(1999) 09 PAT CK 0060

In the Patna High Court

Case No : C.W.J.C. No. 8443 of 1997

H.M.P. Sugars Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 13-09-1999

Acts Referred:
Bihar Finance Act, 1981 — Section 27

Citation : (2000) 1 PLJR 159

Hon'ble Judges : S.N. Jha, J;G.S. Sharma, J

Bench : Division Bench

Advocate : Y.V. Giri, Jyoti Saran and D.P. Verma, for the Appellant; A.P. Jittu, Ranjan Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha & Gurusharan Sharma, JJ.—The petitioner, a company incorporated under the Indian Companies Act, 1956, seeks quashing of the notice of demand u/s 27 of the Bihar Finance Act, 1981 dated 9.1.97 directing it to deposit a sum of Rs. 6,44,119.32 towards sales tax dues. It further seeks quashing of the order of the Joint Commissioner, Commercial Taxes, Patna contained in his memo no. 3982 dated 9.8.97 rejecting its objection against the aforesaid demand notice and, directing realisation of the amount. True copies of the said demand notice and the order are annexures 7 and 12 to the writ petition. According to the petitioner-company, it has been declared as a ''sick industry'' by the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 and, therefore, in view of the provisions of Section 22 of the Act, during the pendency of the rehabilitations scheme, it is not open to the respondents to take any coercive measures for recovery of any amount due from it including the sales tax dues under the Bihar Finance Act. In support of the contention reliance is placed on Fusion Engineering Products Limited Vs. State of Bihar and Others, .

2. It may straightaway be stated that the fact that the petitioner-company has

been declared as a ''sick industry'' by the BIFR and inquiry within the meaning of Section 16 of the said Act is pending and rehabilitation Scheme has been framed by it, is not disputed on behalf of the respondents. Nor it is disputed that the case is covered by the aforesaid decision of this Court in Fusion Engineering Products Limited vs. The State of Bihar. That being so, there is hardly any dispute to be decided in this case.

3. Section 22 of the said Act provides as follows:?

22. Suspension of legal proceedings, contracts, etc.?(1) Where in respect of an industrial company, an enquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an Industrial Company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956); or any law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding-up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect these of and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be the Appellate Authority.

(2) ....

(3) Where an inquiry u/s 16 is pending or any scheme referred to in Section 17 is under preparation or during the period of consideration of any scheme u/s 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare, with respect to the sick industrial company concerned that the operation of all or any of the contracts assurances or property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) ....

(5) ....

4. In view of the admitted position that the dues in question relate to the periods 1994-95 and 1995-96 i.e. for the periods prior to the rehabilitation Scheme, following the decision in Fusion Engineering Products Pvt. Ltd. (supra) and decisions of the Supreme Court mentioned therein, it is not open to the

respondents to recover the amount by taking coercive measures including attachment etc. of the properties. It is made clear however, as held by this Court in the aforementioned case, Section 22 creates an injunction against the realisation of the dues but it does not wipe out the liability of the person, it merely seeks to keep the proceeding for execution, distress or the like, in abeyance until the full and final implementation of the sanctioned scheme. Thus after the period of implementation of the scheme is over, it will be open to the authorities to recover the dues by taking recourse to coercive measures in accordance with law, in the event the company fails to discharge its liability, on its own, in terms of the rehabilitation scheme or otherwise. For the present, it is also open to the respondents to participate and contest the proceedings before the BIFR.

5. In view of the undisputed facts, and the fair stand of the counsel for the respondent that the case is covered by the decision in Fusion Engineering Products Limited vs. State of Bihar (supra), we have no option but to quash the impugned demand notice and the order contained in Annexures 7 and 12 subject to the above observations. We order accordingly. In the result this writ petition is allowed but without any order as to costs.