(1999) 08 AP CK 0077

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10110 of 1999

Dewan Bahadur Ramgopal Mills Ltd.	APPELLANT
Vs	
Appellate Authority for Industrial and Financial Reconstruction and others	RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18(3), 25

Citation : (1999) 5 ALD 21 : (1999) 4 ALT 412 : (1999) 98 CompCas 398

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. K. Lakshmi Narasimha, for the Appellant; M/s. K. Prabhakara Reddy, E. Ramananadham and K. Suryanarayana, for the Respondent

Judgement

1. The order passed by the Appellate Authority for Industrial and Financial Reconstruction on 13th April, 1999 in Appeal No.144/98 has been challenged in this writ petition. Counters have been filed. The matter has been argued in detail. One of the contentions of the respondents was that similar matter had been taken up in the Delhi High Court which was dismissed and later on an appeal was filed before the Supreme Court which was withdrawn with permission to file a review before the Delhi High Court. The learned Counsel for the petitioner submits that review has been filed. The contention of the learned Counsel for the respondents was that since the Delhi High Court was ceased of the matter therefore this Court should not go into entertaining this writ petition. I have seen the copy of the writ petition which was pending before the Delhi High Court and also the order passed by the Delhi High Court. The Delhi High Court passed the order on 14-10-1998. The order against which the present writ petition is filed is of 13-4-1999, therefore I am of the view that this Court is not barred from hearing the writ petition challenging the order of 1st respondent dated 13-4-1999 which was not subject matter either in the writ petition before the Delhi High Court or before the Hon''ble Supreme Court.

2. Many contentions were raised but this Court is confining, with the consent of the learned Counsel for the parties, to only one issue relating to the question of limitation which was raised before the 1st respondent and which was accepted. The orders of Board of Industrial and Financial Reconstruction thereinafter referred as BIFR) against which the appeal was preferred were passed by BIFR on 28-5-1997, 12-8-1997 and 1-6-1998 and the appeal was filed on 26th November, 1998. The first respondent found that the appeal was time barred. This finding needs to be tested on the strength of relevant provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 thereinafter referred as ''the Act'')- Section 18 of the Act lays down the mode in which the scheme is prepared and sanctioned for sick industries. Sub-section 3(a) to Section 18 lays down:

"18. (3) (a). The scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification, if any, made by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Board shall publish or cause to be published the draft scheme in brief in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify."

Section 25 of the Act provides for appeal and limitation which is reproduced:

"25. Appeal:--(1) Any person aggrieved by an order of the Board made under this Act may, within forty five days from the date on which a copy of the order is issued to him, prefer an appeal to the Appellate Authority :

Provided that the Appellate Authority may entertain any appeal after the said period of forty five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

The contention of the learned Counsel for the petitioner is, appeal has to be made within forty five days from the date on which a copy is issued to the aggrieved person, and according to him, u/s 18(3)(a) of the Act a copy has to be necessarily issued to him by the Board and there is no question of making application for copy of the scheme for preferring an appeal. It is true that in the present case the scheme was published in the news papers and the 1st respondent also found that the petitioner had known as early as on 11-8-1998 that the scheme had been accepted and prepared by the BIFR, but he did not take any steps to obtain a copy and file an appeal. The sole ground on which the appellate Court has rejected the appeal was that the petitioner was aware of order having been passed by BIFR and he did not file the appeal within forty five days from the date of his knowledge, therefore the appeal was time barred. It is contended that the knowledge is not pertinent for the purpose of calculation of time for filing the appeal in view of mandate of Section 18(3)(a) and Section 25 of the Act. Section 25 makes it obligatory to file an appeal within forty five days from the date the copy is issued and Section 18(3)(a) makes it obligatory to issue a copy. Therefore, though the petitioner has knowledge or not, the appeal is maintainable if it is filed within forty five days of issuance of copy. In the present case the appeal has been, filed within forty five days of issuance of copy.

3. I think, the interpretation sought to be placed on Section 18(3)(a) and Section 25 of the Act is logical. Once a party receives a copy in terms of Section 18(3)(a) time starts running out against him. If no copy is given to him even if he has knowledge, I do not think, he can be non-suited on the ground of limitation.

4. For these reasons, this writ petition is allowed. The respondent No. 1 is directed to dispose of the appeal on merits within a period of two weeks from the date of receipt of a copy of this order. Although the learned Counsel appearing for the parties had consented to passing of the order that is being passed, yet this order is passed on merits because in my view question of limitation could not be decided on the basis of consent of the parties. No costs.