Modi Industries Ltd. Vs. Nagar Palika, Modinagar and Others

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Court : Allahabad

Decided On : Apr-16-1999

Reported in : 1999(2)AWC1739

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

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 16, 17, 18, 20, 22, 22(1), 22(2), 22(3), 25 and 33; Uttar Pradesh Municipalities Act, 1916 - Sections 68 and 168; Constitution of India - Article 226; Companies Act, 1956

Appeal No. : C.M.W.P. No. 488 of 1996

Appellant : Modi Industries Ltd.

Respondent : Nagar Palika, Modinagar and Others

Advocate for Def. : Pankaj Mittal, Adv.

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

Judgement :

R.K. Agarwal, J.

1. By means of the present writ petition, i.e., Civil Misc. Writ Petition No. 488 of 1996, the petitioner M/s. Modi Industries Ltd., Modi Nagar, district Ghaziabad seeks a writ, order or direction in the nature of certiorari quashing the impugned

demand notice dated 5.7.1996 (contained in Annexures-7 and 8 to the writ petition). The petitioner further seeks a writ of mandamus restraining the respondents, their servants, employees or agents from recovering in any manner, the amount of Rs. 34,90,195.20 p. in pursuance of the impugned demand notice dated 5.7.1996.

2. The facts in brief are that the petitioner, which is a Public Ltd. Company incorporated under the provisions of the Companies Act, has its registered office at Modinagar in the district of Ghaziabad. It has 9 units, namely, Sugar, Steel rods, 'Wire, Vegetable, Electrodes, Gases. Chemicals Distillery, Soap. Paints and Lanterns. The petitioner possessed and owned vast properties at Modinagar. The respondent No. 1, i.e., Nagar Palika, Modi Nagar is a statutory authority. It is empowered to levy house tax under the provisions of the U. P. Municipalities Act. It assessed the annual market value of the buildings located within its jurisdiction for a period of 5 years. It appears that the petitioner became a sick company under the provisions of the Sick Industrial Companies (Special Provision) Act, 1985 (hereinafter referred to as the 'Act'). It applied to the Board of Industrial and Financial Re-construction (hereinafter referred to as the 'B.I.F.R.') constituted under the aforesaid Act. The B.I.F.R. vide order dated 14.3.1991 declared the petitioner as sick and formulated a Scheme for its rehabilitation. However, later on the B.I.F.R. formed an opinion that the petitioner cannot be rehabilitated and prima facie it is satisfied that the petitioner should be wound up. Accordingly, the B.I.F.R. by order dated 8.10.1993 directed the issuance of public notice under Section 20 of the Act for consideration of objection/suggestion or alternative proposal, if any, in respect of the petitioner company. The relevant portion of the order dated 8.10.1993 passed by B.I.F.R. is reproduced below :

'In the circumstances, no viable scheme can be formulated for M.I.L.'s revival. Banks and financial institutions have categorically ruled any further increases in their exposure to M.I.L., in the face of the abovementioned inability/refusal of the Modis. As all efforts to formulate any scheme for revival of M.I.L. have failed, and there is no alternative to winding up the company under Section 20 of the S.I.C.A.Accordingly, the Bench directs issue of public show-cause notice (s) under Section 20 of the Act fixing 14.12.1993 at 12.15 p.m. for consideration of objections/ suggestions or alternative proposals, if any, in respect of the Sick Industrial Company, Modi Industries Ltd., by anyone concerned, which should reach the Board latest by 30.11.1993.'

3. It has further been stated by the petitioner that the aforesaid order dated 8.10.1993 passed by the B.I.F.R. was challenged before this Court by BHARTIYA K1SAN UNION, being Civil Misc. Writ Petition No. 45214 of 1993. On 10.12.1993, a Division Bench of this Court stayed further proceedings in Case No. 151 of 1990 with regard to Modi Sugar Mills pending before B.I.F.R. The said order was made operative by this Court initially till 18.2.1994. However, subsequently, the stay order passed on 10.12.1993 had been extended from time to time and now it is operative till further orders. It may be pointed out that the petitioner consists of 9 units. This Court stayed the proceedings before B.I.F.R. only in respect of Modi Sugar Mill's, i.e., one of the units. The said writ petition is still pending.

4. The Nagar Palika, Modinagar, assessed the house tax on the petitioner for the quinquennial period 1992-93 to 1995-96 at Rs. 8,72,548.780 per year. Vide notice dated 18.5.1996, it asked the petitioner to deposit a sum of Rs. 34,90,195.20 p. towards house tax. The notice also stipulated that if the aforesaid amount is deposited within 30 days, a rebate of 10% is admissible to the petitioner. On receipt of the aforesaid notice dated 18.5.1996, the petitioner filed its reply vide letter dated 23.5.1996, in which apart from challenging the levy of house tax on merits, it also stated that it had already been declared a sick industrial company by the B.I.F.R. under the Act, and a rehabilitation scheme is still pending for consideration before the BIFR. The demand is, therefore, hit by Section 22(1) of the Act, which bars all recoveries, whatsoever against thepetitioner without prior permission of the B.I.F.R. Being not satisfied with the reply filed by the petitioner, the Nagar Palika, respondent No. 1, issued a notice on 5.7.1996, calling upon the petitioner to forthwith deposit the sum of Rs. 34.90.195.20 p. towards house tax. A formal notice under Section 168 of the Municipalities Act, was also issued. By means of the said notice, the petitioner was called upon to deposit the aforesaid amount within 15 days of the receipt of the said notice, otherwise the entire amount was to be recovered by attachment and sale of the properties belonging to the petitioner.

5. The petitioner has challenged the action of the Nagar Palika, Modinagar, respondent No. 1, in seeking to realise the sum of Rs. 34,90,195.20 p. towards house tax for the year, 1992-93 to 1995 on the ground that the petitioner has been declared a sick company within the meaning of Section 16 of the Act, and a Scheme under Section 17 is under preparation for consideration of B.I.F.R. The petitioner has pressed the provision of Section 22(1) of the Act to contend that the respondent No. 1 cannot recover the aforesaid amount of house tax from it except with the consent from the B.I.F.R.

6. In the counter-affidavit filed by Sri Mahendra Pal Singh. Tax Collector, Nagar Palika, Parishad. Modi Nagar, on behalf of respondent No. 1, it has been stated that no proceedings under Sections 16, 17 and 18 of the Act, are pending before the B.I.F.R. and, therefore, the petitioner is not entitled to any benefit under Section 22(1) of the Act. The respondent No. 1 is, therefore, free to recover the arrears of house tax from the petitioner as arrears of land revenue. It has further been stated by the respondent No. 1 that the proceedings under Section 20 for forwarding an opinion to the High Court for the purposes of winding up of the company are totally different in nature and cannot be treated as proceedings under Sections 16, 17 and 18 of the Act. It is only when an enquiry under Section 16 or a Scheme under Section 17 is said to bepending, that Section 22(1) of the Act will apply. It has further been stated that the petitioner is no longer a viable company and all Schemes for its rehabilitation prepared by the B.I.F.R. had failed. No bank or financial institution or even the management is interested in reviving the company. The total liability of the company exceeds its assets. The B.I.F.R. had already initiated proceeding under Section 20 of the Act, so that it may recommend to this Court for winding up of the petitioner's company. However, the Management of the company in collusion with some of the workers instigated BHARTIYA KISAN UNION to file Civil Misc. Writ Petition No. 45214 of 1993 and had obtained stay order so that the proceedings before the BIFR with respect to recommending the winding up the company may not proceed. It is for this reason that the B.I.F.R. till date could not forward its opinion to this Court as required under Section 20 of the Act.

7. In the rejoinder-affidavit filed by Sri Vishnu Kumar Sharma, Manager (Legal) of the petitioner, it has not been denied by the petitioner that the petitioner management of the company in collusion with some of the workers instigated BHARTIYA KISAN UNION to file Civil Misc. Writ Petition No. 45214 of 1993. Paragraph 6 of the rejoinder-affidavit filed by Sri V.K. Sharma deals with the averments made in the paragraph 11 of the counter-affidavit of Sri Mahendra Pal Singh, filed on behalf of respondent No. 1 regarding petitioner's collusion/instigation with its workers in getting the Writ Petition No. 45214 of 1993 filed before this Court and getting the proceedings before B.I.F.R stayed.

8. Paragraph 11 of the counter-affidavit of Sri Mahendra Pal Singh and para 6 of the rejoinder-affidavit of Sri Vishnu Kumar Sharma are reproduced below :

Paragraph 11 of the Counter-Affidavit of Sri Mahendra Pat Singh

'11. That in reply to the contents of paragraphs 1, 2 and 3of the writ petition it is stated that the petitioner company has become duly defend, it is no longer viable company. All Schemes have its rehabilitation/ nourishment prepared by the B.I.F.R. have failed. No bank or financial institutions or even the management is interested in reviving the company. The total liabilities of the company exceeds its assets. The B.I.F.R. has already initiated proceedings under Section 20 of the Act, so that the Hon'ble High Court may be recommended to wind up the company. However, the Management of the company in collusion with some of the workers instigated BHARTIYA KISAN UNION to file a Writ Petition No. 45214 of 1993 and obtained a stay order so that the proceedings before the B.I.F.R. with respect to recommending the winding up of the company may not continue. It is for this reason and the stay order of the Court in the above writ petition that the Board till date could not forward his opinion to the High Court as required under Section 20 of the Act. It is misconceived to allege that the company is possessed with vast properties at Modinagar. The petitioner company has not paid house tax in respect of its properties.'

Paragraph 6 of the rejoinder-affidavit of Sri Vishnu KumarSharma

'6. That in reply to thecontents of paragraphs 6, 7, 8, 9,10 and 11 of the counter-affidavitit is submitted that the Board forIndustrial FinancialReconstruction has found thepetitioner-company to be sick by its order dated 14.3.1993.However, illegally, it found thatthe petitioner-company could notbe rehabilitated. It, therefore,recommended for winding up ofthe petitioner-company. Theaforesaid order was challenged inthis Hon'ble Court. This Hon'bleCourt in Civil Misc. Writ PetitionNo. 45214 of 1993, has beenpleased to pass stay order. Thus, the recommendation of the B.I.F.R. for winding up of the petitioner-company stands stayed by this Hon'ble Court and the matter, therefore, is still pending before the B.I.F.R. The impugned demand cannot be recovered in view of the specific bar imposed by Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.'

9. In Civil Misc. Writ Petition No. 7249 of 1992, the petitioner seeks issuance of a writ, order or direction in the nature of writ of certiorari quashing the order dated 15.2.1992 passed by the Executive Officer. Nagar Palika. Modinagar, respondent No. 2 (filed as Annexure-7 to the writ petition). The petitioner further prays for a writ of mandamus restraining the respondents from recovering in any manner the amount of Rs. 27,28,867.48 p. in pursuance of the order dated 15.2.1992 being the house tax for the period 1982 to 1987.

10. We have heard Sri Ravikant, learned counsel appearing for the petitioner and Sri Pankaj Mittal, learned counsel appearing for Nagar Palika, Modinagar, respondent No. 1, and the learned standing counsel appearing for respondent Nos. 2 and 3.

11. Sri Ravi Kant, learned counsel for the petitioner has assailed the notice of demand issued by the respondent No. 1, for the realisation of Rs, 34,90,195.20 p. and Rs. 27,28,867.48 p. as house tax only on the ground that the proceedings for rehabilitation of the petitioner-company is pending before B.I.F.R. under the Act. It was incumbent upon the respondent No. 1 to seek the consent of B.I.F.R. before proceeding to recover the said amount from the petitioner.

12. Section 22 of the Act provided for suspension of legal proceedings, contracts, etc. subsections (1), (2) and (3) of Section 22 which are relevant for the purpose of

present writ petition, are reproduced below :

'Suspension of legal proceedings, contracts, etc.

22. (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 for 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, 1956 (1 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 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 He or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority.

(2) Where the management of the sick industrial company is taken over or changed in pursuance of any scheme sanctioned under Section 18, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law :

(a) It shall not be lawful for the share-holders of such company or any other person to nominate or appoint any person to be a Director of the Company ;

(b) No resolution passed at any meeting of the shareholders of such company shall begiven effect to unless approved by the Board.

(3) Where an inquiry under Section 16 is pending or any Scheme referred to in Section 17 is under preparation or during the period of consideration of any Scheme under Section 18 where any such scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements,

awards, standing orders or other instruments in force, to which such sick industrial company is a part or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligation and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board :

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.'

13. In the present case, the B.I.F.R. in its order dated 8.10.1993 had prima facie found that no viable scheme can be formulated for the petitioner's revival. It found that bank and financial institutions have categorically ruled out any further increase in their exposure to the petitioner company, in the face of the inability/refusal of the Modi's to give any firm proposal for revival of the company and assured commitment for induction of required funds. As all efforts to formulate any scheme for revival of the petit loner-company had failed and there is no alternative to winding up the company under Section 20 of the Act. However, the B.I.F.R. directed issue of show cause notices under Section 20 of the Act,fixing 14.12.1993 for consideration of objection/suspension or alternative proposals, if any, in respect of the petitioner-company. From the aforesaid order dated 8.10.1993 passed by the B.I.F.R., it is clear that the scheme for rehabilitation proposed under Section 17 of the Act, was found not viable and before recommending the winding up, the B.I.F.R. had invited objections suggestions or alternative proposals, if any, from the public. The proceedings before the B.I.F.R. in pursuance of the order dated 8.10.1993 had been stayed by this Court vide order dated 20.12.1993, in so far as Modi Sugar Mills, one of the unit of the petitioner is concerned. Thus, in our view, the proceedings before the B.I.F.R. had not been terminated, as the B.I.F.R. had not forwarded any opinion to this Court that the petitioner-company should be wound up as contemplated under Section 20 of the Act. It can be said that by inviting objections/ suggestions or alternative proposals, the stage of Section 17 of the Act has not come to an end, even though the BIFR had come to the conclusion that there is no alternative to winding up the company under Section 20 of the Act.

The B.I.F.R., may after considering some alternative proposal being made, come to a conclusion that the petitioner company can be revived and in that event, it may not make any recommendation or forward its opinion for winding up the petitioner company.

14. The contention of Sri Pankaj Mittal, learned counsel for the respondent No. 1 to the effect that the proceedings under Section 17 of the Act, had come to an end when the B.I.F.R. had recorded a categorical finding that there is no alternative to winding up of the petitioner company under Section 20 of the Act, is not correct. As already held above, the proceedings under Section 17 of the Act, will deem to have been pending before the B.I.F.R. since the B.I.F.R. had not forwarded its opinion to this Court that the petitioner company should be wound up.

15. The learned counsel for the petitioner. Sri Ravi Kant relied upon the decision or the Hon'ble Supreme Court in the case of Gram Panchayat and another v. Sri Ballabh Class Works Ltd. and others. AIR 1990 SC 1017, wherein the Hon'ble Supreme Court held that in the light of the' steps taken by the B.I.F.R. under Sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board, indeed, there would be automatic suspension of such proceedings against the companies' properties. As soon as the enquiry under Section 16 is ordered by the Board, the various proceedings set out under sub-section (1) of Section 22 would be deemed to have been suspended. The Hon'ble Supreme Court further observed that the creditors may approach the Board for permission to participate against the company for the recovery of their dues/outstanding/over dues whatever it is called. The Board at its discretion may accord its approval for proceedings against the company. The Hon'ble Supreme Court upheld the order of the High Court quashing the recovery proceedings taken against the property of the company in the aforesaid case.

16. Sri Ravi Kant further relied upon the decision of the Hon'ble Supreme Court in the case of Tata Davy Ltd. v. State of Orissa and others. JT 1997 (7) SC 216. wherein the Hon'ble Supreme Court had held that the arrears of taxes and the like dues from sick industrial company that fulfils the conditions set out in Section 22(1)

of the Central Act cannot be recovered by coercive process unless the said Board gives its consent thereto.

17. From perusal of Section 22(1) of the Act, it will be clear that the said section is applicable where an enquiry under Section 16 is pending or any Scheme referred to under Section 17 is under preparation for consideration. In the present case even though the Scheme prepared under Section 17 of the Act have beenheld by the B.I.F.R. to be not viable for the revival of the Petitioner Company, yet it had invited alternative proposals. The only inference which can be drawn from the order dated 8.10.1993 passed by the B.I.F.R. is that it can consider any alternative proposal for revival of the petitioner-company. Thus, the stage of Section 17 is not over and the provisions of Section 22(1) of the Act, will come into play and no proceedings for realisation of the outstanding amount of house tax can be taken by coercive process against the properties of the petitioner company except with the consent of the Board.

18. The contention of the learned counsel for the respondent No. 1 that it is for the B.I.F.R. to pass orders under sub-section (3) of Section 22 of the Act, during the period of consideration of any Scheme under Sections 17 and 18 is misplaced inasmuch as sub-section (3) of Section 22 only empowers the B.I.F.R. to suspend the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instructions in force to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order. It further empowers the B.I.F.R, to modify the aforementioned contracts, agreements, settlements etc., while preparing the Scheme under Section 17 or any such scheme under Section 18 or where such scheme is sanctioned thereunder for due implementation of the scheme. However, Section 22(1) of the Act, bars any proceedings for recovery of outstanding dues by coercive process and if the proceedings has already been instituted, then from proceeding with any further except with the consent of the Board. Admittedly, in the present case, the respondent No. 1 had not obtained the consent of the B.I.F.R. before proceeding to recover the outstanding amount of house tax from the petitioner. Thus, the respondent No. 2 cannot recover the outstanding amount of house tax from the petitioner by coercive process. Itcan do

so after obtaining the consent of the Board.

19. Sri Pankaj Mittal, learned counsel for the respondent relied upon a decision of this Court dated 8.10.1998 given in Premier Vinyal Flooring Ltd., Bulandshahr v. State of U. P. and others, Civil Misc. Writ Petition No. 32211 of 1998, in support of his plea that Section 22 of the Act, does not deny access to the industrial company whose sickness is being examined as to complain before the B.I.F.R. that during pendency of an enquiry creditor whosoever it might be insists in proceeding with the execution of realisation of dues by coercive process. The petitioner instead of approaching this Court ought to have approached the B.I.F.R. for redressal of his grievances at the first instance. He also pointed out that the petitioner had got the proceedings before the B.I.F.R. stayed through BHARTIYA K1SAN UNION (Civil Misc. Writ Petition No. 45214 of 1993). The allegation that the said writ petition had been got filed by the Management of the petitioner company in collusion with some of the workers had not been denied by the petitioner in the rejoinder-affidavit. Therefore, the learned counsel submitted that in the interest of justice this Court should not exercise its discretion in favour of the petitioner in exercise of its extraordinary equity jurisdiction under Article 226 of the Constitution of India.

20. Sri Ravi Kant, learned counsel for the petitioner, however, submitted that the decision of this Court in the case of Premier Vinyal Flooring Ltd. is per incuriam as it had not considered the decision of the Hon'ble Supreme Court in the case of Gram Panchayat v. Sri Ballabh Glass Works (supra) and Tata Davy Ltd. v. State of Orissa (supra) and also runs contrary to the aforesaid decisions. For this proposition, he relied upon the decision of the Hon'ble Supreme Court in the case of State of U. P. and another v. Synthetics and Chemicals Ltd. and another. (19911 4 SCC 139. In our view, in the decision of this Court in the case of 'Premier VinyalLtd., it had been held that there is no issue that sub-section (1) of Section 22 lays down that during the pendency of an enquiry under Section 16 or any other Scheme under Section 17, proceedings or execution in the nature of distress or attachment against the properties of the industrial company when its sickness is being examined will not be proceeded with, except with the consent of the Board. Thus, the aforesaid decision does not lay down anything which is contrary to the principles laid down by the Hon'ble Supreme Court in the aforementioned two

decisions. In the aforesaid case, this Court held that the Sick Industrial Company is not without remedy where pending an enquiry by the B.I.F.R. about its sickness, realisation of dues is being made by coercive process. It held that the sick industrial company can make a complaint before the B.I.F.R. and is answerable to the provisions so provided under Section 33 of the Act, and it permits an Industrial company to apply for appropriate ad-interim relief before the B.I.F.R. This Court only declined to interfere under Article 226 of the Constitution on the ground that B.I.F.R. is not powerless to pass appropriate orders and relegated the petitioner therein to approach the B.I.F.R. We are in complete agreement with the aforementioned decision of this Court.

21. From the order dated 8.10.1993 passed by the B.I.F.R., it is clear that in spite of many opportunities given to the petitioner and the Modis to work out solutions detailed in the proceedings of 6.8.1992 and 24.12.1992, no solution could emerge even though considerable time had elapsed. Further, there is no firm proposal for revival of the petitioner's company either from the company or the Modis or any other party with assured commitment for Induction of required funds and even the bank and financial institutions have ruled out any further increase in their exposure to petitioner in the fact of the above mentioned inability/refusal of the Modis. All the efforts of the B.I.F.R. toformulate any scheme had Tailed and there is no alternative to the winding up of the petitioner-company. The petitioner got the proceedings stayed before B.I.F.R. by instigating and in collusion with some of its workmen through BHART1YA KISAN UNION'S writ by this Court. Thus, on the one hand the petitioner and the Mod is are not coming forward for any viable scheme for the revival of the petit loner-company and they are also not giving any commitment for induction of the required funds, instead of challenging the illegality of the findings, if any, in the B.I.F.R.'s order dated 8.10.1993, themselves, they had got it challenged in collusion with the workers union and had successfully stalled the proceedings before the B.I.F.R.. thereby continue to manage the affairs of the various units of the petitioner to their advantage and personal gains. On the other hand, taking advantage of the self-made situation ; they want to avoid the liability for payment of taxes and other statutory duties taking shelter under the umbrella of Section 22(1) of the Act. Even before this Court, no proposal, whatsoever, has been made by the petitioner or the Management as to what

efforts have been made by them for the revival of the petitioner-company. By the aforesaid action of the petitioner in getting their proceedings before the B.I.F.R. stayed by this Court, the effect is that the B.I.F.R. had not been able to formulate any scheme for rehabilitation/revival of the petitioner-company nor it has been able to forward its opinion to this Court that the petitioner-company should be wound up. The petitioner stood to gain immensely from the said order dated 10.12.1993. On the one hand, it is doing its business while on the other hand it is not paying due taxes to the authorities and is taking shelter/protection under Section 22(1) of the Act. The object of Section 22(1) of the Act had been enacted not to rescue such type of companies like the petitioner. The conduct of the petitioner has resulted in a situation 'Heads I win. Tails you lose', in favour of the petitioner. The petitioner cannot be permitted toinvoke this Courts extraordinary equity jurisdiction under Article 226 of the Constitution of India in such a situation like the present one.

22. Even though, we are of the view that in view of the specific prohibition contained in Section 22(1) of the Act, the respondent No. 1 could not have initiated proceedings for realisation of the outstanding amount of house tax from the petitioner by coercive process, yet in view of the undisputed fact that the petitioner in collusion with some of its workers had instigated BHARTIYA KISAN UNION to file Civil Misc. Writ Petition No. 45214 of 1993 and had got the proceedings before the B.I.F.R. stayed in so far as the Modi Sugar Mills (one of its units) is concerned, we are not inclined to exercise our equity jurisdiction under Article 226 of the Constitution of India.

23. We, therefore, decline to quash the notice dated 5.7.1996 issued by the respondent No. 1 (filed as Annexure-7 to the writ petition No. 488 of 1996) and the Order dated 15th February. 1992 passed by the respondent No. 2 (filed as Annexure-7 to the Writ Petition No. 7249 of 1992).

24. Both the writ petitions have no force and are hereby dismissed with costs to respondent No. 1 which we assess at Rs. 10,000.