

(1965) 02 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : First Appeal against Order No. 4-D of 1965

Sushil Kumar Sanghi

APPELLANT

Vs

R.R. Kini

RESPONDENT

Date of Decision : 22-02-1965

Acts Referred:

Companies Act, 1956 — Section 10A(1), 235, 240, 240(3), 240(5)
Constitution of India, 1950 — Article 20(3)

Citation : AIR 1967 P&H 45 : (1966) 36 CompCas 201 : (1965) 2 ILR (P&H) 339

Hon'ble Judges : D. Falshaw, C.J; Mehar Singh, J

Bench : Division Bench

Advocate : R.L. Aggarwal, R.L. Kohli and P.N. Chadha, for the Appellant; Niren De, Additional Solicitor-General and S.N. Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, J.—In this appeal u/s 10D of the Companies Act, 1956 (1 of 1956), hereinafter to be referred as "the Act", by Sushil Kumar Sanghi, appellant from the order dated November 26, 1964, of the Companies Tribunal made u/s 240, read with Section 10A(1)(b), of the Act, accepting the application made by the respondent, Mr. R.R. Kini, who has been appointed as inspector by the Central Government to investigate the affairs of Asia Udyog (Private) Limited, hereinafter to be referred as "the Udyog Company", u/s 235(c) of the Act, and ordering the appellant " to answer such questions as may be put to him by the petitioner (respondent with regard to the affairs of the Udyog Limited from and after 13th February, 1953", the main question for consideration is whether the appellant is or is not entitled, in the facts and circumstances of the case, to protection of article 20(3) of the Constitution, which says that " no person accused of any offence shall be compelled to be a witness against himself ".

2. On report by the Registrar of Companies, Delhi, under Sub-section (6) of Section 234 of the Act concerning the affairs of the Udyog Company, the Central Government being of the view that it was desirable that inspectors be appointed

to investigate into the affairs of that company and to report thereon, it, by notification No. 2(9)-CL.I/62, of April 19, 1963, appointed Mr. R.R. Kini (respondent), Legal Adviser, and Mr. S.M. Dugar, Senior Accounts Officer, in the department of Company Law Administration, as inspectors to investigate into the affairs of that company for the period from January I, 1953, to date and even for the period prior thereto, should the inspectors consider necessary to do so, and to report thereon pointing out, inter alia, all irregularities and contraventions in respect of the provisions of the Act or of the Indian Companies Act, 1913, or of any other law for the time being in force and the person or persons who are responsible for such irregularities and contraventions. The inspectors were to complete their investigation and make the report within three months from the date of the notification, but as that was not possible, that time was extended from time to time.

3. It was Mr. R.R. Kini alone who took up the investigation of the Udyog Company. The appellant was asked to appear before him on July 16, 1964, which he did, and on that day a part of his statement was recorded. On the next day, that is to say, on July 17, 1964, when the appellant appeared again to continue his statement, he moved two applications objecting to being questioned by the inspector, which applications were dismissed on July 31, 1964. The appellant was to appear before the inspector on August 15, 1964, to continue his statement, but on August 13 he wrote informing the Inspector that he was not going to appear any further before him. This he seems to have also conveyed to him orally.

4. On that the inspector moved an application before the Tribunal under Sub-section (3) of Section 240, read with Section 10A(1)(b), of the Act, certifying the refusal of the appellant to appear before him and to answer the questions in the investigation of the affairs of the Udyog Company. The appellant raised a large number of objections before the Tribunal to that application of the inspector. The Tribunal repelled all the objections and made an order as already stated above. In this appeal by the appellant it is that order of the Tribunal which is being questioned.

5. A charge-sheet is pending in a criminal case against the appellant along with a number of others in the court of the District Magistrate of Delhi in connection with conspiracy to commit criminal breach of trust in regard to the funds of Dalmia Jain Aviation Limited of which the appellant was one of the directors and for commission of various offences in pursuance of the conspiracy. A copy of the charge-sheet is annexure " R-2 " in which there are a number of charges for offences u/s 120B, read with Section 409, and Sections 409 465 467 and 477A of the Penal Code. Items 3 and 36 in the charge-sheet concern the appellant. Those items are:

"3. Investigations made by me have revealed that a criminal conspiracy having for its objects the commission of the criminal breach of trust of the funds and assets of Dalmia Jain Airways Limited, Delhi, and the offences for forgery and

falsification of accounts came into being in or about 1946 at Delhi and continued to exist till 1953, during which period its ramifications spread over other places in India. All the accused mentioned above were parties to the criminal conspiracy....

36. On March 25, 1953, the Board of Directors of Dalmia Jain Aviation Limited consisting of R. Sharma (since dead), S.K. Sanghi, accused No. 18, and G. Ramachandran, accused No. 19, authorised S.N.Dudani, accused No. 15, to dispose of the records of Dalmia Jain Airways Limited and all the important and incriminating records were done with. "

6. It is said that previously the name of the Udyog Company was Dalmia Jain Aviation Limited. One of the allegations against the accused persons, including the appellant, in that case is said to be that the funds of Dalmia Jain Airways Limited were siphoned away through Dalmia Jain Aviation Limited, now the Udyog Company, and then the offence of breach of trust of the funds and assets of Dalmia Jain Airways Limited was committed by the accused persons. The learned counsel for the appellant has urged that the object of the questions in the investigation by the inspector has been to show inter-connection between Dalmia Jain Airways Limited and Dalmia Jain Aviation Limited so as to bring into picture the offence of misappropriation of funds and assets of Dalmia Jain Airways Limited by among others the appellant. He then points out that answers so obtained from the appellant can be used as evidence against him under Sub-section (5) of Section 240 of the Act, which is in these terms--" Notes of any examination under Subsection (2) or (4) shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. " The learned counsel has stressed that the nature of the questions that were being asked of the appellant by the inspector revealed intimate and direct connection between the subject-matter of the prosecution that is pending against the appellant in the court of the District Magistrate and the nature of the investigation that is being conducted by the inspector. In this way the appellant was placed in a situation in which he was being compelled to answer questions, the answers to which would incriminate him for offences in the pending criminal case against him and would be available as evidence against him under Sub-section (5) of Section 240 of the Act. What the learned counsel has urged is that there has been contravention of sub-article (3) of article 20. This in substance is the main contention on the side of the appellant in this appeal. No question was placed before the Tribunal, and none has been placed before this court, that the inspector asked the appellant to show the bearing of any such question on the charges against the appellant in the criminal case pending against him before the District Magistrate. Obviously in the absence of the form and the nature of the question objected to, it is next to impossible to reach a conclusion whether or not it may have any connection with that prosecution and tends to be an incriminating question for offences forming the subject-matter of that prosecution or, for that matter, of any other offence. The appellant gave answers to all questions before the inspector until before his

refusal to continue with his statement. Up to that stage he took no objection to the nature and character of the questions. The learned counsel for the appellant has pointed out that the appellant was unrepresented by a legal adviser before the inspector and he was not in a position to take such a technical objection to the nature and character of the questions that were being put to him. It is said that there has been a refusal on the part of the inspector to allow the appellant legal aid of a counsel. But the learned Additional Solicitor-General has stated at the bar that there would be no objection by the inspector to the presence of a counsel for the purpose of aiding and advising the appellant to raise objections to the incriminating nature and character of any question put to him. But of course such assistance will only be confined to such advice. The learned counsel for the appellant has further referred to the final order made by the Tribunal that the appellant will answer such questions as may be put to him by the inspector with regard to the affairs of the Udyog Company and he says that in this there is no reservation that the questions are to be subject to the limitation as in sub-article (3) of article 20. This, however, is an approach without substance because every tribunal which has the power to examine a person in any connection must keep in view the provisions of that article. Merely because the Tribunal has not made reference to that article in the closing sentences of its order does not mean that the inspector is not to have regard to the provisions of that article. As has been pointed out, there was no specific question before the Tribunal with regard to which it could consider the applicability or otherwise of sub-article (3) of Article 20. A vague allegation was made before it that the questions that were likely to be put to the appellant would have the tendency to contravene that article, but apparently the Tribunal could not possibly have taken note of any such vague allegation and passed an effective order. What was contended before it, and has been reiterated here, is that in view of the pending prosecution of the appellant in the criminal case before the District Magistrate, the investigation by the inspector be stopped altogether because its ramifications are likely to almost cover the same field as that prosecution. This again is vague and it has not been shown how that is so. It has been said that copies of a large number of documents have been given to the accused persons in that criminal case and a very large number of witnesses are cited and it is not practical for the appellant to state in definite detail what aspect of the prosecution in that criminal case is parallel to what part of the investigation before the inspector. This surely in itself gives a reply to the argument of the learned counsel for the appellant that the Tribunal could not possibly have made a blanket order stopping the enquiry on such a vague approach which it is impossible to bring to bear on sub-article (3) of article 20. There is no manner of applying that article except to something specific and definite from which it can be made out that what is being sought from the party will provide evidence of an incriminating nature against him. Particularly is this so with regard to an oral statement that a party, as the appellant in this appeal, is required to make under the law. The learned counsel for the appellant has then suggested that the inspector should prepare a list of questions beforehand and give the list to the appellant to enable him to know

which questions are likely to incriminate him so that he may object to the same and may not give answers. This is an extraordinary suggestion, for no investigation can possibly be conducted in this manner. It is not possible for the inspector to prepare a list of questions for an obvious reason that the run of the questions will depend to a very great extent upon the manner in which the answers are given and the information sought in question is supplied. The learned counsel has also made reference to certain parts of the Report of the Commission of Inquiry, commonly known as Bose Commission Report, and in it there was reference to Dalmia Jain Aviation Limited, the previous name of the Udyog Company, at pages 366, 417 and 419. The object of this has been that there has already been some kind of investigation with regard to the Udyog Company when its name was Dalmia Jain Aviation Limited. It has not been quite clear how any reference to that company in the report of the Bose Commission affects the power of the Central Government u/s 235 of the Act to appoint inspectors to investigate the affairs of the Udyog Company or the jurisdiction of the inspector to do so under the succeeding provisions of the Act. It is thus clear that there is nothing in the present case upon which sub-article (3) of article 20 can operate and it cannot possibly be applied to a vague allegation that the investigation that is being conducted by the inspectors may have some bearing or is likely to have a bearing on certain aspects of the prosecution in the criminal case pending before the District Magistrate against the appellant, without saying definitely what aspect or what material of that case is being made the subject-matter of the questioning in the present investigation. The Tribunal because of Section 10A(1)(b) exercises the powers of the court u/s 240 of the Act and the relevant sub-section is Sub-section (3). For the present purpose this much of it is material. " If any such persons fails without reasonable cause or refuses--...(b) to appear before the inspector personally when required to do so under subsection (2) or to answer any question which is put to him by the inspector in pursuance of that sub-section, the inspector may certify the failure or refusal under his hand to the court and make an application to the court to hold an enquiry into the case ; and the court may, thereupon, after taking such evidence, if any, as may be produced against or on behalf of the alleged offender and hearing his explanation, if any, make an order for the production by him before the inspector of all such books or papers within a date to be specified in the order or requiring such person to answer any question which may be put to him by the inspector." It is evident that, on the facts of the present case, the inspector could only certify the refusal of the appellant " to appear before him personally " and " to answer any question which is put to him ", and the Tribunal could only order the appearance of the appellant and require him " to answer any questions which may be put to him by the inspector." This is the limitation of the jurisdiction of the Tribunal. It could either direct the appellant to answer any questions put to him by the inspector or dismiss the application of the inspector with regard to any particular question or questions. But under this provision it has no jurisdiction to stop an investigation ordered by the Central Government u/s 235 of the Act. This court has no power to do so either, hearing an appeal from

an order of the Tribunal.

7. It has then been further contended by the learned counsel for the appellant that the Tribunal, in spite of the application of the appellant in this behalf, did not take any evidence in support of the position taken by the appellant in reply to the application of the inspector. When asked what possible type of evidence had the appellant in mind when making such an application, the learned counsel has, in the face of the vague allegations detailed above, had to fall back into saying that the appellant would have led evidence connected with the criminal case pending against him in the court of the District Magistrate, but the Tribunal could not be turned into something like a parallel court trying the same thing as the District Magistrate has to try in that case. This approach, on the facts, is entirely misconceived. In the face of the vagueness of the allegation on the side of the appellant that the questions which the inspector will put to him, without knowing what questions the inspector will put to him or what will be the trend of those questions, would be likely to incriminate him, it was quite impossible for the appellant to lead any evidence with regard to the same or for the Tribunal to permit the appellant to do so. The only manner in which evidence could have been attracted and, even for that matter sub-article (3) of article 20 could come into consideration, was to deal with specific and definite questions when put by the inspector to the appellant. As a question is put and if sub-article (3) of article 20 is attracted, an objection can be taken to a question and then the objection can be followed up. It has already been pointed out that the learned Additional Solicitor-General has said that the inspector will allow the facility of the presence of a legal adviser to the appellant to help him to know whether such an objection ought or ought not to be raised with regard to a particular question.

8. Another argument urged by the learned counsel on behalf of the appellant is that the inspector, Mr. R.R. Kini, is a legal adviser in the Company Law Administration, and it is against the principles of natural justice that an employee in the Company Law Administration and a legal adviser to the Registrar of Companies should be conducting the investigation. This is a rather astounding argument because all investigations are on the side of the Government, by and large conducted by Government officials or Government agencies and it is not clear how any principle of natural justice intervenes to stop such investigations. The argument is, to say the least, without any basis.

9. The last argument urged by the learned counsel is that while the notification appointed two Inspectors to carry on the investigation jointly or severally, but only one Inspector has done so, and that one Inspector could not conduct either the investigation or approach the Tribunal as he has done. The learned counsel is of the opinion that both the Inspectors must have acted in unison and as a body. This is obviously incorrect, for there would be no point in empowering them to carry out the investigation jointly and severally if every time they are compelled to sit jointly. The object of thus appointing two inspectors with power to conduct the investigation jointly and severally is apparent that each one of the inspectors

may be able to carry on a part of the investigation by himself on a particular aspect of the affairs of the company. So that nothing turns upon this argument.

10. There were, as stated, a number of other arguments before the Tribunal, none of which has been urged at the hearing here, and all the arguments that have been urged .have been found to be unsound and unsupportable. This appeal fails and is dismissed with costs.

Falshaw, C.J.

11. I agree.