

Doburg Lager Breweries Pvt. Ltd vs Dhariwal Bottle Trading Co. & Anr on 14 March, 1986

Equivalent citations: 1986 AIR 1547, 1986 SCR (1) 841, AIR 1986 SUPREME COURT 1547, 1986 (11) COM NR 593, 1986 UJ (SC) 566, (1986) MAHLR 718, 1986 (2) SCC 382, (1986) 2 SUPREME 222, (1986) 60 COMCAS 1028, (1986) 2 COMLJ 119, 1986 BOM LR 88 338

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, M.P. Thakkar

PETITIONER:

DOBURG LAGER BREWERIES PVT. LTD.

Vs.

RESPONDENT:

DHARIWAL BOTTLE TRADING CO. & ANR.

DATE OF JUDGMENT 14/03/1986

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

THAKKAR, M.P. (J)

CITATION:

1986 AIR 1547

1986 SCR (1) 841

1986 SCC (2) 382

1986 SCALE (1) 388

ACT:

Bombay Relief Undertakings (Special Provisions) Act, 1958, ss. 3 and 4 - Declaring an industrial undertaking as a "relief undertaking" - Whether grant of loan under the Act is a condition precedent - Whether s. 3 is controlled by the Preamble to the Act.

HEADNOTE:

The appellant, a private limited company, carrying on business in a backward area of the State, had employed about 200 workmen. It had borrowed about Rs.52.30 lakhs from the State Industrial and Investment Corporation of Maharashtra Limited (SICOM). It ran into financial difficulties as a result of which winding up proceedings were commenced

against it by a creditor, respondent No.1 in the year 1982. Taking into consideration the financial position of the appellant-company and the consequences that were likely to ensue if the industry was to be closed, the State issued a notification under section 3 and sub-clause (iv) of clause (a) of sub-section (1) of section 4 of the Bombay Relief Undertakings (Special Provisions) Act, 1958 declaring it as a relief undertaking and directing that any right, privilege, obligation or liability accrued or incurred by the appellant-company (except those mentioned in the Notification) before it was declared a relief undertaking and any remedy for the enforcement thereof became suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority came to be stayed automatically. Consequently, the Company Judge of the High Court stayed the proceedings in the winding up petition. The Division Bench also confirmed the order of the Company Judge in appeal. The State Government also issued subsequent notifications on May 9, 1984, May 10, 1985 and November 8, 1985 for the same purpose and pursuant to the resolution of SICOM dated February 17, 1984 another loan of Rs.15 lakhs was advanced to the appellant-company by the State Government through SICOM.

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Respondent No.1 then filed a writ petition in July 1984 in the High Court challenging the aforesaid Notifications. The learned Single Judge allowed the writ petition and quashed the Notifications on the ground that in order to invoke the powers under section 3(1) of the Act, the condition precedent was that the State Government must have provided under the Act, loan guarantee and other financial assistance to the undertaking as a measure preventing unemployment relief as per the Preamble of the Act and since it had not been established that Rs.52.30 lakhs had been lent by SICOM under the Act as a measure of preventing unemployment or employment relief, the Notification dated November 10, 1983 was ultra vires the Act and that the advance of Rs.15 lakhs by the State Government before May 9, 1984 did not cure the defect. The appellant-company filed an appeal against the order of the learned Single Judge and the same was dismissed by the Division Bench in limine.

Allowing the appeal,

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HELD: 1. The decision of the High Court that unless loan is advanced by the State Government under the Act no declaration can be made under section 3 of the Act is wholly erroneous. It is not warranted by the provisions of the statute. The case is remanded to the High Court to consider the other contentions of the parties. [854 A; 853 H]

2. The whole object of the Act is to subserve the public interest and in particular to prevent unemployment or to grant unemployment relief. Section 3 of the Act which is a self-contained one refers to the industrial undertakings

in respect of which a declaration may be made under it. It is not controlled by the Preamble to the Act. An industrial undertaking which may be declared as a relief undertaking under sec. 3 may be of two kinds. It may be an industrial undertaking started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by the State Government or under its authority. It may also be an industrial undertaking to which any loan, guarantee or other financial assistance has been provided by the State Government. There should be a declaration that an industrial undertaking of either kind should be conducted to serve as a measure of preventing unemployment or an unemployment relief.

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Then such an undertaking will be deemed to be a relief undertaking for the purposes of the Act. The consequences of such declaration are contained in section 4 of the Act, one of them being that the State Government gets the power to direct that notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever any right, privilege, obligation or liability accrued or incurred before the undertaking was declared as 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. A notification issued under sub-section (1) of section 3 is renewable by like notification from time to time for further periods not exceeding twelve months at a time, so however that all the periods the aggregate do not exceed fifteen years. [851 F-H; 852 A-D]

3. A distinction has been made in the Act between cases falling under sub-clause (ii) of clause (a) of sub-section (1) of section 4 of the Act and cases falling under sub-clause (iv) of clause (a) of sub-section (1) of section 4 of the Act. Sub-clause (ii) of section 4(1)(a) of the Act refers to the agreements, settlements, awards, standing orders made under the several labour laws mentioned under the Schedule to the Act and states that agreements etc. which may be applicable to a relief undertaking 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 may 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 issued for the said purpose. In this case the Act seems to resolve a likely value-conflict between loans given for running the industry as a relief undertaking and the rights of workmen under the agreements, awards etc. under the labour laws in the Schedule. This sub-clause does not have anything to do with sub-clause (iv) of section 4(1)(a) under which the case of a

creditor like respondent No.1 falls. Another distinction which may be noticed is the difference between the language in sub-clause (ii) of section 4(1)(a) and in section 3. The former contains these words 'before any loan, guarantee or other financial assistance was provided to it by or with the

844 approval of the State Government for being run as a relief undertaking' (emphasis added). In section 3, the words are "or to which any loan, guarantee, or other financial assistance has been provided by the State Government shall with effect from..... be conducted to serve as a measure or of unemployment relief." (emphasis added). The only precondition for the exercise of the power under section 3 is that loan must have been advanced prior to the date of notification and it must still be outstanding on that day. This is what leaps to the eyes effortlessly on the mere opening of the eyes. On the other hand, section 3 does not say expressly or by implication "a loan etc. is given for being run as a relief undertaking under this Act." [852 H; 853 A-G]

In the instant case, the State of Maharashtra had provided through SICOM which is virtually an agent of the State Rs. 52.30 lakhs by way of an advance to the appellant-company before the first notification was issued, and at any rate before the second notification was issued the State Government itself had advanced Rs. 15 lakhs in addition to what SICOM had advanced earlier. Hence the industry of the appellant-company was one to which any loan, guarantee or other financial assistance had been provided in the State Government. There is no provision in the Act requiring that any such loan should be granted under it before a declaration may be made under section 3(1) thereof. [852 E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 932 of 1986.

From the Judgment and Order dated 21.1.1986 of the Bombay High Court in Appeal No. 28 of 1986.

Dr. Y.S. Chitale and Mukul Mudgal for the Appellant. K. Rajendra Choudhary for the Respondents. The Judgment of the Court was delivered by VENKATARAMIAH, J. At the conclusion of the hearing of the above appeal on March 10, 1986 we passed the following order in the above appeal and the connected special leave petition:

"Special leave granted. We do not agree with the view of the High Court that the loan in question should have been advanced under the Act in order to attract the provisions of sections 3 and 4 of the Bombay Relief Undertakings (Special

Provisions) Act, 1958. The judgment of the learned Single Judge and of the Division Bench of the High Court are set aside and the case is remanded to the learned Single Judge to consider the submissions to be made on other points involved in this case. It is open to the Union which has filed Special Leave Petition No. 3428 of 1986 to apply to the High Court for being impleaded and the High Court on such application being made will consider it in accordance with law. The appeal and Special Leave Petition No. 3428 of 1986 are disposed of accordingly. There is no order as to costs.

Reasons follow."

We are quite unhappy with the order of the Bombay High Court against which this appeal is filed. The grounds urged in support of the writ petition were fallacious, the reasons given by the learned Single Judge for allowing it were faulty and the order of dismissal of the appeal in limine passed by the Division Bench exhibits indifference. Courts are expected to show more concern and to give greater attention before quashing a statutory instrument made or issued under a beneficent legislation intended to prevent large scale unemployment and misery than what is shown by the High Court in this case.

The facts of the case are these. The appellant herein is a private limited company and has been carrying on business in the State of Maharashtra. It ran into financial difficulties as a result of which winding-up proceedings were commenced against it. M/s. Dhariwal Bottle Trading Co., respondent No.1 herein, which is a partnership firm filed Company Petition No. 119 of 1982 as a creditor for winding-up of the appellant company. The appellant company was carrying on business in a backward area of the State of Maharashtra. It had employed about 200 workmen who were likely to be thrown out of employment. The appellant company had also borrowed about Rs.52,30,000 from the State Industrial and Investment Corporation of Maharashtra Ltd. (SICOM). Taking into consideration the financial position of the appellant company, and the consequences that were likely to ensue if the industry which was being run by it was to be closed, the Government of Maharashtra took action under the Bombay Relief Undertakings (Special Provisions) Act, 1958 (hereinafter referred to as 'the Act') by declaring it as a relief undertaking with effect from November 10, 1983 by its notification issued on November 10, 1983 under section 3 and sub-clause (iv) of clause (a) of sub-section (1) of section 4 of the Act. The notification reads thus:

"NOTIFICATION Industries, Energy and Labour Department, Mantralaya, Bombay 400032, Dated the 10th day of November, 1983. No BRU-1083/(9602)/IND-10. 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 Bombay Relief Undertakings (Special Provisions) Act, 1958 (Bom. XCVI of 1958), the Government of Maharashtra, hereby-

(a) declares that the industrial undertaking called "M/s. Doburg Lager Breweries (P) Ltd., Bombay" (hereinafter referred to as "the said relief undertaking") to which State Industrial and Investment Corporation Maharashtra Ltd., has provided a loan of Rs. 52.30 lakhs, shall for a period of 6 months commencing from 10th day of November, 1983 be conducted to serve as a measure of unemployment relief; and

(b) directs that in relation to the said relief undertaking and in respect of the said period for which the said relief undertaking continues as such, any right, privilege, obligation or liability (excepting the obligations or liabilities incurred in favour of workmen of the said relief undertaking or in favour of the industrial units which are registered as small scale industrial units with the Directorate of Industries of the Government of Maharashtra, the Maharashtra State Electricity Board, the State Industrial and Investment Corporation of Maharashtra Limited, the Maharashtra State Financial Corporation, Bank of Maharashtra, Vijaya Bank, Bank of India, Industrial Development Bank of India, Industrial Finance Corporation of India and Industrial Credit and Investment Corporation of India and the dues of the Employees' State Insurance Corporation, and any liability incurred under the Bombay Sales Tax Act, 1959 (Bom. LI of 1959), the Maharashtra State Tax on Professions, Trades, Calling and Employments Act, 1975 (Mah. XVI of 1975), and the Employees' Provident Fund and Miscellaneous Provision Act, 1952 (19 of 1952), accrued or incurred before the 10th day of November 1983 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.

By order and in the name of the Governor of Maharashtra.

P.L. Sawai, Desk Officer, Industries, Energy & Labour Department"

The above notification was to be effective for a period of six months at the first instance.

Section 3 and the relevant part of section 4 of the Act read as follows :

"3.(i) If at any time it appears to the State Government necessary to do so, the State Government may, by notification in the Official Gazette, declare that an industrial undertaking specified in the notification, whether 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, or to which any loan, guarantee or other financial assistance has been provided by the State Government shall, with effect from the date specified for the purpose in the notification be conducted to serve as a measure of preventing unemployment or of unemployment relief and the undertaking shall accordingly be deemed to be a relief undertaking for the purposes of the Act.

(2) A notification under sub-section (1) shall have effect for such period not exceeding twelve months as may be specified in the notification;

but it shall be renewable by like notifications from time to time for further periods not exceeding twelve months at a time, so however that all the periods in the aggregate do not exceed fifteen years.

4.(1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provisions 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 -

.....

(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;

....."

The effect of the above mentioned notification dated November 10, 1983 was that any right, privilege, obligation or liability accrued or incurred by the appellant company (except those mentioned therein) before it was declared a relief undertaking and any remedy for the enforcement thereof became suspended and all proceedings relative thereto pending before any Court, tribunal, officer or authority came to be stayed automatically. Consequently the proceedings in the winding-up petition (Company Petition No. 119 of 1982) filed by the Ist respondent against the appellant company were also stayed by the Company Judge of the High Court. Against his order an appeal was filed before the Division Bench and that appeal was dismissed. The order of stay thus became final. Having failed in its attempt to get the order of stay vacated, the respondent No. 1 apparently in order to coerce the appellant filed a writ petition, being Writ Petition No. 1552 of 1984 out of which this appeal arises on the file of the Bombay High Court challenging the notification issued under sections 3 and 4 of the Act and subsequent notifications which had been issued from time to time on May 9, 1984, May 10, 1985 and November 8, 1986 for the same purpose. It may be stated here that even today the last of the notifications that is the one issued on November 8, 1985 under those provisions is in force. It should also be stated here that pursuant to the resolution of SICOM dated February 17, 1984, another loan of Rs. 15,00,000 was advanced to the appellant company by the State Government through SICOM. The notification dated May 9, 1984 recites that Rs.15,00,000 had been so advanced. It says that the State Government had provided the said loan under a package scheme of incentives through SICOM and the said recital is repeated in each of the subsequent notifications. Everyone of them contains a declaration in terms of section 3 and a direction under section 4(1)(a)(iv) of the Act as stated above. Each one of them can stand by itself though they refer to the fact that the undertaking is having the protection with effect from November 10, 1983, that is from the date of the first notification, as that date becomes relevant for purposes of computing the aggregate period under section 3(2) of the Act.

The Writ Petition was allowed by the learned Single Judge with costs and the notifications were quashed. An appeal filed by the appellant company against the order of the learned Single Judge was dismissed by the Division Bench in limine. The order of the Division Bench ran as follows:

"Heard both sides. Stay to continue for four weeks. Dismissed."

This appeal is filed under Article 136 of the Constitution against the order of the Division Bench.

The writ petition was filed in July 1984 after the State Government had issued the notification dated May 9, 1984 containing the statement that the State Government had advanced an additional loan of Rs.15,00,000 to the appellant company. The contention urged on behalf of the respondent No.1 (the petitioner in the writ petition) may be stated in the language of the learned Single Judge himself, thus : "5. Shri Cooper, learned counsel appearing for the petitioners while attacking the notification dated November 10, 1983 being illegal and contrary to section 3 of the Act urged that the said Notification does not fulfil the condition precedent prescribed under section 3 of the Act viz. 'giving a financial assistance to a sick unit like the respondent No.2 herein under the Act before issuing such notification. According to the learned counsel before issuance of the notification under section 3(1) of the Act the Government must have given under that provision any loan, guarantee or other financial assistance. He further submitted that no financial assistance and/or loan and/or guarantee has been provided by the State Government under the Act before issuing the notification dated November 10, 1983, and, therefore, the impugned Notification is contrary to section 3(1) of the Act."

(emphasis added) Having set out the contention of the respondent No.1 the learned Single Judge assumed for purposes of the case that SICOM was 'the State' within the meaning of Article 12 of the Constitution. Then he proceeded to observe that Rs.52.30 lakhs had been advanced by SICOM as loan not "under this Act", but it was only an ordinary commercial transaction. Then he held that in order to invoke the powers under section 3(1) of the Act, the condition precedent was that the State Government must have provided under the Act loan, guarantee and other financial assistance to the undertaking as a measure preventing unemployment relief as per the Preamble of the Act and since it had not been established that Rs.52.30 lakhs had been lent by SICOM under the Act as a measure of preventing unemployment or unemployment relief, the notification dated November 10, 1983 was ultra vires the Act. He further held that the advance of Rs.15,00,000 by the State Government before May 9, 1984 did not cure the defect. He was of the opinion that the subsequent notifications having been issued in continuation of the first notification were equally ineffective. The petition thus came to be allowed and the appellant company lost the protection granted to it by the Act. Since the Division Bench has not given any reasons for its order we need not refer to it in greater detail.

The Act contains just four sections in addition to its long-title and the Preamble. The Preamble reads :

"WHEREAS it is expedient to make temporary provision 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; It is hereby enacted in the Ninth Year of the Republic of India as follows ;-"

Section 1 of the Act sets out the short title of the Act and the extent of its application. Section 2 of the Act defines 'industry' and 'relief undertaking'. 'Relief undertaking' means an industrial undertaking

in respect of which a declaration under section 3 is in force. Section 3 of the Act and the material part of section 4 have already been set out above. Section 3 which is a self-contained one refers to the industrial undertakings in respect of which a declaration may be made under it. It is not controlled by the Preamble to the Act. An industrial undertaking which may be declared as a relief undertaking under section 3 may be of two kinds. It may be an industrial undertaking started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by the State Government or under its authority. It may also be an industrial undertaking to which any loan, guarantee or other financial assistance has been provided by the State Government. There should be a declaration that an industrial undertaking of either kind should be conducted to serve as a measure of preventing unemployment or an unemployment relief. Then such an undertaking will be deemed to be a relief undertaking for the purposes of the Act. The consequences of such declaration are contained in section 4 of the Act one of them being that the State Government gets the power to direct that notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever any right, privilege, obligation, or liability accrued or incurred before the undertaking was declared as 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. A notification issued under sub-section (1) of section 3 is renewable by like notification from time to time for further periods not exceeding twelve months at a time, so however that all the periods the aggregate do not exceed fifteen years. It is seen that the whole object of the Act is to subserve the public interest and in particular to prevent unemployment or to grant unemployment relief.

In the instant case the State of Maharashtra had provided through SICOM which is virtually an agent of the State Rs.52.30 lakhs by way of an advance to the appellant company before the first notification was issued and at any rate before the second notification was issued the State Government itself had advanced Rs. 15,00,000 in addition to what SICOM had advanced earlier. Hence the industry of the appellant company was one to which any loan, guarantee or other financial assistance had been provided by the State Government. It is not clear how the High Court came to the conclusion that such loan should have been granted "under" the Act. There is no provision in the Act requiring that any such loan should be granted under it before a declaration may be made under section 3(1) thereof. If any such loan is granted by the State Government to an industrial undertaking or guarantee or other financial assistance is given then it may be declared as a relief undertaking. The conclusion of the High Court is not, therefore, warranted by the provisions of the statute.

It may also be noticed that a distinction has been made in the Act between cases falling under sub-clause (ii) of clause (a) of sub-section (1) of section 4 of the Act and cases falling under sub-clause (iv) of clause (a) of sub-section (1) of section 4 of the Act. Sub-clause (ii) of section 4(1)(a) of the Act refers to the agreements, settlements, awards, standing orders made under the several labour laws mentioned under the Schedule to the Act and states that agreements etc. which may be applicable to a relief undertaking 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 may 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 issued for the said purpose. In this case the Act seems to resolve a likely value conflict between loans given for running the industry as a relief undertaking and the rights of workmen under the agreements, awards etc. under the labour laws in the Schedule. This sub-clause does not have anything to do with sub-clause (iv) of section 4(1)(a) under which the case of a creditor like respondent No.1 falls. Another distinction which may be noticed is the difference between the language in sub-clause (ii) of section 4(1)(a) and in section 3. The former contains these words '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' (emphasis added). In section 3 we have these words "or to which any loan, guarantee, or other financial assistance has been provided by the State Government shall with effect from... be conducted to serve as a measure or preventing unemployment or of unemployment relief." (emphasis added). The only precondition for the exercise of the power under section 3 is that loan must have been advanced prior to the date of notification and it must still be outstanding on that day. This is what leaps to the eyes effortlessly on the mere opening of the eyes. On the other hands section 3 does not say expressly or by implication 'a loan etc. is given for being run as a relief undertaking under this Act.' Shri Shanti Bhushan, learned counsel for the respondent No.1, very fairly stated that the order of the High Court may be set aside and the case may be remanded to the High Court to consider other points which had not been considered by the learned Single Judge.

We are of the view that the decision of the High Court that unless loan is advanced by the State Government under the Act no declaration can be made under section 3 of the Act is wholly erroneous. The judgment of the High Court appears to be a very strained one and it is unfortunate that the learned Single Judge committed an error in being carried away by (putting it in the words of the learned Judge) the "very neat and intelligent question of law" raised by the counsel for the petitioner in the writ petition. The learned Judge failed to evince awareness of the incalculable public prejudice that was likely to be caused by the acceptance of the said fallacious contention and to notice that the case called for close and thorough consideration. The summary dismissal of the appeal which deserved to be allowed for the mere asking of it by the Division Bench is equally lamentable to say the least about it.

This appeal should therefore be allowed and the case should be remanded to consider the other contentions of the parties. These are the reasons for our order dated March 10, 1986.

M.L.A.

Appeal allowed.