(1981) 05 DEL CK 0050

In the Delhi High Court

Case No : Civil Writ Petition No. 1892 of 1980 and C.C.P. No. 31 of 1981

Arun Kumar APPELLANT

Vs

Reserve Bank of India RESPONDENT

Date of Decision : 07-05-1981

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Foreign Exchange Regulation Act, 1973 — Section 28, 29, 30

Citation : AIR 1981 Delhi 314 : (1983) 54 CompCas 176

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

S.B. Wad, J.—The petitioner is a non-resident citizen of India. He resides at Lima-Peru, South America, and carries on business of import end exhibition of films there. He holds "Non-resident foreign exchange accounts" in Indian banks. In 1978 he had U.S. Pound 2,66,000 and Pound 11.000 in this account. He also holds foreign exchange amount to about U.S. Pound 5,00,000 in a London bank. With the permission of the RBI he started that is called "Holiday on ice-shows" at various places in India. Broadly speaking, the scheme sanctioned by the Reserve Bank was that the petitioner would use his foreign exchange reserves in India for payment to the foreign artistes. The foreign artistes were not permitted to take out of India any foreign exchange nor the equivalent in India currency. By a letter dated December 23, 1980, the respondent refused the permission to hold further ice-shows. This writ petition is filed against the said order of the respondent dated December 23, 1980. When the petition came up for stay of the impugned order (after the admission of the main petition), I permitted the petitioner to hold a show at Bangalore. The next shows was to he held at Madras in March, 1981. I found that by securing the interim orders the petitioner would be able to get the petition decided in his favor even without the final hearing of the writ petition. I, Therefore, expedited the hearing of the main writ petition itself.

2. The petitioner submits that :

(i) as a citizen of India he has a fundamental right to carry on trade or business under art. 19(1) (g) of the Constitution and the order "revoking" the permission was vocative of the said right;

(ii) the permission given by the Reserve Bank on March 1, 1979, was without any time-limit. So long as his foreign exchange reserves in India were not exhausted, he was entitled to hold the ice-shows;

(iii) no show-cause notice was issued to the petitioner before the impugned order was passed and the impugned order was bad in law for violation of the principles of natural justice; and

(iv) the Reserve Bank, having permitted the petitioner to hold the shows in India, was estopped on the principle of promissory estoppel, to "revoke" the said permission, as the petitioner would suffer serious detriment to his investment for the ice-shows in India.

3. The respondent justifies its action on the basis of the administrative instructions issued by the Ministry of Finance on August 21, 1962. The instructions are : "that no foreign exchange should henceforth be released nor any approvals accorded for engagement of foreign cabaret artistes, musicians, other floor-show artistes, etc." It is contended that the said mandatory instructions were overlooked when the initial permission was granted to the petitioner to hold ice-shows. The RBI decided to revoke the permission after further instructions issued to the Reserve Bank by the Ministry of Finance on February 25, 1980. These instructions reiterated the said administrative instructions issued issued in 1962. The responded further submits that on the reasonable construction of the particulars furnished by the petitioner regarding holding of the ice-shows, the permission accorded was for a limited period. It is then submitted that the petitioner was furnished with copies of the said instruction issued by the Finance Ministry in 1962 and 1980, on his own request, in this writ petition. As the grounds are already disclosed through the said instructions, there is no necessity of a fresh show-cause notice and the petitioner could make all his submissions in this court challenging the said grounds. It is also submitted on behalf of the respondent that there was no breach of the principle of promissory estoppel involved in the present case.

4. In order to carry on any trading or commercial activity in Indian by a non-resident or for establishing a place of business by such a person, the permission of the Reserve Bank has to be obtained under ss. 28 and 29 of the FERA, 1973. So also no foreign national can take up any employment in India or practice any profession or carry on any occupation, trade or business in India, unless he obtain permission from the Reserve Bank under s. 30 of the said Act. The petitioner intended to hold the ice-shows in India with the help of foreign artistes. Therefore, he was requested to obtain the permission of the Reserve Bank. The administrative instructions issued by the Ministry of Finance in 1962 and 1980 are issued under ss. 29 and 30 and other relevant provisions of the

Act. The Govt. of India took a decision that foreign artistes performing cabaret shows or floor-shows or similar shows should not be permitted to carry on these activities in India. The need for preserving and augmenting foreign exchange cannot be over-emphasized. The Government has, Therefore, a vital stake in preventing all such professional activities which are meant only for fun and enjoyment and not for any constructive nation building activity. The Government is also concerned with such activities if they are likely to dwindle or reduce the potential foreign exchange of non-resident citizen acquired abroad. AS the foreign exchange transactions, particularly involving foreign nationals are often very complex and many times beyond the control through the normal State agencies, a cautious approach by Government is understandable and reasonable. Government can evolve any method to prevent like hood of clandestine remittances of foreign exchange. I do not think that the petitioner can make any grievance of this broad national perspective, being a citizen of India. The restriction imposed by the said administrative instructions is patently in public interest and there is no breach of art. 19(1) (g) of the Constitution.

5. The next question for decision is whether the initial permission granted by the RBI was limited in point of time. The petitioner contends that no time-limit or duration was fixed. He submits that the permission was for his benefit till the foreign exchange reserves in India are exhausted by him. It is true that no express time-limit was fixed by the Reserve Bank when the initial permission was given. However, on the basis of the information furnished by the petitioner himself, it is possible to infer the duration of the permission. In the absence of any time-limit expressly laid down, it cannot be assumed that the permission was to operate in perpetuity. Reasonable time-limit, consistent with the facts of the case, can, Therefore, be legitimately fixed. On September 19, 1979, the petitioner wrote to the Reserve Bank requesting permission for recycling the amount received by him as gate money for purposes of the ice-shows. In the said letter petitioner stated that the shows would last for six months and his foreign exchange reserves would get exhausted by that time. The petitioner entered into contract with foreign artistes for the period of eleven months before the shows were started. He engaged 34 artistes and after performing the shows they went back in May, 1980. This uncontroverted evidence goes to show that the petitioner had himself represented to Reserve Bank that he wanted to hold ice-shows for a limited duration till the first round of shows in various cities in India was over. Counsel for the petitioner, however, submits that the terms of the original permission cannot be determined with the help of any evidence subsequent to that date. He has relied upon the two decisions of the Supreme Court. They are : Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . In fact in the later decision, observations of Bose J. in the earlier decisions are relied upon. Bose J. has held (at p. 858 of 1978 AIR) :

"Public orders publicly made, in exercise of a statutory authority, cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

6. I do not think that the said decisions help the petitioner. Here the Reserve Bank is not filing any new evidence in support of its case. It is petitioner who has himself furnished the information from time to time. He himself proceeded, while obtaining the permission for holding the show, on certain assumptions regarding the duration of the shows. He cannot be permitted now to explain away the said commitments in relation to duration. Throughout the conduct of the first set of shows up to May, 1980, both sides proceeded on certain understanding. I have no hesitation in holding that the initial permission did not extend beyond May, 1980.

7. The petitioner invokes the principle of promissory estoppel and submits that the Reserve Bank cannot be permitted to go back upon its initial permission and refuse to permit the holding of shows for the second season. Indeed, the petitioner''s submission is that the permission was a general permission. I have already held that it was a limited permission in point of time and in relation to the first set of shows. For invoking the doctrine of promissory estoppel the petitioner must show that there is an express and unequivocal promise. Secondly, it must be demonstrated by causal connection that the petitioner acted to his prejudice on the said express representation. In other words, it must be shown that but for the said representation he would have taken the action or changed his position. The petitioner cannot deny that there was no express permission to hold shows in India in perpetuity or as he now claims, till his foreign exchanges were exhausted. Having himself committed to certain duration and certain shows, if he has incurred any further expenditure or made arrangements for the subsequent set of shows, it has nothing to do with any "representation" made by the RBI. Administration foreign exchange is a sensitive area of economic administration. The area of administration is an area of high discretion. Individual equities have a very doubtful claim, even assuming that they exist. The submission of the petitioner is, Therefore, rejected.

8. But the petitioner insists that he was entitled to a show-cause notice before the refusal of the permission, for holding the ice-shows for the second set of shows. The respondents in their counter-affidavit took the plea that the permission for future shows was rejected because of the Finance Ministry instructions issued in 1962 and 1980. It is also averred that under s. 75 of the FERA, 1973, the respondent was bound to follow the instructions of the Central Govt. Along with the counter-affidavit the respondent produced copies of the said instructions of the Ministry of Finance. The respondent has submitted that no purpose would achieved by remanding the matter to the Reserve Bank for giving the show-cause notice and for hearing the matter. The only reason as to why the

permission was refused is now disclosed to the petitioner and the petitioner could address this court challenging the validity or applicability of the said instructions.

9. Arguing for the petitioner, Shri Anil Divan, submits that addressing this court on the said instructions is not the same as showing cause before the authorities. He submits that it is a matter of common knowledge that the foreign artistes have regularly been performing the show in various top hotels of the country. He submits that he will be able to produce the evidence before the authorities. He can submits that the Reserve Bank was itself of the opinion that s. 30 of the Act was not attracted in dealing with the petitioner''s case. He submits that he would be able to demonstrate how s. 30 is not applicable. The counsel then submits that in ice-show is not a floor show nor is it a cabaret and, Therefore, the said instructions of Ministry of Finance are not applicable.

10. I do not find that he counsel has made out any effective case for remanding the matter to the Reserve Bank and to give a fresh show-cause notice to the petitioner. Since the Reserve Bank is not free to take any decision contrary to the instructions of the Ministry of Finance, it will be a futile exercise. The petitioner has already addressed me on the question of the applicability of the said circular. The learned counsel for the petitioner contended (on the basis of the dictionary meaning of floor-show) that the ice-show is not a floor-show. He submitted that the floor shows are essentially conducted on the floor of a hotel. Ice-show are not conducted in a hotel. So also he submits that it is not a cabaret show. It may or may not be. I do not think that the enumeration of the activities of entertainment mentioned in the said instructions of the Ministry of Finance is exhaustive. It is clearly indicated by the word "etc." All varieties of shows meant particularly for entertainment are prohibited under said instructions. With a serve drain on the foreign exchange due to hike in petrol prices the foreign exchange position has become particularly difficult. The nation cannot afford to waste foreign exchange, actual or potential, for the purposes of entertainment. There is also no substance in the petitioner''s connection that since foreign artistes were not be paid in foreign currency in India, no permission under s. 30 was necessary. As stated earlier the implication of regulation and control under ss. 29 and 30 (as also the other sections) cannot be construed in relation to an individual, the concerned artiste or the manager. The provisions of the said sections are to be liberally construed so as to arm the State with sufficient powers to deal with the matters which are so vital to the nations''s economy. The approach to such problems is lucidly explained by a Division Bench of Madras High Court in RBI v. Vasanthi Raman [1966] 36 Comp Cas 416. In that case the respondent had complained of the refusal of the permission by the RBI under the scheme of the "Guest hospitality" or "Private hospitality." The respondent wanted to go to the U.K., where her expenses were to be financed by her first cousin. The court rejected the plea. The Division Bench held (at p. 42) : "... we think that the true criterion is that transactions which, by their character, may affect the foreign exchange situation adversely, whether directly or indirectly, would be included within the scope of the bank''s regulative power". An argument in the

present case is that the guest artistes are not to be paid in foreign currency during their stay in India and, Therefore, they are not likely to affect prejudicially the foreign exchange position. A similar argument was made by the respondent in the said Madras decision. The Division Bench held (at p. 425) : "What is claimed is that the restrictions ought not to be imposed where the tour abroad does not directly impinge on the foreign exchange resources, or involve the release of foreign exchange. But that is too limited a view of the powers and functions of the appellant-bank and we definitely consider that the matter should be judged, not merely in relation to the facts of a foreign instance, but in relation to a policy, and to conceivable consequences, direct or indirect of a large number of such cases". The submission of the petitioner is, Therefore, rejected. Mr Shanti Bhusan, appearing for the Reserve Bank, frankly conceded that if the disclosure of grounds in the counter-affidavit is to be treated as a show-cause notice, the ice-show conducted by the petitioner, till the decision of this petition, cannot be called in question. I agree with the counsel for the RBI. The ice-shows held till the decision of this writ petition will have to be accepted as without any blame. The extension of the date of the show-cause notice will naturally extended the period of permission to hold such shows.

11. For the reasons stated above, the writ petition fails with costs. The rule is discharged.

12. C.C.P. No. 31 of 1981 :

This is a petition alleging commission of contempt of the court by the petitioner in holding the ice-show at Madras during the pendency of this writ petition. The allegation is that the petitioner apprised this court for permission to hold a show at Madras. Instead of granting the said permission the court expedited the hearing of the writ petition itself. The respondent submits that as the permission was rejected by the court, holding of ice-shows at Madras amounted to a contempt of this court. It was willful disobedience of the orders of this court. The petitioner, however, contends that there were no prohibitory orders by this court. He was entitled to conduct the shows and he was merely exercising his rights to carry on trade and business. If it is found that there is any trans-gression, the authorities are free to take any action according to law. The submission is that the petitioner has not committed any contempt of this court.

13. Since I have held that all shows held before the show-cause notice are free from blame, the context of the petition itself has changed. The Madras shows were held in the months of March and April, 1981, that is, before the decision of this writ petition. I do not think that the petitioner can be held guilty of contempt of this court. The contempt petition is, Therefore, dismissed.

