Dehri Rohtas Light Railway Company Limited

Vs

District Board, Bhojpur

Civil Appeal Nos. 3250 with 3249 of 1983

(M. Fathima Beevi, S. C. Agrawal JJ)

12.03.1992

JUDGEMENT

FATHIMA BEEVI, J.:-

1.The appellant M/s. Dehri Rohtas Light Railway Company Limited carried on business of running a light railway between Dehri-on-Sone to Tiura Pipradhih in the district of Rohtas, Bihar. The railway line for the said light railway was laid over 67 kilometres. The area covered was 413.55 acres owned and/or used by the company as a lessee. The appellant was liable to pay cess to the District Board under Section 5 of the Bengal Cess Act IX of 1880.

2. An unregistered agreement was entered into between the appellant and the District Board of Shahabad, (now Bhojpur) on 7-8-1953. Thereby it was agreed that the company - will pay a fixed sum of Rs. 10,000/- per annum towards cess in respect of the railway under the Bengal Cess Act IX of 1880 irrespective of the profits or losses made by the company in its railway business. The company paid the cess as per the agreement dated 7-8-1953 for the period from 1953-1954 to 1966-1967.

3. On 27-10-1967, the Collector made a demand of Rs. 9,86,809.33 paise from the appellant intimating therein that State was not bound by the unregistered agreement dated 7-8-1953. The company instituted suit No. 60 of 1968 before the Court of Third Additional Sub-Judge, Sasaram, to enforce the agreement and to restrain the respondents from making any demand in excess of Rs. 10,000/- per annum. The suit was dismissed by the judgment dated 13-9-1971. The First Appeal No. 1242 of 1971 filed before the High Court against that decision was also dismissed by the judgment dated 23-5-1980. Civil Appeal No. 3249 of 1983 is directed against this judgment of the High Court.

4. In the meantime the demand for the cess was raised against the company for the years 1967-1968 to 1971-1972. This demand was challenged by the company before the High Court by filing Writ Petition No. 1372 of 1974. The High Court by judgment dated 30-3-1979 quashed the notice of demand with direction as to how the cess is to be assessed under Section 6 read with Section 5 of the Bengal Cess Act, 1880. Based on this judgment reported in 1979 Bihar Bar Council Journal 428, the appellant filed C.W.J.C. No. 1266 of 1980 under Article 226 of the Constitution before the Patna High Court for quashing the demand notices for the period 1953-1954 to 1966-1967. The High Court by judgment dated 6-1-1981 dismissed the writ petition in limine. Civil Appeal No. 3250 of 1983 is directed against the judgment of the High Court dated 6-1-1981.

5. The Bengal Cess Act was applicable to the State of Bihar and under Section 5 of the said Act all immovable properties were liable to a local cess. The local cess was to be assessed under Section 6 on the annual value of lands and, until provisions to the contrary is made by the Parliament on the annual net profits from mines and quarries and from tramways, railways and other immovable property. Accordingly, the cess payable by the company in respect of its immovable properties on which its railways are constructed and operated is to be assessed on the net profits arising out of the said immovable properties and not on the net profits of the entire business of running the railways which the company derived from its railway undertaking.

6. The Additional Collector made the demand for the sum of Rupees 9,86,809.33 paise as alleged due on account of cess in respect of the land of the company for the years 1953-1954 to 1966-1967 by various notices, although full payment of the rent and cess as agreed upon was made for the relevant period. Demands are not made on the net profits derived from the said lands used by the company for its railways, but are based on the net profits of the entire business of the railway undertaking. The company had filed returns showing the net profits not of the said lands but of its railway business as a whole on the basis of which the aforesaid cess demands had been made.

7. The company filed the suit challenging the demands for the years 1953-1954 to 1966-1967 on the basis of the agreement dated 7-8-1953 for restraining respondents from making any demands in excess of Rs. 10,000/-. The suit was dismissed on the sole ground that the State of Bihar did not consent to the, agreement between the company and the District Board.

8. The demands for the subsequent years 1967-1968 to 1971-1972 were challenged in the writ petition on the ground that the said demands for cess were based on the net profits of the entire railway undertaking of the company and not on the basis of net profits of the lands used for the said railway undertaking. The High Court in allowing the writ petition and quashing the said notices accepted the ground.

9. The question, therefore, arising in these appeals is whether the appellant is entitled to the same relief in respect of the demands for the earlier years. Since the demands for the earlier years were the subject-matter of the challenge in the suit which was pending, the company had not sought relief of quashing the said demands in the writ petition filed earlier. The challenge in the suit as stated was only on the basis of the agreement and not on the ground of illegality. The company did not include the demands for the earlier years in the first writ petition. It is, therefore, contended for the respondents that the second writ petition filed after a long lapse of several years had been rightly dismissed by the High Court. It is also contended that the demands could not be quashed in the civil suit on the ground now urged. The learned counsel for the respondents, therefore, submitted that these appeals should fail. He also placed reliance on the decision of this Court in Tirlok Chand v. H. B. Munshi, (1969) 2 SCR 824 : (AIR 1970 SC 898), in support of the judgment of the High Court that the writ petition cannot be entertained after inordinate delay.

10. The appellant's learned counsel referred to the earlier decision of the High Court wherein the Court observed thus:

> ".....net profits from the railways must in the context of the Act, be given a restricted meaning and it is the net profits from immovable properties of the railways .which is liable to the payment of the local cess. Thus the net profit of the company is referable partly to its ownership of immovable property and partly to its ownership of movable properties. It is only that portion of net profit which is derived from the

use of the immovable property of the petitioner Company which is liable to cess. If that be the correct view the present demand contained in Annexures 3 to 7 is not sustainable. Of course, it would be open to the authorities to reassess the cess in the light of the legal position as explained, and after determining as to what portion of the net income is referable to its ownership of immovable property."

11. It is accordingly settled that the statutory basis of chargeability under the Cess Act is the immovable property of the company. The appellant's learned counsel maintained that the jurisdiction of the Cess Authorities is, therefore, confined to levy of cess only on the net profits of the company derived from the immovable properties and any different stand would be hit by Article 265 of the Constitution of India.

12. The question thus for consideration is whether the appellant should be deprived of the relief on account of the laches and delay. It is true that the appellant could have even when instituting the suit agitated the question of legality of the demands and claimed relief in respect of the earlier years while challenging the demand for the subsequent years in the writ petition. But the failure to do so by itself in the circumstances of the case, in our opinion, does not disentitle the appellant from the remedies open under the law. The demand is per se not based on the net profits of the immovable property, but on the income of the business and is, therefore, without authority. The appellant has offered explanation for not raising the question of legality in the earlier proceedings. It appears that the authorities proceeded under a mistake of law as to the nature of the claim. The appellant did not include the earlier demand in the writ petition because the suit to enforce the agreement limiting the liability was pending in appeal, but the appellant did attempt to raise the question in the appeal itself. However, the Court declined to entertain the additional ground as it was beyond the scope of the suit. Thereafter, the present writ petition was filed explaining all the circumstances. The High Court considered the delay as inordinate. In our view, the High Court failed to appreciate all material facts particularly the fact that the demand is illegal as already declared by it in the earlier case.

13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its on facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tirlok Chand (AIR 1970 SC 898) (supra) relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed.

14. Since the entire matter is before us, we do not consider that it is necessary to remit back the case

to the High Court for fresh disposal. In the light of the earlier decision, it has to be held that the demands made for the years 1953-1954 to 1966-1967 on the basis of the assessment on a net profits of the undertaking is clearly unsustainable. The Cess Authorities have to make the assessment taking into account only the net profits of the immovable properties used for the purposes of the business by the company and the assessments have to be modified accordingly. It was submitted on behalf of the respondent that the District Board has received the cess at the rate of Rs. 10,000/- per annum and, if on revised assessment, the liability is reduced then the burden will be cast an the District Board to refund the excess and that is one of the reasons why the claim of the company cannot be entertained at this distance of time. It was also submitted that under the terms of the agreement, the excess over Rs. 10,000/- is to be paid by the District Board and that would be an additional burden. It is fairly conceded on behalf of the appellant that on the basis of the revised assessment the company undertakes not to claim any refund from the District Board and would pay the excess over Rs. 10,000/- without burdening the District Board with the liability to pay the same in terms of the agreement. When such undertaking is given by the company it is only just, fair and proper that the claim of the company is entertained and the Cess Authority is directed to recompute the cess payable for the years in question holding the demand already made as illegal.

15. In view of the above discussion while dismissing Civil Appeal No. 3249 of 1983 arising from the suit and disposing of Civil Appeal No. 3250 of 1983, we allow the Writ Petition No. 1266 of 1980 and make the following directions :-

> "The appellant-company is liable to pay for the years 1953-1954 to 1966-1967 the cess as recomputed in the light of the decision in Writ Petition No. 1372 of 1974. If the amount paid by the company for these years is in excess of the amount thus assessed, the District Board shall not be liable to make any refund of the excess. If the cess recomputed exceeds the amount already paid, the liability to pay such excess shall be on the appellant-company."

In the circumstances of the case, the parties are directed to bear their respective costs.

Order accordingly.

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