(2002) 10 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (C) No. 4173 of 2000

Biren Sarma — APPELLANT

Vs

Assam Financial Corpoction and Another — RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:
State Financial Corporations Act, 1951 — Section 29(1)

Citation : (2004) GLT 91 Supp

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : C. Baruah and N.K. Baruah, for the Appellant; B.K. Goswami and T. Goswami, for the Respondent

Judgement

D. Biswas, J.—The Petitioner is the proprietor of M/s Ankoor Printers at Simaluguri in the district of Sibsagar, Assam. The Petitioner obtained a loan of Rs. 4,30,000/- from the Assam Financial Corporation and started his prin-ting business over a plot of land measuring 1 Katha covered by P.P. No. 79, Dag No. 314. The operation of the Press was adversely affected due to irregular supply of power and this reduced the output of the Press to a considerable extent. The Petitioner repaid the loan to the extent of Rs. 3,41,000/- on various dates by instalment. The Corporation issued a legal notice dated 2.11.98 calling upon the Petitioner to pay the dues within 15 days. The Petitioner, in response to the legal notice, paid another sum of Rs. 60,000/- on 12.4.99 and 1.10.99, in two instalments. The Corporation, thereafter, issued another notice dated 9.3.2000 intimating their intention to take over the printing press in exercise of the powers u/s 29(1) of the State Financial Corporation Act, 1951. Despite payment made regularly, the Corporation took over the printing Press thereby depriving the Petitioner from running his business, the only source of his livelihood. The taking-over has been challenged by the Petitioner in this petition with prayer for restoration of possession of the press.

2. I have heard Mr. C. Baruah, the learned Counsel for the writ Petitioner and Mr.

B.K. Goswami, the learned senior Counsel for the Respondent Corporation.

3. Referring to the statement made in the affidavit-in-opposition Shri Goswami submitted that the outstanding amount payable to the Corporation as on 24.3.2000 was Rs. 14,09,640.15 excluding interest. According to Shri Goswami, the Corporation had no option but to take over the possession of the Press in exercise of its statutory powers to save the corporation from financial loss.

4. There is nothing much for consideration in this case. Shri Baruah argued that if the possession of the Press is restored back, an endeavour will be made to clear the dues. Mr. Goswami, however, contended that possession of the Press cannot be restored back unless payment is made.

5. In support of his contention, Shri Baruah, the learned Counsel for the Petitioner, relied upon the decision in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and argued that the Corporation is not to act merely as a profit earning concern, but should function so as to promote the business potential of the country for the benefit of the people. According to Shri Baruah, the Petitioner could not pay the instalments due to various reasons including irratic power supply and given a chance, he will make all efforts to clear the outstanding amount.

6. Mr. Goswami, opposing the above suggestion argued that the decision in Mahesh Chandra (supra) is no longer a good law in view of the decision of the Supreme Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, In this judgment, the Supreme Court considered the above decision of Mahesh Chandra (supra) and held as follows:

8. The guidelines were stated to be necessary to ensure fair play. That decision, as the factual position would go to show, was rendered in a case where the borrower intended to repay the debt and was anxious to do so. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled, hand and foot in the name of fairness.

9. In matters like the present one, fairness cannot be a one-way street. Corporation borrow money from the Government or other Financial Corporation and are required to pay interest thereon. Where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that the Corporation was not acting fairly, even if requisite procedures have been follows.

In para-13 of the aforesaid judgment, the "Supreme Court held that the fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The Corporation is an independent autonomous statutory body and it has to function as per its own constitution and rules. The Corporation takes decision on the basis of information in its possession and the advice it receives. Unless the action of the Corporation is malafide, even a wrong decision by it is not open to challenge. The decision of the Corporation to take over an organisation can be interfered with only when it is taken in violation of statutory provisions or where it acts unreasonably.

7. In the instant case, there is no dispute that the writ Petitioner is in huge arrears. The amount paid is insignificant to the amount due. Hence, the decision of the Corporation cannot be said to be malafide for having taken on unreasonable considerations. There is also no violation of the provisions of the Act of 1951. Hence, this Court need not interfere with the decision and direct restoration of possession, unless a viable formulae is worked out for payment.

8. This petition is, therefore, disposed of with the direction that if the writ Petitioner Pays 50 percent of the amount due as on today within four months, the Corporation shall restore back the possession of the Printing Press to the writ Petitioner and shall allow the Petitioner to continue with such possession if the balance amount, as may emerge after computation, is paid in equal bi-monthly instalment and fully liquidated within a period of two years.

No costs.

