Mahanagar Telephone Nigam Ltd vs Chairman Central Board Direct Taxes And ... on 7 May, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2434, 2004 (6) SCC 431, 2004 AIR SCW 2934, 2004 (2) ALL CJ 2028, 2004 (4) SLT 43, 2004 (6) ACE 19, 2004 (5) SCALE 705, 2004 ALL CJ 2 2028, (2004) 137 TAXMAN 242, (2004) 4 SUPREME 240, (2004) 5 SCALE 705, (2004) 168 ELT 147, (2004) 4 MAD LW 269, (2004) 3 PAT LJR 269, (2004) 181 TAXATION 394, (2004) 3 JLJR 160, (2004) 267 ITR 647, (2004) 18 INDLD 166

Bench: S.N. Variava, H.K. Sema

CASE NO.:
Appeal (civil) 3058 of 2004

PETITIONER:
MAHANAGAR TELEPHONE NIGAM LTD.

RESPONDENT:
CHAIRMAN CENTRAL BOARD DIRECT TAXES AND ANR.

DATE OF JUDGMENT: 07/05/2004

BENCH:
S.N. VARIAVA & H.K. SEMA

JUDGMENT:

JUDGMENT 2004 Supp(2) SCR 593 The Order of the Court was as follows :

Leave granted.

This Appeal is against the Judgment dated 24th August, 2000.

Mr. Rohatgi has raised a preliminary objection to the Special Leave Petition being proceeded with by this Court. He submits that this Court has, in the case of Oil and Natural Gas Commission vs. Collector of Central Excise reported in 1995 (4) Supp(SCC) 541, held that in every case where a dispute is between Government Departments and/or between a Government Department and a Public Sector Undertaking, the matter should be referred to the High Powered Committee established by the Government pursuant to an order of this Court dated 11th September, 1991. He pointed out that it has been held by this Court that it is the duty of every Court or Tribunal to demand clearance from the Committee and that in the absence of clearance the proceedings must not be proceeded with.

Mr. Rohatgi also relied upon the case of C.C.E. vs. Jeesop and Co. Ltd. reported in 1999 (9) SCC 181, wherein this Court has again disposed of an Appeal filed by the Collector of Central Excise against two public sector companies by holding that the course indicated in Oil and Natural Gas Commission's case (supra) has to be followed. He also relied on a decision of this Court in the case of Canara Bank vs. National Thermal Power Corporation reported in 2001 (1) SCC 43, wherein it has been held that the purpose of the directions in Oil and Natural Gas Commission's case (supra) is to see that frivolous litigation between Government Departments and Public Sector Undertakings should not be dragged on in the Courts. He also relied upon the case of Chief Conservator of Forests vs. Collector reported in 2003 (3) SCC 472, wherein it is held as follows:

"14. Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or the C.P.C. that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and Union of India, this Court in Oil and Natural Gas Commission v. CCE (1992 Suppl. (2) SCC 432) called upon the Cabinet Secretary to handle such matters. In Oil and Natural Gas Commission & Anr. v. CCE (1995 Suppl. (4) SCC 541), this Court directed the Central Government to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

> 15. The facts of this appeal, noticed above, make out a strong case that there is a felt need of setting up of similar committees by the State Government also to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a Committee consisting of the Chief Secretary of the State, the Secretaries of the departments concerned, the Secretary of Law and where financial commitments are involved, the Secretary of finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the stand of the Government."

Mr. Rohatgi pointed that in this case the dispute had been referred to the High Court Committee and the Committee has decided as follows:

> "The Committee having regard to the fact that Mahanagar Telephone Nigam Ltd. was contemplating writ petition against show-cause-notice advised Mahanagar Telephone Nigam Ltd. to await appealable order. The Committee accordingly, did not permit to file writ petition in the High Court at this stage."

He submitted that the Appellants were bound to comply with the decision of the High Powered Committee and await an appealable Order. Mr. Rohatgi pointed out that by an interim order dated 8th May, 2002 this Court has allowed the proceedings, pursuant to the show-cause-notice, to proceed but this Court has directed that no final Orders be passed. He submitted that this Court should now permit the final Order to be passed and the Appellants can then have their remedy against the final Order.

As against this, Mr. Andhyarujina submitted that every citizen of this country, including a Public Sector Body, has a right to agitate its grievances in a Court of law. He submitted that if the fundamental rights of a Corporation, even though it be a Public Sector Undertaking, are affected, then the Body cannot be prevented from agitating its rights in a Court of law. He submitted that the Order of this Court in Oil and Natural Gas Commission's case (supra) only ensures that disputes between the Government Departments and/or Public Sector Bodies first go for conciliation by the High Powered Committee. He submitted that the intention was not and could not be that the Body/Department be precluded from approaching a Court of law for enforcing its rights. Mr. Andhyarujina submitted that it has been so clarified by this Court in the case of Oil and Natural Gas Commission vs. Collector of Central Excise reported in 1994 (70) ELT 45 (SC). He strongly relies upon Para 4 of this Judgment which reads as follows:

> "4. There are some doubts and problems that have arisen in the working out of these arrangements which require to be clarified and some crease ironed out. Some doubts persist as to the precise import and implications of the words and recourse to litigation should be avoided. It is clear that order of this court is not to effect that --- nor can that be done --- so far as Union of India and its statutory corporations are concerned, the statutory remedies are effaced. Indeed, the purpose of the constitution of the High Power Committee was not to take away those remedies. The relevant portion of the order reads:

> "We direct that the Government of India shall set up a Committee consisting representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India; Ministry and Public Sector Undertaking of the Government of India and Public Sector Undertakings in between themselves to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior Officers only should be nominated so that the Committee would function with status, control and discipline."

It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house Committee."

Mr. Andhyarujina submitted that this Court has thus clarified that the statutory remedies are not to be effaced and that the only purpose is to ensure that the parties first attempt conciliation before the High Powered Committee. He submitted that if the High Powered Committee cannot resolve the dispute then it must grant leave to approach a Court of law. He submitted that otherwise valuable rights of the Public Sector Undertaking/Department, to approach a Court of law, would be effaced and the party would be left remedyless.

We have heard the parties.

Undoubtedly, the right to enforce a right in a Court of law cannot be effaced. However, it must be remembered that Courts are overburdened with a large number of cases. The majority of such cases pertain to Government Departments and/or Public Sector Undertakings. As is stated in Chief Conservator of Forests' case (supra) it was not contemplated by the framers of the Constitution or C.P.C. that two departments of a State or Union of India and/or a department of the Government and a Public Sector Undertaking fight a litigation in a Court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in co-ordination and not confrontation. The mechanism set up by this Court is not as suggested by Mr. Andhyarujina only to conciliate between the Government Departments. It is also set up for purposes of ensuring that frivolous disputes do not come before Courts without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However there could also be frivolous litigation proposed by a department of the Government or a Public Sector Undertaking. This could be prevented by the High Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the Department/Public Sector Undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to Court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will

be fair and honest. Even if the Department/Public Sector Undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done.

In this case this is absolutely what has happened. The Appellants wanted to approach the Court only against a show-cause-notice. It is settled law that against a show-cause-notice litigation should not be encouraged. The decision of the High Powered Committee, set out hereinabove, merely emphasizes the well settled position. It is an eminently fair and correct decision. The purpose of the decision was to prevent frivolous litigation. No right of the Appellants is being affected. It has been clarified that the Appellants could move a Court of law against an appealable order. By not maintaining discipline and abiding by the decision the Appellants have wasted public money and time of the Courts. The clarificatory order, relied upon by Mr. Andhyarujina, clarifies in Para 5 as to what is to happen if clearance is not given by the Committee. It is set out that in the absence of the clearance the proceedings must not be proceeded with. This position is further clarified in Chief Conservator of Forests' case (supra) where again this Court has held that the decision taken by such a Committee is binding on all Departments concerned and it is the stand of the Government.

In view of this settled law, which is binding on us, we hold that as clearance has not been given to the Appellants these proceedings cannot be proceeded with. The High Court was wrong in dealing with the merits of the matter. We, therefore, do not examine whether the High Court was right on merits. The Appeal accordingly stands disposed of with no order as to costs.

We clarify that the Respondents are now free to pass the Order. However, any observation/finding given by the High Court, on merits, will not be used or taken into consideration. The Appellants will be at liberty to pursue their legal remedy against that Order in case they are affected by that Order.