
(2003) 08 AHC CK 0038
In the Allahabad High Court
Case No : C.M.W.P. No. 26379 of 2000

Ingersoll Rand Wadco Tools Ltd.

APPELLANT

Vs

U.P. State Industrial Development Corporation and Another

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Companies Act, 1956 — Section 23

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 4, 5

Citation : (2003) 6 AWC 4934

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : A.K. Misra, for the Appellant; H.N. Sharma, S. Chaturvedi, Sharad Sharma and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari for quashing the impugned orders dated 6.1.2000, 15.4.2000 and 16.7.1999, Annexures-1, 2 and 3 to the writ petition passed by the Respondent No. 2, Regional Manager, U.P. State Industrial Development Corporation, Ghaziabad (hereafter referred to as "U.P.S.I.D.C."). The Petitioner has also prayed for a mandamus directing the Respondent corporation to approve the building expansion plan submitted by the Petitioner without insisting upon the payment of transfer charges.

2. Heard the learned Counsel for the parties.

3. The Petitioner is a company registered under the Indian Companies Act. It is aggrieved against a demand of Rs. 29,74,027 by the Respondent as transfer charges by the impugned order dated 6.1.2000 which has been reaffirmed by the impugned order dated 15.4.2000, consequent upon the Petitioner company changing its name from M/s. Wadco Tools Limited to M/s. Ingersoll Rand Wadco Tools Limited. The Petitioner is also aggrieved against the inaction of the Respondent in not approving its building expansion plan and demanding transfer charges.

4. It is stated in paragraph 3 of the writ petition that pursuant to agreement between the Petitioner and the Respondent, the Petitioner was given Industrial Site No. 37A on lease for 90 years in the year 1974. True copy of the lease deed dated 22.10.1974 is Annexure-4 to the writ petition. Copy of the allotment of the site in favour of the Managing Director of the Company is Annexure-5 to the writ petition. The Petitioner company decided to change its name from M/s. Wadco Tools Ltd. to the present name M/s. Ingersoll Rand Wadco Tools Limited and sought registration of new name instead of the former name u/s 23 of the Indian Companies Act. The Registrar of Companies duly issued a fresh certificate of incorporation of the new name in place of the old name in the register u/s 23 of the Act. True copy of the said certificate is Annexure-6 to the writ petition. The Petitioner vide letter dated 10.9.1997, informed the factum of change of name of the company to the Respondent along with certificate of the Registrar of Companies. Copy of the said letter dated 10.9.1997 is Annexure-7 to the writ petition. It is stated in paragraph 6 of the writ petition that Registration No. 17646 of the Petitioner company remains the same despite the change of name as is evident from the certificate of the Registrar as well as from Section 23 of the Act which states:

(1) Where a company changes its name in pursuance of Section 21 or 22, the Registrar shall enter the new name on the register in place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein, and the change of name shall be complete and effective only on the issue of such a certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not affect any rights or obligations of the company, or render defective and legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

5. It is alleged in paragraph 7 of the writ petition that pursuant to the lease deed the Petitioner company paid the entire transfer consideration, and the possession of the site has been handed over to it and will remain with it. The factum of change of the name was accepted by the sales tax authorities, central excise authorities, factory authorities and the U.P. State Electricity Board vide Annexure-8 to the writ petition.

6. In paragraph 9 of the writ petition it is alleged that the Petitioner submitted a plan for expansion of the construction over the site in question as per existing requirement for approval. It may be mentioned that under the U.P. Urban Planning and Development Act, 1973, such approval is required. True copy of the letter seeking approval of the building expansion plan dated 24.6.1999 is Annexure-9 to the writ petition. However, the contesting Respondent returned

the expansion plan vide letter dated 16.7.1999. True copy of the said letter dated 16.7.1999 is Annexure-3 to the writ petition. It is stated that this action of the Respondent is wholly arbitrary and illegal and the Respondent corporation has no authority to demand the transfer fee as a precondition to the sanction of the map.

7. By the impugned order the Respondents have demanded payment of transfer charges of Rs. 30 lacs from the Petitioner on account of the change of name of the company and have made it a precondition for approval of the plan. Against that order the Petitioner made applications vide Annexure-10 to the writ petition and then filed Writ Petition No. 8357 of 2000 challenging the demand of transfer charges as a precondition for sanction of the building expansion plan. That petition was disposed of with a direction that the Petitioner may file a representation along with a certified copy of the order before the Respondent No. 1 taking all the grounds which he has taken in the petition and the said Respondent shall pass a speaking and reasoned order. Accordingly the Petitioner made a representation vide Annexure-13 but the same has been rejected. The Respondent corporation has reaffirmed the demand for transfer charges on the basis of the guidelines of the corporation that if the controlling interest of the company has changed the same amounts to transfer and consequently transfer charges becomes leviable vide Annexure-14 to the writ petition.

8. It is alleged in paragraph 19 of the writ petition that the terms and conditions of the agreement between the Petitioner and the Respondents are governed by the terms of the registered lease deed executed on 22.10.1974, which was registered on 1.2.1975. Hence any action of the corporation has to be in accordance with the terms of the lease deed and any other demand of the corporation can be raised only if the same is permissible in law. It is alleged that the transfer charges are not supported by the terms of the lease deed nor any provision of the statute and hence it is illegal. There is no provision in the U.P. Urban Planning and Development Act, 1973, authorizing imposition of transfer charges and hence the same has no legislative sanction. The Petitioner has already paid the entire lease consideration of about Rs. 1,80,000 and other dues but the corporation is now demanding about Rs. 30 lacs which is 11 times more than the entire lease consideration merely because there is change in the name of the company. This demand is illegal and arbitrary and without authority of law. It is alleged that the alleged guidelines cannot regulate the terms and conditions of the lease and cannot authorize the levy.

9. A counter-affidavit has been filed by the Respondents. It is alleged in paragraph 4 of the same that the demand of transfer charges is on account of change of ownership (shareholdings) as per provisions contained in Clause 2 (p) of the lease deed copy of which is Annexure-4 to the writ petition.

Clause 2 (p) of the lease deed states:

If the lessee being a registered partnership firm or an unregistered partnership or a company or a co-operative society is reconstituted or wound up the lessee's

successors in interest shall within 60 days of such reconstitution or winding up enter into a binding contract with the lessor to abide by and faithfully carry out the terms, conditions, stipulations, provisos and agreements herein contained failing which the lessor shall be entitled to determine this deed.

10. It is alleged in paragraphs 6 and 7 of the counter-affidavit that there was a change of clear title of the land in view of the change in the shareholdings and this justified the demand of transfer charges.

11. We do not agree with the Respondents. There is nothing in Clause 2 (p) of the lease deed which permits demand of transfer charges. On the contrary, if a company is reconstituted, then it has to enter into a binding contract with the lessor to carry out the same terms, conditions, stipulations as mentioned in the agreement. We agree with the learned Counsel for the Petitioner that the impugned demand of transfer charges has no statutory sanction nor can it be charged under the lease deed copy of which is Annexure-4 to the writ petition.

12. Moreover, the change in the name of the company does not mean that it became a different legal entity. Even the change of shareholders will not make the company a different legal entity because it is well-settled that a company is a distinct legal entity separate from its shareholders, vide *Soloman v. Soloman & Co. Ltd.*, 1897 AC 22 ; *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , etc.

13. In *Economic Investment Corporation Ltd. Vs. The Commissioner of Income Tax, W.B. and Others*, , it was held that the change of name of the company does not occasion any substitution or succession. In *M/s. Gur Narain Jagat Narain & Co. v. Motor and General Sales Ltd.*, 1980 ALJ 508, the Allahabad High Court held that the change in the name of a company does not change its rights and obligations.

14. In *Pioneer Protective Glass Fibre (P.) Ltd. v. Fibre Glass Pilkington Ltd.*, (1985) 3 Comp LJ 309, the Calcutta High Court held that despite change in the name of a company the legal entity continues, and such change does not result in dissolution of the company and incorporation of a new company. Hence to a fresh certificate of the corporation u/s 23 of the Companies Act on a change of the name of the company does not imply that a new company has come to in existence.

15. So far as the alleged guidelines of the corporation, copy of which is Annexure-14 to the writ petition is concerned, it may be mentioned that these guidelines have no statutory force and hence they cannot justify imposition of transfer charges. Any such charge or fee must have statutory backing, as held by a Division Bench of this Court in Writ Petition No. 47222 of 2002, *Shaukat Ali v. A.D.A.*, decided on 1.7.2003.

16. Moreover, even assuming that transfer charges can be levied on the basis of the aforesaid guidelines of the corporation, it is evident that so long as the promoters hold 26% share in the alleged transferee company, no transfer

charges can be levied.

17. We agree with the submission of the learned Counsel for the Petitioner that the demand for transfer fee is beyond the terms of the lease deed and has no statutory basis, and hence cannot be sustained. Where the relation between the parties are governed by a contract whose terms are incorporated in the lease deed, copy of which is Annexure-4 to the writ petition, the Respondent corporation cannot unilaterally demand transfer charges. There is nothing in the lease deed which states that on the change in the name of a company or shareholders of the company, transfer charges will have to be paid.

18. For the reasons given above the petition is allowed. The impugned orders are quashed. The Respondents are directed to approve the building expansion plan submitted by the Petitioner without insisting upon the payment of transfer charges as precondition for giving consent or approval.