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(1992) 01 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5455 of 1991

Modi Spinning and Weaving Mills Co. Limited APPELLANT

Vs

U.P. State Electricity Board and others RESPONDENT

Date of Decision : 09-01-1992

Acts Referred:

Constitution of India, 1950 — Article 133(1)
Electricity Act, 1910 — Section 24
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 15(1), 16, 17, 17(1)
Village Panchayat Act — Section 129

Citation : AIR 1992 All 247 : (1992) 1 AWC 364 : (1992) 75 CompCas 672

Hon'ble Judges : V.K. Khanna, J;R.A. Sharma, J

Bench : Division Bench

Advocate : Rakesh Sawahney, Sudhir Chandra and Miss Bharati Sapru, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.K. khanna, J.—Petitioner Modi Spinning and Weaving Mills Co. Ltd. Modi- nagar is a Public Limited Company incorporated under the Indian Companies Act having its registered office at Modinagar and is running a textile manufacturing unit. For the purposes of running its unit it gets its electrical energy from the U.P. State Electricity Board (hereinafter referred to as the Board) under an agreement executed between the parties. The dispute in the present writ petition centres round the question as to whether the Board can disconnect the supply of electrical energy to the petitioner''s textile mills in exercise of its power u/ S. 24 of the Indian Electricity Act after the petitioner''s unit has been declared as a sick industrial company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

2. Brief admitted facts for the purposes of adjudication of the question raised in the present writ petition are that the petitioner had filed a Civil Misc. Writ Petition No. 6915 of 1986 before the Lucknow Bench of this Court wherein the petitioner

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had challenged the notification dated 28-1-1986. by means of which the respondent Board had revised the rates of power tariff. In the aforesaid writ petition a stay order was granted in favour of the petitioner which stood vacated when the writ petition was finally dismissed on 7-5-1990.

3. The Board on 11-5-1990 intimated the petitioner that the total outstanding demand towards the petitioner amounted to Rupees 2,l7,30,335.65p. According to the petitioner as the Board was intending to disconnect the electricity supply to the petitioner''s unit, the petitioner''s unit and its sister concerns had to agree in writing vide letter dated 31-5-1990 that a substantial amount shall be paid by 4-6-1990 and the balance amount will be paid in monthly installments of Rs.6 lacs with effect from August, 1990. The petitioner''s unit and its sister concerns gave an assurance that if the Board does not disconnect their electricity supply they would not file any appeal against the judgment of the High Court dated 7-5-90 before the Supreme Court. In pursuance of the aforesaid agreement certain amounts were paid by the petitioner''s unit.

4. The petitioner moved a reference under S. 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 to the Board for industrial and financial reconsiderations and for determination of the measures to be adopted with respect to the petitioner''s unit. On 20-6-1990 the Board declared the petitioner''s unit to be a sick company and directed the Industrial Development Bank of India (IDBI) as the Operating Agency to prepare a scheme for the revival of the petitioner-Company. The petitioner informed the Board not to insist upon the payment of the balance amount of the electricity dues till such time as the matter of rehabilitation of the petitioner is pending before the Board for Industrial and Financial Reconstruction (BIFR) and the scheme prepared and presented by IDBI for this purpose is permitted to be implemented without any hindrance from any quarter.

5. By a notice dated 20-11-1990 from the Board it was intimated to the petitioner that there were arrears with regard to the payment of some installments contrary to an undertaking given earlier and if the petitioner did not pay the arrears in regard to the payment of such installments the respondents will have no other alternative except to disconnect the petitioner''s supply under the Electricity Act for non-payment of dues without any further notice. The aforesaid notice has been annexed as Annexure 7 to the writ petition. On 31-12-1990 the Board rejected the petitioner''s request for deferment of the payment of the outstanding dues of electricity on the ground that the petitioner and its sister concerns had earlier agreed to pay certain amount in installments to discharge their total liability. The aforesaid letter of the Board dated 3-12-1990 has been annexed as Annexure 10 to the writ petition. Another notice dated 1-12-1990 contained in Annexure 11 to the writ petition was received by the petitioner from the Executive Engineer of the Electricity Board in which it was intimated that the installments for the months of September to November 1990 at the rate of Rs. 6 lacs per month were to be deposited as per agreement but

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only an amount of Rs. 6 lacs has been deposited leaving a balance of Rs. 12 lacs, It was intimated that in case the amount of Rs. 12 lacs was not deposited immediately there will be no alternative left with the Board except to disconnect the petitioner''s supply without any further notice. The petitioner has averred in the writ petition that so far as the current dues are concerned the petitioner is regularly paying the same and has committed no default in respect of the future payments.

6. In the present writ petition the petitioner has prayed for a writ of certiorari quashing the letter dated 11-5-1990 and notices dated 22-8-1990 and 3-12-1990. The petitioner has also prayed for a writ of mandamus directing the respondents not to recover the balance outstanding towards electricity dues and not to disconnect the supply of electricity to the petitioner till the pendency of the proceedings before the BIFR, inter alia, on the following ground:--

7. Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 provides inter alia that where in respect of an industrial company, a scheme referred to u/S. 17 is under preparation then notwithstanding anything contained in the Companies Act or any other law or 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 thereof shall lie or be proceeded with further, except with the consent of the Board....."

8. Provisions of S. 24 of the Indian Electricity Act according to the petitioner are in the nature of execution against the properties of the Company, firstly because electricity connection is the property of the Company and thus by having recourse to the provisions of S. 24 of the Indian Electricity Act the property of the Company is being proceeded with. Secondly, since the U.P. State Electricity Board is having the monopoly for supplying electricity, the properties of the Company are being affected inasmuch as without electrical energy the industrial Unit of the Company cannot be run.

9. For the purposes of determination of the question raised in the present writ petition it would be wroth while to reproduce the relevant provisions of the Sick Industrial .Companies (Special Provisions) Act, 1985 (Act No. I of 1986) (hereinafter described as the "Act"). A bare look at the Preamble, the statement of objects and reasons and the provisions of the Act makes it clear that the Act has been enacted to safeguard the economy of the nation and to protect viable sick Units and .is aimed at revising and rehabilitating sick industries. S. 15 of the aforesaid Act provides for a reference to the Board when a Company has become a sick industrial Company for determination of the measures which shall be adopted with respect to the Company. Section 16 enjoins upon the Board to make such enquiry as it may deem fit for determining whether any industrial company has become a sick industrial Company or not. Section 17 of the Act

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invest the Board with powers to make suitable orders on the completion of enquiry u/S. 16 of the Act. Under S. 17(1) the Board has to come to a decision by passing an order in writing whether it is practicable for the Company to make its network positive within a reasonable time. In case the Board comes to that conclusion then u/S. 17(2) the Board shall by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the Company as it may deem fit to make its network positive. However, if the Board comes to the conclusion that it is not practicable for a sick industrial company to make its network positive within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in S. 18 in relation to the said Company, it may as soon as may be, by order in writing direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company. Section 18 invests the operating Agency specified under sub-sec. (3) of S. 17 of the Act, with a power to frame a Scheme with respect to the Company. S. 19 of the Act provides for re habilitation of the Company by giving financial assistance. It may be useful to reproduce the provisions of S. 19 of the Act:

"19. Rehabilitation by giving Financial Assistance:-- (1) Where the Scheme relates to preventive, ameliorative remedial and other measures with respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any Scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority any Government bank institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance to the sick industrial company.

(2) Every scheme referred to in sub-sec. (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation.

(Emphasis provided)

(3) Where in respect of any scheme the consent referred to in sub-sec. (2) is given by every person required by the scheme to provide financial assistance, the Board may, as soon as may be, sanction the scheme and from the date of such sanction the the scheme shall be binding on all concerned.

(4) Where in respect of any scheme consent under sub-sec. (2) is not given by any person'' required by the scheme to provide financial assistance, the Board may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit.

(Emphasis provided).

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Section 20 of the Act provides for winding up of sick industrial company. It gives power to the Board to make enquiry u/S. 16 and after consideration of all relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties. In case it forms an opinion that it is just and equitable that the sick industrial company should be wound-up, it may record and forward its opinion to the concerned High Court. The High Court is enjoined on the basis of the opinion of the Board to order winding up of the sick industrial company and will proceed and caused to proceed with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956.

10. The main provision of the Act which will fall for consideration is S. 22 of the Act, the relevant part of which runs as follows:--

"22, Suspension of Legal Proceedings, Contract Etc. (1) Where in respect of an industrial company, an inquiry u/S. 16 is pending or any scheme referred to u/S. 17 is under preparation or consideration of a sanctioned scheme is under implementation or where an appeal u/S. 23 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (I of 1956) or any other 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 thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2) xx xx xx xx xx xx" From perusal of the scheme given under the aforesaid provisions of the Act it becomes clear that in case an order u/S. 17(3) of the Act has been passed for preparation of the scheme and the scheme relates to preventive, ameliorative, remedial and other measures with respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government any scheduled bank or other bank, a public financial institution or State Level Institution or any institution or other authority to the sick industrial Company. However, it is very pertinent to note that in such a case the scheme has to be circulated to every person required by the scheme to provide financial assistance for his consent within a period of 60 days from the date of such circulation. Sub-sec. (3) of S. 19 provides that when the consent is given by the persons concerned required by the Scheme to provide financial assistance, the Board, may, as soon as may be, sanction the scheme and from the date of such sanction the scheme shall be binding on all concerned. Sub-sec. (4) of S. 19 is rather important which says that where in respect of any scheme, consent under sub-sec. (2) is not given by any person required by the Scheme to provide financial assistance, the Board may adopt such other measures including the winding up of the sick industrial Company as it may deem fit.

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11. It is thus clear that when a sick industrial unit is being sought to be rehabilitated and a scheme is being prepared for that purpose, the scheme looking to the requirement of the industrial company for the purposes of making it viable may provide for getting reliefs, concession or sacrifices from Governmental agencies, banks and other authorities. However, the scheme does not automatically become binding on persons required by the scheme to provide financial assistance without their consent. In case the consent is not received the Board has to adopt other measures and cannot force those agencies to provide financial assistance,

12. Section 22 of the Act deals with suspension of legal proceedings, contract etc. It imposes certain restrictions on rights of third parties in respect of institution or continuation of legal proceedings such as winding up, execution, distress or the like against the properties of the company or by way of appointment of Receiver. It is not disputed that in the present case no execution or any coercive process had been initiated by the Board for realisation of its dues from the properties of the company. In its notice what the Electricity Board had done was to exercise powers of disconnection u/S. 24 of the Indian Electricity Act. It will result in a situation that in future the petitioner''s industrial unit will be deprived of supply of electricity.

13. The question, therefore, which falls for determination in this writ petition is as to whether the exercise of the power by the Board in not supplying electricity in future would come within the ambit of what has been prohibited u/S. 22(l) of the Act. In other words, can it be said that when the Electricity Board has intimated that it will not supply electricity in future if the arrears are not paid, the action of the Electricity Board amounts to taking proceedings for execution, distress or the like against any of the properties of the industrial company of the petitioners'' unit. By no stretch of imagination it can be said that the electricity which is being supplied to the petitioner by the Electricity Board is the property of the petitioner. Getting an electricity connection is only a means to get electrical energy from the Board to the petitioners'' unit. Even if for arguments sake we may taken that the electricity connection, cable and other fixtures which the petitioner has installed in his factory may be the property of the petitioner but when the Electricity Board exercises its power u/S. 24 of the Indian Electricity Act this property of the petitioner is not being proceeded against by the Board. What the Board by exercise of its powers u/S. 24 of the Indian Electricity Act is doing is not to supply electrical energy which admittedly is the property of the Board. However, the words against the property of the company'' clearly implies that the action must be against the property of the company. Non-supply of goods in future cannot amount to action against the property of the company. It cannot be said that future non-supply of goods under the contract is similar to proceedings for winding up, execution or distress against the properties of the company or amounts to appointment of Receiver over the property of the company. If any other view is taken, it will result in anomalous situation. We may take an example that raw material is being supplied to an

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industrial unit by some person or agency and the unit has not paid the bills and there is outstanding demand against the unit. The pertinent question will be as to whether such a unit can force the supplier to supply the raw material by taking protection of S. 22 of the Act. Non-supply of raw material in future in so far as the supplier is concerned is not to increase the existing liability of the industrial undertaking which has already been declared to be a sick unit. So far as the supplier is concerned, the measure taken by him by stopping to supply the raw ; material in future cannot by any stretch of imagination be said to be taking steps for recovery of arrears which have already fallen due. We are thus of the opinion that the exercise of the power by the aforesaid Board in giving a notice u/ S. 24 of the Indian Electricity Act does not amount to initiation or continuation of legal proceedings such as, winding up, execution, distress or the like against the properties of the company. In this connection it may be noticed that reliance has been placed on a decision of the Bombay High Court in the case of The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others, . In the aforesaid case the coercive proceedings had been initiated u/S. 129 of the Village Panchayat Act to recover a sum of Rs. 9,47,539/- stated to be the property tax and other amounts due from the company. It is, therefore, clear that in case of Sri Vallabh Glass works (supra) the recovery against the properties of the company were going on and the principles laid down in the aforesaid case cannot apply to a case of non-supply of electricity in future by the Electricity Board.

14. For the reasons stated above, we are thus of the opinion that the action of the U.P. State Electricity Board in giving notice u/S. 24 of the Indian Electricity Act cannot amount to initiation or continuation of legal proceedings such as execution, distress or the like against the properties of the company. The petitioner is thus not entitled to get the impugned notices issued by the State Electricity Board quashed. The writ petition accordingly fails and is dismissed. However, looking to the facts and circumstances of the case the parties shall bear their own costs. The stay order granted in this case is discharged. Learned counsel appearing for petitioner has made an oral prayer, at the time of delivering the judgment that this court may grant a certificate for filing appeal under Art. 133(1) of the Constitution of India. After hearing the learned counsel for the petitioner we are of the opinion that the present case does not involve substantial question of law of general importance which, in our opinion, needs to be decided by Hon''ble Supreme Court. The oral prayer is accordingly rejected.

15. It may also be mentioned that prayer was made for staying the disconnection for a period often days. We have also considered the prayer and the oral prayer is rejected.

16. Petition dismissed.

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