(2011) 06 AHC CK 0192

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34692 of 2011

Venus Sugar Limited APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 15(1), 22, 22(1), 3(1)
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 17, 17(2), 17(4)
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 17(4)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 282

Citation : (2011) 7 ADJ 415

Hon'ble Judges : Pankaj Mithal, J;Dilip Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Venus Sugar Limited, Moradabad has filed this petition for quashing the citation dated 23rd May, 2011 and for a direction upon the Respondents not to realize Rs. 515.94 lacs from the Petitioner-company as arrears of land revenue pursuant to the aforesaid citation.

2. The Petitioner is a Public Limited Company incorporated under the Companies Act, 1956 and carries on business of manufacture and sale of white crystal sugar and refined sugar. It transpires from the records of the writ petition that a recovery certificate dated 20th April, 2011 was forwarded by the Cane Commissioner to the Collector for recovery of Rs. 515.94 lacs from the Petitioner, out of which Rs. 472.97 lacs was the balance cane price upto 20th April, 2011, Rs. 34.14 lacs was balance commission to the Cane Unions and Rs. 0.86 was interest on the delayed commission. This recovery certificate dated 20th April, 2011 was challenged by the Petitioner in Writ Petition No. 30011 of 2011 which

was dismissed by a Division Bench of the Court by a detailed judgment dated 31st May 2011 and the recovery certificate dated 20th April, 2011 was upheld. The citation dated 23rd May, 2011 was thereafter issued by the Tehsildar u/s 282 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the ''Act''). It is this citation that has been assailed in this petition and a further relief has been sought that the Respondents should be restrained from realising the amount from the Petitioner as arrears of land revenue till the reference of the Petitioner Company u/s 15 of the Sick Industrial Company (Special provisions) Act, 1985 (hereinafter referred to as the ''SICA'') is decided.

3. It is the submission of Sri Umesh Chandra, learned Senior Counsel for the Petitioner, assisted by Sri Neeraj Tripathi that as the Petitioner-Company has been declared a sick company u/s 3(1)(o) of the SICA, no coercive method can be taken against the Petitioner-Company for recovery of the amount. It is also his submission that the rights of the pawnee who had parted with the money in favour of the pawnor on the security of the goods cannot be defeated by the goods being seized by the Government and making the money available to the other creditors without the claim of the pawnee being fully satisfied. He has also submitted that objections against the citation have been filed by the Petitioner before the Sub-Divisional Magistrate and they need to be decided before the auction can take place. In support of his contention learned Senior Counsel for the Petitioner has placed reliance upon the decisions of the Supreme Court reported in Central Bank of India Vs. Siriguppa Sugars and Chemicals Ltd. and Others, The Bank of Bihar Vs. The State of Bihar and Others, and Seth Banarsi Dass (Dead) by LRs Vs. District Magistrate and Collector, Meerut and others,

4. Sri S.G. Hasnain, learned Additional Advocate General of the State assisted by Dr. Y.K. Srivastava and Sri Ravindra Singh, learned Counsel for the Cane Co-operative Federation have however submitted that this petition cannot be entertained as the Petitioner had earlier filed Writ Petition No. 30011 of 2011 for quashing the recovery certificate dated 20th April 2011 which was dismissed by the Division Bench of the Court on 31st May 2011 and it is on the basis of this recovery certificate that the impugned citation was issued.

5. We have considered the submissions advanced by the learned Counsel for the parties.

6. In order to appreciate the contentions advanced by the learned Counsel for the Respondents, it will be appropriate to refer to certain paragraphs, grounds and prayer of the earlier Writ Petition No. 30011 of 2011 filed by the Petitioner. The relevant paragraphs are as follows:

2. That by means of the present writ petition, the Petitioner assails the validity of the recovery certificate dated 20.04.2011 issued by the Respondent No. 2 in purported exercise of powers conferred by Section 17 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter shall be referred to as "Act of 1953") read with the provision of Clause 3 of the Sugarcane (Control)

Order, 1966. The impugned certificate seeks to command the Petitioner to pay outstanding cane price dues, society commission together with interest thereon. The recovery certificate further requires the Petitioner to deposit collection charges on the aforesaid amounts, as detailed in the recovery certificate.

21. That the Petitioner submits that since huge accumulated loss suffered by the Company and as on 30.06.2010 the accumulated losses had exceeded the net worth of the company the Board for Industrial and Financial Reconstruction vide letter No. 3(V-2)/BC/2010 dated 08.12.2010 has registered a reference filed by the company u/s 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985 as case No. 62 of 2010. A copy of the letter dated 08.12.2010 of the Registrar is being annexed to this writ petition and market as Annexure-7.

22. That the Board for Industrial and Financial Reconstruction(BIFR), Delhi vide their letter dated 19.04.2011 in the case No. 62/2010 of M/S Venus Sugar Limited fixed the case for hearing on 04.05.2011 for determination of sickness and the measures to be adopted under the Act for company''s rehabilitation, in the office of the Board (Bench-1) consisting of Shri Y.K. Gaiha (Member). The Hon''ble BIFR Board on 04.05.2011 heard the State of U.P. represented by Mr. Sanjay Gupta, District Cane Officer, Moradabad, Banks (State Bank of India, Punjab and Sind Bank, Oriental Bank of commerce), FI''s (SASF, IFCI, Standard Charted Bank) and after considering their views declared the Venus Sugar Limited as a "Sick Industrial Companies (Special Provisions) Act, 1985. The Board also appointed State Bank of India as Operating Agency for financial reconstruction and rehabilitation of the company.

24. That while the Petitioner was struggling to liquidate its outstanding dues, the impugned recovery certificate came to be issued against it and a copy of the said recovery certificate dated 20.04.2011 issued by the Respondent No. 2 is being annexed to this writ petition and marked as Annexure''8''.

25. That consequent to the recovery issued by the Cane Commissioner, the Tehsildar has seized the godown of the Venus Sugar Mills and has attached the power house supplying electricity to the sugar factory on 07.05.2011 showing seizure made by Respondent No. 5 is marked and annexed as Annexure No. 9.

The relevant ground is as follows:

U. Because that the company is a Sick Industrial Company and as per Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985 no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the BIFR Board or, as the case may be, the Appellate Authority.

The prayers are as follows:

i) issue, writ, order or direction in the nature of certiorari quashing the recovery certificate dated 20.04.2011 issued by the Respondent No. 2.

ii) to issue an appropriate writ order or direction in the nature of mandamus commanding the Respondents to scrutinize the records of the Petitioner for the purposes of verification of payments made directly to farmers and to amend the recovery certificate accordingly;

iii) to issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondents to drop all actions under the impugned recovery certificate during the pendency of the aforesaid verification exercise;

iv) issue, writ order or direction in the nature of mandamus directing the Respondent authorities No. 2 and 3 to release the sugar godown, of Venus Sugar Mill and also the power House of the Petitioner?s sugar factory seized/attached by the Tehsildar vide attachment order dated 7.05.2011 consequence to the issuance of recovery certificate by Respondent No. 2.

v) pass such other and further order or direction as this Hon''ble Court may deed fit and proper in the circumstance of the case, as the company is a Sick industrial Company as per Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, no suit for the recovery of money shall lie or be proceeded except with the consent of the BIFR Board or, the Appellate Authority.

vi) Award cost of the writ petition.

7. It is, therefore, clear that the Petitioner had sought the quashing of the recovery certificate dated 20th April, 2011 for the reason that the Company had been declared a sick Company u/s 3(1)(o) of the SICA on 4th May, 2011. Specific ground was taken for this plea and prayer No. (v) was also made to this effect. The writ petition was dismissed by a detailed judgment and order dated 31st May, 2011.

8. The recovery certificate was issued to the Petitioner under Rule 17(4) of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as the ''1953 Act'') which provides that the Cane Commissioner shall forward to the Petitioner a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest due from the occupier and the Collector, on receipt of such certificate, shall proceed to recover from such occupier, the amount specified therein as if it were an arrear of land revenue. Section 17 of the 1953 Act is quoted below:

17. Payment of cane price.-(1) The occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed.

(2) Upon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith.

(3) Where the person liable under Sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of

delivering, he shall also pay interest at a rate of 7-1/2 per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid or be paid at such reduced rate as he may fix:

Provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figure ''7-1/2'' the ''figure 12'' shall be deemed substituted.

(4) The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue.

(5)(a) Without prejudice to the provisions of the foregoing sub-sections, where the owner or any other person having control over the affairs of the factory or any other person competent in that behalf enters into an agreement with a bank under which the bank agrees to give advance to him "on the security of sugar or ethanol (directly produced from the sugarcane juice or B-Heavy molasses)" produced or to be produced in the factory, the said owner or other person shall provide in such agreement that a percentage determined by such authority and in such manner as may be prescribed of the total amount of advance shall be set apart and be available only for re-payment to cane-growers or their co-operative societies on account of the price of sugarcane purchased or to be purchased for the factory during the current crushing season from those cane-growers or from or through those societies, and interest thereon and, such societies, commission in respect thereof.

(b) Every such owner or other person as aforesaid shall send a copy of every such agreement to the Collector within a week from the date on which it is entered into.

9. It is, therefore, clear that on receipt of the certificate from the Cane Commissioner, the Collector has to recover the amount from the occupier as if it were an arrear of land revenue. For this purpose, the Sub-Divisional Magistrate has to issue a citation u/s 282 of the Act. The citation was issued on behalf of the Collector pursuant to the recovery certificate. Once the challenge to the said certificate dated 20th April, 2011 failed when the writ petition dismissed, the Petitioner cannot again question the issuance of citation for the same reason namely that as the Petitioner had been declared a sick Company u/s 3(1)(o) of the SICA, no coercive steps can be against it u/s 22(1) of the SICA. Such ground was taken in the earlier writ petition and a prayer was also made for quashing the recovery citation for this purpose. It was not granted and in view of Explanation (v) to Section 11 of the Code of Civil Procedure, the prayer shall be deemed to have been refused. The issuance of the citation is merely a consequential action after the recovery certificate is issued as is clear from

Section 17(4) of the 1953 Act. The submission of learned Senior Counsel for the Petitioner that the citation has no connection with the recovery certificate cannot be accepted. This petition for quashing the citation for this reason or for other reasons which could have been urged for setting aside the citation, therefore, cannot be entertained.

10. In this connection, reference needs to be made to the decision of the Supreme Court in State of U.P. and another Vs. Labh Chand, wherein it was observed:

When a Judge of single Judge Bench of a High Court is required to entertain a second Writ Petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier Writ Petition of the same person on the same matter had been dismissed already by another single Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternate remedy. Second Writ Petition cannot be, so entertained not because the learned single Judge has no jurisdiction to entertain the same, but because entertaining of such a second Writ Petition would render the order of the same Court dismissing the earlier Writ Petition redundant and nugatory, although not reviewed by it in exercise of the recognised power. Besides, if a learned single Judge could entertain a second Writ Petition of a person respecting a matter on which his first Writ Petition was dismissed in limine by another learned single Judge or a Division Bench of the same Court, it would encourage an unsuccessful Writ Petitioner to go on filing Writ Petition after Writ Petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 of the Constitution in that any order of any Bench of such Court refusing to entertain a Writ Petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh Writ Petition. This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the Court refusing to entertain a Writ Petition. It is why, the Rule of judicial practice and procedure that a second Writ Petition shall not be entertained by the High Court on the subject-matter respecting which the first Writ Petition of the same person was dismissed by the same Court even if the Order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternate remedy, has come to be accepted and followed as salutary Rule in exercise of Writ jurisdiction of Courts.

(emphasis supplied)

11. In such circumstance, the Petitioner is not justified in placing reliance upon the decisions of the Supreme Court.

12. Learned Senior Counsel for the Petitioner has, however, urged that the citation is defective as it is not in accordance with the provisions of Section 282 of the Act and Order XXI of the Code of Civil Procedure. It is for the Petitioner to raise such objection regarding defects, if any, in the citation at appropriate stage in the proceedings.

13. The writ petition is, accordingly, dismissed with the aforesaid observations.