(2010) 04 OHC CK 0012

In the Orissa High Court

Anirudha Sahoo APPELLANT

Vs

Commissioner, State Transport Authority and Others RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Citation : (2010) 110 CLT 92

Hon'ble Judges : V. Gopalagowda, C.J;B.K. Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.K. Patel, J.—In this Writ Petition, the Petitioner has made prayers to quash the letter dated 3.5.2009 under Annexure-4 issued by Opp. Party No. 3, Branch Manager, Magma Shrachi Finance Limited to repossess the truck bearing No. OR-21 A-1315 & to direct Opp. Party No. 3 to hand over the said truck in the same condition in which it was seized or, in the alternative, to extend the benefit by way of compensation & damage urging several facts & raising certain legal contentions.

2. Petitioner availed finance from Opp. Party No. 3, the financer, to purchase a truck. Registration Certificate under Annexure-1 in respect of the truck in favour of Petitioner subject to higher purchase agreement with Opp. Party No. 3 was issued by Opp. Party No. 2, the Regional Transport Officer, Jagatsinghpur. It is averred that the Petitioner, as per the details provided in Paragraph-6 of the writ application, repaid the dues amounting to a sum of Rs. 11,06,096 in 36 installments by the end of 31.3.2009. However, Opp. Party No. 3 made further demand & issued demand notice dated 5.3.2009 under Annexure-3 threatening to institute civil & criminal actions against the Petitioner. Ultimately, Opp. Party No. 3 with the help of ''Gundas'' forcibly repossessed the truck loaded with iron & issued repossession letter under Annexure-4. When the Petitioner applied for statement of accounts, Opp. Party No. 3 issued the same under Annexure-5 which reveals that the Petitioner has already paid Rs. 11,06,096 out of the total

demand of Rs. 12,51,096. According to Opp. Party No. 3, balance outstanding dues amounted to Rs. 1,45,000. It is contended that balance default dues against the Petitioner was only Rs. 83,000 by the date of repossession. However, Opp. Party No. 3 claimed higher demand & threatened to put the seized truck to sale. Such action of Opp. Party No. 3 is arbitrary & illegal as the Petitioner was required to repay the dues in Equal Monthly Installments (EMI) by 1.12.2009. Petitioner came to know from reliable source that Opp. Party No. 3 has already sold the vehicle & obtained permission for fresh registration of the vehicle from Opp. Party No. 2. It was contended by the Learned Counsel for the Petitioner that Opp. Party No. 3 is liable to pay compensation for having repossessed the truck forcibly & illegally by engaging ''Gundas''.

3. Opp. Party No. 3 filed counter traversing the Petitioner''s averments. It was averred that the Petitioner purchased the truck by availing finance to the tune of Rs. 10,25,000 by entering into bilateral agreement dated 31.3.2006. As per the agreement, Opp. Party No. 3 was to receive Rs. 13,46,105 from Petitioner in 45 EMI. However, as on 3.5.2009 there was outstanding dues to the tune of Rs. 1,14,000 excluding default payment charges against the Petitioner. Petitioner having failed to comply with the demand notice under Annexure-3, Opp. Party No. 3 repossessed the truck. Intimation was given to the local police station before & after repossession. After repossession, Opp. Party No. 3 issued pre-sale & post sale notices dated 11.5.2009 under Annexures-B/3 & C/3 to the Petitioner & his guarantor to get the truck released on payment of outstanding dues. The Petitioner having not responded to pre-sale notice, Opp. Party No. 3 sold the truck to one Shyamlal Pal of Hoogly district in West Bengal on 25.6.2009 in order to realise dues payable by the Petitioner. It has been averred that apart from EMI payable by the Petitioner, he was liable to pay delay payment charges also. As per the agreement, even if the Petitioner failed to deposit a single EMI, Opp. Party No. 3 had right to repossess the vehicle & recall the entire outstanding dues. Had the Petitioner made payment of outstanding dues in response to demand notice, the vehicle would not have been sold by the Opp. Party No. 3. it has been categorically averred that Opp. Party No. 3 being not a functionary of State within the meaning of Article 12 of the Constitution, the writ application is not maintainable under Articles 226 & 227 of the Constitution. In course of hearing also, it was vehemently contended by the Learned Counsel for the Opp. Party No. 3 that entire grievance of the Petitioner in the writ application is directed against Opp. Party No. 3, which is a private company, & therefore, the writ application is not maintainable.

4. Admittedly, Opp. Party No. 3 represents a private company incorporated under the Companies Act engaged in the business of providing finance. Consequent upon a bilateral agreement entered into between the Petitioner & Opp. Party No. 3, Petitioner availed loan for purchasing the truck. Dispute between the Petitioner & Opp. Party No. 3 relates to default in re-payment of loan by way of E.M.Is. None of the prayers made in the Writ Petition is directed against any statutory authority. The rival contentions made by the parties relate to civil dispute

concerning breach of commercial contract. Learned Counsel for the Petitioner sought to rely upon the decision in Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, to urge that writ application is maintainable in cases of present nature. However, decision cited by Learned Counsel for the Petitioner was rendered by Hon''ble Supreme Court in Criminal Appeal No. 267 of 2007 arising out of order passed by Allahabad High Court in a Criminal Miscellaneous Petition directing SSP, Allahabad to ensure registration of F.I.R. & investigation on the basis of application submitted by the Writ Petitioner. Therefore, the decision is of no help to the Petitioner.

5. As has been laid down by the Hon''ble Supreme Court in Federal Bank Ltd. Vs. Sagar Thomas and Others, : a Writ Petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt.); (ii) Authority; (iii) a statutory body ; (iv) an instrumentality or agency of the State; (v) a company which is financed & owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging pubic duty or positive obligation of public nature; (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function. A private company carrying on banking business cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or Association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. Such conditions are not fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline also do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. In Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, it has been pointed out that the question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally & administratively dominated by or under the control of the Government. Such control must be particular to the body in question & must be pervasive. If this is found then the body is a State within the meaning of Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

6. The subject matter of the present Writ Petition relates to loan taken by the Petitioner from a private company. The remedy for the Petitioner for breach, if any, of agreement by Opp. Party No. 3 has to be availed by resorting to appropriate proceeding for resolution of civil dispute. The Petitioner having not made any grievance against any of the authorities under the State or claimed relief from the State, the writ application is not maintainable.

Hence, the Writ Petition is dismissed.

V. Gopalagowda, C.J.

7. I agree.

8. Writ Petition dismissed.