

(1993) 11 CAL CK 0005
In the Calcutta High Court
Case No : Matter No. 1413 of 1993

Poddar Udyog Limited

APPELLANT

Vs

W.B. State Electricity Board and Others

RESPONDENT

Date of Decision : 18-11-1993

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : 98 CWN 588

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Asok K. Chakraborty, J

Bench : Division Bench

Advocate : Jayanta Mitra and Abhijit Chatterjee, for the Appellant;A.K. Mitra, P.K. Roy, S.P. Saina and U. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J.—This is an appeal against the judgment and order dated 5th August, 1993 passed by the Learned Trial Judge dismissing the writ application. The Learned Trial judge dismissed the writ application, inter alia, by the following observations.

On a careful consideration of the submissions made on behalf of the respective parties, it appears to me that the claim of the petitioners to the benefit of the judgement and order dated 19th December, 1986, cannot be extended to the petitioners at this stage. Although the said judgment or order is a final order for the purpose of the proceedings before the Learned Trial Judge, it cannot be said to have attained finality, in view of the pendency of the Appeal preferred by the Board. Furthermore, by virtue of the interim order passed on 22nd January, 1984, the separation of the said judgment and order has been stayed and the interim order passed on 30th September, 1986, by the Learned Trial Judge has been revived and is in force. Accordingly, the benefit that is now being enjoyed by the litigating Mini-Steel Plants are the benefits available under the interim order on 30th September, 1986, to which the petitioners are not entitled in view of their acceptance of the conditions contained in the letter of 29th October,

1986, that the petitioners would not be entitled to the benefits of any interim order passed in the pending litigation.

I am not inclined to accept the submissions of Mr. Kapoor that since the judgement and order dated 19th December, 1985, put an end to the proceedings before the Learned Single Judge, it must be held to be a final order for the purpose of the agreement arrived at between M/S. Hope India Limited and the West Bengal State Electricity Board. While the said judgement and order dated 19th December, 1986, may be said to be a final order for the purpose of ending the proceedings before the Learned Trial Court, in my view, it does not attain finality till such time as the Appeal preferred therefrom is finally disposed of. It is precisely for such reason that interim order has been made by the Appeal Court pending the final disposal of the Appeal.

The decision cited by Mr. Kapoor in the case of Mohanlal Maganlal Thakkar (Supra) is not of any help to the petitioners in the facts of this case. The other decision cited by Mr. Kapoor on the doctrine of legitimate expectation cannot also have application to the facts of this case, in view of the specific agreement entered into between M/ S. Hope (India) Limited and the West Bengal State Electricity Board.

The appellant filed a writ application challenging the power of the State Electricity Board in demanding the maximum demand charge and ultimately the appellant applied before the respondent. State Electricity Board for supply of more power for the purpose of extension of the factory and thereafter, the writ application being C.R. No. 10258 (W) of 1982 filed by one Siddhartha Ferro Alloys Ltd. against the West Bengal State Electricity Board.

On 30th September, 1985 Mr. Justice Suhas Chandra Sen passed an order in that case to the following extent:

The interim order dated the 7th day of July, 1983 is varied to the extent that the petitioner will pay 50% (fifty percent) of the demand charges with effect from 1st day of October, 1986, so far as the outstandings arrear is concerned. 50% (fifty percent) of the accumulated demand charges will also be paid by petitioner in instalments. This will be in addition to the current bills which the petitioner will pay. The instalment will be of Rs. 2(two) lacs a month. The first of such instalments will be paid by the 7th day of November, 1986 and the rest by the 7th day of every subsequent months. The payment will be without prejudice to the rights and contentions of both the petitioners and the respondents.

2. Ultimately, Mr. Justice Suhas Chandra Sen made the rule absolute and restrained the Board from giving effect to the notice dated 4th November, 1992 demanding the maximum demand charge and directed the Board to modify and amend the maximum demand charges raised in the bills annexed to the petition and the subsequent bills that had been raised by the Board on the same manner and on the basis as was done on the earlier occasion when the maximum demand charges were reduced by the Board. The bone of contention was

whether the Board could make the maximum demand charges when the Board was not in a position to maintain regular supply of energy because of shortfall of production in energy.

3. An appeal was preferred by the State Electricity Board against the order passed by Suhas Chandra Sen, J and the Division Bench of this Court by the order dated 22nd January, 1987 passed in Appeal No. 38 of 1987 (Matter No. 1002 of 1983) passed an interim order staying the operation of the judgment and order passed by Suhas Chandra Sen. J. dated 19th December, 1986. It was made clear that the interim order passed on 30th September, 1986 will continue till the pendency of the appeal. The said appeal is still pending.

4. For the purpose of obtaining further supply of electricity as aforesaid there was a fresh agreement by and between the appellant and the Board. It is not necessary to go into the details of the agreement and/or the rival contentions of the parties in as much as the dispute was whether the appellant would be entitled to the benefit of the judgment passed in Matter No. 1002 of 1983. According to the appellant, the appellant was not aware of the order passed in Matter No. 1002 of 1983, and coming to know of the same the appellant/petitioner approached Board by the letter dated 20th December, 1988 pointing out the condition contained in the Board's letter dated 29th October, 1986 to the extent that WBSEB will make available to Messers Hope (India) Ltd... any concession whatsoever which may be granted under any final order by the Hon'ble High Court/Supreme Court/ Government/any amicable settlement at the instance of the Power Department for other Mini Steel Plants", and further stated that the appellant/petitioner had come to learn that in case of Siddhartha Ferro Alloys Ltd. and others a final order was passed on 19th December, 1986. directing the Board to modify and amend the maximum Demand Charges raised in the bills in the same manner and on the same basis as was done on earlier occasions when the Maximum Demand charges were reduced by the Board. The said order dated 19th December, 1986 had finally disposed off the said case and was final and binding on all concerned. In the letter dated 20th December, 1988 it was also stated that the Board preferred an appeal against the order dated 19th December, 1986 and moved an application for stay of operation of the order dated 19th December, 1986 and the Division Bench of the court, however, refused to stay of operation of the order dated 19th December, 1986. but directed to give effect to the interim order passed in that matter.

5. Accordingly, it was stated in the said letter by the appellant/ petitioner to the Board that in accordance with the terms of settlement entered into by and between the parties, the benefit of the said order passed by S.C. Sen, J. in Matter No. 1002 of 1986 should also be extended and the benefit of the said order should also be given. Or in other words the appellant/ petitioner claimed that they would not be liable to pay the Maximum Demand Charges, but in terms of that offer passed in the other case as aforesaid they would be able to pay in the same as was directed to be paid by the other party. With that the Board by

its letter dated 4th April, 1989 pointed out that in view of the terms of settlement the appellant was not entitled to any such benefit until and unless the matter reached its finality before the Division bench of this Court or before the Supreme Court and until and unless the matter had reached its finality and conclusive the appellant would not be entitled to the benefit of those orders.

6. Mr. Jayanta Mitra Learned Counsel appearing on behalf of the appellant submitted that the writ application in Matter No. 1002 of 1986 has been finally disposed of and it is the fact whether the appeal has been preferred or not the same was binding between the parties and the same benefit should be extended in the case of the appellant as agreed between the parties. It was submitted by Mr. Mitra that this practice must be followed so that all the parties get uniform treatment.

7. Mr. Anindya Mitra, Learned Counsel appearing on behalf of the Board submitted that in terms of the agreement it was agreed between the parties that if any decision given by this Court in any other proceeding had reached its finality in that event the same benefit should be extended in case of the appellant and not otherwise. The appellant filed a writ application which was withdrawn and thereafter a fresh agreement has been entered into by and between the parties and both the parties should proceed on the footing that so long as an order passed in any other proceeding reached its finality in whatever manner which may be the benefit of those orders should not be extended.

8. Mr. Anindya Mitra also submitted that the order in Matter No. 1002 of 1983 was passed before the agreement was entered into by and between the parties and when the agreement was entered into it was expected that the parties have entered into the agreement keeping their eyes open to the facts and circumstances of the case. It was further submitted by Mr. Anindya Mitra that the order passed in Matter No. 1002 of 1983 could not be said to have reached its finality and/or the matter had not been conclusively decided in view of the pendency of the appeal and the appeal is a continuation of the original writ application and only after the appeal has been disposed of by the Division Bench and in case no appeal is preferred Before the Supreme Court only in that case the matter can be said to have reached its finality and in case the matter is taken up before the Supreme Court in that case if the matter reached its finality, the same would be binding on all the parties in view of the provisions of Article 141 of the Constitution which laid down with the judgment passed by the Supreme Court should be treated as the law of the land.

9. Accordingly, until and unless the matter has reached its finality, there is no question of the extension of the benefit of the order which was enjoyed by the other parties and which was in interim nature. It was further submitted by Mr. Mitra that in view of the agreement between the parties the appellant had acted illegally withholding payment of the demand. In this connection it was submitted that from April, 1987 to March, 1988 the entire demand was paid for the subsequent period. Upto March, 1989 the demand payment was made in terms

of the demand. Thereafter, the appellant made default and did not pay anything towards the demand and not even half of the demand charges and admittedly, at the present on the basis of the demand charges a sum of Rs. 1,98,17,643/- is due and payable by the appellant to the respondent Board.

10. After hearing the rival contention of the parties, we are in agreement "with the view taken by the Learned Trial Judge that the benefit of the judgement and order dated 19th December, 1985 passed in Matter No. 1002 of 1983 could not be extended in the case of the appellant until the said judgment and order had reached its finality in Appeal in the Division Bench or the Supreme Court as the case may be. At this stage the appellant is not entitled to get any benefit of the order and judgment dated 19th December, 1986 which had not reached" its finality as the same is the subject in appeal.

11. It is well settled that the appeal is a continuation of the original proceeding and after the order is passed by the Learned Trial Judge merges with the decision of the Appellate Court in the instant case because of the pendency of the appeal against the order dated 19th December, 1986 which cannot be said by any stretch of imagination that the order of the Learned Trial Judge had reached its finality. The benefit of the interim order would only be obtained by the parties before the Court and the other parties may get benefit of the same if the same had reached its finality by way of binding proceedings.

12. In case the order reached its finality the same would be binding upon the Board and the Learned Council appearing on behalf of the Board made it abundantly clear, in case the matter had reached its finality the same benefit would be extended not only on the appellant/petitioner. but also on all the parties similarly situated.

13. Accordingly, we do not find any reason to interfere with the order passed by the Learned Trial Judge. The appeal along with the application stands dismissed. There will be no order as to costs. A prayer is made on behalf of the appellant for stay of operation of the order. In case a sum of Rs. 10 lakhs is paid within seven days from date there will be a stay of operation of the order for a period of two weeks from date.

Asok Chakraborty, J.

I agree.