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STATE OF WEST BENGAL & ORS.

v.

CALCUTTA HARDWARE STORES & ORS.

FEBRUARY 20, 1986

[A.P. SEN AND B.C. RAY, JJ.]

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Constitution of India - Article 226 - Ad interim exparte orders - Grant of - Restraint and circumspection - Necessary.

600 metric tonnes of tin plates worth about Rs.60 lakhs were seized from the respondent-firm. Prosecution was launched C by the State Government against the respondents under ss.7 and 8 of the Essential Commodities Act 1955 for violation of paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order 1977 and under ss.120B and 420 of the Indian Penal Code 1860. Show cause notices for confiscation of the seized goods were also issued by the D Additional Collector under s.6A of the Act.

In the Writ Petition under Article 226 before the High Court the respondents moved an application for release of the seized goods which was rejected by a Single Judge. In appeal the Division Bench set aside the interlocutory order of the E Single Judge and directed the release of the seized goods to the respondents on their furnishing of a bank guarantee of Rs.5 lakhs in the form of fixed deposit recepits and also on furnishing security of immovable property being 0.71 acre of land situate at Police Station Titaghur District 24 pargana.

F Allowing the appeal of the State to this Court,

HELD: 1. Although the powers of the High Court under Art.226 are far and wide and the Judges must ever be vigilant to protect the citizens against arbitrary executive action, nonetheless, the Judges have a constructive role and G therefore, there is always the need to use such extensive powers with due circumspection. There has to be in the larger public interest an element of self-ordained restraint. It was distressing that despite a long line of decisions of Supreme Court deprecating the cursory manner of passing such interlocutory orders for the mere asking, the High Court

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should have passed the impugned order in the manner that it did. [370 C-D; 367 B-C]

2. The ad interim order of the Division Bench of the High Court was illegal and invalid. The result of the order was that the respondents under threat of contempt secured release of valuable seized material practically furnishing little or no security. The observations of the Division Bench which had the effect of prejudging the whole issue before the Single Judge who was seized of the writ petition, as also foreclosing the trial of the respondents for commission of the alleged offences had also no legality and propriety. [367 C; 367 G-H; 368 A]

**Siliguri Municipality & ors. v. Amalendu Das & Ors.**, [1984] 2 S.C.C. 436; **Assistant Collector of Central Excise, Chandan Nagar West Bengal v. Dunlop India Pvt. Ltd. & Ors.**, [1985] 1 S.C.C. 260; **State of Rajasthan & Ors. v. M/s. Swaika Properties & Anr.**, [1985] 3 S.C.C. 217; **Siliguri Municipality, Titaghur Paper Mills Co. Ltd. v. State of Orissa**, [1983] 2 S.C.C. 433; **Union of India v. Oswal Woollen Mills Ltd.**, [1984] 2 S.C.C. 646; **Union of India v. Jain Shudh Vanaspati Ltd.**, C.A.No. 11450/83 and **Samarias Trading Co. Pvt. Ltd. v. S. Samuel**, [1984] 4 S.C.C. 666; relied upon.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 627 of 1986.

From the Judgment and Order dated 11th December, 1985 of the Calcutta High Court in F.M.A.T. No. 4053 of 1985.

D.N. Mukherjee and H.K. Puri for the Appellants.

Bhola Nath Sen, Bhasker Sen, B.P. Singh, V. Sheker, S. Roy and L.P. Agarwala for the Respondents.

The Order of the Court was delivered by

SEN, J. We had allowed the appeal at the conclusion of hearing of January 31, 1986. We now proceed to give the reasons therefor.

In this appeal by special leave the short point is as to the legality and propriety of an ad-interim order dated

December 11, 1985 passed by a Division Bench of the Calcutta High Court consisting of R.N. Pyne and Ajit Kumar Sen Gupta, JJ. setting aside an interlocutory order of Padma Khastgir, J. dated November 6, 1985. By the impugned order, the learned Judges have directed the release to the respondents of more or less 600 metric tonnes of tin plates which, according to the State Government, are worth nearly about Rs.60 lakhs, seized from them for alleged contravention of item 24, schedule 1 to the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1997 and which, according to the respondents, are nothing but waste material, on condition set out by them, namely, on the furnishing of bank guarantee of Rs.5 lakhs in the form of fixed deposit receipts and also on furnishing security of immovable property being 0.71 acre of land situate at Police Station Titaghur, District 24 Pargana.

The learned Judges while making the impugned order have unfortunately made certain observations which seek to prejudge the issues involved in the prosecution launched against the respondents by the State Government for committing alleged offences punishable under ss.7 and 8 of the Essential Commodities Act, 1955 for violation of the mandatory provisions of paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and of having committed alleged offences punishable under ss.120B and 420 of the Indian Penal Code, 1860. They have gone to the extent of observing that the notices for confiscation of the seized goods were issued by the Additional Collector, 24 Paragana Alipore under s.6A of the Act without any basis in that they do not answer the description of tin plates, tin plates waste waste or defective tin free steel sheets and therefore were not essential commodities within the meaning of s.2(a) of the Act and the said Order issued thereunder.

Looking to the seriousness of the charges and the circumstances attendant upon the seizure of the huge quantity of tin plates, the learned Single Judge had very rightly and properly refused to grant the application for release of the seized goods. It is rather surprising that the learned Judges in hearing an appeal from an interlocutory order should have passed the impugned order directing release of the seized goods without affording an opportunity to the State Government to file a return to the writ petition. There is material on

record to show that the seized goods are essential commodities, namely, Notification No.SO.508(E)/ESS/Iron & Steel-2A dated 1.7.1985 issued by the Government of India, Ministry of Steel, Mines & Coal, and examination report dated November 13, 1985 by the Appraiser (Metal Expert).

We are greatly distressed that the learned Judges despite a long line of decisions of this Court starting from **Siliguri Municipality & Ors. v. Amalendu Das & Ors.** [1984] 2 S.C.C. 436 to **Assistant Collector of Central Excise, Chandan Nagar West Bengal v. Dunlop India Ltd. & Ors.** [1985] 1 S.C.C. 260, down to **State of Rajasthan & Ors. v. M/s Swaika Properties & Anr.** [1985] 3 S.C.C. 217 deprecating the cursory manner of passing such interlocutory orders for the mere asking, should have passed the impugned order in the manner that they did. It seems that the pronouncements of this Court have had little effect on them. The result of this has been that the respondents under threat of contempt secured release of such valuable seized material practically furnishing little or no security. We are really amazed that the State Government should have been compelled to release the goods as per the directions of the learned Judges. What makes it worse is that the respondents are facing prosecutions under s.3 read with ss.7 and 8 of the Essential Commodities Act as also under ss.120B and 420 of the Indian Penal Code, and have also been served with a notice by the Additional Collector under s.6A of the Act to show cause why the seized material should not be confiscated to Government. It is needless to stress that the question whether the seized goods answer the description of tin plates, tin plates waste waste or waste material etc. or whether the respondents had committed a contravention of paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order issued under s.3(1) of the Act, which is an offence punishable under ss.7 and 8, are all questions to be gone into and tried before the learned Special Judge, 24 Paragana, Alipore before whom the trial is pending. That apart, the observations call in question the validity of the action of the Additional Collector in serving a notice of confiscation under s.6A of the Act with respect to the seized goods. We do not see legality and propriety of making these observations by the learned Judges which have the effect of prejudging the whole issue before the learned Single Judge who is seized of the writ petition, as also

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foreclosing the trial of the respondents for commission of the alleged offences.

In somewhat similar circumstances, Chinnappa Reddy, J. speaking for the Court in **Dunlop India Ltd.'s** case, after referring to the earlier decisions in **Siliguri Municipality,** B **Titaghur Paper Mills Co. Ltd . v. State of Orissa** [1983] 2 S.C.C. 433 **Union of India v. Oswal Woollen Mills Ltd.** [1984] 2 S.C.C. 646, **Union of India v. Jain Shudh Vanaspati Ltd.** C.A. No.11450/83, and **Samarias Trading Co. Pvt. Ltd. v. S. Samuel** [1984] 4 S.C.C. 666, expressed strong disapproval of the practice prevailing in the High Court of granting such C ad-interim orders which practically have the effect of the grant of the main relief in the petition under Art. 226 of the constitution, and observed :

> "We have come across cases where the collection of public revenue has been seriously jeopardised and D budgets of governments and Local Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by courts. In fact, instances have come to our knowledge where Governments have been forced to explore further sources for raising revenue, sources which they E would rather well leave along in the public interest, because of the stays granted by courts. We have come across cases where an entire Service is left in a stay of flutter and unrest because of interim orders passed by courts, leaving the work they are supposed to do in a state of suspended F animation. We have come across cases where buses and lorries are being run under orders of court though they were either denied permits or their permits had been cancelled or suspended by Transport Authorities. We have come across cases where liquor shops are being run under interim orders of G court. We have come across cases where the collection of monthly rentals payable by excise contractors has been stayed with the result that at the end of the year the contractor has paid nothing but made his profits from the shop and walked out. We have come across cases where dealers in food grains H and essential commodities have been allowed to take

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back the stocks seized from them as if to permit them to continue to indulge in the very practices which were to be prevented by the seizure. We have come across cases where land reform and important welfare legislations have been stayed by courts. Incalculable harm has been done by such interim B orders. All this is not to say that interim orders may never be made against public authorities. There are, of course, cases which demand that interim orders should be made in the interests of justice. Where gross violations of the law and injustices are perpetrated or are about to be perpetrated, it is the bounden duty of the court to intervene and C give appropriate interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, a court may well be justified in granting interim relief against public authority. D But since the law presumes that public authorities function properly and bona fide with due regard to the public interest, a court must be circumspect in granting interim orders of far-reaching dimensions or orders causing administrative, burdonsome inconvenience or orders preventing collection of public E revenue for no better reason than that the parties have come to the court alleging prejudice, inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other F vital considerations apart from the existence of a prima facie case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest. There are many such factors worthy of consideration."

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Quite recently, this court in **Swaika Properties'** case reiterated :

"It is to be deeply regretted that despite a series of decisions of this Court deprecating the practice H

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prevalent in the High Court of passing such interlocutory orders for the mere asking, the learned Single Judge should have passed the impugned ad interim ex parte prohibitory order the effect of which, as the learned Attorney-General rightly complains, was virtually to bring to a B standstill a development scheme of the Urban Improvement Trust, Jaipur viz. Civil Lines Extension Scheme, irrespective of the fact whether or not the High Court had any territorial jurisdiction to entertain a petition under Article 226 of the Constitution. Such arbitrary exercise of C power by the High Court at the public expense reacts against the development and prosperity of the country and is clearly detrimental to the national interest."

Although the power of the High Court under Art.226 of the D Constitution are far and wide and the Judges must ever be vigilant to protect the citizens against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such extensive powers with due circumspection. There has to be in the larger public interest an element of self-ordained restraint. We hope E and trust that the High Court would hereafter use its powers to grant such ad-interim ex-parte orders with greater circumspection.

The appeal must therefore succeed and is allowed. The order passed by the Division Bench dated December 11, 1985 is F set aside and that of the learned Single Judge dated November 6, 1985 dismissing the application for release of the seized goods is restored. We direct that the High Court shall take immediate steps to recover back the seized property from the respondents including the two vehicles bearing registration nos. USY 6342 and WBQ 6688 if they have been delivered in G pursuance of the orders passed by the learned Judges to respondents. The respondents shall pay the costs of the appellants. Costs quantified at Rs.5,000.

A.P.J. Appeal allowed.