
(2004) 05 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 531 of 2004

Modi Industries Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20, 22
Uttar Pradesh Municipalities Act, 1916 — Section 22

Citation : (2004) 2 UPLBEC 1707

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Bharatji Agrawal, Dhruv Agrawal and Piyush Agrawal, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed with a prayer for declaring Section 161(b) of the U.P. Municipalities Act, 1916, as ultra vires the Constitution. The petitioner has also prayed for a writ of certiorari to quash the impugned provisional assessment orders of house tax dated 23.11.2001 (vide Annexure-III to the petition) and for quashing the demand notices dated 6.12.2003, for assessment years 2000-01 to 2002-03 from the petitioner (vide Annexure-II to the petition). The petitioner has also prayed for quashing of the citations in pursuance of the impugned demand notices (vide Annexure-IV to the petition).

2. Heard learned Counsel for the parties.

3. The petitioner is a Company registered under the Indian Companies Act. It is alleged in Para 7 of the petition that the petitioner is a sick unit and proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA) are pending before the Board of Industrial and Financial Reconstruction (hereinafter referred to as BIFR). The petitioner is aggrieved by the demand notices dated 6.12.2003, demanding enhanced house tax from the

petitioner for various units for the years 2000-01 to 2002-03 and has alleged that recovery proceedings are barred by Section 22 of the SICA.

4. Aggrieved against the demand notices dated 6.12.2003, the petitioner filed a Civil Suit No. 1452 of 2003 before the Civil Judge, Senior Division, Ghaziabad and applied for an injunction against the demand. It is alleged in Para 18 of the writ petition that it was in the said suit that the respondents for the first time disclosed the impugned provisional assessment orders, copy of which is Annexure-III to the petition. In Para 3 of the supplementary-affidavit it is stated that subsequently the suit has been withdrawn vide order of the ACJ (S.D.), Ghaziabad dated 16.4.2004, Annexure SA-I. In fact the suit is barred by Section 164 of the Municipalities Act.

5. In Para 22 of the petition it is alleged that in respect of a previous demand relating to previous years the petitioner had challenged the same before this Court but the petition was dismissed on 16.4.1999 (vide Annexure-VIII to the writ petition).

6. Learned Counsel for the petitioner, has submitted that the petitioner cannot file appeals against the provisional assessment orders in view of Section 161(b) of the U.P. Municipalities Act which states that the appeal shall not be heard unless the amount claimed from the appellant has been deposited by him in the Municipal Office. Learned Counsel has challenged the constitutional validity of Section 161(b).

7. A counter-affidavit has been filed by the Nagar Palika Parishad, Modinagar and we have perused the same.

8. In Para 17 of the counter-affidavit it is stated that the scheme of rehabilitation of the Company has been failed before the BIFR who have recommended for the winding up of the Company u/s 20(2) of the SICA. Hence, it is alleged that no proceedings can be said to be pending before the BIFR, particularly in view of the judgment of this Court in Writ Petition Nos. 99 to 103 of 1999, Modi Industries Ltd. v. State of U.P. and Ors., decided on 22.2.1999, vide Annexure-CA-1.

9. We have carefully perused the judgment of this Court in Writ Petition Nos. 99 to 103, decided on 22.2.1999. That decision has referred to the order of the BIFR dated 8.10.1993, copy of which is Annexure-RA-1 to the rejoinder-affidavit.

10. We have carefully perused the order of the BIFR dated 8.10.1993. In Para 4 of the said order it is mentioned that the BIFR has only formed a prima facie opinion that Modi Industrial Ltd. has to be wound up as no measures under the Act, are feasible for its revival. However, having said that, the BIFR directed in Para 5 of its order for issuing of a public show cause notice u/s 20 fixing 14.12.1993, for considering of objections/suggestions or alternative proposals, if any, in respect of the Sick Industrial Company, Modi Industries Ltd. by anyone concerned.

11. Section 20(1) of SICA states :

"Where the Board, after making inquiry u/s 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court."

12. A perusal of Section 20(1) shows that under that provision the Board has to record and forward its opinion to the concerned High Court. In the order dated 8.10.1993, the Board has not recorded its final opinion nor has forwarded its opinion to the High Court. Thus the order dated 8.10.1993 cannot be said to be an order u/s 20(1) as it has neither recorded a final opinion nor has it sent its opinion to the High Court. It has only recorded a prima facie opinion and has invited objections/suggestions or alternative proposals in respect of the Company.

13. Annexure-VII of the writ petition is the order dated 30.1.2004 before the BIFR. In that order it is mentioned :

"Having heard the submissions of all concerned and considering the material on record, the Bench observed that in today's hearing both the MDs of the Company had shown some flexibility from their earlier rigid stands and displayed willingness to come forward for amicable settlement of the issues involving division of assets and liabilities based on fair valuation thereof. This step would improve the prospects for formulating a joint proposal for a DRS and pave the way for the revival of the company. Keeping this in view, the Bench issued the following directions :--

(a) OA (IDBI) shall immediately appoint a reputed Valuer to undertake the valuation of the assets of the corporate office. The valuer will complete this task within 60 days from today without waiting for the copy of the proceedings. In respect of shares, OA may appoint a firm of CAs for the purpose of valuation.

(b) The OA will brief the Valuers properly on all the issues forming part of the Terms of Reference (TOR) of their assignment.

(c) The company will deposit Rs. 7 lakhs with the OA (IDBI) within 7 days towards the cost of the valuation. Balance, if any, due should be reimbursed by the company within 30 days of receipt of the Bill.

(d) The company shall finalise the OTS of its dues on the basis of negotiations with Fis/banks and all other parties within the next 45 days. This settlement was necessary, so that the valuation report is received, rehabilitation proposal can be formulated without objections from the concerned parties.

(e) On receipt of the Valuation Report from the Valuers, the OA would make available the same to all concerned, with 4 copies to the Board."

14. A perusal of the above directions in the order dated 30.1.2004, shows that the BIFR has noticed that both the MDs of the Company had shown some flexibility from earlier rigid stands and displayed willingness to come forward for amicable settlement of the issues involving division of assets and liabilities based on fair valuation. Hence the BIFR directed the Operating Agency (IDBI) to immediately appoint a reputed Valuer to undertake the valuation of the assets of the corporate office. The Operating Agency was permitted to appoint a firm of chartered accountants for this purpose. The BIFR also gave some other directions as mentioned in the above order.

15. Thus, a perusal of the order dated 30.1.2004 shows that proceedings before the BIFR are still pending in respect of Modi Industries Ltd. and have not been concluded.

16. Learned Counsel for the respondents submitted that the judgment in Writ Petition Nos. 99 to 103 of 1999, dated 22.2.1999, is binding as a precedent on this Court. We cannot accept this submission. A decision is an authority for the principle of law, which it lays down and is not an authority in respect of facts which are found to be incorrect vide *Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal*, . Thus, in *Municipal Committee, Amritsar Vs. Hazara Singh*, , the Supreme Court observed :

"Statements on matters other than law have no binding force."

17. In *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*, , the Supreme Court observed that the observations of a Judge are not to be read as *Enclid's* theorem, nor as provisions of the statute. In *State of Punjab Vs. Baldev Singh*, , the Supreme Court observed that everything in a decision is not a precedent. In *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, , the Supreme Court observed that it is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. It is only the principle laid down in the judgment that is binding.

18. In the light of the above decisions we are of the opinion that the judgment dated 22.2.1999 in so far as it was observed therein that no proceedings u/s 22 can be said to be pending was based on a misconception about the correct facts. As stated in detail above, the proceedings are pending before the BIFR which is also evident from the order dated 30.1.2004 (vide Annexure-VII to the petition).

19. Since admittedly proceedings before the BIFR are pending the bar of Section 22 clearly applies. In the decision of a Division Bench of this Court in *Modi Rubber Ltd. v. Madura Coast Ltd. and Anr.*, Special Appeal No. 420 of 2004, decided on 20.5.2004, we have discussed several Supreme Court decisions on the point and the same need not be repeated here.

20. For the reasons given in the aforesaid decisions we are clearly of the opinion

that no recovery can take place against the petitioner-Company in view of the bar of Section 22. As regards the question of constitutional validity of Section 161(b) of the U.P. Municipalities Act, in our opinion, it is not necessary to go into this question. It is a settled legal principle that if a case, can be decided without going into the constitutional question then the Court should avoid going into the constitutional question. As observed by us above, this petition can be decided on the point that Section 22 of the SICA bars the impugned recovery. Hence we are not going into the constitutional question regarding validity of Section 161(b).

21. For the reasons given above this petition is allowed. The impugned recoveries under the U.P. Municipalities Act shall remain under abeyance until the proceedings under the SICA are finalized.