

C. E. S. C. Limited and Others

Vs

Bowrech Cotton Mills Co. Ltd. and Others

Civil Appeal No. 383 of 1992

(K. Ramaswamy, K. Jayachandra Reddy JJ)

23.01.1992

ORDER

1. Special leave granted.

2. We have heard the learned counsel on either side. This appeal arises against the judgment of the Division bench of the Calcutta High Court dated May 21, 1991 granting interim direction pending the matter arising under Article 226 of the Constitution. The appellant admittedly supplies electric energy to the respondent-mill and in terms of the contract the appellant, as contended by its learned counsel had to supply the electric energy and the respondent had to pay the consumption charges as well as surcharge on delay in payment thereof plus additional security deposit on average of three months' consumption of electricity as per Section 24 of the Indian Electricity Act, 1910. It is the case of the appellants that the respondent-mill had undertaken in July 1990 to make the payment of the arrears at the rate of Rs 10 lakhs per month in addition to regular consumption charges till all the arrears were liquidated and had also undertaken to furnish the additional security and to pay surcharge on the delayed payments but the respondent-mill committed default. The appellants, therefore, issued notice of disconnection and challenging the validity thereof, a writ petition was filed in the High Court. Ultimately in that writ petition direction given to pay the arrears at the rate of Rs 10 lakhs per mensem till all the arrears were liquidated became final and again default was committed. Again notice of disconnection was issued. The second writ petition was filed and in the second writ petition, the learned Single Judge directed to deposit at the rate of Rs 6 lakhs per mensem. When challenged, on appeal the impugned order was passed. The High Court directed as an interim measure that the respondent-mill should pay the balance sum of Rs 25 lakhs within five months from the date of the order and first instalment shall be payable on or before June 15, 1991 and thereafter on the 15th of every succeeding month. The instalment paid shall not be less than Rs 4 lakhs per mensem. However, the entire dues shall be liquidate within five months as stipulated earlier. If any default is committed, then the appellant shall be at liberty to disconnect the supply after giving three day's clear notice.

3. It is contended by Sri P. P. Rao, the learned senior counsel for the appellants that when High Court had given direction in the first writ petition, the respondent-mill had committed default and that, therefore, the second writ petition is not maintainable. We do not propose to go into this aspect of the matter since it was not raised in the High Court. It is next contended that the appellants are entitled in terms of Section 24 of the Indian Electricity Act, 1910 to the current rate of consumption charges and also surcharge on delayed payment and additional security. The respondent-mill is bound to comply thereof. Having undertaken in the contract and also as per the order of the High Court in the first instance the respondent-mill is bound to make payment in terms thereof. Sri A. N. Sen, the learned senior counsel for respondent-mill contended that under Section

3 of the Sick Industrial Companies (Special Provisions) Act, 1985, on September 6, 1990 the respondent-mill has been declared as a sick mill and proceedings have been initiated before the Board for Industrial and Financial Reconstruction (hereinafter referred to as B.I.F.R.). The appellant company is one of the creditors and it has to lay its claims and decision is to be rendered by the Board. The respondent-mill is not obligated in these circumstances to pay the same. It is a matter pending in the High Court. The liability to pay to the appellant was disputed before the High Court. The B.I.F.R.'s order would become final and that, therefore, the respondent has been paying only the current consumption charges. The directions cannot, therefore, be given to liquidate the arrears.

4. Having given our anxious consideration to the respective contentions, we are of the opinion that it is premature to express any opinion on merits with regard to liability of the mills regarding the arrears as it is a matter to be gone into before the Board. Suffice to say that as per the statement given by the appellants as on January 22, 1992, the respondent-mill has to pay only current consumption charges for the month of December, 1991 at Rs 25,83,360.20, the surcharge on delayed payments towards arrears is Rs 14,83,928.39 and further accrual delayed payment surcharge is Rs 2,24,237.91. The balance security for three months' average consumption charges on every three months is Rs 77,17,500.00 after giving credit to the existing security deposit of Rs 11,00,100.00. As regards the payment of the current consumption charges for the month of December, 1991, the due date is January 24, 1992. Therefore, it is open to the respondent-mill to pay the same within the due date and if not already paid, it should be paid by the end of January 31, 1992. As regards the accrued surcharge on delayed payment for current dues as on January 22, 1992 it is a sum of Rs 2,24,237.91. The respondent is directed to pay this amount and also a further sum of Rs 6 lakhs towards the surcharge on delayed payment of arrears within a period of two months from today. They are also directed to give immovable property security for Rs 25 lakhs within six months to the Registrar of the High Court (appellate side). This payment of surcharge and security will be subject to the result in the inquiry before the Board and also subject to the result in the writ petition pending in the High Court. The payment of delayed surcharge and security will be without prejudice to the contentions of the parties. The respondent also shall continue to pay the current rate of consumption charges within the stipulated period as per rules and if such payment is made then the question of paying surcharge on delayed payment does not arise. If there is any arrears in payment of the current charges, they should also be liable to pay the surcharge in terms of the contract for the subsequent periods from January 1, 1992 onwards. If any default in payment of current consumption charges and compliance of this order is committed, it is open to the appellant to issue notice of disconnection of three days and is free to take action as per law. Subject to these modifications of the judgment of the High Court, the appeal is allowed but in the circumstances parties are directed to bear their own costs.

5. Sri Rao, has stated that a large number of matters touching this point are pending decision in the High Court. We request the High Court to consider for early disposal of all these matters as a batch preferably within six months so that the controversy can be decided in one way or the other.

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