(1998) 03 AHC CK 0131

In the Allahabad High Court

Case No : C.M.W.P. No. 29614 and 24425 of 1991 and 38860 of 1996

Rewa Gases (P.) Ltd. APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 2, 3, 3(1)
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 2, 3, 3(1)
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 2, 3, 3(1)

Citation : (1998) 2 AWC 1523 : (2000) 101 CompCas 212

Hon'ble Judges : Palok Basu, J;J.C. Misra, J

Bench : Division Bench

Advocate : S.C. Budhwar, Anil Sharma and Sunil Ambwani, for the Appellant; S.C., R.B.D. Mishra and R.P. Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

Palok Basu, J.—The only controversy involved in the bunch of these writ petitions is whether on the recovery proceedings initiated against the petitioners at the Instance of concerned respondent, recourse could be taken to the provisions contained in Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 (for short Recovery Act).

2. M/s. Rewa Gases Private Limited have prayed that recovery certificate dated 6.10.1990 (Annexure-17 to the writ petition), Vikas Industrial Gases Limited have prayed that citation No. 132803 dated 21.8.1991 (Annexure-9 to the writ petition) and Vindhyachal Air Products Private Limited have prayed that recovery certificate dated 6.11.1996 (Annexure-18 to the writ petition) may be quashed. In these documents, substantial amount is sought to be recovered against the

three petitioners respectively for the alleged price of the materials supplied by the respondent concerned to the petitioners. Undlsputedly, U. P.. Carbide and Chemicals Limited had made certain supplies to each of the petitioners and the price thereof has not been paid. This has resulted in recovery proceedings initiated by the U. P. Carbide and Chemicals Limited under the Recovery Act. When the writ petitions were filed, counter-affidavits were called. It transpires that U. P. Carbide and Chemicals Limited have gone in the meantime under liquidation. Consequently, it is now represented by the Official Liquidator on whose behalf Sri Sunil Ambwani, learned counsel, has put in appearance. Counter-affidavits have been filed by the Official Liquidator. Rejoinder-affidavits have also been filed by the petitioners to those counter-affidavits. Interim orders were passed while entertaining the writ petitions staying realisation proceedings under the Recovery Act and as prayed by the parties'' learned counsel, the writ petitions are being disposed of finally at the admission stage.

3. Sri S. C. Budhwar, senior counsel, assisted by Sri Anil Sharma and Sri R. P. Agrawal, has been heard at considerable length in support of this writ petition. Sri Sunil Ambwani appearing on behalf of U. P. Carbide and Chemicals Limited (under liquidation) and Sri Virendra Kumar, standing counsel, appearing on behalf of the State of Uttar Pradesh have been heard in opposition at length.

4. At the very outset. It may be pointed out that Courts are reluctant in Interfering in matters where advantage is taken by a person or a firm or company in business transactions and payment is not made or is evaded on one ground or the other. It was rightly pointed out by the respondents'' counsel where defaulters who may be proceeded with under the Recovery Act comes to Court for equitable relief under Article 226 of the Constitution of India, such person, firm or company finds it difficult to get such a relief from the Court. But, as stated above, a particular mode of recovery in a concerned transaction is quite different from the money being due as price of the materials supplied. The provisions under the Recovery Act would apply only where it is permissible by those provisions. In other cases where price of the goods/materials supplied, if remains unpaid, mode of recovery has to be found out somewhere else and not under the provisions of Recovery Act.

5. From the materials on record, there does not appear to be any State-sponsored Scheme under which any of the petitioners may have been supplied any material or goods. At least counter-affidavits are silent on this point. The Court, therefore, is to proceed on the basis of that. There is some force in the contention of the learned counsel for the petitioners which have been repeatedly averred in various paragraphs of the writ petition that each of the petitioners had entered into mercantile transaction with the opposite party No. 3, U. P. Carbide and Chemicals Limited. From the pleadings, it has been further made clear that the price for the supply of the goods has not been paid. The contention of the petitioners that they had raised some dispute about quality of the goods is criticised by the learned counsel for the respondents as totally baseless and false

and were castigated as having been made with million motive. But that question is simply foreign at this stage in this writ petition.

6. The Recovery Act has defined ''Corporation'' in Section 2 (a) and ''Government Company'' in Section 2 (c) and it has defined ''State-Sponsored Scheme'' in Section 2 (g). Then it has delineated the mode of recovery as arrears of land revenue by four contingencies enumerated in clauses (a), (b), (c) and (d) of sub-section (1) of Section 3 of the Recovery Act. Keeping these provisions in the background, three arguments advanced by Sri S. C. Budhwar have to be considered :

(1) That U. P. Carbide and Chemicals Limited is not notified as Corporation within the meaning of Section 2 (a) of the Recovery Act and, therefore, it could not take recourse to the present recovery modes.

(2) That there was no State-sponsored Scheme under which the petitioners were advanced or granted or supplied any goods or materials and consequently for the recovery of its price, the provisions u/s 3 of the Recovery Act cannot be put to use.

(3) That the transaction was a simple mercantile transaction between the petitioners and U. P. Carbide and Chemicals Limited and for that reason also, the present proceedings are wholly without Jurisdiction.

7. The first argument to the effect that U. P. Carbide and Chemicals Limited cannot use the provisions of the Recovery Act is without any force. Admittedly, the opposite party No. 3, M/s. U. P. Carbide and Chemicals Limited is a subsidiary company of U. P. State Mines and Minerals Development Corporation, which corporation is already a notified corporation within the meaning of Section 2 (a) of the Recovery Act, which is quoted below :

"2 (a) "Corporation" means the Uttar Pradesh Financial Corporation established under the State Financial Corporation Act, 1951, and Includes any other Corporation owned or controlled by the Central Government or the State Government and specified in a notification Issued in that behalf by the State Government in the Official Gazette."

8. Section 617 of Companies Act has made it permissible that subsidiary company of a Government company will be Included within the meaning of the words, ''Government Company'' as defined therein. Section 2 (c) of the Recovery Act says that ''Government Company'' means a Government Company as defined in Section 617 of the Companies Act, 1956. It is not in dispute that U. P. Carbide and Chemicals Limited is a subsidiary company of the aforesaid U. P. State Mines and Minerals Development Corporation. In view of this clear provision, there is no force in the arguments that U. P. Carbide and Chemicals Limited cannot take recourse to the provisions of the Recovery Act. In a given case, it is permissible for U. P. Carbide and Chemicals Limited to Invoke the provisions of the Recovery Act.

9. Both the remaining arguments have, however, enough force. As already noted above, none of the petitioners took any advantage of entering into any transaction under the provisions of any State-sponsored Scheme. Likewise, at no point of time the petitioners seem to have approached U. P. Carbide and Chemicals Limited for according any financial assistance or loan under any State-sponsored Scheme. Obviously, the transactions of the petitioners were simple mercantile transactions. It appears that U. P. Carbide and Chemicals Limited had supplied some goods/materials to each of petitioners and price thereof has not been paid by any of the petitioners to the aforesaid supplier. Consequently, in view of the provisions noted above, U. P. Carbide and Chemicals Limited, on facts of these cases, cannot Invoke any of the clauses (a), (b), (c) and (d) of Section 3 of the Recovery Act against any of the petitioners for recovery of the money which it claims to be due against them under ordinary business transaction.

10. In view of the aforesaid discussions, the writ petitions have to succeed. However, it is made clear that any other mode of recovery which is available to the respondents can be resorted to wholly uninfluenced by any observation existing in this judgment which has the effect of nullifying the recovery mode only under the provisions of the Recovery Act.

11. The Writ Petition Nos. 29614 of 1991, 24425 of 1991 and 38860 of 1996 succeed and are allowed. The recovery certificate dated 6.10.1990 (Annexure-17), Citation No. 132803, dated 21.8.1991 (Annexure-9), and the recovery certificate dated 6.11.1996 (Annexure-18) of the respective writ petitions are quashed. No action in pursuance of those recovery certificates or citation shall be taken against the petitioners and, if taken already, shall stand quashed. Interim orders granted in all the writ petitions are hereby vacated. Parties will bear their own costs.