

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL Nos.113, 114 and 115 of 2019

COMMON JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B.Radhakrishnan)

We have heard the learned Senior Counsel appearing for the appellant in these appeals, which is M/s.REC Limited (formerly known as Rural Electrification Corporation Limited). We have also heard the learned Senior Counsel appearing for the respective respondents/writ petitioners, who had instituted the Writ Petitions from which these Writ Appeals arise.

2. These intra-Court appeals under Clause 15 of the Letters Patent are against the interlocutory orders issued by the learned single Judge, whereby interim suspension of the further proceedings on the basis of the show cause notice has been issued.

3. The learned Senior Counsel for the appellant argued that the foundation of the impugned interlocutory order is wholly unsustainable inasmuch as the Writ Petitions do not contain any challenge to the jurisdiction of the writ appellant to issue the show cause notice. He argues that the jurisdictional facts on the basis of which the power to issue the show cause notice has been exercised is not a matter on which judicial review could be entertained to nip the entire further proceedings in the bud. It is further argued by the learned Senior Counsel for the appellant that there is no question of any bias that could be demonstrated because, fundamentally, in terms of the relevant provisions of the RBI Guidelines, the decision to issue a show cause notice is firstly an institutional decision. Secondly, it has a multipeer mechanism whereby there is an intra

institutional consideration of the need to issue a show cause notice. That being so, there is no foundation for any argument that the impugned action of issuing the show cause notice is actuated by bias, it is argued. Learned Senior Counsel for the appellant further argued that the reliance placed by the learned single Judge on the decision of the Apex Court in **Canara Bank v. Debasis Das**¹ to be made applicable to the facts of the case, is illusory inasmuch as the application of the ratio decidendi of that decision does not lead to the conclusion arrived at by the learned single Judge. Per contra, learned Senior Counsel appearing for the contesting writ petitioners points out that the order issued by the learned single Judge is more in the nature of an *ad interim* order and does not amount to a final interlocutory order in which rights of parties are decided and, therefore, the appeals under Letters Patent would not lie to the Division Bench. He further argued that the National Company Law Tribunal (NCLT) having refused to come to the aid of the writ appellant and because the writ appellant had initiated proceedings in criminal jurisdiction against the writ petitioners, there is substantial foundation for the plea and the impugned action of issuance of show cause notice being actuated by bias.

4. Adverting to paragraphs 13 and 14 of the impugned order of the learned single Judge, we see that by referring to the decision of the Apex Court in **Canara Bank's** case (*supra*), the learned single Judge has apparently stated that the show cause notice impugned in the Writ Petitions, *prima facie*, does not contain the essential details. Learned single Judge was also of the opinion that the issue was already contested before the NCLT and that the Tribunal had rejected

¹ (2003) 4 SCC 557

the petition holding that no sufficient material was placed to declare that there was fraudulent act with an intention to defraud. It was, therefore, that the learned single Judge found that there is *prima facie* ground to hold that the impugned show cause notice is not valid and that in the background of the case, the show cause notice is an empty formality as argued on behalf of the writ petitioners before the learned single Judge. It was also found that the balance of convenience is in favour of the writ petitioners. This is how the impugned order of interim suspension came to be made.

5. The question whether the decision of NCLT that there is no fraudulent act committed with an intention to defraud is sufficient enough to exclude further proceedings which are proposed by the writ appellant is itself an issue that will have to be determined, if proceedings following the show cause notice have to be carried to its logical end. The contents of the show cause notice is expected to communicate reasonably to the noticee the grounds on which the proposed action is intended. This is among the ratio decidendi of the decision of the Apex Court in **Canara Bank's** case (supra). In the backdrop of the view expressed by the learned single Judge that the show cause notice does not contain essential details, we are of the view that the application for interim relief as well as the three Writ Petitions need to be further considered from the stage of which it has reached. Urgency of this is more so because, the matter relates to commercial litigation and it is the object of such jurisdiction to expedite the decision in such matters.

6. Therefore, while we do not propose to interfere with the impugned order, we order these Writ Appeals requesting the learned single Judge to proceed with further consideration of the applications

for interim relief or for final disposal of the Writ Petitions most expeditiously as possible. It may be taken that we have not expressed anything touching the merits of the matter.

7. The Writ Appeals are ordered accordingly. Let the Writ Petitions be listed before the learned single Judge with a copy of this judgment next week.

The miscellaneous petitions pending in these appeals, if any, shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

11.03.2019
vs

