

(34) Likewise, the summoning Magistrate has just ignored these vital aspects of the matter with impunity and summoned the petitioners as accused in a very routine manner, which is not legally permissible. Therefore, to me, the impugned complaint (Annexure P-6) and the summoning order dated 19.7.2003 deserve to be set aside.

(35) In the light of aforesaid reasons, the instant petitions are accepted. Consequently, the impugned criminal complaint (Annexure P6) and summoning order dated 19.7.2003 are hereby quashed. The petitioners (in both the petitions) are accordingly discharged from the criminal proceedings and are set at liberty.

S. Gupta

Before M.M. Kumar & Ajay Kumar Mittal, JJ.

**PICCADILY SUGAR AND ALLIED
INDUSTRIES LTD.,—Petitioner**

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP 17674 of 2010

18th January, 2012

Constitution of India, 1950 - Art. 226 - Companies Act, 1956 - Land Revenue Act - S.69 - Punjab Sugarcane (Regulation of Purchase and Supplies) Act, 1953 - Punjab Sugarcane (Regulation of Purchase and Supplies) Rules, 1958 -18(6) - Sick Industrial and Companies (Special Provisions) Act, 1985 - Ss. 3(1)(o), 15(1) & 22 - Petitioner company declared sick industrial company by board for Industrial and Financial Reconstruction - Assistant Collector passed order dated 11.6.2010 asking petitioner to deposit cane cess and in case of failure it was ordered that action U/s 69 of Land Revenue Act would be initiated - Order passed by Assistant Collector challenged by way of writ petition - Direction also sought for implementation of rehabilitation scheme dated 1.4.2010 - Writ

petition allowed - Order set aside holding that as per section 22 when a sanctioned scheme is under implementation no proceedings for execution, distress or the like against any of the properties of the Industrial Company can be initiated.

Held, That once the rehabilitation scheme has been approved by BIFR and no appeal against the order dated 1.4.2010 passed by BIFR, has been filed before the Appellate Authority for Industrial and Financial Reconstruction (for brevity, 'AAIFR'), then the rehabilitation scheme would be binding. We find no force in the argument raised on behalf of the respondents that the rehabilitation scheme is not binding on them and there is no provision in the Punjab Sugarcane (Regulation of Purchase and Supplies) Act, 1953 and the Punjab Sugarcane (Regulation of Purchase and Supplies) Rules, 1958 for waiving off the tax (cane cess).

(Para 6)

Further held, That a perusal of the aforesaid provision would show that where in respect of an industrial company, amongst other things, a sanctioned scheme is under implementation then notwithstanding anything contained in any other law, no proceedings 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 or of any guarantee in respect of any loans or advances granted to the industrial company is to lie or be proceeded with further except with the express permission of the BIFR or AAIFR as the case may be.

(Para 8)

Further held, That as a sequel to the above discussion, this petition succeeds. The impugned order dated 11.6.2010 (P-5) passed by the Assistant Collector-respondent No. 4 is set aside. The respondents are directed to implement the rehabilitation scheme in so far it concerns them and, as approved by the BIFR, vide order dated 1.4.2010 (P-3).

(Para 9)

D.S. Patwalia, Advocate, *for the petitioner.*

Sudeepti Sharma, DAG, Punjab, for respondent Nos. 1 to 4.

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution challenges order dated 11.6.2010 (P-5), passed by the Assistant Collector Class I, Patran, District Patiala, asking the petitioner- Company to deposit the balance principal amount of Cane cess i.e. a sum of '9,31,541 before 17.6.2010 in the Government treasury and in case of failure action under Section 69 of the Land Revenue Act was to be initiated. A further prayer has been made for restraining respondent Nos. 1 to 4 from initiating any coercive action against the petitioner-Company in view of the fact that it has been declared as a sick industrial company under Section 3(1)(o) of the Sick Industrial and Companies (Special Provisions) Act, 1985 (for brevity, 'SICA') vide order dated 3.10.2002 passed by the Board for Industrial and Financial Reconstruction (for brevity, 'BIFR') and subsequently BIFR has also sanctioned a rehabilitation scheme vide order dated 1.4.2010, which has attained finality because no further appeal to the Appellate Authority for Industrial and Financial Reconstruction (for brevity, 'AAIFR') has been filed. The petitioner has also sought a direction to the respondents to implement the rehabilitation scheme, dated 1.4.2010 (P-3) and to grant all the benefits and concessions as admissible under the said scheme.

(2) The undisputed facts of the case are that the petitioner is a Public Limited Company, which was incorporated on 15.3.1993 under the provisions of the Companies Act, 1956. It has set up a plant for manufacture of white crystal sugar with installed capacity of 2500 TCD along with the facilities for co-generation of power at village Hamjheri, Hariau and Deogarh, situated on Patran-Jakhal State Highway about 3 Kms. from Patran town of District Patiala. The petitioner-Company was generating profits up to the year 1996-97. However, thereafter due to low price of sugar and increased cost of case, the profitability and performance of the petitioner-Company was adversely affected since 1997-98. The situation was so aggravated that eventually an application under Section 15(1) of 'SICA' was filed before the BIFR and, the petitioner- Company was declared as a sick industrial company in terms of Section 3(1)(o) of SICA, vide order dated 3.10.2002 (P-2). The Oriental Bank of Commerce was appointed as the Operating Agency (for brevity, 'OA'). The petitioner-Company was directed to submit a detailed rehabilitation proposal to the OA. On 20.5.2003, while the OA

was in the process of finalisation of the draft rehabilitation scheme, the BIFR directed the petitioner-Company to sort out with the secured creditors the reliefs and concessions envisaged in the rehabilitation proposal and submit a fully tied up rehabilitation proposal to OA by disclosing the sources of promoters contribution within one month but not later than 20.6.2003. On 13.3.2008, another order was passed by the BIFR directing the petitioner-Company to re-submit draft rehabilitation scheme taking the cut of date as 31.3.2008. On 28.5.2008, the Operating Agency was changed from Oriental Bank of Commerce to State Bank of Patiala because the dues of Oriental Bank of Commerce were settled by the petitioner-Company under One Time Settlement Scheme. Ultimately, on 1.4.2010, the BIFR sanctioned the rehabilitation scheme (P-3). It has been claimed that as per para 11.3 the petitioner-company has to be granted all benefits and concessions as per State Government policy guidelines for sick industrial unit. Accordingly, the Cane cess payable by it to respondent Nos. 1 and 2 as on cut-off date i.e. 31.3.2008, was to be waived of and the petitioner-Company was entitled for exemption from payment of cane cess for a period of five years from the cut-off date. This five years exemption period would expire on 31.3.2013. It has further been submitted that from the year 1994 when the petitioner- Company came into existence till 31.3.2008, the amount of cane cess comes to about Rs. 1,21,73,298/-, out of which it has already paid an amount of Rs.23,06,341/-. Thus, in terms of the sanctioned rehabilitation Scheme the remaining cane cess after the cut-off date has to be waived off by granting exemption from payment of cane cess for a period of five years from the cut off date.

(3) On 9.6.2010 (P-4), the petitioner-Company brought to the notice of respondent No. 1 the sanctioned rehabilitation scheme issued by the BIFR. However, on 11.6.2010, the Assistant Collectorrespondent No. 4 passed the impugned order and directed it to deposit an amount of Rs. 9,31,541/- on or before 17.6.2010 in the Government Treasury failing which action under Section 69 of the Land Revenue Act was to be initiated (P-5). On 21.6.2010, the petitioner-Company filed a reply to the said notice. It was specifically highlighted that since the petitioner-Company has been declared as a sick company by the BIFR on 3.10.2002, therefore, as per Section 22 of the SICA no recovery could be effected from it without seeking prior permission from BIFR. It was further stated that even the

assets of the Company could not be disposed of or alienated without the permission of the BIFR. Apprehending that the respondents would proceed with penal action, the instant petition has been filed.

(4) In the written statement filed on behalf of respondent Nos. 1 and 2 it has been pointed out that under Rule 18(6) of the Punjab Sugarcane (Regulation of Purchase and Supplies) Rules, 1958, the Cane Commissioner is required to forward to the Collector a certificate indicating the amount of arrears on account of price of cane plus interest if any due from the occupier or the agent and the Collector on receipt of such certificate is to proceed to recover from such occupier or agent the amount specified as if it was arrear of land revenue. It has been urged that a recovery certificate was issued for recovery of tax on purchase of sugarcane for the year 2007-08, amounting to '9,31,541 as arrear of land revenue to the Deputy Commissioner, Chandigarh, vide letter dated 11.11.2008 (R-2). On 26.11.2008, the District Collector, Chandigarh, issued a recovery certificate (R-3) and thereafter impugned notice dated 11.6.2010 (P-5) has been issued by the Assistant Collector respondent No. 4. In para 5 of the preliminary submissions it has been stated that there is no provision to waive the tax on the purchase of sugarcane levied by the State Government under the Punjab Sugarcane (Regulation of Purchase and Supplies) Act, 1953 and the Punjab Sugarcane (Regulation of Purchase and Supplies) Rules, 1958. It has been stated that the rehabilitation scheme by the BIFR has not been sanctioned in the presence of respondent Nos. 1 and 2 as they were never a party to the said revival scheme and no notice was ever received for the said purpose.

(5) We have heard learned counsel for the parties at length and perused the paper book with their able assistance. It is a conceded position that the petitioner Company has been declared as a sick company by BIFR on 3.10.2002 under the provisions of Section 3(1)(o) of SICA. Eventually, vide order dated 1.4.2010, the BIFR has also sanctioned a rehabilitation scheme for revival of the petitioner company, which has been duly approved in the presence of representatives of various parties. In para 9 of the sanctioned rehabilitation scheme it has been specifically stated that the relief and concession from the State Government i.e. respondent Nos. 1 and 2 be advanced to the petitioner-Company. Similarly, para 11.3 of the Scheme

contains the description of the relief and concession from respondent No. 1 and 2. Para 11.3 of the sanctioned rehabilitation scheme (P-3) is reproduced as under:

“11.3 FROM THE STATE GOVERNMENT OF PUNJAB

- (1) To declare the company as ‘Relief Undertaking’ and grant all benefits and concessions as per the State Government policy guidelines for sick industrial units.
- (2) To waive the Cane cess dues payable by the company as on cut-off date and further grant exemption from payment of Cane cess for a period of five years from cut-off date.
- (3) To consider to exempt the company/its directors/officials from the penal provisions of any State Act (other than that for criminal offences) for the defaults if any, committed by the company/directors till the cut-off date.”

(6) Once the rehabilitation scheme has been approved by BIFR and no appeal against the order dated 1.4.2010 passed by BIFR, has been filed before the Appellate Authority for Industrial and Financial Reconstruction (for brevity, ‘AAIFR’), then the rehabilitation scheme would be binding. We find no force in the argument raised on behalf of the respondents that the rehabilitation scheme is not binding on them and there is no provision in the Punjab Sugarcane (Regulation of Purchase and Supplies) Act, 1953 and the Punjab Sugarcane (Regulation of Purchase and Supplies) Rules, 1958 for waiving off the tax (cane cess).

(7) Even otherwise once a company is before the BIFR, Section 22 of SICA would come in operation. It would be profitable to reproduce the relevant part of Section 22 of SICA, which reads thus:-

“22. **Suspension of legal proceedings, contract, 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, 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 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 advances 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.” (emphasis added)

(8) A perusal of the aforesaid provision would show that where in respect of an industrial company, amongst other things, a sanctioned scheme is under implementation then notwithstanding anything contained in any other law, no proceedings 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 or of any guarantee in respect of any loans or advances granted to the industrial company is to lie or be proceeded with further except with the express permission of the BIFR or AAIFR as the case may be. The aforesaid provision came up for consideration before Hon’ble the Supreme Court in the case of Rishabh Agro Industries Ltd v. P.N.B. Capital Services Ltd., (2000) 5 SCC 515 (see para 9). It was held that for successfully invoking the applicability of Section 22 of SICA, it has to be established that a sanctioned scheme is under implementation and it could not be said that despite the aforesaid situation the provisions of Section 22 would not be attracted. Accordingly, we find that the relief claimed by the petitioner is meritorious and deserves to be accepted even on this additional ground.

(9) As a sequel to the above discussion, this petition succeeds. The impugned order dated 11.6.2010 (P-5) passed by the Assistant Collector-respondent No. 4 is set aside. The respondents are directed to implement the rehabilitation scheme in so far it concerns them and, as approved by the BIFR, vide order dated 1.4.2010 (P-3). The needful shall be done within a period of one month from the date of receipt of a copy of this order.

J.S.M.