
(2011) 08 MAD CK 0172
In the Madras High Court

Case No : Writ Petition No. 10316 of 2011 and M.P. No. 1 of 2011

Ashok Kumar Hotels (Cuddalore) Private Ltd.

APPELLANT

Vs

The Chairman Cum Managing Director, The Branch Manager
Tamil Nadu Industrial Investment Corporation and Mr. Durai

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 08 MAD CK 0172

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C. Prakasam, for the Appellant; K.V. Sundararajan, for R1 and R2
and D. Sathya, for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The matter came to be posted on being specially ordered by the Hon"ble Chief Justice vide order dated 17.8.2011.

2. This is the 6th round of litigation by the petitioner. The following table shows the litigations filed by the Petitioner, the prayer of the Writ Petition and the relief granted by this Court:

Sl. No.

W.P.No.

Filed by (Tvl.)

Prayer

Remarks

1

1626/04

VanajaSelvarajan Director

Challenging the notice dated. 22.1.04 of the respondent Corporation intimating about taking constructive possession of collateral security

The Hon"ble Court granted interim stay on condition that the petitioner should deposit the entire outstanding amount within a period of 12 weeks, failing which the stay granted stands automatically vacated. The petitioner did not comply with the court order. Writ Petition disposed off.

2

23902/05

VanajaSelvarajan Director

Challenging the letter dated 18.7.05 of the respondent Corporation

Writ Petition dismissed as withdrawn.

3

11285/07

Ashok Director

Challenging the auction proceedings and direction to TIIC to give 12 weeks time for repayment of loan as per letter dated 25.9.06

The Hon"ble Court granted interim stay on condition that the petitioner should remit Rs.5 Lakh on or before 31.3.07. Complied. Writ Petition dismissed.

4

13784/09

Ashok Kumar Hotels (Cuddalore)

Challenging the auction sale and for a direction to accept the petitioner"s offer for

Interim stay granted on 22.7.09. Auction may go on. Confirmation alone stayed. Writ Petition disposed of

Sl. No.

W.P.No.

Filed by (Tvl.)

Prayer

Remarks

Pvt.Ltd.rep.byVanajaSelvarajan Director

payment of entire dues together with simple interest

19602/10

Ashok Kumar Hotels (Cuddalore) Pvt. Ltd. rep. by Vanaja Selvarajan Director S. Ashokkumar

Challenging the auction sale notice dated 13.8.10 and consequently directing TIIC to accept the petitioner offer for paying the entire dues together with simple interest by way of One Time Settlement

Disposed.

3. The Petitioner registered them selves as a Small Scale Industry and borrowed loan from the Respondent Tamil Nadu Industrial Investment Corporation Limited (for short "TIIC" a sum of Rs. 62.31 Lakhs. The loan was availed for the construction of three-star category hotel on the lease hold land. The primary land owned by one of the Directors of the Company was offered as security and the loan was also offered by furnishing collateral security and the Directors of the company have executed necessary documents towards collateral security. Since there was a default in the repayment of the loan, the Respondent attempted to execute the recovery of the loan amount. At this stage, the Petitioner filed W.P. No. 11285 of 2007 challenging the auction sale. The said Writ Petition was dismissed as infructuous on 22.1.2008 stating that there was no cause of action for filing the Writ Petition. Subsequently, the Petitioner filed another Writ Petition being W.P. No. 19602 of 2010. It was at the time when the respondent TIIC were successfully able to find a bidder and it was stated that about Rs. 80 lakhs was offered to be paid by the Petitioner. But, however, this Court, while permitting the auction process to go on, directed the petitioner to go for One Time Settlement and till the consideration of the One Time Settlement proposal by the respondent TIIC, it was directed that the auction cannot be confirmed. Thereafter, certain parleys took place between the Petitioner and the Respondent TIIC.

4. The One Time Settlement proposals failed through because the Petitioner's offer was not within the norms of the company. The Petitioner has once again come forward before this Court seeking for a direction to the Respondent to accept the Petitioner's offer of Rs. 1 Crore towards full and final settlement for settling the entire dues to the respondent TIIC.

5. This Court admitted the Writ Petition and granted an interim stay initially for 8 weeks. Subsequently, it was extended from time to time and after the last extension given on 27.7.2011, there was no further extension.

6. On notice from this Court, the respondent TIIC has filed a counter affidavit dated 22.7.2011 refuting the allegations made by the petitioner. In the meanwhile, another development took place, namely the 3rd respondent, who was the highest bidder at the relevant time and such fact was also recorded by this Court in the earlier Writ Petition, had filed an affidavit dated 1.8.2011 stating

that he is not willing to accept the offer and he is seeking for refund of the amount for various reasons, namely, as this Court interdicts the process of auction, such developments are bound to take place. But, at the same time, this court is not willing to consider the request made by the 3rd respondent as he has not come forward within the purview of this Writ Petition. Yet the petitioner has been filing the Writ Petitions after Writ Petitions on the loan issue and the last Writ Petition, namely W.P.No.19602 of 2010 dated 26.8.2010 had clearly forestalled the entire issue as this Court had, while rejecting the case of the petitioner, merely directed to go for One Time Settlement proposal and until the consideration of the proposal, the confirmation was postponed. Therefore, the petitioner cannot once again reagitate the issues all over again and for 7th round in the matter of loan transaction.

7. In this context, it is necessary to refer to the judgment of the Supreme Court in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, and in paragraphs 10 and 11, it had observed as follows:

10....Indeed, in a matter between the corporation and its debtor, a writ court has no say except in two situations: (1) there is a statutory violation on the part of the corporation or (2) where the corporation acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an appellate authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints -self-imposed undoubtedly of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

11. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak v. Union of India. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred". (Lord Diplock in Secretary of

State for Education and Science v. Metropolitan Borough Counsel of Tameside2.)The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene....

8. In the light of the above, this Court is not inclined to entertain the Writ Petition at the instance of the Petitioner and the Petitioner's attempt to file such Writ Petitions continuously is an clear abuse of process of court. Hence, the writ petition stands dismissed. No costs. The connected Miscellaneous Petition is closed.