
(1999) 04 AHC CK 0041
In the Allahabad High Court
Case No : C.M.W.P. No. 18247 of 1991

J.K. Cotton Spinning and Weaving Mills Co. Ltd.	APPELLANT
Vs	
Collector and Others	RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 3

Citation : (1999) 2 LLJ 781

Hon'ble Judges : Lakshmi Bihari, J;D.S. Sinha, J

Bench : Division Bench

Advocate : Vijay Bahadur Singh, for the Appellant; Vinay Malaviya, for the Respondent

Final Decision : Allowed

Judgement

D.S. Sinha and Lakshmi Bihari, JJ.—Heard Sri Vijay Bahadur Singh, the learned counsel appearing for the petitioner and Sri Vinay Malaviya, learned Standing Counsel of the State of U.P., representing the respondents.

2. The notice dated December 21, 1990 and citation dated June 21, 1991, photo copies whereof are appended to the petition as Annexures "2" and "5" respectively, are under challenge in this petition under Article 226 of the Constitution of India.

3. By the impugned notice and the citation proceedings against the petitioner have been initiated for recovery of a sum of Rs. 19,41,297.72 alleged to be recoverable as arrears of land revenue u/s 3 of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978.

4. The contention of the petitioner, in the fore-front, is that the impugned recovery is barred by Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter called the "Act". According to the petitioner it is a sick company as contemplated under the Act and proceedings u/s 16 of the

Act are on. Indeed, by its order dated January 24, 1991, a copy whereof is Annexure "1" to the petition, Board of Industrial and Financial Reconstruction has declared the petitioner to be a sick Company.

5. While entertaining the petition, on July 3, 1991 the Court granted one month's time to the respondent to file counter affidavit. No counter affidavit was filed. On November 19, 1991, the Court again granted a month's time for filing requisite counter affidavit. The respondents failed to file counter affidavit. On the request of the learned Standing Counsel, the Court again on May 13, 1997 granted to the respondents three weeks further time for filing counter affidavit. The respondents once again failed to file counter affidavit. Eventually on August 22, 1997, the Court admitted the petition and issued notice to the respondents. Office report dated April 28, 1999 points out that no counter affidavit has been filed.

6. In the absence of counter affidavit, the Court is left with no choice but to accept the averments made in the petition to be correct. Thus it is not in dispute that the petitioner is a sick company and relevant proceeding qua it u/s 16 of the Act are going on. Sri Vinay Malaviya, learned Standing Counsel representing the respondents, very fairly, concedes that the petitioner being a sick company as contemplated by the Act, the protection of Section 22 of the Act would be available to it and in view of the said protection, the impugned recovery cannot be effected against the petitioner.

7. In the result, the petition succeeds and is allowed. The impugned recovery shall not be effected against the petitioner for so long as the proceedings under the Act are pending. There is no order as to costs.