
(1997) 08 GAU CK 0006
In the Gauhati High Court
Case No : Writ Appeal No. 474 of 1994

Assam Conductors Manufacturers Association	APPELLANT
Vs	
Assam State Electricity Board	RESPONDENT

Date of Decision : 28-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1997) 2 GLJ 544

Hon'ble Judges : M.Ramakrishna, J and P.C.Phukan, J

Bench : Division Bench

Advocate : A.K.Goswami, G.N.Sahewalla, J.Chutia, B.Goyal, P.Bora, N.N.Saikia, N.M.Lahiri, Advocates appearing for Parties

Judgement

M. Ramakrishna, C.J.—The Assam Conductors Manufacturers Association, Ulubari, Guwahati, represented by its President, Shri Ramgopal Agarwal, was the petitioner in Civil Rule No. 1351 of 1993 seeking for a writ of Mandamus by way of a direction to the respondents Nos. 1 and 2 to comply with the requirement of section 4 of the Interest in Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act. 1993, hereinafter referred to as the Act and to make payment of the money payable to the petitioner. The petitioner Association had also sought for any other reliefs that this Court may deem fit in the circumstances of the case.

2. The learned Single Judge, by an order made on 6.9.94 following the judgment and order passed by him while disposing of Civil Rule No. 1101 of 1994 (Trusses & Tower (P) Ltd vs. ASEB & others), disposed of the writ petition holding that the writ petition stands disposed of in terms of the order passed in Civil Rule No. 1101 of 1994. Aggrieved by the said order of the learned Single Judge, this writ appeal is presented challenging the correctness and the legality of the order of the learned Single Judge under appeal. The appellant Association has sought for setting aside the order of the learned Single Judge and to pass appropriate orders as this Court deems fit and appropriate under the facts and circumstances

of the case, for the grounds taken in the appeal.

3. We have heard the learned counsel on both the sides.

4. Mr. NM.Lahiri, learned senior counsel for the appellant, having taken us through the grounds of appeal, order of the learned Single Judge and the other documentary evidence produced in support of the appeal, argued that: (i) The view taken by the learned Single Judge while interpreting the provisions of section 4 and section 6 of the Act while reaching the conclusion against the appellant is erroneous, (ii) The conclusion reached by the learned Single Judge while interpreting the provisions of section 6 of the Act holding that the writ petition is not the remedy for recovery of the amount of money said to be due to the writ petitioner is improper and cannot be sustained in law.

Therefore, Mr. NM Lahiri, the learned senior counsel argued that the order passed by the learned Single Judge under appeal, is liable to be set aside and the writ appeal deserves to be allowed.

5. As against the contentions of the learned counsel for the appellant, the learned counsel for the respondents, Shri NN Saikia, the learned Advocate General for the State of Arunachal Pradesh and also the legal adviser to the Assam State Electricity Board, hereinafter referred as ASEB, however, argued that the intendment of section 6 of the Act is to enable an aggrieved person to file a civil suit seeking recovery of the money payable to him. Therefore, the approach of the learned Single Judge in holding that the writ petition is not maintainable seeking for the relief of recovery of money, must be held to be correct. He further argued that the conclusion reached by the learned Single Judge in holding that a civil Court is competent for seeking relief in a matter of this kind, is perfectly justified.

6. In view of the rival contentions argued in support of their respective cases, we will have to find out: (i) As to whether the conclusion reached by the learned Single Judge while interpreting the provisions of section 6 of the Act is proper? (ii) Whether the view taken by the learned Single Judge in the writ petition, as brought by the petitioner, is not maintainable and that the civil suit is the remedy, is justifiable?

7. The preamble of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (ActNo.32 of 1993), goes to show that this is an Act to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto.

8. Referring to the objects and reasons of the Act. it is stated therein as follows :

"Inadequate working capital in a small scale or an ancillary industrial undertaking causes serious and endemic problems affecting the health of such undertaking, industries in this sector have also been demanding that adequate measures be taken in this regard. The Small Scale Industries Board, which is an apex advisory

body on policies relating to small scale industrial units with representatives from all the States, Govt bodies and the industrial sector, also expressed this view. It was, therefore, felt that prompt payments of money by buyers should be mandatorily ensured and mandatory provisions for payment of interest on the outstanding money, in case of default, should be made. The buyers, if required under law to pay interest, would refrain from withholding payments to small scale and ancillary industrial undertakings."

Indeed, this Act replaces the Ordinance of 1992 promulgated by the President of India on the 23rd of September, 1992.

9. Therefore, in the light of the preamble and the objects and reasons for the enactment of this law, it is clear that the authorities intended to make a law with a view to enable the buyers for making prompt payments of money to the suppliers and in addition to that, if there is any delay in making prompt payments as against the supplies made to them, the buyer shall be liable to pay certain amount of interest which act would restrain the buyer from withholding of payments to , small scale and ancillary industrial undertakings.

10. Thus therefore, the Court will have to see whether in the event of delay in making prompt payment of the bills for the supplies of the requirements of the buyer, what is the intendment of the Act. This can be gathered while reading section 6 of the Act. While section 4 of the Act is a charging section for the purpose of calculating the rate at which the interest is payable and from which point of time the rate of interest is payable, section 6 of the Act deals with the recovery of the amounts due. It reads follows :

"The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of sections 4 and 5, shall be recoverable by the supplier from buyer by way of a suit or other proceeding under any law for the time being in force." (emphasis supplied)

Indeed, section 7 provides for an appeal subject to certain conditions.

11. In the instant case, as rightly observed by the learned Single Judge while dealing with the writ petition, there was no prayer in the writ petition seeking for any amount of money payable by the buyer to the supplier in regard to any supply having been made and the bill of the supply has not been cleared. On the other hand, the only prayer in the writ petition is that this Court may issue a direction by way of a writ of Mandamus to the respondent Nos. 1 and 2 to make payment in regard to the interest payable on delayed payment of the bills. In other words, this Court is not called upon to decide and to grant relief in respect of any amount of money payable as regards any supply made to the buyer. The writ petitioner is aggrieved only regarding non payment of the rate of interest payable as contemplated under sections 4 and 5 of the Act.

12. As we have already referred to the provisions of section 4, section 5 also deals with the liability of the buyer to pay compound interest, with which we are

not concerned. We are concerned only in regard to the understanding of the intendment of section 6 for the purpose of recovery of amounts due payable in terms of section 4 of the Act. In other words, we are called upon to decide as to what is the amount, by way of rate of interest payable, required to be calculated under section 4 of the Act towards the amount of interest on delayed payments.

13. First of all, there is no foundation laid in the writ petition as to what is the extent of delay in regard to the payment of bills as against the supply made by the supplier in respect of each transaction. The learned Single Judge referring to this aspect, while dealing with Civil Rule 1101 of 1994, has observed that there was a direction on 17.2.92 and also on 17.3.92, for supply of PSC Coal to the ASEB. The petitioner claims to have supplied the coals numbering 3,900 (three thousand nine hundred) by both the orders dated 17.2.92 and 17.3.92. It is pointed out that the bills were raised for the supply of coals and ultimately, the bills were finally paid on 8.10.93. So, as on the date on which the writ petition was filed, no amount of the bills was due to the writ petitioner. On the other hand, the only claim in the writ .petition was that since the petitioner was entitled to interest for delayed payments under the Act, they were seeking for the said relief in the writ petition. In other words, the learned Single Judge has referred to the factual position and recorded a finding that there was no balance amount payable as against the supplies made to the respondents. The only relief sought for in the writ petition is the rate of interest payable on the delayed payments, as contemplated under section 4 of the Act having not been paid, that relief is, therefore, sought for in the writ petition.

14. As we have already pointed out, there is no basis laid down in the writ petition as what is the number of days delayed in making prompt payments as against the supplies made by the suppliers. Therefore, it is not possible for this Court to investigate and record a finding as to how many days" delay is there in respect of the prompt payments required to be made by the buyer to the supplier as against the supplies made in respect of the coals referred to above.

15. Secondly, it was pointed out by the learned Single Judge that in a petition under Article 226 of the Constitution of India, in exercise of its extraordinary jurisdiction, it is not possible for this Court to investigate into this disputed question with a view to give relief to the parties.

16. Mr. NM Lahiri, the learned senior counsel for the appellant, however, placed strong reliance to support his argument on the following decisions :

(i) Nripendra Roy vs. State of Assam & others, 1995 (1) GLJ 120; (ii) Md.Rahimulla vs. State of Assam & others, 1995 (1) GLJ 121; (iii) Chand Mohammad AH vs. State of Assam & others, 1995 (1) GLJ 122.

17. We have considered these three decisions rendered by a Single Judge of this Court and we have found that excepting for reference to payment of bill amounts in pursuance of supply of orders, by virtue of Govt contract, the petitioner had supplied materials and submitted bills; but, since there was no payment having

been made, the Govt was directed to make payment of the sanctioned amount.

18. Similarly, in the second decision also, the payment of bill amount on completion of the work having not been paid, since the work having been completed and there was, admittedly, a sum of Rs.2,48.202/ which was due to the contractor since 1992. in terms of the contract, the amount was found to be due. Therefore, the learned Single Judge directed the Govt to make that payment.

19. In the third decision, a similar view was taken by the learned Single Judge by issuing a writ of Mandamus to make payment of the bills in pursuance of the work order dated 12.4.91. Since the petitioner had completed the work in terms of the contract, the respondents were directed to finalise the bills after verification and the measurements made of the work done by the contractor and to pay the bills by 31st March, 1995.

20. Therefore, in none of these reported judgments, a law has been laid down in respect of a question of law arising in the instant case. In that view of the matter, these decisions are of no assistance to the appellant.

21. In the Union of India & others vs. Ghaus Mohammad, AIR 1961 SC 1526, the Hon"ble Supreme Court while referring to the dispute as to whether the respondent was a foreigner or an Indian citizen, referring to the scope of provision of sections 3 (2) (c), 8 and 9 of the Foreigners Act. 1946, and section 9 of the Citizenship Act. 1955, held :

"The question whether the respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Article 226 of the Constitution would not be appropriate for a decision of the question. In our view this question is best decided by a suit...."

In Sohan Lal vs. Union of India, AIR 1957 SC 529, a Bench of four Judges of the Supreme Court, referring to the provisions of Article 136 of the Constitution in relation to the powers of the Supreme Court and Article 226 of the Constitution in relation to the powers of the High Courts, has laid down as follows :

"We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to his appeal can be decided." Please see paragraph 5 of the judgment.

In New Satgram Engineering Works & another vs. Union of India & others, AIR 1981 SC 124, the Hon"ble Supreme Court while referring to the facts and circumstances including the interpretation of the provisions of Article 226 of the Constitution of India, held as follows :

"The question whether the workshop called the engineering unit was "situate in, or adjacent to", the coal mine and was "substantially" used for the purpose of the mine as well as the question whether the Technical Director's Bungalow and the Guest House were "solely" used for the residence of officers and staff of the mine and, therefore, fall within the definition of "mine" as contained in section 2 (h) of the Nationalisation Act, held could not be decided in proceedings under Article 226 of the Constitution and the High Court was justified in observing that the dispute relating to the properties in question raised a "serious question of title" and the parties should get their rights adjudicated upon in a civil Court." Please see paragraphs 17 and 23 of the judgment.

22. We will now refer to the intendment and object of section 6 of the Act. As we have already extracted the preamble and the objects and reasons for the enactment of the law, the same may be read along with the rules of interpretation of section 6 of the Act. This is with the view to understand the correct intendment of the legislation.

23. It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of the statute are to be taken together with each other. Each word, phrase or sentence is to be considered in the light of the general purpose of the Act itself. (Please see *Aswini Kumar Bose vs. Arabinda Bose*, AIR 1952 SC 369 at page 382)

24. By a careful consideration of the Act of 1993, specifically referring to the charging section 4 of the Act including section 6 dealing with recovery of the amounts due, arising out of the rate of interest required to be calculated and made payable under section 4, we are clearly of the view that the language employed in section 6 clearly says that any person entitled to recover the amounts due from a buyer under section 6 of the Act, shall do so by way of a suit or other proceeding under any law for the time being in force, which means, generally we will have to construe that by referring to "suit or other proceeding", it necessarily means that the aggrieved person shall seek a remedy by way of a suit in a civil Court.

25. Seeing the view taken by the learned Single Judge in disposing of the writ petition, we are of the view that there is no force in the argument of the learned counsel for the appellant persuading us to take a different view from the view expressed by the learned Single Judge. The learned counsel for the appellant has failed to make out a case.

In the result, the appeal fails and is dismissed.