A

UNION OF INDIA & ANR.

v.

SWADESHI COTTON MILLS & ANR.

September 12, 1978

B

[V. R. KRISHNA IYER, D. A. DESAI AND A. P. SEN, JJ.]

Practice and Procedure—Interference by the Supreme Court against interlocutory orders is permissible under Art. 136 of the Constitution only when ends of justice dominate and if public interest so dictates—Company Law Board inducting additional Directors under s. 408(1) of the Companies Act—High Court cannot stay the orders at the interlocutory stage unless there are good grounds to STRIKE down the order. Benefit of reasonable doubt belongs to the specialised body.

C

The Company Law Board by its order dt. 17th December, 1977 inducted several additional directors in addition to the existing directors of the respondent company, under s. 408(1) of the Companies Act, 1956, since it was of the opinion that the affairs of the company in question "are being conducted in a manner which is prejudicial to the interest of the company and to public interest". But the Delhi High Court passed an ad interim stay of the said orders, while admitting the writ Petition.

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Allowing the appeal by special leave, the Court

HELD : Where repercussions are incalculable and the basis of the direction, though interlocutory, is obscure, the ends of justice dominate and the Supreme Court may interfere, if public interest so dictates under Art. 136 of the Constitution. [736B]

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(2) A company of considerable financial dimensions and involved in operations using public resources as investment naturally becomes the concern not merely of the Company Law Board but also all of the economic process of the country. The specialised body with responsibility to watchdog corporate process is the Company Law Board. When it investigates and reaches a definite conclusion and makes a consequential direction, it is entitled to *prima facie* respect unless there are glaring circumstances to the contrary. It may well be that the order of the Board may be vitiated by infirmities, legal or other. It may also be that the reasoning of the Board and the factual foundation for it is sound. In such situations acting at an interlocutory stage, the benefit of reasonable doubt belongs to the specialised body. If there are good grounds to strike down the order certainly the High Court has jurisdiction to stay its operation. [737D-G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1501 of 1978.

Appeal by Special Leave from the Judgment and Order dated 18-1-1978 of the Delhi High Court in Civil Misc. Petition No. 1120-W of 1977 and 109/78 in Writ Petition No. 585/77.

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Soli J. Sorabjee Addl. Sol. General, *Girish Chandra* for the Appellant.

A *S. T. Desai, B. P. Maheshwari* and *Suresh Sethi* for Respondent No. 1.

A. K. Sen and *Vineet Kumar* for Respondent No. 2.

ORDER

B An ad interim order of stay passed by the High Court of Delhi has been challenged before us in this appeal. We should have hesitated to interfere with an interlocutory order following the usual practice in this Court. But, where repercussions are incalculable and the basis of the direction, though interlocutory, is obscure, the ends of justice dominate and we may interfere if public interest so dictates.

C

Here is an order of the Company Law Board under sec. 408(1) of the Companies Act, 1956, which gives a wealth of facts and a variety of reasons to support an ultimate direction which runs thus :

D "Since all the three conditions referred to in sub-section (1) of sec. 408 of the Companies Act, 1956, are established on the facts and circumstances of the case, the Company Law Board hereby appoint officers for three years, in addition to the existing directors of the company :—

1. Shri B. M. Kaul, Member, Railway Board (Retd.) 5-J-4 Jawahar Nagar, Jaipur.

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2. Shri A. K. Mazumdar, Chief Secretary, Orissa Govt. (Retd.) 26/2, Dover Road, Apartment No. 4, Calcutta-19.

3. Shri P. K. Choksi, Senior Partner, Price Waterhouse Pest & Co., B-4, Gillander House, Calcutta-1.

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4. Shri S. K. Mitra, President, Institute of Cost & Works Accounts of India, 14-A/6 Western Extension Area, Karol Bagh, New Delhi-5.

5. Shri P. A. S. Rao, Formerly President of the Institute of Company Secretaries of India, C-7/7, Vasant Vihar, New Delhi.

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6. Shri M. C. Bhatt, Joint Secretary, Govt. of India (Retd.) B-22, Defence Colony, New Delhi-24.

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7. Shri Triloki Nath Sharma, Business Executive, 247, Mohan Nagar, G. T. Road, Sahibabad, Ghaziabad (U.P.)

The Company Law Board direct further under sub-section (6) of sec. 408 of the Act that Shri B. M. Kaul will act as Chairman of the Board of Directors of the Company.

In accordance with the order passed by the Delhi High Court on 24th August, 1977, referred to hereinbefore the implementation of this order will be subject to any order that may be passed by the Delhi High Court in the matter pending before it."

This order, which inducted seven additional directors was based on the ground that the affairs of the company in question "are being conducted in a manner which is prejudicial to the interests of the company and to public interest." The High Court, after hearing counsel on both sides, passed a laconic order that :

> "We consider that the proper order to be made, in view of the circumstances of the case, is to stay the operation of the order of the Company Law Board, dated 17th December, 1977, except as regards Shri P. K. Choksi, Shri S. K. Mitra and Shri P. A. Rao, and also to direct that the said three gentlemen will not vote at the meetings of the Board of Directors till the disposal of the writ petition. We order accordingly."

A company of considerable financial dimensions and involved in operations using public resources as investment, naturally becomes the concern not merely of the Company Law Board but also of the economic process of the country. The specialised body with responsibility to watchdog corporate process, is the Company Law Board. When it investigates and reaches a definite conclusion and makes a consequential direction, it is entitled to *prima facie* respect unless there are glaring circumstances to the contrary. We do not wish to make any observations on the merits of the matter since the High Court is seized of the case. It may well be that the order of the Board may be vitiated by infirmities, legal or other. It may also be that the reasoning of the Board and the factual foundation for it is sound. In such situations, acting at an interlocutory stage, the benefit of reasonable doubt belongs to the specialised body. Of course, as stated earlier, if there are good grounds to strike down the order, certainly the High Court has jurisdiction to stay its operation. However, we find nothing stated in the order itself indicating why the High Court *prima facie* thought it necessary substantially to stay the operation of the Company Law Board's order of induction of seven persons as directors. Nor have we any light regarding the total eclipse of four directors and the partial eclipse of the other three. Unfortunately, the inscrutable face of a sphinx does not go well with the judicial process. Whatever might have been

A the basis of the High Court's order—we do not make any comments thereon—we are inclined to nullify the interim stay. Our inclination is explained by the prefatory observations we have earlier made in this order. To expatiate more may prejudice one side or the other. To indicate this much is obligatory to explicate ourselves.

B There was some argument at the Bar about an order under sec. 18AA of the Industries (Development and Regulation) Act, 1951, and its impact upon the order impugned before us. Maybe, by virtue of that appointment, the entire company comes under the control of the authorised person appointed under that provision. It is not for us to explore here the effect and import of the order of the Central Government under section 18AA and we desist from doing so. All that we need do and that we can do in the present appeal is to allow it so that the Company Board's direction in regard to seven additional directors will come into full force until the final decision of the High Court. We allow the appeal.

D We may make it clear that the learned Additional Solicitor General did assure the court that nothing which will stultify the two writ petitions before the High Court will be done by the Company Law Board or the Central Government. We hope the High Court will dispose of the case very expeditiously.

S.R. *Appeal allowed.*