

Modi Industries Ltd. Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-22-1999

Reported in : 1999(2)AWC1226

Judge : M.C. Agarwal and ;R.K. Agarwal, JJ.

Acts : Uttar Pradesh Municipalities Act, 1960 - Sections 160 and 173A; Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 16, 17, 18, 20, 20(2), 22, 22(1) and 25; [Constitution of India](#) - Articles 14 and 226; [Companies Act, 1956](#)

Appeal No. : C.M.W.P. Nos. 99-103 of 1999

Appellant : Modi Industries Ltd.

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and ;Pankaj Mittal, Adv.

Advocate for Pet/Ap. : Ravi Kant, Adv.

Judgement :

M.C. Agarwal and R.K. Agarwal, JJ.

1. In these five writ petitions under Article 226 of the Constitution, there is a single petitioner and similar reliefs are claimed in all the writ petitions. They are,

therefore, being heard together and are being disposed of at the admission stage.

2. We have heard Sri Ravi Kant, learned counsel for the petitioner and Sri Pankaj Mittal, learned counsel for the Nagar Palika Parishad.

3. The petitioner is M/s. Modi Industries Limited which owns and operates five industrial units in the names of (1) Modi Gas and Chemicals, (2) Modi Steels, (3) Modi Sugar Mills. (4) Modi Paints and Varnish Works and (5) Modi Vanaspati Co. The assessments for the purposes of levy of municipal taxes under the U. P. Municipalities Act, 1960 in respect of the aforesaid five industrial undertakings have been made by the Nagar Palika Parishad, Modi Nagar in the aforesaid names. The petitioner challenges the recovery of the taxes for which the recovery certificates have been issued to the Collector, Ghaziabad and it also challenges the validity of Section 173 (A) of the Act which provides for recovery of the municipal taxes as arrears of land revenue. The reliefs claimed in all the writ petitions are similar in nature and for facility of reference, the reliefs claimed in Writ Petition No. 99 of 1999 are reproduced below :

'1. a writ, order or direction in the nature of writ of certiorari quashing the impugned notice of demand (citation) dated 5.2.1999 contained in Annexure-8, as well as the notice dated 3.3.1998, 25.4.1998 and 31.7.1998, contained in Annexure-3. 3-A and 6 respectively to the writ petition ;

2. a writ, order or direction in declaring the provisions of Section 173A of the Act ultra vires Article 14 of the [Constitution of India](#), thereby null and void ;

3. a writ, order or direction in the nature of writ of mandamus restraining the respondents from recovering the sum in question from the petitioner in any manner including by coercive process.'

4. The learned counsel for the petitioner contended that the Nagar Palika Parishad has not followed the procedure prescribed under the U. P. Municipalities Act in making the assessments and has not even supplied to the petitioner the copies of the orders by which its objection were disposed of and that the assessments have been made in the name of the units which are not legal persons and not against

the owner of the properties, i.e., M/s. Modi Industries Ltd., the petitioner. It is also claimed that the petitioner filed objections in writing before the Executive Officer but no order disposing of the said objections and finalising the assessments has been communicated to the petitioner.

5. The U. P. Municipalities Act, 1960 contains elaborate provisions for the determination of the annual value and the preparation of an assessment list, etc. and also provides for the remedy of appeal when a citizen is dissatisfied with the assessments. Section 160 of the Act provides for appeal and, therefore, so far as the petitioner's grievance against the finalisation of the assessment list is concerned, it has the statutory remedy of availing a right of appeal and all objections including those referred to above, can be agitated in the appeal.

6. It was contended that the petitioner has not been supplied with the copies of the orders by which the assessments have been finalised. The Act does not contain any provision by which the Nagar Palika is obliged to serve a copy of the orders finalising the assessments before the same can be enforced. It is for the citizen to apply for copies of the orders on the publication of the list or on coming to know that the list has been finalised, as the case may be. We have no doubt that if the petitioner seeks copies of the concerned orders, the respondents would supply the same to the petitioner with reasonable speed. The petitioner also challenges the validity of Section 173A of the U. P. Municipalities Act which provides for recovery of the arrears of taxes as arrears of land revenue. No serious argument was raised on this point and we do not find any arbitrariness in making such special provisions in relation to public revenue.

7. Lastly, it was contended that the petitioner M/s. Modi Industries Ltd, has been declared sick by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Spl. Provisions) Act, 1985 and, therefore, by virtue of Section 22 of the said Act, any tax levied on the petitioner cannot be recovered. It is mentioned in the writ petitions that the Board passed an order directing that the Company be wound up but the operation of the said order has been stayed by this Court in Civil Misc. Writ Petition No. 45214 of 1993. Subsection (1) of Section 22 reads as under :

'22. Suspension of legal proceedings, contracts, etc.--(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 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 and 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 Board or, as the case may be, the Appellate Authority.'

Thus, the protection under Section 22 is available with an enquiry under Section 16 is pending or a scheme is under preparation or implementation or an appeal under Section 25 is pending. Section 18 of the Act provides for preparation and sanction of the schemes for rehabilitation and Section 20 provides that where the Board after making enquiry under Section 16 and after considerations of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated loss within a reasonable time while meeting all R. K. Agrawal 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. Sub-section (2) of Section 20 then provides that the High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company, in accordance with the provisions of the [Companies Act, 1956](#). Sub-section (2), thus, shows that the Board's opinion that the company cannot be revived and should be wound up, is final and the High Court is obliged to order the winding up of the company following the opinion of the Board. Therefore, no proceeding, as is referred to in Section 22 can be said to be pending once the Board has finalised its opinion and sent its opinion to the concerned High

Court. This has been done in this case. It is another matter that this Court has, in a writ petition under Article 226 of the [Constitution of India](#), stayed the operation of that order and that stay order is continuing for several years. The fact remains that Section 22 can no longer be invoked by the petitioner for protection to use its sickness as a nectar of life.

8. For the above reasons, we find no force in these writ petitions and the same are dismissed in limine with costs to the respondent Nagar Palika Parishad, Modi Nagar.

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