

Gram Panchayat and Another

Vs

Shree Vallabh Glass Works Limited and Others

Special Leave Petition (Civil) No. 14395 of 1989

(K. Jagannatha Shetty, R. M. Sahai JJ)

15.03.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. The petitioners seek leave to appeal against the decision of the Bombay High Court in Writ Petition No. 6108 of 1987 quashing the proceedings for recovery of property tax and other expenses due from the respondent 1-company.
2. The matter arises in this way : For the purpose of prevention and revival of sick industries, the Central Government has enacted the Act called the Sick Industrial Companies (Special Provisions) Act, 1985 ('the Act'). The Act extends to the whole of India including the State of Jammu & Kashmir. It came into force (except Section 15 to 34) with effect from May 15, 1987. The Act covers only sick industrial companies or industrial companies which have the potential to become sick. The Act empowers the Central Government to establish a Board to be known as the Board for Industrial and Financial Reconstruction to exercise the jurisdiction and powers, and discharge the functions and duties imposed under the Act.
3. Respondent 1-company M/s. Shree Vallabha Glass Works Ltd. has been declared to be a sick industrial company within the meaning of clause (o) of sub-section (1) of Section 3 of the Act. 'Sick Industrial Company' means "an industrial company being a company registered for not less than seven years which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year".
4. Petitioner 1 is the Gram Panchayat, Salwad and petitioner 2 is the Chairman of the Gram Panchayat. The petitioners initiated coercive proceedings under Section 129 of the Bombay Village Panchayat Act, 1959 to recover a sum of Rs. 9,47,539 stated to be the property tax and other amounts due from the company. Challenging that proceedings, the company moved the High Court by way of writ petition under Article 226 of the Constitution claiming protection provided under Section 22 of the Act. The High Court has accepted the writ petition and restrained the petitioners from recovering the said amounts without the consent of the Board.
5. The question is whether the Panchayat could not recover the amount due to it from out of the properties of the sick industrial company without the consent of the Board ?
6. Section 22 provides, as far as material, as follows :

"22. Suspension of legal proceedings, contracts etc. - (1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority.

# \* \* \* \*##

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

7. Section 22(1) provides that in case the enquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration by the Board or any appeal under Section 25 is pending then certain proceedings against the sick industrial company are to be suspended or presumed to be suspended. The nature of the proceedings which are automatically suspended are : (1) Winding up of the industrial company; (2) Proceedings for execution, distress or the like against the properties of sick industrial company; and (3) Proceedings for the appointment of receiver. The proceedings in respect of these matters could, however, be continued against the sick industrial company with the consent or approval of the Board or of the appellate authority as the case may be.

8. Section 16 authorises the Board to make such enquiry as it may deem fit for determining whether any industrial company has become a sick industrial company. Where Board is satisfied that a company has become a sick industrial company, it could give a reasonable time to the company to make its net worth positive [Section 17(2)]. Where it is not practicable for sick industrial company to make its net worth positive within a reasonable time, Section 17(3) steps in authorising the Board to direct any operating agency to prepare a scheme in relation to the company. The Board may specify the various measures to be considered by the operating agency. These measures are detailed out in Section 18. The operating agency has to prepare a scheme as per the order specified by the Board.

9. In the instant case, the Board by order dated August 27, 1987 has stated that it was satisfied that the company has become a sick industrial company. The Board directed that further proceedings under the Act shall be taken with respect to the company. On the same day the Board after having heard the representatives of the ICICI, the company, the concerned banks, the other public financial institutions and the State Government of Gujarat, considered the entire material on record, held that it was not practicable for the company to make its net worth positive within a reasonable time and that further proceeding under sub-section (3) of Section 17 of the Act are, therefore, to be taken. Accordingly, in exercise of the powers conferred under Section 17(3) of the Act, the Board appointed the ICICI as the operating agency to prepare a scheme for rehabilitation/revival of the company keeping in view the provisions of Section 18 and 19 and the guidelines. At the same time the Board appointed Shri Y. V. Sivaramakrishnayya as the special director of the company for

safeguarding its financial and other interests.

10. In the light of the steps by the Board under Sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board. Indeed, there would automatic suspension of such proceedings against the company's properties. As soon as the inquiry under Section 16 is ordered by the Board, the various proceedings set out under sub-section (1) of Section 22 would be deemed to have been suspended.

11. It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company for the recovery of their dues/outstandings/ overdues or arrears by whatever name it is called. The Board at its discretion may accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Sub-section (5) of Section 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues.

12. In our opinion, the High Court was justified in quashing the recovery proceedings taken against the properties of the company and we accordingly, reject this petition, with no order as to costs.

</html