
(1996) 09 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Petition No's. 560 and 1968 of 1995

Canara Bank

APPELLANT

Vs

Power Grid Corporation of India Ltd.

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Citation : (1997) 96 ELT 37

Hon'ble Judges : R.C. Lahoti, J;J.B. Goel, J

Bench : Division Bench

Advocate : Shri V.P. Singh and Mohit Mathur, for the Appellant; Shri J.C. Seth, Ms. Sunita Dutt and Madan Lokur, for the Respondent

Judgement

R.C. Lahoti, J.—This order disposes of the preliminary objections raised to the maintainability of the petition in two CWPs.

2. The facts are similar. We briefly state the facts from CWP No. 1968/95.

3. In the year of 1986, the petitioner with the permission of the RBI established a wholly owned subsidiary namely Can bank Financial Services Ltd., respondent No. 2 herein. Power Grid Corporation of India Ltd. - formerly National Power Transmission Corporation Ltd. - respondent No. 1 in CW 1968/95 had floated 9% non-cumulative secure redeemable tax-free bonds (hereinafter, 9% bonds, for short). Respondent No. 2 had subscribed to the said 9% bonds of the face value of Rs. 40 crores in the year 1992. Soon thereafter, there was outbreak of security scam causing collapse of security market in shares, securities and bonds. The respondent No. 2 facing liquidity crunch wanted to dispose of the said bonds to fulfill its commitment elsewhere. The petitioner purchased 9% bonds of the face value of Rs. 40 crores for consideration from respondent No. 2. Relative letters of allotment were endorsed and transferred by respondent No. 2 in favor of the petitioner. On 7-9-1992, the petitioner lodged the said letters of allotment with respondent No. 1 for registering the transfer in the name of the petitioner.

4. Thereafter the petitioner was informed by respondent No. 2 that out of the

bonds sold by respondent No. 2 to the petitioner, the bonds to the extent of Rs. 18,000/- and already been sold to the public over the counter and, Therefore, those bonds may be excluded from the said lot. Respondent No. 2 also asked for return of the relative bonds. The petitioner then informed the respondent No. 1 to proceed with registering the transfer of the bonds of the face value of Rs. 39,99,82,000/- only.

5. The respondent No. 1 had invested certain amount in the Portfolio Management Service of respondent No. 2 and the latter had faulted to return the same within the specified period. Respondent No. 1, Therefore, sought for a comfort letter from the petitioner as an assurance that respondent No. 2 would return respondent No. 1's investment when due. On 22-12-1992, the petitioner informed respondent No. 1 that the petitioner and respondent No. 2 were separate legal entities and the petitioner was not responsible for the dues of respondent No. 2. The petitioner declined to issue any comfort letter and insisted on immediate registration of the transfer.

6. On 11-11-1993 the respondent No. 1 informed the petitioner that it had exercised its right of lien on the bonds in question for the default committed by respondent No. 2 and, Therefore, it was not registering the bonds in favor of the petitioner. The respondent No. 1 also questioned the bona fides of the transaction between the petitioner and respondent No. 2 and asked for detail of the payments by the petitioner to respondent No. 2.

7. As respondent No. 1 neither registered the bonds in favor of the petitioner, nor returned the same, nor did pay the accrued interest thereon to the petitioner, the petitioner approached the Cabinet Secretary through the Ministry of Finance, with the request to place the matter before the Committee of Secretaries for settlement or to permit the petitioner to approach the Company Law Board.

8. On 5-4-1994, the petitioner received an endorsed copy of letter from respondent No. 2 addressed to respondent No. 1, whereby the petitioner learnt of the respondent No. 1 having forfeited 9% bonds which were lodged by the petitioner with respondent No. 1 for registering the transfer.

9. After serving a legal notice, the present petition has been filed on 20-5-1995 alleging the forfeiture of the bonds by respondent No. 1 as illegal and arbitrary and seeking a writ/direction to respondent No. 1 to forthwith rescind the forfeiture of 9% bonds of the face value of Rs. 39,99,82,000/- to deliver the bonds to the petitioner and also to pay the interest accrued thereon.

10. In CWP 560/95, the facts and pleas are similar, except with the difference that respondent No. 1 is MTNL and the bonds are 17% bonds issued by respondent No. 1 having a face value of Rs. 90 crores.

11. The respondent No. 1 in each of the two petitions has raised so many objections to the maintainability of the petition itself. Out of the several objections so raised, it would suffice to notice and deal with only two of them;

firstly, that the filing of the petition in the Court having not been cleared by the High Power Committee for Resolution of Disputes constituted by the Central Govt., the petition could not have been filed, secondly, that the petitioner has alternative efficacious remedy of filing a petition to the Company Law Board u/s 111 of the Companies Act, 1956, and Therefore, the present petitioner was misconceived.

12. We have heard Mr. V. P. Singh, Senior Advocate assisted by Mr. Mohit Mathur, Advocate for petitioner in both the petitions. We have also heard Mr. T. C. Seth, Counsel for respondent No. 1 in CWP 1968/95 and Dr. A. M. Singhvi assisted by Mr. A. M. Ditta for respondent No. 1 in the CWP 560/95 on the preliminary objections.

13. So far as the first objection is concerned, we are of the opinion that the same cannot be sustained.

13.1 In 1992 (61) ELT 3 (SC) the Supreme Court directed the Govt. of India to set up a Committee to ensure that no litigation to which Central Government and Public Sector Undertakings are parties, comes to a Court or Tribunal without the matter having been first examined by the Committee. Pursuant to the directions of the Supreme Court such a Committee has been constituted.

13.2 The directions given by the Supreme Court in ONGC's case in the year 1991 came up for clarification by yet another order reported in Oil and Natural Gas Commission Vs. Collector of Central Excise, . Their Lordships clarified that any dispute between public undertakings of the Central Govt. and UOI must go to the High Power Committee for clearance of litigation either before the litigation is initiated or even during litigation if filed without seeking such clearance. The object is to have litigation avoided between such bodies and have the dispute resolved by the High Power Committee. However, their Lordships have vide paras 4 and 6 made it clear that the Supreme Court did not mean to efface the statutory remedies available to the UOI and its statutory corporation and, Therefore, if the High Power Committee was unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation.

13.3 The learned Counsel for the respondent No. 1 submitted that the High Power Committee had in its meeting dated 17-8-1995 refused to grant clearance to the petitioner and, Therefore, the petitioner was not maintainable.

13.4 It was submitted by the learned Counsel for the petitioner that the minutes of the meetings of the Committee on Disputes, Cabinet Secretariat (Litigation Cell), brought on record by respondent No. 1 were not the minutes of the meeting of the High Power Committee constituted by the Central Govt. pursuant to the directions given by the Supreme Court in ONGC's case, but we are not prepared to accept that submission in view of the statement made by Mr. Madan Lokur, learned Standing Counsel for the UOI that the minutes so brought on record of the Court were of the meeting, of the High Court Power Committee constituted pursuant to the directions of the Supreme Court. Still we do not think

that the petition could be dismissed as not maintainable because of want of clearance to the petitioner from the Committee that we say for two reasons. Firstly, for want of clearance the petition cannot be dismissed, it has to be kept pending awaiting reconciliation or clearance. Secondly, in view of the subsequent order of the Supreme Court in ONGC's case it does not lie with the High Power Committee to refuse clearance it has only two options - either to resolve the dispute or to grant clearance for the litigation.

13.5 The first preliminary objection is rejected.

14. Section 111 of the Companies Act provides for a petition being preferred to the Company Law Board against the refusal to register the transfer of shares or debentures. Appeal may be preferred by the transferor or transferee to the Company Law Board against any refusal of the company to register the transfer or transmission. Petition may be preferred to the Company Law Board for rectification of the register if default is made or unnecessary delay takes place in entering in the register the fact of any person having become a member. The Company Law Board is empowered to direct the transfer or transmission to be registered by the company and/or the register to be rectified in accordance with the direction. The Board is empowered to make interim, incidental or consequential orders. It may decide any question relating to the title of any person, party to the application and any other question which it may consider necessary or expedient to decide in connection with the application for rectification. All these provisions are applicable to register of debenture-holders. Sub-section 12 of Section 2 defines debentures to include bonds, inter alia.

14.1 It is submitted by the learned Counsel for respondent No. 1 that the remedy so provided is an effective alternate remedy. The petitioner can seek complete redressal of its grievances from the Company Law Board. The Board exercised power of the Court and can also hold inquiry or investigation even if there are disputed questions. Writ petition will not be an appropriate forum because of the availability of an alternative efficacious remedy more so if there are a disputed questions of fact arising for decision in which case this Court would certainly not entertain the petition in exercise of its writ jurisdiction.

14.2 There is substance in the submission. In *Shanta Genevieve v. Sakal Papers Pvt. Ltd.* 1990 (69) Com Cas 83, the High Court of Bombay has held :

"the remedy u/s 155 of the Companies Act, is equally efficacious, definitely more speedy and certainly appropriate."

14.3 It was further pointed out by Mr. Seth, the learned Counsel for respondent No. 1 in CWP 1968/95 that not only the remedy u/s 111 of the Companies Act was apposite and appropriate, the petitioner has already availed such remedy in respect of one lot of debentures forming part of the same or similar transactions and hence there is no reason why the petitioners should not have availed that remedy in respect of debentures forming subject matter of the present petition.

14.4 The learned Counsel for the petitioner initially resisted this preliminary objection raised by Mr. Seth by submitting that the remedy was not available to the petitioner. But a little later submitted that if the petitioner was driven to the Company Law Board by filing a petition u/s 111 of the Companies Act, respondent No. 1 may dispute the jurisdiction of the Company Law Board and may refuse to submit to it. On this Mr. Seth, the learned Counsel for respondent No. 1 made a statement at the Bar that a petition for rectification if filed u/s 111 of the Companies Act before the Company Law Board. Respondent No. 1 would not object to its maintainability in the sense that resolution of such disputes as are raised in the present petition does lie within the jurisdiction of Company Law Board through respondent No. 1 does not waive its right to raise all other legal objections such as on the ground of limitation etc. or on the merits of the petition. Mr. A. M. Singhvi, the learned Counsel for respondent No. 1 in the other CWP has joined in making that statement.

14.5 We are of the opinion that the disputes raised by the petitioner and relief sought for herein can appropriately be raised and sought for before the Company Law Board u/s 111 of the Companies Act which is an alternate efficacious remedy available to the petitioner.

14.6 The present petitions before us are Therefore liable to be dismissed as not maintainable.

15. CWP 1968/95 and CWP 560/95 are both dismissed in liming on the ground of availability of alternate efficacious remedy to the petitioner.