**(2012) 01 AHC CK 0445**

**In the Allahabad High Court**

**Case No :** Writ C. No''s. 56421 and 58068 of 2005

Bijli Cotton Mill APPELLANT

Vs

U.P. Power Corporation Ltd. and Another <BR>U.P. Power Corporation Ltd. Vs M/S. Bijli Cotton Mills Unit of National Textil Corpn. Ltd. RESPONDENT

**Date of Decision :** 10-01-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2012) 01 AHC CK 0445

**Hon'ble Judges :** R.K. Agrawal, J;B. Amit Sthalekar, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

1. Writ Petition No. 56421 of 2005 has been filed under Article 226 of the Constitution of India by M/s Bijli Cotton Mills seeking a writ, order or direction in the nature of certiorari quashing the recovery proceedings and citation/demand notice dated 22.6.2005 issued by the Collector, Hathras, respondent no. 2, filed as Annexure 14 to the writ petition as also a writ, order or direction in the nature of mandamus restraining the respondents not to demand and recover the amount from the petitioner by citation dated 22.6.2005 by which the petitioner has been asked to deposit a sum of Rs. 3,50,98,199.55 + collection charges + interest.

2. Writ Petition No. 58068 of 2009 has been filed by the U.P. Power Corporation Limited (hereinafter referred to as the Corporation) seeking a writ, order or direction in the nature of mandamus, directing the Board for Industrial & Financial Reconstruction, New Delhi through its Chairman (hereinafter referred to as BIFR) to implement the order dated 5.3.2003 passed in Case No. 504/1993 by which the earlier order dated 21.3.2002 on the basis of hearing dated 5.2.2002 was recalled and respondent no. 3 was directed to approach the State Government for issuing an order for waiver of interest and damages. Further a

writ, order or direction has been prayed for quashing the order dated 1.5.2008 passed by respondent no. 3 to the extent it holds that the surcharge comes under damages.

3. Briefly stated the facts giving rise to Writ Petition No. 56421 of 2005 are as follows:

The petitioner, Bijli Cotton Mills was engaged in manufacturing of cotton yarn. It stopped its operation from 1992. It was nationalized under the provisions of Sick Textile Undertaking Nationalization Act, 1974, a Central Act. The petitioner''s unit was taken over by the Government of India and thereafter transferred to M/s National Textiles U.P., a subsidiary of National Textile Corporation Ltd., a Government of India Undertaking. It appears that huge electricity dues and other dues were outstanding. The National Textiles Corporation, U.P. also became sick and approached the BIFR for rehabilitation. The BIFR in its meeting held on 5.2.2002 sanctioned a Scheme. Clause 5.03 of the Scheme relates to concession and relief to be given by the State Government of Uttar Pradesh. Sub-clause (V) of Clause 5.03 provided for waiver of interest and damages on the electricity, water and municipal dues and accept payment of principal amount only during the year 2001-02. It appears that the electricity connection of the petitioner''s unit was disconnected on 3rd May, 1999 and electricity bill was raised on 5.11.2003 in which the total amount due was shown at Rs. 88,02,577.25 which comprised of principal amount of Rs. 33,52,251.18 and late payment surcharge amounting to Rs. 54,50,326.07. In terms of the scheme so framed by the BIFR the petitioner represented before the Managing Director, U.P. Power Corporation Limited, Lucknow on 25.2.2004 and a stand was taken by the officer of the National Textiles Corporation Limited that only principal amount of Rs. 33,52,251.18 was to be paid and the amount of Rs. 54.50,326.07 relating to late payment surcharge was to be waived. In the meanwhile another notice dated 27th December, 2004 has been issued by the Executive Engineer, Electricity Distribution Division II, U.P. Power Corporation Limited, Hathras calling upon the petitioner to pay a sum of Rs. 3,50,98,199.55. This amount represents late payment surcharge only. Representations were made to the authorities in terms of Clause 5.03 (V) of the Scheme framed and sanctioned by the BIFR. The matter remained as it is, whereupon the petitioner approached this Court by means of the present writ petition. Vide order dated 7th November, 2006 this Court had dismissed the writ petition being devoid of merits. The petitioner approached the Hon''ble Supreme Court by filing petition for special leave to appeal (Civil) No. 20610 of 2006 which after leave having been granted was converted in Civil Appeal No. 5275 of 2007. The Hon''ble Supreme Court vide judgment and order dated 16th November, 2007 allowed the appeal and remitted the matter to this Court with certain directions. The parties were directed to seek clarification before the BIFR whether delayed payment surcharge is included in interest or the damages in view of the conceded position that no interest was levied. The effect of waiver in case of Lord Krishna Mills case was also be considered as also the relevance of documents referred in the order. In compliance of the direction of Hon''ble Supreme Court the parties approached the BIFR for clarification and the BIFR vide order dated 1st May, 2008 had held that surcharge was included in the term ''interest and damages'' under Clauses 5.03 and 5.04 of the sanctioned scheme. The case set up by the petitioner is that in terms of the order dated 1st May, 2008 passed by the BIFR the petitioner is not liable to pay surcharge as the State Government was required to waive the payment of late payment surcharge payable by the petitioner and the citation impugned in the writ petition is liable to be quashed.

4. In Writ Petition No. 58068 of 2009 preferred by the Uttar Pradesh Power Corporation Limited the order dated 1.5.2008 passed by the BIFR has been challenged on the ground that M/s Bijli Cotton Mills cannot escape from the liability of payment of late payment surcharge as it is neither interest nor damages.

5. During the pendency of the aforesaid two writ petitions the Uttar Pradesh Electricity Regulatory Commission has approved One Time Settlement Scheme to be introduced by various power distributing companies operating in the State of Uttar Pradesh in order to ensure payment of huge arrears of electricity dues relating to actual electricity charges and waiver of late payment surcharge. The Scheme was sanctioned by the Commission on 5th February, 1010 and was made applicable for the period from 1st February, 2010 to 31st March, 2010 to be applied to all categories of non-Government consumers who got themselves registered by depositing registration fees of Rs. 1000/- and applying in the prescribed proforma. On getting registered late payment of surcharge was to be waived of completely on the condition that the principal amount of electricity charges was to be paid within a time bound period. The Managing Director of Dakshinanchal Vidyut Vitran Nigam Limited (hereinafter referred to as DVVNL) in whose jurisdiction M/s Bijli Cotton Mills falls, vide letter dated 6th March, 2010 had asked the Company to fill up the prescribed form of One Time Settlement Scheme by depositing Rs. 1000/- and get themselves registered. It may be mentioned here that M/s Bijli Cotton Mills had already paid the principal amount towards electricity charges and a sum of Rs. 3.5 crores was due towards late payment charge. Pursuant to the letter dated 6th March, 2010 written by the Managing Director, DVVNL the petitioner had deposited a sum of Rs. 1000/- on 18th March, 2010 and had also applied for waiver of late payment surcharge. The application is still pending.

6. Sri H.P. Dubey, learned standing counsel appearing for respondent no. 1 in Writ Petition No. 56421 of 2005 and for the petitioner in Writ Petition No. 58068 of 2009 initially submitted that the scheme of one time settlement is not applicable to M/s Bijli Cotton Mills as it is only applicable to non-Government consumers. However, he sought a clarification from the Corporation and vide letter dated 6th January, 2012, the Chief Engineer, Commercial and Energy Accounting, U.P. Power Corporation had informed Sri Dubey that non-Government consumer would be a one if payment is not received by the

 

consumer from the Government Treasury for defraying the expenses. M/s Bijli Cotton Mills which is unit of National Textiles Corporation Limited, a Government of India Undertaking was engaged in a purely commercial activities and did not receive any payment for defraying its expenses from the Government Treasury even though it is a Government Company. That being the position, we are of the considered opinion that M/s Bijli Cotton Mills comes within the purview of non-Government consumer and the benefit of One Time Settlement Scheme would be applicable to it. Accordingly, we dispose of both the writ petitions with the direction to the Managing Director, DVVNL to dispose of the application for One Time Settlement filed by M/s Bijli Collon Mills and if the entire electricity charges have been paid, waive the late payment surcharge in terms of One Time Settlement Scheme. The recovery certificate is hereby quashed. We may mention here that in the special facts and circumstances of the case we have not gone into the question whether the late payment surcharge comes under the category of interest or damages or not as claimed by the U.P. Power Corporation Limited in its writ petition.

 