(2004) 09 PAT CK 0009

In the Patna High Court

Case No : C.W.J.C. No. 194 of 2002

Dr. G.N. Singh APPELLANT

Vs

The Bihar State Financial Corporation and Others RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Citation : (2004) 4 PLJR 433

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—This writ petition is filed challenging the decision of the Bihar State Financial Corporation as communicated to the petitioner by letter, dated 13.11.2001 (Annexure 8) rejecting his request for extension of time for payment of the One Time Settlement amount. The facts of the case are brief and without controversy. The petitioner is a doctor with specialisation in radiology. In the year, 1983-84 he took a loan of Rs. 3.92 lacs from the Corporation for purchase of some ultra sonography equipments. He defaulted in the repayment of loan as a result of which the dues accumulated with the accrual of interest.

2. In July, 1993, the Corporation introduced a scheme of One Time Settlement of dues. The petitioner made an application under the scheme making payment of Rs. 1.58 lacs alongwith the application, as required under the terms of the scheme. His application was accepted and by letter, dated 22.11.1995 (Annexure 1) Corporation intimated him of its offer to settle the entire dues on payment of Rs. 10.75 lacs. In the letter he was allowed two modes of payment, one being payment of the entire amount of Rs. 10.75 lacs at one time by 23.11.1995 and the other being payment of the amount in instalments as specified in the letter so that the One Time Settlement amount was paid fully by 12.5.1996, i.e., within six months from the date of the Corporation''s decision to accept his request for one time settlement. In that letter it was made clear that in case of failure to make the payments as stipulated in the letter, the original agreement would once

again become operative and any payment(s) made against the amount of One Time Settlement would be deemed to have been made towards the liquidation of the dues, alongwith the interest, under the original agreement.

3. It is an admitted position that the petitioner was unable to make full payment of Rs. 10.75 lacs by 12.5.1996. In fact, prior to 12.5.96 he was able to pay only a small fraction of the One Time Settlement amount. He made an application for extension of the time for depositing the One Time Settlement amount but his application was rejected and he was informed accordingly by letter, dated 9.2.1998 (Annexure 4). Nevertheless, according to the petitioner''s case he was given to understand by the Branch Manager of the Corporation that his request for extension of time may still be considered favourably if he deposited the full amount of One Time Settlement. Acting on the basis of the assurance given by the Branch Manager, the petitioner made full payment of Rs. 10.75 lacs in the following manner:

2.8.1995 :

Rs. 1,58,000/-

27.3.1996 :

Rs. 95,000/-

15.5.1996 :

Rs. 65,000/-

2.11.1996 :

Rs. 1,15,000/-

28.12.1996 :

Rs. 3,10,000/-

31.3.1996 :

Rs. 50,000/-

2.11.1997:

Rs. 2,82,000/-

Total

Rs. 10,75,000/-

4. Thus, though according to the letter of acceptance he was required to pay the full amount by 12.5.1996, he paid off the amount by 2.11.1997, that is, after a delay of about a year and a half. On payment of the full amount the Branch Manager forwarded his case for extension of time to the head office with a strong recommendation in the petitioner''s favour from his end by letter, dated

27.11.1997 (Annexure 3). The petitioner also made a number of representations before the Corporation for extending the time for payment and for accepting the payments made by him till 2.11.1997 and to treat the loan account as finally settled and closed. The Corporation, however, rejected his request for extension of time and by the impugned letter, dated 13.11.2001 intimated him that his dues (even after taking into account the payments made by him) stood at Rs. 16.5 lacs as on 31.8.2001. The petitioner was asked to liquidate the dues indicated in the impugned letter within fifteen days on threat of legal action.

5. Had the matter rested only with the acceptance letter, dated 22.11.1995 and the terms and conditions stipulated therein, the decision of the Corporation to reject the petitioner''s request for extension would have been unexceptionable and no interference would have been warranted by this court. But it appears that around the same time the Corporation accepted the petitioner''s request for One Time Settlement of his dues, it also took the decision, on request from many loanees who were eager to settle their respective accounts under the scheme to extend, in appropriate cases, the period for payment of the One Time Settlement amount, significantly relaxing the terms of the original scheme. At Annexure 9 is the office order issued by the Managing Director under his memo no 43121, dated 3/4.11.1995. The office order reads as follows:

In many cases of One Time Settlement, requests were received for allowing time beyond six months for payment of the amount as fixed under O.T.S. scheme. This matter was placed before the Board on 29.9.95 vide Item No. 11909 for consideration and the Board has resolved that in case of default by the promoter to clear the total payment within six months as stipulated for the O.T.S. scheme, the rate of interest to be charged on the balance amount (i.e. unpaid amount) during the extended period beyond six months will be decided by the Executive Committee on a case to case basis.

The Board however felt that normally such extension should not be granted. Therefore in very genuine cases such proposals may be referred to the H.O. for decision.

(emphasis added)

6. On behalf of the petitioner it is asserted and it is not denied by the Corporation that in a number of cases the time granted initially in the acceptance letter for payment of the One Time Settlement amount was later extended on the request of the concerned loanees. In case of the petitioner no reason whatsoever has been assigned for not extending the time for payment of the One Time Settlement amount. The petitioner might have been a bad loanee and a chronic defaulter before the acceptance of his request for One Time Settlement but it will not be fair and reasonable to reject his request for extension of time on that ground. His past conduct could only be considered for granting his request for One Time Settlement of his dues. But once his request for One Time Settlement was accepted any further request for extension of time could only be considered

in the light of the payments/defaults made by him in payment of the agreed amount. In this regard it is true that he did not make the payment within the fixed time but it is equally true that he did make payment of the One Time Settlement amount as determined by the Corporation albeit after a delay of about a year and a half.

7. The Branch Manager who was in direct dealing with the petitioner also made a strong recommendation for extension of time in his favour. I am, therefore, satisfied that it was a fit case for grant of extension of time for payment of the One Time Settlement amount and the Corporation acted quite unreasonably, unfairly and unjustly in rejecting his request even without assigning any reasons.

8. It may be noted here that according to the stipulations in the acceptance letter after the first instalment of Rs. 2,68,750/-, the balance amount was to be paid off by 12.5.1996 alongwith 16% PA interest chargeable, on the remaining amount calculated on day to day basis. Further, in the office order, dated 3/4.11.1995 it was stated that the rate of interest to be charged on the balance amount, (that is, unpaid amount) during the extended period beyond six months would be decided by the Executive Committee on a case to case basis. It would be, therefore, in the fitness of things for the Corporation to extend the period of payment of the One Time Settlement amount in the case of the petitioner till 2.11.1997 with a suitable enhancement in the rate of interest over 16% for the period falling after 12.5.96.

9. On hearing Mr. Manik Vedsen, counsel for the petitioner and Mr. Y.V. Giri, Senior Advocate representing the Corporation, the Corporation is directed to grant to the petitioner extension of time till 2.11.1997. For the period after 12.5.1996 the Corporation may charge interest at a rate slightly higher than 16% and may fix an appropriate rate of interest to be charged on the balance (out of the agreed amount of Rs. 10.75 lacs) remaining unpaid after 12.5.1996. A statement in regard to the amount of interest should be given to the petitioner within one month from today. The petitioner must pay off the additional amount of interest demanded by the Corporation within two months from the date of service of a copy of the statement on him whereupon the Corporation shall take the loan account as fully settled and closed. In the result, this writ petition is allowed subject to the observations and directions made above.