

(2004) 08 CAL CK 0057
In the Calcutta High Court
Case No : Writ Petition No. 1091 of 2004

Howrah Mills Co. Ltd. and Another	APPELLANT
Vs	
Employees" State Insurance Corporation and Others	RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

Employees State Insurance Act, 1948 — Section 32

Citation : (2004) 4 CHN 357 : (2006) 129 CompCas 418 : (2005) 1 LLJ 774 : (2006) 71 SCL 131

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta and Pushan Kar, for the Appellant; Subal Moitra and Keya Bhattacharya, for the Respondent

Judgement

Amitava Lala, J.—This writ petition is arising out of a very important question whether BIFR Scheme under the Sick Industrial Companies (Special Provisions) Act, 1985 will have overriding effect over the Employees" State Insurance Act, 1948 or not. The line of argument of Mr. Partha Sarathi Sengupta, learned Sr. Counsel appearing for the petitioner is that there are four points to consider 358 Howrah Mills Co. Ltd. vs. Employees" State Insurance Corpn. 2004(4)CHN the same. Firstly, whether "special" will prevail over the "general" or not. Whether the latter Act will prevail over the earlier Act or not. Whether the Sick Industrial Companies (Special Provisions) Act, 1985 provides any non-obstante clause over and above the Employees" State Insurance Act, 1948 or not. Whether the Sick Industrial Companies (Special Provisions) Act, 1985 is special to the special Act, i.e., the Employees" State Insurance Act, 1948 or not.

2. At the threshold, I find that a claim of the Employees" State Insurance Corporation against the petitioner company for further interest of Rs. 82.78 lakhs is challenged. Although the prayers are not properly made in the writ petition but for the ends of justice, Court can covert the prayer as per the suitability.

3. According to Mr. Sengupta, the scheme formulated under the Act provides rate

of interest 6% per annum and the company is bound to pay such rate but not any other rate beyond the same as per the claim of the Corporation. As by way of wrong advice they have shown that from 7th August, 1996 upto 22nd October, 1997 i.e. the period within the scheme they are supposed to pay 15% per annum they cannot call back the same but for the remaining balance they cannot be directed to pay de hors the scheme made under the Sick Industrial Companies (Special Provisions) Act, 1985. In that way Employees' State Insurance Act, 1948 cannot override the scheme under the aforesaid Act, 1985.

4. Mr. Sengupta firstly has relied upon a judgment reported in Union of India (UOI) and Another Vs. G.M. Kokil and Others, , to satisfy the test that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. He further cited a judgment reported in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, ., to remind the maxim "generalia specialibus non-derogant" and say that it would be applicable herein since the Sick Industrial Companies (Special Provisions) Act, 1985 is a special Act. By citing Allahabad Bank Vs. Canara Bank and Another, he further advanced his argument by saying that in a conflicting situation about the prevailing effect of Companies Act and the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the latter was prevailed being a special Act. It was further held that there can be a situation in law where the same statute is treated as special statute by one legislation again general statute by another legislation. Both the aforesaid Acts can be special Acts and the principle that when there are two special Acts the latter will normally prevail over the former if there is a provision in the latter special Act giving overriding effect. In a Full Bench decision of Andhra Pradesh High Court, reported in 1998(2) SLR 88. Murthy and Ors. vs. Engineer-in-Chief (Irrigation Wing) (AP) and Ors., it was further hold that under the Seek Industries (Special Provisions) Amendment Act, 1993, any scheme would be as good as a statute. Such scheme is statutory in "nature in view of the provisions of Section 32 of the Act.

5. Therefore when the scheme provides to pay 6% interest for the period . specified thereunder, the authority under the Employees' State Insurance Act, Howrah Mills Co. Ltd. vs. Employees' State Insurance Corpn. (A. Lala, J.)359 1948 cannot claim more than the same. Section 32 of the Sick Industrial Companies (Special Provisions) Act, 1985 says the provisions of the Act and/or any Rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contain in another law except two other laws which are not relevant for the purpose of due consideration here.

6. Mr. Subal Moitra learned Senior Counsel appearing on behalf of the respondents relied upon a judgement of a Single Judge of this Court reported in 2001(106) Company Cases 518, Universal Paper Mills Ltd, and Ors. vs. Regional

Provident Fund Commissioner and Ors., to establish that proceedings under B.I.F.R. in respect of the aforesaid Act cannot have any overriding effect in respect of the Provident Fund dues. However, such judgement has various distinguishing features. It has been categorically held that there is no whisper made in the petition that B.I.F.R. had accepted the scheme or any scheme has been filed for its rehabilitation before the B.I.F.R. or the scheme has been approved or sanctioned by the B.I.F.R. The scheme was not annexed to the petition nor placed before this Court. Such factual situation is not prevailing hereunder. Therefore, such judgement cannot have any persuasive value herein. The other judgement cited by Mr. Moitra reported in Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others, , to establish that bar applies under the Sick Industrial Companies {Special Provisions) Act only to such of those dues reckoned or included in the sanctioned scheme for rehabilitation which is not applicable herein. Here there is no such scheme prevailing for the purpose of due consideration. He has brought notice of this Court as regards summary report of proceedings of the B.I.F.R. dated 3rd June, 2004 (wrongly written as 3rd June, 2003) to establish that no scheme is subsisting. He also brought notice of this Court as regards summary report of 8th August, 2000 to establish an order to pay the dues. A proposal was made for the purpose of sale of the land. From the said report it appears that an observation is made by the B.I.F.R. expecting mobilisation of huge amount which could be utilised towards payment of interest arrears and old dues of P.F., E.S.I, Gratuity and other dues. According to Mr. Moitra the scheme of 2004 is no more in existence because the same has been quashed by this Court. Therefore, now it has to be considered as to whether the rate of interest at the rate of 6% per annum which has been fixed by B.I.F.R. in the earlier occasion will prevail over the later claim of the E.S.I. authority under letter dated 2nd June, 2004 or not.

7. According to me, quashing of the report or scheme by this Court on the earlier occasion neither closes the door of the B.I.F.R. in reconsidering the scheme nor the order of quashing, ipso facto, revives the report or scheme dated 8th August, 2000 as regards rate of interest to be charged by the E.S.I.C. for old outstanding dues minus the amount as agreed to be paid at the rate of 15% per annum from 7th August, 1996 to 22nd October, 1997. I have not been called upon to decide the rate of interest or further interest. I have been called upon to consider the jurisdictional conflict in between the authority under Sick Industrial Companies (Special Provisions) Act, 1985 and the authority under the Employees' State Insurance Act, 1948. Upon going through the relevant records I find that report or scheme of the B.I.F.R. made provision for payments due to E.S.I.C. Such scheme has a statutory force. It cannot be disbelieved that the jurisdiction of the B.I.F.R. in this regard was invoked. In further. E.S.I.C. had submitted to such jurisdiction of B.I.F.R. As such at this stage the jurisdictional question is largely academic. However, it is a well-known principle that in between the two special Acts the latter Act is to be followed to override the earlier in case of any controversy because the Legislature had in its mind the existence of the previous

Act at the time of introduction of the latter Act. Therefore, SICA, 1985 is special to the special Act i.e. E.S.I. Act, 1948 particularly in view of non-obstante clause u/s 32 therein. However, in considering the question I have taken into account one positive factual aspect of the matter that E.S.I.C. had submitted to the jurisdiction of B.I.F.R. After doing this, E.S.I.C. cannot usurp the jurisdiction and say that the claim of E.S.I.C. is independent of SICA, 1985 in case of a company under B.I.F.R.

8. Thus, taking into totality I am of the view that B.I.F.R. is the appropriate authority to consider this question of interest and the payability hereunder. In fact, following the earlier order of this High Court under writ jurisdiction a scheme has been framed as regards payment of claim of E.S.I.C. but the question of rate of interest is not specific in the latest scheme. Therefore, all the questions in this regard are kept open for the B.I.F.R. to consider and decide upon giving fullest opportunity of hearing and passing a reasoned order thereon within a period of two months from the date of communication of this order.

9. Accordingly the writ petition stands disposed of.

10. However, no order is passed as to costs.

11. Let xeroxed certified copy of this judgment be supplied to the parties by the department within a period of fortnight from the date of putting in requisition for drawing up and completion of the order as well as the certified copy thereof.