

(2008) 07 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 27677 of 2007

Deen Dayal Medical and Educational Trust

APPELLANT

Vs

Housing and Urban Development Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : AIR 2009 Mad 81 : (2009) 1 MLJ 875

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : K. Selvaraj, for the Appellant; K.S. Sundar, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—This Writ Petition has been preferred by an Educational Trust praying for a Writ of Certiorarified Mandamus to call for the records relating to the order of the 2nd respondent dated 24-2-2007 proceedings No. HUDCO/DDMET/2007/33360 and the consequential order of the third respondent dated 15-6-2007 in proceedings No. HUDCO/OW/DDMET/2007, quash the same and consequently direct the respondents to process the application of the petitioner for loan dated 20-7-2006.

2. Factual details as culled out from the affidavit filed in support of the Writ Petition are as under:

(a) The petitioner is an Educational Trust functioning at Chennai and they have submitted an application on 17-7-2006 to the fourth respondent for availing loan for construction of building and purchase of equipments for the proposed medical college. The fourth respondent called upon the petitioner to pay the process fee and to apply in the prescribed format and accordingly, the petitioner made an application along with the required documents and the same were acknowledged by the respondents. Subsequently, the Inspection Team of the respondents visited the college on 20-8-2006 and verified the existing buildings, lands,

hospital etc. and submitted its report to the respondents. However, the petitioner did not receive any communication from the respondents and as such, the petitioner made a series of representations to the respondents and ultimately the second respondent as per proceedings dated 29-1-2007 informed them that they are unable to consider the request of the petitioner for grant of loan. Since no reasons were found mentioned in the said proceedings, the petitioner submitted a letter dated 14-2-2007 requesting the respondents to give reasons for such a rejection. The second respondent thereafter as per letter dated 24-2-2007 informed the petitioner about material discrepancy observed by the Inspection Team and their opinion that the proposal did not merit acceptance. Subsequently, the third respondent as per communication dated 15-6-2007 informed the petitioner that they are not in a position to consider the application of the plaintiff and as such, requested them to treat the matter as closed. Aggrieved by those two orders dated 24-2-2007 and 15-6-2007, the petitioner has filed the Writ Petition.

(b) The fourth respondent has filed a counter-affidavit for and on behalf of all the respondents and in the said counter-affidavit, the fourth respondent has detailed the reasons which made them to reject the loan application submitted by the petitioner. The main reason for rejection of the loan application was the lack of financial viability as well as the improper project revenue stream. There were other reasons also as mentioned in the counter-affidavit to justify their stand that the petitioner was not entitled for loan from the respondents as a matter of right.

3. In the above factual background, I have heard Thiru. Selvaraj, the learned Counsel appearing for the petitioner and Thiru K. Sounder, the learned Counsel appearing for the respondents.

4. The grievance of the petitioner pertains to the rejection of their application for loan. The application submitted by the petitioner was originally rejected as per order dated 29-1-2007 without any reason and subsequently, as per proceedings dated 24-2-2007, the respondents intimated the petitioner that due to certain material discrepancy observed during the inspection made by the Regional Office Officers and the report submitted thereafter, it was felt that the proposal did not merit consideration and accordingly, the same was rejected. Subsequently, as per proceedings dated 15-6-2007 the respondents have given detailed reasons for rejection of the loan application.

5. The learned Counsel appearing for the petitioner contended that the reason that there were material discrepancies found in the inspection made by the RO members were no more valid on account of the subsequent report made by the Mission Member on 10-10-2006, wherein he had withdrawn his earlier supplementary note dated 5-10-2006.

6. It is found from the materials available on record that the proposal given by the petitioner was scrutinized by the Inspection Team and the respondents, and

in the said report, there were certain adverse remarks against the petitioner. It is not for this Court to assess the merits or otherwise of the observation made in the Inspection Report as the entire matter pertains to the realm of contract. The petitioner is admittedly an applicant for financial assistance and the first Respondent is a Bank. The matter in question is a commercial transaction between the Bank and a customer. It is for the Bank to decide as to whether it has to extend financial assistance to a particular customer and in that process, the Bank has to consider so many aspects, including the past transactions of the customer as well as his financial background. The matters which weighed with the Bank in rejecting the proposal cannot be subjected to judicial review like an Appellate authority. In financial matters, especially in banking transactions, review by this Court is very limited and merely because the first Respondent Bank is a State within the" meaning of Article 12 of the Constitution of India, it cannot be said that all the transactions of the; Bank are liable for judicial scrutiny.

7. In the counter-affidavit filed by the fourth respondent, there were clear indications that the project revenue stream was not proper and financial viability was lacking and all these prompted the respondents to reject the application for financial assistance submitted by the petitioner. Sufficiency of those reasons for rejecting the application is not a matter to be considered by this Court as if this Court has got appellate jurisdiction in respect of the banking transactions of the first Respondent.

8. The learned Counsel appearing for the petitioner vehemently contended that the petitioner has paid a sum of Rs. 5,00,000/-as process fee and as such, the respondents should have taken the matter with little seriousness and in the alternative, prayed for remitting the matter to the respondents for reconsideration. Merely because the petitioner has paid Process Fee, it cannot be said that the respondents are bound to sanction financial assistance. There was no promise made by the respondents that the application submitted by the respondents would be considered favourably and as such, there is no question of promissory estoppel.

9. It is true that the first Respondent is a State and they should act in a non-arbitrary manner. The respondents are also expected to act in a fair manner. The petitioner was not able to demonstrate any such unfair treatment by the respondents.

10. The learned Counsel appearing for the petitioner relied on the Judgment of the Apex Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and submitted that altogether different reasons are found mentioned in the counter and none of those reasons were found in the impugned Order. I do not find any merit in the said contention in view of the fact that even in the impugned Order issued by the respondents, they have demonstrated that the petitioner was not entitled to the loan as requested by them.

11. It is trite that the jurisdiction of the High Court under Article 226 of the Constitution of India is very limited in respect of banking transactions as well as of financial institutions. Each Bank have got their own guidelines and norms for grant of loans and other financial assistance. Such norms often would vary from Bank to Bank. Many, factors do weigh with the banks either for grant or for refusal of loans. The reasons given by the Bank, in case demonstrated to be incorrect, still judicial review is very limited in respect of those decisions, as the Courts cannot substitute its decision in the place of the decision so taken by the banks.

12. The Apex Court in Karnataka State Industrial Investment and Development Corporation Ltd. v. Cavalet India Ltd. and Ors. reported in 2005 (3) Scale 414, considered the extent of judicial review in respect of transactions of financial institutions and summarized the legal position thus:

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial Corporation and seek to correct them. The Doctrine of fairness does not convert the writ Courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ Court has no say except in two situations;

(a) There is a statutory violation on the part of the Corporation or

(b) where the corporation acts unfairly i.e. unreasonably.

(iii) In commercial matters, the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however more prudent, commercial or business like it may be, for the decision of the financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

In view of the aforesaid reasons, I am of the view that no interference is called for in the proceedings impugned in the writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently M. P. No. 2/2007 is also dismissed.