
(2008) 11 JH CK 0024
In the Jharkhand High Court

Ashok Kumar Sinha and Mahendra Pratap Singh @ M.P. Singh	APPELLANT
Vs	
Bihar State Financial Corporation and Others	RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2009 Jhar 42 : (2010) 1 BC 126

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.

W.P.(C) No. 505 of 2002:

1. The present writ petition has been preferred by the petitioner against the impugned order dated 10.1.2002, passed by the Managing Director, Bihar State Financial Corporation, Patna (respondent No. 2) vide which the initial amount of Rs. 5,00,000/- and Rs. 50,000/-, deposited by the petitioner towards the earnest money, was forfeited. The petitioner has also prayed for a restraint order against the respondents for restraining them to hand over the assets of M/s Aren Chemicals (Pvt.) Ltd. in favour of respondent No. 4.

2. The facts, in brief, are summarized as under:

One M/s Aren Chemicals Pvt. Ltd. (hereinafter referred to as "the loanee") was sanctioned a term loan of Rs. 12.25 lakhs in the year 1974 out of which Rs. 11.90 lakhs was disbursed. The company committed default in making repayment and accordingly notices were issued u/s 29 of the State Financial Corporation Act, 1951. Upon receiving no response to the notice u/s 29 the unit was advertised for auction sale and the same was published in daily newspaper Hindustan Times on 25.2.1995 and in Prabhat Khabar on 25.3.1995. In response to the said advertisement the respondent corporation received two tenders, first

from Shri Ashok Kumar Sinha, the petitioner herein, on 1.6.2000 and the second tender was received on 26.2.2000 from one M/s Rishav of Circular Road, Ranchi. They participated in the tender and deposited Rs. 50,000/- earnest money as per the conditions stipulated and the petitioner was declared the highest bidder and the bid amount was settled at Rs. 65.50/- lakhs and the tender was accordingly opened on 29.8.2000 in the Office Chamber of the Managing Director of the respondent Corporation.

W.P.(C) No. 561 of 2002:

In this writ petition the petitioner (loanee) has prayed for issuance of a writ in the nature of certiorari to quash/cancel rescind the order dated 4.10.2001 passed by respondent No. 1, the Managing Director, B.S.F.C. whereby and whereunder he had ordered for auction sale of the mortgaged hypothecated assets of M/S Aren Chemical Pvd. Ltd., H.B. Road, Ranchi. The petitioner is the Managing Director of Aren Chemical (loanee) who committed default in making repayment and accordingly notices were issued u/s 29 of the State Financial Corporation Act followed by auction sale in the year 1995 itself. In the instant writ petition a prayer has also been made for issuance of restraint order against respondents from interfering with the assets of the Industry in question. The present writ petition has been filed after the entire auction sale has been completed.

3. The aforesaid two writ petitions are being disposed of by this common order.

4. The facts in brief are summarized as under:

The petitioner submits that vide an order dated 6.10.2001 respondent No. 2 herein i.e. Managing Director of the Corporation intimated the petitioner that the Executive Committee of the B.S.F.C. in its meeting dated 29.9.2001 has approved the sale of mortgaged assets of the loanee in his favour. Since the petitioner failed to deposit 25% of the assets value, the Corporation vide letter dated 13.11.2001 intimated the petitioner that his earnest money was forfeited due to his failure to deposit the initial amount. Thereafter, the respondent-Corporation invited one M/s Bharat Steel Trading Company to negotiate the sale of the assets of the loanee but the said Bharat Steel Trading Company also failed to deposit the initial amount. The petitioner was again intimated by the Corporation for negotiation. The petitioner also requested the Corporation to reconsider his case and further gave an offer of escalated rate to the extent of Rs. 50,000/-. The respondent-Corporation after considering the offer of the petitioner vide its order dated 10.10.2001 agreed to sell the mortgaged assets of the loanee for a total consideration amount of Rs. 66.50 Lakhs with 30% initial cash down payment to be deposited by the petitioner and, accordingly, the petitioner was directed to deposit a sum of Rs. 19.45 Lakhs by 24th December, 2001. The petitioner could not deposit the aforesaid amount on 24.12.2001 due to sudden death of his uncle on 23.12.2001 and he, accordingly, intimated this fact to the respondent-Corporation and requested for extension of time for 30

days. Respondent No. 3 suggested the petitioner to approach respondent No. 2, the Managing Director of the Corporation, who was the competent authority for extension of time. Accordingly, the petitioner approached respondent No. 2 at Patna on 27.12.2001 and a meeting was fixed on 29.12.2001. The petitioner filed an application to respondent No. 2 and requested him to grant extension up to 28.1.2002 for depositing the initial amount on the ground of death of his uncle and also proposed to deposit a sum of Rs. 5,00,000/- as part payment of the initial amount. He also undertook to pay the balance amount of Rs. 14 Lakhs by 28.1.2002. The petitioner, accordingly, deposited eleven drafts for a total amount of Rs. 5,00,000/- on 29.12.2001, which was duly accepted and the office of respondent No. 2, accordingly, indicated that it will pass necessary orders on his application for extension of time and the same was to be communicated to the petitioner subsequently.

5. The petitioner further submits that at one hand respondent No. 2 allowed and accepted the deposit of Rs. 5,00,000/- towards part payment of the initial deposit at Patna and at the same time, respondent No. 3 accepted Banker's cheque dated 26.12.2001 for a sum of Rs. 19.95 Lakhs from respondent No. 4 on 27.12.2001 itself and further assured respondent No. 4 that the assets of the loanee shall be given to him only. The petitioner came to know that respondent No. 4 has purchased the Banker's Cheque No. BC 029381, S.B.I. Kokar dated 26.12.2001 for an amount of Rs. 19.95 Lakhs and the said Banker's Cheque was deposited in the account of the Corporation at Ranchi. Strangely the petitioner received a letter dated 2.1.2002, issued by the Managing Director of the Corporation, intimating him the extension of the date for depositing the amount till 7.1.2002 and the petitioner received the said letter on 7.1.2002. Immediately on the same day he approached respondent No. 3 at Ranchi office and apprised him about the fact that he has received the letter only on 7.1.2002 and, as such, it was not possible for him to deposit the balance amount on the said date. Respondent No. 3 instead of considering the genuine difficulty of the petitioner insisted upon him to surrender his claim and also assured that if he surrenders his claim, the Corporation will refund the entire amount of Rs. 5.50 Lakhs to the petitioners. It also threatened that in case he did not agree to accept the said proposal of surrender, then the entire amount of Rs. 5.50 Lakhs, so deposited by him, will be forfeited. Under the aforesaid coercion and threat given by respondent No. 3, the petitioner was compelled to sign a letter prepared by respondent No. 3 on 7.1.2002. However, on 9.1.2002 the petitioner wrote a letter to respondent No. 2 by registered post, requesting therein to allow him to deposit the rest of the initial amount. Instead of considering the application of the petitioner, the respondent- Corporation vide its impugned letter dated 10.1.2002 cancelled the earlier order and forfeited the earnest money and initial part payment amounting to Rs. 5 Lakhs, which is sought to be challenged in the present writ petition.

6. Private respondent No. 4 in its counter affidavit, filed by one Kamlesh Kumar Singh, has submitted that the petitioner, being the highest bidder, was allowed to

deposit a sum of Rs. 19.45 Lakhs by 24.12.2001 as 30% of the consideration amount, which was fixed at Rs. 66.50 Lakhs but he failed to deposit the same and it was in these background that the same was cancelled/withdrawn vide Memo No. 1611/Zone-IV dated 10.12.2001. Respondent No. 4 further submits that it gave a matching offer of Rs. 66.50 Lakh's for purchasing the mortgaged assets of the said unit and, accordingly it was finalized by the Corporation to sell the mortgaged/hypothecated assets of the loanee in favour of the answering respondent, based on the best offer received against the auction sale notice, published u/s 29 of the State Financial Corporation Act, 1951 on the stipulated terms and condition. At paragraph No. 8 of its counter affidavit, respondent No. 4 submits as under:

That in pursuance of the aforesaid decision of the Corporation, the answering respondent deposited a sum of Rs. 19.95 Lakhs on 26.12.2001, being the equivalent of 30% of the total consideration price through banker's cheque.

It is further submitted that the handover/takeover took place on 17.1.2002 and sale deed was executed in favour of respondent No. 4 on 14.5.2003 after it deposited the entire consideration amount. It is also the case of respondent No. 4 that it has since then invested a huge amount of Rs. 40,00,000/- for smooth functioning of the unit.

7. I have considered the pleading as well as the rival contentions/arguments advanced by the counsel for the petitioner as well as the respondents.

8. The advertisement for auction sale and the tender notice for sale of mortgaged assets as advertised on 25.2.1995 and 25.3.1995 at paragraph 3 stipulated as under:

If no tender or no acceptable tender is received by the corporation on the above dates for any particular unit, the tender shall continue to be received against this advertisement on the concerned branch Office....

On a bare reading of the aforesaid condition it will be evident that the tenders were allowed to continue in case no tender or no acceptable tender was received whereas In the Instant case the corporation submits on affidavit that two tenders were received in the year 2000 which was negotiated including that of the petitioner herein and the quoted amount was acceptable. The admitted fact remains that the negotiations of tender were held on 29.8.2000 and one another tender was received on 29.9.2001 of M/s Bharat Steel Trading and after considering the aforesaid tender sale order was issued on 6.10.2001 in favour of the petitioner for a total sum of Rs. 65.50 lakhs and he was directed to deposit 25% of the above amount as initial cash down payment after 21 days but within 30 days from the date of issuance of sale order. Simultaneously the original promoter was also offered to retain the unit as per the terms and conditions of the sale order. It appears that the petitioner failed to deposit the initial cash amount within specific period of time and accordingly vide another memo No. 1462/Z/iv dated 13.11.2001 the sale order issued in favour of the petitioner was

cancelled but when M/s Bharat Steel Company failed to comply with the terms and conditions of sale order and further failed to pay the initial amount the sale order issued in their favour was also cancelled on 10.12.2001.

9. In the meanwhile petitioner herein again gave a matching offer of Rs. 66.50 lakhs and assured to deposit 30% of the consideration money of Rs. 66.50 lakhs within 15 days from the date of issuance of sale order. Thus the petitioner was required to deposit the initial cash down payment on or before 25.12.2001. It appears that the petitioner again failed to deposit the initial cash down payment to the tune of 30% as per the revalidated sale order dated 10.12.2001.

10. It was, at this stage that M/s Sushila Automobiles (Respondent No. 4) obtained the tender from the Branch Office and submitted their offer on 27.12.2001 along with a bankers cheque dated 26.12.2001 for an amount of Rs. 19.95 lakhs. However, the petitioner again approached the head office at Patna and met the Managing Director and also deposited a draft of Rs. 5 lakhs on 29.12.2001 and the Managing Director, vide its letter dated 2.1.2002 allowed him to deposit the balance initial cash down payment up to 7.1.2002 but when the petitioner failed to deposit initial payment on or before 7.1.2002, the respondent corporation vide its order dated 10.1.2002 cancelled the sale order in favour of the petitioner and forfeited the amount of Rs. 5.50 lakhs deposited by the petitioner and simultaneously issued a final order in favour of M/s Sushila Automobiles Pvt. Ltd vide memo No. I558/Z/iv dated 11.1.2002. It appears that when the petitioner failed to deposit the initial cash payment even after the extended period, the respondent corporation cancelled the sale order on 10.1.2002 because the extended period, in any case, expired on 7.1.2002.

11. It will be evident that the petitioner has also been a defaulter inspite of three opportunities being given to pay the initial cash payment of 30%. Further, by a hand written letter dated 07.01.2002 the petitioner himself surrendered his claim and informed that he was no more interested and further requested to refund the earnest money of Rs. 5 lakhs so deposited. In any event a matching offer was given by Respondent No. 4 and the initial cash payment was deposited on 27.12.2001 which was also after the expiry of the period of 15 days as extended for the petitioner to deposit the initial payment which he failed. The fact remains that the extended period of 15 days expired on 25.12.2001 and only thereafter on 27.12.2001 respondent No. 4 gave its offer on 27.12.2001 with Banker's cheque for a sum of Rs. 19.95 lakhs dated 26.12.2001 as initial payment.

12. The Hon'ble Supreme Court in Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, in a similar matter finally laid down the following legal principles in Paragraph 19 which is quoted as under:

From the aforesaid, the legal principles that emerge are:

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the

Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:

(a) there is a statutory violation on the part of the Corporation, or

(b) where the Corporation acts unfairly i.e. unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action u/s 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

13. Considering the aforesaid facts and circumstances of the case, it appears that as far as reasonableness and the intention to secure the best price which has been consistently held to be a dominant consideration, has been realized more so, when the petitioner could not deposit the initial cash down payment even after the extended period and thereafter he himself surrendered his claim

and asked for refund of initial deposit. Thus, even otherwise estoppel by conduct will apply against him and the prayers not to hand over the assets to Respondent No. 4 is unsustainable and liable to be rejected. In the aforesaid judgment it has been specifically stated that tender and negotiation could be adopted apart from public auction to secure the best price which has been followed in the instant case. Even the initial amount paid by Respondent No. 4 and accepted by the respondent Corporation was after expiry of the extended period for payment by the petitioner. Thus, the action was fair and reasonable and in any case the best price was secured and received by the Corporation in totality. In this regard three Judges Bench of the Hon'ble Supreme Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, while overruling the decision in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, held as under:

The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. Also, the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not opened to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. In commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned.

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

14. However, one fact does not stand to reason that even after permitting M/s Sushila Chemical to participate in the tender and further after accepting the offer and the Banker's cheque dated 26.12.2001 for an amount of Rs. 19.95 lakhs from Respondent No. 4, how could the respondent Corporation again accept a draft of Rs. 5 lakhs on 29.12.2001 from the petitioner and further extend the period and allow him to deposit the balance initial cash down payment up to 7.1.2002. This action of the respondent Corporation is clearly unjustified and thus the forfeiture of the amount of earnest money to the tune of Rs. 5 lakhs as deposited by the petitioner is held to be arbitrary and illegal.

15. The Corporation cannot take the benefits of its own default and even

otherwise the period of notice and extended time given to the petitioner was entirely inadequate and the negotiations with a third party was done in unusual haste with Respondent No. 4 as if everything was preplanned and negotiated in advance. Even the second extension vide letter dated 2.1.2002 was only till 7.1.2002 and the letter itself was received by the petitioner on 7.1.2002. The period of notice and extension was quite inadequate.

16. The Hon"ble Supreme Court in an identical issue in SJS Business Corporation Pvt. Ltd. v. State of Bihar at paragraph 19 held as under:

In this case, the first notice of sale was given on 31.1.2002. A period of about four weeks was given to the purchasers to submit their offers by 28.2.2002. The period of four weeks can therefore be taken to be the ordinary norm. But when the second impugned notice of sale was given on 26.3.2002, less than three days were given to the purchasers to inspect the premises, make necessary arrangements and submit their offers to BICICO. Of these three days, two were public holidays when barks would have also been shut. The period of notice was, in the circumstances, entirely inadequate. Besides, we have not been told the reason for this unusual haste. Such precipitate action was not called for unless there was some other considerations weighing with the authorities, considerations which have not been disclosed to the Court.

17. In the aforesaid background it will be in the interest of justice to direct the respondent Corporation to refund the earnest money for an amount of Rs. 5 lakhs as deposited by the petitioner with interest at the rate of 8% within a period of one month from the date of receipt of this order.

18. Considering the aforesaid facts and circumstances of the case, both the writ petitions being devoid of any merit, are accordingly dismissed without any order as to cost except for the aforesaid direction to refund the earnest money.