

(1989) 12 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No's. 3730 of 1980, 1545 of 1984, 6630 of 1985, 1335 of 1986 and 6482 of 1987

Alka Ceramics

APPELLANT

Vs

Gujarat State Financial Corporation and Others

RESPONDENT

Date of Decision : 27-12-1989

Acts Referred:

Army Act, 1950 — Section 125
Constitution of India, 1950 — Article 14, 19, 19(1), 21, 300A
Contract Act, 1872 — Section 172, 176
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B
Gujarat Public Moneys (Recovery of Dues) Act, 1979 — Section 3(1), 3(4)
State Financial Corporations Act, 1951 — Section 29, 29(1), 3, 31, 31(1)
Transfer of Property Act, 1882 — Section 58, 69

Citation : AIR 1990 Guj 105 : (1992) 73 CompCas 209 : (1990) 1 GLR 628 : (1985) 1 GLR 57

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; R.A. Mehta, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—In this group of writ petitions, the petitioners are industrial concerns which had taken loans from the respondent, Gujarat State Financial Corporation (hereinafter referred to as "the Corporation" or "the GSFC") and executed agreements and deeds of mortgage/pledge/hypothecation. They have made defaults in repayment of the loan and instalments thereof and in meeting their obligations to the respondent Corporation. The respondent-Corporation had, therefore, resorted to section 29(1) of the State Financial Corporation Act, 1951 (Act No. 63 of 1951), whereunder the State Financial Corporation has been conferred a 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 realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

2. The petitioners have, therefore, challenged the constitutional validity of section 29(1) of the Act, and, in the alternative, the action threatened or taken

under that provision. Section 29(1) of the Act reads as under :

"29(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the 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 realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation."

3. Learned counsel appearing for the petitioners have contended that this provision is unreasonable, drastic, arbitrary, violative of the principles of natural justice and fair play; the Corporation behaves as a judge, in its own cause and executes its own decision at its unguided sweet will; there is no hearing, no reasoned order, no consideration for revival of a viable sick unit, no safeguard, no corrective machinery, no appeal, revision or review, no guideline, no procedure, no natural justice, no fair play and this unreasonable provision enables the respondent-Corporation to take possession and transfer the industrial concern at any price without following any procedure to any person and, therefore, this provision is utterly arbitrary, unreasonable and violative of articles 14, 19, 21 and 300A of the Constitution.

4. Secondly, it is contended that covering the same field of default by the industrial concern, another remedy is provided by section 31 of the Act whereby the Corporation has been given an expeditious judicial remedy by way of a mere application to the District Judge for an order of sale or transfer of the management of the industrial concern. This judicial remedy directly to the District judge is held to be in the nature of an execution application and, therefore, it is a summary and expeditious remedy through the court. As against that, the other direct action without intervention of the court provided by way of section 29 of the Act is very drastic and the Corporation which is an authority of the State has absolute discretion to "pick and choose" an industrial concern against whom it would proceed u/s 29(1) and not proceed against others similarly situated u/s 29(1) and instead, proceed against them u/s 31(1) of the Act by approaching the District Judge. Thus, the existence of these two remedies gives arbitrary power to the Corporation and, therefore, section 29(1) is violative of the guarantee of equality under article 14 of the Constitution of India. It is also submitted that the Corporation has a similar remedy under the Gujarat Public Money (Recovery of Dues) Act, 1979. It is also an effective remedy for recovery of its dues. In these circumstances, the authority and the discretion given to the Corporation to proceed against an industrial concern u/s 29 of the Act is discriminatory, arbitrary and violative of article 14 of the Constitution of India.

5. On behalf of the respondent-Corporation, learned counsel have submitted that

this statutory corporation is a public authority established for the purpose of industrial growth with no profit motive. It utilises its funds for helping industrial concerns to come up and recycle the recoveries and funds for the same purpose and any delay or impediment in the recovery would affect the working of the Corporation in helping the new industrial concerns to start and grow. It is with a view to promote quick credit for the purpose of industrial growth and for speedy recovery of the dues that special privileges have been conferred upon the Corporation. It is submitted that section 29 of the Act is not a remedy but merely a right and an extension of the principle of section 69 of the Transfer of Property Act with a view to help industrial growth of medium and small scale industries. It is submitted that section 69 of the Transfer of Property Act enables the mortgagee if it is a Government, or even a private mortgagee in a metropolitan city to take direct action of taking possession and effecting sale without the intervention of the court and the validity of that provision has been upheld long back by the Madras High Court. It is further submitted that the same right is given to the statutory corporation which has been specially created to advance loans to small and medium size industries and to recycle these funds for the said purpose. It is further submitted that a notice is given before taking action u/s 29 of the Act and this enables the party to explain, reply or comply with the demand and the principles of fair play and natural justice are complied with. If any party has a genuine and reasonable apprehension of any illegal act, it can always have remedies in law by a civil suit or a writ petition in order that the acts and omissions on both the sides can be adjudged. It is, therefore, submitted that the provision is a reasonable provision made in public interest and in the interest of industrial growth. There is no procedural infirmity in the provision. It is also submitted that sections 29 and 31 are not two separate remedies and section 29 is a right or privilege and section 31 is a remedy to be availed of wherever felt necessary. In any case, it is submitted that there are sufficient guidelines in section 29 itself as well as in the preamble, the scheme and other provisions of the Act and the statement of Objects and Reasons of the Act, where speedy recovery is the guiding factor, and the Corporation which is an authority of the State consists of very high officials and always acts as a reasonable and prudent person. It is also submitted that the industrial concerns while taking the loan not only know, but also accept their legal liability and also expressly agree in the agreement also about this kind of consequence in case of default or breach of that agreement. Learned counsel for the respondent has also submitted that the validity of section 29 has already been upheld by the High Courts of Andhra Pradesh and Kerala and no other court has taken a different view.

We will consider the rival submissions in the light of the arguments advanced by them and the authorities cited before us.

6. The State Financial Corporations Act, 1951, was enacted to provide for the establishment of State Financial Corporations. Their share capital is distributed amongst the State Government, the Reserve Bank, the Development Bank, Scheduled banks, insurance company, other financial institutions and other

parties. This distribution has to be done by the State Government with the approval of the Central Government u/s 4 of the Act and the shares are not transferable except to the State Government, Reserve Bank, Development Bank or other financial institutions recognised in this behalf by the State Government. The general superintendence, direction and management of the affairs and business of the Financial Corporation vest in the board of directors (section 9) consisting of four directors nominated by the State Government, one director nominated by the Reserve Bank, two directors nominated by the Development Bank, three directors one of whom represents scheduled banks, another representing co-operative banks and the third representing the remaining financial institutions, one directly elected in the prescribed manner from amongst other parties or shareholders and the managing director is to be appointed by the State Government in consultation with and after obtaining the advice of the Development Bank and except in the case of first appointment, also with the board (section 10). The chairman of the board is also to be nominated by the State Government after considering the recommendations of the board (section 15). The executive committee consists of the managing director and four other directors elected by the nominated directors (section 18). This executive committee may deal with any matter within the competence of the board subject to general and special directions of the board (section 20). Chapter III relates to the power and duties of the board which includes sections 29 and 31 of the Act. Section 24 provides for the general duty of the board and it reads as under :

"24. The board in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests of industry, commerce and the general public."

Sections 24 to 32F of Chapter III indicate the scope in brief by their marginal notes which read as follows :

Section Marginal note 24 General duty of the board 25 Business which Financial Corporation may transact 26 Limit of accommodation 27 Power to impose conditions for accommodation 28 Prohibited business 29 Rights of Financial Corporation in case of default 30 Power to call for repayment before agreed period 31 Special provisions for enforcement of claims by Financial Corporation 32 Procedure of District Judge in respect of applications under section 31 32A Power of Financial Corporation to appoint directors or administrators of an industrial concern when management is taken over 32B Effect of notified order u/s 32A 32C Powers and duties of directors and administrators 32D No right to compensation for termination of contract of managing agent, managing director, etc. 32E Application of Act 1 of 1956 32F Restriction on filing of suits for dissolution, etc., of an industrial concern not being a company when its management is taken over.

7. Chapter V contains miscellaneous provisions. Section 39 provides that in the discharge of its functions, the board shall be guided by such instructions on questions of policy as may be given to it by the State Government in consultation

with and after obtaining the advice of the Development Bank and the decision of the State Government shall be final. Section 43A enables the board to delegate to the managing director or to any other officer of the Financial Corporation subject to such conditions and limitations, if any, as may be specified in the order such of its powers and duties as it may deem necessary. Section 44 provides that the Financial Corporation shall be deemed to be a bank for the purposes of the Banker's Books Evidence Act, 1891. Section 46B provides that the provisions of the act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act, shall be in addition to and not in derogation of any other law for the time being applicable to an industrial concern.

8. The Statement of Objects and Reasons for enacting this law states that it was intended to provide medium and long-term credit to industrial undertakings which fall outside the normal activity of the commercial banks. The State Financial Corporation being controlled and guaranteed by the Government was, therefore, constituted as a special statutory agency to advance loans to deserving industrial undertakings. While providing incentives to start industrial undertakings, the recoveries from the concerns have to be ensured and, therefore, it was specifically mentioned that the Corporation has been given privileges in the matter of enforcement of its claims against its dues.

9. Section 29(1) which we have quoted in the beginning confers a right on the State Financial Corporation when a party commits default in payment and recovery is to be effected. At that stage, the Corporation takes an administrative decision as to the manner in which it would proceed to recover its dues. At that stage, the principal consideration would be as to the most expedient and speedy mode of recovery. At that stage, can it be said that the Corporation undertakes any adjudicator function ?

10. Even section 31 on which strong reliance is placed by the petitioners cannot be said to be adjudicator because it has been held to be in the nature of execution of a decree at a stage posterior to the passing of the decree.

11. In the case of Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, ; Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, , the Supreme Court, while reversing the judgment of the Gujarat High Court, discussed the nature of proceedings under sections 31 and 32 of the Act. The question had arisen in the context of liability to pay court-fees. The High Court had held that the applicant should bear ad valorem court-fees, treating it on par with a suit by the mortgagee to enforce the mortgage debt by the sale of the mortgaged property. The Supreme Court reversing this finding of the Gujarat High Court held that the proceeding u/s 31 was not in the nature of a suit, but was something akin to an application for

attachment of property in execution of the decree at a stage posterior to the passing of the decree. Thus, when section 31 is held to be in the nature of execution after passing of a decree, it cannot be said that section 29 is for determination of any liability by way of adjudication by the Corporation.

Following the aforesaid judgment, a Division Bench of this court in Corporation [1982] 23 Guj LR 550 ; Bharat Chemical Works and Others Vs. Gujarat State Financial Corporation, Ahmedabad, held as follows :

"Since an application u/s 31(1) is held to be neither a plaint nor an application in the nature of a plaint and since it has been specifically held : (i) that such an application is not a suit by a mortgagee for the recovery of the mortgage money by the sale of mortgaged property; (ii) that the investigation therein of the claim of the Corporation, which is not a monetary claim, does not involve all the contentions that can be raised in a suit; and (iii) that the substantive relief in such an application is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. It is too late in the day to contend that the proceeding commenced upon such an application is a suit for the recovery of the dues of the Corporation within the meaning of sub-section (4) of section 3 of the Recovery Act and that it would abate u/s 7 upon the commencement of the Recovery Act."

As far as the question of dues of the Corporation is concerned, the entries in the books are evidence of the dues in view of section 44 of the Act which provides that :

"The Financial Corporation shall be deemed to be a bank for the purposes of the Banker's Books Evidence Act, 1891."

12. Therefore, the entries in the books of the Corporation are evidence of the outstanding dues and non-payments thereof by the party. Regarding the principles of natural justice or fair play, we will be discussing the same at a later stage but once those dues are duly ascertained, the only question is of its recovery or execution of the decree and exercising the right of a secured creditor. u/s 58 of the Transfer of Property Act, a mortgagee has a right to sell the mortgaged property. Section 67 provides for the right to foreclosure or sale of the mortgaged property. Section 69 provides for power of sale by the mortgagee without the intervention of the court and three situations are laid down as under :

- (a) where the mortgage is an English mortgage;
- (b) where the mortgagee is the Government; and
- (c) where the mortgagee is in a metropolitan city.

13. In the last two cases, the power of sale without the intervention of the court is required to be expressly conferred upon the (mortgagee) by the (mortgagor). Section 69(3) provides that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground

that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised; but any person damnified by unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power. Section 69A provides for appointment of the receiver by a mortgagee having the right to exercise power of sale without intervention of the Court u/s 69. Similarly, sections 172 and 176 of the Indian Contract Act, 1872, provide for bailments or pledges. Section 176 gives a right to sell the property pledged after giving a reasonable notice of sale. This is also without intervention of the court. Hypothecation is a similar right attached to the immovable property. In the case of M.K. Ranganathan and Another Vs. Government of Madras and Others, , the Supreme Court Considered the right of a secured creditor when the company is wound up by the court and held as under (para 20) (at p. 351 of 25 Comp Cas) :

"The secured creditor is outside the winding up and he can realise his security without the intervention of the court by effecting a sale of the mortgaged premises by private treaty or by public auction. It is only when the intervention of the court is sought, either by putting in force any attachment, distress or execution within the meaning of section 232(1) or proceeding with or commencing a suit or other legal proceedings against the company within the meaning of section 171 that leave of the court is necessary and if no such leave is obtained the remedy cannot be availed of by the secured creditors."

14. It would, thus, be clear that when the Corporation decides to resort to section 29 of the Act and takes any action under that section, it is not entering upon any adjudicatory or quasi-judicial function. It is a decision by a party to the agreement as to what kind of steps for speedy recovery should be taken and whether the assistance of the court is necessary. Just as a mortgagee u/s 69 of the Transfer of Property Act can take a decision to proceed u/s 69 and if he finds any difficulty in proceeding without the assistance of the court, he may take a decision to go to a court of law. But it is the decision of a party to the agreement and at that stage, no quasi judicial function is involved. Similarly, when the Corporation takes an administrative decision as to the course of action to be taken and followed it is not exercising any quasi-judicial function.

15. Even if it is not a quasi-judicial function and merely an administrative function, does it mean that it can proceed without giving any opportunity of hearing and observing the minimum principles of natural justice or fair play ? In the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Supreme Court observed as under (paras 14 and 20) :

"With the increase of the power of the administrative bodies, it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land, but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules, namely, (1) no one shall be a judge in his own cause (*nemo debet esse iudex in propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But, in the course of years, many more subsidiary rules came to be added to the rules of natural justice. Till very recently, it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why these rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this court in *Suresh Koshy George Vs. University of Kerala and Others*, , the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for the purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

16. In the case of *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, , the Supreme Court had occasion to consider the nature and scope of the principles of natural justice. It observed as under (page 969) :

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter."

17. In the case of *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, ; *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, , the Supreme Court considered what are the rules of natural justice before an administrative authority and, in para 8, observed as under (at page 393 of AIR 1973 SC) :

"The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yard-stick in this manner. The concept of natural justice cannot be put into a straitjacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See for instance, the observations of Lord Parker in *H. K. (An Infant), In re* [1967] 2 QB 617. It only means that such measure of natural justice should be applied as was described by Lord Reid in *Ridge v. Baldwin* [1964] AC 40 (HL) as "insusceptible" of exact definition but that a reasonable man would regard as a fair procedure in particular circumstances. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of the case."

The case of *Shahoodul Haque Vs. The Registrar, Co-operative Societies, Bihar and Another*, , was a case under article 311 of the Constitution and the Supreme Court observed as under (at page 1897) :

"In any case, on the facts before us, we think that it will be useless to afford any further opportunity to the appellant to show cause why he should not be removed from service. The undenied and undeniable fact that the appellant had actually abandoned his post of duty for an exceedingly long period without sufficient grounds for his absence is so glaring that giving him further opportunity to disprove what he practically admits could serve no useful purpose."

18. In the case of *Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others*, , the provisions of the Punjab Foodgrains Dealers Licensing and Price Control Order, 1978, giving power to suspend licences for a period of 90 days without giving any opportunity was upheld as a measure of social control and public interest.

19. The case of *Kharavela Industries Pvt. Ltd. Vs. Orissa State Financial Corporation and Others*, , is a direct case u/s 29 of the State Financial Corporations Act. In para 6, it was held that the Corporation cannot be forced to take recourse to section 31 and it is open to the Corporation to take recourse to section 29 of the Act and section 31 is expressly without prejudice to the

provisions of section 29. The Division Bench of the Orissa High Court further came to the conclusion that a reading of section 29 of the Act does not exclude application of the principles of natural justice. But whether in a given case, the said rules have been complied with or not, depends upon the facts and circumstances of the case. In that case, the Orissa State Financial Corporation afforded sufficient opportunity to the industry inasmuch as the Corporation gave due notice to the industry as to the industry to pay the instalments. This was held to be due compliance with the principles of natural justice. However, subsequently, the industry made some payments and the earlier order to take over possession was not given effect to and subsequently another order for taking possession of the industry without giving any notice was passed though in the meantime there had been some substantial payment by the industry and the Orissa High Court held that the Corporation had failed in its duty to give reasonable time and notice to the industry that the Corporation was going to take over the industrial concern and a minimum opportunity to the industrial concern to put forth its case before the Corporation ought to have been given. Though the earlier order did comply with the requirements of the principles of natural justice, yet the subsequent order failed to give any opportunity whatsoever. However, we wish to make it clear that merely because there is some subsequent payment, it would not nullify the earlier notice and action u/s 29 unless the payment is substantial, say about one-third of the outstanding, and there is a concrete and reasonable proposal and promise to pay the balance within a reasonable period. If such substantial payment and proposal are made, the Corporation has to consider afresh whether to proceed u/s 29 after taking into account the reasonableness and reliability of the offer.

20. It is, thus, clear that even though the decision of the Corporation u/s 29 is not a quasi-judicial decision yet is an administrative function, none the less, a reasonable reading of section 29 does not exclude the principle of fair play and some element of natural justice. It need not be an elaborate procedure of personal hearing, exchange of pleadings, leading of evidence and cross-examination of witnesses. It need not even be a regular show-cause notice, but a notice to the party bringing to its notice the default position and the consequences flowing therefrom of inviting action u/s 29 of the Act has to be given so that the party has reasonable time and opportunity to explain, replay or comply with the same. After considering the response, if any, from the party, it is open to the Corporation to arrive at its own decision. The party may point out in reply about the default position and/or may offer substantial part payment and offer reschedulement of repayment supported by its financial working and cash flow for the past period as well as as projected in future. If the Corporation is satisfied that the debtor has been bona fide, trustworthy and creditworthy and because of genuine difficulties, it wants reasonable reschedulement after substantial part payment, the Corporation will consider the same in accordance with its policy of encouraging and assisting the industrial growth of viable industrial units and if the Corporation is of the opinion that the industrial unit

does not fulfill its policy requirement, the Corporation may proceed further u/s 29 in accordance with law, and, in that case, it would be acting fairly, reasonably and in accordance with the principles of natural justice and not arbitrarily. As stated earlier in the Supreme Court judgments, the principles of natural justice in administrative decisions are the principles to act fairly. If that is done, the Corporation can proceed further in accordance with the provisions of section 29 of the Act. If such action is in breach of the principles of natural justice, that is to say, the Corporation did not act fairly, then that action could be challenged, but that would not vitiate the legal provision contained in section 29 of the Act.

21. The second aspect of unreasonableness of the provision is alleged on the ground that there is no appeal against such decision and that the Corporation is acting as a judge in its own cause and, therefore, it would be a biased decision and against the principles of natural justice and it is not subject to any further appeal or revision or review.

In the case of *The Ahmedabad Municipal Corporation and Others Vs. Ramanlal Govindram and Others*, the Supreme Court reversed the judgment of the Gujarat High Court observing as follows (at page 1192) :

"The conclusion of the High Court that the provision in section 437A(1) is unreasonable because the Municipal Commissioner is in substance a party to the dispute is unacceptable. The conferment of power on the Municipal Commissioner as an Administrative Officer to take proceedings for eviction cannot be struck down as unreasonable on the ground that he is a judge in his own cause. He is the highest officer of the Corporation. The Corporation acts through these officers. There is no personal interest of the Municipal Commissioner in evicting these persons. The Corporation represents public interest. The Municipal Commissioner acts in public duty in aid of public interest. The Municipal Commissioner will apply his mind to the facts and circumstances of a given case as to whether there should be an order for eviction. If the Municipal Commissioner wrongly exercises his power, the action will be corrected in appeal."

22. In the present case, the board and its officers are high ranking officials and authorities and they have no personal interest against any debtor or defaulter. They are interested in furthering the industrial policy of the State and assisting in industrial growth and promoting credit and recycling of fund for further promoting credit to other needy industrial concerns. Just as they discharge their public duties while advancing loans, they are discharging public duties for effective recovery of the loans. It is not possible to attribute any personal bias to them so that the provision of section 29 is unreasonable on that count. Really speaking, they are not even judging their own cause. They are taking an administrative decision as to what course of action should be taken in case of default. It is their duty and section 29 enables them to make effective recovery by providing a speedy procedure. This procedure is analogous to section 69 of the Transfer of Property Act.

23. In the case of *Organic Chemical Industries v. Union of India* [1979] 55 FJR 283; AIR 1979 SC 1803, the Supreme Court considered the validity of section 14B of the Employees' Provident Funds and Miscellaneous provisions Act, 1952. There, the order of the Provident Fund Commissioner imposing damages was not subjected to appeal. In that case, the Supreme Court observed that absence of guidelines or appeal is a desirable corrective, but not an indispensable imperative and, therefore, the section was not held to be bad and it was observed that if the order passed by the officer is bad, it can be challenged under the writ jurisdiction.

24. In the case of *V. Narasimhachariar Vs. Egmore Benefit Society, 3rd Branch Ltd.*, a similar provision, i.e., section 69 of the Transfer of Property Act, was challenged as violative of article 14 of the Constitution. Upholding the validity of that provision, the Madras High Court held as follows in paras 24 and 25 (at pages 143 and 144)

"Thus, it will be seen that the power of the mortgagee to sell u/s 69 coming from England got extended to this country because it is absolutely necessary for promoting quick credit. It is necessary to point out that though quick credit is derided in extreme Left Wing Political circles, it is undoubtedly the key-stone of modern industry and commerce. In fact, it is on account of these provisions that mortgages became trusted securities and institutions and banks taking deposits have been freely investing in first mortgages. On the other hand, but for such a security, if funds are to be kept locked up and have to await the costly and cumbrous procedure of sale through court, the facilities for borrowing and expanding industries and commerce would not be available in the Presidency Towns. In restricting this right only to Presidency Towns the Legislature based this upon a reasonable classification. I have already pointed out the extracts from various authoritative sources showing that this was not deliberately extended to the mofussil where the procedure might lend itself to abuse. The passage of time has not diminished but increased the usefulness of this provision and it has not rendered this classification otiose. There has been no time as the present when facilities for credit have got to be retained unimpaired if we are to progress from the rural economy into a highly industrial economy. This power conferred on the mortgagees stands hedged with by various restrictions to prevent the abuse of the same. The aggrieved mortgagor can have recourse to courts both before the sale and after the sale. In certain respects, his position is even better than that of a mortgagor in the mofussil.

Over and above all, as pointed out by Venkatarama Ayyar J. (as he then was) in his judgment in W.P. No. 308 of 1953, dated April 24, 1953 (Mad), the power of sale is the subject-matter of a freely negotiated contract between the mortgagor and the mortgagee. The state only provides a particular procedure in the case of the mortgagees in Presidency Towns and when the freely negotiated contract is not kept up what happens is the mortgagees who are citizens of the Union of India like the mortgagors, only come to enforce their rights under the contract entered into between them. article 14 can obviously have no application. There is

no discrimination looked at from any point of denial of equal protection. Therefore, the point taken under article 14 of the Constitution fails. Point (b), viz., that the power of the mortgagee to sell offends article 19(1)(f) of the constitution, has no substance. The ideology behind this right is that of individualism and private property. It means that a man is free to acquire any property including means of production either by inheritance, personal earnings or by other lawful means, to hold it as his own and dispose of it limited only by the exigencies of public welfare. "Dispose of" means (a) to determine the fate of, to exercise a power of control over, to fix the condition, employment, etc., to direct or assign for a use; (b) to exercise finally one's power of control over, to pass over into the control of someone else by selling, to get rid of. Hold means to possess the property, to enjoy the benefits which are ordinarily attached to its ownership. In this case, this power of the mortgagor to acquire property or dispose of the property or hold property. On the other hand, this is a case of the mortgagor, under the freedom guaranteed under article 14, holding property and subject to a freely negotiated contract by him, acquiring funds thereon providing for the disposal of the property in the event of his not being able to discharge the mortgage in the manner agreed to by him. Therefore, section 69, Transfer of Property Act, does not offend article 19(1)(f) of the Constitution."

25. Learned counsel for the petitioners tried to distinguish the case by submitting that section 69 required express consent of the mortgagor giving the mortgagee the right to sell the property without intervention of the court. In the present case, it is no doubt true that there is no such consent. None the less, at the time when the industrial concern enters into the agreement, it is fully aware of this legal provision and expressly agrees to the same. It is open to it not to avail of the loan facilities from the Corporation. If he does not agree to these terms, the Corporation may not advance the loan. After having obtained the loan, he cannot say that he has not consented to the same. In any case, having regard to the nature of the public Corporation, the public duty, public purpose and the guidelines as found in the Act itself, it cannot be said that the conferment of this power on the Corporation is bad. This Act has been enacted to promote industrial growth for small and medium industries and to assist them in their growth. But that does not mean that the Corporation has to make a waste of public money for the defaulters. Every such debtor has to pay back the loan as per the agreed schedule of repayment and in case of default, face the consequences. As laid down by the Madras High Court, the object of such provision is to promote quick credit and to see that such power given to the mortgagee does not lend itself to abuse, and if any defaulter or mortgagor has any grievance about the action, he can have recourse to the court both before and after the sale as observed by the Madras High Court.

26. As a result of the aforesaid discussion, it is clear that the provision (section 29) also does not become bad merely because it does not provide for any appeal or corrective machinery. If the action of the authority acting under such section is bad, it can always be challenged in writ jurisdiction and the other party is not

without any remedy. The board consisting of high officials takes a decision u/s 29 of the Act. That decision is required to be taken fairly and after giving a notice of reasonable time and an opportunity to explain and reply to the same; thereafter acting fairly if the authority takes any action, the section does not become bad on any of the counts suggested in this petition that there is no appeal provided or that the Corporation is a judge in its own cause. Once the principles of fair play are read into the provision, there is no unreasonableness, arbitrariness or other infirmity in section 29 and, therefore, section 29 cannot be said to be violative of articles 14, 19, 21 and 300A of the Constitution of India on the ground of unreasonableness and arbitrariness.

27. The argument of unreasonableness is based more on apprehension than on reality and is merely in the abstract. Section 29 has to be read in a reasonable manner and in a proper perspective. Every legislation has a perspective which has to be read into every provision of the Act. Every provision is intended to further the perspective of the legislation. Section 29 can be resorted to only when the condition precedent of default in payment or breach of condition of the agreement is there. Therefore, it is not that at any time without fulfilling the condition, action is to be taken. Even such action has to be taken fairly, i.e., after giving reasonable notice, time and opportunity to the defaulter to explain and/or reply and/or comply. Even thereafter, the public Corporation has to act fairly as a reasonable and prudent person and as a trustee after taking over possession and while effecting sale. It cannot be said that the Corporation is authorised by section 29 to sell the property for what ever price and by what ever method, while the corporation is taking over possession or management and effecting sale, whether by private negotiations or auction, it is acting as a trustee and would act as a reasonable and prudent person as if the properties were its own and try to fetch the maximum price.

28. If in any of these acts, the authority of the Corporation goes wrong or the Corporation acts illegally that action may be open to challenge before and after such action, in a court of law and the aggrieved person is not without any remedy. We are, therefore, of the opinion that section 29 is not arbitrary, irrational or unreasonable and is not violative of articles 14, 19, 21 and 300A of the Constitution.

29. The second contention is regarding the two remedies u/s 29 and 31 and the absolute discretion given to the Corporation to choose either of the remedies against some of the defaulters and resort to the remedy in respect of other similarly situated defaulters giving arbitrary, naked and unguided discretion and enabling the authority to "pick and choose" and giving hostile and discriminatory treatment; and between two provisions, one which is more drastic should be struck down and the authority should be left with no discretion and should be directed to take action against the person u/s 31 by striking down section 29. Learned counsel on both the sides have cited several decisions on the question.

30. In the case of Jyoti Pershad Vs. The Administrator for The Union Territory of

Delhi, , the Supreme Court formulated some rules for applying the equality clause of article 14 of the Constitution. The Supreme Court observed that the import, content and scope of article 14 of the Constitution has been deliberately considered and explained in numerous decisions of the Supreme Court and to summarise the principles or rather the rules of guidance would be sufficient. The Supreme Court also considered the application of those rules to the provisions of the impugned enactment. The following are the rules as summarized in the headnote :

"(1) If the statute itself or the rules made under it applied unequally to persons or things similarly situated, it would be an instance of a direct violation of the constitutional guarantee and the provision of the statute or the rule in question would have to be struck down.

(2) The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the Legislature vests a discretion in an authority be it the Government or an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary powers enabling it to discriminate.

In such circumstances, the very provision of the law which enables or permits the authority to discriminate, offends the guarantee of equal protection afforded by article 14.

(3) The above rule would not apply to cases where the Legislature lays down the policy and indicates the rule or the line of action which should serve as a guidance to the authority. Where such guidance is expressed in the statutory provision conferring the power, no question of violation of article 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to persons or things similarly situated. Even where such is not the case, there might be transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of a violation of article 14, but as really being beyond its power.

(4) It is not, however, essential for the legislation to comply with the rule as to equal protection that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself.

Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits.

In the circumstances indicated under the forth head, just as in the third, the law enacted would be valid being neither a case of excessive delegation or abdication of legislative authority viewed from one aspect, not open to objection on the ground of violation of article 14 as authorising or permitting discriminatory treatment of persons similarly situated. The particular executive or quasi-judicial act would, however, be open to challenge on the ground not so much that it is in violation of the equal protection of the laws guaranteed by article 14 because ex concessis that was not permitted by the statute but on the ground of the same being ultra vires as not being sanctioned or authorised by the enactment itself. The situation in such cases would not be parallel to the tests to be applied for determining the validity of rules made under statutes which enable the rule making authority to enact subsidiary legislation "to carry out the purposes of the Act". The criteria to be applied to determine the validity of such rules could be appropriately applied to determine the validity of the action under the provisions like the one dealt with under the last two heads."

In view of this judgment of the Supreme Court, these rules are required to be applied to the present case. According to the petitioners, the Act enables unequal and discriminatory treatment to the defaulters similarly situated because the Legislature has vested discretion in the Corporation without laying down any policy and disclosing any tangible or intangible purpose and, therefore, the authority has been clothed with arbitrary power enabling it to discriminate. In such circumstances, section 29 will be "bad as violative of article 14 of the Constitution".

31. According to the respondents, the Legislature has laid down the policy of speedy recovery and indicated the time of action which would serve as a guidance to the authority and, therefore, there is no violation of article 14 of the Constitution. It is further submitted that as laid down in rule 3, if in a given case, the authority has acted beyond the guidelines or there is abuse of power, such action can be challenged by appropriate proceedings, but not the section. It is further stated that the guidance is provided by the Statement of Objects and Reasons which shows the object of the legislation and the objective sought to be achieved by the legislation, the policy laid down while enacting the legislation and laying down the policy in the legislation itself.

In the case of *State of Orissa v. Dhirendranath Das* AIR 1961 SC 1715, the Supreme Court struck down the prejudicial procedure out of the two procedures and observed as follows (at page 1717) :

"If against two public servants similarly circumstanced, enquiries may be directed according to procedures substantially different at the discretion of the executive authority, exercise whereof is not governed by any principles having any rational relation to the purpose to be achieved by the enquiry, the order selecting a prejudicial procedure, out of the two open for selection, is hit by article 14 of the Constitution".

32. In the case of *Ram Dial and Others Vs. The State of Punjab*, , there were two provisions in the Punjab Municipalities Act, i.e., sections 14(e) and 16(1) for removal of a member in public interest. u/s 16(1), hearing is provided to the member concerned, but if for exactly the same reason, the State Government choose to take action u/s 14(e) it does not give any opportunity of hearing. This was held to be obviously discriminatory and, therefore, that part of section 14(e) was struck down as violative of article 14 of the Constitution.

33. In the case of *Munnawar Ahmad and Others Vs. State of Madhya Pradesh and Others*, , the provision was struck down as violative of article 14 not on the ground of discrimination because of two remedies, but on the ground of unreasonableness and arbitrariness of the provision of eviction without hearing.

34. In the case of *S.M. Nawab Ariff Vs. Corporation of Calcutta and Others*, , it was held that where out of two different laws to which the same person or same class of person is subjected, one law is more burdensome than the other, the law which is burdensome will be struck down as discriminatory law. In para 10, the Calcutta High Court found that no principle or policy or guidance was laid down.

35. On behalf of the respondents, strong reliance has been placed on the judgment of the Supreme Court in the case of *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, . In that case, the Bench of seven judges of the Supreme Court summarised the propositions in para 15 on the same line as in the case of *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, and observed as follows (in para 16) :

"The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is that premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorised persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary civil court. Even normally, one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be prolonged one, to resort to the latter. Administrative officers, no less than the courts do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of these cases

where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this court is not powerless. Furthermore, the fact that the legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property and provided a special speedy procedure, therefore, is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, ."

36. In the case of *Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others*, ; [1979] 43 STC 4 the validity of sanction given by the Sales Tax Commissioner for prosecution was challenged on the ground that the Commissioner was entitled to two different procedures for enforcing and realising the assessment made and one was more drastic than the other and there were no guidelines as to the circumstances in which he should resort to either of the two procedures. The Supreme Court followed its earlier decision in the case of *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, . In para 14, the Supreme Court referred to its earlier decision in the case of *State of Kerala and Others Vs. C.M. Francis and Co.*, , wherein it was held that if two remedies are open, both can be resorted to, at the option of the authorities recovering the amount unless the statute in express words lays down that one remedy is to the exclusion of the other. Another case, *Ram Sarup Vs. The Union of India (UOI) and Another*, , was also considered wherein the question arose as to whether the power u/s 125 of the Army Act which empowered the officer either to try a case by court martial or by an Ordinary Court or by a Criminal Court, was left entirely within his discretion without any guidance, and was violative of article 14 of the Constitution. The Supreme Court held that (at page 1592 of 1979 AIR) : "the choice as to which court should try the accused is left to the responsible military officers under whom the accused is serving and these officers were to be guided by consideration of the exigencies of the service, maintenance of discipline in the army, speedier trial, the nature of the offence and the person against whom the offence is committed. When power is conferred on high and responsible officers they are expected to act with caution and impartiality while discharging their duties and the circumstances under which they will choose either of the remedies available should be left to them. The vesting of discretionary power in the State or public authorities or an officer of high standing is treated as a guarantee that the power will be used fairly and with a sense of responsibility."

37. It has been held by the Privy Council in *Province of Bombay v. Bombay Municipal Corporation* [1946] 73 IA 271 that every statute must be supposed to be for public good at least in intention and, therefore, of few laws can it be said that the law confers unfettered discretionary power since the policy of law offers guidance for the exercise of discretionary power. Applying the principles of this decision to the present case, the guidance will have to be inferred from the policy

of the law itself, that is, if on the particular facts of a case, the Commissioner who is an officer of high standing, in exercise of his discretion comes to the conclusion that more drastic remedy should be taken, the exercise of that option cannot be termed as unconstitutional. In considering the validity of a statute the presumption is in favor of its constitutionality and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles. For sustaining the presumption of constitutionality, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived. It must always be presumed that the Legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds. It is well settled that courts will be justified in giving a liberal interpretation to the section in order to avoid constitutional invalidity. These principles have given rise to the rule of reading down the section if it becomes necessary to uphold the validity of the sections. In the present case, it is seen, u/s 46 before prosecution can be launched, it is necessary that the assessee should have failed to pay the tax due within the time allowed without reasonable cause. The duty of the Commissioner is, therefore, to be satisfied that the assessee has failed without reasonable cause and with recourse to prosecution u/s 46(1)(c) the tax cannot be collected. The provisions of section 22 (4A) can be read as being applicable to cases in which the stringent step of prosecution is considered not necessary. The option is with the Commissioner and if he thinks levy of penalty would achieve the purpose of collection of the tax he can have recourse to the provisions of section 22(4A). Before levying a penalty u/s 22(4A), the Commissioner shall give reasonable opportunity of being heard as to why the penalty should not be levied. Reading the two provisions harmoniously, we are of the view that discretion is given to the Commissioner to resort to one of the two remedies as the facts of the case may require. In graver cases, he will be justified in taking the drastic remedy and resorting to prosecution in the Criminal Court if he is satisfied that such a course is necessary for the collection of the tax expeditiously. If the discretion is not properly exercised the court may be justified in interfering in such cases but the law cannot be held to be invalid. In the present case, we have no doubt, it is a grave case of failure to pay the tax as repeated reminders went unheeded. The Commissioner on the facts is fully justified in coming to the conclusion that resort to prosecution is necessary. On a consideration of the decisions on the point we are satisfied that there is nothing illegal in conferring different procedures on the authorities. Taking into account the scheme of the Act, it can be inferred that a more drastic remedy is to be taken when such a step is found necessary on the facts of the case. Thus construed the validity of the section cannot be questioned but if the facts of the case do not warrant taking of the graver step and no adequate reasons are found, that order in such circumstances may be found to be invalid."

38. In the case of Director of Industries, U.P. and Others Vs. Deep Chand

Agarwal, , the validity of section 3 of the U.P. Public Moneys (Recovery of Dues) Act was challenged on the ground of article 14. The Supreme Court negatived the contention. The Allahabad High Court has struck down that provision following the Supreme Court judgment in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, . However, that was overruled by the Supreme Court in the case of Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, . Therefore, the Supreme Court reversed the judgment of the Allahabad High Court and observed as follows (headnote) :

"The Act is passed with the object of providing a speedier remedy to the State Government to realise the loans advanced by it or by the Uttar Pradesh Financial Corporation. The State Government while advancing loans does not act as an ordinary banker with a view to earning interest. Ordinarily, it advances loans in order to assist the people financially in establishing an industry in the State or for the development of agriculture, animal husbandry and for such other purposes which would advance the economic well being of the people, moneys advanced by the state Government have got to be recovered expeditiously so that fresh advances may be made from the state Government. It is with the object of avoiding the usual delay involved in the disposal of suits in Civil Courts and providing for an expeditiously remedy that the Act has been enacted. It cannot, therefore, beside that there is no reasonable basis for the classification made by the statute and that classification does not have a reasonable relation to the object of the statute. It is no doubt true that there is no express provision in the Act containing such guidelines. That, however, is not sufficient to hold that section 3 of the Act confers arbitrary power on the State Government and makes a hostile discrimination. An officer authorised by the State Government to issue the certificate is expected ordinarily to avail himself of the speedier remedy provided under the statute. The Act which is passed with the object of providing a speedier remedy itself provides sufficient guidance to the officer concerned as to when he should resort to the remedy provided by it."

39. Thus, the object of a speedier remedy and recovery is held to be a sufficient guideline especially when the power is conferred on the State agency which is not an ordinary banker and the public dues are to be recovered expeditiously so that fresh advances may be made from the same. The Supreme Court noticed that there was no express provision in the Act laying down the guideline. Yet, section 3 was not struck down on the ground that the object of providing speedier remedy itself provides a sufficient guideline to the officer concerned as to when he shall resort to that remedy.

40. In the case of Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, , the challenge was on the ground that two different procedures were available to the Government for fixation of minimum wages and it was contended that it conferred unguided and uncontrolled powers on the Government to follow either of the two procedures in the matter of fixing

minimum wages. Negating the contention, the Supreme Court observed as under :

"It is true that this court has firmly ruled that the procedural inequality, if real and substantial is also within the vice of article 14. But then, before a power can be held to be bad the same should be unguided and unregulated one. But if a power is given to an authority to have recourse to different procedures under different circumstances, that power cannot be considered as an arbitrary power. It must also be remembered that power u/s 5(1) is given to the State Government and not to any petty official. The State Government can be trusted to exercise that power to further the purposes of the Act. It is not the law that the guidance for the exercise of a power should be gatherable from one of the provisions in the Act. It can be gathered from the circumstances that led to the enactment of the law in question, i.e., the mischief that was intended to be remedied, the preamble to the Act or even from the scheme of the Act."

41. In the case of Manhar Lal Bhogilal Shah Vs. State of Maharashtra, , the question was one of the discretion to the customs authorities to take either of two different proceedings. In para 10, the Supreme Court observed that in all cases, the customs officers have to act in a reasonable and bona fide manner and they cannot just discriminate between similar cases according to their whims and fancies. If that is done, it is always open to a person against whom a complaint has been instituted to challenge their exercise of discretion in appropriate proceedings, and the following observations from the earlier Supreme Court judgment in the case of Matajog Dobey Vs. H.C. Bhari, were relied on (at page 1515) :

"It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official."

42. In the case of Bharat Chemical Works and Others Vs. Gujarat State Financial Corporation, Ahmedabad, , the question was considered between the two remedies of section 31 under the State Financial Corporations Act and section 3(1) of the Gujarat Public Money Recovery of Dues Act. The Division Bench of this court held that both the provisions were akin to execution proceedings and, therefore, they do not confer two competing powers, one displacing the other. It was held that the Corporation has only one power, namely, the power to take steps akin to the execution of a decree and that power may be exercised in either or even both of the two modes in certain cases and the discretion is left with the competent authority to resort to either or both of the said remedies. Therefore, neither of the remedies is barred or is violative of article 14 of the Constitution of India. Same reasoning applies to section 29 also.

43. From the aforesaid decisions, it can be easily seen that the mere existence of different options to the authority is not violative of article 14 of the Constitution. It is to be seen whether these options are guided by any policy. The policy is

obvious from the enactment and its object. A special privilege and right has been conferred on the Corporation to effect speedy recovery and the guiding principle is speedy recovery. When the guidance is provided for the exercise of option, it cannot be said that this discretion regarding exercise of option is unguided and arbitrary and, therefore, the challenge on that count cannot succeed.

44. The same view upholding the validity of section 29 had been taken in the case of *Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others*, . Its conclusions are recorded in headnote "A" which reads as under :

"Every statute providing for two different procedures covering the same field and making one of them drastic does not ipso facto become violative of article 14 of the Constitution of India. It is only in such cases where there are no guidelines specifically in the statute and where the necessary guidance cannot also be gathered from an examination of the preamble and surrounding circumstances and the provisions of the statute themselves explained and amplified by affidavits, the power conferred on the administrative body to choose one procedure or the other can be condemned as an unguided one and the provision of law providing for such an unguided power suffers from the vice of discrimination. But a statute which satisfied these tests cannot suffer from the vice of unconstitutionality. Case-law reviewed.

The two procedures mentioned in sections 29 and 31 are different and there are no provisions by way of guidelines in these two sections as to when a particular procedure can be resorted to. The choice is left to the Corporation. From a combined reading of the Objects and Reasons and sections 8, 9, 10, 24, 25 and 27, the requisite guidance can be inferred and a very responsible authority is vested with the power of selecting either of the procedures under sections 29 and 31 respectively. So the statute itself discloses a definite policy and objective, and it confers authority on the Corporation to make selection of the procedure. When that is so, a responsible body like the Financial Corporation will act in a realistic manner keeping in view the interests of the Corporation, industry, commerce and the general public. There is a guiding policy and principle available from the statute for the Corporation to act in this regard and, accordingly, section 29 is not violative of article 14 of the Constitution."

45. We are in complete agreement with the conclusion that there is guiding policy and principle available from the statute in this regard. Therefore, section 29 is not violative of article 14 of the Constitution.

46. Same view has also been taken by the Division Bench of the Kerala High Court in the case of *K. Surendranathan Vs. Kerala Financial Corpn. and Others*, . It is summarised in head note "A" which reads as follows :

"It is not the law that there can be only one remedy available for recovery of loans, advances, etc., from defaulters, namely, recourse through the Ordinary Courts of law. Any statute may in appropriate cases provide for more than one

remedy against the same defaulter for recovery of the dues or it may be that relief for recovery is provided in different enactments. Special remedies may be available in favour of or against particular classes of persons. When these two statutory remedies are available against the same defaulter, the power so conferred under the statute is not arbitrary where there are guidelines to control the discretion to be exercised. Thus, guidelines need not necessarily be specifically enumerated in the very section or provision conferring those powers. The guidelines can be gathered from the other provisions of the Act itself, the preamble and the surrounding circumstances, etc.

The State Financial Corporations Act intended to create and the Government constituted a financial corporation, mainly, to advance loans and to give financial assistance to certain financial undertakings. The Corporation is controlled, managed and supervised by a board of directors, chosen with special emphasis on the financial responsibility of the corporation. The board has to act on business principles due regard being had to the interests of the industry, commerce and general public, as specifically provided in section 24. In the enforcement of its rights and obligations, the board cannot fritter its funds by giving dubious loans and fail to take proper steps for recovery of the amounts due ... To be compelled to resort to a court of law for recovery of its dues is to submit to the inevitable delay that it entails. The Act, therefore, intended that the corporation should have "special privileges" for enforcement of its claims. The object was sought to be achieved by the provision contained in sections 31 and 29 and by section 32B also. Section 29 is an enabling provision under which the corporation can in certain circumstances, if the situation warrants, take possession of the secured premises in the interests of the industry, or in the interest of the corporation in case of default. In the absence of section 29, the board would have been powerless to take possession even in those cases where there is default, and no attempt is made by the defaulter to pay the dues and the factory is allowed to remain idle. Delay in taking possession in such cases may be suicidal to the interests of the Corporation and industry, for the machinery, etc., may rust and the undertaking will be useless when it is brought to sale later. Section 29 is thus not meant for arbitrary use and is not capable of arbitrary exercise. The guidelines for the exercise of this power are thus found in the object and purpose of the Act and in the various provisions including section 24 of the Act. Section 29 is thus not arbitrary nor is it violative of article 14 of the Constitution.

Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others, , Shreeshyla Crowns and Screws Pvt. Ltd. Union of India AIR 1983 Kar 130 , and Molly Jose Vs. Kerala Financial Corporation and Others, relied on."

47. Further, there is some difference between the provisions of section 29 and 31. Although the condition precedent for initiating the action is the same under both the provisions, viz., default in payment of the outstanding dues or breach of agreement u/s 31, the court can give specified reliefs only, namely :-

- (a) sale of the property; or
- (b) transferring the management of the industrial concern to the Financial Corporation; or
- (c) ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment.

48. The court sale will be an auction sale where the terms and conditions would be of a certain set pattern only. The concerns and the properties which are required to be sold are the industrial concerns of medium and small size worth lakhs of rupees and capable of being run on economic and viable basis, if the conditions of payments can be moulded in accordance with the policy of the Financial Corporation, which cannot be done in the case of a court sale. Moreover, in a court sale, it is not easy to find purchasers as compared to a sale and negotiations by the Corporation. The court will not be in a position to grant instalments to the purchaser which facility would bring a better price and also revival and/or continuance of the industry which is the object of the financial corporation. u/s 29, the Corporation has been given power to lease the property, but the court cannot do this. In a given case, leasing the property might be more beneficial both to the creditor as well as the debtor because the debtor, without losing the property permanently, might be able to discharge the debt within a reasonable time. Therefore, it is not possible to say that section 29 and 31 cover the same field. The express language of section 31 "without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act" makes it abundantly clear that the Legislature has deliberately provided a special and additional right and privilege to the financial corporation in section 29 indicating the guidelines when expeditious remedy of section 29 is to be resorted to and section 31 is an additional right which is without prejudice to the provisions of section 29, to approach the court whenever assistance of the court is felt necessary by the Corporation.

49. As a result of the aforesaid discussion, we hold that section 29 does not prohibit application of the principles of natural justice and fair play and a notice of demand of dues and of intention to take action u/s 29 gives a due opportunity to the industrial concern to explain, reply or comply with or make suggestions and the procedure is a reasonable procedure and the right given to the secured creditor, State Financial Corporation, is a right to proceed without intervention of the court and is reasonable having regard to the status and nature of the Corporation which is charged with a public duty of granting loans and making recoveries with a view to industrial growth and public interest and on business principles. The rules of natural justice are to secure justice and to prevent injustice and if fairness is shown by the decision-maker, no breach of natural justice can be complained of. *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, and the duty is not to act judicially but to act fairly. *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, , and in each case it is to be seen whether the authority

has acted fairly. If the authority has acted unfairly, such act of the authority can be challenged, but the section cannot be said to be unreasonable and the aggrieved party can challenge the action of the authority at any appropriate stage before or after the action is taken and there is no person left without a remedy before the judicial forum. Even though section 29 and 31 cannot be said to be two remedies to the authority, the discretion is a property guided discretion. Promotion of quick credit was recognised to be a necessity of commerce even before the industrial revolution had effectively spread in India a hundred years ago. With the present necessity to quick industrial growth and the necessities of the modern times, the necessity of promotion of quick credit has become more and more acute as also its recovery. If quick recovery is not assured, the creditor would be slow in giving and would thus hinder the industrial growth. Therefore, quick credit and quick recovery is the keystone of modern industrial growth and it is because of such statutory provision and assurance that it has been possible to extent credit to industrial concerns and effect recoveries. As observed by the Madras High Court, the passage of time has not diminished but increased the usefulness of such provision. It is seen from experience that neither section 69 of the Transfer of Property Act nor section 29 of the State Financial Corporations Act has resulted in grave injustice to any party. If there has been any occasion of injustice, remedy is available to the aggrieved party. The discretion, if any, to choose between the remedies is guided by the considerations with which the Act was enacted and this guided discretion is clearly covered by rule 3 as in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, , and not by rule 4. The guiding principle is speedy recovery and with such indication clearly indicated in the Act, the officers of the Corporation are expected to avail themselves of the more effective procedure and not resort to the procedure which is likely to delay. Any procedure which is effective from the view point of the creditor is likely to be looked upon as drastic by the debtor and any provision looked upon by the debtor as a soft and fair procedure is likely to be seen by the creditor as dilatory and frustrating. It is for the court to see whether the Legislature has provided guidance for exercising the discretion. Once the Legislature itself indicates that the speedier procedure is to be resorted to, it cannot be said that there is arbitrary discretion given to the authority. Even the Supreme Court has recognised that the officers to having these discretionary powers would choose the procedure which is more expeditious and more effective and such discretion cannot be said to be arbitrary having regard to the normal behaviour, and whenever there is actual discrimination in practice, the court is not powerless to strike it down. Whenever a summary power or procedure is prescribed for recovery of taxes, public moneys, public premises and for collection of public funds, the legislative intention is clear that the Legislature wants the authority to act quickly and effectively and this power has been given to the board which consists of high Government officers, nominees and directors and they are expected to exercise the power justly and fairly and they can be trusted with the power.

50. In view of these conclusions, we are, therefore, of the opinion that there is no merit in the challenge by the petitioner to the constitutional validity of Section 29(1) of the State Financial Corporations Act on the ground of articles 14, 19, 21 and 300A of the Constitution.

51. As regards the individual facts of each petition, it is to be noted that it is an admitted position that a substantial amount is due and outstanding in each of the petitions to the Corporation. Even though notices have been given in all cases, substantial amounts still remain outstanding. Even though these petitions are pending since long and there was sufficient time and opportunity to make the payment, unfortunately the petitioners have failed to avail of the same. In view of the fact that in almost all cases only advertisement for sale has been issued and no further action has been taken or in some cases, only notice u/s 29 has been issued, there is no substantial question which requires to be considered in these matters. As we have already come to the conclusion that section 29 is a valid piece of legislation and in reply to the notice u/s 29, it is open to the industrial concern to explain and pay. In some of the cases, interim relief has been granted unconditionally. In some cases, it is conditionally on payment of some amount. In most of the cases, interim relief is vacated, refused or not granted. However, no action for recovery or taking possession or effecting sale has been taken. Since a long time has passed thereafter, it would be necessary to issue fresh advertisements. In the meanwhile, it is open to these units to make payment of the dues and avoid recovery and action u/s 29 of the Act, in view of the fact that large amounts have been outstanding since a very long time and the industrial concerns have not shown their bona fide intention to make payment by making even part payments, irrespective of the fact whether they are protected or not by any interim order. If they are protected by interim order, it was all the more necessary for them to make the best use of their protection by making payments. By this time, the entire of substantial debt would have been wiped out. The fact that no such substantial payment has been made shows that there is no bona fide intention to make the payment or there is no ability to make the payment and the resultant action u/s 29 is inevitable. The industrial concern has not only to show that it has the intention to pay or that its word is trustworthy or creditworthy, but it also has to make actual payment. Having regard to the length of time and the amount of dues which has remained outstanding, it cannot be said that the action of the Corporation in proceeding u/s 29 is in any way unreasonable. The Corporation cannot wait indefinitely. The industrial unit had more than sufficient time and opportunity to make the payment. In view of the fact that till today no effective step has been taken u/s 29 except issuing the advertisement or notice u/s 29, nothing further is required to be considered. As and when possession is taken and/ or sale is effected, such sale or action of taking possession may be challenged if there is any material irregularity or illegality in the same and that would be considered at that stage in accordance with law. At present it is clear that the respondent Corporation is entitled to proceed u/s 29 of the Act by taking appropriate action. In view of the

fact that the advertisements were issued long back, it would be in the fitness of things that fresh advertisements are issued and the Corporation would not act on the old advertisement in order to bring a proper price at present.

52. In one matter, i.e., in Special Civil Applications Nos. 3070 of 1986 and 6482 of 1987, sale is already effected. That will be considered separately. In Special Civil Application No. 3086 of 1986, possession has been taken and sale has been stayed on condition of depositing Rs. 50,000. That also will be considered separately.

In the rest of the matters, there is not much to be considered separately. However, some points were raised in some of these matters, such as :

(i) That the Corporation had not advanced the full amount of loan sanctioned and the remaining amount of the loan was not paid and was cancelled and, therefore, there is breach of promise by the Corporation and the Corporation is estoppel by promissory estoppel from recovering the amounts already advanced.

(ii) That the unit is a sick unit and the Corporation is under a duty to help revival of such sick unit and, therefore, the recovery cannot be enforced.

(iii) That the Corporation is under a duty to rehabilitate and not to kill industrial units by coercive recovery.

(iv) That the running unit should not be forced to be closed down by enforcing recovery u/s 29.

53. All these arguments are for not paying the amounts due and for avoiding and delaying the day of reckoning. After the amount of loan is sanctioned, it is for the industrial unit to avail of the same by producing necessary vouchers and proof and availing of the loan. In none of the cases, has it been shown that the industrial unit wanted to avail of the balance amount of the loan in due time by producing the requisite documents. The Corporation is not bound to keep its funds committed idle for a long time. It is true that the Corporation charged commitment charges, but the Corporation is not expected to keep its funds frozen with a view to get commitment charges. The Corporation has more important duty to promote industrial growth and not to keep its funds committed idle. The Corporation is, therefore, entitled to cancel the remaining outstanding loan after due and reasonable time. In fact, none of the units had complained of non-payment of the balance amount of the sanctioned loan. It is only when coercive recovery is threatened that they have come out to stop recovery of balance amount of the outstanding loan. As regards sick unit and its rehabilitation, it is for the concerned industrial unit to satisfy that it is a creditworthy, trustworthy and bona fide debtor not by its words and promises but by acts. Even if the given unit is viable, it is the debtor who has further to show that he is bona fide and genuinely interested in making the payment and that has to be proved by making such payments of a substantial part of the debt and by offering reschedulement within a reasonable period. If the debtor is unable to

make substantial payment even after a lapse of a long time and does not offer reschedulement and balance payment within a reasonable time, it cannot be said that the Corporation is failing to revive that unit. In fact, by sale of such unit to a new entrepreneur, the unit is more likely to be rehabilitated and restarted by the new entrepreneur. It is the question of revival of the unit and not of revival of the debtor; it is change of ownership which is more likely to help rehabilitation and revival. Even in the case of a running industry, if the industry run by a debtor is unable to generate any funds for repayment of its dues to the Corporation for a long time, it cannot be said that the Corporation should indefinitely stay recovery. In the facts of these cases, most of the industries are closed. Even those which are running are not making payments of their dues to the Corporation. In these circumstances, it cannot be said that there is any case made out for restraining the Corporation from proceeding u/s 29. In many of these cases, the debtors had made offers of reschedulement. The Corporation did not accept those offers because the payments were not reasonably substantial and the reschedulement period was beyond reasonable length and instalments were not proper and they were on the lower side. Even so, the debtors did not make the payments even according to their own offer of reschedulement. This shows lack of bona fide on the part of the debtors. During the course of the hearing the Corporation had offered reschedulement to the debtors who had paid 30 per cent. of the outstanding dues and the balance payment by instalments within a period of 2 to 3 years. Quite a few of the industrial units availed of that opportunity and settled the matter and withdrew the petitions. The cases which have remained are of such industrial units which are unable to pay or do not want to pay and yet want to restrain recovery.

54. Naturally, the courts cannot help them against public interest and against the provision of law.

55. In view of the aforesaid discussion, all these petitions are required to be dismissed and the rule is required to be discharged and interim relief is required to be vacated. Where only notice is issued, it is required to be discharged.

56. In the result, all these petitions fail. Rule notice is discharged. Interim relief wherever granted is vacated.

57. In Special Civil Applications No. 3986 of 1989, where possession has been taken by the Corporation and sale has been stayed on deposit of Rs. 50,000, the petitioner is directed to make a written representation to the Corporation within two weeks from today to show how it proposes to discharge its liability to the Corporation by initial substantial and the rest by instalments. The representation shall be decided by the Corporation as expeditiously as possible and, if necessary, by calling the party for negotiations. If any amicable arrangement is worked out, the question of sale would not survive and possession should be restored to the petitioner. However, if no such arrangement could be worked out, the Corporation may take further steps u/s 29 of the Act in accordance with law. Subject to the aforesaid directions, this petition is dismissed. Notice discharged.

Interim relief vacated.

58. In Special Civil Application No. 3070 of 1986, the dues of 1979 were more than Rs. 1,26,000. The default was committed in the year 1983 and after notice u/s 29, the property has been sold. If the petitioner has any ground for challenging that action of sale, the petitioner will be at liberty to challenge the same by way of an independent action. The Corporation is directed to render to the petitioner true and complete account of the sale and if there is any surplus, to disburse the same in accordance with law to the persons entitled to the same. Subject to the aforesaid directions, this petition is also dismissed. Rule discharged.

59. In Special Civil Application No. 6482 of 1987, the loan sanctioned in December, 1982, was for an amount of Rs. 18.25 lakhs. As there were defaults in the payments of instalments, a show-cause notice was issued on October, 1, 1986. Another notice was issued on February 14, 1987. On March, 3, 1987, the petitioner was called before the Recovery Review Committee where the petitioner agreed to pay a sum of Rs. 2 lakhs before the end of March, 1987, and Rs. 1 lakh every year. But the petitioner failed to comply. A notice u/s 29 was issued and, thereafter, an advertisement for sale was issued on June 23, 1987. The petitioner issued a cheque for Rs. 75,000, but it was dishonoured and returned uncashed. As on March 31, 1988, the total dues claimed by the Corporation are Rs. 26,45,045. In the petition, no interim relief was granted and thereafter the sale has taken place. If the petitioner has any ground for challenging that action of sale, the petitioner will be at liberty to challenge the same by way of an independent action. The Corporation is directed to render to the petitioner true and complete account of the sale and if there is any surplus, to disburse the same in accordance with law to the persons entitled to the same. Subject to the aforesaid directions this petition is also dismissed. Rule discharged.

60. In all these petitions, the petitioners will pay the costs of the respondents.

61. Learned counsel for the petitioner in Special Civil Application No. 6630 of 1985 prayed that certificate for appeal to the Supreme Court be granted. In out opinion, no substantial question of law of general importance which needs to be decided by the Supreme Court arises in this case and, as such, the prayer for a certificate for appeal to the Supreme Court is rejected.