

(2011) 05 JH CK 0044
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1717 of 2011

Basic Fuels Pvt. Ltd.

APPELLANT

Vs

Bihar State Credit and Investment Corporation Ltd. and
Others

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Citation : (2011) 3 BC 686 : (2011) 3 JCR 175 : (2011) 8 RCR(Civil) 1673

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly against a letter written by Respondent No. 2 dated 25th February, 2011, which is Annexure-7 to the memo of the present petition. By this letter, it has been stated by the Finance Corporation to the present Petitioner that Respondent No. 1 will take steps for recovery of dues.

2. Counsel for the Petitioner submitted that as per the Industrial Policy of the State Government, Respondent No. 2 cannot recover dues unless and until the matter is finalised under the Industrial Policy by the State Government authorities especially by Respondent Nos. 4, 5 and 6.

3. Counsel for the Respondents submitted that the Court must lift the veil as there is no difference between the company and their Directors and the Directors are personally responsible for making payment of dues.

4. Having heard counsel for the both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ petition mainly for the following facts and reasons:

(i) Petitioner is a private limited company.

(ii) Counsel for the Petitioner upon query could not point out anything about the

sales tax and such other revenues paid to the Government.

(iii) It further appears that Respondent No. 1, which is a Financial Corporation, has given loan of sizeable amount, which has not been paid. Outstanding amount as per Respondent No. 1 is Rs. 39 lakhs and odd.

(iv) It appears that the Petitioner is taking shelter of Industrial Policy of the State Government. The Petitioner is alleging that it has been declared as sick unit and is waiting for rehabilitation.

Be that as it may, there is no provision which debars Respondent No. 1, which is Financial Corporation, from recovery of its own dues.

(v) Counsel for the Petitioner could point out only one provision of the Jharkhand Industrial Policy, 2001 i.e. Clause 23.3.3, which reads as under:

23.3.3. The sick SSI units would be identified by such Apex body w.e.f. such date as per the guidelines issued by RBI. Appropriate packages of relief and concessions for such units would be approved for their rehabilitation. The units declared sick by such body and opting for rehabilitation shall be eligible for relief and concessions by banks financial institutions, as per the guidelines of the RBI within a specified time frame.

(Emphasis supplied)

In view of the aforesaid Clause, it cannot be said that Respondent No. 2 is restrained from recovery of its money from the Petitioner. Moreover, looking to Clause 23.3.3 of the Industrial Policy, it appears that declared sick unit will be eligible for relief and concessions by the Banks or Financial Institutions, as per the guidelines of the Reserve Bank of India. These all depend upon the guidelines of Reserve Bank of India, especially for getting any relief by the Petitioner.

(vi) Counsel for the Petitioner has miserably failed in pointing out any guidelines, worth the name, of the Reserve Bank of India exempting the present Petitioner from making the payment of the dues towards the Financial Institutions, nor he could point out any guidelines of Reserve Bank of India restraining the Financial Corporation from recovery of the money from the Petitioner.

(vii) Counsel for the Petitioner submitted that Respondent No. 1 is a party in rehabilitation proceedings.

Be that as it may, participation by the Financial Corporation, in the rehabilitation proceedings does not create a legal restraint or bar for recovery, but, it is participating so that the companies like the Petitioner may not dispose of their properties in the manner, in which they like. Just to safeguard its interests, the Financial Corporation is participating in the proceedings otherwise, there is no statutory bar for recovery of the money.

(viii) Statutory bar or legal restraint for recovery of dues by financial institution cannot be presumed.

(ix) The Petitioner is unable to point out what has been stated by Respondent No. 1 against the so called sickness of the Petitioner and so called rehabilitation. There may be objection by Respondent No. 1 for even declaration of the sickness of the Petitioner because such type of private companies are sick because of their own mismanagement.

5. In these set of circumstances, I am not inclined to stay the process of recovery initiated by Respondent No. 1 in pursuance of the letter dated 25th February 2011, which is at Annexure-7 to the memo of the petition.

6. There is no substance in this writ petition. Hence, the same is hereby, dismissed.