

(2003) 11 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 34313-314 of 2002 (GM-KEB)

Southern Ferro Ltd.

APPELLANT

Vs

Karnataka Power Transmission Corporation Ltd.

RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 3

Citation : (2004) 52 SCL 508

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Sriyuths, S.V. Shastri, Ravi S. Hegde and Aswathanarayana Reddy, for the Appellant; N.K. Gupta, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Petitioner company claims that it is a company declared as a "Sick Industrial Undertaking" within the meaning of this expression occurring in Section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act" for short) as per an order passed to this effect on 20-7-1999 by the Bench-III of the Board for Industrial and Financial Reconstruction in Case No. 96/99 before it.

2. It is the case of the petitioner that pursuant to the order, efforts for reviving the company is on. The petitioner-company is aggrieved by the two demands raised on it as per Annexure-C dated 2-5-2002 in Bo. AEEE-I/AAO/SAI/HT/HBL/2002-03/650 for Rs. 4,13,830 and Annexure-E dated 24-8-2002 in No. DRSD./SA/PI/2077 for Rs. 34,17,627 by the respondent apprising the petitioner as per the communication dated 24-8-2002 (Annexure-E) that on failure of payment within a week therefrom, power supply to the installation will be disconnected.

3. Petitioner, being aggrieved by these demands and the threat of disconnection, has approached this Court questioning the legality of such demands and also the intimation and the threat of the respondent Karnataka Power Transmission Corporation Limited to resort to coercive action for the realisation of the amount

demanded under the notice. The petitioner has contended that the threatened action is directly in conflict with the provisions of Section 22 of the Act; that in spite of the petitioner company having brought to the notice of the respondent - Power Corporation even on an earlier occasion that it is a sick industrial undertaking and it enjoys certain immunities from enforcement of recovery proceedings, the Corporation is threatening to disconnect power supply which is a coercive measure; that the threatened action is illegal, not permitted in law and while the demands should be quashed, the Corporation should be restrained from resorting to disconnection of power supply etc.

4. The writ petition is resisted on behalf of the respondents pointing out that the demand is justified; that the validity of such a demand, particularly for the payment of what is known as "additional security of a sum equivalent to the average consumption for three months", which is the consumption for three months based on the average consumption for the earlier year, is fully justified; that the validity of such a demand has been upheld by this Court and the Supreme Court and as such the challenge is not sustainable.

5. Sri S.V. Shastri, learned Counsel appearing for the petitioner has vehemently urged by pointing out to the provisions of Section 22 of the Act that the threatened action on the part of the respondents to disconnect the power supply for non-payment of the amounts demanded from the petitioner company is a coercive action and amounts to enforcing a liability on a sick industrial undertaking even during the pendency of the proceedings before the Board, which is not permitted u/s 22 of the Act and as such submits that this action is violative of the provisions and requires to be held to be so and the respondent should be restrained from refusing supply of power to the petitioner company.

6. Learned Counsel submits that the word "proceeding" is to be given a wide meaning and if it is so understood, the threatened action on the part of the respondent-Corporation for disconnecting the power supply, principally being in the nature of a coercive measure against a sick industrial undertaking, is also a proceeding within the meaning of Section 22 of the Act and as such is hit by the provisions of this section. In this regard, learned Counsel has placed reliance on the decision of the Supreme Court is the case of Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, . Learned Counsel submits, the Supreme Court had occasion to look into the scope of the expression "proceeding" occurring in Section 22 of the Act and has held that this word should be given as wide a meaning as is possible having regard to the object of the Act and the purpose of the Act being to revive and rehabilitate a sick industrial undertaking and by providing a relief from enforcement of the liabilities against it during the pendency of the revival measures. Learned Counsel in this regard submits that the word "proceeding" has been held to be a word not necessarily to be confined to a legal proceeding though it is so indicated in the head note to the section and as such if the interpretation as given by the Supreme Court should be properly understood and extended to a proceeding of

the nature of the demand and threatened action on the part of the respondent Corporation, the petitioner should be given relief. Learned Counsel prays for allowing the writ petition by quashing the impugned demands.

7. Sri N.K. Gupta, learned Counsel appearing for the respondents, on the other hand submitted, that the demand by the respondent-Corporation being a security measure and to cover the price for consumption for about three months by consumers, it has been held by Courts that such a demand is justified, particularly having regard to the fact that a consumer is billed and a demand raised on him and the time permitted for such payment in all, roughly taking about three months for the entire circle to be completed and the Courts have sustained demand for three months by the Board. Learned Counsel has placed reliance on the decision of a Division Bench of this Court in the case of Assistant Executive Engineer v. Reyhan Minerals & Chemicals (P.) Ltd ILR 1992 Kar. 1 where the precise question had come up for consideration. In that case also an identical demand for payment of the security deposit for the value of consumption for three months period had been challenged by a sick industrial company on the premise that the demand for such payment of the security deposit and the threatened action for disconnection in case of non-payment, are all coercive measures coming within the meaning of the word "proceeding" occurring in Section 22 of the Act and this Court having expressly held that a demand of this nature is not a proceeding within the meaning of Section 22 of the Act, the bar under the section was not attracted and it is open to the Power Supply Corporation to enforce the demand. Sri Gupta, learned Counsel for respondent Board submits that in the light of the decision of this Court interpreting the identical demand to be not a proceeding contemplated within the meaning of Section 22 of the Act, it is not open to the petitioner to contend that on the principle of a wide interpretation to be given to the word "proceeding" as held by the Supreme Court in the case of Maharashtra Tubes Ltd (supra) such a proceeding also should be taken to be a "proceeding" covered within the meaning of Section 22 of the Act.

8. The decision of the Supreme Court no doubt, is based on the principle of interpretation, seeks to enlarge the meaning of the various situations contemplated u/s 22 of the Act being in the nature of coercive action and situations even going beyond a legal proceeding and no doubt leaves it open to consider any other situation which is not necessarily in the nature of a legal proceeding, also as to whether it is a proceeding within the meaning of Section 22 of the Act. The decision only leaves open scope for such an examination. But in the case on hand, a Division Bench of this Court having examined in identical situation and having concluded that it is not in the nature of a proceeding or a situation contemplated within the meaning of Section 22 of the Act, the decision of the Supreme Court is of no assistance for the argument sought to be advanced on behalf of the petitioner.

9. The question having been answered by this Court on an earlier occasion and in

an identical situation, to be a situation which is not a proceeding within the meaning of Section 22 of the Act, it is not possible to accept the contentions urged on behalf of the petitioner. This Court cannot grant the relief as sought for by the petitioner.

10. In the circumstances, these writ petitions are dismissed.