Supreme Court of India
Deputy Commercial Tax Officer & ... vs Corromandal Pharmaceuticals & ... on 12 March, 1997
Author: Paripoornan
Bench: B.P. Jeevan Reddy, K.S. Paripoornan

PETITIONER:
DEPUTY COMMERCIAL TAX OFFICER & ORS

Vs.

RESPONDENT:
CORROMANDAL PHARMACEUTICALS & ORS.

DATE OF JUDGMENT: 12/03/1997

BENCH:
B.P. JEEVAN REDDY, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Paripoornan, J.

Special leave granted.

2. Respondent 1 to 4 in writ petition No. 21973 of 1995 before the High Court of Andhra Pradesh representing the Commercial Tax Department, Andhra Pradesh, are the appellants in this appeal. The petitioner and respondents 5 and 6 in the writ petition are respondents 1 to 3 in this appeal. This appeal is filed against the judgment and order of the High Court of Andhra Pradesh dated 4.11.1995.

3. The petitioner in the writ petition is M/s. Corromandal Pharmaceuticals Ltd. The said company manufacture and markets bulk drugs and formulations. It was declared as a sick industrial company under The Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the Act' (Act No.1 of 1986) by the Board for Industrial and Financial Reconstruction (shortly called 'BIFR'). The Industrial Reconstruction Bank of India (shortly called 'IRBI') has been appointed as the operating agency. The BIFR sanctioned a scheme of 1988 in exercise of its powers under Section 18(4) read with Section 19(3) of the Act after obtaining the consent of the concerned financial institutions, on 19.11.1990. The said sanctioned scheme was brought into force with immediate

effect. It was modified later on 29.12.1993. Shortly stated, the said sanctioned scheme for rehabilitation of the company is under implementation.

4. The petitioner-company is an assessee to sales tax under the Andhra Pradesh General Sales Tax Act, 1957. It was assessed for the assessment years 1992-93 by order dated 3.1.1994 and for the year 1993-94 by order passed in 1995. The Sales Tax authorities initiated action under Section 17 of the Andhra Pradesh General Sales Tax Act for recovery of the said dues. It is seen that appeals were preferred from the assessment orders and the appellate authority granted a conditional order of stay to pay the tax assessed in instalments. Even then, there was default. For the aforesaid two years, the sales tax arrears due from the petitioner- company is stated to be Rs. 9,53,833/-. It is brought to our notice that there are sales tax arrears for the years 1986- 87 to 1992-93, but those arrears are not in question in this appeal. We are concerned only with the collection of the balance of tax Rs. 9,53,833/- due for the assessment years 1992-93 and 1993-94. As stated, the assessment orders for the said years were passed on 3.1.1994 and in 1995-- long after the scheme was sanctioned by the BIFR on 19.11.1990.

5. The petitioner-company assailed the recovery proceedings for the sales tax dues before the High Court. It prayed for the issue of a writ of mandamus directing the first and second respondents (commercial Tax Authorities) not to proceed with the collection of balances sales tax amount of Rs. 9,53,833/- without the permission of BIFR, as required under Section 22 of the Act (Act No. 1/86), and for other reliefs. The plea of the petitioner was that the sanctioned scheme by BIFR for rehabilitation of the company is under implementation, and so, no proceedings for execution, distress or the like against the company, shall lie except with the consent of the Board. According to the Revenue, the arrears of the sales tax in question relate to the period after the sanctioned scheme was brought under implementation and that the leal embargo/bar under Section 22 of the Act is inapplicable since Section 22 of the Act can apply only in respect of the sales tax dues included in the "sanctioned scheme". Only those dues which were included in "the package" in the sanctioned scheme will be governed by the said bar. The High Court considered the rival pleas in the light of the relevant statutory provisions, a few decisions of this court and of other High Courts and held that there is not warrant to import the limitation as contended by the Revenue in applying Section 22 of the Act and that no coercive steps for the purpose of recovery of tax dues including action under Section 17 of the Andhra Pradesh General Sales Tax Act ca be taken by the Revenue without obtaining the consent of BIFR. The writ petition filed b the first respondent herein--- the company, was allowed. It is thereafter, the Revenue move this court by way of S.L.P.No. 10474/96 and has come in appeal.

6. We heard counsel. For the purpose of resolving the controversy raised in this case, it will be useful to quote Section 22(1) and 22(5) of the Act as also Board of industrial and Financial Reconstruction Regulations, 1987, regulation Nos. 29 and 30 :-

"22. Suspension of legal proceedings, contracts, etc. ---

(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under

implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or ay other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be the Appellate Authority.

(2) .....

(3) .....

(4) .....

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

Regulation Nos. 29 & 30.

"29. The Board shall publish or cause to be published short particulars concerning the draft scheme, by way of notification, in such daily newspapers and periodicals, as it may consider necessary, inviting suggestions and objections regarding the draft scheme, within such time as may be mentioned in the notification, from the shareholders, creditors and employees of the sick industrial company, the sick industrial company, the transferee company as well as any other company concerned in the amalgamation.

30. The Board shall consider the suggestions and objections received from the sick industrial company, the operating agency or, as the case may be, from the transferee company and any other company concerned in the amalgamation and from any shareholder, creditor, or employee or such industrial companies."

(emphasis supplied) It will be useful to understand the scheme of the Act (No. 1/1986); the Preamble to the Act states as follows :-

> "An Act to make, in the public interest, special provisions with a view to securing the timely detection to sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto."

Section 3(b), 3(i) and 3(o) may also be read :-

3. (b) "Board" means the board for Industrial and Financial Reconstruction established under section 4;

xxxx xxxx

(i) "Operating agency" means any public financial institution, State level institution, scheduled bank or any other person as may be specified by general or special order as its agency by the Board;

xxxx xxxxx

(o) "sick industrial company" means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth. Explanation. - - For the removal of doubts, its is hereby declared that an industrial company existing immediately before the commencement of the sick industrial Companies (Special Provisions) Amendment Act, 1993, registered for not less than five years and having at the end of any financial year accumulated losses equal to or exceeding its entire net worth shall be deemed to be a sick industrial company; xxxxx xxxxx"

Chapter III of the Act deals with "References, inquiries and schemes". Section 15 thereof authorises the Board of directors of the Company to make a reference to the Board (BIFR) for determination of the measures which shall be adopted with respect to the company. Section 16 authorises the Board to make such inquiries as it may deem fit for determining whether any industrial company has become a sick industrial company. Where Board is satisfied that a company has become a sick industrial company, it could give a reasonable time to the company to make its net worth positive [Section 17(2)]. Where it is not practicable for sick industrial company to make its net worth positive within a reasonable time, Section 17(3) steps in authorising the Board to direct any operating agency to prepare a scheme in relation to the company. The Board may specify the various measures to be considered by the operating agency. These measures are detailed out in Section 18. The operating agency has to prepare a scheme as per the order specified by the Board.

Under Section 18(3) of the Act a Scheme prepared by the operating agency shall be examined by the Board and an copy of the scheme with modification made by the Board shall be sent to the sick Industrial Company and the operating agency. The draft scheme shall be published in brief in daily newspapers, inviting suggestions and objections. (Regulations No. 29 & 30). It is open to the Board to make modifications as it considers necessary in the light of the suggestions and objection received. It is thereafter the scheme is sanctioned by the Board and it shall come into force on such date as the Board may specify in that behalf. Section 19 of the Act provides for rehabilitation by giving financial assistance. Section 22(1) deals with suspension of legal proceedings, contracts, etc. It is common ground that a sanctioned scheme for the rehabilitation of the petitioner company is under implementation. The scheme was sanctioned on 19.11.1990. It is also admitted before us that

the sales tax arrears for which proceedings were initiate by the Revenue are for the assessment years 1992-93 and 1993-94. The assessment orders for these years were passed on 3.1.1994 and in 1995, long after the sanctioned scheme was brought into force. The main contention of the Revenue before the High Court and still in appeal before us is, that the arrears of sales tax in question for which proceedings are initiated against the petitioner company, relate to the period after the sanctioned scheme was brought under implementation and the legal bar or embargo under Section 22 of the Act can only be in respect of the sales tax dues included in a sanctioned scheme. According to the Revenue, the Section should be reasonably construed and understood or read down in the above light. It was argued that apparently the embargo or bar envisaged by Section 22 of the Act is of wide import and covers a long period. This bar or embargo beings to operate the moment an inquiry is ordered or pending, and continues during the course of the inquiry, when a scheme is under preparation or consideration, and still later when the scheme is under implementation or even when an appeal under Section 25 of the Act relating to the company is pending. It was urged that the inquiry itself will take time and the pendency of the proceedings form the date of the inquiry till the scheme is implemented or an appeal is disposed of, envisage going through various formalities and will take a long time. If the bar or embargo envisaged by Section 22 of the Act is to cover the entire length of time, the situation may lead to very unreasonable or unintended state of affairs similar to the one in the present case; the suspension of proceedings specified in Section 22 of the Act should be confined to matters included, in prepackage state of affairs only, (in the sanctioned scheme) and not post-package matters like the instant one, which should be outside the pale or area of the "sanctioned scheme". Counsel submitted that when the scheme was sanctioned on 19.11.1990, there was no assessment for the sales tax for the years 1992-93 and 1993-94. The petitioner (assessee) itself could have collected sales tax for the said years only after the scheme was sanctioned. The tax so collected really belongs to the State. But, the amount is not remitted to the State. If the bar or embargo under Section 22(1) of the Act is held to cover such amounts collected by the assessee, which really belong to the State, and enables it to retain the same, till the implementation is over or the appeal under section 25 of the Act is disposed of, it will result in a state of affairs enabling the assessee to retain the amounts due to the State for no reason and indefinitely; the Revenue will have to obtain consent of the Board or as the Appellate Authority even for realising the legitimate amounts due to it and withheld by the assessee, unreasonably. There may be similar instances where the petitioner/assessee collects amounts due to the Revenue or others and it yet enabled to keep it back with itself unreasonably for a long time if the immunity under Section 22(1) of the Act operates absolutely. According to the Revenue the bar under Section 22(1) of the Act should not lead to such an undesirable, state of affairs; and so the section should be understood or read down to act as a bar or embargo only for such of those pre- package dues reckoned or included in the scheme sanctioned. On the other hand, counsel for the first respondent (petitioner in the writ petition) company asserted that the embargo under Section 22(1) to the Act is absolute and cannot be diluted or whittled down. All that is required by Section 22(1) of the Act is that in cases where an inquiry is pending or scheme is under preparation or consideration or a sanctioned scheme is under implementation or an appeal is pending, no proceedings, as stated in Section 22 of the Act for execution. distress or the like, shall be proceeded with except with the consent of the Board or as the Appellate Authority. What is contemplated by Section 22(1) of the Act is only a previous consent of the Board for the proceedings to be initiated against, a sick company. It is not an absolute bar. The facts pointed out by the Revenue do not call for reading down the wide import of section 22(1) of the

Act.

8. We considered the rival peas urged before us. In Gram Panchayat and another v. Shree Vallabh Glass Works Limited and others [1990 (2) SCC 440], the concerned company was declared a sick industrial company and steps were taken under Section 16 and 17 of the Act by the Board. The question was; whether the creditor (Panchayat) could recover the amount due to it from out of the property of the company without the consent of the Board. This Court, stated the law at page 443 (paragraph 10), thus : -

> "In the light of the steps taken by the board Under Sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board. Indeed, there would be automatic suspension of such proceedings against the company's properties. As soon as the inquiry under Section 16 is ordered by the Board, the various proceedings set out under Sub- section (1) of Section 22 would be deemed to have been suspended."

(emphasis supplied) The above decision was followed by this court in Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. and another [1993 (2) SCC 144]. The following portion of the heed note of the report at pages 144-145 sufficiently brings out the ratio relevant for the purpose of the present appeal :-

> "Where an inquiry is pending under Section 16/17 or an appeal is pending under Section 25 of the 1985 Act there should be cessation of the coercive activities of the type mentioned in Section 22(1) to permit the BIFR to consider what remedial measures it should take with respect to the sick industrial company."
>
> "The purpose and object of suspension of proceedings etc. under S. 22(1) of the 1985 Act is to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. The words or the like which follows words 'execution' and 'distress' are clearly intended to convey that the properties of the sick industrial company shall not be made the subject-matter of coercive action of similar quality and characteristic till the BIFR finally dispose of the reference made under Section 15 of the 1985 Act. The legislature has advisedly used an omnibus expression 'the like' as it could not have conceived of all possible coercive measures that may be taken against a sick undertaking....."

(emphasis supplied) Our attention was also drawn to the following High Court decisions:

Reliance Ispat Industries Ltd. & Anr. v. Commissioner of Sales Tax, M.P. & Ors. [Vol. 91 (1993) STC 521 M.P.); Himalaya Rubber Products Limited and Anr. v. The Board for Industrial and Financial Reconstruction & Ors. [Vol. 88 (1993) STC Cal. 47]; Vijay Mills Co. Ltd. & Ors. v. State of Gujarat & Ors. [Vol. 68 (1990) Co. Cases 597 Guj], etc.

9. The Madhya Pradesh and Calcutta High Courts have followed the decision of this court in Gram Panchayat and another v. Shree Vallabh Glass Works Limited and others [1990 (2) SCC 440].

10. On a fair reading of the provision contained in Chapter III of Act 1/1986 and in particular Sections 15 to 22, we are of the opinion that he plea put forward by the Revenue is reasonable and fair in all the circumstances of the case. Under the statue, the BIFR is to consider in what way various preventive or remedial measures should be afforded to a sick industrial company. In that behalf, BIFR is enabled to frame an appropriate scheme. To enable the BIFR to do so, certain preliminaries are required to be followed. It starts with the reference to be made by the Board of Directors of the sick company. The BIFR is directed to make appropriate inquiry as provided in sections 16 and 17 of the Act. At the conclusion of the inquiry, after notice and opportunity afforded to various persons including the creditors, the BIFR is to prepare a scheme which shall come into force on such date as it may specify in that behalf. It is in implementation of the scheme wherein various preventive remedial or other measures are designed for the sick industrial company, steps by way of giving financial assistance etc. by Government, banks or other institutions, are contemplated. In other words, the scheme is implemented or given effect to, by affording financial assistance by way of loans, advance or guarantees of reliefs or concessions or sacrifices by Government, banks, public financial institutions and other authorities. In order to see that the Scheme is successfully implemented and no impediment is cased for the successful carrying out of the scheme, the Board is enabled to have say when steps for recovery of the amounts or other coercive proceedings are taken against sick industrial company which, during the relevant time, acts under the guidance/control or supervisions of the board (BIFR). Any step for execution , distress or the like against the properties of the industrial company or other similar steps should not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. In order to safeguard such state of affairs, an embargo or bar is placed under Section 22 of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of the Board or, as the case may be, the appellate authority. The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act. So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is stated, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts like sales tax, etc, which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold if indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against spirit of the statue in business sense, should be avoided.

11. The situation which has arisen in this case seems to be rather exceptional. The issue that has arisen in this appeal did not arise for consideration in the two case decided by this Court in Gram Panchayat and another v. Shree Vallabh Glass Works Limited and others [1990(2) SCC 440] and

Maharashtra Tubes Ltd. V. State Industrial & Investment Corporation of maharashtra Ltd, and another [1993 (2) SCC 144]. It does not appear from the above two decisions of this court nor from the decisions of the various High Courts brought to our notice, that in any one of them, the liability of the sick company dealt with therein itself arose, for the first time after the date of sanctioned scheme. At any rate, in none of those cases, a situation arose whereby the sick industrial unit was enabled to collect tax due to the Revenue from the customers after the "sanctioned scheme" but the sick unit simply folded its hands and declined to pay it over to the Revenue, for which proceedings for recovery, had to be taken. The two decisions of this Court as also the decisions of High Courts brought to our notice are, therefore, distinguishable. They will not apply to a situation as has arisen in this case. We are, therefore, of the opinion that Section 22(1) should be read down or understood as contended by the Revenue. The decision to the contrary by the High Court is unreasonable and unsustainable. We set aside the judgment of the High Court and allow this appeal. There shall be no order as to costs.