(2004) 01 AHC CK 0079

In the Allahabad High Court

Case No : C.M.W.P. No. 42981 of 2000

L.H. Sugar Factories Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3

Citation : (2004) 2 AWC 1642

Hon'ble Judges : V.M. Sahai, J;Tarun Agarwala, J

Bench : Division Bench

Advocate : V.K. Birla, for the Appellant; S.C. Khare, S.C. and S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The petitioner is a sugar factory and is engaged in the manufacturing of crystal clear sugar by vacuum pan process. It transpires that the petitioner could not pay the cane price dues for the crushing season 1983-84 and applied for a loan from "Uttar Pradesh Sugar Special Fund Committee" (hereinafter referred to as the ''Committee'') constituted under Sub-section (12) of Section 3 of the U. P. Sugarcane (Purchase Tax) Act , 1961. The Committee on the request of the petitioner agreed to grant a loan of Rs. 91.43 lacs for the purpose of payment of arrears of sugarcane price for the crushing season 1983-84 subject to the condition that the principal amount along with interest at the rate of 19.5% per annum would be paid in five equal annual instalments. For the aforesaid purpose an agreement dated 15.11.1984 was executed between the petitioner and the Cane Commissioner, U.P. on behalf of the Committee. It transpires that the petitioner was unable to repay the loan and approached the State Government for reschedulement of the loan. The State Government accepted the request of the petitioner and by an order dated 30.9.1989 agreed to reschedule the loan. The said order stipulated that the period from November 1984 to September, 1989 will be treated as moratorium period and for this period interest would be charged at the rate of 16.5% per annum. Further, the total amount of interest calculated for the period November, 1984 to September, 1989 would be treated as a term loan w.e.f. September, 1989 and this amount would be paid in various instalments, the first of which was to be paid by 15.10.1989. It further transpires that the petitioner could not comply with the aforesaid reschedulement plan and accordingly again approached the State Government for reschedulement of the loan. The State Government by an order dated 8.10.1987 agreed in principle to reschedule the repayment of the principal amount and the interest accrued thereon and subsequently by an order dated 24.12.1987 rescheduled the repayment plan stipulating therein that the interest for the period September, 1989 to 31.3.1997 would be charged at the rate of 16% per annum, which would be treated as a term loan subject to the condition that the first instalment should be paid by 1.1.1998. The State Government subsequently, vide order dated 13.1.1998 extended the repayment of the first instalment from 1.1.1998 to 1.2.1998.

2. It is alleged that in the reschedulement plan, as indicated in the Government order dated 13.1,1998, the interest was calculated at the rate of 19.5% instead of 16%. The petitioner, however, deposited the first instalment on 29.1.1998 calculating the rate of interest at the rate of 19.5% per annum and thereafter, submitted a representation dated 4.4.1998 to the State Government praying therein that the interest be recalculated at the rate of 16% instead of 19.5% per annum. The said representation of the petitioner was accepted by the State Government vide its order dated 17.4.1998 holding therein that the rate of interest prior to September, 1989 and from September, 1989 to 31.3.1997 is to be calculated at the rate of 16% per annum and accordingly, directed the Cane Commissioner to modify the repayment plan of the petitioner. Instead of modifying/correcting the repayment schedule, the Cane Commissioner vide letter dated 24.7.1998 and 6.1.1999 directed the petitioner to keep paying the instalment as per order of the State Government dated 13.1.1998 and the excess amount, if any, would be adjusted later on. However, the petitioner deposited the principal amount and the interest accrued thereon through various instalments calculating the interest at the rate of 16% per annum and did not deposit the interest at the rate of 19.5% per annum. Consequently, a recovery certificate dated 15.7.2000 for a sum of Rs. 18,13,452 was issued under U. P. Public Moneys (Recovery of Dues) Act, 1972,

3. Against the aforesaid recovery certificate dated 15.7.2000, the petitioner filed Civil Misc. Writ Petition No. 34101 of 2000, before this Hon''ble Court, which was disposed of by an order dated 4.8.2000 directing the petitioner to make a fresh representation to the Cane Commissioner, who would decide the matter. The Cane Commissioner by the impugned order dated 7.8,2000 rejected the representation of the petitioner and held that the petitioner was liable to pay the interest at the rate of 19.5% per annum. Thus, the petitioner filed the present writ petition praying for the following reliefs :

"to issue a writ, order or direction in the nature of certiorari quashing the recovery certificate dated 15.7.2000 (Annexure-19) and rejection order dated 7.8.2000 (Annexure-22) passed by the respondent No. 2 ;

to issue a writ, order or direction in the nature of mandamus commanding the respondents not to adopt any coercive measure against the petitioner for recovery of the amount in pursuance of recovery certificate dated 15.7.2000 issued by the respondent No. 2, Cane Commissioner, U. P., Lucknow ;

to issue any other writ, order or direction as this Hon''ble Court may deem fit and proper in the circumstances of the case ;

award costs of the writ petition to the petitioner."

4. We have heard Sri V.K. Birla, learned counsel for the petitioner and Shrish Chandra Khare, learned standing counsel for the respondents.

5. The learned counsel for the petitioner submitted that the State Government accepted the representation of the petitioner and vide order dated 17.4.1998 held that for the period prior to September, 1989 and from September, 1989 to 31.3.1997. the rate of interest would be charged at the rate of 16% per annum. The State Government further directed the Cane Commissioner to modify the reschedulement plan of the petitioner. The counsel for the petitioner urged that there was no justification for the Cane Commissioner to direct the petitioner to deposit the amount as per reschedulement plan, as disclosed in the order dated 13.1.1998, especially in the light of the fact that the State Government vide its order dated 17.4.1998 had directed the Cane Commissioner to amend and modify the reschedulement plan of the petitioner.

6. The learned counsel for the respondents has submitted that the petitioner was required to pay the first instalment by 15.10.1989, as per order of the State Government dated 30.9.1989. Since, the petitioner failed to deposit the instalment within the time granted as per the aforesaid order dated 30.9.1989, the petitioner was, therefore, not entitled to the benefit of 16% interest for the period 1984 to September, 1989 and was liable to pay interest at the rate of 19.5% per annum. It was further submitted that the Government order dated 24.12.1997 did not waive the penal interest of 19.5% per annum for the period prior to September 1989 and that the Government order dated 24.12.1997 charging the interest at the, rate of 16% per annum was confined only for the period September, 1989 to 31.3,1997.

7. The contention of the learned standing counsel appearing for the respondents has no force and is liable to be rejected. The State Government by order dated 30,9.1989 agreed to reschedule the repayment of the loan charging the interest at the rate of 16% per annum. This Government order of 30.9.1989 was further modified by order dated 8.10.1997 directing that the interest for the period September, 1989 to 31.3.1997 would also be charged at the rate of 16%. The State Government on the representation of the petitioner by order dated

17.4.1998 clarified that the rate of interest prior to September, 1989 and thereafter, would be charged at the rate of 16% per annum. Thus, in view of the categorical direction issued, by the State Government vide its order dated 17.4.1998, the demand raised by the Cane Commissioner, U. P., Lucknow, charging the interest at the rate of 19.5% per annum is wholly unjustified and unwarranted. The Cane Commissioner should have modified the reschedulement plan, as directed by the State Government in its order dated 17.4.1998, which was binding upon him.

8. In view of the aforesaid discussions, the writ petition succeeds and is allowed. The recovery certificate dated 15.7.2000 and the order of the Cane Commissioner, U. P., Lucknow, dated 7.8.2000 are hereby quashed. The Cane Commissioner, U.P., Lucknow, is directed to recalculate the amount of interest at the rate of 16% per annum for the period prior to September, 1989 and thereafter. After calculation, if any amount is found to be payable by the petitioner, the same shall be paid by the petitioner within one month from the date of the order of the Cane Commissioner, U.P., Lucknow, respondent No. 2. The parties shall bear their own costs.