(1991) 11 KAR CK 0038

In the Karnataka High Court

Case No : Writ Appeal No. 2901 of 1991

Assistant Executive Engineer (Electrical), Karnataka Electricity Board — APPELLANT

Vs

Reyhan Minerals and Chemicals (Pvt.) Ltd. — RESPONDENT

Date of Decision : 29-11-1991

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 22, 22 (1), 25

Citation : (1993) 76 CompCas 426 : (1991) 3 KarLJ 6

Hon'ble Judges : S.P. Bharucha, J;S.A. Hakeem, J

Bench : Division Bench

Advocate : N.K. Gupta, for the Appellant; S.G. Shivaram, for the Respondent

Judgement

1. This appeal is on board for a preliminary hearing. We think it is desirable to dispose of it at this stage. We have heard counsel accordingly.

2. The appeal is filed by the Karnataka Electricity Board and an officer against the order of the learned single judge directing the Board to restore power supply to the writ petitioner''s unit subject to the following conditions :

"(i) the petitioner shall pay the actual consumption charges payable every month as per the demand;

(ii) the petitioner shall also pay the amount of Rs. 1,79,100 towards additional security deposit in ten equal monthly instalments along with the current bill. The first of such instalments shall be payable on or before August 10, 1991. The actual consumption charges shall be paid as and when the bills are presented;

(iii) in case the petitioner commits any default in payment of the instalment amount as ordered, it is open to the respondent to take such action as it is open in law;

(iv) power supply shall be restored within a period of one week from today."

3. The learned judge accepted the submission on behalf of the writ petitioner that, inasmuch as the writ petitioner''s unit was a sick industry and its case was under consideration by the Board for Industrial and Financial Reconstruction and the State Government, an order should be passed in the terms set out above.

4. Our attention was drawn by counsel to the provisions of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. The relevant portion of that section is sub-section (1), which reads thus :

"(1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or a consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority."

5. It was submitted on behalf of the Board that the provisions of section 22(1) had no application to a case such as this for the Board was not proceeding against the property of the writ petitioner to recover its dues but was only stopping supply of electricity. Attention was drawn by the learned Government advocate appearing for the Board to the judgment of the Division Bench of the Andhra Pradesh High Court in The Andhra Cement Company Ltd., Secunderabad Vs. A.P. State Electricity Board and others, This was also a case in which an Electricity Board had disconnected or threatened to disconnect the supply of power to a sick company. The Division Bench held that section 22 contemplated that no proceedings either for winding up or for execution, distress or the like against any of the properties of the company or for appointment of a receiver in respect thereof would "lie or be proceeded with". Further, the words "against the properties" of the company therein clearly implied that the action ought to be against the property of the company and non-supply of goods in future did not amount to action against the property of the company.

6. On behalf of the writ petitioner, our attention was drawn to the judgment of the Supreme Court in The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others, . This case concerned proceedings relating to the recovery of property tax u/s 129 of the Bombay Village Panchayat Act and it was held that such proceeding would not lie without the consent of the Board for Industrial and Financial Reconstruction u/s 22(1). The Supreme Court analysed the provisions of section 22(1) and held that only the following proceedings were automatically suspended thereby, namely, (1) winding-up of a sick industrial company; (2) proceedings for execution, distress or the like against the properties of a sick industrial company; and (3) proceedings for the appointment

of a receiver thereof.

7. The Andhra Pradesh High Court, in the judgment aforesaid, considered the Supreme Court judgment in the case of Shree Vallabh Glass Works Ltd. [1990] 71 Comp Cas 169, and said that the observations were made in the context of the recovery of property tax and other dues by coercive process which were recoveries against the property of a sick industrial company and could not be applied to the case of non-supply of future electricity by an electricity board.

8. It is patent that the disconnection of electric supply by the Board is neither a proceeding for winding-up nor for execution, distress or the like against the properties of a sick industrial company nor for the appointment of a receiver thereof. In our view, the provisions of section 22(1) have no application to a case such as this where the creditor of a sick industrial company declines to permit that sick industrial company to increase the quantum of its debt to the creditor.

9. On behalf of the writ petitioner, great reliance was placed upon the proceedings of the State Government to help in restructuring the writ petitioner''s unit. It was stated that the these proceedings contemplated that the dues of the Board would not be recovered. We asked whether the Board was a consenting party to the proceedings to which the answer was in the negative. We do not see how the State Government can speak for the Board.

10. In the result, the appeal succeeds and is allowed. The order under appeal is set aside and the writ petition is dismissed. There shall be no order as to costs.