

(2007) 05 AHC CK 0071
In the Allahabad High Court

Govind Printing Works and Another

APPELLANT

Vs

U.P. State Handloom Corporation Ltd. and Others

RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

COMPANIES ACT, 1956 — Section 617
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 24

Citation : (2007) 4 AWC 3513

Hon'ble Judges : Shishir Kumar, J;R.P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.P. Misra and Shishir Kumar, JJ.—The present writ petition has been filed in the nature of certiorari quashing the recovery certificate and further quashing the notice dated nil Issued by respondent No. 5 contained as Annexure-3 to the writ petition. Further a writ in the nature of mandamus directing the respondents not to take any coercive method against the petitioners.

2. The petitioners are engaged in the business of printing and is carrying on its business by dyeing/printing of cloths which are sent for job work by different companies and corporations. The respondent No. 1 U.P. State Handloom Corporation Limited is also one of the concern which sends towels, sarees, malmal for job work of dyeing, printing, bleaching etc. to the petitioners and pays the job charges after completion of their work. The petitioners are dealing with the respondents since past about 15 years. According to the respondent No. 1 the petitioners' concern owes a sum of Rs. 3,58,828.91 to the Corporation. As per communication of the respondent No. 1 dated 22.8.1997 certain malmals and borders sarees are lying with the petitioners and they are still with the petitioners which they are ready to return even today. In another statement respondent No. 1 has shown dues to the tune of Rs. 7,86,484.45 against the petitioners. The respondent itself is not clear what is the actual amount. There

was a dispute between the petitioners and the Corporation, as such, the Chief Manager (Production) directing for constitution of a Committee to go into the details of the dispute between the petitioners and the respondents regarding the amount due to the petitioners. The petitioners presented themselves before the respondents with all the details and relevant documents but the dispute was not resolved. However, inspite of the best efforts of the petitioners, the dispute was not resolved and all of a sudden the respondent No. 1 has started recovery proceeding against the petitioners. On the basis of the aforesaid recovery certificate sent to the District Magistrate, Kanpur Nagar for a sum of Rs. 21.59.588.80 is being recovered from the petitioners. Aggrieved by the aforesaid action of the respondents the petitioners filed the present writ petition.

3. Notices were issued and counter and rejoinder-affidavits have been filed, therefore, with the consent of the parties the writ petition is being disposed of finally.

4. It has been submitted by the petitioners that the respondents have placed reliance on alleged agreement executed on 8th September, 1993. Petitioner submits that certain amount is due to be paid by the respondent No. 1 to the petitioners towards printing of towels. On the other hand, the respondent No. 1 claims that certain amount is due and stock is lying with the petitioners. The dispute between the parties has not been adjudicated before any proper forum and in such situation, the petitioners submit that the respondents cannot claim any amount without having any proper adjudication of the amount. As the amount has not been quantified and liability of amount has not been fixed upon the petitioners, therefore, in view of the Division Bench judgment of this Court in the case of Ganesh Rice Mills Ltd. v. State of U.P. and Ors. 1993 EFR 549, it has been submitted in the aforesaid Judgment that the authorities are not empowered to proceed straightway to recover the amount unless and until the amount is quantified. The reliance has been placed upon paras 9, 10 and 11 of the said Judgment.

9. The claim of the Government is, in our opinion, pure and simple one for compensation in respect of the damage to gunny bags which it considers has resulted from some alleged acts or omission of the petitioner. It is clearly in the nature of a claim for unliquidated damage. There is, in our opinion, in these circumstances no right in the Government either under the agreement or under the Levy Order straightaway to proceed to recover such unliquidated damages from the petitioner without the same having been previously determined through mutual agreement, arbitration or a civil suit.

10. The view that we are taking is fully fortified by a pronouncement of the Supreme Court in the case of Union of India v. Raman Iron Foundry 1974 SC 1265. The true legal import and nature of a claim for unliquidated Lordship Bhagwati, J., speaking for the Court observed thus:

Now the law is well-settled that a claim for unliquidated damages does not give

rise to a debt until the liability is adjudicated by adjudicatory authority. When there is a breach of contract, the party which commits the breach does not co-*instanti* incur any pecuniary obligation, nor does the party complaining of the breach become entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages.

After examining several decisions both of the English Courts and of various High Courts in India, His Lordships summed up the law thus:

A claim for damages for breach of contract is, therefore, not a claim for a sum presently due and payable....

11. Further, from the affidavits filed by the parties, it is clear that there was a dispute between the parties as regards who was responsible for the gunny bags having become unserviceable. The claim of the petitioner is that it was ready and willing at all material times to return the gunny bags to the Government but the Government itself failed to take back the same even after orders to that effect had been passed by the Commissioner, Food and Civil Supplies. The petitioners' stand is that if the gunny bags have become unserviceable the same was not on account of any act or omission of the petitioners but entirely on account of the normal wear and tear to which the gunny bags were exposed because of the failure of the Government to take back the same within a reasonable time. On the contrary, the assertion of respondents in the counter-affidavit is that the gunny bags were damaged on account of the failure of the petitioners' to take care of the same. Whether the petitioners are right or the respondents, the fact remains that there was clearly a dispute between the parties as regards the claim of the Government to recover any amount from the petitioner on account of the gunny bags having become unserviceable. Now under Clause (11) of the agreement itself, there is a provision for arbitration. It provides that every dispute, difference or question touching or arising out of this agreement or the subject-matter thereof shall be referred to the sole arbitration of a person nominated or the Secretary to the Uttar Pradesh Government, Food and Civil Supplies Department whose decision thereon shall be final and binding to the parties. Admittedly, the dispute was not referred for arbitration. Instead the Government chose to determine the quantum of damages itself and thereafter demand the same on pain of the amount being adjusted against the price payable to the petitioner on account of levy rice. This was clearly arbitrary, and without any sanction of law.

5. Further submission made on behalf of the petitioners is that the petitioners had not taken any loan, advance, grant or credit enabling the respondent No. 1 to invoke the provisions of Uttar Pradesh Public Money (Recovery of Dues) Act, 1972. The respondent No. 1 according to their own admission in para 4 of the counter-affidavit, is a Government company. The loan, advance or grant given by Banking Company or Government Company are covered u/s 3(1)(b) of the Act 1972. Section 3(1)(b) is being reproduced below:

3. Recovery of certain dues as arrears of land revenue.--(1) Where any person is party:

(b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him, by a banking company or a Government company, the case may be, under a State-Sponsored Scheme;

6. From the perusal of the aforesaid section it clearly goes to show that the amount can be recovered by the Banking Company or a Government company if it is a loan, advance or grant or credit under the State Sponsored Scheme, as the petitioner has not been given any loan, advance or grant or credit under the State Sponsored Scheme. In fact the petitioners and respondents have entered Into the business transaction, therefore, the aforesaid act of the respondents are against the law.

7. As regards, agreement, petitioners submit that it was never acted upon by the parties. As according to Clause (8) of the agreement, the petitioners was to give security deposit of Rs. 50 lacs. No such deposit was ever made, as such, in view of the aforesaid fact the aforesaid agreement was not an agreement in the "eye of law. Moreover, the agreement was not registered, therefore, the same has got no evidentiary value, as such, no reliance can be placed upon the same. As regards Clause 20, the same is also barred in view of the provision of Section 24 of the Indian Contract Act. If a contract which involves in its fulfilment, the doing of an act prohibited by statute then it is void. Reliance has been placed upon a judgment in Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, In paragraph 20 of the said judgment, it has been held that If the contract between the parties is of an act prohibited by statute is void. Paragraph 20 is being reproduced below:

20. It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim *A pactis privatorum publico juri non derogatur* means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no Court can lend its assistance to give it effect. See *Mellis v. Shirley L.B.* What is done in contravention of the provisions of an Act of the Legislature cannot be made the subject of an action.

8. As the petitioners and the respondent have entered into a purely business transaction and no loan, advance or credit was given by the respondent No. 1 to the petitioners hence the agreement could not provide for recovery of any amount due as arrears of land revenue. The petitioners have also placed reliance upon a Full Bench judgment is *Smt. Sharda Devi v. State of U.P. and Ors.* AIR2001 (45) 156. The Full Bench of this Court has held that the real test is whether the banking company has made the advance under State Sponsored Scheme. The relevant paragraphs are 18 and 19. The same are being quoted below:

18. The correctness of the above quoted principle of law has never been doubted and the principle is of general application. Therefore, if the borrower is not such a person who may satisfy the requirements of various clauses of Sub-section (1) of Section 3, no certificate can be sent to the Collector to recover the amount under the provisions of the Act. If the local agent of the bank has erroneously assumed Jurisdiction and has sent a certificate even though the case is not covered by Clause (b) of Sub-section (1) of Section 3, the recovery proceedings initiated by the Collector can be challenged in proceedings under Article 226 of the Constitution, it is true that exercise of jurisdiction under Article 226 of the Constitution is discretionary in nature and the Court may refuse, to exercise discretion in favour of a person if it finds that equity is against, him or it will result in miscarriage of Justice. While exercising its powers, the Court must keep in mind the well-settled principles on which such high prerogative writs are issued. At the same time it must be kept in mind that we are governed by rule of law and all actions taken must be supported by law. It cannot, therefore", be laid down as a principle of universal application that even though the proceedings initiated for recovery of the loan as arrears of land revenue are without jurisdiction as the loan does not fall within the purview of the Act yet the Court would shut its eyes and decline to exercise Jurisdiction under Article 226 of the Constitution only on the ground that the borrower owes money to the bank. In a proper case the Court would not hesitate to issue appropriate writ as the facts and circumstances of the case may justify.

19. In view of the discussion made above, we are clearly of the opinion that a banking company can recover its dues by taking recourse to Section 3 of the Act only where the loan or advance or grant or credit has been given by it to a borrower under a State Sponsored Scheme and not otherwise. Any money advanced under cash credit limit facility by itself is not determinative of the matter as there is no prohibition under the Act for the State Government to notify such a facility as the State Sponsored Scheme. The real test is whether the banking company has made the advance, etc. under a State Sponsored Scheme.

9. In view of the aforesaid submission and circumstances, the petitioners submit that the respondents have got no jurisdiction to recover any amount as arrears of land revenue and the recovery against the petitioners is not sustainable, as such, the same is liable to be quashed. If any amount is due to the respondents as alleged by the respondents it can only be adjudicated in a proper legal forum. The provision of Uttar Pradesh Public Money (Recovery) of Dues) Act cannot be enforced in view of the facts and circumstances of the present case.

10. On the other hand, Sri Shiv Nath Singh who appear for the respondent Handloom Corporation has submitted that the Corporation has sent the clothes, materials etc. for the purposes of dyeing, printing and stitching to the petitioners but the petitioners have detained the huge quantity of clothes and did not return to the Corporation after completing the Job work. In spite of the repeated requests and reminders the clothes and materials which were sent to the

petitioners concerned have not been returned and the total cloth is amounting to Rs. 17,27,671.05. The Corporation is a Government company duly owned, controlled and financed by the Government of Uttar Pradesh. It is a registered company u/s 617 of the Companies Act. There is an agreement signed by the officers of the Handloom Corporation as well as the proprietor of the petitioners. Clause 20 of the said agreement states that the Corporation may without prejudice to any other remedy provided by this agreement, recover all dues here-in-under from the contractor as arrears of land revenue. In view of the aforesaid submissions the learned Counsel for the respondents submits that the petitioners cannot challenge the recovery certificate by means of the present writ petition and the writ petition is liable to be dismissed.

11. We have heard Sri Anurag Khanna, learned Counsel for the petitioners and Sri Shiv Nath Singh for the respondents and have perused the record.

12. From the record it is clear that petitioners were doing printing work on the basis of the clothes sent by the respondents and after printing work, the goods were returned to the respondents. It appears that there was some dispute, therefore, the recovery certificate has been issued. The question for consideration by this Court is whether the respondents can invoke the provision of Uttar Pradesh Public Money (Recovery of Dues) Act, 1972. From the perusal of the Section 3, if there is any agreement relating to a loan, advance or grant given to a person or relating to credit in respect of, or relating to hire purchase of, goods, sold to him by the State Government or the Corporation, by way of financial assistance. Sub-section (b) of Section 3 states that it may be under State Sponsored Scheme. Admittedly, no loan advance, or grant has been given by the respondents to the petitioners, as such the Public Money Recovery Act is not applicable in the present case. Though according to respondents Clause 20 of the agreement states that money can be recovered as arrears of land revenue but this is a case where the amount is not quantified even the respondents are not sure what amount is to be recovered from the petitioners. In view of Manna Khaltan's case (supra) it is clear that if a contract which involves in its fulfilment the doing of an act prohibited by the statute is void. It was a purely business transaction and no loan, advance, grant or credit was given by the respondents, therefore, we are of the view that it cannot be recovered as arrears of land revenue.

13. In Full Bench decision of this Court of Sharda Devi (supra), it has been held by the Full Bench of this Court that Clause (b) must be confined to only such loans, advances or credits which have been given by a banking company under a State Sponsored Scheme. Any construction or interpretation of Clause (b) which permits banking company to recover a loan, advance or credit which has not been given under State Sponsored Scheme by taking recourse of the provisions of the Act must be rejected otherwise the act itself would become unconstitutional for want of legislative competence of State Legislature. Admittedly, from the record it is clear that the respondents themselves are not

sure what amount is to be paid by the petitioners. In our view, unless and until the amount is quantified, no action or order straightway to proceed to recover such unliquidated amount from the petitioners can be initiated.

14. In view of the aforesaid fact, we are of the view that the action of the respondents cannot be sustained, as such, the recovery certificate (Annexure-3 to the writ petition) is hereby quashed. The writ petition is allowed. It is, however, open to the respondents to recover the amount from the petitioners in accordance with law.

15. No order as to costs.