(1987) 03 RAJ CK 0041

In the Rajasthan High Court

Case No : Company Petition No''s. 4 of 1983, 4 and 6 of 1984 and 3 of 1985

Jaysynth Dyechem and APPELLANT

Vs

Mewar Textile Mills Ltd. RESPONDENT

Date of Decision : 22-03-1987

Acts Referred:

Companies Act, 1956 — Section 442, 443
Industries (Development and Regulation) Act, 1951 — Section 2
Rajasthan Relief Undertakings (Special Provisions) Act, 1961 — Section 4(1)

Citation : AIR 1988 Raj 16 : (1988) 64 CompCas 334 : (1987) 1 WLN 627

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : M.M. Singhvi, H.M. Parekh and Kewalchand Samdaria, for the Appellant; L.R. Mehta, R. Mehta and D.S. Shishodia and J.P. Joshi, A.D.G., for the Respondent

Judgement

M.C. Jain, J.—In these winding up petitions by the creditors, objections have been filed by the creditor-petitioners challenging the validity of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961 (for short ''the Act'') and consequently, the notification issued by the State Government under the provisions of Sections 3 and 4 of the Act. The first notification was issued on April 8, 1985 and subsequently the term was further extended by one year by the notification dt. 14-2-86. By the notification, issued u/s 4 all pending proceedings in any court have been stayed. Reply to the objections have been filed by the non-petitioner-Company refuting the case pleaded by the creditor-petitioner. The creditor petitioners'' case is that the Act is covered under the entries 43, 44 and 95 of the List I Union List in the VII Schedule, whereas the case of the non-petitioner-company is that the Act is covered under entries 23 and 33(a) of list III of the 7th Schedule i.e. Concurrent List.

2. In order to appreciate the controversy, it would be proper to reproduce the relevant entries, reference of which has been made by the learned counsel for the parties. Entries 43, 44 and 95 of List I are as under with comment

thereunder in the shorter Constitution of India (VIII) edition by P. D. Basu : --

"43. Incorporation, regulation and winding up of the trading corporations, including banking, insurance and any financial corporations but not including co-operative societies.

1. Incorporation, regulation and winding up of trading corporations-- An Act which regulates the affairs of a company by laying down certain special rules for its management and administration is fully covered by this item. It would also include legislation providing for the amalgamation of companies, but not the regulation of their functions.

2. Read with entry 95 of List I, this present Entry empowers Parliament to define the jurisdiction of Courts (other than the Supreme Court) relating to the subject-matters coming under the present entry e.g. banking companies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

Scope of Entries 43-44 of List I. The scope of these two entries is limited to the ''incorporation, regulation and winding up'' of certain classes of corporations. They do not imply that any law relating to a Corporation would come under either of these two Entries, even though the ''pith and substance'' of such law relates to some other relevant Entry.

Thus,

(i) if a law regulates the ''business'' of a corporation, it would not fall under the present Entries but may fall under some other Entry, according to the nature of the business. For instance, if the business be supply of electricity, it would come under entry 38 of List III.

(ii) If a corporation is established for the establishment and organisation, of ''industries'' in industrial areas, the law would be governed by entry 24 of List II, unless entry 52 of List I is attracted by a Parliamentary declaration.

95. Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this; Admiralty jurisdiction.

Entry 95 of List I and entry 65 of List II--The effect of these entries to that while legislating with regard to matters in their respective lists the two legislatures are competent to make provisions in the several Acts enacted by them, concerning the jurisdiction and powers of the Courts in regard to the subject-matter of the Acts, because otherwise the legislation may not be quite complete or effective. These entries are wide enough to empower the two Legislatures to legislate negatively as well as affirmatively with regard to the jurisdiction of the Courts in regard to the matters within their respective legislature ambits. They can bar the jurisdiction of the Courts in regard to those matters and they can also confer special jurisdiction on certain Courts. (See further under entry 3, List II).

Acts coming under this Entry--Sections 45A-B of the Banking Companies Act, 1949."

3. Entries 23 and 33 of the List III of the Concurrent List are as under : --

23. Social Security and social insurance; employment and unemployment.

33. Trade and commerce in, and the production, supply and distribution of : --

(a) The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the Public interest, and imported goods of the same kind as such products;

(b) Foodstuffs, including edible oilseeds and oils;

(c) Cattle fodder, including oilcakes arid other concentrates;

(d) Raw cotton, whether ginned or unginned, and cotton seed; and

(e) Raw Jute.

4. Reference may also be made to the provisions of the Act, its preamble as well as the statement of objects and reasons for enacting the Act. The statement of objects and reasons appended with the Rajasthan Relief Undertakings (Special Provisions) Bill, 1961 is as under :--

"Where the State Government, in order to prevent or to provide relief against, unemployment, starts, takes over, or acquires, or grants any financial assistance to, any industry, it is necessary to protect it, for such time as such industry may take to come to its own, from legal proceedings and also to extend the period of limitation in order to save the interests of the creditors. Similarly, it is also necessary to suspend temporarily certain laws which provide the machinery of settling labour disputes and certain other conditions of service of labour. Some retrenchment in labour will also be required and unless the labour laws are suspended, reduction of labour in the industry will not be feasible. Hence this bill, which seeks to replace an ordinance lately promulgated by the Governor in this respect. The facilities provided herein are also made available to the industries, as in respect of which a notified order u/s 18A of the Industries (Development and Regulation) Act, 1951, is in operation."

5. The long title or the preamble of the Act is "An act to make special provisions for declaring certain industrial undertakings as relief undertakings and in other matters in respect thereof." Section 2 of the Act defines the expression "industry" and relief undertaking. The expression "relief undertaking" has been defined to mean an industrial undertaking, in respect of which, a declaration u/s 3 is in force. Section 3 of the Act is as under : --

3, Declaration of Relief Undertakings-- (1) If at any time, it appears to the State Government necessary to do so, the State Government may, by notification in the Official Gazette, declare that an industrial undertaking specified in the notification, whether started, acquired, or otherwise taken over, by the State

Government, or in respect of which a notified order u/s 18A of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951) is in operation, and carried on, or proposed to be carried on, by itself, or under its authority or to which any loan guarantee, or other financial assistance has been provided by the State Government shall, with effect from the date specified for the purpose in the notification, be a relief undertaking for the purposes of this Act.

(2) A notification under Sub-section (1) shall have effect for such period not exceeding two years as may be specified in the notification; but it shall be renewable by like notifications, from time to time, for further periods not exceeding twelve months at a time, so, however, that the total period in the aggregate does not exceed five years.

6. The relevant part of Section 4 is Clause (b) of Sub-section (1) which is also reproduced hereunder : --

(b) no suit, or other legal proceeding shall be instituted or commenced, or if pending, shall be proceeded with, against any industrial undertaking during the period in which it remains a relief undertaking.

Explanation :-- "Legal proceeding" means any proceeding under any law before any Court, tribunal, officer, authority, or arbitrator, started on a plaint, petition of appeal, application, reference, or otherwise.

7. It is Clause (b) which is in controversy in these petitions. An explanation has been appended to clause (b) to explain the meaning of the words "Legal Proceeding". The State Government has issued the notification in exercise of the powers conferred u/s 4 staying the proceedings pending in any Court. Clause (b) provides that, when the State Government issues a notification in the Official Gazette, then, as a result of that notification no suit or other legal proceedings shall be instituted or commenced or if pending, shall be proceeded with, against any industrial undertaking during the period in which it retains a relief undertaking and the expression "Legal Proceeding" means any proceeding under any law before any court, tribunal, officer, authority or arbitrator started on a plaint-petition of appeal, application, reference or otherwise.

8. On behalf of the creditor petitioners, it is urged that the matter relating to winding up is a matter falling exclusively in entry 43 of List I and under entry 43 the Companies Act has been enacted by the Parliament providing for winding of companies along with their incorporation and regulation. No law affecting winding up can be enacted by a State legislature. If any provision affects the winding of company, then making of such a provision would attract entry 43 within the exclusive domain of the Parliament and if any law is enacted by the State Legislature in any way, touching the winding up of any company, then such a law would fall within the entry 43 beyond the competence of the State legislature. Entry 44 deals with incorporation regulation and winding up of corporations. Emphasis has been placed on entry 43 and also on entry 95, which deals with jurisdiction and powers of all courts except the Supreme Court with respect to

any of the matter in the List I. The Parliament has enacted the Companies Act and under the Companies Act elaborate rules have been framed by the Supreme Court after consultation with the High Courts, in exercise of the power conferred by Sub-sections (1) and (2) of Section 643 of the Companies Act, 1956 and Part III of the rules commencing from Rule 95 makes provisions for winding up by court. For staying of proceedings specified provisions have also been enacted under the Companies Act, 1956, which are Sections 442 and 443. So far as power of stay is concerned, it is contained in Section 442. It is urged that the notification issued by the State Government u/s 4 prohibiting institution and commencement of suit or proceedings and staying the pending proceedings directly impinges upon the winding up proceeding, for which, the State Legislator has no jurisdiction, in view of the fact that the matter falls in the entries 43 and 95. Even with regard to jurisdiction over the matters stated or mentioned in List I, it is only the Parliament which is competent to snake provisions relating to jurisdiction and powers of all Courts, it has also been faintly urged that the word proceeding should not be considered to cover winding up proceedings and the word Court should also not be considered to include the High Court. If the State legislature had intended to extend the law to winding up proceeding which are being heard and decided by the High Court, it would have made it clear that the provision would include all proceedings relating to companies before the High Court.

9. So far as the second contention is concerned, I may at once state that the expression used by the State legislature in Section 4(b) is of widest amplitude. Legal proceeding has been explained and the explanation makes it abundantly clear that the expression would mean, any proceeding before any Court. It cannot be conceived that the words "any proceeding" excludes the proceedings of winding up and the word court exclude the proceeding before the High Court it should be presumed that the State legislature knows that the proceeding in the nature of winding up exclusively fall within the jurisdiction of the High Court under the Companies Act. That being so, if the legislature had intended to exclude the proceeding before the High Court, the State legislature would have made such a provision. The very object of the Act, in that situation, would have been defeated. Normally industries are incorporated companies and if the companies winding up proceeding would have been outside the purview of the Act then the whole object of the Act would be defeated Thus the submission made on behalf of the creditor petitioners in my opinion, has no substance that the word legal proceedings explained in Section 4(l)(b) excludes from its scope the proceedings of winding up before the High Court.

10. Coming to the main contention raised by the learned counsel for the petitioners, I may mention that if any law made by the State Government touches the domain of the Central Legislature or any law made by the Central Legislature (ouches the domain of the Stale legislature, then in that situation, the Court is called upon to look to the substance of the law and determine the question as to whether the enacted law as such falls in which entry and the

doctrine of pith and substance would come into play and having regard to this doctrine, the controversy has to be resolved. It is true that by Section 4(1)(b) pending winding up proceeding are affected. If this provision applies then the pending proceeding shall stand stayed and, new proceedings shall not be instituted or commenced and to that extent, it can be said that the provision touches the winding up of companies falling within entry 43. The question is, what is the true character of the Act. What is intended by the Act. For determination of the true character and the nature of the legislation, one should look to the whole of the Act including its preamble and as well as its objects and reasons. A perusal of the objects and reasons and the preamble would show that the Act has been enacted with a view to provide relief to certain undertakings, which are on the verge of collapse which may result into unemployment and which may also result into non-production of the commodities for the manufacture, of which they came into existence. In case, the companies or the undertakings are allowed to be wound up then in that situation there would be unemployment and the products which may be essential for the society, the society would be deprived of those products. The State Government has come forward to provide relief to such undertakings. It may advance loan or provide other financial assistance or give any guarantees and thereby save those undertakings, for the time being and this can be done by issuance of the notification u/s 3 and the aggregate period under Sub-section (2) of Section 3 is 5 years. Section 4 further provides for specifying the industrial relations and other facilities temporarily for relief undertakings. The application of certain laws may be stayed and even application of certain agreements, settlements and awards or standing orders may also be stayed or suspended. When laws can be suspended, when awards can be suspended and when standing orders can be stayed, then u/s 4(1)(b) it was necessary to make a provision for staying pending proceeding or bar the institution or commencement of any suit or other proceeding. Viewed in the light of the preamble and the Statement of Objects and Reasons along with provisions of the Act, it would appear that the legislation was intended to prevent unemployment and the legislation was also intended to continue the industry or undertaking to run so as to continue to manufacture the products by such industrial undertaking''s, the control of which has been declared by Parliament to be expedient in the public interest. Section 2 of the Industries (Development and Regulation) Act, 1951 makes a provision for declaration as to control by the Union. It was declared by Section 2 and it is expedient in the public interest that the Union should take in its control the industries specified in 1st schedule and in the first schedule in item 23(i), there is mention of the industry, Textiles (including those dyed, printed or otherwise processed) made wholly or in part of cotton including cotton yarn, hosiery and rope. Thus, it would appear that the law falling under entry 33 would be within the competence of the Central Legislature as well as the State legislature. Similarly entry 23 of List III of Schedule seventh deals with social security and social insurance employment and unemployment. The object of the Act is to prevent unemployment. The true character of the legislation made by the State legislature is to make law in relation to the subjects falling under entries 23 and 33 although incidentally, it also just impinges upon the proceeding of winding up, which are regulated by the Companies Act, enacted by the Parliament under entry 43 of List 1. This is only the incidental effect and it is not the true nature of the law.

11. So far as, entry 95 of the List 1 is concerned, it may be stated that such entries are there in all the three lists. Entry 65 of List II deals with the jurisdiction and powers of all the Courts, except the Supreme Court with respect to any of the matters in this list and similarly in List III as well, entry 46 deals with jurisdiction and powers of all the Courts except the Supreme Court with respect to any of the matters in List III. If the matters fall in the List I then, in respect of those matters the question of jurisdiction and power of all Courts can be considered by the Central Legislature. With regard to entry 46 in List III the Central Legislature as well as State legislature both are competent, if they enact any law relating to any entry falling in List III and if the Act, in question, is covered by j entries 23 and 33, in that case, under entry 46 some provisions can be enacted relating to the jurisdiction and powers of all the Courts as well, although in the present case such a situation does not arise. What has only been done is, to prevent institution or commencement of the suits and proceedings and to stay the pending proceedings. Some cases have also been cited at the bar, to which, I may also make reference.

12. Mr. Mehta learned Counsel for the non-petitioner company referred to a direct decision of the Calcutta High Court in Pushraj Puranmull and Another Vs. N. Roy and Others, The Full Bench of the Calcutta High Court considered the question of constitutional validity of Relief Undertakings (Special Provisions), Act 1972. Their Lordships considered the question as to whether that Act falls within the legislative competence of the legislature of West Bengal or it is beyond its competence. Referring to the decisions relating to the doctrine of pith and substance, their Lordships found that from all the provisions set out in the Act, the pith and substance of the legislation appears to be prevention of unemployment or providing relief against the unemployment and it comes directly within the scope of item 23 of List III. Their Lordships referred to a decision of the D. S. Patel v. Gujarat Slate Textile Corporation Ltd. (1971) 41 Com Cas 10 where the Bombay Relief Undertakings I Special Provisions) Act was in question. The Gujarat High Court found the law to be valid. In the Calcutta decision item 33 of List III was also taken into consideration although it was earlier staled that it would not be necessary in view of the entry 23 but still it has been observed that the Act intends to give breathing time to a sick industry and thereby encourage them to continue its productive activity and from this point of view it may be stated that the Act is within the competence of the powers of the State legislature in item 33(a) of List III.

13. Although reference has been made by the learned counsel for the petitioners to Indu Bhushan Bose Vs. Rama Sundari Debi and Another, and 2. Thangia v.

Hanuman Bank AIR 1958 Mad 403 but these decisions do not in any way help the petitioner. So far as the doctrine of pith and substance is considered, 1 have already considered the applicability of this doctrine in relation to the provisions of the Rajasthan Act.

14. In the result I find no force in the objections raised on behalf of the creditor petitioners, so the objections are overruled. The proceedings of winding up shall remain stayed in view of the notification.

