Meena

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.119 OF 2010

1. The Chief Electrical Engineer, Electricity Department, Government of Goa, Vidyut Bhawan, Panaji Goa ...Appellants

2. The State of Goa, Through its Chief Secretary, Having office at Secretariat, Porvorim Goa.

3. The Director of Mines and Industries, Government of Goa, Udyog Bhawan, Panaji Goa.

Versus

1. M/s Rukminirama Steel Rollings Pvt. Ltd. A company incorporated under The Companies Act, 1956 (Act 1 of 1956), Having registered office at L-26, Cuncolim Salcete Goa, Represented herein by its Director, Shri B. Raghavendra.

2. Shri B. Raghavendra, Director, M/s Rukminirama Stel Rollings Pvt. Ltd. Having registered office at L-26, Cuncolim Industrial Estate, Cuncolim, Salcete Goa ...Respondents

Mr. P. Faldessai, Additional Government Advocate *for the appellants.*

Mr. Nitin Sardessai, Senior Advocate with Mr. J.P. Supekar and Mr. S. Sayed, Advocates *for the respondent – State.*

CORAM: MANISH PITALE, J

DATED: 8th December, 2021

ORAL JUDGMENT:

1. By this appeal the appellants have challenged judgment and order dated 16/04/2010, passed by the Court of District Judge – 2, North Goa whereby a suit for recovery filed by the respondents was partly decreed.

2. Brief facts leading up to filing of the present appeal are that the respondents offered their bid for purchasing an industrial unit which was being auctioned by the respondents. According to the respondents, the representation held out to the bidders during the course of the auction was that the industrial policy of 2003, published in the official gazette on 06/08/2003, would be applicable. Clause 5.7 of the said policy stipulated that any industrial unit seized under Section 29 of the State Financial Corporation Act, 1951, being sold to a new entrepreneur shall be treated as a new industrial unit. It was further specifically stipulated that public dues such as arrears of sales tax, entry tax, and any other State Government dues payable by the previous owners of the unit will not be realised from the transferees of the transferred units and they shall be recoverable from the previous owners.

3. According to the respondents, they offered their bid for purchasing the said industrial unit in auction on the basis of the said representation held out by the appellants. The bid of the respondents was accepted, as a consequence of which the industrial unit was purchased by the respondents. Thereafter, when the respondents applied for new electricity connection for the said industrial unit, the appellants claimed outstanding dues payable on the said unit and insisted upon deposit of such alleged outstanding dues. The respondents deposited the said amounts under protest and thereafter, filed the aforesaid suit for recovery of the said amount.

4. In the suit filed by the respondents, they specifically pleaded that the applicable industrial policy was of the year 2003 containing the aforesaid clause 5.7, whereby liability for arrears of amounts could not be foisted upon the respondents. They specifically pleaded that they were induced to offer their bid for purchasing the industrial unit in view of the aforesaid representations made at the time of conducting the auction.

5. The appellants filed their written statements opposing the claims of the respondents, but significantly they admitted the contents of the paragraph of the plaint where the respondents had made the aforesaid claim about having offered their bid upon being induced by the appellants on the basis that the industrial policy of 2003 was applicable. The case of the appellants before the Court below was that there was a change in the policy by way of an order issued on 19/02/2004, which was allegedly published in the official gazette on 20/02/2004. The rival parties led evidence in support of their claims. The Court below framed as many as 7 issues and found in favour of the respondents on all the issues. Consequently, the suit was decreed and the appellants were found liable to pay an amount of ₹63,48,938/- alongwith interest @12% per annum to the respondents.

6. Mr. P. Faldessai, learned Additional Government Advocate appearing on behalf of the appellants submitted that the Court below committed a grave error in granting the decree in favour of the respondents despite the admitted position that there was indeed a change in policy before the auction was undertaken and that the change in policy was applicable to the case of the respondents also. It was submitted that certain crucial admissions given by the witness who deposed for the respondents would show that the change in policy was indeed published in the official gazette and the same was enough to justify the amounts recovered by the appellants from the respondents after the said industrial unit was purchased by them. Attention of this Court was invited to order dated 19/02/2004, which signified the change in policy.

7. On the other hand, Mr. Nitin Sardessai, learned Senior Counsel appearing for the respondents submitted that the order dated 19/02/2004, was neither part of the record of the Court below nor an exhibited document and therefore, the same could not be relied upon by the appellants. It was further submitted that the Court below had correctly appreciated the pleadings and evidence on record to come to the conclusion that the amounts were illegally recovered by the appellants because the respondents had offered their bid on the basis of representation held out by the appellants while conducting the auction and that therefore, the action of the appellants in recovering the amount was correctly held by the Court below as hit by the principle of promissory estoppel. It was submitted that the so called admission of the witness who deposed on behalf of the respondents had to be appreciated in the backdrop of the documents on the record, particularly Exhibit–27 i.e. the industrial policy published in the official gazette on 06/08/2003. It was further submitted that the Court below had additionally held against the appellants on the basis of the judgments of the Hon'ble Supreme Court, particularly judgment in the case of ***Isha Marbles v/s. Bihar State Electricity Board and another*** [1995 (2) SCC 648], wherein it was laid down that no recovery of electricity charges could be made against the purchaser because he was not the consumer who had used the electricity supply. On this basis it was submitted that the appeal deserved to be dismissed.

8. Heard learned Counsel appearing for the rival parties and perused the material on record.

9. In the light of the contentions raised on behalf of the rival parties the following points arise for consideration:

α) Whether the Court below was justified in partly decreeing the suit filed by the respondents?

β) Whether the Court below was justified in holding that the action of the appellants in recovering the amounts from the respondents was hit by the principle of promissory estoppel?

10. Certain admitted facts in the present case may be appreciated. There is no dispute about the fact that when the auction was conducted in November,2004, in the present case, alongwith the brochure, what was held out to the bidders was the industrial policy published in the official gazette on 06/08/2003(exhibit-27). There was no mention about the purported change in policy as per order dated 19/02/2004. Clause 5.7 of the said industrial policy of the year 2003 reads as follows:

> *5.7 Any Industrial unit seized under Section 29 of the State Financial Corporation Act, 1951 and thereafter sold to a new entrepreneur shall be treated as a new industrial unit for the purpose of all concessions as applicable under the policy. Arrears of sales tax, entry tax, and any other State Government Dues payable by previous owners will not be realised from the transferees of the transferred units. These being public dues, will be recovered from the*

previous owners, under the alternate legal provisions like Goa Land Revenue/ Code and the rules made thereunder."

11. In the suit filed by the respondents it was specifically pleaded on the basis of the aforesaid clause, which was quoted in the plaint, that the respondents were induced to place their bid for purchasing the industrial unit on the aforesaid representation contained in the industrial policy of 2003. In the written statement the appellants admitted the contents of the aforesaid pleadings raised on behalf of the respondents.

12. It is also an admitted position that the order dated 19/02/2004, purportedly changing the policy, was never placed on record before the Court below and it is not an exhibited document. There is also nothing brought on record on behalf of the appellants to show that the aforesaid order was published in the official gazette.

13. These admitted facts were taken into consideration by the Court below to examine the rival contentions. In paragraph (23) of the impugned judgment and order, it was found that since the respondents proceeded to offer their bid on the basis of the representation and promise held out by the appellants in the industrial policy published in the official gazette on 06/08/2003 and since the respondents were never put to notice about the purported change in policy, the action of recovering amounts from the respondents was hit by the principle of promissory estoppel.

14. This Court is of the opinion that no fault can be found with the aforesaid finding rendered by the Court below, as it is based on proper appreciation of the pleadings and documents on record, particularly the document at Exhibit – 27 i.e. industrial policy of 2003. Insofar as the purported admissions given by PW1, who deposed on behalf of the respondents are concerned, a perusal of the cross-examination of the said witness would show that the statement made by the said witness to the effect that recovery was done by the appellants on the basis of amended clause 5.7 of the industrial policy is not borne out by the very document on record. A perusal of the above quoted clause 5.7 of the industrial policy of 2003, which was published in the official gazette, shows that no recovery could have been made from the respondents at all. Therefore, the appellants cannot derive any benefit from the so called admission given by PW1.

15. Even otherwise, the Court below has found that the Hon'ble Supreme Court in the case of ***Isha Marbles v/s. Bihar State Electricity Board and another***(supra) and other judgments has laid down that recovery of electricity dues cannot be made from the purchaser of the industrial unit, for the reason that the purchaser was never consumer of the electricity in respect of which dues are sought to be recovered. This is an additional ground on which the Court below found in favour of the respondents.

16. This Court has appreciated the pleadings and the material on record and it is found that no error can be attributed to the impugned judgment and order. Consequently, both the points framed above are held in favour of the respondents and against the appellants.

17. Consequently, the appeal is dismissed.

18. During the pendency of the appeal, the appellants had deposited the entire amount before this Court, which the respondents were permitted to withdraw by furnishing Bank Guarantees. Later, the Bank Guarantees were replaced by Fixed Deposits. As a Consequence of the dismissal of the appeal, the Fixed Deposits shall be permitted to be released in favour of the respondents.

MANISH PITALE, J.