

The Barium Chemicals Ltd. and Another

Vs

Sh. A. J. Rana and Others

Civil Appeals Nos. 1452-53 (NCM) of 1971

(CJI S.M. Sikri, J.M. Shelat, G.K. Mitter, I.D. Dua, H.R. Khanna JJ)

07.12.1971

JUDGMENT

KHANNA, J. -

1. This judgment would dispose of two Civil Appeals Nos. 1452 and 1453 of 1971, which have been filed by special leave by The Barium Chemicals Ltd. and its Managing Director, Shri P. N. Balasubramanian. Appeal No. 1452 is directed against the judgment of the Andhra Pradesh High Court whereby the appellants' petition under Article 226 of the Constitution of India for the issuance of a writ to quash order, dated May 22, 1966, under Section 19(2) of the Foreign Exchange Regulation Act, 1947 (Act VII of 1947) (hereinafter referred to as the Act) and other consequential reliefs was dismissed. The other appeal is directed against the order of the High Court refusing to certify the case to be fit for appeal to the Supreme Court under Articles 132 and 133 of the Constitution against the aforesaid judgment. The respondents impleaded are (1) Shri A. J. Rana, Deputy Director, Enforcement Directorate, Ministry of Finance, (2) Shri R. C. Dutt, Secretary to the Government of India, Ministry of Finance, (3) Shri M. L. Wadhwa, Enforcement Officer, Enforcement Directorate and (4) Union of India, through the Secretary of Finance.

2. The first appellant was registered as a public limited company in 1961 with its registered office at Ramavaram in Andhra Pradesh. The second appellant, who is the sole proprietor of a concern name Transworld Trades, was appointed the Managing Director of the appellant company. On May 19, 1965, an order was issued on behalf of the Company Law Board under clause (b) of Section 237 of the Companies Act, 1956, appointing four persons as inspectors to investigate the affairs of the appellant company on the ground that the Board was of the opinion that there were circumstances suggesting that the business of the appellant company was being conducted with intent to defraud its creditor, members or other persons and that the persons concerned in the management of the affairs of the company had in connection therewith been guilty of fraud, misfeasance and other misconduct towards the company or its members. The above order was made on behalf of the Board by Shri Dutt, Respondent, who was at that time the Chairman of the Company Law Board.

3. In pursuance of the above order, searches were conducted at Hyderabad, Ramavaram, New Delhi and Willington and a number of documents were seized. The appellants challenged the legality of the above order of the Company Law Board by means of a petition under Article 226 of the Constitution of India in the Punjab High Court. One of the grounds taken by the appellants in that petition was that the impugned order had been issued mala fide at the instance of Sri T. T. Krishnamachari, who was then Finance Minister and who, according to the appellants, had a bias against appellant No. 2. The second ground on which the order of the Company Law Board was assailed was that there was no material on the basis of which such an order could have been made.

Some other grounds were also taken but we are not concerned with them. The above petition was dismissed by the Punjab High Court and thereupon the appellants came up in appeal to this Court. It was held by this Court that the appellants had failed to show that the impugned order had been passed mala fide. The impugned order, however, was set aside by the majority on the ground that the facts mentioned in the affidavit filed on behalf of the respondents could not reasonably suggest that the business of the appellant company was being conducted to defraud the creditors, members or other persons or that the management was guilty of fraud towards the company or any of its members. As the facts mentioned in the said affidavit were found to be extraneous to the matters mentioned in clause (b) of Section 237 of the Companies Act, the impugned order was held to be ultra vires that section.

4. The above judgment of this Court was pronounced on May 1, 1966. On May 6, 1966, the appeal was posted for directions in respect of the documents which had been seized. This Court then passed an order that "the Respondents (1 and 3-7) will deposit in this Court all the books, necessary papers and other documents that they have seized under the order that has been quashed by our judgment in this case, within ten days from today. They also give an undertaking that they will not inspect those papers while in their possession, and after a fortnight from today, the appellants will be entitled to receive them from the custody of this Court without further order".

5. In pursuance of the above order, the seized documents were deposited on May 19, 1966, with the Registrar of this Court. An application thereafter was filed in this Court by Shri P. R. Krishnan, Assistant Director in the Enforcement Directorate, praying for a direction to the Registrar of the Court to accept service of an order under Section 19(2) of the Act and to hand over the documents in the custody of the Registrar to the Enforcement Directorate. The said application was disposed of without any specific orders. On May 22, 1966, the following order was issued by respondent No. 1 :

"No. V (358)/65 (Part File) (i) ENFORCEMENT DIRECTORATE MINISTRY OF FINANCE Department of Revenue and Insurance Government of India Grams : 'DIRENFERA' Reserve Bank Building, 2nd floor New Delhi - 1.##

Whereas for the purposes of the Foreign Exchange Regulation Act, the Central Government considers it necessary to obtain and examine certain papers and documents belonging to Shri P. N. Balasubramanian, The Barium Chemicals Ltd., and the Transworld Trades and documents and papers pertaining to the aforesaid concerns including the documents specified in the schedule hereunder.

And whereas, the documents specified in the schedule are at present in the custody of the Registrar of the Supreme Court of India under an order, dated May 6, 1966, passed by the Hon'ble Supreme Court in Civil Appeal No. 381 of 1966 (Barium Chemicals Limited v. Company Law Board).

And whereas, the aforesaid documents are likely to be handed over to Messrs. The Barium Chemicals Ltd., and/or Shri P. N. Balasubramanian by the Registrar of the Supreme Court of India under the aforesaid order of the Supreme Court, dated May 6, 1966.

And whereas, Shri P. N. Balasubramanian is in control of The Barium Chemicals Ltd., and Transworld Trades and is in a position to obtain and furnish the aforesaid documents.

Now therefore, in exercise of the powers under Section 19(2) of the Foreign Exchange Regulation Act, 1947, the Central Government hereby requires the said Shri P. N. Balasubramanian and/or The Barium Chemicals Ltd., to furnish to Shri M. L. Wadhwa, Enforcement Officer, Enforcement Directorate, Ministry of Finance, Department of Revenue and Insurance, New Delhi, the said documents (as per schedule attached to this order) on obtaining the same from the Registrar of the Supreme Court.

Dated at New Delhi this 22nd day of May, one thousand nine hundred and sixty six.

(A. J. Rana) Deputy Director, Enforcement Directorate, Ministry of Finance, Department of Revenue and Insurance, Government of India.###

Attached to the order was the following schedule :

1. Letter sent by Bank of Scotland, Piccadilly, Circus Branch, 16-18, Piccadilly, London, W.I. In February, 1964 to Mr. P. N. Balasubramanian, The Barium Chemicals Ltd.
2. Letter, dated May 20, 1965 from L. A. Mitchell Ltd., Chemical Engineers, Harvester House, 37, Peter Street, Manchester - 2 to Mr. P. N. Balasubramanian, The Barium Chemicals Ltd.
3. Letter, dated May 28, 1962 from Mr. P. N. Balasubramanian to Sir Charles Chominglan Kt. 93, Iverna Court, London WG.
4. Letter, dated November 21, 1961, from Transworld Trades, signed by L. A. Shandero, Director of Agencies to L. A. Mitchell Ltd., Harvester House, 37, Peter Street, Manchester - 2.
5. Copy of telegram, dated July 24, 1961, from P. N. Balasubramanian, 186, Golf Links, New Delhi - 3 to Lt. Mitchell, Inspection, Manchester, England booked at C.T.O., New Delhi.
6. Letter, dated June 30, 1961, from L. A. Mitchell Ltd., Chemical Engineers, Harvester House, 37, Peter Street, Manchester - 2 to Mr. P. N. Balasubramanian, Transworld Trades, 186, Golf Links, New Delhi - 3.
7. All other books, papers and other documents relating to Shri P. N. Balasubramanian, Transworld Trades and The Barium Chemicals Ltd., in the possession of the Registrar of the Supreme Court of India under an order, dated May 6, 1966, passed by the Hon'ble Supreme Court of India in Civil Appeal No. 381 of 1966 (Barium Chemicals Ltd. v. Company Law Board and Others)."

The order was addressed to the appellant company. Another copy of the order was addressed to appellant No. 2.

6. The appellant thereupon filed petition under Article 226 of the Constitution of India in the Andhra Pradesh High Court for the issuance of a writ, as mentioned earlier, to quash the order, dated May 22, 1966, and other consequential reliefs. One of the grounds taken by the appellants for assailing the impugned order was that the order had been passed mala fide at the instance of Shri Dutt respondent, who was previously Chairman of the Company Law Board and was at the time of the passing of the impugned order, Secretary to the Government of India, Ministry of Finance, Department of Revenue and Insurance. It was stated that Shri Dutt in conspiracy with his subordinates wanted to wreak vengeance against the appellants as the earlier order made by him

under clause (b) of Section 237 of the Companies Act had been quashed by the Supreme Court. Shri Dutt was also stated to be inimical to the appellants because of publication of certain articles against him. Another ground taken by the appellants was that Shri Rana, respondent No. 1, was not competent to make the impugned order and the same was not in conformity with Article 77 of the Constitution. The order was also stated to be ultra vires Section 19(2) of the Act, as the conditions precedent to the making of the order were non-existent. Ground further was taken that the provisions of Section 19(2) of the Act were violative of Articles 14, 19(1)(f) and (g) and 20(3) of the Constitution.

7. The above grounds were controverted by the respondents and the affidavits of Shri Rana and Shri Dutt respondents as also those of Shri Jasjit Singh, Joint Secretary in the Ministry of Finance (Department of Revenue and Insurance), Shri Venkataraman, Director of Enforcement and Shri T. P. Singh, Secretary of the Ministry of Finance were filed in opposition to the petition. According to the case of the respondents, Shri Dutt had nothing to do with the issuance of the impugned order and he was never consulted by Shri Rana or the Joint Secretary concerned or any other officer in that connection. It was further stated that the impugned order was the result of consultation which the Director of Enforcement and Shri Jasjit Singh had with the then Finance Minister, Shri Sachindra Choudhuri. There was no legal infirmity, according to the respondent, in the impugned order. The order was, it was added, in conformity with the requirements of Section 19(2) of the Act and Article 77 of the Constitution.

8. The learned Judges of the High Court held that the charge of mala fide against Shri Dutt must fail as he had nothing to do with the issuing of the impugned order. It was further held that necessary material had been placed before the Finance Minister with a view to enable him to form an independent opinion as to the necessity of issuing the impugned order under Section 19(2) of the Act. The contention that the impugned order was not in conformity with Section 19(2) of the Act was repelled. Shri Rana respondent, it was further held, was authorised to sign on behalf of the President. The impugned order as such was found to be in conformity with Article 77 of the Constitution. The appellant did not press the ground that Section 19(2) of the Act was violative of Articles 14, 19(1)(f) and (g) and 20(3) of the Constitution in view of an earlier decision of this Court but reserved the right to agitate the question in appeal in this Court. The High Court also overruled an objection taken on behalf of the respondent relating to territorial jurisdiction. In the result, the petition, as stated earlier, was dismissed.

9. Before proceeding further, it may be mentioned that the Act was enacted, as according to its preamble, "it is expedient in the economic and financial interests of India to provide for the regulations of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion". Section 19 of the Act confers power to call for information. Sub-section (2) of that section, with which we are concerned, reads as under :

"2. Where for the purpose of this Act the Central Government or the Reserve Bank considers it necessary or expedient to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve bank it is possible for such person to obtain and furnish, the Central Government or, as the case may be, the Reserve Bank may, by order in writing, require any such person (whose name shall be specified in the order), to furnish, or to obtain and furnish, to the Central Government or the Reserve Bank or any person specified in the order with such information, book or other document."

10. Various contentions have been advanced in appeal by Mr. Sorabji on behalf of the appellants but it is not necessary to deal with all of them, as in our opinion, the impugned order is liable to be quashed on the short ground that it does not satisfy the requirements of Section 19(2) of the Act.

11. Sub-section (2) of Section 19 of the Act has been reproduced above and its perusal shows that the sub-section consists of two parts. The first part mentions the occasion or the circumstance in which an order under the sub-section can be made, while the second part deals with two contingencies and provides for the form and mode of the order in which it should be made to suit each contingency. The two parts of the sub-section are :

1. Where for the purpose of the Act the Central Government or the Reserve Bank considers it necessary or expedient to obtain and examine any information, book or other document.

2. (a) In case the said information, book or document is in the possession of any person, the Central Government or as the case may be, the Reserve Bank may by order in writing, require such person to furnish to the Central Government or the Reserve Bank or any person specified in the order such information, book or other document.

(b) In case, however, the information, book or document is not in the possession of the person to whom the order is addressed, but it is possible in the opinion of the Central Government or the Reserve Bank, for such person to obtain and furnish that information, book or other document, the Central Government or the Reserve Bank may, by order in writing, require such person to obtain and furnish to the Central Government or the Reserve Bank or any person specified in the order such information, book or other document.

12. It would, therefore, follow that the power under the above provision can be exercised either by the Central Government or by the Reserve Bank. The occasion for the exercise of this power would arise when either of them, viz., the Central Government or the Reserve bank, considers it necessary or expedient for the purpose of the Act to obtain and examine any information, book or document. It is only when the said requirement is satisfied that the Central Government or the Reserve Bank, as the case may be, can proceed in the manner indicated above in Clause 2(a) or 2(b).

13. We are in the present case not concerned with the Reserve Bank nor with the situation wherein it was considered expedient to obtain and examine any information, book or other document. The impugned order purports to have been made by the Central Government because, according to it, the Central Government considered it necessary for the purpose of the Act to obtain and examine the papers and documents specified in the schedule attached to the order. The question which arises for determination is whether the authority concerned applied its mind so as to show that the Central Government considered it necessary for the purpose of the Act to obtain and examine the papers and documents specified in the Schedule.

14. The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is 'to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, be thing oneself, to reflect' (vide shorter Oxford Dictionary). According to Words and Phrases - Premanent Edition Vol. 8-A 'to consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is therefore, manifest that

careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent.

15. A necessary corollary of what has been observed above is that mind has to be applied with regard to the necessity to obtain and examine all the documents mentioned in the order. An application of the mind with regard to the necessity to obtain and examine only a few of the many documents mentioned in the order, while there has been no such application of mind in respect of the remaining documents, would not be sufficient compliance with the requirements of the statute. If, however, there has been consideration of the matter regarding the necessity to obtain and examine all the documents and an order is passed thereafter, the Court would stay its hand in the matter and would not substitute its own opinion for that of the authority concerned regarding the necessity to obtain the documents in question.

16. The language of Section 19(2) of the Act points to the conclusion while an order under it may be made with respect to 'any information; book or other document', it is essential that such information, book or other document should be specified in the order. This is apparent from the concluding part of the said sub-section wherein there is reference to 'such information, book or other document'. The word 'such' points to the necessity of specifying the information, book or other documents in the order. It is, no doubt, true that the order can relate to a large number of books, documents or informations, it is all the same imperative that the same should be particularised in the order. According to sub-section (1A) of Section 23 of the Act, if any person contravenes any of the provisions of this Act or of any rule, direction or order made thereunder, for the contravention of which no penalty is expressly provided, he shall, upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. The fact that penal consequences follow from non-compliance with an order made under sub-section (2) of Section 19 also highlights the importance of specifying the information, book or other document in the order.

17. The order under the above provision of law is addressed to the person who is either in possession of requisite information, book or other document or is, in the opinion of the authority concerned, able to obtain and furnish such information, book or other document. For compliance with such an order, it is imperative that the person against whom the order is directed should be left in no doubt with regard to the precise information, book or other document which is required to be furnished by him. It, therefore, becomes essential that the requisite information, books or other document should be specified in the order.

18. In the light of what has been stated above, let us examine the impugned order in the present case. The appellants have been directed by the impugned order to obtain and furnish the documents mentioned in the schedule attached to the order. The first six items in the schedule relate to five letters and one telegram while the Seventh item mentions other books, papers and documents relating to the appellants in the possession of the Registrar of this Court under order, dated May 6, 1966, passed by this Court. The list of those documents is on the file of this case and its perusal shows that hundreds of documents and files are in the custody of the Registrar relating to the appellants. Some of those documents have not even the remotest connection with the matters for which information, book or other document may be obtained under Section 19(2) of the Act. One of the documents is a memorandum submitted by the appellant company to the Minister for Finance

and Industry, Government of Andhra Pradesh. Some other documents contain agenda for the meetings of the Board of Directors. Still another document is described as "one confidential typed pamphlet of five papers heading 'The Empire of T.T.K. and Company', found in the personal brief case of the Managing Director." There are also files relating to the memoranda submitted to the Minister for Heavy Engineering as also copies of letters addressed to the Chief Controller of Imports and Exports. Some sheets of papers contain chemical formulae relating to the preparation of certain barium compounds. A number of shares certificates of the appellant company in the name of the appellant, his wife and minor child are also in the custody of the Registrar. We are at a loss to understand as to how it was considered necessary for the purpose of the Act to obtain and examine any of the above mentioned documents. It cannot be gainsaid that there has to be some nexus between the documents sought to be obtained and the purpose of the Act. Where such a nexus is missing and the document has no relevance for the purpose of the Act, the condition precedent to the making of an order under Section 19(2) must be held to be non-existent.

19. The fact that an omnibus order was made in respect of all documents relating to the appellants, which were in the custody of the Registrar under the order of this Court, including some of the documents which have not even remotest bearing on the matter covered by the Act, goes to show that there was no due application of the mind by the authority concerned. As mentioned earlier, an essential condition precedent to the making of an order under Section 19(2) is that the authority concerned should have considered it necessary to obtain and examine for the purpose of the Act the specified information, book or other document. The element of due care and attention which is an essential ingredient of the phrase 'considers it necessary' is lacking in this case. As such, the impugned order should be held to be not in conformity with sub-section (2) of Section 19 of the Act.

20. Mr. Chagla on behalf of the respondents has referred to the case of Seth Durgaprasad, etc. v. H. R. Gomes, [(1966) 2 SCR 991] where it was held that the power to search, granted under Section 105 of the Customs Act, is a power of general search and it is not necessary for its exercise that the authority should specify the documents for which search is to be made. The above case, in our opinion, cannot be of such assistance to the respondents. The power to search contemplated by Section 106 of the Customs Act, is similar to that conferred under Section 19-D of the Foreign Exchange Regulation Act, which also relates to search for and seizure of useful and relevant documents secreted in any place. The authorisation for search contemplated by the above two provisions need not specify the documents for which search is to be made because in a vast majority of cases, the authority concerned might not be aware of the precise nature of the secreted documents. The same reasoning would not, however, hold good in case an order is made under Section 19(2) for obtaining specified documents.

21. Reference has also been made by Mr. Chagla to the cases of M. P. Sharma and Others v. Satish Chandra, District Magistrate, Delhi and Others, [1954 SCR 1077] and Income-tax Officer, Special Investigation Circle-3, Merrut v. M/s. Seth Brothers and Others. [(1970) 1 SCR 601]. The first of these cases deals with the question as to whether search warrant issued under Section 96 of the Code of Criminal Procedure offends Article 19(1)(f) of the Constitution and whether compelled production of incriminating documents by a person against whom a first information report has been made is testimonial compulsion within the meaning of Article 20(3) of the Constitution. None of these questions arises for consideration in the present case and as much the cited authority cannot be of much help to the respondents. The other case of Seth Brothers (supra), dealt with the power of search and seizure under Section 132 of the Indian Income-tax Act. The question involved in that case was essentially different from that which arises for determination in the present case. As such,

the said decision can also be of not such avail to the respondents.

22. The impugned order for the reasons stated above is liable to be quashed. It would, however, be open to the authority concerned to make a fresh order in due compliance with the requirements of Section 19(2) of the Act. We, therefore, allow Appeal No. 1452 of 1971, to set aside the judgment of the High Court and quash the impugned order. The appellants shall be entitled to the costs of this appeal as well as of the High Court. Appeal No. 1453 of 1971, in the circumstances has become infructuous as such is dismissed with no order as to costs.

23. The records in question, in the custody of the Registrar, will be returned to the appellants after a month unless another order has been made under Section 19(2) of the Act or other provision of law.

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