(2002) 10 BOM CK 0097

In the Bombay High Court

Case No : Appeal from Order No. 11 of 2002

Suryoday Allo-Metal Powders Ltd. APPELLANT

Vs

Senior Intelligence Officer and Another RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Bombay Relief Undertakings (Special Provisions) Act, 1958 — Section 4

Citation : (2003) 2 ALLMR 662 : (2003) 4 BomCR 284 : (2003) 2 MhLj 171

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : A.S. Oka and S.A. Sawant, for the Appellant;

Final Decision : Dismissed

Judgement

V.C. Daga, J.—This appeal is directed against the order dated 12-12-2001, passed by the Joint Civil Judge, Senior Division, passed below exhibit 5 in Regular Civil Appeal No. 1627 of 2001 refusing to grant injunction against the defendant restraining them from proceeding with any investigation or recovery proceeding arise out of the provision of Central Excise Act.

THE FACTS :

2. The facts leading to the present appeal are as under :--

The appellants, the original plaintiffs, the limited company, originally known as M/s Tirupati Allo-Metal Powders Ltd., now known as "M/s Suryoday Allo-Metal Powders Ltd.," filed a suit for declaration and perpetual injunction being Regular Civil Suit No. 1627 of 2001, seeking declaration that the act of the subordinate intelligence Officer. Working under the Directorate General of Excise (Intelligence), Pune, who had taken search of the premises of M/s Suryoday Allo-Metal Powders Ltd., and investigation initiated pursuant thereto be declared null and void ab initio and the defendants be restrained permanently from instituting any recovery proceeding for the recovery of the excise duty allegedly evaded by the appellants. The application seeking interim relief in consonance with prayer seeking permanent injunction Exhibit 5, was also filed by the plaintiffs which was rejected.

The plaintiffs in the suit claim that the plaintiffs were declared as a Relief Undertaking, under the provisions of the Bombay Relief Undertakings (Special Provisions) Act, 1958, ("the Act" for short), vide notification issued by the State Government, dated 8th October, 2002, followed by another Notification dated 3rd October, 2002. The application seeking interim relief under Order XXXI, Rule 1 of the CPC ("the C.P.C. for short), (Exhibit 5) moved by the plaintiffs came to be rejected by the impugned order dated 12-12-2001.

Aggrieved by the aforesaid order dated 12-12-2001 original plaintiffs/appellants invoked appellate jurisdiction of this court under Order 43, Rule 1 of the Civil Procedure Code, contending that the impugned order suffers from non-application of mind and is liable to be quashed and set aside.

STATUTORY PROVISION :

3. Before proceeding further with the discussion it may be proper to read the relevant provisions of the Bombay Relief Undertakings (Special Provisions) Act, 1958 relevant for the purpose of this case.

The preamble of a statute is a prefatory statement at its beginning, following the title and preceding enacting clause, explaining and declaring the policy, purpose, reasons and the objects sought to be achieved by the enactment.

4. The Act was enacted so as "to make temporary provisions for industrial relations and other matters to enable the State Government to conduct, or to provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of preventing unemployment or of unemployment relief. Initially, it was applicable only to those industrial undertakings which were started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by itself or under its authority. But by an amendment made in 1960, the Act was made applicable also to industrial undertakings to which any loan, guarantee or other financial assistance has been provided by the State Government. Section 3 expressly declares that on issuance of notification thereunder the specified industrial undertakings shall be conducted to serve as a measure of preventing unemployment or of unemployment relief and undertaking shall accordingly be deemed to be a relief undertaking for the purpose of this Act.

Sub-section (2) of Section 3 says that a notification u/s 3(1) shall have effect for such period not exceeding 12 months as may be specified in the notification. It is, however, renewable for a like period from time to time so, however, that all the periods in aggregate do not exceed five years.

Section 4(1) is relevant for our purpose and may be set out in full:

"4(1) Notwithstanding any law, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the Official Gazette, direct that --

a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under Sub-section (2) of Section 3. --

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be exempt therefrom), or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification; (ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or other financial assistance was provided to it by, or with the approval of, the State government for being run as a relief undertaking, shall be suspended in operation or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification;

(iii) rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with Clauses (i) and (ii) and the notification;

(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed;"

(b) the right, privilege, obligation or liability referred to in Clause (a)(iv) shall, on the notification ceasing to have force, revive and be enforceable and the proceedings referred to therein shall be continued; Provided that in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was suspended under Clause (a)(iv) shall be excluded notwithstanding anything contained in any law for the time being in force".

5. The contents of the schedule at the foot of the Act read as under :

SCHEDULE Central Acts,

1. The Industrial Employment (Standing Orders) Act, 1946 (XX of 1946)

2. The Industrial Disputes Act, 1947 (XIV of 1947)

Bombay Acts

3. The Bombay Industrial Relations Act, 1946 (Bom. XI of 1947).

4. The Bombay Shops and Establishments Act, 1946. (Bom. IXXIX of 1948).

6. The relevant portion of the notification issued by the State Government in exercise of powers conferred by Section 3 reads as under :

Now, therefore, in exercise of the powers conferred by Section 3 and Sub-clause (iv) of Clause (a) of Sub-section (1) of Section 4 of the said Act the Government of Maharashtra hereby, -

a) declares that the said Relief Undertaking shall for a period of six months commencing on the 3rd October 2002 and ending on 2nd April 2003 (both days inclusive), be conducted to serve as a measure of an unemployment relief; and

b) directs that in relation to the said Relief Undertaking and in respect of the said further period of six months commencing on the 3rd October 2002 and ending on 2nd April 2003 (both days inclusive), for which the said Relief Undertaking continues as such, any right, privilege, obligation or liability [excepting the obligations or liabilities incurred in favour of the workmen of the said Relief Undertaking, the dues of the Employee''s State Insurance Corporation and any liabilities incurred under the Bombay Sales Tax Act, 1959 (Bom. LI of 1959), the Maharashtra State Tax on Professions, Trades Callings and Employments Act, 1975 (Mah. VI of 1975), the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952) and the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966)] accrued or incurred before the 3rd October 2002 and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority, shall be stayed."

The Submissions:

7. The counsel for the plaintiffs/ appellants placed main reliance upon Sub-clause (iv) of Clause (a) of Sub-section (1) of Section 4; which lays down that any remedy for the enforcement of the liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal officer or authority shall be stayed.

8. It was argued before the trial court that in view of the provision or Section 4(1) Sub-clause (iv) of Clause (a) no proceedings resulting in any recovery can be allowed to be proceeded with against the plaintiffs/appellants. The trial court did not accept the contention advanced by the plaintiffs/appellants and refused to grant interim relief as prayed for. Shri A.B. Oka learned counsel appearing for the appellants/ plaintiffs reiterated the above submission before this court. It, therefore, has become necessary to examine the scope and operation of the provisions of the Act.

Section 4(1)(a) of the Act lays down that on a notification being made the industry becomes a relief undertaking and the laws enumerated in the schedule to the Act shall not apply. So far as Central Acts are concerned the schedule specifies The Industrial Employment (Standing Orders) Act, 1946 (XX of 1946) and The Industrial Disputes Act, 1947 (XIV of 1947), and provides that the relief undertaking shall be exempt therefrom.

At this stage it will not be out of place to mention that Central Excise Act is not to be found in the schedule appended to the Act. It is therefore clear that so far as Section 4(l)(a)(i) is concerned it will not be applicable to the proceedings initiated under the Central Excise Act. The learned counsel for the appellants also concedes to this legal position.

9. The learned counsel for the appellants faced with this legal situation pressed into service Sub-clause (iv) of Section 4(1)(a) and contended that any right, privilege, obligation or liability created or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relating thereto pending before any court, tribunal, officer or authority shall be stayed.

FINDINGS

Reading of the said Sub-clause (iv) of Section 4, as observed hereinabove, would show that it is not applicable to the liabilities arising out of Central Excise Act. In order to reach this conclusion one has to read the preamble of the statute which contained the recitals showing the reasons for the enactment of the Act. The preamble of the Act lays down that in order to mitigate the hardship that may he caused to the workers who may be thrown out of employment by the closure of an undertaking. Government may have to take over such undertaking either on lease or on such conditions as may be deemed suitable and run it as a measure of unemployment relief. As in such cases Government may have to fix revised terms of employment of the workers or to make certain labour laws or any specified provisions thereof. It also makes a provision that the rights and liabilities of the original employer and workmen which might remain suspended during the period the undertaking is run by Government, would revive and become enforceable as soon as the undertaking ceases to be under the control of Government. Therefore, by no stretch of imagination the proceedings initiated under the Central Excise legislation can be brought within the purview of the provisions of the said Act.

10. Apart from the above, Sub-clause (iv) shows that what is suspended is any right, privilege, obligation or liability accrued or incurred before the undertaking was declared as a Relief Undertaking and any remedy for enforcement thereof.

Sub-clause (iv) cannot be read in isolation. Sub-clause (iv) has to be read along with Sub-clauses (i), (ii) and (iii). Sub-clause (i) contemplates that all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply and such relief undertaking shall be exempt from the operation of the laws enunciated therein. Sub-clause (ii) contemplates that all or any of the agreements, settlements, awards or standing orders made under any of the laws mentioned in the Schedule to the Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government for being run as a relief undertaking, shall be suspended in operation or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification. Sub-clause (iii) lays down that rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with Clauses (i) and (ii) and the notification. Sub-clause (iv) lays down that any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed. Thus what is to be suspended or stayed has a reference to the proceedings in relation to items referred in Sub-clauses (i) and (ii) of Section 4(1)(a), as such Sub-clause (iv), cannot be read in isolation. Section 4 is a complete code by itself.

Further, Sub-clause (iv) shows that what is suspended is any right, privilege, obligation or liability accrued or incurred before the undertaking was declared as a Relief Undertaking and any remedy for enforcement thereof. The word "liability" denotes a crystallized liability capable of recovery from the relief undertaking. Any proceedings leading to the determination of the liability will be outside the scope of the said Sub-clause. A similar view has been taken by the trial court while rejecting the application. The view taken by the trial court appears to be reasonable, possible, proper and valid.

11. Apart from the above view, there is no material to show that the liability, if any, sought to be recovered is incurred prior to the undertaking was declared a relief undertaking. No material is on record. The learned counsel sought time to bring this material on record. As a matter of fact this material ought to have been on the record of the trial court so as to make out a cause of action for the suit. In absence of any such material prima facie there is no cause of action to invoke Sub-clause (iv) of Section 4 of the Act; as such no fault can be found with the impugned order of the trial court.

The proceedings, if any, seeking to recover excise duty cannot be said to cause any legal injury to the appellants as the incidence of excise duty must have been transferred to the consumers. It must have been recovered by the appellants. No case is made out to suggest that no such recovery was made by them. Apart from this no such injunction could be asked or granted by the Civil Court in view of bar of Section 41(h) of the Specific Relief 1. Thus no prima fade case or balance of convenience is to be found in favour of the appellants/plaintiffs. The injunction was rightly refused by the trial court.

12. In the result appeal is dismissed with no order as to costs.