Bileshwar Khan Udyog Khedut Shahakari Mandali Ltd.

Vs

Union of India

Civil Appeal Nos. 1660-66 of 1981

(V. N. Khare, R. P. Sethi JJ)

10.02.1999

JUDGMENT

V.N. Khare J

1. The appellants in these appeals are Co-operative Sugar Factories engated in the business of manufacture of sugar in the State of Gujarat. On 15th June, 1972 the respondent issued an order known as Sugar Price Determination Order and on the same day the Levy (Sugar Control) Order, 1972 was issued under which the sugar manufacturer were required to sell sugar to the Union Government, State Government or their nominees at the controlled price of Rs. 124.59 per quintal for D-Grade sugar. The appellants challenged the aforesaid Sugar Price Determination order and Levy Control Order by means of separate petitions before the Gujarat High Court. In the writ petition there was a prayer for interim relief also. Interim prayer as contained in the writ petition reads as follows :

> "That pending the hearing of the petition your Lordships will be pleased to issue an interim injunction restraining the respondents their servants and agents and or their successors in office as the impugned orders requiring the petitioner to supply sugar to the State Government or Union Government or to their nominees at a price of Rs. 150/- per quintal."

2. The High Court by an order dated 31.7.1972 admitted the writ petition and granted interim order as prayed for in the writ petition. Subsequently on 29.8.1972, the stay order was made absolute. Some time in March, 1973 the writ petition came up for hearing and on that day the counsel for the appellant stated before the Court that by lapse of time the writ petition was rendered infructuous. Consequently the writ petition was dismissed with cost. After dismissal of the aforesaid writ petition the Parliament passed an Act known as Levy Sugar Price Equalisation Fund Act, 1976 (hereinafter referred to as the `Act'). Once of the objects of the act was to make provisions for refund of excess realisation made by the sugar factories on the basis interim orders issued by the courts. After the Act came into force, Union of India filed separate applications for issuing direction by the High Court to the writ petitioners whose writ petitions were dismissed by the High Court to pay the difference of price between Rs. 124.59 and Rs. 150/- per quintal realised by them on account of interim order granted by the High Court along with interest. The High Court after hearing the matter directed the appellants to credit to levy sugar price equalisation fund the difference between the control price of Rs. 124.59 and the price realised by them in respect of levy sugar sold by them between 31.7.1972 to 12.3.1973. The High Court further directed that the appellants shall credit to the fund interest at

the rate of 12-1/2% per annum on the excess realisation made by them. It is against this order the appellants came to this Court by means of special leave petitions.

3. This Court granted special leave in all the appeals limited to the question as regards the liability of the appellants to pay interest on the amounts which they were called upon to refund the excess realisation meaning thereby that leave was refused to the extent the appellants were required to refund the excess realisation made by them. Thus the only question which is before us is, as to whether the appellants are liable to pay interest at the rate of 12-1/2% per annum on all the excess realisation made by them on the basis of interim orders obtained by them.

4. Learned counsel appearing for the appellants raised two arguments. The first argument is that the amount which the appellants were required to refund was not an excess realisation within the meaning of the expression "excess realisation" as contained in Section 2(b)(ii) of the Act. The second argument is that their cases are not governed by sub-section (3) of Section 3 of the Act but are governed by Section 3(4) and (5) of the Act.

5. Coming to the first argument, the contention of the appellants' counsel is that since the interim orders passed by the High Court on the basis of which the appellants made excess realisation having not set aside by the appellate or higher court, the realisation made by the appellants would not fall within the ambit of Section 2(b)(ii) of the Act. The contention is that interim orders passed in writ petitions although automatically lapsed on dismissal of writ the petitioners, but were not set aside by the appellate or higher court. This contention is wholly untenable. It is not disputed that on the dismissal of the writ petitions the interim orders passed therein were automatically stood discharged. The ordinary meaning of the word `set aside' is to revoke or quash, the effect of which is to make the interim order inoperative or non-existent. In the present case when the High Court dismissed the writ petition the interim order passed therein became non-existent and in-operative. The effect of setting aside an order or automatic discharge consequent upon the dismissal of writ petition is the same. In fact the expression `set aside' used in Section 2(b)(ii) means the interim order has come to an end and has become inoperative. We, therefore, reject the first argument of learned counsel for the appellant. So far as the second argument is concerned, we have held hereinbefore that the interim orders passed in the writ petitions came to an end on dismissal of the writ petition before the Act came into force, and under such circumstances Section 3(4) and (5) can have no application in the appellants' case. The Supreme Court in *The Ankepalle Co-operative Agricultural & Industrial Society Ltd. and another v. Union of India and others, 1977(4) SCC 2041* has held that sub-sections (4) and (5) of Section 3 do not apply to a case in which interim order made by a Court has already come to an end as a result of termination of final proceedings before the commencement of the Act. Moreover, the special leave against the order passed by the High Court directing the appellants to refund the excess realisation made by them was refused. Thus it is not open to the appellants to raise this argument again. Since in the present case sub-section (3) of Section 3 of the Act which provides for grant of interest on the excess realisation made by the appellant is applicable the appellants are liable to pay interest. We, therefore, reject the second contention of the counsel.

6. For all the reasons stated above, we do not find any merit in the appeals. The appeals are dismissed with no order as to costs.