(1990) 03 BOM CK 0046

In the Bombay High Court

Case No : S.L.P. (Civil) No. 14395 of 1989

Gram Panchayat and Another	APPELLANT
Vs	
Shree Vallabh Glass Works Ltd. and Others	RESPONDENT

Date of Decision : 15-03-1990

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 129
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 22, 22(1), 22(5)

Citation : (1990) 3 BomCR 109

Hon'ble Judges : R.M. Sahai, J;K. Jagannatha Shetty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K. Jagannatha Shetty, J.—The petitioners seek leave to appeal against the decision of the Bombay High Court in Writ Petition No. 6108/87 quashing the proceedings for the recovery of property tax and other expenses due from the first respondent company.

2. The matter arises in this way : For the purpose of prevention and revival of sick industries, the Central Government has enacted the Act called "The Sick Industrial Companies (Special Provisions) Act, 1985 ("The Act"). The Act extends to the whole of India including the State of Jammu and Kashmir. It came into force (except sections 15 to 34) with effect from 15 May, 1987. The Act covers only sick industrial companies or industrial companies which have the potential to become sick. The Act empowers the Central Government to establish a Board to be known as the Board for Industrial & Financial Reconstruction to exercise the jurisdiction and powers, and discharge the functions and duties imposed under the Act.

3. The first respondent-company Messrs. Shree Vallabh Glass Works Ltd. has been declared to be a sick industrial company within the meaning of clause (o) of sub section (1) of section 3 of the Act. ''Sick Industrial Company'' means an

industrial company being a company registered for not less than seven years which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth and has also suffered cash losses in such financial year and the financial year immediately proceeding such financial year.''

4. The first petitioner is the Gram Panchayat, Salwad and second petitioners is the Chairman of the Gram Panchayat. The petitioners initiated coercive proceedings u/s 129 of the Bombay Village Panchayat Act to recover a sum Rs. 9,47,539/- stated to be the property tax and others amounts due form the company. Challenging that proceedings, the Company moved the High Court by way of writ petition under Art, 226 of the Constitution claiming protection provided u/s 22 of the Act, The High Court has accepted the writ petition and destrained the petitioners from recovering the said amount without the consent of the Board.

5. The question is whether the Panchayat could not recover the amount due to it from out of the properties of the sick Industrial company without the consent of the Board?

6. Section 22 provides, as far as material, as follows:

"Section 22---Suspension of Legal Proceedings contracts, etc.

(1) Whether in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the Industrial Company or any other Instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress of the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellant Authority.

22(2) to 22(4) --- xxx xxx xxx

22(5)---In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

7. Section 22(1) provides that in case the enquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration by the Board or any appeal u/s 25 is pending then certain proceedings against the sick industrial company are to be suspended or presumed to be suspended. The nature of the proceedings which are automatically suspended are : (1) Winding up of the industrial company; (2) Proceedings for execution, distress or the like against the properties of the sick industrial company and (93) Proceedings for the appointment of Receiver. The proceedings in respect of these matters could,

however, be continued against the sick industrial company with the consent or approval of the Board or of the Appellate Authority as the case may be.

8. Section 16 authorities the Board to make such enquiry as it may deem fit for determining whether any industrial company has become a sick industrial company. Where Board is satisfied that a company has become a sick industrial company, it could give a reasonable time to the company to make its net worth positive (section 17(2)). Where it is not practicable for sick industrial company to make its net worth positive within a reasonable time, section 17(3) steps in authorising the Board to direct any operating agency to prepare a scheme in relation to the company. The Board may specify the various measures to be considered by the operating agency. These measures are detailed out in section 18. The operating agency has to prepare a scheme as per the order specified by the Board.

9. In the instant case, the Board by order dated 27th August, 1987 has stated that it was satisfied that the company has becomes a sick industrial company. The Board directed that further proceedings under the Act shall be taken with respect to the company. On the same day the Board after having heard the representatives of the ICICI, the Company, the concerned Banks, the other public financial institutions and the State Government of Gujarat, considered the entire material on record, held that it was not practicable for the company to make its net worth positive within a reasonable time and that further proceeding under sub section (3) of section 17 of the Act are, therefore, to be taken. Accordingly, in exercise of the powers conferred u/s 17(3) of the Act, the Board appointed the ICICI as the operating agency to prepare a scheme for rehabilitation/revival of the company keeping in view of the provisions of sections 18 and 19 and the guidelines. At the same time the Board appointed Shri Y.V. Sivaramakrishnayya as the special Director of the company for safeguarding its financial and other interests.

10. In the light of the steps taken by the Board under sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board. Indeed, there would be automatic suspension of such proceedings against the company''s properties. As soon as the inquiry u/s 16 is ordered by the Board, the various proceedings set out under sub-section (1) of section 22 would be deemed to have been suspended.

11. It may be against the principles of enquiry if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company for the recovery of their dues/ outstandings/overdues or arrears by whatever name it is called. The Board at its discretion may accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Sub-section (5) of section 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for the

recovering the dues.

12. In our opinion, the High Court was justified in quashing the recovery proceedings taken against the properties of the company and we accordingly, reject this petition, with no order as to costs.

