

CASE NO.:
Appeal (civil) 651 of 2001

PETITIONER:
Pyrites Phosphates & Chemicals Ltd. & Anr

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 26/11/2007

BENCH:
TARUN CHATTERJEE & DALVEER BHANDARI

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 651 OF 2001
(With C.A. No. 1761 of 2002)

Civil Appeal No. 1761 of 2002 :

1. A notification bearing No. SO 565 (E) dated 21st of June, 1995 whereby an amendment was made in paragraph 1.3 of Schedule X of the Companies Act 1956, was sought to be declared as ultra vires the Constitution of India and was challenged by way of a writ petition before the High Court of Calcutta. A learned single judge held that the purported amendment was unreasonable being against the legislative policy and quashed the Notification dated 21st of June, 1995. The operative part of the judgment reads as follows: -

"For the purpose of registration of the increase in share capital only certain amendments have to be made in certificate issued therefore and certain alternations have to be made in the Registers maintained by the Respondent No. 1 for that purpose. Such a regulatory fee is not meant to be a profit making venture nor thereby a retrospective effect can be given so as to completely given a go-bye to the amount paid by the petitioner at the time of initial registration and/or subsequent increase in the authorized share capital prior to coming into force of the impugned Notification.

Imposition of enhanced fee in such a manner must also be held to be wholly unreasonable.

In that view of the matter only, the impugned orders cannot be sustained. The purported enhancement has therefore, be held to be unreasonable being against the legislative policy.

For the reasons aforementioned, these applications are allowed, the impugned Notification are set aside but in the facts and circumstances of the case, there will be no order as to costs."

2. Feeling aggrieved by the aforesaid order of the learned single judge, an appeal was carried by the appellant-The Registrar of Companies, West Bengal, which was dismissed on a finding that the notification in question was violative of Article 14 of the Constitution and if the word "pay" was read in place of the second "payable" in Clause 3 of Schedule X, then it made no sense and in any event, the mere substitution of the word "paid" in the above place could not have the meaning of giving credit to the company for the fees already paid by it from time to time. It is this judgment of the Division Bench,

which is now under challenge in this court by way of a special leave petition in respect of which leave has already been granted.

3. We have heard the learned counsel for the parties and examined the materials on record, including the notification in question, which was challenged before the High Court. It has now been brought to our notice that by a further order, by virtue of the striking down of the notification dated 21st of June, 1995 by the High Court, the Central Government had withdrawn the said notification and restored the position which was prevailing before the notification in question was brought into force. Such being the admitted position now, we are not inclined to interfere with the impugned order of the High Court. Accordingly, the appeal is disposed of without going into the arguments advanced by the learned counsel for the parties. However, we direct the appellant to refund the money, recovered on the basis of the amendment made by the notification which was struck down by the High Court, within three months from the date of supply of a copy of this order without payment of interest on the same. The appeal is thus disposed of. There will be no order as to costs. However, we make it clear that this order shall not be taken as a precedent in respect of other matters relating to the same question.

Civil Appeal No. 651 of 2001 :

1. A notification bearing No. SO 565 (E) dated 21st of June, 1995 whereby an amendment was made in paragraph 1.3 of Schedule X of the Companies Act, 1956 was sought to be declared as ultra vires the Constitution of India and was challenged by way of a writ petition before the Patna High Court. However, a Division Bench of the High Court at Patna dismissed the writ petition. This special leave petition has been preferred against the aforesaid judgment and order of the Patna High Court.

2. In view of the reasoning given in CA No. 1761 of 2002, we set aside the order of the High Court and strike down the notification dated 21st of June, 1995 and allow this appeal. Since we have struck down the notification, we direct the respondent to refund the amount already recovered pursuant to the amendment made by the notification dated 21st of June, 1995 within three months from the date of supply of a copy of this order. No interest shall be payable and/or the appellants shall not press for the payment of interest on the aforesaid amount which shall be refunded to them.

3. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.