(1997) 07 PAT CK 0042

In the Patna High Court

Case No : Criminal W.J.C. No. 169 of 1997

Baba Pulp and Fruits Ltd. APPELLANT

Vs

Central Bureau of Investigation and Others RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102
Income Tax Act, 1961 — Section 281B

Citation : (1998) 93 CompCas 374

Hon'ble Judges : N.K. Sinha, J

Bench : Single Bench

Advocate : Anjana Prakash, for the Appellant; Rakesh Kumar, for respondent No. 1, R.K.P. Singh, for respondent Nos. 4 and 5 and S.K. Sharan, for the Respondent

Judgement

N.K. Sinha, J.—Heard learned counsel for the parties.

2. The petitioner, Baba Pulp and Fruits Limited, is a company registered under the Companies Act, 1956, which is a hundred per cent, export oriented unit engaged in the export of fresh fruits and vegetables in the international market. The company has a current account (C.A.27) with Canara Bank, Boring Road Branch, Patna (respondent No. 4), The branch manager of the bank (respondent No. 5) through his letter dated September 10, 1996 (annexure-1), informed the petitioner''s lawyer that the operation of the said account has been stopped pursuant to letter dated February 12, 1996 (annexure-11), of the officer-in-charge of Barkatta police station and later on, in pursuance of letter dated August 28, 1996, of the Superintendent of Police, CBI, in connection with investigation of CBI, Patna Case No. RC-42(A)/96-Pat(A.H.D), the company through its managing director, Shri Anil Kumar Sinha, in this writ application, seeks quashing of annexure-1 and issue of a writ of mandamus commanding the respondents to allow the petitioner to operate the aforesaid bank account for smooth running of business.

3. Smt. Anjana Prakash, learned counsel appearing for petitioner-company, argued that the stoppage of operation of the current account of the company by the respondents in the absence of any order of the court is illegal, whimsical and violative of the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. It was pointed out that the police had no such powers to stop operation of the bank account under the provisions of Section 102 of the Criminal Procedure Code (hereinafter referred to as "the Code"). She argued that the amount lying in deposit in the aforesaid account belongs to the company which has been a recipient of financial assistance from a number of institutions.

4. Learned counsel for the petitioner, in the course of argument, referred to the counter-affidavit filed by respondent No. 1, the CBI. The affidavit has been sworn by the Superintendent of Police of CBI, Patna, who claims to be the supervising officer of Case No. RC-42(A)/96. As stated in the counter-affidavit, the said case relates mainly to the conspiracy aspects involving different accused persons in respect of fraudulent withdrawals of huge amounts of money from the various treasuries of the State on the basis of false allotment letters relating to the Animal Husbandry Department of the Government of Bihar.

5. Shri Anil Kumar Sinha, the managing director of the company, has been described as one of the suppliers in the Animal Husbandry Department who had fraudulently withdrawn huge amounts from the Government exchequer in the garb of supply of materials to the Department without actually supplying the same. Shri Anil Kumar Sinha is also described as own brother of the main accused, Shri Tripurari Mohan Prasad, in the said criminal case and against whom there were allegations that he had fraudulently withdrawn crores of rupees from the Animal Husbandry Department without supplying any material. Respondent No. 1 claims to have issued letter dated August 28, 1996, copy of which is annexure-B to the counter-affidavit, to respondent No. 5 to trace out any account or locker, etc., standing in the name of Shri Tripurari Mohan Prasad, and his family members and pass on the information to the CBI for the proper investigation of the case. Respondent No. 5 was also asked to stop the operation of those accounts. The stand of the CBI is that, while investigating the case and exercising the power u/s 102 of the Code, the investigating agency has rightly asked the bank to stop the operation of current account No. 27. It was argued on behalf of the petitioner-company that the CBI had no such powers to seize the account of the petitioner-company. Reliance was placed on a judgment of the Delhi High Court in Swaran Subharwala v. Commissioner of Police 1988 Cri. LJ 241. In the said case, the petitioner, before invoking the powers of the High Court in the matter had also moved the trial court. In the instant case, the petitioner-company has not filed any application before the court where the said criminal case is pending for any order to operate the account or withdraw any amount for any purposes. Counsel stated that the investigating agency had not furnished any report regarding the seizure of the account to the Special Judge, CBI, as required under Sub-section (3) of Section 102 of the Code and, hence, the petitioner-company could not have filed such an application before the court.

6. Shri Rakesh Kumar, learned counsel appearing for the CBI, states that Messrs. Inter Pharmaceuticals (India) Pvt. Ltd., another accused of the Animal Husbandry Department cases, in an identical situation, had filed Cr. W.J.C. No. 765 of 1996 for identical relief, that is. for allowing the company to operate the account, the operation of which was stopped pursuant to the request of the investigating agency. The said writ application was referred to a Division Bench by a learned single judge of this court and a Division Bench of this court by order dated February 25, 1997, copy of which is annexure-C to the counter-affidavit, disposed of the writ application as withdrawn with the observation that the petitioner, if so advised, may move the court after submission of the charge-sheet. The order is dated February 25, 1997, but has inadvertently been typed as order dated March 25, 1997, in the counter-affidavit. According to the CBI, a similar order ought to be passed in the present writ application.

7. It may be mentioned that a counter-affidavit has been filed on behalf of the Income Tax Department, respondent No. 6, and the Commissioner of Income Tax, respondent No. 7, stating that a credit balance of Rs. 2,51,351 is standing in the aforesaid current account of the petitioner-company in support of which a photocopy of the bank account has been filed as annexure-A to the counter-affidavit. It is stated that Shri Tripurari Mohan Prasad and his family members have utilised current account No. 27. The balance lying in the said account was not disclosed to the Income-lax Department and a huge demand was expected to be raised on assessment. Thus, after obtaining the approval of the Commissioner, respondent No. 7, the amount lying to the credit of the said account, has been provisionally attached u/s 281B of the Income Tax Act. The aforesaid provision of the Income Tax Act empowers the Income Tax Officers to make provisional attachment of any property of the assessee during the pendency of any proceeding for the assessment or reassessment of any income even though there is no demand outstanding against the assessee if he is of the opinion that it is necessary to do so to protect the interests of the Revenue. The order of provisional attachment initially passed was subsequently extended and is still operating. In other words, the amount of Rs. 2,51,351 lying in the current account in question of the petitioner-company stands provisionally attached. The petitioner-company has not filed any application for amendment seeking to quash the order of provisional attachment and, hence, issuance of any direction to the bank authority to allow the petitioner-company to operate the account, does not arise.

8. However, in view of the prayer made by the CBI, this writ application is disposed of in terms of the order dated February 25, 1997, of the Division Bench of this court in Cri. W.J.C. No. 765 of 1996 with the observations that if so advised, the petitioner-company may move this court after submission of the charge-sheet.

