

(1995) 06 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1691 of 1990

Chemicot India Private Limited and Another

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 05-06-1995

Acts Referred:

Citation : (1999) 95 CompCas 418 : (1996) 2 PLJR 106

Hon'ble Judges : Radha Mohan Prasad, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Subhro Sanyal, for the Appellant; Shankar Prasad and Deepak Kumar Sinha, for the Respondent

Judgement

This Judgment has been overruled by : Bihar State Financial Corpn. and Others Vs. Chemicot India Pvt. Ltd. and Others, (2006) 4 BC 132 : (2006) 133 CompCas 338 : (2006) 8 SCALE 525 : (2006) 7 SCC 293 : (2006) 5 SCR 312 Supp

Gurusharan Sharma, J.—Chemicot India Private Limited, a company, registered under the Companies Act, 1956, and a small scale industrial unit, registered with the Directorate of Industries, Government of Bihar, has filed this writ application under Articles 226 and 227 of the Constitution of India for issuing an appropriate writ/order/direction against the respondents for their refusal to release term loan of Rs. 15,00,000 (fifteen lakhs) after approving the expansion project of the petitioner-company.

2. The Bihar State Financial Corporation (hereinafter to be referred to as "the Corporation") is an establishment under the State Financial Corporations Act, 1951. The petitioner-company submitted plan/project for sanction of loan to the Corporation. The said project was approved and the Corporation sanctioned a term loan of Rs. 20.80 lakhs, additional term loan of Rs. 5.20 lakhs and 8/9 lakhs for setting up an unit for manufacture of absorbent cotton. Necessary loan agreements were duly executed and registered mortgaging the properties of the petitioner-company described in the schedule thereto.

3. The petitioner-company decided to expand the existing unit and on August 17, 1987, made an application to the Corporation for sanction of an additional term loan of Rs. 20.10 lakhs. By order dated March 30, 1988, the managing director of the Corporation sanctioned an additional term loan of Rs. 15 lakhs to the petitioner-company on certain terms and conditions, which were incorporated in the agreement dated March 30, 1988. The petitioner-company was asked to produce registration certificate from the Director-General of Technical Development (DGTD) in terms of clause 24 of the agreement, which provides as under :

"The concern shall have to submit DGTD registration certificate before legal documentation".

4. On personally approaching the DGTD authority in respect of the formalities for getting registration certificate the petitioner-company was informed that it being a SSI unit was not entitled to get the aforesaid registration certificate. Further the product of the petitioner was strictly reserved for SSI sector under the provisions of the Industries (Development and Regulation) Act, 1951. The petitioner-company accordingly informed the managing director of the Corporation that it being a SSI unit, already registered with the Directorate of Industries, Patna, was not entitled to get DGTD registration certificate and as such it was impossible on its part to produce the said registration certificate.

5. Thereafter, by office letter, dated May 19, 1988, the respondents waived the requirement of the DGTD registration certificate as required under Clause 24 of the agreement and asked the petitioner-company to come to the head office of the Corporation at Patna for registration of the agreement positively within May 25, 1988. Accordingly, on May 23, 1988, the documents were registered and this act of the Corporation amounted to waiver of the said clause 24 of the agreement. Surprisingly again, the petitioner-company was asked to produce DGTD certificate although as per the petitioner-company the requirement of clause 24 of the agreement was waived and the documents were already registered. The authorities insisted on producing the said certificate as a condition precedent for release of the loan and release of the said term loan amount was withheld for non-production thereof.

6. According to the petitioner-company after waiving the said condition contained in Clause 24 of the agreement, the assistant general manager was not justified to insist again on production of the said certificate, which was impossible to be complied with as the petitioner-company was not legally entitled to the said registration certificate. Further, after registration of the documents, the assistant general manager of the Corporation cannot insist upon the production of the DGTD certificate and it is incumbent upon the Corporation to release the term loan forthwith. The DGTD registration certificate is not granted to any SSI unit and in any event, the question of granting the said certificate in respect of the product especially reserved for SSI sector under the Industries (Development and Regulation) Act, 1951, does not and cannot arise at all. Further, as the

petitioner-company has invested less than Rs. 35 lakhs on its plant and machinery, it comes within the purview of SSI and it cannot be registered with the DGTD.

7. According to the petitioner-company the main requirements for registration with the DGTD are, namely, (a) The activity is a non-schedule industry, (b) the number of workers employed using power is less than 50 or 100, respectively, (c) the investment in fixed assets is up to Rs. 5 crores subject to certain conditions, (d) the item is not reserved for public sector, (e) the item is not reserved for small scale sector, (f) the item is not covered under Schedule 1 and Schedule II of the Government Notification No. 629(E), dated May 50, 1989, (g) the industrial undertaking is not located or proposed to be located within the restrictive area and (h) the applicant is neither an MRTP nor FERA company. The petitioner-company does not fulfil the aforesaid requirements and, therefore, the provisions of the registration with the DGTD shall not apply to it.

8. The respondents also asked the petitioner-company to make payment of a sum of Rs. 4,65,999 which the petitioner owed to the Corporation.

9. A counter-affidavit on behalf of the respondent-Corporation has been filed stating, inter alia, therein that the petitioner-company issued three cheques amounting to Rs. 1.20 lakhs odd towards the dues of principal and interest and thereafter the Corporation sanctioned a loan of Rs. 15 lakhs to it and agreement was executed, but the said three cheques were dishonoured and thereafter in spite of repeated demands made by the Corporation, the petitioner-company did not make any payment towards the principal and interest and the total dues of the Corporation swelled to approximately about Rs. 45 lakhs as on February, 1989. u/s 10 of the Industries (Development and Regulation) Act, 1951, it is mandatory for the owner of an industrial unit to get registration certificate from the Director-General of Technical Development, an authority appointed u/s 25 of the Act and in case no such certificate is obtained and produced by an industrial undertaking, then serious consequences under the said Act may follow and the Central Government has even power to take over the management and control of the said industrial undertaking and the result would be that the Corporation may have to lose its security altogether and would not be in a position to realise its dues. It is totally false to say that the respondent-Corporation waived the requirements of clause 24 of the said agreement relating to production of DGTD certificate. It is also totally false to say that the value of the plant and machinery of the petitioner-company is less than Rs. 55 lakhs ; rather it is more than Rs. 45 lakhs, excluding the cost of diesel generator and as such DGTD certificate was mandatory.

10. In its reply, the petitioner-company contended that the Corporation never took the plea that the loan could not be sanctioned for non-payment of principal and interest of the earlier loan and this plea taken herein is an afterthought and contrary to and inconsistent with the records. In view of the decision of the standing group committee the sanction of term loan in question has no nexus

with the payment of principal and interest of the earlier loan. The then Branch Manager of the Corporation at Deoghar requested the petitioner-company to issue three blank cheques without mentioning the date and amount so that after sanction of the term loan, adjustment may be made and only thereafter the amount and date shall be mentioned so that those cheques would be presented to the bank. At the time of issuance of the blank cheques the petitioner-company had made it clear to the branch manager that it had no fund to issue any cheque, but in view of the aforesaid assurance and representation, those cheques were issued. In view of the said representation and on good faith those blank cheques, only putting signature thereon were handed over to the said branch manager. It appears that in spite of the aforesaid assurance and representation the branch manager filled up those three blank cheques and put the amount and date in his own hand and sent them for encashment.

11. It has further been contended that at any rate obtaining of DGTD registration certificate could not be mandatory ; inasmuch as the petitioner is not entitled to get the said certificate in view of the aforesaid requirements and that Clause 24 of the agreement was inserted without appreciating the requirements in this regard.

12. Since the disputed questions relating to investment of amount towards plant and machinery by the petitioner-company, status of the petitioner-company and the requirement of registration certificate from the Director-General of Technical Development (DGTD) cannot be ascertained in this writ application under Articles 226 and 227 of the Constitution of India, we refrain from going into those questions.

13. As per Clause 24 of the agreement dated March 30, 1988, the petitioner-company was required to submit DGTD registration certificate before legal documentation. The authorities of the corporation, on the representation of the petitioner-company that they were unable to get registered with the Director-General of Technical Development and to produce such registration certificate, on May 25, 1988, allowed the legal documentation of the petitioner-company to be completed. This act of the Corporation, in our opinion, amounted to waiver of the requirement of Clause 24 of the agreement.

14. Counsel for the Corporation could not answer our query as to how and why the Corporation allowed legal documentation to be completed without production of DGTD registration certificate by the petitioner-company and once legal documentation was completed, whether the corporation is entitled to withhold disbursement of the term-loan already sanctioned and to insist upon production of the said DGTD certificate by the petitioner-company thereafter.

15. In our opinion, as per Clause 24 of the agreement, production of the DGTD registration certificate was a condition precedent for legal documentation and once it was waived by the authorities of the Corporation, there was no obstruction thereafter as per the agreement in disbursement of the sanctioned

term loan to the petitioner-company.

16. Admittedly, the petitioner-company has taken loans from the Corporation earlier for setting up a unit for manufacture of absorbent cotton and certain instalments of repayment of the said amount of loan along with interest are due against it. Undoubtedly, the Corporation is entitled to recover its legal dues from the petitioner-company in accordance with the prescribed procedure under the law, including adjustment, if any. In our opinion, therefore, the demand of the Corporation against the petitioner-company, subject to accounting, is quite justified.

17. In our view, in the facts and circumstances of the case, the Bihar State Financial Corporation is not justified in withholding disbursement of the aforesaid term loan of Rs. 15,00,000 (15 lakhs) already sanctioned to the petitioner-company on the ground that the registration certificate of the Director-General of Technical Development has not been produced by it.

18. In the result, this writ application is disposed of with a direction to the respondent-Corporation to disburse the amount of term loan aforesaid to the petitioner-company forthwith in accordance with law.

Radha Mohan Prasad, J.

19. I agree.