SUPREME COURT OF INDIA

Baranagore Jute Factory Plc. Mazdoor Sangh

Vs.

Baranagore Jute Factory Plc.

C.A.No.4298-4299 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

21.03.2017

JUDGMENT

Kurian Joseph,J.,

SLP(Civil)No.25733-25734/2015

1. Leave granted.

2. The appellants are the petitioners/applicants before the learned Single Judge in an application filed by them for taking appropriate action against the respondents herein for violating the order dated 23.02.2011. According to the appellants, the entire money paid by the National Highway Authority of India ('NHAI' for short) on account of acquisition of the company's land, should have been deposited with the High Court, in the true spirit of the order dated 23.02.2011. To the extent relevant, for the purpose of the present case, it may be noted that of the total amount due to the company, the NHAI issued a cheque for an amount of Rs.94.16 crores approximately in favour of the Registrar of the High Court after deducting an amount of Rs.10,55,60,331/- by way of tax deducted at source ('TDS' for short). Thereafter, the company filed its income-tax return for the assessment year 2013-2014 and claimed and received refund of the entire amount covered by the TDS, after deducting the tax. According to the respondents, the amount was utilised for various purposes in connection with the affairs of the company. It is the stand of the respondents that the direction to deposit the amount with the High Court was given to the NHAI, and in having claimed, received and utilised the refund received from the Income-Tax Department, there is no violation of the order dated 23.02.2011.

3. Learned Single Judge was prima facie of the opinion that there was deliberate violation of the order dated 23.02.2011, and therefore, issued Rule to the respondents, returnable in six weeks, vide order dated 26.06.2015. There was also a direction that the respondents shall not operate the bank accounts of the company without securing the afore-mentioned amount of Rs.10,55,60,331/-.

4. Aggrieved, the respondents took up the matter in appeal before the Division Bench leading to the impugned order.

5. The Division Bench, in the impugned order, took the view that the learned Single Judge should not have passed an order affecting the operation of bank accounts, and therefore, to that extent, the order of the learned Single Judge was vacated. And thus aggrieved, the appellants are before this Court.

6. It may specifically be noted that the Division Bench has not interfered with the Rule issued to the respondents in the proceedings initiated under The Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') for the alleged violation of the order dated 23.02.2011. The Division Bench only vacated the order regarding operation of the bank accounts of the company without securing the amount of rupees ten crores and odd. To quote from the impugned order:

> "The order under appeal cannot, in our view, be sustained to the extent that the appellants have been restrained from operating their bank accounts without setting apart ten crores and odd. The two appeals and the connected stay applications are disposed of."
>
> (Emphasis supplied)

7. Still further, the Division Bench also clarified that:

> "Having regard to the urgency and considering the fact that the contempt proceedings and the company applications are pending before the learned Single Bench, we have not issued any direction for affidavits."

8. Thus, the limited question before us is whether the Division Bench was justified in interfering with the order passed by the learned Single Judge for securing the amount received by the respondents by way of refund from the Income-Tax Department.

9. In order to appreciate the above question, it is necessary to refer to the background under which the relevant orders have been passed by the learned Single Judge.

10. The most relevant amongst the orders is the one dated 23.02.2011 passed by the learned Single Judge, which is one alleged to have been violated by the respondents. The text of the order reads as follows:

> "The Court: Mr. S.N. Mitra, learned senior Advocate appearing for the Baranagore Jute Factory PLC Mazdoor Sangh (BMS), the applicant in CA 906 of 2010 submitted that a portion of the vacant land of the company in liquidation has been acquired by the National Highway Authority of India and on account of compensation huge amounts are likely to be paid to the company in liquidation. He submitted that

considering the conflicting claims made by various persons who are either in management or who are seeking to take over management in liquidation the money likely to come may not be safe. Therefore, he submitted that the money should be adequately protected. Mr. Sen, learned Senior Advocate appearing for Chaitan Chowdhury and Ridh Karan Rakeeha submitted that the submission made by Mr. S.N. Mitra is a reasonable one. Mr. Anindya Kumar Mitra, learned Senior Advocate appearing for Damodar Prasad Bhattar,Sunil Toshniwal, S.lha & Ors, submitted that there is no objection to the money being protected but he submitted that his clients are presently running the management of the company in liquidation and therefore his clients should be permitted to receive the compensation and to keep the same in fixed deposit subject to further order of Court. Mr. Subhranshu Ganguly, learned Advocate representing Yashdeep Trexim Pvt. Ltd. supported the submission of Mr. S.N. Mitra. Ms. Manju Agarwal, learned Advocate, appearing for some of the creditors of the company in liquidation also supported the contention of Mr. S.N. Mitra. Mr. D.K. Singh, learned Advocate appearing for the Official Liquidator submitted that pursuant to earlier orders passed by the Apex Court it is. only proper that the money should be deposited with the Registrar, Original Side. Mr. Niloy Sengupta, learned Advocate appearing for Krishna Kumar Kapadia, who, according to him, holds controlling block of shares in the company submitted that the submission of Mr. S.N. Mitra should be accepted. Considering the submissions made by the learned Advocates appearing for the parties I am of the opinion that the submission made on behalf of the Official Liquidator is also in conformity with the submission made by Mr. S.N. Mitra which has largest support of the parties appearing before me. In that view of the matter, National Highway Authority of India is restrained from making any payment on account of compensation to the company in liquidation except by way of an account payee cheque to the Registrar, Original Side. The Registrar, Original Side upon receipt of such payment shall keep the same in a short term fixed deposit subject to further order of Court with the SBI Main Branch. Upon receipt of the money, he shall keep the parties informed about it. It is clarified that I have referred to the company as a company in liquidation because there is already a winding up order passed by this Court. Fuller effect of that order is yet to be examined."

(Emphasis supplied)

11. After the deposit of the amount of around Rs.95 crores, as paid by the NHAI, in terms of the said order, several attempts have been made by the respondents herein for withdrawal of the said amounts purportedly for meeting some of the liabilities of the company. We shall refer to only one order passed by this Court on 12.03.2015 wherein this Court, at paragraph-4, has taken note of the order passed by the Division Bench of the High Court dated 14.08.2014. To the extent relevant, paragraphs-4, 6, and 7 of the order dated 12.03.2015 passed by this Court in Civil Appeal Nos. 2814-2815 of 2015, read as follows: The Division bench while affirming the order passed by the Company Judge observed as under:-

"Considering the amount of deposit which the appellants want to withdraw, and the company's indebtness to its various creditors and the quantum of its liability, coupled

with the facts that even the workers have not been paid their dues, we do not feel it safe to allow a particular group of shareholders, who are described as interloper by the creditors, to withdraw the money deposited with the Registrar, Original Side of this Court without deciding the said issue finally particularly when we find that the appellant/applicant themselves have filed an application being C.A. No.957 of 2010 praying for permanent stay of the company petition No.2 of 1987 which is yet to be decided finally. In the aforesaid context, we do not find any illegality in the impugned order passed by the learned Company Court proposing to dispose of all the pending applications simultaneously."

It has been brought to our notice that the impugned order dated 14.8.2014 was earlier challenged in SLP (C) No.29330 of 2014 (@ SLP CC No.16278/2014). The said Special Leave Petition was dismissed as withdrawn on 27.10.2014 by passing the following order.

"Mr. Ajit Kumar Sinha, learned senior counsel appearing for the petitioner, seeks permission to withdraw this petition with a liberty to move the Company Judge to dispose of the pending matters as expeditiously as possible. Therefore, in view of the fair submission made by the learned senior counsel, we dismiss this special leave petition as withdrawn with a request to the Company Judge to dispose of the pending matters as expeditiously as possible preferably within a period of three months from today."

7. In the facts and circumstances of the case, we are of the opinion that the Company Judge before whom all applications are pending should dispose of the same as expeditiously as possible within a period of two months from today."

(Emphasis supplied)

12. Thus, it may be noted that this Court declined to interfere with the order passed by the Division Bench of the High Court, which in turn refused the prayer for withdrawal of the deposit lying with the Court.

13. Despite the above background, the respondents received cheque dated 13.06.2014 by way of Income-Tax refund to the tune of Rs.10,21,28,520/- after conceding the tax for Rs.34,31,807/- from the total TDS of Rs.10,55,60,331/- and utilised the same for various purposes without any clarification or permission from the company court which passed the order dated 23.02.2011 regarding the deposit of the entire money paid by the NHAI towards compensation for the acquired land. This conduct, according to the learned Single Judge, prima facie, was in violation of the order dated 23.02.2011, and hence, the Rule with a further direction to secure the entire TDS amount. Thus, the learned Single Judge, after referring to the order dated 23.02.2011, passed the following order on 26.06.2015. To the extent relevant, the order reads as follows:

"... Pursuant to the aforesaid order, the National Highway Authority issued a cheque of Rs.94.16 crores approximately in favour of the Registrar, Original Side of this

Court. The National Highway Authority had issued the aforesaid cheque after deducting a sum of Rs.10,55,60,331/- on account of tax deducted at source. Such payment appears to have been received by the Registrar, Original Side of this Court on or about November, 2012. The fixed deposit was made by the Registrar, Original Side on 9th November, 2012, that is to say, during the financial year 2012-13 corresponding to assessment year 2013-14. In the return filed on behalf of the company for the assessment year 2013-14, a claim for refund was made on the basis of the aforesaid deposit made by the National Highway Authority on account of the tax deducted at source as would appear from page 101 of the application. It appears that the claim for refund was met by the Income Tax Authority by issuing a cheque on 13th lune. 2014 as would appear from page 102 of the application. There is, as such, clear evidence of the fact that the alleged contemnors received the refund in violation of the order dated 23rd February, 2011. Assuming that receipt of the cheque on account of refund of income tax was in the usual course of business, there can be no gainsaying that the cheque should not have been encashed without leave of Court. From Annexure-E to the application appearing at page 102, it appears that a cheque dated 13th June, 2014 was received on account of refund and has also been encashed. Such encashment of the cheque on account of refund which has its origin in the amount paid by the National Highway Authority was in the teeth of the order dated 23rd February, 2011. I am, therefore, prima facie of the opinion that there has been a deliberate violation of the order passed by this court. It appears from the return appearing at page 101 that a sum of Rs.34.31.807/- was payable on account of tax by the company. After deducting the aforesaid sum from the amount of Rs.10,55,60,331/-, the balance sum of Rs.10,21,28,520/- was claimed by way of refund. The liability on account of income tax is payable by the present management from their own resource and for that any part of the money received from the National Highway Authority could not be used. Therefore, the alleged contemnors, managing the affairs of the company, in liquidation, appear to have appropriated the aforesaid sum of Rs.10,55,60,331/- which was deposited by way of tax deducted at source with the Income Tax Department by the National Highway Authority. For the aforesaid reasons, issue Rule against the alleged contemnor Nos. 1 to 6. Returnable six weeks hence. Since the company, in liquidation, through the machination of the alleged contemnors, has been enriched by the aforesaid sum and in order to preserve the aforesaid sum the alleged contemnors are restrained from operating the bank account/accounts of the company without setting aside the aforesaid sum of Rs.10,55,60,331/-. ..."

(Emphasis supplied)

14. The above order was the subject matter of challenge before the Division Bench, leading to the impugned order.

15. The Division Bench, as we have already referred to above, was not happy with the order regarding restriction on operation of the bank account without securing the TDS amount. To the extent relevant, the consideration in the impugned order reads as follows:

"... With the greatest respect we are of the view that the learned Court should perhaps have given the appellants an opportunity to explain and should perhaps also have ascertained what was the balance in the accounts maintained by the company before passing an order which has in effect and substance restrained the company from operating its accounts. It is not in dispute that the turnover of the company is in crores. This was the submission made on behalf of the respondents as well. A Company with such turnover cannot possibly carry on its business without operating any bank accounts at all. The livelihood of 4000 workers employed by the company is involved. We are not concerned with whether the present management will continue or not; we are also not concerned with whether the management is managing the affairs of the company well or mismanaging the company. These are matters which will be decided in the appropriate proceedings at the appropriate stage. It is however reiterated, at the cost of repetition that there was no specific order against the Company restraining the Company from encashing cheques towards Income Tax refund, or from utilising the same. The order under appeal cannot, in our view, be sustained to the extent that the appellants have been restrained from operating their bank accounts without setting apart ten crores and odd. The two appeals and the connected stay applications are disposed of."

(Emphasis supplied)

16. As we have already clarified, the Division Bench, in the impugned order, has not interfered with the Rule issued in the contempt proceedings. The interference is only to the extent of direction to secure the TDS amount Rs.10,55,60,331/-.

17. Though Shri Shyam Divan, learned Senior Counsel invited our attention to the judgment of this Court in Sudhir Vasudeva, Chairman and *Managing Director, Oil and Natural Gas Corporation Limited and others v. M. George Ravishekaran and others* [1], and contended that the courts must not travel beyond the four corners of the order which is alleged to have been flouted, in the background which we have explained above, we find it difficult to appreciate the submission. This Court, in the judgment referred to above, in paragraph-19, has clarified that the directions which are explicit in the judgment or "are plainly self-evident" can be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Prima facie, we are of the view that learned Single Judge has taken note only of the plainly self-evident facts while issuing the Rule and order regarding securing the amounts which the respondents received by way of refund from the Income-Tax Department and utilized.

18. It may be seen that the order dated 23.02.2011 regarding the deposit in court was passed to secure the entire compensation from the NHAI. The court was concerned about the money to be received from the NHAI towards the compensation and appropriately protecting the same from being used by the company. Even the respondents herein had "... no objection to money being protected...". The court had, in fact, declined the request made by the respondents ... "to receive the compensation and to keep the same in fixed deposit subject to

further orders of the court". The Official Liquidator was of the view that ... "the money should be deposited with the Registrar, Original Side".

19. After considering the submissions of the learned Counsel appearing for the parties, the learned Single Judge, formed the opinion that ... "the submission made on behalf of the Official Liquidator is also in conformity with the submission made by Mr. S.N. Mitra, who has largest support of the parties before me (the court)". Hence, the learned Single Judge made it clear that "In that view of the matter, the National Highway Authority was restrained from making any payment on account of compensation to the company in liquidation except by way of an account payee cheque to the Registrar, Original Side of the High Court". Therefore, it is fairly clear that the court had in mind the entire compensation paid by the NHAI in respect of the land acquired by them. Since the NHAI was bound to deduct TDS, an amount of Rs.10,55,60,331/- was paid to the Income-Tax Department. There can be no doubt whatsoever that the said amount formed part of the compensation. What the court in its order dated 23.02.2011 was requested and the court intended too was to protect the compensation amount. Merely because it goes through the Income-Tax Department, the same does not cease to be part of compensation. Even the respondents herein had submitted before the court at the time of passing the order dated 23.02.2011 that the compensation amount needed to be protected and they were willing to protect it subject to the order of the court. Therefore, the respondents, while handling of the compensation amount, had to seek orders from the court; going by the way they understood the proceedings.

20. In that background of the case, we are of the view that the respondents should not have appropriated the refund they received from the Income-Tax Department. There is nothing wrong in claiming the refund. The problem is in utilising the refund received. The refund they received is actually the compensation in respect of the land acquired from the company and it is that amount which the court wanted to protect by its order dated 23.02.2011. Hence, prima facie, we are of the view that the appropriation made by the respondents of the refund amount they received from the Income-Tax Department was in violation of the order dated 23.02.2011. It appears, for that reason only, even the Division Bench declined to disturb the Rule in the contempt proceedings issued against respondents. However, the Division Bench is wholly wrong in entering a finding that there is no violation of the order dated 23.02.2011 in utilising the refund. No doubt, had the refund and subsequent appropriation been of any amount other than the compensation, there would not have been any contempt at all.

21. Unfortunately, the Division Bench, in the impugned order, failed to recapitulate the background of the order dated 23.02.2011 and its own earlier orders with regard to the refusal for withdrawal by the respondents of the compensation deposited in court. Even if there be pressing needs, there could not have been any utilisation of the compensation amount without leave of the court. We find that the Division Bench has taken note of the expenditure made by the respondents of the amount they received. To quote the relevant background:

> "We have also looked into the details of utilisation of the refund as given in the schedule being Annexure 'L' to the stay application filed before us, wherefrom it

appears that Rs.1,19,18,723/- was paid towards arrear electricity charges by three account payee cheques drawn on Axis Bank Ltd., particulars whereof have been given in the schedule. Another Rs.2,23,00,000/- has been kept in fixed deposit as lien for issuance of bank guarantee favouring CESC Ltd., against the security deposit to be paid to CESC Ltd., for continuation of supply of electricity. This payment has been made by cheque dated 28th June, 2014 and also by transfer from Syndicate Bank on 28th June, 2014. A sum of Rs.24,92,582/- has been paid towards arrear Central Sales Tax [Partial Payment]; Rs.34,56,910/- towards Employees State Insurance contribution; Rs.44,44,044/- towards Provident Fund contribution; Rs.66,00,000/- towards arrear dues of Jute Corporation, a government body and Rs.4,68,85,198/- towards arrear wages, arrear ex gratia payment, arrear gratuity and other arrear dues of the workmen."

22. It is also seen from the order that the Division Bench had taken note of the paltry balance in the accounts of the company as on 27.06.2015. To quote:

> "We directed the company to furnish us with details of its bank operations. It appears that the company has about twelve bank accounts in operation in India and the combined balance in all these accounts taken together as on 27th June, 2015 was Rs.13,96,188.79P. Our attention has been drawn by Mr. Mookherjee to the fact that there are three other bank accounts with combined balance of not more than Rs.3,44,436/- which have not been used for over seven years and the company also has a bank account outside India that has a balance of 936 pounds [less than Rs.1,00,000/- in value in Indian currency."

23. It may be seen that the respondents have been managing the affairs of the company for a few years despite the futile attempts made by them to withdraw the compensation lying in deposit in court.

24. As held by this Court in *Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and another*[2], and going a step further, the Court has a duty to issue appropriate directions for remedying or rectifying the things done in violation of the orders. In that regard, the Court may even take restitutive measures at any stage of the proceedings.

25. In the background as above of the case, the Division Bench should not have interfered with the order dated 26.06.2015 passed by the learned Single Judge. However, taking note of the fact, an amount of Rs.2,23,00,000/- has been kept in fixed deposit towards lien for issuance of bank guarantee, we make it clear that the respondents shall not operate the bank accounts of the company after 03.04.2017 without securing an amount of Rs.8,32,60,331/-. We also make it clear that without leave of the High Court, the fixed deposit of Rs.2,23,00,000/- with the Axis Bank shall not be withdrawn. However, it would be open to the respondents to apply for appropriate clarification or modification of the order dated 26.06.2015, after making the deposit as above and it will be open to the learned Single Judge to pass the appropriate orders on merits of the application.

26. We make it clear that any observations made by us are only for the purpose of this order and shall not have any bearing on the consideration by the learned Single Judge in the contempt proceedings.

27. The appeals are allowed as above. There shall be no order as to costs.

Judgment Referred.

[1]*(2014) 3 SCC 0373*
[2]*(1996) 4 SCC 0622*