

(1997) 09 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12856 of 1997

Gee Kay Textiles Ltd. and Others

APPELLANT

Vs

Haryana Industrial Development Corporation and Others

RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

State Financial Corporations Act, 1951 — Section 24, 29

Citation : AIR 1998 P&H 40 : (1998) 94 CompCas 771 : (1998) 2 ILR (P&H) 155 : (1997) 117 PLR 768 : (1997) 4 RCR(Civil) 486

Hon'ble Judges : Jawahar Lal Gupta, J;B. Rai, J

Bench : Division Bench

Advocate : Harbhagwan Singh and Anju Arora, for the Appellant; Kamal Sehgal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Is the action of the respondent in invoking the provisions of Section 29 of the State Financial Corporations Act, 1951, and taking possession of the factory of petitioner No. 1 illegal ? This is the short question that arises for consideration in this case. A few facts may be noticed.

2. Petitioner No. 1 is a company engaged in the manufacture of cotton yarn. Petitioner No. 2 is the union of employees. Petitioner No. 3 is the president of the union. Petitioner No. 1 took loans from the Haryana State Industrial Development Corporation as well as the Haryana Financial Corporation. The petitioner committed default in payment. Vide letter dated May 26/28, 1997, respondent No. 1, the Haryana State Industrial Development Corporation Limited, informed the petitioner that it had "failed to comply with the terms of agreement and . . . made default in repayment of instalments and interest, etc., . . . account continues to be irregular in spite of several letters/reminders . . . ". In spite of reminders, the dues had not been cleared and as on February 28, 1997, an amount of Rs. 1,30,34,000 was due. The petitioner was called upon to pay the amount "at the earliest possible time but not later than

June 18, 1997." It was warned that in case of failure, "the corporation shall have no other way except to proceed against you u/s 29 of the State Financial Corporations Act, 1951 . . . without any further notice to you." By another letter of June 18, 1997, the respondent informed the petitioner that its proposal for grant of time to clear the arrears has been rejected. The payment should be made as directed, vide notice dated May 28, 1997, failing which it "shall be constrained to take over possession of the unit u/s 29 . . ." Vide letter dated June 25, 1997, the petitioner informed the respondent that its machinery had been overhauled and that it will "be able to achieve the target daily production of about 6,000 kg. which will certainly improve the cash accruals of the company" so as to enable it to meet its obligations. In order to prove its bona fides, the petitioner enclosed four post-dated cheques for Rs. 5 lakhs each. It also promised to clear the other dues. The petitioner requested the respondent to accept its proposal for making the payments as mentioned in the letter.

3. The respondent did not accept the petitioner's request and proceeded to take possession u/s 29. Aggrieved by this action, the petitioners have filed the present writ petition. It is alleged that the action is violative of the provisions of Section 24 of the State Financial Corporations Act, 1951. Even the head office of the first petitioner has been closed. The proposals put in by the petitioner were wrongly rejected. As a result, the workers will be retrenched. In this situation, it has been prayed that the action u/s 29 of the State Financial Corporations Act, be rescinded and the possession of the factory be restored to the petitioner.

4. This case was listed for preliminary hearing on September 2, 1997. On that day, Mr. Kamal Sehgal, advocate, had appeared and complained that in spite of having entered a caveat on behalf of the first respondent, the notice of the petition and a copy thereof had not been given to him. Learned counsel for the petitioners admitted that a caveat had been entered and he furnished a copy of the writ petition to Mr. Sehgal. The case was adjourned to September 9, 1997. On that day, Mr. Sehgal appeared for the first respondent and pointed out that the petitioner had made no payment since February, 1994, and the defaults had been continuously committed. He further pointed out that cheques for an amount of Rs. 40 lakhs as given by the petitioner had been dishonoured. In this situation, the respondent had no alternative but to proceed to take action u/s 29,

5. On behalf of the petitioner, the factual position was not controverted. It was only pleaded that the petitioner had made payment of a total amount of Rs. 92 lakhs. There was a fire in the factory in July, 1997. As a result, the production was affected. In the circumstances of the case and in view of the provisions of Section 24 of the State Financial Corporations Act, the respondent should not have taken the extreme step of resorting to the provisions of Section 29 of the State Financial Corporations Act. It was also pointed out that even the registered office of the company had been sealed,

6. On behalf of the respondent, it was contended by Mr. Sehgal that the petitioner was given an opportunity to make the payment. He was given notice.

In reply to the notice, the petitioner had given post-dated cheques. These were dishonoured. It is only after the petitioner had failed to honour his commitment or make the payment that the impugned action was taken.

7. It is true that Section 24 provides that the board shall act on "business principles". It shall have due regard to the interests of the industry, commerce and the general public. The very purpose of establishing a financial corporation is to finance the industry. However, a fact which cannot be ignored is that the financial corporations deal with public money. They have, thus, to act on "business principles". While a corporation cannot act like the traditional money-lender who was crafty and exploited the helpless, it cannot ignore its own interests either. It is with this objective that the corporation has been armed with a right to take over the management and possession of the industrial concern which makes "any default in repayment". The corporation does not have to wait till the concern disposes of all the assets and makes the recovery impossible. It does not have to blindly accept the promises made by the industrial concern. It has to remain vigilant and take over possession before it is too late,

8. What is the position in the present case ? Admittedly, the petitioner has made defaults, In the letter dated May 26, 1997, respondent No. 1 had clearly pointed out to the petitioner that there was a default regarding payment of Rs. 130.34 lakhs. On behalf of the petitioner, this allegation has not been denied. Still further, vide its letter dated June 25, 1997, the petitioner had given four cheques for Rs. 5 lakhs each which were dated July 10, July 30, August 15, and August 30, 1997. Admittedly, these cheques have been dishonoured. In such a situation, the respondent had no alternative except to take immediate steps to secure its dues. This is precisely what has been done in the present case. It cannot be said that the action is contrary to "business principles" or that the respondent has not shown regard "to the interests of industry".

9. Mr. Harbhagwan Singh placed reliance on the decisions of their Lordships of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and U. P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. [1993] 78 Comp Cas 408 ; AIR 1993 SC 1435.

10. In Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, it was found by their Lordships that "Admittedly, the entire loan was not disbursed If the corporation refused to release the amount at a time when the unit is nearing completion or is ready to start functioning, then it falls short of capital and it is bound to land itself in trouble. This is what happened in this case." (para. 15, col. 2 ; page 12). Such is not the situation in the present case. As for the latter case, the following observations in para. 10 are very instructive (page 414):

"We agree that the corporation is not like an ordinary money lender or a bank which lends money. It is a lender with a purpose--the purpose being promoting the small and medium industries. At the same time, it is necessary to keep

certain basic facts in view. The relationship between the corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest ; it merely amounts to transferring public money to private account. The fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it."

11. The matter was recently considered by a Full Bench of this court in Haryana Financial Corporation Ltd., Chandigarh Vs. Bags and Cartons and another, It was observed as under (para. 12, page 708) :

"There is a clear rationale for this provision. Today, materialism has come to have its sway. The business and industry talk in "money-syllables". To some, even "matrimony" is a "matter of money". The industrialist has the tendency to live within his "financer's" means. The familiar pattern is--take a loan and go sick. Many find it against their "principle to pay interest and against their interest to pay the principal". It is in order to meet such a situation that Parliament has armed the corporation with a power to not only invoke the jurisdiction of the court u/s 31 but even to take over the management and possession of the industrial concern u/s 29 and to transfer it by way of lease or sale so as to recover its dues."

12. In the facts and circumstances of this case, it cannot be said that the corporation has acted unfairly. The respondent is dealing with public funds. It is in the position of a trustee. It has to manage its affairs efficiently. It is true that in a certain case where grant of time can help the sick unit to revive, the corporation can wait. However, the discretion has to be exercised by the authority and not by this court. It is like the use of an artificial respirator for a patient. Giving it to a person who cannot be revived while depriving another who has a chance would not be fair. In the circumstances of this case, when the petitioner could not even honour its commitment and the cheques-given by it had bounced, the corporation was justified in taking the impugned action.

13. It was contended that even the registered office of the petitioner has been sealed. It is a part of the property which belongs to the petitioner and the corporation needs it to recover its dues and it cannot be said that it could not have been taken into possession, Equally, it appears that the excuse regarding fire was only made out to justify the default. No evidence to support this was even produced.

14. No other point was raised.

15. In view of the above, no ground for interference is made out. The writ

petition is wholly lacking in merit. It is, consequently, dismissed. No costs.