

A

UNION OF INDIA AND OTHERS

v.

OSWAL WOOLLEN MILLS LTD. AND OTHERS

B

March 27, 1984

[O. CHINNAPPA REDDY, A.P. SEN AND E.S. VENKATARAMIAH, JJ.]

C Import Control Order, 1955. Clause 8-B—Writ petition by company impugning order under Clause 8-B—grant of ex parte interim stay by High Court whether valid and legal.

Practice & Procedure—Statutory Orders—Grant of ex parte interim stay by Courts—Validity of.

D Petitioner company situated in Punjab—Relief sought against Union of India situated in New Delhi—Writ petition in Calcutta High Court—Filing of whether valid.

E The respondents filed a writ petition in the High Court of Calcutta against an order made under Clause 8-B of the Import Control order 1955, in respect of a consignment of beef tallow which arrived at the Calcutta Port. A Single Judge issued a rule and granted an interim order restraining the Union of India and the Chief Controller of Imports and Exports from filing any criminal complaint against the respondent-firm or its Directors and also a direction to permit the respondents to re-export the consignment of tallow. An application was made by the Union of India to vacate the interim order. In the meanwhile the respondents sent letters and telegrams to the department intimating that the interim order of the High Court had not been obeyed, and threatening action for contempt of Court. An application to commit the Chief Controller of Imports and Exports, and others for contempt of court was filed by the company. Over-ruling the request made on behalf of the Department to vacate the interim order, the court issued a rule in the application for contempt and directed the Department officials to appear in person.

G Being aggrieved by the order, the Department filed a Special Leave Petition against the interim order and the rule for contempt.

Allowing the appeal, vacating the interim order and quashing the rule for contempt of Court;

H HELD: 1. Writ petitions are often deliberately filed in distant High Courts, as part of a manœuvre in a legal battle, so as to render it difficult for

the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications. An inevitable result of the filing of writ petitions elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. [345B-C, A]

A

In the instant case, the writ petition was filed in the Calcutta High Court when the office of the company is in the State of Punjab and all the principal respondents are in Delhi.

B

2. A statutory order such as the one under Clause 8-B of the Import Control Order purports to be made in the public interest and unless there are even stronger grounds of public interest an ex-parte interim order will not be justified. The only appropriate order to make in such cases is to issue notice to the respondents and make it returnable within a short period. This should particularly be so where the offices of the principal respondents and relevant records lie outside the ordinary jurisdiction of the Court. To grant interim relief straight away and leave it to the respondents to have the interim order vacated may jeopardise the public interest. [346G-347A]

C

3. If an interim order is once made by a court, parties employ every device and tactic to ward off the final hearing of the application. It is therefore, necessary for the courts to be circumspect in the matter of granting interim relief, more particularly so where the interim relief is directed against orders or actions of public officials acting in discharge of their public duty and in exercise of statutory powers. [347B]

D

In the instant case, no interim relief should have been granted by the High Court. The interim order is of a drastic character with a great potential for mischief and has the effect of practically allowing the writ petition at the stage of admission without hearing the opposite parties. [347C, 346D]

E

4. The application to commit the authorities for contempt of court appears to be a device to exact licences from them. [349B]

F

In the instant case, the stay of the operation of the 'abeyance' order merely meant that the writ petitioners were entitled to have their applications disposed of by the concerned authorities. The High Court not having set any limit of time for the disposal of the applications, it was not for the writ petitioners to impose a time limit and demand that their applications should be disposed of forthwith. If the writ petitioners were aggrieved by the failure of the authorities to dispose of their applications expeditiously, it was open to them to seek a further direction from the court fixing a limit of time within which the applications were to be disposed of. [348G-349A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal

No. 1972 of 1983

From the Judgment and Order dated 22.11.83 of the Calcutta High Court in Civil Rule No. 10933 W of 1983 and order issuing contempt notice dated 3.2.84 being Civil Rule No. 571 W of 1984.

Milon K. Banerjee, Additional Solicitor General, A.K. Ganguli and R.N. Poddar for the appellants.

Soli J. Sorabjee, Mrs. Manik Karanjawala, Ratan Karanjawala, Kuldeep Pablay, Sumit Kachawha and Dr. Roxana Swamy for the respondents.

A. Subba Rao for STC.

The Order of the Court was delivered by

CHINNAPPĀ REDDY J. We grant special leave and proceed to dispose of the appeal.

M/S. Oswal Woollen Mills Limited having its registered office at Ludhiana in the State of Punjab and a branch office at Calcutta, and Narayan Das Jain, Secretary of the Company have filed a writ petition in the Calcutta High Court seeking various reliefs against the Union of India (through the Secretary, Ministry of Commerce, New Delhi), the Chief Controller of Imports and Exports, New Delhi, the Deputy Chief Controller of Imports and Exports, Amritsar, the Collector of Customs, Calcutta and the State Trading Corporation of India, New Delhi. The primary prayer in the writ petition is to prevent or to quash an apprehended or purported action under clause 8-B of the Import Control Order. All the other reliefs sought in the writ petition revolve round the principal relief regarding clause 8-B of the Import Control Order. The other prayers are either ancillary or incidental to the principal prayer or are of an interlocutory character. Having regard to the fact that the registered office of the company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court. The writ petitioners however have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the

Calcutta Port. An inevitable result of the filing of writ petitions elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the company is in the State of Punjab and all the principal respondents are in Delhi. But we do feel disturbed that such writ petitions are often deliberately filed in distant High Courts, as part of a manoeuvre in a legal battle, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications. More about this later.

It appears that an order under clause 8-B of the Import Control Order had been made against the company on November 9, 1983, but the writ petition was filed as if the order was in the offing and might be made at any time. The writ petition was apparently filed in professed or real ignorance of the order made under clause 8-B of the Import Control Order.

On November 22, 1983, a learned single judge of the Calcutta High Court issued a rule *Nisi* and granted an interim order in the following terms:

“There will be an interim order of stay/injunction in terms of prayers (j), (k), (l) and (n) of the writ petition till the disposal of the rule. Liberty is given to the respondents to apply for vacation or variation”.

The rule was made returnable on January 31, 1984. Prayers (j), (k), (l) and (n) of the petition were for the grant of:-

“(j)—Injunction restraining the respondents their servants and/or agents from filing any criminal complaint against the petitioners or any of its director or employees from initiating any departmental proceedings under the Import and Export (Control) Act, 1947 and Import (Control) Order, 1955 against the petitioners or any of its Directors or Employees till the disposal of the Rule;

(k)—Injunction restraining the respondents from issuing an order of abeyance under clause 8-B of the Import Control

A Order, 1955 and/or from taking any action under such order of abeyance till the disposal of the rule;

(1)—Mandatory order directing the respondent No.5 Collector of Customs to permit the petitioners to re-export the consignment of inedible Beef Tallow in terms of I.T.G. Public Notice No.37 of 1983 dated 1.9.83 with respect to the consignment weighing 456.316 MT which is lying at Calcutta under section 49 of the Customs Act;

(n)—An order that pending the hearing and final disposal of this writ petition the petitioners be permitted to re-ship and/or re-export the consignment of 456.216 MT of inedible Beef Tallow which arrived at Calcutta as more particularly mentioned in Annexure 'I'."

D It is obvious that the interim order is of a drastic character with a great potential for mischief. The principal prayer in the writ petition is the challenge to the order made or proposed to be made under clause 8-B of the Import Control Order. The interim order in terms of prayers (j) and (k) has the effect of practically allowing the writ petition at the stage of admission without hearing the opposite parties.

E While we do not wish to say that a drastic interim order may never be passed without hearing the opposite parties even if the circumstances justify it, we are very firmly of the opinion that a statutory order such as the one made in the present case under clause 8-B of the Import Control Order ought not to have been stayed without at least hearing those that made the order. Such a stay may

F lead to devastating consequences leaving no way of undoing the mischief. Where a plentitude of power is given under a statute, designed to meet a dire situation, it is no answer to say that the very nature of the power and the consequences which may ensue is itself a sufficient justification for the grant of a stay of that order, unless, of course, there are sufficient circumstances to justify a strong *prima facie* inference that the order was made in abuse of the power conferred by the statute.

G A statutory order such as the one under clause 8-B purports to be made in the public interest and unless there are even stronger grounds of public interest an *ex parte* interim order will not be justified. The only appropriate order to make in such cases is to issue notice to the respondents and make it returnable within a short period. This should particularly be so where the offices of the principal respondents and relevant records lie outside

the ordinary jurisdiction of the court. To grant interim relief straight away and leave it to the respondents to move the court to vacate the interim order may jeopardise the public interest. It is notorious how if an interim order is once made by a court, parties employ every device and tactic to ward off the final hearing of the application. It is, therefore, necessary for the courts to be circumspect in the matter of granting interim relief, more particularly so where the interim relief is directed against orders or actions of public officials acting in discharge of their public duty and in exercise of statutory powers. On the facts and circumstances of the present case, we are satisfied that no interim relief should have been granted by the High Court in the terms in which it was done.

Orders under clause 8-B of the Import Control Order, similar to the one made against Oswal Woollen Mills Limited, were made against various import-export houses and others. Some of these orders have been questioned by the affected parties in different High Courts and, in some cases, interim orders have also been obtained. One such writ petition filed by Liberty Oil Mills Pvt. Limited has been transferred to this court from the Bombay High Court at the instance of the Union of India. The case is now pending in this court and has in fact been heard in part by this very Bench. Apparently, under the impression that the questions at issue will be finally determined by this court in the case of the Liberty Oil Mills, the Union of India and the other authorities do not seem to have moved expeditiously to contest the writ petitions filed in the High Courts and to have the interim orders vacated. In the present case, an application to vacate the interim order was filed in the Calcutta High Court on February 1, 1984. In the meanwhile, Oswal Woollen Mills Limited went on writing letters and sending telegrams complaining that the interim orders of the High Court had not been obeyed and threatening action for contempt of Court. On January 6, 1984, an application to commit the Chief Controller of Imports and Exports and others for contempt of court was filed by the company. Notice to the respondents was ordered on the same day and on February 3, 1984, overruling the request made on behalf of the respondents that the petition to vacate the interim order may be heard first, the High Court issued a rule in the application for contempt of court against the Chief Controller of Imports & Exports and the Deputy Chief Controller of Imports and Exports and directed them to appear in person on March 6, 1984. Thereupon the Union of India, the Chief Controller of Imports & Exports, etc.

A have filed the present special leave petition against the interim order dated November 22, 1983 of the Calcutta High Court in Civil Rule No.10933 W of 1983 and the rule for contempt of court issued on February 3, 1984 in Civil Rule No. 571 W of 1984. We have heard Shri Milon Banerjee, learned Additional Solicitor General for the petitioners and Shri Soli Sorabjee, learned senior Advocate for the respondents.

C We have already mentioned that the High Court was not right in granting interim relief in the terms in which it had done so. We, therefore, vacate the interim order dated November 22, 1983 made by the Calcutta High Court. It has been pointed out to us that the Chief Controller of Imports & Exports has himself issued a Public Notice dated 1st September, 1983 permitting re-shipment/re-export of import consignment which could not be cleared consequent upon the Ministry of Commerce Import Trade Control Order No 27/83 dated the 24th August, 1983. The Public Notice empowers the customs authority to allow re-shipment/re-export having regard to the extent to which foreign exchange spent on import will be earned back and subject to such other conditions relating thereto as the Customs authority may impose. We wish to make it clear that the vacating of the interim order will not disentitle the writ petitioners from seeking and taking advantage of the public notice dated September 1, 1983.

F In regard to the rule for contempt of court, we find it difficult to sustain the same. Though ordinarily we would have left the matter to be decided by the High Court, we think it unnecessary to do so in the present case having regard to the elaborate arguments addressed to us by both parties. The complaint of the writ petitioners in seeking the rule for contempt of court was that the authorities had not dealt with their applications for licences, etc. despite the 'abeyance' order having been stayed. It is obvious that G the stay of the operation of the 'abeyance' order merely meant that the writ petitioners were entitled to have their applications disposed of by the concerned authorities. The High Court not having set any limit of time for the disposal of the applications, it was not for the writ petitioners to impose a time limit and demand that their applications should be disposed of forthwith. If the writ petitioners were aggrieved by the failure of their authorities to dispose of their applications expeditiously, it was open to them to seek a further direction from the court to fixing a limit of time within which the

applications were to be disposed of. We fail to see how the Chief Controller of Imports & Exports or the Deputy Chief Controller of Imports & Exports could be said to have committed any contempt of court, even *prima facie*, by their mere failure to take action in the matter of the disposal of the applications of the writ petitions. In the circumstances, we perceive the application to commit the authorities for contempt of court to be a device to exact licences from them.

We accordingly allow the appeal, vacate the interim order dated November 22, 1983 of the Calcutta High Court in Civil Rule No. 10933 W of 1983 and quash the rule for contempt of court issued on February 3, 1984 in Civil Rule No. 571 W of 1984.

Before we part with the case, we may refer to a statement made by Shri J.P. Sharma, Deputy Chief Controller of Imports and Exports, New Delhi in the affidavit filed by him before us to the effect that 'in the larger public interest Government was unable to obey the interim order and had taken the question to this Hon'ble Court which is pending decision shortly'. Torn out of the context in which it was made, the unhappy language in which it has been expressed is suggestive of contumaciousness on the part of J.P. Sharma. However, he has filed further affidavits before us explaining the context in which the statement was made and expressing his unqualified regret. We accept his explanation and expression of regret. We are satisfied that Shri J.P. Sharma did not mean what the language employed by him suggested. However, we do wish to express our disapproval of the language employed which is certainly suggestive of contumaciousness.

N.V.K.

Appeal allowed.