

SUPREME COURT OF INDIA

Union of India

Vs.

Modiluft Ltd

C.A.No.4025 of 2003

(N. Santosh Hegde, Ashok Bhan and B.P. Singh JJ.)

07.05.2003

JUDGMENT

Santosh Hegde, J.

1. Heard learned counsel.

2. Leave granted.

3. The Union of India and two others have challenged in this appeal an interim order made by the High Court of Delhi dated 30.7.2002 in C.M. No. 5084/2002 in C.W.P. No. 6611 of 2001. By the said order, while granting Rule the High Court made the impugned *ad hoc* interim arrangement. By this, the High Court directed the Union of India and other respondents in the writ petition to issue a 'No Objection Certificate' (NOC) to the respondent herein subject to the respondent complying with the schedule of payment proposed in the impugned order.

4. Briefly stated, in the schedule of payment, the High Court directed the respondent to pay to the Customs Authorities a sum of Rs. 50 lacs per month for an initial period of 6 months, and thereafter a sum of Rs. 70 lacs per mensem for a further period of 6 months. It also directed the writ petitioner to obtain certain letter of confirmation from M/s. Air UK Leasing Ltd. (AUL) confirming that a sum of Rs. 12.5 crores paid by them could be appropriated towards the dues of the writ petitioner in payment of inland air travel tax.

5. The writ petition before the High Court was filed challenging an order made by the Joint Secretary in a Revision application, who by the said order had upheld the order of the Commissioner (Appeals) who had, in turn, upheld the demand made by the Union of India on the respondent for payment of inland air travel tax purportedly collected by the respondent from the passengers along with the interest and penalty statutorily payable for non-deposit of such tax within the time stipulated in the statute.

6. As noted above, the writ petition is still pending consideration by the High Court and the impugned order is made as an interim arrangement.

7. Learned Attorney General appearing for the appellants, contended that the relief granted by the High Court though interim in nature, is beyond the ambit of the writ petition itself, apart from being in the nature of a final relief. He contended that there are certain factual and legal issues which have been decided by the statutory authorities in their quasi-judicial status, and unless and until the said findings are set aside by the High Court, no relief in the nature of interim relief could have been granted by the High Court. For example, he contends that the contention of the respondent that a sum of Rs. 12.5 crores deposited by AUL with the customs authorities for taking away the aircraft from India, could not have been treated as an amount adjustable towards the dues of the respondent. He submits that a contention to the contrary has been rejected by all the statutory authorities, therefore, this is an issue which could only be decided at the stage of final hearing. He also contended that AUL is not a party to the proceedings before the High Court and the so called settlement which is referred to in the impugned order between AUL and the respondent cannot be taken into consideration by the court in the writ proceedings. Learned Attorney General had a more serious objection in regard to the direction to grant of a 'NOC' which, according to the learned counsel, is a matter outside the pale of the writ petition, because what is in dispute in the writ petition is only the amount payable as inland air travel tax and not the right of the respondent to re-launch its airline operations, the latter being subject to many other conditions under the appropriate laws and by appropriate authorities, who are not parties to the writ petition. At any rate, the learned Attorney General submits that such an interim direction in a writ petition challenging an order in revision is wholly alien to the subject-matter of the writ petition. Learned Attorney General also submits that even assuming that an order of this interim nature can be sustained for any reason, the respondent having defaulted in payment of the instalments fixed by the High Court, this Court should vacate the interim order. He also submitted that because of the direction issued by the High Court, coercive proceedings were initiated against the appellant and they were compelled to issue a conditional NOC which he submits, permitted to be withdrawn or be declared as ineffective.

8. Mr. A.B. Saharya, learned senior counsel for the respondent, submitted that the impugned order in question was on fact made after negotiations between the parties and is almost a consent order, therefore, the appellant should not be permitted to go back on such consent order. On this ground alone, he contends that the appeal should be dismissed. He also contended that the sum of Rs. 12.5 crores deposited by AUL was towards the pending dispute in regard to the non payment of inland travel tax, therefore, AUL having agreed to the appropriation of that amount by the customs authorities towards the alleged dues of the respondent towards the above tax, the department was bound to give due credit that too from the date on which the said amount was deposited with the customs authorities. He also contended that from an overall picture of the proceedings that took place in the High Court on several dates, it would be clear that the impugned order was made in the interest of the parties concerned, therefore, it being an order in equity, this Court should not interfere with the impugned order. At any rate, learned counsel contended this in appeal some important questions arise for consideration which will have to be decided by this Court before any interference with the impugned order, which are as follows:

“1. Whether or not the sum of Rs. 12.5 crores paid in April, 1997 by AUL in lieu of the restrained aircraft being taken out of India would itself satisfy the entire tax due as on from the date of the deposit i.e. April, 1997 ?

2. Whether interest @ 20% per annum would be payable to the appellant in spite of the deposit made by the AUL of the 12.5 crores in April, 1997 ?

3. Whether levy of penalty can be justified in view of the abovestated deposit by AUL ? and

4. Whether withholding of NOC for resumption of airline operations on the ground of tax dues is justified when adequate security was given ?”

9. Having heard learned counsel for the parties and perused the records, we think it is neither necessary nor advisable for us to answer these questions raised by the learned counsel in this appeal because these are questions which arise for consideration in the writ petition which is still pending before the High Court. In this appeal, we are only concerned with the reasons given in the impugned order by the High Court and our endeavour is to determine whether such reasoning could be the basis of an interlocutory order.

10. Mr. Saharya, learned senior counsel, has also contended that the impugned order is made because of a settlement arrived by the parties concerned which is in the nature of a consent order and is also an order in equity therefore the same should not be interfered with.

11. If either of these grounds is factually correct then we have no difficulty in agreeing with the High Court but in regards to the factum of settlement between the parties, the parties are not at *ad idem*. Learned Attorney General has specifically denied this factual position and has stated that it is not a consent order or an order based on settlement but is an order made by the court at its discretion after hearing the parties. We also notice from a perusal of the impugned order it does not indicate that the said order is based on any settlement between the appellant and the respondent herein or on any consent or concession shown by the appellants herein. As a matter of fact, it is the case of the appellants that the report having collected the inland air travel tax (IATT) from the passengers as an agent of the Government of India, has not deposited the said amount as required under the statute hence are not only liable to pay the said collected tax to the Govt. Of India but also liable to pay interest and penalty on such delayed payment. While the respondent contends that certain sums of money deposited by AUL should be appropriated against the sum due from them and the said amount having been deposited in the year 1997 itself by AUL, there is no liability on them to pay any further IATT. This is an issue which was raised before different forums like the assessing authority, Commissioner of Appeals and the Revisional Authority and all the three authorities have held against the respondent holding that the amount deposited by AUL cannot be adjusted towards the tax due from the respondent, which still remains to be the bone of contention in the writ petition, therefore, it will be difficult to accept that the appellant would have accepted to treat the deposit made by the AUL as available for adjustment towards the tax due from the respondents even for the purpose of an interim order. In the impugned order it

seems the High Court has recognized a settlement between AUL and respondents, but the appellants are not parties to such settlement nor are they willing to associate themselves with such settlement. If that be so, unless and until the High Court decides the issue whether such settlement is binding on the appellant or not to seek adjustment of the said amount deposited by AUL, we do not think it was proper for the High Court to have taken note of this deposit by AUL as being in favour of the respondent, while passing the impugned order.

12. The next question for our consideration is whether the impugned order is an order in equity ? Learned Attorney General submits that the tax in question was payable by the passengers who travelled in the respondent's aircraft and the said tax has been collected by the respondent as an agent of the appellant and has not deposited the said amount as statutorily required but has appropriated the same for its own use and the finding of the 3 authorities is concurrently in favour of the appellants. In such a case granting and instalment that too towards part of the appellants. In such a case granting an instalment that too towards part of the amount due, can never be said to be an equitable order.

13. Mr. Saharya, learned senior counsel for the respondents contended that since the High Court has directed the respondents to deposit the amount of tax, which it thought was due to the appellants, though in instalments the appellants interest is secured. And the further direction of the High Court to issue the NOC was only to facilitate the respondents to restart its airline operations denial of which was causing irreparable loss to the respondents. He submitted by the restarting of the airline operations even the appellant stood to gain because it would fetch more revenue to the appellant, hence, the impugned order is an equitable order.

14. We find it difficult to accept the reasoning of learned counsel for the respondent that the order in question is an order in equity. For an order to be an order in equity, it should be equitable to all parties concerned. We do not think the impugned order has taken into consideration the interest of the Revenue as was expected of the court entertaining an appeal against a money decree. The respondent herein according to the appellant collected the tax from the passengers which was payable to the Union of India as an agent and did not deposit with the authorities concerned, on the contrary obviously used the same for its own use. Its contention before the authorities that there was no default has been rejected by the said authorities. It is their further case that certain amount deposited by the AUL with the customs authorities as a security for the purpose of taking back their aircraft to their country should be adjusted towards the respondent's dues, has also been negated by all authorities. In such circumstances, entertaining a petition in its writ jurisdiction to grant a liberal instalment to the respondent to pay the dues that too only a part of the dues, in our opinion, cannot be considered as an interim order made in equity. Therefore, the order of the High Court on the facts and circumstances of this case cannot be termed as an order in equity which ought not to be interfered with by this Court.

“Learned counsel for the respondent, however, contends that there is serious dispute as to the liability of the respondent to pay this tax because it alone is not agent of the Union of India in collecting such tax because many a time such tax is collected by the

travel agents who themselves may be directly liable to the Government of India to deposit the amount so collected by them. But this is an issue which is not yet decided by the High Court, therefore, we do not think the impugned order is one such order which can be considered as an equitable order with which we should not interfere.”

15. Nextly, we notice that the High Court has granted a relief by way of an interim order which we think it could not have done at the interim stage for more than one reason. The writ petition in question was filed challenging an order made by the Government in revision. The subject matter of the said petition pertains to the liability of the respondent to pay the tax. In the said writ petition, the respondent has sought an additional prayer by way of a direction to the respondent to grant a NOC to re-launch its airline operations. We do not want to say at this stage that such joinder of two separate causes of actions could be maintained in a writ petition like the one that is filed before the High Court by respondent. It should be noticed that the authorities empowered to permit re-launching of the airline's operations were not before the Court which we are told is the Department of Civil Aviation. Be that as it may, since the relief as termed in the writ petition being a final relief, we think the same could not have been granted by the High Court at an interlocutory stage. But the learned counsel for the respondent contends that the said prayer is only an incidental prayer because the Civil Aviation authorities have refused to grant necessary permission to re-launch the airline's operations to the respondent only because the customs department which is a respondent before the High Court, has refused to give a NOC therefore in effect what is sought for before the High Court is only a direction to the customs authorities to issue a NOC which in turn may be used by the respondent to obtain the required permission from the competent authorities to re-launch their airline operations. Be that as it may, even accepting the argument of respondent, it is to be noticed that even a NOC from the customs authorities can be directed to be issued by the High Court only after it comes to the conclusion that the amount as determined by it has been paid by the respondent and not by an interim order otherwise it would amount to the granting of a final relief in favour of the respondent who has suffered adverse orders from the authorities below, even before the writ petition is finally decided, and in the event of the ultimate dismissal of the writ petition the respondent would gain an undue advantage in spite of its default and might even give rise to other questions in equity including rights of the third party.

16. Seen from any angle, we think the High Court has erred in granting the impugned relief to the respondent which in our opinion is in the nature of a final relief which on facts and circumstances of this case, without deciding the issues involved in the writ petition, could not have been granted. Therefore, we allow the appeal and set aside the impugned order. The NOC which is said to have been issued provisionally stands revoked. Payment made, if any, by the respondent would be given credit or adjusted in a manner considered appropriate by the High Court in the pending writ petition.

17. We have refrained from expressing any opinion on the submission urged before us by the appellants that in any event the respondents have committed default in payment of instalments as directed by the High Court in its impugned order and, therefore, in terms of the order itself, the order stands vacated.

18. Learned counsel for the respondent contends that in view of the pending dispute between the parties the respondent is suffering irreparable loss therefore we should request the High Court to dispose of the pending writ petition at an early date. This is a matter which is best left to the discretion of the High Court, hence we do not propose to make any such request to the High Court. We also make it clear that whatever views may have been expressed in this order, if any, are only tentative and meant for the disposal of this appeal only. We have not expressed any concluded opinion on the issues which may arise for consideration before the High Court in the pending matters.

The appeal is allowed accordingly.