

Union of India and Another

Vs

Swadeshi Cotton Mills Co. Ltd., and Another

Civil Appeal No. 1501 of 1978

(V. R. Krishna Iyer, D. A. Desai, A. P. Sen JJ)

12.09.1978

ORDER

1. Leave granted.

2. An and interim order of stay passed by the High Court of Delhi has been challenged before us in this appeal. We should have hesitated to interfere with an interlocutory order following the usual practice in this Court. But, where repercussions are incalculable and the basis of the direction, though interlocutory, is obscure, the ends of justice dominate and we may interfere if public interest so dictates.

3. Here is an order of the Company Law Board under Section 408(1) of the Companies Act, 1956, which gives a wealth of facts and a variety of reasons to support an ultimate direction which runs thus :

Since all the three conditions referred to in sub-section (1) of Section 408 of the Companies Act, 1956, are established on the facts and circumstances of the case, the Company Law Board hereby appoint officers for three years, in addition to the existing directors of the company :-

(1) Shri B. M. Kaul, Member, Railway Board (Retd.), 5-J-4, Jawahar Nagar, Jaipur.

(2) Shri A. K. Mazumdar, Chief Secretary, Orissa Government (Retd.), 26/2, Dover Road, Apartment No. 4, Calcutta-19.

(3) Shri P. K. Choksi, Senior Partner, Price Waterhouse Pest & Co., B-4, Gillander House, Calcutta-1.

(4) Shri S. K. Mitra, President, Institute of Cost & Works Accounts of India, 14-A/6, Western Extension Area, Karol Bagh, New Delhi-5.

(5) Shri P. A. S. Rao, Formerly President of institute of Company Secretaries of India, C-7/7, Vasant Vihar, New Delhi.

(6) Shri M. C. Bhatt, Joint Secretary, Government of India (Retd.), B-22, Defence Colony, New Delhi-24.

(7) Shri Triloki Nath Sharma, Business Executive, 247, Mohan Nagar, G. T. Road, Sahaibabad, Ghaziabad (U.P.).

The Company Law Board direct further under sub-section (6) of Section 408 of the Act that Shri B. M. Kaul will act as Chairman of the Board of Directors of the Company.

In accordance with the order passed by the Delhi High Court on August 24, 1977, referred to hereinbefore the implementation of this order will be subject to any order that may be passed by the Delhi High Court in the matter pending before it.

4. This order, which inducted seven additional directors was based on the ground that the affairs of the company in question "are being conducted in a manner which is prejudicial to the interests of the company and to public interest". The High Court, after hearing counsel on both sides, passed a laconic order that :

We consider that the proper order to be made, in view of the circumstances of the cases, is to stay the operation of the order of the Company Law Board, dated December 17, 1977, except as regards Shri P. K. Choksi, Shri P. A. S. Rao, and also to direct that the said three gentlemen will not vote at the meetings of the Board of Directors till disposal of the writ petition. We order accordingly.

5. A company of considerable financial dimensions and involved in operations using public resources as investment, naturally becomes the concern not merely of the Company Law Board but also of the economic process of the country. The specialized body with responsibility to watchdog corporate process, is the Company Law Board. When it investigates and reaches a definite conclusion and makes a consequential direction, it is entitled to prima facie respect unless there are glaring circumstances to the contrary. We do not wish to make any observations on the merits of the matter since the High Court is seized of the case. It may well be that the order of the Board may be vitiated by infirmities, legal or other. It may also be that the reasoning of the Board and the factual foundation for it sound. In such situations, acting at an interlocutory stage, the benefit of reasonable doubt to the specialized body. Of course, as stated earlier, if there are good ground to shoot down the order, certainly the High Court has jurisdiction to stay its operation. However, we find nothing stated in the order itself indicating why the High Court prima facie thought it necessary substantially to stay the operation of the Company Law Board's order of induction of seven persons as directors. Nor have we any light regarding the total eclipse of four directors and the partial eclipse of the other three. Unfortunately, the inscrutable face of a sphinx does not go well with the judicial process. Whatever might have been the basis of the High Court's order we do not make any comments thereon - we are inclined to unllify the interim stay. Our inclination is explained by the prefatory observations we have earlier made in this order. To expatiate more may prejudice one side or the other. To indicate this much is obligatory to explicate ourselves.

6. There was some argument at the Bar about an order under Section 18AA of the Industries (Development and Regulation) Act, 1951, and its impact upon the order impugned before us. May be, by virtue of that appointment, the entire company comes under the control of authorised person appointed under that provision,(but) it is not for us to explore here the effect and import of the order of the order of the Central Government under Section 18AA and we desist from doing so. All that we need do and that we can do in the present appeal is to allow it so that the Company Law Board's direction in regard to seven additional directors will come into full force until the final of the High Court. We allow the appeal.

7. We may make it clear that the learned Additional Solicitor General did assure the Court that nothing which will stultify the two writ petitions before the High Court will be done by the

Company Law Board or the Central Government. We hope the High Court will dispose of the case very expeditiously.

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