(2008) 11 OHC CK 0072

In the Orissa High Court

Bhagyalaxmi Powerloom Unit APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Citation : AIR 2009 Ori 82 : (2009) 1 OLR 33

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—The petition is pending before this Court for more than 10 years challenging the demand notice issued on 31st August, 1998 for a sum of Rs. 3,35,672.40 p. The Orissa State Financial Corporation (for short, ''Corporation'') did not muster the courage to make recovery of the public money. A sum of Rs. 51,960/- was advanced to a partnership firm of which one Mr. Durga Madhab Patnaik was the sole proprietor vide order dated 10th February, 1982. As per the terms of agreement for sanction of loan, the entire amount had to be paid in 7 1/2 years in 13 half-yearly instalments. The entire amount had to be deposited by the month of August, 1989, but not a single pie had been deposited by said Durga Madhab Patnaik. The Corporation was kind enough not to initiate the proceeding for making recovery of the loan amount. Instead, the Corporation accepted the application made by the said borrower Durga Madhab Patnaik that the loan be shifted in the name of his wife as she became the sole proprietor of the firm for the reason that he had become a government servant and was ineligible to have any private business vide letter dated 19.2.1990. In September, 1993, the loan was rearranged in the name of Smt. Premamanjari Patnaik and the said loan amount had to be recovered in 9 years in 16 half-yearly instalments. As not a single instalment was deposited, the entire arrangement was recalled vide order dated 31st August, 1998.

2. There is nothing on record to show as to why a public Financial Corporation remained merely a silent spectator for a period of sixteen years as borrower was

adamant not to deposit a single instalment. When the impugned notice for recovery was sent, the petitioner approached this Court by filing this writ petition. No interim order was passed by this Court in favour of the petitioner. It is a clear cut case where the statutory authorities dealing with public money are behaving without any sense of responsibility and not making any attempt for recovery under the garb that the matter is pending in the Court though no interim order had ever been passed in favour of the petitioner.

3. We have issued notice to the Corporation on 4th September, 2008 to explain as to under what circumstance, in the absence of any interim order from this Court, the Corporation was so charitable to the petitioner that no attempt was made to recover the loan after advancing the loan in 1982. A period of 26 years has elapsed and not a single penny has been recovered so far from the petitioner.

4. Affidavit has been filed on behalf of the Corporation stating that since the matter was pending before the Court and attempts are being made for listing the case, no proceeding would be initiated against the petitioner for making recovery of the loan. Such explanation further shows how casual approach has been taken by the authorities under the statute who are responsible to make recovery of the public money.

5. In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the Apex Court observed as follows:

...the legislative intent in enacting the statute in question was to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a stipulated period. Though the Corporation is not like an ordinary moneylender or a bank which lends money, there is purpose in its lending i.e. to promote small and medium industries. The relationship between the Corporation and the borrower is that of creditor and debtor. That basis feature cannot be lost sight of. A Corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given. In that way industrialization which is the intended object can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money...promoting industrialization does not serve public interest if it is at the cost of public funds. It may amount to transferring public money to private account.

(Emphasis added).

Similar view had been reiterated in U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. and Ors. AIR 1993 SC 1435, wherein, the Apex Court observed as follows:

...the corporation is not like an ordinary moneylender or a Bank which lends money. It is a lender with a purpose -the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others...

(Emphasis added).

6. The Apex Court has emphasized on the opposite party-Corporation to make recovery for the simple reason that the Corporation itself borrows from different financial institutions and entrepreneurs as it does not have its own resource and after recovery it is to be utilized for advancing to some persons for development of the society.

7. In such fact-situation, it is beyond our imagination that as to under what circumstance the Corporation did not take any step whatsoever particularly when certain immovable property had . been mortgaged with the Corporation. Learned Counsel for Corporation has submitted that there was no buyer at proper price. No advertisement had ever been issued by the Corporation to dispose of the property mortgaged with it. Learned Counsel for the petitioner simply submitted that due to certain financial problem the petitioner has not been able to make any payment and, therefore, no payment has yet been made. It is also submitted that a person who did not deposit even a single instalment since 1982 is also before the Writ Court for getting the loan waived.

Petitioner had taken loan in 1982 and till today not a single pie has been deposited. Rather allegations of arbitrariness, unfairness have been alleged against the Corporation. The Corporation for the reasons best known to it could not wake up from its deep slumber and no attempt had ever been made to make recovery whatsoever from the petitioner in spite of the fact that this Court did not grant any interim relief. The Corporation also did not proceed to make recovery. This reveals very sorry state of affair as to how public financial institutions are being mismanaged. Learned Counsel for the petitioner has expressed his inability to explain as to what had been the problem, as to whether the petitioner or her husband had become insolvent/indigent person or the petitioner''s husband has lost government service or whether they had not acquired any movable or immovable property or they had not arranged marriages of their children. Everything on this earth must be available for them for enjoyment at their sweet will, but it is strange that the petitioner never thought it appropriate to make payment of any of the instalments since 1982. This is a case where inference can be drawn on collusion of the officers of the Corporation with the loanee.

8. In that view of the matter, we express our displeasure on the manner the opposite parties as well as the petitioner behaved. Hence, for us, there is no option but to dismiss the writ petition with the above observation.

A copy of this judgment be sent to the learned Chief Secretary to Government of Orissa, Bhubaneswar, directly by the Registry for information and appropriate action.

B.N. Mahapatra, J.

9. I agree.

