

(2010) 04 MP CK 0063
In the Madhya Pradesh High Court

Chanderkant Gupta

APPELLANT

Vs

M.P. State Industrial Development Corporation and Others

 Central India Food Products Vs State of M.P. and
Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34
State Financial Corporations Act, 1951 — Section 29, 3, 30, 31, 32

Citation : (2010) 3 MPHT 152 : (2010) 4 MPLJ 170

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.

As the common question of law arises in both these petitions, this order shall govern the disposal of W.P. No. 12005/2005 and W.P. No. 667/2010.

Revenue Recovery Proceedings, initiated against the petitioner at the instance of respondent No. 1, M.P. State Industrial Development Corporation Ltd. (referred to as SIDC) is being challenged in this petition under Article 226 of the Constitution of India.

Similar is the challenge in W.P. No. 667/2010, wherein series of notices dated 5-12-2009, 18-8-2008, 13-9-2004 and 31-12-2004 are being questioned.

In W.P. No. 12005/05, facts briefly are that, financial assistance was provided by the SIDC to M/s. Malanpur Leathers by way of term loan of Rs. 90 lacs in the year 1992. The petitioner herein stood a guarantor for the said term loan facility. And for due repayment of the outstanding in the term loan account mortgaged his property as security.

The company faltered in making due repayment resulting in huge outstanding to

the tune of Rs. 75,00,000/-.

In order to recover dues outstanding, respondent No. 1 resorted to proceedings under the Madhya Pradesh Lok Dhan Shodhya Rashion Ki Vasuli Adhiniyam, 1987; whereunder RRC on 20-8-2001 was issued and was forwarded for execution to the Divisional Commissioner, Co-ordination Branch, Head Quarter, Tees Hazari on 26-12-2001; wherefrom, it was sent to the Additional District Magistrate, District South New Delhi.

The petitioner was thereafter served with show-cause notice for recovery on 15-7-2005. It was mentioned therein that since the petitioner had failed to deposit the amount of Rs. 75,00,000/- by 11-11-2004, why should he be not arrested and be committed to civil prison.

Brief facts in W.P. No. 667/2010 are that financial assistance was provided by the SIDC to the petitioner by way of term loan of Rs. 70 lakhs to set up a unit for manufacturing Gram Flour (Besan) Mill with a fineness of 300 Mesh, capacity of 50 tonnes per day at Khasra Nos. 541/2 and 535/2 at Village Chirahkala, Tehsil Gadarwara, District Narsinghpur (M.P.).

The petitioner-Company faltered in making due repayment resulting in huge outstanding to the tune of over Rs. 5 crores. The SIDC besides resorting to an action u/s 29 of the State Financial Corporation Act, 1951, proceeded to recover the dues outstanding by resorting to the measures under Adhiniyam, 1987 and issued the revenue recovery certificate which are being questioned in the present writ petition.

Being aggrieved of said action, the respective petitioners have filed these petitions seeking quashment of the Revenue Recovery Certificate and the action initiated thereunder.

Contention put forth by learned Counsel for respective petitioners is that (i) the respondent, i.e., SIDC being not a Corporation notified u/s 2(c) of the Adhiniyam, 1987, it is beyond its powers to resort to the recovery proceedings under said Adhiniyam and (ii) the notice for arrest and a committal to civil prison in execution of the RRC is patently erroneous as there is no provision under the Adhiniyam, 1987 or the Rules made thereunder which contemplates such an action. It is further contended in W.P. No. 667/2010 that the SIDC having resorted to the remedy u/s 29 of the Act of 1951 is prohibited by virtue of proviso to Section 5 of Adhiniyam, 1987, which stipulates that the authority to which the sum is due shall take recourse to the provisions of only one law at a time for its recovery. It is also contended that the issue as to whether the "Banking Company" after advent of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (referred to as "Act of 1993") the Banking Company can resort to the provisions under Adhiniyam, 1987 has been settled at rest by a judgment rendered in Santosh Vs. Central Bank of India, . It is further contended that it is only by virtue of notification dated 29-1-2009 issued by the State in exercise of its power u/s 2(c) of the Adhiniyam, 1987 that the SIDC has

been declared to be a Corporation for the purpose of Adhiniyam, 1987 and since the notification is prospective in nature the action initiated prior to 29-1-2009 is vitiated as the same has no sanction of law.

Propitiating the submissions, learned Counsel took this Court through various provisions of Act of 1993, Adhiniyam, 1987, Rules made thereunder, viz., the M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Niyam, 1988 and the judgments rendered in AIR 2003 SC 2103 and Santosh (supra).

The respondents on their turn supports the action initiated against the respective petitioners. It is contended that money extended to the entrepreneurs/ industrialists like the petitioners by way of loan by the respondent is a public money and therefore, the respondent SIDC is clothed with special powers u/s 32 of the State Financial Corporation Act, 1951 and other acts including Section 155(f) of the M.P. Land Revenue Code, 1959 and Adhiniyam, 1987 for recovery of dues. It is urged that the powers vested in the SIDC to recover its dues under various statutes is without prejudice to each other. Learned Counsel for the respondent while placing reliance on a State Government Circular dated 7-3-2003, which empowers Corporation and other institutions, as find mention therein, to take recourse to the provision of Adhiniyam for recovery of dues further contends that, Section 155(f) of 1959 Code empowers the SIDC to recover its dues as an arrears of land revenue. It is accordingly contended that the action initiated against the petitioner though bannered as under Adhiniyam, 1987, but the same has to be treated as under the 1959 Code. It is urged that the action for recovery of dues being in accordance with law, the same is not open for interference.

Having considered the rival contentions, the issue which crops up for determination is whether the initiation of the recovery proceedings, apparently under the provisions of Adhiniyam, 1987 are tenable at the instance of the SIDC and secondly, whether the respondent No. 4, the Sub Divisional Magistrate (Hauz Khas), New Delhi, to whom the RRC has been transferred for execution was within his right to have issued the notice for arrest and a committal to civil prison.

Indisputably, the respondent SIDC is a successor of Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., established u/s 3 of the State Financial Corporation Act, 1951, which stipulates that the State Government may by notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification. And that, such Financial Corporation shall be a body corporate by the name notified under Sub-section (1) of Section 3 having perpetual succession and a common seal, with power, subject to the provisions of the Act of 1951 to acquire, hold and dispose of property and shall by the said name sue and be sued.

During course of hearing a notification dated 7-7-1987 issued by the Central Government has been brought to the notice of this Court. The notification is in the following terms:

F. No. 5 (9)/86-IF.II Government of India/Bharat Sarkar Ministry of Finance/Vitta Mantralaya Department of Economic Affairs/Arthik Karya Vibhag (Banking Division)/(Banking Prabhag)

New Delhi, the 7th July, 1987 CSR WHEREAS the Government of the State of Madhya Pradesh have requested that the provisions of Sections 29, 30, 31, 32 and 32-A to 32-D of the State Financial Corporation Act, 1951 (63 of 1951) may be made applicable to the Madhya Pradesh Audyogik Vikas Nigam Limited, an institution established by the State Government, which has for its object financing of industrial concerns.

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 46 of the said Act, the Central Government hereby

directs that the provisions of the said Sections 29, 30, 31 and 32-A to 32-D shall apply to the said Madhya Pradesh Audyogik Vikas Nigam Limited.

Sd/ (P.K. Malhotra) (Under Secretary to the Government of India)

Thus, only enumerated provisions of the Financial Corporation Act, 1951 has been made applicable; therefore, the mode of recovery of amounts due to the Financial Corporation as an arrear of land revenue u/s 32G of 1951 Act is not available with the SIDC.

Since in the present case the issue pertains to recovery, the analysis is, therefore, confined to the said issue as to whether it is within the powers of the SIDC to take recourse to the provisions of Adhiniyam, 1987.

Admittedly in the present case, the provisions contained in Adhiniyam, 1987 has been resorted to recover the dues.

The contention of the petitioner that, it is beyond the powers of the Corporation to resort to the provisions of Adhiniyam, 1987 for effecting recovery of the dues outstanding needs to be tested on the anvil of the provisions therein.

"Corporation" as defined u/s 2(c) of Adhiniyam, 1987 means the "Madhya Pradesh Financial Corporation established under the State Financial Corporation Act, 1951 (No. 63 of 1951) and includes any other Corporation owned or controlled by the Central Government or the State Government which is declared by the State Government, by notification, to be a Corporation for the purpose of this Act".

The issue for determination is whether the SIDC, incorporated under the State Financial Corporation Act, 1951 can be excluded from the ambit of Corporation unless notified to be such u/s 2(C) of Adhiniyam, 1987.

It is nobody's case that the SIDC is not a Financial Corporation under the Act of 1951. In that case merely because the State Government issued a notification u/s 2(c) of Adhiniyam, 1987 on 29-1-2009, the SIDC, a Financial Corporation, is not excluded from the ambit of Section 2(c) even prior to such notification. For

an authority: In Lucknow Development Authority Vs. M.K. Gupta, , Section 2(o) of the Consumer Protection Act, 1986, an inclusive definition of "Service" was held to include "Housing Corporation" even before the service was included expressly by amendment in 1993. In Principles of Statutory Interpretation : Justice G.P. Singh, Tenth Edition, at Page 174, it is observed by learned Author "The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the Statute. When it is so used these words and phrases must be construed or comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include".

In M.K. Gupta (supra), it was observed by Their Lordships:

2. ...A scrutiny of various definitions such as "consumer", "service", "trader", "unfair trade practice" indicates that Legislature has attempted to widen the reach of the Act. Each of these definitions are in two parts, one, explanatory and the other explanatory. The explanatory or the main part itself uses expressions of wide amplitude indicating clearly its wide sweep then its ambit is widened to such things which otherwise would have been beyond its natural import. Manner of construing an inclusive clause and its widening effect has been explained in Dilworth v. Commissioner of Stamps 1899 AC 99, as under:

"include" is very generally used (in) interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural, import, but also those things which the definition clause declares that they shall include

It has been approved by this Court in Regional Director, Employees" State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, ; Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, , and The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, . The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.

What remains to be examined is if housing construction or building activity carried on by a private or statutory body was service within meaning of Clause (o) of Section 2 of the Act as it stood prior to inclusion of the expression housing construction in the definition of "service" by Ordinance No. 24 of 1993....

In Appeal No. 2954 filed by a builder it was urged that the inclusion of housing construction, in Clause (o) and avail, in Clause (d) in 1993 would indicate that the Act as it stood prior to the amendment do not apply to hiring of services in reamendment retrospective it should be held to be prospective as it is settled

that any law including amendments which materially affect the vested

rights or duties or obligations in respect of past transactions should remain untouched. Reliance was placed on Jose Da Costa and Another Vs. Bascora Sadasiva Sinai Narcornim and Others, , State of Madhya Pradesh and others Vs. Rameshwar Rathod, and Re Pulborough School Board Election Case (1891-94) All ER Rep 831 (834). It was also argued that when definition of "service" in Monopolies and Restrictive Trade Practices Act was amended in 1991 it was made retrospective. Therefore, in absence of use of similar expression in this Act it should be deemed to be prospective. True, the ordinance does not make the definition retrospective in operation. But, it was not necessary. In fact, it appears to have been added byway of abundant caution as housing construction being service was included even earlier. Apart from that what was the vested right of the contractor under the agreement to construct the defective house or to render deficient service? A Legislation which is enacted to protect Public Interest from undesirable activities cannot be construed in such narrow manner as to frustrate its objective. Nor is there any merit in the submission that in absence of the word "avail of in the definition "consumer" such activity could not be included in service. A perusal of the definition of "service" as it stood prior to 1993 would indicate that the word "facility" was already there. Therefore, the Legislature while amending the law in 1993 added the word in Clause (d) to dispel any doubt that consumer in the Act would mean a person who not only vires but avails of the facility for consideration. It in fact indicates that these words were added more to clarify than to add something new.

The "expansive nature" of an inclusive definition was also held in Narmada Bachao Andolan Vs. Union of India (UOI) and Others, :

62. It is now well-settled that when the interpretation clause used an inclusive definition, it would be expansive in nature.

In the case at hand if a restricted meaning is given to the definition "Corporation" as it appears u/s 2(c) of Adhiniyam, 1987 as to exclude SIDC which is a Financial Corporation and a distinct entity than "any other Corporation" owned or controlled by the Central or the State Government declared to be so by notification to be so for the purpose of Adhiniyam, 1987", then it will be defeating the object of the enactment, i.e., A dhiniyam, 1987, which facilitates speedy recovery of certain classes of dues.

Even a Registered Co-operative Society has been construed to be a Corporation, in Daman Singh and Others Vs. State of Punjab and Others, , wherein Their Lordships were pleased to observe :

6. We have already extracted Section 30 of the Punjab Act which confers on every Registered Co-operative Society the status of a body corporate having perpetual succession and a common seal, with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. There cannot,

therefore, be the slightest doubt that a Co-operative Society is a Corporation as commonly understood. Does the scheme of the Constitution make any difference? We apprehend not.

It is in respect of such Corporation and not a financial institution under the Act of 1951 that a notification would bring it within the ambit of definition clause, i.e., 2(c) of Adhiniyam, 1987 from the date of notification.

Now coming to the aspect as to whether the issue is covered by a judgment rendered in Santosh (supra). In the said case, it was the Bank Company which initiated the proceedings by resorting to the provisions of Adhiniyam, 1987 for recovery of loan over 10 lakhs (Rs. 52,22,230/-). The learned Single Judge while taking note of the definition of "Banking Company" u/s 2(b) of the Adhiniyam, 1987 and the judgment rendered in Unique Butyle Tube Industry (P) Ltd. (supra), came to observe:

10. The aforequoted principle of law laid down by the Supreme Court in the case of Unique Butyle (supra), has full application to the facts of this case. When the object and provisions of U.P. Act, 1972 are compared with that of the object and provisions of M.P. Adhiniyam, 1987 then they are found in pari materia with each other. In fact, Section 3 of U.P. Act, which fell for interpretation in aforesaid case before the Supreme Court is so identically worded with that of Section 3 of M.P. Adhiniyam that there is no room for any distinction between the two provisions. As a necessary corollary, if no demand could be raised u/s 3 of U.P. Act by any Banking Company, then no such demand could as well as be raised u/s 3 of M.P. Adhiniyam by or at the instance of any Banking Company as defined u/s 2(b) of M.P. Adhiniyam. It is for the reason that Section 24(2) of the R.D.B. Act does not specify M.P. Adhiniyam alongwith other Acts which are specifically mentioned in Sub-section (2) of Section 34. In other words, Section 34(2) of R.D.B. Act which is in the nature of saving of an action does not include within its fold the action taken under M.P. Adhiniyam and hence, any action taken under the M.P. Adhiniyam will not be saved. It will be thus, hit by Section 34(1) of R.D.B. Act which has overriding effect on all actions taken under any other Acts.

In Unique Butyle (supra), it was observed by Their Lordships that:

9. Section 34 of the Act consists of two parts. Sub-section (1) deals with the overriding effect of the Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. Sub-section (1) itself makes an exception as regards matters covered by Sub-section (2). The U.P. Act is not mentioned therein. The mode of recovery of debt under the U.P. Act is not saved under the said provision, i.e., Sub-section (2) which is of considerable importance so far as the present case is concerned. Even a bare reading therein makes it clear that it is intended to be in addition to and not in derogation of certain statutes; one of which is the Financial Act. In other words, a Bank or Financial Institution has the option or choice to proceed either under the Act or

under the modes of recovery permissible under the Financial Act. To that extent, the High Court's conclusions quoted above were correct. Where the High Court went wrong is by holding that proceedings under the U.P. Act were permissible, U.P. Act deals with separate modes of recovery and such proceedings are not relatable to proceedings under the Financial Act.

Thus, the case of Unique Butyle (supra), was concerned with a Banking Company or a Financial Institution as defined under the Act of 1993 and U.P. Public Money (Recovery of Dues) Act, 1972 whereas in the case at hand the SIDC is not a Banking Company under Adhiniyam, 1987, and though a Financial Institution under the Act of 1951, but has not been notified as a "financial institution" under the Act of 1993.

In view whereof the principle of law laid down in the cases of Unique Butyle and Santosh (supra), in the considered opinion of this Court, are not attracted in the case of a State Financial Corporation such as the SIDC.

At this juncture attention is drawn to the judgment rendered in Ramsharan Mittal and Ors. v. The State of M.P. and Ors. W.P. No. 336/2004, wherein the learned Single Judge while upholding the contentions of the petitioners therein has quashed the revenue recovery proceedings under Adhiniyam, 1987 resorted to by the SIDC. It is, however, stated at bar that the said verdict is under challenge in a writ appeal and, therefore, the learned Counsel for the parties refrain from placing reliance on the judgment rendered in Ramsharan Mittal (supra).

In view of above, the contention that the action initiated by respondent No. 1 for recovery of its dues under Adhiniyam, 1987 is without jurisdiction has no force and is hereby negated.

Now coming to the next aspect as to whether the respondent No. 4 in W.P. 12005/2005 was within his right to have issued a notice for arrest and committing to civil prison vide Annexure P-2.

It is not in dispute that the revenue recovery certificate emanated under Adhiniyam, 1987 and the Rules made thereunder, viz., The M.P. Lok Dhan (Shodhya Rashion Ki Vasuli) Niyam, 1988. Rules 5 and 9 thereunder stipulates:

5. Procedure for issuing demand notices and warrants of attachment.- (a) The Recovery Officer shall follow the same procedure for issue of process and conduct of distraint proceedings as laid down under the Madhya Pradesh Land Revenue Code, 1959 and rules made thereunder.

(b) On receipt of a recovery certificate from the Authority, the Recovery Officer shall proceed to register a case immediately and issue demand notice to the debtor in Form II in the manner prescribe in the Madhya Pradesh Land Revenue Code, 1959 and rules made there under, within a period of fifteen days.

(c) If the debtor fails to deposit the amounts due within the period stipulated in the demand notice, the Recovery Officer shall issue notice to the Guarantor in

Form III.

(d) A copy of every demand notice or warrant of attachment issued by a Recovery Officer shall be endorsed to the Authority whose dues it purports to recover.

(e) On receipt of a Demand Notice or warrant of attachment, the person may deposit the amount due either with the authority from which he had taken the loan or the Recovery Officer.

Procedure to be followed in respect of executed/un executable Recovery Certificates.-- (a) After the amounts specified in the recovery certificate have been recovered from the concerned person(s), the Recovery Officer shall advise the concerned Authority immediately of the same by giving him intimation in Form VI indicating also details of amounts recovered by him directly, and the amounts deposited by the person(s) with the Authority and reported to him in Form IV.

(b) Where the Recovery Officer after execution of the recovery process has come to the conclusion that the amounts mentioned in the Recovery Certificate filed by the concerned Authority cannot be recovered, in part or full, for any reason, he shall also intimate the same to the Authority in Form VI. The Authority shall, if he has knowledge of realizable assets with the person(s) guarantor(s), bring these to the attention of the Recovery Officer. In the event the Authority is unable to locate other assets or fails to respond within three months from receiving Form VI from the Recovery Officer, the Recovery Officer shall return the certificate to the concerned Authority with his comments.

Learned Counsel appearing for respondent No. 1 the SIDC is at loss to show a provision regarding arrest and committing to a prison. The show-cause notice (Annexure P-2) being not tenable in the eyes of law is hereby set aside.

In result, W.P. No. 12005/2005 is partly allowed, whereas, W.P. No. 667/2010 is dismissed. However, no costs.