

(2001) 07 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10025 of 2001

Vinedale Distilleries Limited and another

APPELLANT

Vs

Appellate Authority for Industrial and Financial
Reconstruction (AAIFR), New Delhi and others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18, 22

Citation : (2001) 5 ALD 434 : (2001) 4 ALT 619 : (2002) 108 CompCas 166

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : M/s V.R. Reddy for T. Surya Kiran and P. Venugopal, for the Appellant; M/s P. Chidambaram for Vilas Afzal Purkar, V. Srinivas, L. Narasimha Reddy and Rajiv Nayak, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners prays for issuance of a writ of certiorari calling for records relating to the order passed by the Board for Industrial and Financial Reconstruction (BIFR) in case No.70 of 1989, dated 23-2-2001 as confirmed by the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) in Case No.115 of 2001, dated 4-5-2001 and 25-5-2001 and set aside the same.

2. The first petitioner is a company registered under the Indian Companies Act, 1956 and is engaged in the business of manufacturing and sale of Indian Made Foreign Liquor (IMFL). The second petitioner is the Chairman of the company. The petitioner company approached the second respondent for rehabilitation under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA"). The BIFR vide proceedings dated 24-9-1991 sanctioned a scheme for revival of the petitioner company. The said scheme was under implementation. But on account of imposition of total prohibition in the State of Andhra Pradesh, the petitioner company had to wind up its commercial activities

from January, 1995 resulting in total collapse of the implementation of the scheme as approved by the second respondent-BIFR.

3. However, after partial lifting of the prohibition, the Commissioner of Excise renewed the licence under the provisions of the A.P. Excise Act, 1968 in June, 2000 pursuant to the directions of this Court obtained by the petitioner company.

4. It is the case of the petitioner Company that the management of the petitioner company sorted out all the pending issues including the one subsisting against the employees. It had worked out and arrived a tie up with UB group and has been working to its maximum capacity, ever since revival. There are about 400 employees working in the unit. The long pending issue of Dena Bank has also been settled with Dena Bank, by offering one time settlement offer of the management. The unsecured creditors are stated to have given consent to convert their unsecured loans to a tune of Rs.6.39 crores into preference shares. On account of the same, the net worth of the company has turned out to be positive. It is the specific case of the petitioner company that on account of conversion of net worth into positive, the petitioner company itself ceased to be a sick company within the meaning of SICA and as such the second respondent-BIFR has no jurisdiction to deal with the petitioner company under the provisions of SICA.

5. The sheet anchor of the case of the petitioner company is that it had filed a written application before the second respondent-BIFR explaining the existing position on 8-2-2001 and bringing it to its notice of the subsequent developments.

6. The second respondent-BIFR vide its order dated 23-2-2001 came to the conclusion that the company/promoters have failed to revive the company under the sanctioned scheme of 1991 and the proposal submitted by the petitioner company has not been tied up by them. The second respondent-BIFR having taken note of the fact that the case has been before the Board for more than ten years passed orders declaring the existing scheme sanctioned on 24-9-1991 to have failed. The operating Agency (IDBI) is directed to prepare a draft rehabilitation scheme on their own, restricting the reliefs/concessions from Financial Institutions/Banks strictly as per RBI guidelines and those from State Government, if any, strictly as per the standard package applicable to sick industrial companies. The scheme is directed to be prepared within a period of three weeks and the same could be made available to the intending bidders who would also be free to submit a revival proposal of their own in response to the advertisement issued by the Operating Agency (OA). The Operating Agency is accordingly directed to issue an advertisement by 15-3-2001 for change in management of the company inviting offers for takeover/leasing/ amalgamation/ merger for rehabilitation, with or without One Time Settlement (OTS) of the dues of Financial Institutions/ Bank, giving sixty days time for submission of offers upto 15-5-2001. The present promoters of the company were also permitted to submit an offer in response to the advertisement to be issued by the Operating

Agency. The Operating Agency is further directed to send an interim progress report to the Board after 15-5-2001 after evaluating the relative merits of the offers received pursuant to the advertisement issued by the OA. The second respondent-BIFR observed that if no concrete rehabilitation proposal with means of finance fully tied up is received pursuant to the advertisement to be issued by the OA, the Board may consider passing further appropriate orders which may include issue of a show-cause notice for winding up of the company.

7. The petitioner company challenged the said order before the first respondent-AAIFR. The appellate authority after an elaborate consideration of the matter concurred with the conclusions of the second respondent-BIFR and accordingly dismissed the appeal. Hence this writ petition.

8. Before we proceed to consider the rival contentions, it is expedient to first notice the scope of judicial review by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India in the matter of reviewing the orders of BIFR.

9. Re-appreciation of evidence by this Court is totally impermissible. This Court may have to judicially review the decision or the order as the case may be within the certiorari parameters. The Court would interfere only if it finds that the decision making process is vitiated by an error apparent on the face of the record. It is true as contended by Sri V.R. Reddy, learned senior Counsel appearing on behalf of the petitioners that this Court would certainly interfere if the findings and conclusions readied by the appellate authority (AAIFR) or BIFR are perverse. It is equally true that non-consideration of material evidence may vitiate the findings. This Court in a given case may direct the appellate authority (AAIFR) and BIFR as the case may be to reconsider the matter in accordance with law. But, as urged by Sri P. Chidambaram, learned senior Counsel appearing on behalf of the respondents, this Court in exercise of its judicial review jurisdiction would not substitute the findings for that of the quasi-judicial bodies who are entrusted with the duty to decide the matter under the provisions of SICA. Such a course is not permissible in law. By process of judicial review this Court cannot re-appreciate the evidence and record its own findings of fact.

10. In the instant case, it is nobody's case that the authorities below acted without jurisdiction. Of course, this Court may also interfere when an inferior Court or Tribunal acts illegally in exercise of its undoubted jurisdiction and when it decides without giving an opportunity to the parties of being heard. The jurisdiction of this Court is supervisory in nature and not appellate (See: Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, and State of West Bengal Vs. Atul Krishna Shaw and Another,).

11. The questions that fall for consideration may have to be considered in the aforesaid legal background.

12. Sri V.R. Reddy, learned senior Counsel would contend that the impugned order, which has the effect of changing the management of the petitioner

company, is contrary to the order passed by the Delhi High Court and confirmed by the Supreme Court, where under the petitioner has been appointed as Court Commissioner. The second respondent-BIFR could not have passed order displacing the petitioner from the management of the company without taking prior consent of the Delhi High Court or the Supreme Court as the case may be.

13. There appears to be a serious dispute between the third respondent Company and the second petitioner herein with regard to the acquisition of the entire equity holding of the first petitioner company. According to the third respondent, petitioner No.2 and his associates (Aggarwal Group) had entered into an arrangement with the third respondent and its associates for acquisition of the entire equity holding of Deccan Holding Pvt. Ltd., Deccan Securities Pvt. Ltd., Chamunda Investment Pvt. Ltd., and Yogeswar Investment Pvt. Ltd., (hereinafter referred to as Deccan Group) which held 100% shareholding of petitioner No. 1 from the Aggarwal Group for a consideration of Rs.1.40 crores. Thereafter, the Board of Directors of the said Deccan Group of companies was restructured and the former directors of the Deccan Group (petitioner No.2 and his nominees) resigned from the Board. Consequent upon the purchase of these Deccan Group of companies and since they controlled the 100% shares of petitioner No.1, the original share certificates of the company were handed over and continued to remain under the control of the third respondent. The Board of Directors of the first petitioner company was reconstituted on 26th December, 1992.

14. The Aggarwal Group denied and disputed the sale of the shares of the Deccan Group of Companies and as well as the validity of the meeting held on 26-12-1992. It is evident from the record that suits were filed by both the groups in Mumbai as well as Secunderabad, Andhra Pradesh in relation to the said dispute. Number of interlocutory orders were passed by the Courts at Mumbai and Secunderabad. Transfer applications were filed by both the groups in the Supreme Court and on 5-8-1994 the Supreme Court with the consent of the parties passed orders transferring all interlocutory applications to be heard and disposed of by a Division Bench of Delhi High Court.

15. The Delhi High Court after an elaborate consideration of the matter and having considered the question of balance of convenience, disposed of the interlocutory applications and appointed the Aggarwal Group of directors of Vinedale as Receiver and allow them to run the company and its factory "as representative of the Court and make them accountable to the Court as Receiver" subject to various terms and conditions. The Delhi High Court noticed the hurdle for appointing any Receiver in view of Section 22 of SICA. Section 22 of SICA requires sanction of the BIFR. In the circumstances, the Court proposed to await the sanction of BIFR and for the purpose of enabling the BIFR to pass appropriate orders indicated as to the proposed order to be passed after receiving the sanction of BIFR. It is specifically observed by the Delhi High Court that the nominee of the BIFR on the Board shall also continue till such time as

the BIFR would want him to continue. The Aggarwal Group of Directors were made answerable to the Court for their actions and omissions. The Court reserved its power to issue directions to the Receivers for implementing the scheme/orders of the BIFR/AAIFR. The Court in the process made a significant observation to the following effect:

"This Court does not intend to do anything which will conflict with the powers of the BIFR/AATFR".

16. It is further required to notice that the Delhi High Court directed the Aggarwal Group not to enter into any agreement of sale or any transfer or encumber immovable properties of the Vinedale or of the four investment companies without the sanction of the Court.

17. Both the parties carried the matter to the Supreme Court. The Supreme Court disposed of the petitions directing the Aggarwal group to be treated as "Court Commissioner" instead of "Receiver". The Supreme Court also clarified that the Aggarwal Group shall not create any third party rights in respect of the property of Vinedale nor transfer the shares or create any encumbrance without the sanction of the High Court.

18. It is required to notice that the suits by and between the parties pending on the file of the Delhi High Court have nothing to do with the proceedings on the file of the BIFR. Neither the proceedings nor the orders passed by the Delhi High Court would in any manner effect the jurisdiction of the BIFR under the provisions of SICA to pass appropriate orders u/s 18 of SICA. In the order itself, the Delhi High Court made it absolutely clear that the Court would entitle to issue directions to the Receiver for implementing the scheme/orders of BIFR/ AAIFR and further observed that the Court does not intend to do anything, which will conflict with the powers of the BIFR/ AAIFR.

19. It is thus absolutely clear that the order passed by the Delhi High Court in no manner would effect the jurisdiction of the BIFR to pass appropriate orders u/s 18 of SICA. In fact, the order appointing the Aggarwal Group as Court Commissioner itself was subject to requisite sanction from the BIFR.

20. The Aggarwal Group cannot be considered to be in the management of the company on its own. It is continuing in the management of the affairs of the company as Court Commissioner. The Court Commissioner so appointed by the Delhi High Court cannot claim any immunity whatsoever from the provisions of SICA. The BIFR continues to have its jurisdiction in the matter to pass appropriate orders. There is no order as such interdicting the BIFR from passing appropriate orders. In the circumstances, it is difficult to accept the submission made on behalf of the petitioners. The orders passed by the BIFR and confirmed in the appeal, in my considered opinion, do not run counter to the order passed by the Delhi High Court. The nature and scope of enquiry in the pending suits by and between the parties before the Delhi High Court and the proceedings before the BIFR are totally different. The BIFR's jurisdiction to pass appropriate orders

in exercise of its power u/s 18 of SICA is in no manner effected by the orders of the Delhi High Court. The order passed by the BIFR and confirmed in the appeal by the AAIFR cannot be set aside on the ground that it interferes with the orders passed by the Delhi High Court.

21. The learned senior Counsel further submits that the petitioners filed a written application before the BIFR on 8-2-2001 contending that the first petitioner company ceased to be a sick company within the purview of SICA and as such BIFR has no jurisdiction to deal with the said company under the provisions of SICA. But the BIFR failed to take the written application dated 8-2-2001 on record and proceeded further totally ignoring the same. The order, according to the learned senior Counsel, suffers from an error apparent on the face of the record. Non-consideration of the relevant material made available by the petitioners would vitiate the whole of the order. It is contended that the AAIFR, which heard the appeal on 4-5-2001, also overlooked and ignored the application dated 8-2-2001 filed by the petitioners and disposed of the appeal by one line order, of course, supplementing the reasons thereafter.

22. It is the case of the petitioners that the rehabilitation scheme formulated by the Operating Agency could not be effectively implemented due to imposition of total prohibition by the Government of Andhra Pradesh and after extensive efforts secured renewal of licence by June, 2000 after lifting the prohibition in the State of Andhra Pradesh. The industry was revived. The management of the company sorted out all the pending issues including the one subsisting against its own employees. The management had worked out and arrived a tie up with UB group and has been working to its maximum capacity ever since its revival. 400 employees continue to work in the unit. Long pending issue of Dena Bank has also been settled by offering one time settlement. The industrial unit which is situated in 64 acres of land has been rejuvenated and has been functioning to its brim. It is also submitted that the unsecured creditors gave their consent to convert their unsecured loans to a tune of Rs.6.39 crores into preference shares and accordingly the net worth of the company has turned out to be positive obliterating the sickness of the company. The company ceased to be a sick company.

23. It is required to notice that the said unsecured creditors are not impleaded as parties in this writ petition. However, the attempt of issuing preference shares to the unsecured creditors could not be implemented as the extraordinary General Meeting called by the Aggarwal Group was stayed by the Delhi High Court vide its order dated 27-2-2001. In the circumstances, the Court cannot proceed on the assumption that the company ceased to be a sick company for the reason that the unsecured creditors have agreed to convert their unsecured loans into preference shares.

24. There is nothing on record to show that Dena Bank in no manner amicably agreed to settle the dispute with the petitioner management. In such view of the matter, non-consideration of the application dated 8-2-2001 itself has not

resulted in any material irregularity. On that count, the order passed by the BIFR cannot be said to be vitiated by any error apparent on the face of the record.

25. Another question that falls for consideration is as to whether the impugned order passed by the BIFR as confirmed in appeal by the AAIFR suffers from any perversity?

26. The BIFR having taken note of the fact that the company/promoters have failed to revive the company under the sanctioned scheme of 1991 and that the proposal submitted by the company has not been tied up by them and also in view of the fact that the case has been before the Board for more than ten years, thought it fit to appoint the IDBI as Operating Agency. The Operating Agency was directed to prepare a Draft Rehabilitation Scheme on their own, restricting the reliefs/ concessions from Financial Institutions/ Banks strictly as per RBI guidelines and as per the standard package applicable to sick industrial companies. The Scheme was directed to be prepared by the Operating Agency within a period of three weeks making it available to the intending bidders who would also be free to submit a revival proposal of their own in response to the advertisement issued by the Operating Agency. The Operating Agency was accordingly directed to issue an advertisement for change in management of the company inviting offers for takeover/ leasing/amalgamation/merger for rehabilitation, with or without. One Time Settlement of the dues of Financial Institutions/Bank. The present promoters were also entitled to submit an offer in response to the advertisement issued by the Operating Agency. The BIFR further held that if no concrete rehabilitation proposal with means of finance fully tied up is received in response to the advertisement issued by the Operating Agency, the Board may consider passing further appropriate orders which may include issue of a show-cause notice for winding up of the company.

27. The BIFR took into consideration every conceivable aspect of the matter while reviewing the sanctioned scheme. The Board heard the matter elaborately on 19-1-2001. Elaborate submissions were made and the minutes were accordingly recorded reflecting the submissions.

28. The Board noticed that the sanctioned scheme was implemented only partially as Dena Bank did not release the assistance of Rs.2.66 crores as part of the means of finance to meet the cost of the sanctioned rehabilitation scheme. The revised proposal submitted by the company on 16-2-1998 was also taken into consideration. The BIFR observed that a joint meeting was held on 9-2-1999 when the Dena Bank refused to increase its exposure and grant term loan/ working capital; likewise the Commercial Tax Department refused to reschedule the arrears of sales tax dues. The Board noticed that the accumulated losses were Rs.552 lakhs as against the projected level of Rs.79 lakhs. It is under those circumstances, the Board came to the conclusion that the company/promoters have failed to revive the company under the sanctioned scheme of 1991 and the proposal submitted has not been tied up by them. It is under those circumstances, the impugned order has been passed.

29. The appellate authority having re-appreciated the entire material available on record concurred with the findings of the BIFR. In my considered opinion, such concurrent findings of fact cannot be interfered with by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The order cannot be characterised as a perverted one. The order is not based upon any surmises. It is not possible for this Court to substitute the findings for that of the primary authority and appellate authority.

30. The appellate authority rightly noticed that the only banker of the company, that is to say, Dena Bank has declined to extend further financial help, as the dues were not paid as per the sanctioned scheme. The appellate authority also noticed the outstanding liabilities of the company. The overall circumstances have been taken into consideration. The appellate authority is right in observing that the proceedings are not to be allowed to be used as dilatory tactics to prevent rehabilitation of the sick company. The appellate authority relied upon the observations made by the Supreme Court time and again that the proceedings under SICA should be expeditiously completed within the time frame, to avoid needless accumulation of losses by the company and the loss of revenue to the State. The appellate authority rightly observed that non-utilisation of productive assets of the company will further give a death-blow to the company.

31. In the affidavit filed in support of the writ petition certain allegations of bias are made against BIFR. The learned senior Counsel Sri V.R. Reddy did not seriously press those allegations and rightly so in my considered opinion. There is absolutely nothing on record to suggest that the BIFR acted in any biased manner. Adequate opportunity has been provided to all the concerned by the BIFR before passing the impugned order. This Court does not exercise any appellate jurisdiction over the BIFR and AAIFR. The decision making process is not at all vitiated. The whole of the record and the proceedings undoubtedly would reveal the attempts being made by the petitioners from time to time to drag on the proceedings so as to perpetuate themselves in the management of the company. The writ petition is speculative in its nature.

32. For all the aforesaid reasons, I do not find any merit in this writ petition. The same shall accordingly stand dismissed. There shall be no order as to costs.

33. Consequently, the interim order earlier granted by this Court shall stand vacated.