
(2003) 11 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2083 of 1995

A.P. State Financial Corporation

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 44(2C)
State Financial Corporations Act, 1951 — Section 46B

Citation : AIR 2004 AP 78 : (2004) 1 ALD 62 : (2004) 2 ALT 191 : (2004) 2 BC 158 : (2004) 54 SCL 418

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Y.N. Lohit, SC for A.P. Financial Corporation, for the Appellant;
Government Pleader for Forests for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The petitioner, namely A.P. State Financial Corporation (hereinafter referred to as "the Corporation") sanctioned a term of Rs. 2,90,500/- and a soft loan of Rs. 50,000/- to Respondent No. 4 for loan purchase of transport vehicle. Respondent No. 4 having executed necessary documents and having complied with the required legal formalities, received the loan amount and purchased TATA 1210A bearing registration No. AP 26T 2115 and hypothecated the same to the petitioner. Respondent No. 4 agreed to clear off the term loan and soft loan in 58 and 55 instalments respectively, the first of each such instalment was to commence from 13-2-1991. When respondent No. 4 committed default in paying the instalments, the petitioner initiated proceedings u/s 29 of the State Financial Corporations Act, 1951 for recovery of the dues and seized the vehicle. Assailing the said action of the petitioner, respondent No. 4 approached this Court in W.P. No. 9460 of 1993, in which a direction was issued to the petitioner to release the vehicle in favour of respondent No. 4 subject to respondent No. 4 paying a sum of Rs. 20,000/-.

2. The petitioner states that when respondent No. 4 having taken release of the vehicle, failed to turn up and pay the instalments, they made elaborate enquiries and came to know that the vehicle for purchase of which loan was sanctioned to respondent No. 4 was involved in a forest offence and was confiscated by respondent No. 2-Sub-Divisional Forest Officer, and against the orders of confiscation, respondent No. 4 had filed an appeal in CMA No. 50 of 1994 before the District Court, Warangal, and sought for release of the vehicle. Respondent No. 4, simultaneously, appears to have also filed a writ petition in WP No. 2339 of 1994 before this Court, and a learned Single Judge of this Court vide his orders dated 6-4-1994, while disposing of the said writ petition directed release of the vehicle subject to certain conditions, which respondent, No. 4 failed to comply, and as such, the confiscated vehicle remained with respondent No. 2. The petitioner appears to have made several requests to respondent Nos. 2 and 3 to release the vehicle in their favour, and when there was no response, they filed the present writ petition seeking a direction to respondent Nos. 2 and 3 to release the vehicle TATA 1210A bearing registration No. AP 26T 2115 in their favour, for the purchase of which they provided finance to respondent No. 4.

3. Heard the learned Standing Counsel for the Corporation and the learned Government Pleader for Forests for respondent Nos. 1 to 3.

4. The State Financial Corporation Act, 1951 being a Central Act, and the provisions contained therein having been given an overriding effect over all other laws in force by reason of the provisions of Section 46-B thereof, the learned Standing Counsel submits that the provisions of A.P. Forest Act, 1967, should pave way for the Central Act, and the Corporation alone is entitled to effect sale of the vehicle hypothecated to them, and not the Forest Officials under the State Act. Inasmuch as the petitioner had financed respondent No. 4 for purchase of the vehicle, and the vehicle having been hypothecated to them, the learned Standing Counsel for the petitioner submits that having regard to the phraseology "owner of the vehicle" contained in Section 44(2-C) of the A.P. Forest Act, 1967, the petitioner alone should be treated as the owner of the vehicle, and the vehicle should be released in their favour for they having first charge over the vehicle, alone are entitled to effect sale of the vehicle and realize the proceeds realized through the sale towards appropriation of their dues and not the Forest Officials who have confiscated the vehicle from respondent No. 4 for a forest offence.

5. Denying the averments made in the writ petition, the Forest Range Officer filed counter. The learned Government Pleader for Forests while reiterating the averments made in the counter-affidavit inter alia submitted that though the provisions of State Financial Corporations Act, 1951 have an overriding effect over all other laws in force, yet they cannot be treated to have an effect over laws, which provide for confiscation of vehicles for forest offences, and inasmuch any vehicle which is involved in a forest offence is liable to be confiscated, respondent No. 2, and having regard to the fact the vehicle for which finance was

provided by the petitioner to respondent No. 4, was involved in a forest offence, the same was confiscated by respondent No. 2, and no exception can be taken thereto. Though respondent No. 4 assailed the orders of confiscation in appeal in CMA No. 50 of 1994 before the District Court, Warangal, respondent No. 4, inspite of orders being passed by the District Judge, while disposing of the said appeal, to appear before respondent No. 2 has failed to appear, and in those circumstances, the orders of confiscation passed by respondent No. 2 remained without any change, and in view of the interim orders of stay dated 8-2-1995, granted by this Court pending disposal of the writ petition, the confiscated vehicle was not put to sale. The learned Government Pleader submitted that having regard to the judgment of the Division Bench of this Court in Ashok Leyland Finance Limited v. Government of A.P., AIR 2001 AP 270, and a judgment of a learned Single Judge of this Court in Mirza Ramza Ali Vs. Commissioner, Prohibition and Excise and Another, , the contention of the petitioner that having regard to the language used in Section 44(2-C) of the Forest Act, 1967, the petitioner should be treated as owner of the vehicle, for it has financed the purchase of vehicle to respondent No. 4, who had hypothecated the vehicle to it, cannot be accepted.

6. The short question that arises for consideration in this writ petition is whether the Corporation, which has provided finance to respondent No. 4 for purchase of vehicle, which was confiscated by respondent No. 2 for its involvement in a forest offence, is entitled to release of the confiscated vehicle, by treating the Corporation as owner of the vehicle.

7. There is no dispute about the fact that the petitioner has provided finance to respondent No. 4 for purchase of vehicle and respondent No. 4 having purchased the vehicle hypothecated the same to the petitioner. Admittedly, the vehicle for which the petitioner provided finance, was involved in a forest offence, and was confiscated by respondent No. 2. Now it is required to be seen whether the petitioner, which has provided finance for purchase of the vehicle, which is under confiscation of respondent No. 2 is entitled release of the vehicle in its favour.

8. The A.P. Forest Act, 1967 does not define the term "owner", but Section 44(2-C) thereof, refers to owner of the vehicle. Having regard to the fact that the A.P. Forest Act, 1967 does not define the term "owner" but refers to owner of the vehicle in Section 44(2-C) a Division Bench of this Court in Ashok Leyland Finance Limited v. Government of A.P., considered the meaning of "owner" as defined in Section 2(30) of the Motor Vehicles Act, 1988, which states that a person in whose name a motor vehicle stands registered, and where such a person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement, held thus:

Since the Forest Act does not define the term "owner" and since Section 44 (2-C) of the Forest Act refers to the owner of the vehicle, it is appropriate that the

definition of the "owner" defined u/s 2(3) of the Motor Vehicles Act, 1988 should be kept in mind in construing the provisions of Sub-section (2-C) of Section 44 of the Act. Hence, the financier cannot be considered to be the owner of the vehicle for the purpose of Section 44 (2-C) of the Act. Therefore, the financier, solely on the ground that the vehicle was used for transporting contraband forest produce without his knowledge or connivance, cannot seek the release of the vehicle irrespective of the fact whether the forest offence was committed with the knowledge or connivance of the hirer. Further, the provisions of Sub-section (2-C) makes it abundantly clear that the burden to prove to the satisfaction of the Authorized Officer that the vehicle was used in carrying the contraband forest produce without the knowledge or connivance is on the owner of the vehicle and not on the Authorized Officer.

9. It therefore, becomes clear that though the petitioner provided finance for purchase of the vehicle, it cannot be treated as owner of the vehicle, for it is the person alone who is in possession of the vehicle, can be treated as owner of the vehicle in case of an agreement of hypothecation. In the instant case, no doubt the financed vehicle is hypothecated to the petitioner, but when the offence under the Forest Act, was committed, the vehicle was in possession of the respondent No. 4, who purchased the vehicle availing finance from the petitioner.

10. A learned single Judge of this Court in a recent judgment rendered in *Mirza Ramza Ali v. Commissioner, Prohibition and Excise*, considered a similar question, as is raised in this writ petition. In the said case, the financed vehicle was involved in an excise offence, and it was confiscated by the excise officials, the financier approached this Court for release of the vehicle contending that as per Clause 8 of the hire purchase agreement, the ownership of the vehicle will remain with the financier unless and until the loan amount is repaid. The learned single Judge having considered the said question in the light of the provisions of Section 51(5) of the A.P. Prohibition Act, 1955 held thus:

A reading of Sub-section (5) of Section 51 further makes it clear that the name of the financier cannot be shown as owner of the vehicle unless and until such person satisfies the registering authority that he has taken possession of the vehicle owing to default of the registered owner, in which event it is competent for the registering authority after issuing notice to the registered owner to cancel the certificate and issue a fresh certificate of registration in the name of the financier. Thus, for all purposes, a person who is in possession of the vehicle or hirer whose name is shown as registered owner can alone be treated as owner. The limited protection given to the owner is as contained in Sub-sections (2) to (5) of Section 51 of the M.V. Act. The position is not different even in the Hire Purchase Act, 1972.

11. In the instant case, it is not the case of the petitioner that the vehicle was registered in its name or that the vehicle was in its possession. On the other hand, it is their admitted case that after release of vehicle, respondent No. 4 was in possession of the vehicle, and while he was in such possession, the vehicle

was involved in a forest offence, for which offence, the vehicle was confiscated by respondent No. 2, and in spite of orders having been passed by the District Judge, Warangal, in the appeal preferred by respondent No. 4 against the orders of confiscation, to appear before respondent No. 2, he failed to appear, and as a result whereof, the orders of confiscation attained finality. Unless and until the petitioner successfully challenges the orders of confiscation and proves that the confiscated vehicle was registered in their name or that consequent upon seizure of the vehicle in exercise of their special powers, the vehicle was repossessed by them, the relief as prayed by the petitioner in this writ petition cannot be granted. In that view of the matter, the contention of the petitioner that having regard to the provisions of Section 46-B of the State Financial Corporations Act, 1951 and the phraseology "owner of the vehicle" employed in Section 44(2-C) of the A.P. Forest Act, 1967, the petitioner, who is a financier, has to be treated as owner of the vehicle for the purpose of release of the confiscated vehicle in their favour, for effect the vehicle to sale, and realize the proceeds realized through such sale, for appropriation of their dues recoverable from respondent No. 4, to whom they granted loan for purchase of the vehicle, cannot be accepted.

12. The Apex Court in a recent judgment rendered in State of Karnataka Vs. K. Krishnan, , while considering the question of release of forest produce/property used in the commission of forest offences, arising out of Karnataka Forest Act, 1964 held thus:

The provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence the Authorised Officer or the Appellate Authority has to specify the reasons, which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools boats, vehicles, cattles etc., used in the commission of the forest offence, which are liable to forfeiture should not be released. This however does not debar the officers and the authorities under the Act including the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of the more offence with respect to the forest and its produce which, if not protected, is surely to affect the mother earth and the atmosphere surrounding it. The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. When any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence including confiscatory proceedings, if any.

Nonetheless, if for any exceptional reasons a Court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.

13. In the instant case, it is not disputed that the vehicle for which the petitioner provided finance, was involved in a forest offence, and even the order passed by the competent authority confiscating the said, attained finality.

14. In the above premise, the writ petition is bereft of any merit, and the same is accordingly dismissed. No costs.