(1995) 11 CAL CK 0029

In the Calcutta High Court

Case No : C.O. No. 2364 (W) of 1995

Bengal Lamp Ltd. and Another — APPELLANT

Vs

State of West Bengal and Others — RESPONDENT

Date of Decision : 16-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 23
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 25, 5(3)

Citation : 100 CWN 343

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : S.P. Sarkar, Balai Ch. Roy, Nirmalya Bhattacharya, Jayak Gupta, Soumya Majumder, S.C. Ukil and Chhabi Roy Das, for the Appellant;Tapan Ch. Dutta, for the Respondent

Judgement

Satya Brata Sinha, J.—Interpretation of the order dated 25th November, 1993 passed by S.K. Sen. J. in a writ application filed by the petitioners is the core question involved in this writ application. Before adverting to the said question, however, the fact of the matter may briefly be noticed. The petitioner no. 1 is an existing company within the meaning of the Companies Act, 1956 having been founded in the year 1932 by Professor S.K. Roy, K.C. Roy and H.K. Roy, the ancestors of petitioner no. 2 Tapan Roy and his brother Tapash Kumar Roy who are the Managing Director and Joint Managing Director respectively.

2. The said company has two factories; one situated in Calcutta and the other at Bangalore in the State of Karnataka. In the year 1989 the production in both the factories was suspended. The factories, however, were not closed and the workmen were also not retrenched. On or about 26.8.1989 in a general meeting the shareholders of the petitioner no. 1 resolved to refer the case of the petitioner no. 1 to B.I.F.R. in terms of Section 23 of the Sick Industrial Companies (Special Provision) Act, 1985 (hereinafter called and referred to for the sake of brevity as the said Act) as the said Company was declared a sick unit

as the accumulated loss exceeded its net worth. Pursuant to the said resolution a reference was made before B.I.F.R. and the same was registered as the case no. 72 of 1990. On 13.3.91 B.I.F.R. passed an order asking the I.R.D.B.I. which had been appointed as operating agency to submit a report for the purpose of exploring the fensibility of inducting some other resourceful entrepreneurs, company/group, who may be willing to take over the company and to bring in the required interest and free funds, as there had been a dissension in the present management. The petitioners preferred an appeal against the said order and by an order dated 21.6.1991 the appellate authority directed the BIFR to re-examine the question of involving new entrepreneurs.

3. On 25.10.91 BIFR appointed ICICI as the Operating Agency in place of IRBI for preparing a scheme for the rehabilitation of the company and the petitioner no. 2 and his brother were asked to submit an audited balance sheet for the years ended 31.3.89, 31.3.90 and 31.3.91. They were also asked to deposit a sum of Rs. 50/- lakhs which was not complied with. Again an appeal was preferred against the said order and by an order dated 22.3.1993 the appellate court gave certain directions followed by another order dated 28.5.93. In the meantime two applications were filed by other two applicants, namely, Bengal Lamp Shramik Panchayat and Bengal Lamp Workers Union and the matter came up before the appellate authority for hearing the said application along with the another application filed by the petitioner no. 1. The said appeal was eventually dismissed by an order dated 10.9.93 and the matter was referred back to the BIFR. By an order dated 5th October, 1993 BIFR, inter alia, observed that in view of the failure on the part of the promoters to deposit a sum of Rs. 150 lakhs, they were not in a position to bring in necessary funds for revival of the company and thus the operating agency was asked to undertake the techno-economic viability study of the company. A writ petition was filed by the petitioner as against the said order which was disposed of by this court by an order dated 25.11.93.

4. Pursuant to the said order the impugned order dated 29.12.93 was passed whereby and whereunder it was, inter alia, held that as the scheme submitted by the petitioners was not workable in as much as both the State of West Bengal and also State of Karnataka refused to accord permission to the petitioners for selling their lands and also in view of the fact that the bank had refused to advance any working capital to the present management.

5. It appears that a contempt application was moved by the petitioners against Arun Sarkar & Ors. and therein they prayed for extension to file the scheme and the same was allowed by an order dated 10.2.1994; pursuant whereto the BIFR by an order dated 10.2.94 granted 4 months time to the petitioner for submission of the rehabilitation scheme whereafter such a scheme was filed. The said scheme was examined by the operating agency after holding a joint meeting with all concerned and thereafter the impugned order dated 9.12.94 was passed. The operating agency caused an advertisement in local newspaper en

16.12.1994 calling upon the interested parties for submission of revival scheme, pursuant whereto amongst others Om Development Limited the intervenor herein submitted a scheme. It appears that on or about 8.8.95 the said Om Development Ltd. had entered into a memorandum of understanding with the Workers Union in terms whereof it had accepted most of the demands of the workers and further an assurance was given that no surplus lands of Bengal Lamp would be sold for raising funds for the revival of the said Company. The intervenor aforementioned as also the Bengal Electric Lamp Workers'' Union have filed applications for being impleaded as parties in the writ application.

6. By an order dated 7.2.1995 a learned Single Judge of this Court passed an order of stay directing the BIFR not to give any effect or further effect to its order dated 9.12.1994. The said interim order was extended by an order dated 28.2.1995.

7. Applications have also been filed by the Workers'' Union as also the said Om Development Limited for vacating the said interim orders.

8. Mr. Sarkar, the learned Counsel appearing on behalf of the petitioners, submitted that from a perusal of the impugned order it would appear that only 3 days prior to the passing thereof the State of West Bengal and the State of Karnataka refused to accord sanction to the petitioners to sell their surplus lands in terms of the provision of Urban Land (Ceiling and Regulation) Act, 1976 and the Bank also refused to advance any working capital and the same having taken the petitioners by surprise, they could not submit any modified scheme. The learned Counsel would urge that the petitioners own 30 acres of land in Bangalore and lands measuring about 62,283.71 Sq. Meters in and around Calcutta but the said lands being subject matter of a proceeding under the Urban land (Celling and Regulations) Act, 1976 (hereinafter referred to the ''Celling Act'') the petitioners cannot sell the same.

9. According to the respondents the State of West Bengal and the State of Karnataka had taken unduly a long time in issuing a notification u/s 10 of the Ceiling Act. The learned Counsel would urge that had such notification been issued and the retainable lands were released in favour of the petitioners, they could have sold some portion thereof so as to enable them to revive the said industry on its own resources and for that purpose, it would not have been necessary to search for any (sic). The learned Counsel contends that the State of West Bengal and the State of Karnataka acted illegally in sitting over the matter for a long time.

10. Mr. Sarkar, learned Counsel appearing on behalf of the petitioners, has also drawn my attention to the fact that a writ petition has been filed by the petitioners before the Karnataka High Court and by an order dated 17.9.96 the said High Court while issuing Rule NISI restrained the BIFR from proceeding further in the aforementioned case. It was submitted that the proposal of the petitioner is not a new scheme but only an amendment thereof in view of the

changed situation and thus, in terms of the order dated 25th November 1993 passed by S.K. Sen. J. the petitioner ought to have been given another opportunity by BIFR to submit another scheme before passing the impugned order. The learned Counsel submits that the purport and object of the said Act is to enable all concerned to nurture a sick unit and to make an attempt to put back on its feet According to the learned Counsel the said Act being a benevolent statute, the provisions thereof should be construed in favour of the sick units. It has been submitted that the schemes submitted by the petitioners had not been criticised on any ground other than the ground of financial stringency in view of withdrawal of the Bank to give any further advance by way of working capital which was merely a link in the chain. It has been pointed out that the family of the Boys had been running the said factories from its very inception and thus, they ought to have been given some priority.''

11. Mr. Samar Dutta, Learned Counsel appearing on behalf of the State, however submitted that from the factual events it would appear that the petitioners had been given three opportunities but despite the same it could not come out with a workable scheme. It was submitted that the petitioner action in the matter is not bonafide inasmuch as even in the proceedings under the Urban Land (Celling and Regulations) Act. it did not take any step for early disposal thereof.

12. Mr. Balai Roy the learned Counsel appearing on behalf of Om Development limited submitted that the proposal of the petitioners is vague whereas the proposal of his client is more preferable in view of the fact that it land entered into a memorandum of understanding with the workman. The learned Counsel contends the scheme filed by the parties must be competitive and the chances granted to the petitioners stand exhausted in terms of the impugned order and thus BIFR now is merely taking the course of examination of other scheme. It has been pointed out that every year loss of Rs. 3 crores is accumulating and as the Bank does not support the present management, the rehabilitation scheme should be considered and finalised at an early date so as to enable the successful promoter to revive the company. The learned Counsel pointed out that the petitioners were aware of the fact that the State of West Bengal and the State of Karnataka were unable to give their consents for sale of land in view of Section 5(3) of the Urban Land (ceiling and Regulations) Act, 1976 as also in view of the derision of the Supreme Court of India in S. Vasudeva Vs. State of Karnataka and others,

13. Mr. Ukil, the Learned Counsel appearing on behalf of the workmen submitted that the petitioner acted malafide in not impleading the workmen as parties in this writ application although they were parties before BIFR. The learned counsel contends that the petitioners have an alternative remedy under the Act as the impugned order is an appealable one, in terms of Section 25 of the said Act and had such appeal been filed, the appellate authority would have been entitled to make further enquiry in the matter. The learned counsel contends that the petitioner had preferred appeals earlier and thus, there was no reason as to why

they should not be asked to avail the alternative remedy. It has been submitted that although production in both the Units of the petitioners had been suspended, the Company had been selling lamps, flora cent tubes and had been earning huge profits therefrom but despite the same it did not pay the salary or any gratuity or any other amount to the workmen. It has been submitted that in fact after suspension of production in the said factories a large number workmen had died due to starvation, The learned Counsel contends that the petitioners had also failed to comply with the directions of the BIEF earlier and had failed to keep its commitment with Chhabaria Brothers who were ready to revive the company and in relation whereto a special suit is pending in tills court.

14. The sole question, which in my opinion, arises for consideration in this application is as to whether in terms of the order dated 25.11.93 passed by S.K. Sen, J. the petitioners are entitled to submit a fresh scheme and/or a modified scheme and whether such scheme should be given any priority or not. The said order dated 25.11.93 reads thus :-

The BIFR is directed to consider the Scheme furnished by the petitioners first. If the Scheme appears to be workable the scheme will be finalised. In the event the Scheme of the petitioners appears to be unworkable to BIFR, BIFR will record reasons for the same and will be at liberty to consider any other scheme that may be pending with BIFR or may be submitted with BIFR

15. In my opinion, in view of the said order the earlier orders passed by BIFR or AAIFIR are not very relevant for the purpose of disposal of this case. However, such orders are only relevant for the purpose of construction of the order passed by this court.

16. The factual matrix of the case as noticed hereinbefore clearly shows that the matter relating to revival of the industries belonging to the petitioner which had become sick have not yielded any fruitful result so far.

17. It is admitted that the petitioner No. 1 itself invoked the provision of the said Act. It since 1989 failed to submit any workable scheme. It also questioned the orders passed by BIFR twice before the appellate authority and only on the second occasion the appeal was dismissed whereafter an order was passed by BIFR The said order dated 25.11.93 was the subject matter of the writ petitioner before Sen, J. It is only in the said backdrop of the events the learned Judge directed the BIFR to consider the Scheme filed by the petitioners on a priority basis. The petitioners filed an application for extension which was allowed. The petitioners, were therefore, expected to submit a Scheme which would be workable. It is true that at one point of time the State of West Bengal and State of Karnataka agreed to accord their approval for sale of vacant lands which was in possession of the petitioners in excess of the ceiling limit by granting exemption from no provisions of Chapter-3 but evidently the same was done in terms of the judgment of the Karnataka High Court. The Supreme Court in S. Vasudeva (supra) reversed the said decision and held : -

The provisions of S. 201 (1)(b) of the Act do not permit the State Government to give exemption to the vacant land in excess of the ceiling limit for the purposes of transferring the same for whatever reasons including undue hardship to landholder.

18. Assuming that the State of West Bengal and the State of Karnataka communicated the decisions of refusal to grant such exemptions in favour of the petitioners only on 6.12.94 but the petitioners before the impugned order dated 9.12.94 was passed, did not ask for any adjournment for grant of a fresh or modified Scheme. Sen, J. evidently wanted to give an opportunity to BIFR to consider the viability of the Scheme submitted by the petitioners. However, there cannot be any doubt whatsoever that in terms of the said order once such Scheme has been found to be not a workable one, it was open to BIFR to consider any other scheme including any Scheme which may be filed by the petitioners. In terms of the said order the BIFR was to record reasons for the purpose of arriving at a finding that the Scheme furnished by the petitioners was unworkable whereafter it was at liberty to consider any other Scheme that may be pending with BIFR or may be submitted with it.

19. The said order, therefore, does not preclude the petitioners from submitting any Scheme but evidently the petitioners cannot be considered on a priority basis. The BIFR, thus, should consider the scheme which may be filed by the petitioners along with other schemes. The petitioners must file such scheme, if any, before the BIFR within two weeks from date.

20. It is not for this Court to consider the respective merit or demerit of any Scheme furnished by the petitioners or by any other promoters including the intervener. Such consideration lies within the exclusive jurisdiction of BIFR which a statutory body. BIFR as a statutory body is entitled to perform its statutory function and this court in exercise of its jurisdiction under Article 226 of Constitution of India cannot usurp the same nor can it give any direction to it as how and in what manner it will discharge the same. In this view of the matter and for the said reasons it is not desirable that this Court should deal with the allegations made by the respondents against the petitioners as regards their alleged act of bad faith and misconduct etc. Suffice, however, it to say that in terms of the provision of the said Act which is a beneficent statute. It is the solemn duty of the BIFR to find out ways and means for speedy determination by it of the preventive ameliorative, remedial and other measures required to be taken with respect of sick companies and the expeditious enforcement of the measures so determined as would be evident from the preamble of the said Act Expeditious disposal of such case, thus is a statutory compulsion. It also beyond any cavil of doubt that while accepting a Scheme the interest of workmen has also to be borne in mind. It has also to be borne in mind that speedy determination of a matter before the Board is absolutely essential as during pendency of such proceedings all other proceedings and suits against the sick company remain stayed. Even the enforcement of contract etc. can be directed

to be stayed.

21. So far as the proceedings under the Ceiling Act is concerned admittedly the state of Karnataka is required to pass an appropriate order u/s 10 thereof. The petitioners have already moved the Karnataka High Court for that purpose and I hope and trust that the said proceeding would be disposed of expeditiously. As the said matter is subjected before the Karnataka High Court. I am of the view that it would not be proper for this court to make any observation in relation thereto.

22. It is unfortunate that the petitioners prayed for an interim order (sic) the (sic) from proceeding any further in the matter although they had obtained a similar order from this Court. Mr. Sarkar, however, submitted that the said fact had been stated in the writ application filed by the petitioners before the Karnataka High Court but once is left to guess as to whether the said order was brought specifically to the notice of the learned judge. As this application had been filed earlier, this court cannot dismiss the writ application on the ground that the petitioner had not (sic) this court with clean hands as was submitted by the learned Counsel for the respondents.

23. Although in the facts and circumstances of this case it was necessary to issue a direction upon the BIFR to dispose of the matter as expeditiously as possible but in view of the interim order passed by the Karnataka High Court as indicated hereinbefore, this court cannot do so.

24. So far as the applications of addition of parties are concerned, (sic) tin view the facts and circumstances of this case the same are allowed. For the reasons aforementioned the writ application and the application for vacating the stay filed by the applicants Bengal Lamp Workers and Om Development Limited are disposed of with the aforementioned directions and observations but in the facts and circumstances of the case there will be no order as to costs.

