(2011) 07 PAT CK 0267

In the Patna High Court

Case No : CWJC No. 5611 of 2005

M/s Sone Vanaspati Ltd. and Another — APPELLANT

Vs

Union of India and Another — RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0267

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—Petitioner No.1 is a Joint Sector Undertaking being Public Limited Company registered under the provisions of the Companies Act, 1956, whereas Petitioner No. 2 is one of the Directors of the said Company.

2. This writ petition has been filed by the Petitioners challenging the entire proceeding of Certificate Case No. 2076 of 2001 which was initiated against the Petitioners for recovery of Rs. 12,90,317.00 and also challenging warrant of arrest issued against Petitioner No. 2 in the aforesaid case.

3. The Petitioners have challenged the said proceeding on the ground that there was a labour unrest in the Petitioner-company which was declared sick and for its liquidation Company Petition No. 6 of 2009 was filed by the Petitioners and winding up order was passed and Official Liquidator was appointed for the company who submitted his report on 5.7.2010 annexing the statement of affairs, whereafter by order dated 9.7.2010 (Annexure-A series), the High Court of Jharkhand at Ranchi appointed valuer and directed the Official Liquidator to invite claims for sale of the assets of the company by public notice in the newspaper. He thus claimed that once a company is declared sick under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as ''SICA'' for the sake of brevity), no proceeding for realisation of any amount from the company can be initiated without taking recourse to the said law. In this connection, he relied upon Section 32 of the SICA in which it has been provided that the provision of the Act and of any Rules and scheme made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any

other law except the provision of Foreign Exchange Regulation Act, 1973 and Urban Land (Ceiling and Regulation) Act, 1976. He also relied upon a decision of the Apex Court in case of Bharat Singh and Others Vs. State of Haryana and Others, as well as a decision of Division Bench of this High Court in case of Kanhaiya Lal Vs. The State of Bihar and Others

4. In connection with the question of alternative remedy available to the Petitioners against the order passed in the certificate case, learned counsel for the Petitioners submitted that when the pleadings have changed hands and substantial progress has been made in the case, there is no occasion for the court to throw out the writ petition on the ground of alternative remedy. In this connection, he relied upon a decision of Ranchi Bench of this Court in case of Kayne Construction Pvt. Ltd. and Another Vs. Syndicate Bank and Others,

5. On the other hand, learned counsel for the Respondents submitted that the Petitioner-company was covered under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''EPF & MP Act'' for the sake of brevity) with effect from 20.9.1996 and when it was reported to be in default of payment of dues with respect to employees provident fund a proceeding was initiated for determination of the dues for the period concerned and during the course of hearing Area Enforcement Officer submitted dues and deposit statement against which no dispute was raised by the Petitioners and the Assistant Provident Fund Commissioner vide his order dated 30.8.2000 determined the payable dues at Rs. 12,90,317.00 directing the Petitioners to pay the same within fifteen days indicating the consequences of failure. He further submitted that the said order having not been challenged by the Petitioners either in appeal u/s 7-I of the EPF & MP Act or even in the writ petition, the writ petition is not maintainable. He further submitted that where the question of employees provident fund is concerned, the provision of Section 27 of the SICA is not applicable. In this connection, he relied upon a decision of Orissa High Court dated 9.10.2001 in O.J.C. No. 2851 of 2001 (Industrial Development Corporation Orissa Ltd. and Another v. Regional Provident Fund Commissioner-II and Another).

6. From the pleadings of the parties as well as from the materials on record it is quite apparent that neither order dated 30.8.2000 passed by the Assistant Provident Commissioner determining the payable EPF dues at Rs. 12,90,317.00 has been annexed, nor any order of the Recovery Officer in the certificate case for issuance of warrant against the Petitioner has been annexed, nor even the date of issuance of warrant of arrest has been mentioned in the writ petition which was filed on 2.5.2005, annexing copy of notice dated 29.4.2002 issued by the Recovery Officer in the certificate case (Annexure-2) without any statement as to what happened in the interregnum three years.

7. It is not in dispute that Petitioner no.1 is a Public Limited Company registered under the provisions of the Companies Act, 1956 having six partners including officers of the Government and its Corporation and it was covered under the EPF

& MP Act with effect from 20.9.1996. Subsequently, the Petitioners defaulted in payment of dues and hence the authorities under the said Act initiated a proceeding and in course of its hearing, the Area Enforcement Officer submitted his statement regarding dues and deposit which was not deposited by the Petitioners and finally the Assistant Provident Fund Commissioner by his order dated 30.8.2010 determined the payable dues at Rs. 12,90,317.00. The aforesaid determination was made u/s 7A of the EPF & MP Act which was never challenged by the Petitioners, nor any appeal was filed by them as has been provided u/s 7-I of the said Act. The said order has not even been challenged in the instant writ petition and as such the same has attained finality.

8. In the said circumstances, Certificate Case No. 2076 of 2001 for recovery of the said amount was rightly initiated in April, 2001 by the Recovery Officer, whereafter notice of demand was served upon the Petitioner, but no compliance having been received from the Petitioner summon dated 29.4.2002 (Annexure-2) was issued by the Recovery Officer requiring the Petitioner to appear on 30.5.2002 alongwith documents/information relating to Petitioners'' assets failing which the Petitioner has become subject to procedure as laid down under Order XVI Rule 12 of the CPC which is for appearance of witnesses. The Petitioners have not stated anything with respect to any step taken thereafter by the Recovery Officer in the certificate case, although a period of more than three years had lapsed before the filing of the writ petition. Hence, there appears to be no reason for the Petitioners to file a writ petition challenging a non-existent warrant of arrest against Petitioner No. 2 in connection with the aforesaid certificate case.

9. The Petitioners are relying upon a much subsequent order dated 16.8.2002 passed in Petitioners'' Case No. 89 of 1993 by the Board for Industrial and Financial Reconstruction (hereinafter referred to as ''the Board'' for the sake of brevity) in which it was mentioned that on account of complete erosion of its network, the company was referred to the Board and was declared sick under the SICA at the hearing held on 21.5.1998 and subsequently on 31.5.2001 O.A. submitted its final report containing the scheme, envisaging substantial capital expenditure alongwith OTS for the dues of the involved Bank and Institution. This followed certain clarifications and correction from O.A. vide letters dated 30.11.2001 and 27.5.2002. By the said letter Draft Rehabilitation Scheme (DRS) was approved by the Board and direction was given to publish the said scheme in the newspaper, whereafter the final scheme incorporating the statement of the dues was to be considered. Hence, the entire matter before the aforesaid Board was initiated and proceeded much after final order was passed by the Assistant Provident Commissioner and the Recovery Officer. Furthermore, although in the said order dated 16.8.2002 (Annexure-1) the next meeting of the Board was fixed on 11.11.2002, but neither any further order has been annexed to the writ petition nor the pleading reveals what had happened thereafter in the case before the Board, although writ petition was filed more than 21/2 years thereafter.

10. From the draft rehabilitation scheme annexed alongwith the order of the Board dated 16.8.2002 (Annexure-1), it is quite apparent that cut-off date has been fixed for the EPF authorities to consider the instalment facility for payment of arrears of dues and to consider waiver of damages levied on delayed payment of EPF contributions, but the Petitioners have not produced any document whatsoever to establish that the said draft scheme had been approved and is under implementation, nor the Petitioners have produced any application filed by them for grant of instalment for liquidating the arrears/dues in question. In the said circumstances, there appears to be no genuine cause shown by the Petitioner to quash the certificate case which was instituted in lawful discharge of the statutory duties cast upon the Regional Provident Fund Commissioner to determine the contributions/dues in respect of the employees and to take prompt action for its recovery by invoking jurisdiction under Sections 8B to 8G of the Act. Hence, the said proceeding under the EPF & MP Act cannot be legally assumed to be barred due to the pendency of BIFR case under the SICA.

11. The parties are not disputing the fact that the employees provident fund scheme under the EPF & MP Act is applicable to the employees of the Petitioner-company and hence it is liable to pay its contribution, but the Petitioner-company has defaulted in payment of the same, although it has continued to deduct the employees contribution towards provident fund from their wages for several years and had not deposited the same even after specific direction of the authorities concerned and hence Petitioners were duty bound to deposit the employees'' contribution and the employer contribution as well as administrative charges in the provident fund. In the said circumstances, the provision of Section 22(1) of the SICA cannot be of any help to the Petitioner and such provision cannot act as a bar to the recovery proceeding under the EPF & MP Act. According to mandate enshrined in EPF & MP Act a certificate proceeding is initiated to secure the statutory contribution of poor worker of the establishment which is directly related to the livelihood of such poor person and hence the financial position of the establishment or any rehabilitation cannot come in the way of securing fundamental rights of the workers of the Petitioner establishment. Hence, the impugned action has been taken by the authorities concerned in the lawful discharge of their duties cast under the provisions of the Act after following the procedure prescribed in law.

12. So far the point raised by learned counsel for the Petitioners that out of six Directors of the Petitioner-company, three of them are from the State Government or its Corporation is concerned, the said plea is similarly frivolous and misconceived as existence of such Directors does not entitle the Petitioner-company to commit default in payment of the dues of the EPF, nor can it legally stop the authorities from taking any action either against the Petitioner-company or against its Directors in accordance with law and hence the Provident Fund Authorities have rightly taken the aforesaid steps.

13. No doubt the question of alternative remedy was raised by learned counsel

for the Respondents which was objected to by learned counsel for the Petitioners, but this court also thinks that considering the special facts of this case as well as the completion of the pleadings and arguments at length on behalf of the parties, there is no question of disposing of this case merely on the ground of alternative remedy, especially when the alternative remedy cannot be treated as an absolute bar to entertain a writ petition so as to amount to denudation of the power of the High Court under Articles 226 and 227 of the Constitution of India which power the High Court can always exercise in the facts and circumstances of a given case notwithstanding availability of any alternative remedy provided in the Statute. In this connection, learned counsel for the Petitioner has rightly relied upon a decision of a Division Bench of this Court in case of Kanhaiya Lal (supra).

14. Learned counsel for the Petitioners relied upon a decision of the Ranchi Bench of this Court in case of Oriental Insurance Company Ltd. (supra), but the said decision was with respect to certain facts and provisions which are not at all applicable to the facts and circumstances of this case.

15. Learned counsel for the Petitioners has referred to Section 32 of SICA and has also relied upon a decision of the Apex Court in case of Bharat Singh (supra), but in the aforesaid facts and circumstances of this case mentioned above, the provision of Section 32 cannot be used as a bar to the impugned action of the authorities concerned which was legal and justified as per the findings of this court in the above paragraphs. Furthermore, the abovementioned decision cited by the Petitioners does not help them at all rather it goes against the Petitioners as it has been held therein that in a writ petition not only the facts, but the evidence in proof of such facts have to be pleaded and annexed to it, but in this case the Petitioners have miserably failed in that regard as has been discussed above.

16. So far reliance of the Petitioners'' counsel on an order of a Division Bench of this Court dated 28.1.2002 (Annexure-3) passed in CWJC No. 1419 of 2002 as well as upon a decision of the Apex Court in case of Tata Davy Ltd. Vs. State of Orissa and Others, is concerned, it is quite apparent from a bare perusal of the same that the said cases were with respect to arrears of sales tax which was directed to be recovered without the consent of the Board. In those cases the arrear was with respect to sales tax and the law is settled in that regard that once the industry has been declared sick under the provision of the SICA and steps have been taken for formation of the scheme, the State Government cannot recover the arrears of sales tax prior to declaration of the industry as a sick industry without taking consent of the Board. But here the matter is completely different as it concerns the fundamental right of livelihood of the workers in the establishment of the Petitioner-company and non-fulfillment of the statutory obligation with respect thereto by the Petitioner-company. Hence, these two matters cannot be legally equated.

17. So far the plea of the Petitioners that Company Petition No. 6 of 2009 in which Official Liquidator has been appointed, and winding up order has been

passed is concerned, it had been filed at the instance of the Petitioners in the year 2009 after about seven years of the impugned action taken against the Petitioners and it transpires from order dated 9.7.2010 by which notice inviting claims was directed to be issued that the facts which are involved in the instant writ petition had not been brought to the notice of the High Court of Jharkhand at Ranchi where the aforesaid company petition is pending.

18. Considering the entire facts and circumstances of the case as well as the pleadings and evidence of the parties on record as well as the position in law, this court does not find any reason to interfere with the impugned order of the authority concerned and accordingly this writ petition is dismissed. However, if the Petitioners, so like, they may bring the entire facts and circumstances of this case mentioned above to the notice of the High Court of Jharkhand where Company Petition No. 6 of 2009 is pending.

