

(2012) 07 CAL CK 0048
In the Calcutta High Court

Case No : A.P.O. No. 168 of 2012, A.P.O.T. No. 189 of 2009 and A.C.O. No. 42 of 2009

Castron Mining Limited and Sri Mahendra Kumar Agarwalla
and Others

APPELLANT

Vs

Sri Anup Agarwalla and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Companies Act, 1956 — Section 10E, 10E(4C), 10F, 397, 398

Citation : (2012) 07 CAL CK 0048

Hon'ble Judges : Patherya, J

Bench : Single Bench

Advocate : S. N. Mukherjee, Mr. Ratnanko Banerjee, Mr. S. K. Bose, Mr. A. K. Bose and Mr. Kuldip Mallick, for the Appellant; Anindya Kumar Mitra Mr. Soumen Sen, Mr. Debangsu Basak, Advocate and Mr. Piyush Meharia, for the Respondent

Final Decision : Allowed

Judgement

Patherya, J.—This appeal filed u/s 10F of the Companies Act, 1956 is from the order dated 5th February, 2009 passed by the Company Law Board, New Delhi. The case of the appellant is that the order under appeal was passed on a contempt application filed for alleged violation of order dated 8th May, 2007. In proceedings under Sections 397 and 398 of the Companies Act, 1956 filed by one Anup Agarwalla, the respondent No.1 herein an ex parte order was passed on 8th May, 2007 restraining the appellant from making any representation in the name or on behalf of the company. Affidavits were directed to be filed. An application was also filed for vacating the order dated 8th May, 2007 and for dismissal or stay of C.P. 50 of 2007 before the Company Law Board, New Delhi (CLB). An order was passed refusing to vacate the order dated 8th May, 2007 and time was extended for filing affidavits.

2. On 22nd September, 2008 the hearing of the maintainability issue was concluded and a complaint was filed by the respondent No.2 in C.P. 50 of 2007,

namely, Mahendra Kumar Agarwalla (MKA group) through his advocate-on-record M/s. R. L. Gaggar with the Registrar of Companies on 25th November, 2008. The Company Law Board was considering an application filed under Regulations 44 and 47 of the Company Law Board Regulations, 1991 and Contempt of Courts Act, 1971. In refusing to treat the application of 2009, as a contempt application the same should have been dismissed and no order passed as any order passed is in aid of the final relief which dealt mainly with wilful, deliberate and contumacious disobedience of order dated 8th May, 2007 and punishment to be levied on basis thereof. No reasons have been assigned as per the requirement of Section 10E(4C) and 5 of the 1956 Act, as giving of reason flows from the principles of natural justice and a quasi-judicial body is required to give reasons unless dispensed with expressly or impliedly.

3. As held in *S.N. Mukherjee Vs. Union of India*, (4) CHN 712 and an unreported decision in the matter of *Birla Cooperation* that non-grant of reasons is a jurisdictional error. Reliance has also been placed on *Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others*,

4. Opposing the said application counsel on behalf of Anup Agarwalla submits that the order dated 8th May, 2007 was not an ex parte order. It was passed after hearing both parties. The application filed by Anup Agarwalla and his group was filed under Regulations 44 and 47 of the 1991 Regulations. By virtue of demerger on 18th July, 2003 Castron Mining Limited and Castron Technologies Limited came into existence. Form 21 was filed and because of acts of oppression, proceedings under Sections 397 and 398 of the Companies Act was filed by the Anup Agarwalla Group. One of the reliefs sought in the said proceedings is for perpetual injunction restraining the MKA Group from making false and incorrect allegations or addressing any correspondence for and on behalf of the company. The application filed under Regulations 44 and 47 seeks for quashing the complaint dated 25th November, 2008. The complaint was filed after filing of the affidavit-in-opposition and there is no mention of the contents of the complaint therein. On reading of the application filed under Regulations 44 and 47 of the 1991 Regulations it will appear that besides the two Regulations the application has also been filed under the Contempt of Courts Act. In fact while disposing off C.A. 251 of 2007 filed in C.P. 50 of 2007 seeking dismissal of the petition and vacating the order dated 8.5.2007, the prayer for vacating the order dated 8.5.2007 was rejected but the proceedings before the CLB was stayed. From order dated 17th April, 2009 an appeal u/s 10F of the 1956 Act was filed on 12th May, 2009 and it is only thereafter on 21st May, 2009 that A.P.O.T 189 of 2009 has been filed. Therefore till 17th April, 2009 the appellant acquiesced in the order dated 5th February, 2009. The complaint was lodged on 25th November, 2008 through MKA's advocate and it was thereafter on 23rd December, 2008 that the Registrar of Companies forwarded the same to the respondent. A reply was given on 12.1.2009 and the application under Regulations 44 and 47 of the 1991 Regulations and the Contempt of Courts Act was filed on 2.2.2009 and the order passed on 5.2.2009. As parallel proceedings

was initiated by virtue of the complaint by the MKA group therefore the application was filed. Regulation 44 read with Section 403 of the Companies Act justifies the order dated 5.2.2009, which has been passed on contest and as the said appeal is after the appeal filed against order dated 17th April, 2009 the conduct of the appellant be considered and this appeal is nothing but an afterthought. The giving of reason is not necessary as held in K. Venkataramiah Vs. A. Seetharama Reddy and Others, Sm. Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another, and the unreported decision in the matter of Orient Paper and Industries Limited. An inspection was held and report submitted by the Registrar of Companies on 7th August, 2007 wherefrom it appears that the MKA Group had resigned from the Directorship of the company on and from 29th December, 2004 and it was registered with the Registrar of Companies on 28th February, 2005. Therefore, the MKA Group had no authority to participate in the company. This report was submitted pursuant to an order of the CLB dated 10th September, 2007. In fact a reply was also given to the complaint filed on 12th January, 2009 and as it will appear from the said reply a copy of the inspection report was also given to the MKA group, therefore it was aware of the findings of the said report. In fact the balance sheet of the company till the date of the demerger was signed by MKA. Form 21 has also been signed by MKA.

5. Pursuant to the demerger on 13.5.2003 the said demerger was acted upon at the meeting held on 10th June, 2004 and therefore the complaint filed by the advocate of Mahendra Kumar Agarwalla is contrary to the aforesaid. In fact the criminal complaint filed in 2006 is additional evidence of the exit of the MKA Group from the company. No question of law has been raised in this appeal. It has not been argued that on materials disclosed the order could not have been passed. Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others, is not a case dealing with parallel proceeding.

6. In reply counsel for the appellant submits that although relief in terms of prayer (d) was sought but the same has not been granted as an interim relief. According to the respondent the complaint of 25th November, 2008 is in violation of order dated 8.5.2007. In an unreported judgment it has been held that no reason can be substituted by the appellate court and FMAT 1322 of 2008 deals with the issue of inappropriate or insufficient reason. Sm. Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another, and K. Venkataramiah Vs. A. Seetharama Reddy and Others, were cases under Rule 27(2) of Order 41 of the Code of Civil Procedure. The said two cases do not deal with a case of a statutory body not bound to give reasons.

7. The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others, makes giving of reasons mandatory. Section 10E of the Companies Act deals with the principles of natural justice which raises a question of law. The CLB has no power of superintendence over the Registrar of Companies, therefore Section 403 of the 1956 Act is not to apply. In the application filed under Regulations 44 and 47 there is no mention of the

inspection report. The consistent case is that the signatures were forged. In C.A. 251 of 2007 the final order was passed on 17th April, 2009 by which the proceedings before the CLB has been stayed and the application disposed of. The said order is a final order and not an interim order while 5.2.2009 is an interim order and application has not been disposed. Therefore the order dated 5.2.2007 be stayed.

8. Having considered the submissions of the parties the application filed by the respondents was under Regulations 44 and 47 of the 1991 Regulation and although the application was not treated under Regulation 47 but the same was treated under Regulation 44 of the 1991 Regulation and order passed on 5.2.2009. An interim order was passed on 8.5.2007 whereby the MKA group was restrained from representing the Company. During the subsistence of the said order the letter was issued and therefore the CLB was entitled to pass the said order. Admittedly the said order was passed after giving an opportunity of hearing to the parties, but while passing the order no reason has been recorded and it is only for non-recording of reason the same is set-aside in view of S.N. Mukherjee Vs. Union of India, and The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others, . This will however not prevent the Tribunal if so entitled to pass an order after hearing the parties and passing a reasoned order. In fact the order passed is an interim order and after filing of affidavits the application be disposed off in accordance with law. In view of the aforesaid this appeal is allowed only for the reason stated above.