
(2000) 03 PAT CK 0103

In the Patna High Court

Case No : CWJC No's. 3720 and 5565 of 1999

S.K.G. Consolidated Limited

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22, 7(2)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 15(1), 22,
22(1), 25

Citation : (2000) 2 PLJR 145

Hon'ble Judges : Ravi S. Dhavan, C.J;Aftab Alam, J

Bench : Division Bench

Advocate : Y.V. Giri and Jyoti Saran, for the Appellant; S.A. Narain, V.N. Sinha, R.K. Datta and A.N. Singh for State, for the Respondent

Final Decision : Dismissed

Judgement

1. The controversy in these two writ petitions tended to have serious consequences for the State revenue and the pleadings of the parties were complete. With the consent of the parties, therefore, these two writ petitions were heard for final disposal on the stage of admission itself.

2. These two writ petitions filed by the same Petitioner seek to raise issues which are overlapping. These two cases were, therefore, heard together and are being disposed of by this common judgment and order.

2A. In the matter of grant of exclusive privilege for carrying on wholesale trade in country liquor the State Government laid down a condition that it would part with the privilege only in favour of person(s) against whom there were no Government dues of any kind. The Petitioner, S.K.G. Consolidated Limited, came to this Court in CWJC No. 3720 of 1999 asking this Court to intervene in the process of grant of exclusive privilege, to said that the condition laid down by the Government was unreasonable and arbitrary and to command the State Government to grant exclusive privilege to the Petitioner and to issue the licence

in Form 27 in its favour regardless of any sales tax dues against the Petitioner company in respect of the previous period for which it was granted exclusive privilege by the Government. In this writ petition the Petitioner was able to obtain an interim order from this Court on 26.4.1999 by which the Respondents were peremptorily asked to issue licence in Form 27 to the Petitioner company within three days from the date of production of a certified copy of that order before the Collector/District Commissioner of the concerned districts. On the basis of the interim direction the Petitioner was given licences in thirty-eight districts of the State enabling it to carry on wholesale trade in country liquor in those districts.

3. Barely two months after the interim order was passed in its favour in CWJC No. 3720 of 1999 and while its claim in the earlier writ petition was yet to be adjudicated on merits, the Petitioner came to this Court with another writ petition being CWJC No. 5565 of 1999 filed on 22.6.1999. By the second writ petition the court was told that on a reference made u/s 15(1) of the Sick Industrial Company (Special Provisions) Act, 1985, the Petitioner company was granted a certificate of registration by the Board of Financial and Industrial Reconstruction (BIFR). The grant of certificate of registration by the BIFR was in turn made the basis for making the prayer for a direction prohibiting the State Government "from proceeding in any manner or taking any steps for recovery of the sales tax dues and from taking any coercive steps for realisation of sales tax in view of the provisions of Sick Industrial Company (Special Provisions) Act, 1985,

4. Thus, the position, as it emerges, can be stated as follows. Even without making payment of the sales tax dues for the previous period the Petitioner claimed exclusive privilege and the licence for carrying on wholesale trade in country liquor for the current period. It was able to obtain the licences on the basis of an interim direction given by this Court. Enabled thus to carry on trade in country liquor it further claims that having got the certificate of registration from the BIFR it must not be asked by the State Government (without the previous consent of the BIFR) to make payment of the sales tax collected by it though it would be free to realise sales tax on the sale of country liquor made by It. The anomaly in the Petitioner's stand, in so far as the second case is concerned, would be evident if it is borne in mind that the amount of sales tax which the Petitioner insists on retaining with it was not collected in the generality of the Petitioner's trading in the distant past. But the amounts of sales tax which the Petitioner does not want to part with are being collected by it currently, from day to day, and the sales tax is being generated solely and exclusively from its trade in country liquor which the Petitioner is enabled to carry on the basis of the exclusive privilege and licence granted to it by the State Government following an interim direction given by this Court.

5. This, in short sums up the claims of the Petitioner in the two writ petitions. And now only remains to consider the material facts and circumstances of the

two cases in greater detail.

6. But before proceeding to examine the two cases in further detail it would be appropriate to note, for the sake of the record, that the second writ petition (CWJC No. 5565 of 1999) was filed by the Petitioner on 22.6.1999. On 25.6.1999 the case was listed for orders on interlocutory application (I.A. No. 7894 of 1999) filed in the main case. On that date a bench of this Court disposed of the main writ petition itself giving a "direction to the Respondent not to realise any sales tax from the Petitioner without seeking consent of the Board of Industrial and Financial Reconstruction."

7. Against this order the State of Bihar went in appeal before the Supreme Court and the Supreme Court by order dated 15.11.1999 passed in Civil Appeal No. 6560 of 1999 (arising out of S.L.P. No. 15785 of 1999) set aside the order passed by this Court and remitted the matter for a decision in the writ petition (CWJC No. 5565 of 1999) in accordance with law.

8. This is how this matter came back to this Court and while hearing connected excise matters this Court found it proper and appropriate to have these two cases tagged for being heard together.

CWJC No. 3720 of 1999

9. The desk is now made clear for examining the facts of CWJC No. 3720 of 1999 being the first case filed by the Petitioner. However, in order to see the claim of the Petitioner in this case in its proper perspective it would be essential to first state some basic and undeniable facts concerning grant of exclusive privilege and licence for carrying on wholesale trade in country liquor.

10. For the purpose of excise the State is divided into ten zones; each zone consists of several districts. Exclusive privilege and licence for carrying on trade in country spirit is granted separately for each zone. A person may apply for exclusive privilege and licence for one or more or all the zones. Similarly, the State Government may grant exclusive privilege for a zone to one or more persons.

11. According to the current practice exclusive privilege is granted for three years but the licence in Form 27 (for carrying on wholesale trade in country liquor) is issued annually on payment of licence fee in advance.

12. A person applying for grant of exclusive privilege is required to deposit at the time of making the tender, security money @ Rs. 5 lacs, for each zone. At the time of issuance of licence a person granted exclusive privilege is required to pay licence fee @ Rs. 1.00 per L.P. litre for the minimum guarantee quota, which in turn is determined on the basis of the sale during the previous year. In case sale during the current year should exceed the minimum guarantee quota additional sum @ Rs. 1.00 per L.P. litre is to be paid as additional licence fee. Apart from security money and licence fee, excise duty is payable @ Rs. 35/- per L.P. litre. The payment of excise duty becomes due immediately before the removal of the

country liquor from the bonded warehouse. In addition to the aforesaid charges of excise under the Excise Act and the Rules, the sale of country liquor attracts sales tax @ 25% of the selling price. These facts are stated in order to bear in mind that the financial status of a person claiming exclusive privilege would be an important consideration for the State Government for even after making payment of the licence fee, very large amounts of State revenue are yet to be recoverable as excise duty and sales tax.

13. For the previous period (1.7.1995 to 31.3.1999) the Petitioner was granted exclusive privilege for eight zones for car-tying on wholesale trade in country liquor. Previously no sales tax was leviable on the sale of country spirit but on 21.5.1997 (during the previous period) a notification was issued making the sale of country liquor also subject to the levy of sales tax. Though the notification, dated 21.5.1997 was sought to be challenged in several writ petitions filed before this Court, the admitted position is that all the challenges to that notification failed and the imposition of sales tax on the sale of country spirit with effect from 21.5.1997 has now attained finality. Thus, when the previous period came to a close on 31.3.1999, the Petitioner (and other wholesale traders of country liquor) had incurred a liability for payment of sales tax on the sales of country liquor made after the issuance of the notification, dated 21.5.1997.

14. It was in this background that the gazette notification dated 16.12.1998 was issued inviting tenders for grant of exclusive privilege for the current period 1.4.1999 to 31.3.2000, giving rise to the dispute in CWJC No. 3720 of 1999. A copy of the gazette notification dated 16.12.1998 is at Annexure 1.

15. The gazette notification was issued by the order of the Member, Board of Revenue under the signature of the Excise Commissioner and it asked the applicants to submit their tenders before the Board of Revenue. Clause 12 of the tender notice and Clause 7 of the prescribed tender form made it obligatory for the applicant to enclose latest clearance certificates relating to income tax and wealth tax as also the latest clearance certificate from the Commercial Taxes Department. Clause 2 (Cha) of the notice further provided that all the terms and conditions of the licence in Form 27 will form part of the tender notice.

16. The Petitioner submitted its tenders for all the ten zones in the State.

17. However, it is nowhere stated in the writ petition that the Petitioner's tenders were accompanied with the clearance certificates issued by the Commercial Taxes Department for each zone; nor is it stated clearly and positively that as on 1.4.1999 the Petitioner had no sales tax dues in any of the ten zones for which it had submitted its tenders. The writ petition is rather vague and evasive on the twin issues and care is taken not to make any statement that might bind the Petitioner. Thus, in para 8 of the writ petition it is stated that "one has to pay Rs. 5 lacs by way of security and other formalities such as income tax clearance, sales tax clearance etc" In para 9 it is stated that in pursuance of the tender notice the Petitioner applied for grant of exclusive privilege for all the ten zones

"and has deposited five lacs for each zone and fulfilling all the requirements as contemplated/anticipated in the tender notice". Similarly on the question of sales tax dues the statements made in the writ petition are quite vague and evasive and there is no assertion that there were no sales tax dues as on 1.4.1999 against the Petitioner company.

18. On the contrary in the counter affidavit filed on behalf of the third Respondent, the Excise Commissioner cum Secretary, Department of Excise, it was clearly stated that there were sales tax dues against the Petitioner company on the sale of country liquor (See paragraph 4, 7 and 22 of the counter affidavit). Particularly in paragraph 22 of the counter affidavit it was stated that the sales tax dues against the Petitioner company were in excess of Rs. 11,86,00,000/-.

19. The Petitioner company filed a rejoinder to the counter affidavit filed on behalf of Respondent No. 3. In the rejoinder affidavit the Petitioner did not make any denial regarding its being in arrears in payment of sales tax. In the rejoinder affidavit it was simply stated that the payment of sales tax was regulated by an independent Act (Bihar Finance Act) which had its own procedure for recovery etc. and the Excise authorities could not be allowed to function as executing agency for the department of Commercial Taxes (See paragraphs 7 and 17 of the rejoinder affidavit).

20. Thus the picture that emerges from the pleadings of the parties of the parties is that:

(a) there is no clear averment that along with its tenders the Petitioner submitted the latest clearance certificate from the Commercial Taxes Department, and

(b) in any event it is not denied that as on 1.4.1999 the Petitioner had outstanding sales tax dues against it and, therefore, even in case a clearance certificate was submitted alongwith the tenders that did not reflect the true state of affairs.

21. As noted above, in response to the tender notice dated 16.12.1998 the Petitioner submitted tenders for all the ten zones after depositing security money @ Rs. 5 lacs for each zone. By letter dated 30.3.1999 issued by the order of the Member Board of Revenue under the signature of the Excise Commissioner, Bihar, Patna the Petitioner was intimated that subject to the conditions enumerated in that letter it was granted exclusive privilege for carrying on whole sale trade in country liquor in all the ten zones applied for on its behalf. The letter of conditional grant of exclusive privilege for Patna Zone is at Annexure-3. Clause 15 of the letter mandates that no licence would be issued to such tenders against whom there were government dues of any kind till the realisation of the government dues. Copies of the letter were also sent to each of the concerned Collectors/Dy. Commissioners who under the provisions of the Act are given the responsibility of issuing the licence. The decision of the Board of Revenue to grant exclusive privilege to the Petitioner company was also communicated to

the Commercial Taxes Department at various levels.

22. It appears that on receipt of the letter of conditional grant of privilege dated 30.3.1999 the Petitioner deposited licence fees for all the ten zones (adding up to a sum of over Rs. 2.63 crores). In doing so the Petitioner obviously paid no heed to the conditions at Clause 15 of the letter that no licence would be issued to tenderers against whom there were government dues of any kind.

23. The Collectors/Dy. Commissioners of 38 districts falling in the ten zones, did not issue licences in Form 27 to the Petitioner in compliance with the condition at Clause 15 of the letter dated 30.3.1999. As licences in Form 27 were not issued in its favour, the Petitioner was unable to carry on its trade in country liquor and it then came to this Court making a hue and cry that even after depositing Targe sums of money as security and licence fees and even after the issuance of the letter dated 30.3.1999 it was being denied the licences in Form 27 causing it to suffer irreparable loss. On such pleas the Petitioner was able to get an interim direction in its favour from this Court on 26.4.1999 by virtue of which it was granted licences in all the 38 districts and on that basis the Petitioner has been enabled to carry on its trade in country liquor till the financial year is now coming to its close.

24. Now, the question that arises for consideration is whether the State Government was justified in denying to the Petitioner company the licence in Form 27 on the ground of non payment of sales tax dues relating to the previous period and whether in the facts and circumstances of this case the Petitioner company is entitled to the relief(s) claimed by it.

25. Mr. Y.V. Giri, learned Sr. counsel appearing for the Petitioner strenuously assailed the action of the State Government in withholding the issuance of licences in Form 27 and contended that it was no longer open to the Stae Government to deny the licences to the Petitioner company. Mr. Giri submitted that after the issuance of the letter dated 30.3.1999 communicating to the Petitioner the grant of exclusive privilege, the issuance of the licence by the Collectors/Dy. Commissioners was simply consequential and the concerned Collectors/Dy. Commissioners could not be allowed to sit over the formality of issuing the licence more so as the Petitioner company had deposited the entire amounts of the annual licence fees in compliance with the terms of the grant of the privilege.

26. The submission is apparently based on an entirely erroneous premise that the grant of privilege to the Petitioner was unqualified and unconditional. A mere glance at the letter dated 30.3.1999 indicates otherwise. That letter began by stating that exclusive privilage was granted subject to the conditions enumerated in the letter and Clause 15 of the letter laid down the conditions which the Petitioner undeniably failed to fulfill. I, therefore, find no merit in the first submission made by Mr. Giri.

27. Mr. Giri next submitted that the condition laid down in Clause 15 of the letter

dated 30.3.1999 was foreign to the terms and conditions of the tender notice and the State Government was, therefore, not justified in denying exclusive privilege and the licence to the Petitioner for not satisfying the conditions laid down in that letter. Learned Counsel submitted that the matter of grant of exclusive privilege and licence to the Petitioner could be judged only within the parameters of the tender notice and invoking a condition, laid down later, for not accepting the Petitioner's tender was quite unreasonable and arbitrary. In support of the submission reliance was placed on a Supreme Court decision in *Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd. and Ors.* 1977 (1) SCC 53. This Court is of the view that the submission made by Mr. Giri is incorrect on facts and is also unacceptable in principle. It is not correct to say that the condition regarding government dues was not there in the tender notice. It is noted above, that in the matter of grant of exclusive privilege, the financial status of the tender would be a highly relevant consideration. Moreover, Clause 12 of the tender notice and Clause 7 of the prescribed tender form unequivocally required the tendered to submit the latest clearance certificate from the Commercial Taxes Department. It is thus to be seen that Clause 15 in the letter dated 30.3.1999 simply reiterated what was already there in the tender notice. This is so far as the factual position is concerned. In principle also this Court is of the view that the government cannot be faulted for insisting on payment of all past dues before it should part with the exclusive privilege in favour of any person and such a condition cannot be characterised as unreasonable and arbitrary. One may even go a step further and hold that even though such a condition might not be laid down in black and white, in case the Government refused to grant exclusive privilege and licence to a tenderer on such a ground this Court in exercise of its discretion may not be inclined to interfere in the matter.

28. The decision in the case of *Dutta Associates Pvt. Limited* relied upon on behalf of the Petitioner does not seem to have any application to the facts of this case. Paragraph 3 of the judgment is sufficient to show that the judgment in the *Dutta Associates* was rendered in an entirely different set of facts.

29. Mr. Giri then submitted that the condition in Clause 15 of the letter, dated 30.3.1999 should be construed in a manner so as to cover only dues of excise duty and not to include any other Government dues. The submission is unacceptable for the simple reason that in the tender notice itself there is a stipulation for submitting inter alia the latest clearance certificate from the department of Commercial Taxes.

30. Mr. Giri next attempted to invoke the principle of promissory estoppel; learned Counsel submitted that having made the Petitioner deposit the security money and licence fee amounting to over Rs. 2.63 cores the Government was bound to issue licence in the Petitioner's favour and the Government cannot repudiate a promise made by it claiming immunity against the rule of promissory estoppel. In support of this submission Mr. Giri placed reliance on a Supreme

Court decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and another decision of this Court in Shree Krishna Gyanoday Sugar Ltd. and Another Vs. The State of Bihar and Another, . The court finds no substance in this submission either. What was communicated to the Petitioner by letter dated 30.3.1999 was clearly a conditional grant of privilege which could only materialise subject to the Petitioner satisfying the conditions enumerated in that letter. The Petitioner knew very well that it did not satisfy the condition at Clause 15 of that letter and yet it proceeded to deposit the licence fees. In these facts it cannot be held that the Petitioner was made to alter its position on the basis of some promise made by the Government. On the other hand it appears that by making the deposit of licence fees the Petitioner took a calculated risk in trying to create some equity in its favour. It is highly doubtful that any equity was ever created in the Petitioner's favour by its making the deposit of the licence fees. But granting all benefits to the Petitioner it may be recalled that by virtue of the interim direction granted by this Court the Petitioner has been able to obtain the licences and to carry on its trade on that basis for almost the entire period of the financial year. The annual licence fees deposited by it thus stand nearly exhausted.

31. Mr. Giri next made a reference to paragraph 30 of the counter affidavit where it is stated that the file relating to the grant of exclusive privilege was endorsed to the Hon''ble Minister for Excise and Prohibition who ordered that licences be issued only after the clearance of dues. It was further stated that the Collectors and the Dy. Commissioners simply acted in accordance with the instructions given in the conditional letter of grant. Mr. Giri submitted that the tender notice was issued by the order of Board of Revenue and tenders were required to be submitted before the Board. According to him, therefore, the Respondent authorities committed an error and abdicated their statutory responsibility by putting up the file before the Hon''ble Minister and in acting on the instructions given by him. Learned Counsel submitted that a statutory authority must act within the limits of the statute and must not be guided by the directions and instructions given by any other person or agency being foreign to the statute. Reliance in support of the submission was placed on the Supreme Court decision in The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, . The submission is once again untenable both on facts and in law. On facts, it is to be seen that the relevant condition was clearly laid down both in the tender notice and the letter of conditional grant of exclusive privilege dated 30.3.1999. In law, it is to be noted that u/s 22 of the Excise Act it is the State Government which has the power to grant exclusive privilege for trade in intoxicants, including country liquor. Section 7(2)(e) of the Act permits the State Government to delegate to the Board of Revenue, the Commissioner of a Division or the Excise Commissioner all its powers except to power to make rules. It is in exercise of powers u/s 7(2)(e) of the Act that the State Government has delegated its powers to the Board of Revenue and the Board acts in the matter of grant of privilege only as a delegated of the State Government which retains its position

as the principal under the Act. This Court sees no reason why the principal, though having delegated its power may not in appropriate cases oversee and supervise the process and issue suitable and reasonable instructions from time to time. In any event the condition regarding payment of past Government dues is a perfectly reasonable condition and the court may not be inclined to interfere with it regardless of from which quarter the condition came.

32. In so far as the decision in Purtabpur Company it has no application to the facts of this case and the learned Counsel only made random references to some observations in that judgment trying to tear out those observations from their context.

33. Mr. Giri also cited a decision of the Supreme Court in State of Haryana and Others Vs. Lal Chand and Others, and another decision of this Court in M/s Laxmi Narayan and Sons v. State of Bihar 1991 (2) PLJR 134. I see no application of these two decisions in the facts and circumstances of this case.

34. On a careful consideration of the material facts and circumstances, the court is unable to find any fault in the action of the Government in denying the licence in Form 27 to the Petitioner on the ground of non payment of sales tax dues for the previous period and no relief as claimed in CWJC No. 3720 of 1999 can, therefore, be granted to the Petitioner.

CWJC No. 5565 of 1999 :

35. In the second writ petition being CWJC No. 5565 of 1999 the Petitioner seeks a direction prohibiting the State Government from taking any coercive steps against it for realisation of sales tax on the ground that the reference made by the Petitioner was registered as a case by the BIFR.

36. In this connection, it may be noted at the outset that much of the relevance of the second writ petition depended upon the Petitioner getting ex-clusive privilege for the current period 1.4.1999 to 31.3.2002, otherwise the Petitioner's sales tax liability would come to an end on 31.3.1999 itself. In other words, the second writ petition depended to a large extent on the success of the first case being CWJC No. 3720 of 1999 filed by the Petitioner. It is held above that in CWJC No. 3720 of 1999 the Petitioner is not entitled to any relief and, thus, the second case being CWJC No. 5565 of 1999 loses much of its relevance.

37. Before considering whatever remains of the Petitioner's claim in the second case it would be appropriate to have a brief look at the sequence of event. The first case (CWJC No. 3720 of 1999) was filed on 23.4.99. On 26.4.1999 the Petitioner got an interim direction asking the Respondents to issue licences in Form 27 in its favour. At that time this Court had no means to know that the financial state of the Petitioner was in such straits that the Petitioner company was about to make a reference before the BIFR u/s 15 of the Sick Industrial Companies (Special Provisions) Act. Two months after the passing of the interim order by this Court, the Petitioner made a reference on 28.5.1999 and by letter

dated 17.6.1999 from the Registrar, BIFR it was informed that the reference was registered as Case No. 165 of 1999. Within less than a week the Petitioner company was once again before this Court in CWJC No. 5565 of 1999 seeking the afore-mentioned relief. In the second writ petition there is no mention of the earlier writ petition being CWJC No. 3720 of 1999 and there is absolutely no indication that the sales tax which the Petitioner company does not want to part with was being generated and collected by it entirely on the basis of an interim direction passed by this Court in a writ petition filed by it which remained pending. But for an accidental discovery, these two cases might have been listed separately before two separate benches and there was every possibility of separate orders being passed in the two cases overlooking the intrinsic links connecting the two.

38. In the facts and circumstances it appears that the developments did not take place in the normal course of events but were designed and tailored to suit the Petitioner's interests and the Petitioner also tried to take undue advantage of the interim direction issued by this Court in its favour in the earlier writ petition.

39. Coming now the merits of the Petitioner's claim in the second writ petition Mr. Y.V. Giri submitted that the applicability of the bar of Section 22 of the Sick Industrial Companies (Special Provisions) Act commences from the stage of registration of the reference itself and the bar also applies to arrears of sales tax. According to him, therefore, the State Government could not be allowed to take steps for recovery of the sales tax dues against the Petitioner without previous consent of the BIFR. In support of his submissions Mr. Giri relied upon Supreme Court decisions in *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, , *Tata Davy Ltd. Vs. State of Orissa and Others*, and *Real Value Appliances Ltd. Vs. Canara Bank and Others*, .

40. The court is not impressed by the submissions made by Mr. Giri and it is evident to the court that the submissions completely overlook the fact that in so far as the current sales tax liability is concerned, the Petitioner was enabled to collect sales tax on the basis of an interim direction given by this Court. Thus, accepting the Petitioner's submissions in so far as the current liability is concerned would amount to putting the State Government to a great disadvantage on the basis of an interim direction passed by this Court in a case which eventually failed and consequently the interim order also got vacated. The inequity and unreasonableness of such a course is patently evident. On a careful consideration of the facts and circumstances of the case the court is of the opinion that in so far as the current sales tax liability is concerned, none of the three decisions relied upon by Mr. Giri apply to this case. On the other hand some observations made in another Supreme Court decision in the case of *Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others*, seem to have a greater applicability to the facts of this case. In *Corromandal*, the Supreme court observed as follows:

But, in the totality of the circumstances, the safeguard is only against the

impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act. So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal u/s 25 of the Act, it will be reasonable to hold that the bar or imbargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts like sales tax, etc., which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit, to collect amounts due to the revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against the spirit of the Statute in a business sense, should be avoided.

(emphasis added)

41. In the case in hand the position of the Petitioner, in so far as the current liabilities are concerned is far weaker. In the present case the Petitioner is enabled to collect sales tax not even on the basis of a scheme framed by the BIFR but on the basis of an interim direction given by this Court. The State Government cannot be put to a disadvantageous position on the basis of an interim order passed by this Court and the Petitioner cannot be allowed to take undue advantage of that order. The position is, therefore, clear that the Petitioner must pay to the Government all sales tax amounts collected by it on its sales of country spirit after 26.4.1999.

42. So far as the sales tax dues relating to that previous period are concerned, the State may be precluded to realise those dues without the prior consent of the BIFR but in that case it will be certainly open to the State Government not to grant exclusive privilege and the licence to the Petitioner for the current period. Thus, the position that emerges is as follows. The Petitioner can be granted exclusive privilege and licence for the current period only in case it makes payment of the past dues of sales tax. In case of grant of exclusive privilege and licence for the current period the Petitioner company will also be required to make payment of the current sales tax collections being generated on the basis of the exclusive privilege and licence granted for the current period. In case, however, the Petitioner tries to take advantage of Section 22 of the Sick Industrial Companies (Special Provisions) Act, in order to prevent the State Government from realising from it the past dues of sales tax, it will be perfectly legitimate for the State Government to refuse to grant the Petitioner exclusive privilege and licence for the current period. In any event the Petitioner must pay to the State Government the sales tax collected by it after 26.4.1999, i.e. the date of the interim order passed by this Court.

43. In the end Mr. Giri made some submissions common to both the cases. Learned Counsel submitted that the condition regarding Government dues was not applied uniformly and exclusive privilege was granted to some persons against whom also there were sales tax dues. However, no details or particulars in this regard are furnished. Learned Counsel further submitted that the Government owed large sums of money to the Petitioner company and the payment of the Petitioner's dues were not being made by the State Government despite court orders. According to Mr. Giri if those payments were made or an adjustment was allowed, there would be hardly any sales tax dues against the Petitioner for the previous period. Mr. Giri also submitted that the Petitioner company was engaged in the manufacture and wholesale trade of country liquor from 1960 and during the past thirty years it had paid enormous sums of money to the State Government as excise duty. At present it had run into acute financial troubles for which the Government was also partly responsible and in these circumstances the State Government owed it to the Petitioner to come to its rescue so that the Petitioner company may once again be put on its legs and be restored to a position where it may be able to generate further revenue for the State Government.

44. On these issues this Court can hardly make any comment and it is for the Petitioner and the State Government to come, if possible, to a workable understanding. In case the Petitioner puts up its grievances before the State Government, the later would surely consider them and take appropriate decision in accordance with law.

45. In the result the court finds no substance or merit in either of the two writ petitions and both the writ petitions are accordingly dismissed subject to the aforesaid observations and directions.