Section 22.

8. Mr. Ashok Banerjee appearing along with Mr. Saptangshu Basu and Mr. Udayan Sen, the learned counsel for the petitioners, however, contended that there is no question of any repugnancy under the two Acts, the Central or the State each operate in their own field. Insofar as recoveries of proceedings in the nature of distress are sought to be taken, the bar u/s 22 will operate. Reliance has been placed by Mr. Banerjee upon the judgment of the Supreme Court in *Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd.* [1993] 78 Comp. Cas. 803.

9. It must be stated here that Mr. Tarun Roy, the learned counsel for the society, relied upon the judgments of the Supreme Court in [A.S. Krishna Vs. State of Madras](#), and [State of Rajasthan and Others Vs. Vatan Medical and General Store and Others etc. etc.](#), .

10. In Maharashtra Tubes Ltd.'s case (supra), the purpose and object of suspension of proceedings u/s 22 was considered and it was opined that the word "proceedings" in Section 22(1) cannot be given a narrow or restricted meaning to limit the same to legal proceedings. Such a narrow meaning would run counter to the scheme of the law and frustrate the very object and purpose of Section 22(1) of the SICA.

11. A bare reading of Section 22(1), SICA makes the position clear that during pendency of an enquiry u/s 16 or during the preparation of a scheme or pendency of an appeal u/s 25, no proceeding for winding up the company or for execution, distress or the like against any of the properties of the industrial company shall be or be proceeded with further, except with the consent of the Board (BIFR) or the appellate authority, as the case may be.

Thus, Section 22, SICA creates an embargo against disposal of assets of the company for recovery of its debts. The purpose of such embargo is to preserve the assets of the company from being attached or sold for realisation of dues of creditors.

12. In [Tata Davy Ltd. Vs. State of Orissa and Others](#), when arrears of tax were sought to be recovered, the Supreme Court held that those would be proceedings in recovery which cannot be proceeded with without first obtaining consent of the Board.

Thus, when recovery as in the case on hand is sought to be made as arrears of land revenue under the provisions of the Public Debt Recovery Act, it cannot be denied that these are proceedings for recovery and cannot be proceeded with without first obtaining consent of the Board. The bar of Section 22 is directly attracted.

13. Let us now deal with the contentions advanced with regard to the State Act prevailing over the Central Act and the judgments relied upon by the learned counsel for the society.

14. It is not and cannot be disputed that the SICA comes in List I (Union List) and, therefore, in the field of legislation of Parliament to enact by reason of article 246(1).

15. Likewise, it is not in dispute that the Societies Act falls in List II (State List) and, therefore, in the field of legislation of State to enact by virtue of article 246(3).

16. When a question of vires of any enactment is raised, it is to be seen whether looking at the legislation as a whole it can be said that the same is substantially within the entry in the List. Once it is held that it does, the legislative power conferred by that entry will extend to all ancillary matters which can be reasonably said to be comprehended in that topic of legislation. The doctrine of "pith and substance" is applicable when the Act is impugned as ultra vires with a view to ascertain the true character of the legislation. If an enactment falls within the powers expressly conferred by the Constitution upon the Legislature, which enacted

it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another Legislature. Once, the "pith and substance" of the legislation is determined and is found to be within the powers of the Legislature, the extent of invasion into other spheres cannot invalidate the law. It is not an accepted mode of interpretation to disintegrate the legislation into parts and thereafter to examine under what heads of legislation these parts would severally fall and by that process determine what portions are intra vires and which are not. It is the true nature and character (pith and substance) of legislation and not its consequences, which shall determine to which entry the legislation belongs.

17. I shall not dilate on this matter further as the vires of any of the statutes (State Act or the Central Act) is not in question and, therefore, beyond the scope of the instant writ petition. For the purpose of this writ petition, it shall have to be presumed that the respective legislations are valid and intra vires.

18. u/s 58(3) of the Co-operative Societies Act, power has been conferred upon the co-operative society to recover from the employer (company) any amounts if the employer fails to make the deduction or there is default in making payment to the co-operative society. Such amounts are recoverable as an arrear of land revenue and shall rank in priority in respect of the liability of the employer as wages in arrear. In the instant case, full effect has been given to the provisions of Section 58(3). The amounts have been determined and the same are sought to be recovered as arrears of land revenue.

19. Under the Public Demands Recovery Act, the certificate officer has in terms of Section 6 of the Act filed the certificate determining the amount due from the petitioner-company. Notice u/s 7, it appears, has also been served upon the petitioner-company. The certificate can be executed by distress warrant as no objections thereto have been taken u/s 9. Section 14 provides the modes of execution. They are:

(a) by attachment and sale of any property;

(b) attachment of any decree; or

(c) arresting the certificate debtor and detaining him in the civil prison.

20. The certificate debtor being a company, the certificate can be executed by attachment and sale of its properties and, therefore, such proceedings are in the nature of distress proceedings.

21. u/s 22, no such proceedings can be taken except with the consent of the BIFR or the appellate authority, as the case may be. The recovery has, therefore, to be kept in abeyance. However, the certificates under the Public Debt Recovery Act cannot be quashed or set aside. There is no warrant for the same.

22. In the instant case, notice of certificate debtor was issued in Certificate Case No. 1 of 1993-94 u/s 7 of the West Bengal Public Demands Recovery Act dated 3-9-1993, by the Certificate Officer, Assansol, Burdwan. The company's reference before the BIFR was registered as Case No. 510 of 1992 before the BIFR (Annexure B, dated 1-7-1992). It is, however, not clear as on date as regards the present status of the case before the BIFR.

23. In the circumstances, the writ application is liable to be allowed in part and is, therefore, being disposed of with directions as under :

The petitioner shall within one month from the date hereof file an affidavit before respondent No, 2, Registrar of Co-operative Societies and also serve a copy thereof upon respondent No. 4 society stating therein whether the proceedings which were initiated before the BIFR are still pending and if so, the stage of the said proceedings (enquiry u/s 16, preparation of scheme/implementation of scheme/appeal u/s 25 of the SICA). In default, it shall be open to the certificate officer, respondent No. 3 to proceed with recovery in accordance with law.

24. In the event the proceedings before the BIFR/AAIFR are still pending in relation to the petitioner-company, it shall be open to the respondent-society to make such application before the said authority for consent/ approval for recovery of the amounts due under the certificate.

25. No proceedings for recovery under the said certificates shall be taken against the petitioner-company except with the consent/approval of the BIFR/AAIFR as long as the proceedings are pending before the said authorities.

26. The writ application is accordingly disposed of. There shall, however, be no order as to costs.