

(2003) 02 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19773 of 1994

Aditya Pharmaceuticals (P) Limited

APPELLANT

Vs

A.P. State Financial Corporation

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Constitution of India, 1950 — Article 141

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2003 AP 413 : (2003) 3 ALD 120 : (2003) 2 ALT 504 : (2004) 50 SCL 322

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : E.S. Ramachandra Murthy, for the Appellant; Y.N. Lohitha, SC, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—This writ petition is filed to declare the action of the respondent -Corporation in seizing the property of the petitioner-company and selling the same to outsiders for a throw-away price, without due regard to the principles laid down by the Apex Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , as illegal and violative of principles of natural justice.

2. The brief facts of the case are that the petitioner is a company and is represented by its Managing Director. The petitioner borrowed certain amount in the year 1988, from the respondent i.e., the A.P. State Financial Corporation (for short hereinafter referred to as "the Corporation"), subject to certain terms and conditions. One of the conditions is that the amount i.e., the principal along with interest should be repaid in half yearly instalments. The petitioner committed default in payment of instalments. However, upon the request of the petitioner, the loan payment was restructured in the year 1992, subject to certain conditions. Again the petitioner committed default. According to the petitioner,

one of the reasons for committing default in repayment of loan, was that he could not get sufficient finances from the banks and as such he could not start the commercial production. However, as the petitioner committed default, the respondent-Corporation issued recall-cum-sale notice dated 31.8.1993 intimating that for recovering the outstanding amounts, action u/s 29 of the State Financial Corporation Act (for short "the Act") would be taken. In the said notice it was further indicated that if the petitioner pays the arrears on or before 11.9.1993, the proposed action would be dropped. As there was no response from the petitioner, seizure of the petitioner's unit was effected on 5.3.1993 and three months thereafter, paper advertisement was given on 1.6.1994 for sale of the petitioner's unit and accordingly the tenders were finalized and possession was also given to the successful bidders.

3. Now the petitioner in this writ petition challenges the seizure and selling away of the property.

4. The respondent-Corporation filed a counter affidavit in the form of vacate stay petition, giving the details and justifying the action taken by the Corporation and sought for dismissal of the writ petition.

5. The learned Counsel Sri E.S.Rama Chandra Murthy appearing for the petitioner submitted that the petitioner made representations on 2.3.1994 and on 24.9.1994, but the same were not considered by the respondent - Corporation. He contended that, no notice u/s 30 of the Act was given and that the entire process, including the seizure, advertisement in newspapers and finalization of tenders and handing over of the possession, was done behind the back of the petitioner. He further contended that even the procedure u/s 29 of the Act was also not followed. He submitted that the Hon"ble Supreme Court in the decision reported in Mahesh Chandra's case (supra) has issued certain directions which were required to be followed by the Financial Corporation while exercising power u/s 29 of the Act and those directions were not followed by the respondent-Corporation before handing over the unit of the petitioner and therefore the action of the respondent -Corporation is illegal and arbitrary. He submitted that as per the directions of the Supreme Court, in order to know whether the price offered for the petitioner's unit was adequate or not, the same should be intimated to the petitioner to enable him to file his objections, since his interests are vitally involved. He further submitted that as per the said directions of the Apex Court, the highest price on which the tender is to be accepted, must be intimated to the unit holder i.e., the petitioner. Therefore, he contended that since these directions were not strictly followed, the petitioner was deprived of his right to participate in the bid and he could not make the successful bidders as parties to this writ petition. With these submissions, he sought for setting aside of the sale.

6. On the other hand the learned Standing Counsel appearing for the respondent - Corporation submitted that the petitioner is a chronic defaulter and he was given number of opportunities for repayment of the loan amount, but he did not

avail them. He submitted that even the payment of Joan structure was rescheduled two times and in spite of which, the petitioner committed default. Further there was never any adherence to the terms and conditions imposed and hence it became imperative for the respondent - Corporation to invoke Section 29 of the Act and accordingly following the procedure prescribed under the said provision, the petitioner's unit was sold and handed over to the successful auction purchaser on 15.9.1994. He further submitted that after everything was over by 15.9.1994, the petitioner filed the writ petition on 5.11.1994. He submitted that the only thing that now remained is adjustment of the amount fetched in the auction, towards the loan account of the petitioner and even after this, if the petitioner is found due any amount, the same has to be recovered from the petitioner by invoking the other provisions under the Act, or proceeding under the Revenue Recovery Act.

7. Further in order to substantiate the above contentions, the learned Standing Counsel for the respondent - Corporation relied on the judgment of the Apex Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, . He submitted that the Apex Court in the said judgment, has overruled its earlier judgment in Mahesh Chandra's case (supra) and hence, the guidelines issued in the former judgment need not strictly be followed. With these submissions, he sought for dismissal of the writ petition.

8. In order to appreciate the rival contentions, it is necessary to look into the material on record. From the counter-affidavit as well as from the records made available to this Court, it could be seen that the recall-cum-sale notice was issued on 31.8.1993, wherein it was indicated that the petitioner was due an amount of Rs.84,04,700-20 with interest from 1.5.1993, apart from other amounts debit able to the account of the petitioner. Therefore, in order to recover the said amount, it was indicated that, the respondent - Corporation is taking steps u/s 29 of the Act by sale of the petitioner's unit by advertisement in newspapers. It was further indicated that if the sale does not materialize or the proceeds thereof are not sufficient, the Corporation would proceed under other laws. In the said notice, it was specifically advised that, if the petitioner pays the arrears on or before 11.9.1993, the proposed action would be dropped. It appears that even pursuant to the said sale notice, the petitioner has not paid any amounts. However, it is alleged that the petitioner paid a lakh of rupees pursuant to an earlier letter of the Corporation dated 21.8.1993. But the fact remains that pursuant to the sale notice, the petitioner has not paid any amount on or before the cut off date i.e., 11.9.1993, prescribed in the sale notice.

9. The contention of the learned Counsel for the petitioner is that no notice prior to the sale of the petitioner's unit was given to the petitioner and the further contention is that, even assuming that notice was issued, the same was not received by the petitioner and there was no acknowledgement of the petitioner. However, the Counsel for the respondent-Corporation denied the above contention.

10. However, a perusal of the records produced by the Corporation in this regard reveals that the petitioner was given notice. The records maintained by the statutory body and the officials acts, in normal course have to be presumed as correct, unless proved contra. No substantial material is coming forth from the side of the petitioner to refute the contention regarding issuance notice. Hence, I do not find any reason to disbelieve the version of the respondent - Corporation with regard to issuance of the recall-cum-sale notice dated 31.8.1993.

11. At this juncture it is to be noted that the petitioner is only challenging the seizure and sale, without challenging either the paper advertisement, or the sale notice dated 31.8.1993. He also did not file any objection to the said sale notice and, therefore, the unit of the petitioner was seized on 5.3.1993 as per the procedure. The specific case of the petitioner is that he made representation on 2.3.1994, but the same was not considered. Here it is to be noted that the Corporation gave the newspaper advertisement on 1.6.1994 calling for the tenders for the sale of the petitioner's unit. That means by necessary implication, it has to be presumed that the Corporation has rejected the representation of the petitioner. It is not in dispute that the Act also does not provide for any such facility of making a representation.

12. The advertisement for the sale of the petitioner's unit was given in two widely circulated newspapers i.e., in Enadu (Telugu daily) and in Deccan Chronicle (English daily) on 1.6.1994. Pursuant to the said advertisement, many bidders participated and the tenders were finalized on 8.8.1994 and the possession of the petitioner's unit was handed over to the successful bidder on 15.9.1994 and thereafter about two and half months i.e., on 5.11.1994, the petitioner filed the present writ petition and obtained interim stay on 19.12.1994 in WPMP No. 24332/1994.

13. At the cost of repetition it is to be noted that the petitioner did not challenge either the sale notice or the advertisement and to justify this action, he pleads total ignorance of all these transactions, and contends that the entire procedure was carried on behind his back. This ground cannot be appreciated for the reasons stated supra and hence I am of the view that at least before finalization of tenders, he could have approached this Court and should have tried to stall the further proceedings.

14. Further as per Section 29 of the Act, in case of default, the Corporation has right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Corporation. Even though no specific procedure is prescribed for enforcing the above right of the Corporation in the Act, in the present case, the respondent-Corporation has substantially followed the principles of natural justice.

15. Another important factor that is to be noted, is that the seizure was effected on 5.3.1994 and from the record it appears that this seizure was under a cover

of panchanama, in the presence of the company officials of the petitioner. Thereafter as noticed already, the sale notice was published in two widely circulated dailies. In spite of all this, if the petitioner pleads total ignorance, it is nothing but a fallacy.

16. Coming to the other contention of the learned Counsel for the petitioner that the directions issued by the Apex Court in Mahesh Chandra's case (supra) are not followed, it is to be noted that this judgment was overruled by the Apex Court in the later judgment in Jagadamba Oil Mills case (supra).

17. Here, the peculiar contention of the learned Counsel for the petitioner is that as on the date of filing of the writ petition, the judgment of the Apex Court in Mahesh Chandra 's case (supra) is in force and hence the same has to be applied and further since the judgment of the Apex Court in Jagadamba Oil Mills case (supra) is subsequent to the filing of the writ petition, it will have only prospective effect and the same cannot be applied to the case of the petitioner. This alternative contention cannot be appreciated. It is well settled that under Article 141 of the-Constitution of India, the judgment of the Apex Court is the law and binding on all the Courts and further when the justice demands, Apex Court has power to overrule its earlier judgments. When a judgment is overruled, the law laid down in the overruled judgment ceases to operate and the new law laid down in the overruling judgment will come into force and all the matters pending as on that date or any future matters, will come under the fold of that new law. Further the general rule is that the overruling of an earlier decision will always have retrospective effect, except as regards the matters that are res judicata; or that accounts have been settled in the meanwhile; or that the effect of the overruling judgment is specifically made prospective. That is not the situation in the case on hand.

18. Further the Hon"ble Apex Court in Maj. Genl. A.S. Gauraya and Another Vs. S.N. Thakur and Another, , observed at paragraph No. 12 as under:

". . . There is nothing like any prospective operation alone of the law laid down by this Court. The law laid down by this Court applies to all pending proceedings."

19. The eleven judge Bench of the Supreme Court in I.C. Golak Nath and Others Vs. State of Punjab and Another, , has laid down the following guidelines at paragraph No. 52 of the judgment, with regard to prospective overruling:

"(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

20. The case on hand does not fall in any of the above parameters specified by

the Supreme Court, in order to apply the judgment of the Supreme Court in Jagadamba Oils Mills case (supra) prospectively. Therefore, this alternative argument of the Counsel for the petitioner cannot be appreciated and is hereby rejected.

21. In the decision relied on by the Standing Counsel for the respondent - Corporation in Jagadamba Oil Mills case (supra), Their Lordships while overruling the judgment in Mahesh Chandra's case (supra), referred to the observations in their earlier judgments in U.P. Financial Corporation, v. Naini Oxygen & Acetylene Gas Ltd, 1995 AIR SCW 254, and Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, . In U.P. Financial Corporation's case (supra), the Apex Court held that:

"In commercial matters the Courts should not risk their judgments for the judgments of the bodies to whom that task is assigned".

22. Further in Karnataka State Financial Corporation's case (supra), the Apex Court held that:

"in the matter or action by the Corporation in exercise of the powers conferred on it u/s 29 of the Act, the scope of the judicial review is confined two circumstances i.e. (a) where there is statutory violation on the part of the State Financial Corporation, or (b) where the State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short "the Constitution"), the High Court does not sit as an appellate authority over the acts and deeds of the Corporation. Similarly, the Courts other than the High Courts are not to interfere with action u/s 29 of the Act unless the aforesaid two situations exist".

23. Therefore from a conjoint reading of the above two judgments (supra) it is clear that in normal course, the Court shall not interfere with the commercial matters and in case of imperativeness, the interference would be only under two circumstances viz., (1) statutory violation and (2) unreasonableness.

24. In the case on hand no material is produced in order to show that the respondent - Corporation has committed any statutory violation or that its action is unreasonable. On the other hand, the material on record establishes that the respondent - Corporation has complied with the statutory provisions and also substantially followed the principles of natural justice by issuing recall-cum-sale notice as well as advertisement with regard to sale of the petitioner's unit in two widely circulated newspapers. As the petitioner did not avail the opportunities, the Corporation was compelled to sell the unit of the petitioner and adjust the proceeds and thereafter also it is alleged that the petitioner was found still due some amount and for recovering this amount, the Corporation is contemplating to take steps under relevant provisions under the Act and also under other laws.

25. Therefore, at the cost of repetition it is to be stated that the respondent - Corporation had taken all reasonable care i.e., it has first issued recall-sale

notice, thereafter effected seizure and finally issued paper advertisement and ultimately sold the unit of the petitioner to the successful auction purchaser. Therefore, the interest of the third parties also has stepped in. In spite of all this, the attitude of the petitioner in keeping quiet and pleading total ignorance of the events which have happened in a row and after everything is over filing writ petition without impleading the auction purchaser, whose interests would be affected, if any order is passed, cannot be appreciated.

26. At this stage the learned Counsel for the petitioner submitted that after the interim orders were passed by this Court, all further proceedings are stayed. However, the learned Standing Counsel for the respondent - Corporation submitted that by the time the writ petition was filed everything was over i.e., according to him, the unit of the petitioner was handed over to the successful auction purchaser on 15.9.1994 and the writ petition was filed on 5.13.1994. Therefore, in view of all the above details, by virtue of the stay granted by this Court, perhaps only the proceedings like the invocation of the provisions of the Revenue Recovery Act or filing of the suit for recovery of the balance amount, might have been stayed.

27. Again coming to the decision of the Supreme Court in Jagadamba Oil Mills case (supra), while overruling the guidelines laid down by the earlier judgment of the Apex Court in Mahesh Chandra's case (supra), with regard to giving of notice to the unit holder before acceptance of the price offered by the highest bidder in order to know the adequacy or otherwise etc., the Apex Court made the following observations at paragraph Nos. 15 and 17 as under:-

"15. The view in Mahesh Chandra's case (supra) appears to have been too widely expressed without taking note of ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a dishonest borrower. It would not further interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings.

17. The aforesaid guidelines issued in Mahesh Chandra 's case place unnecessary restrictions on the exercise of power by the Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in Mahesh Chandra's case will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible."

28. From the procedure followed by the respondent-Corporation, which is already discussed above, I hold that it is absolutely transparent and reasonable.

29. For the foregoing reasons and following the decisions of the Supreme Court referred to above, I do not find any merit in the writ petition and accordingly the same is dismissed. In the circumstances of the case, there shall be no order as to costs.