

Lalsen Tripathi Vs. Ivth Additional Chief Metropolitan Magistrate, Kanpur Nagar and Others

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Court : Allahabad

Decided On : May-11-1998

Reported in : 1999(1)AWC146

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Industrial Undertakings (Special Provisions for Prevention of Unemployment) Act, 1966 - Sections 3, 3(1) and 4(1) and (2)

Appeal No. : C.M.W.P. No. 13897 of 1998

Appellant : Lalsen Tripathi

Respondent : ivth Additional Chief Metropolitan Magistrate, Kanpur Nagar and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : C.P. Ghildyal, Adv.

Judgement :

D. K. Seth, J.

1. Mr. C. P. Ghildyal, learned counsel for the petitioner has raised very intricate but interesting question of law while supporting the petitioner's contention arising out of the present writ petition.

2. By an order dated 26th March, 1998, passed by the learned Civil Judge (Senior Division), Kanpur Nagar in O. S. No. 608 of 1997, the further proceedings of the said suit was stayed on the basis of a notification dated 23rd June, 1997. issued under Section 3 as a Relief Undertaking under U. P. Industrial Undertakings (Special Provisions for Prevention of Unemployment) Act, 1966.

3. According to Mr. Ghildyal, by virtue of sub-section (2) of Section 4 of the said Act, proceedings relating thereto pending before any Court, Tribunal, Officer or Authority shall accordingly be stayed or be continued subject to such modification, so however, that on the notification ceasing to have effect, all rights, privileges, obligations or liabilities so suspended or modified shall revive or revived in their modified form and be enforceable and all such proceedings as aforesaid shall thereafter be continued from the stage they were stayed and in computing the period of limitation for the enforcement of any such right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof was suspended shall be excluded. This expression has to be given proper interpretation. He contends alternatively that the expression modified by such notification makes it imperative on the State to include such modifications so as to clarify their stand, in the matter of suspension.

4. I have heard Mr. C. P. Ghildyal, learned counsel for the petitioner.

5. In the present case, facts are not disputed. Admittedly, the proceedings of the suit, through which the petitioner has sought to recover certain amount arises out of a contract. According to him, in consequence of the notification under Section 3 as provided in sub-section (1) of Section 4 applies only to the enactment contained in the schedule. However, it was very fairly contended by the learned counsel that by reason of clause (b) of sub-section (1) of Section 4, the proceedings relating to enforcement of any right arising out of a contract or agreement shall also be suspended. The notification dated 23rd June, 1997, provides that both clauses (a) and (b) are being suspended. However, no modification has been provided except

the bank dues. It would be useful to quote the extent of said notification which are as follows :

'Now, therefore, in exercise of the power under clause (b) of subsection (1) of Section 3 of the aforesaid Act, the Governor is pleased to declare that all the eleven units of the U. P. Cooperative Spinning Mills Federation Limited shall be a relief undertaking for a period of one year, with effect from the date of issue of this notification and under clause (b) of the subsection (1) of Section 4 of the said Act to direct further :

(a) that all or any of the enactments specified in the schedule shall not apply or shall apply with such adaptation whether by way of modification addition or omission as may be specified in this behalf.

(b) That all or any of the contracts assurance of property agreements, settlements awards standing orders or other instruments in force under any law whatsoever to which the undertaking is a party or which may be applicable in the undertaking Immediately before the date of its declaration as relief undertaking except the bank dues shall be suspended in operation for a period of one year with effect from the date of the publication of this notification in Gazette.'

6. So far as clause (a) is concerned, it has no relevance for our present purpose. So far as clause (b) is concerned, it only provides manner of modification of the suspension of all contract, assurances of property, agreements, settlements, etc. Only with exception of bank dues and no other exception having been provided, the dues sought to be recovered through the suit concerned not being bank dues the present case does not come within the modification provided in the notification.

7. Now sub-section (2) of Section 4 provides that a notification under Section 3 so far as it relates to sub-section (1) of Section 4 would become effective 'notwithstanding anything to the contrary contained in any other law, agreement or Instrument and any remedy for enforcement of any right, privilege, obligation or liability' shall remain suspended or modified 'and all proceedings relating thereto pending before any Court, Tribunal, Officer or Authority shall accordingly be stayed or be continued subject to such modification, so, however, on the

notification ceasing to have effect, all rights, privileges, obligations or liabilities so suspended or modified shall revive or revive in their modified form and be enforceable and all proceedings aforesaid shall thereafter be continued from the stage they were stayed.....'

8. Use of the expression and the scheme of the said section clearly provides that notification is a notification through which whole or part of the rights, liabilities, etc. may be suspended or a part may be kept open for being excepted or exempted from such suspension. Such exemption or exception or modification are to be provided in the notification itself. Both suspension or modification are to be included in the notification. In the present case, modification is included in the notification itself in regard to bank dues only, while suspending all other privilege rights or liabilities other than bank dues.

9. The effect of notification under Section 3 in relation to the proceedings relating to such agreement or enforcement of right, etc. as provided in sub-section (2) of Section 4 as noted above provides that all proceedings relating thereto pending before any Court, Tribunal, Officer or Authority shall accordingly be stayed or be continued subject to such modification. Therefore, all proceedings shall be stayed or suspended and those may be continued subject to such modification to the extent it is modified. The legislative intent of the Legislature is clear. The very scheme conceives that on the cessation of the notification, rights and privileges reviving may be enforced and continued from such stage at which it was stayed.

10. The legislature had never intended that where suspension is complete, proceedings can be continued. Proceedings relating to the matters excepted by the modification in the notification can only be continued only to the extent of the modification, so that on the cessation of the notification the revived rights can be enforced from the stage it was stayed. Thus, such proceedings can be continued by the Court to the extent as the Court may decide having regard to the extent of the suspension or modification and how far it is permitted for the Court to proceed.

11. The contention raised by the learned counsel for the petitioner does not appeal to me. Inasmuch as sub-section (2) does not give any discretion to the Court to

proceed with the proceeding where the suspension is complete. The modification is to be provided by the notification. The Court is bound to proceed on the basis of the notification. The Court if proposes to proceed to find out modification, when there is none In that event the Court would modify the suspension. The suspension or modification is to be provided in the notification. The exercise of discretion by the Court cannot be equated to a notification. The Court cannot substitute notification by its exercise of discretion. The scheme of sub-section (2) does not contemplate any such power to have been conferred on the Court.

12. On the other hand, the language used is clear and unambiguous and it specifically lays down that the proceedings pending before a Court shall accordingly be stayed. We may note that legislature has used the expression that the proceedings 'shall' be stayed subject to such modification without leaving any discretion to the Court. The stay is automatic as soon the notification becomes effective. Such notification in fact creates inherent lack of jurisdiction in the Court. As soon as the legislature provides the suspension of the rights and liabilities etc., the Court ceased to have jurisdiction for enforcing such rights etc. There cannot be any scope for the Court to exercise its discretion to find out such modification except as provided in the notification itself so as to enable it to obtain the jurisdiction which it initially lacks by virtue of such notification.

13. The expression that the right would revive and be enforceable and the proceedings shall accordingly be stayed or be continued from the stage where it was stayed. While taking care of limitation, it clearly indicates that the suspension was complete and there was no discretion left to the Court to. proceed with the proceedings which is suspended completely by such notification. However, such proceedings may be continued if it comes within the ambit of modification in the notification such as in the present case which excepts Bank dues alone. In such, event suit relating to Bank dues can be proceeded with by the Court. The present proceeding being a suit other than Bank dues and thus being outside the scope of the modification provided in the notification, arising out of contract is to be stayed in consequence of such notification by reason of sub-section (2) of Section 4 of the said Act.

14. In view of the above discussions. I am unable to persuade myself to agree with the contention of Mr. Ghildyal. The writ petition therefore, fails and is accordingly dismissed, however, without cost.

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