
(2010) 11 MP CK 0061

In the Madhya Pradesh High Court

Case No : M.A. (Company) No. 3 of 2008

Birla Ericsson Optical Limited and Others

APPELLANT

Vs

Rameshwara Jute Mills Co. Limited and Others

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Companies Act, 1956 — Section 10F, 397, 398, 399, 402

Citation : (2012) 171 CompCas 276

Hon'ble Judges : Rajendra Menon, J;Ajit Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard on I.A. No. 13001/2008, an application for vacating the stay granted by this Court on 30.10.2008.

2. This is an appeal filed by Appellant M/s Birla Ericsson Optical Limited, Shri Harshvardhan Lodha, Shri Ramesh Chandra Tapuriah alongwith Shri Dhan Raj Bansal u/s 10F of the Companies Act, 1956 and challenge in this appeal is made to an interlocutory order-dated 15.10.2008 passed by the Company Law Board in Company Application No. 533/2008, filed in Company Petition No. 35/2005, which is still pending.

3. Company Petition No. 35/2005 is filed by M/s Vindhya Telelinks Limited against various Respondents, including Respondent No. 1 herein i.e... M/s Rameshwara Jute Mills Co. Limited, and the present Appellants in the matter of proceedings under Sections 397, 398 read with 402, 403, 406 and 408 of the Companies Act.

4. It is seen from the records that in the pending Company Petition bearing No. 35/2005, Respondent No. 22 namely M/s Rameshwar Jute Mills Co. Ltd (Respondent No. 1 in the present proceedings) filed an application being C.A. No. 533/2008 and in the said interlocutory application the impugned order-dated 15.10.2008 - Annexure A, has been passed, which reads as under:

Application mentioned. Counsel appearing for the Respondent seeks time to file a reply. To be done by 25.10.2008 and rejoinder by 02.11.2008. The application will be heard on 5.11.2008 at 2.30 PM.

In the meanwhile there will no Board meeting in any of the Respondent companies except that for the purpose of approving quarterly results, Board meeting may be held, if required.

5. Challenging the aforesaid interlocutory order, this appeal has been filed u/s 10F. After the appeal was filed a mention was made during the vacation for urgent hearing of the appeal or the interlocutory application for stay and, therefore, a Vacation Bench heard the matter on 30.10.2008 and as interim order was passed staying operation of the impugned order-dated 15.10.2008 and further proceedings in Company Petition No. 35/2005 was also directed to be stayed. I.A. No. 13001/2008 has been filed for vacating the aforesaid interim order and this application is filed by Respondent No. 1.

6. Shri S.P. Singh, learned Senior Advocate appearing for Respondent No. 1, in support of I.A. No. 13001/2008 canvassed a ground with regard to suppression of certain facts by the Appellants. It was submitted by him that an identical order-dated 15.10.2008 passed in C.P. No. 57/2005 is already impugned in another petition MA (Comp) No. 2/08, by M/s Vindhya Telelinks Limited and is pending before this Court. It is stated that in the said proceedings a Bench of this Court had passed an order-dated 24.10.2008, which was conditional in nature and even though the Appellants herein were in know of the aforesaid interlocutory order passed in MA (Comp) No. 2/08, by suppressing the aforesaid fact, have been successful in obtaining the interim order. Accordingly Shri S.P. Singh, learned Senior Advocate, in support of I.A. No. 13001/2008 argued that as the Appellants have obtained the interim order of stay during vacation suppressing the fact about passing of the earlier order in MA (Comp) No. 2/08, on 24.10.2008, the application for vacating stay be allowed and the stay order vacated. Placing reliance on a judgment of the Supreme Court, in the case of Tamilnad Mercantile Bank Share Holders Welfare Association Vs. S.C. Sekar and Others, learned Senior Advocate sought for allowing the prayer made in I.A. No. 13001/2008.

7. Refuting the aforesaid, Shri Pratap Chatterjee, learned Senior Advocate for Appellant M/s Birla Ericsson Optical Limited, took us through the records and tried to emphasize that the proceedings initiated for winding up, before the Company Law Board itself is not maintainable in as much as the requirement of Section 399 of the Companies Act is not fulfilled and the petition against the present Appellants is not maintainable. That apart, it is further submitted that at the instance of Respondent M/s Rameshwara Jute Mills Co. Ltd, who is not the Petitioner in the winding up petition, but is only a co-Respondent alongwith the present Appellant, the application for stay was not maintainable and, therefore, the order of stay granted at the instance of this Respondents is wholly unsustainable. Taking us through various aspects of the matter, touching the

merits of the company petition pending before the Company Law Board, learned Senior Advocate for the Appellants tried to submit that the stay has been rightly granted by this Court and the application for vacating stay is liable to be rejected. As far as suppression of facts is concerned, taking us through the pleadings and material available on record, learned Senior Advocate emphasized that the allegation of suppression are not correct and the same are based on assumptions of the Respondent.

8. We have heard learned Counsel for the parties at length and perused the records.

9. From the records, it is clear that the company petition filed being Company Petition No. 35/2005 is pending consideration before the Company Law Board and at this stage the question of maintainability of the company petition and various other aspects, with regards to merit of the Company Petition, need not be gone into as they are to be considered by the Company Law Board in the pending proceedings. At this stage the only question warranting consideration by this Court in this appeal u/s 10F, is as to whether the interim order granted on 30.10.2008, by the Company Law Board is in accordance with law or not.

10. We have perused the order, which is already reproduced hereinabove and it can be seen that the order has been passed without disclosing any reasons and it does not show application of mind. It is now well settled that the conferment of quasi-judicial power implies that the person concerned must follow the rules of natural justice and must give reasons for making the order which he is empowered to make. Purely administrative bodies are also bound to act justly and fairly which may bring in the requirement of natural justice as also the duty to give reasons. Even a non-statutory private body which is not a state under Article 12 of the Constitution, but which exercises public functions is bound to follow the principles of "fairness" and "good faith" and to act reasonably and its orders are amenable to judicial review. Section 4(1)(d) of the recently enacted statute, the Right to Information Act, 2005, also requires every public authority of India to "provide reasons for its administrative or quasi-judicial decisions to affected persons". (See Principles of Statutory Interpretation by Justice G.P. Singh XI Ith Edition, 2010, Pages 446, 449 and 450).

11. Under English Law, a quasi-judicial authority need not give reasons unless required to do so by statute but now even there is also a definite shift in favour of the view that reasons should be given. In *Flannery v. Halifax Estate Agencies Ltd.* (2000) 1 All ER 373, (CA), comments have been made that the duty to give reasons "is function of due process and, therefore, of justice. Its rationale has two principle aspects. The first is that fairness surely requires that the parties especially the losing party should be left in no doubt why they have won or lost. The second is that a requirement to give reasons, concentrates the mind and if it is fulfilled the resulting decision is much likely to be soundly based."

12. From the bare reading of the impugned order, it is clear that no reason has

been given by the authority for staying the proceedings of the Appellant Company. The order, therefore, suffers from inherent defect of not following the rules of natural justice. For these reasons, we set aside the impugned order and remand the matter to the Company Law Board with a direction to decide the interlocutory application C.A. No. 533/2008, filed by Respondent No. 1 afresh, in accordance with law after following the principles of natural justice.

13. As the only prayer made in this appeal u/s 10F is to set aside the impugned order-dated 15.10.2008 and as this prayer has been allowed by us by this order, the further prayer made in this appeal with regard to the question of maintainability of the proceedings pending before the Company Law Board being a matter which has to be decided by the Company Law Board in the pending proceedings i.e...Company Petition No. 35/2005, now nothing further survives for adjudication in this appeal u/s 10F. IA No. 13001/2008 stands finally disposed of.

14. Accordingly, this Miscellaneous Appeal (Company) stands allowed and disposed of.