

(1999) 06 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 9667/98

Haridwar Choubey

APPELLANT

Vs

Managing Director B.S.R.T.C. and Others

RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (1999) 3 PLJR 398

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Dinbandhu Singh, for the Appellant; P.K. Shahi, for Respondent Nos. 1 and 2 and Sarvadeo Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—Initially the writ petition was filed for issue of a writ in the nature of mandamus commanding Respondent Nos. 1 and 2 not to sell M/s. Rama Rice Mill in favour of third party or to Respondent No. 3, without offering the same to the unit holder and transfer the unit to the Petitioner or allow the Petitioner to sell out the unit on market value which is much higher on which the Corporation is intending to sell the unit to third party or allow the Petitioner to dispose of some of the lands of the mill in question to deposit the loan of the Corporation. However, by amending the writ petition a prayer has been made for quashing the sale order dated 24.9.1998 and sale agreement dated 14.11.1998 in favour of Respondent No. 3

2. From the pleadings of the Petitioner in the writ petition, supplementary affidavit and the Respondents in the counter-affidavit the facts not in dispute are that M/s. Rama Rice Mill is partnership firm and the Petitioner is one of the partners of the firm. Loan was disbursed by the Corporation to M/s. Rama Rice Mill for modernisation of the unit in the year 1987-88. The loan amount was to be paid back in instalment. The firm did not pay the instalment in spite of repeated demand by the Corporation and it raised to the tune of Rs. 43.49 lacs

till 31.5.96. The Corporation took action u/s 29 of the State Financial Corporation Act. On 4.3.95 the assets of the firm was advertised for sale in daily Newspaper "Hindustan Times". It was re-advertised on 10.1.97 in daily Newspaper "Hindustan Times" and again on 14.1.97 in Hindi daily Newspaper "Hindustan" for wider publicity. Different persons filed tender for purchase of the mortgaged assets of the unit. One Sunil Kumar Singh and Akhilesh Kumar Singh offered Rs. 40 lacs after negotiation. One Md. Azim, Respondent No. 3, offered Rs. 39.75 lacs. The Corporation accepted the offer of Sunil Kumar Singh and Akhilesh Kumar Singh and ordered to sell in their favour on consideration of Rs. 40 lacs. Sale order was issued in their favour on 10.3.1997. A notice vide memo No. 433 dated 10.3.97 was sent to the promoter to retain the unit on the matching terms of the sale order but the promoter did not offer to retain the unit on the matching terms rather the promoters filed T.S. No. 156/97 against the Corporation for setting aside the sale order in favour of Sunil Kumar Singh and Akhilesh Kumar Singh. Injunction petition was also filed which was rejected vide order dated 23.2.1998. However, Sunil Kumar Singh and Akhilesh Kumar Singh, the first tenderers did not deposit initial 25% of the consideration money and as such sale order was withdrawn. Respondent No. 3 the second tenderer approached the Corporation for issue of sale order in his favour and on negotiation he offered Rs. 40,1000/- (sic). The Corporation accepted his offer as his offer was more than Rs. 40 lacs i.e. offer of first tenderer. The sale order was issued on 24.9.1998 in favour of Md. Azim, Respondent No. 3 who deposited 25% of the consideration money. Sale agreement was also executed on 14.11.1998 and possession of the unit was also handed over to Respondent No. 3 on the same day i.e. 14.11.1998 by the Corporation. The grievance of the Petitioner is that after 24.9.1998 i.e. the date on which sale order was issued in favour of Respondent No. 3 no notice was given to the firm to retain the unit on matching terms of the sale order in favour of Respondent No. 3 though the Petitioner who is one of the partners of the firm filed a petition on 12.10.1988, Annexure-1, for time for consultation with the other partners of the firm to deposit the amount and subsequently on 20.10.1998, Annexure-2 admitting that no amount of loan was deposited but now he is able to deposit the amount and as such requested to grant permission to deposit the amount and to run the Mill. The sale order, the agreement to sale and subsequently handing over possession of the unit to Respondent No. 3 is against the guide line laid down in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, .

4. In Mahesh Chandra case (supra), the Apex Court had laid down guidelines for taking action u/s 29 of the State Financial Corporation Act for recovery of the loan amount. One of the guidelines is that sale of the unit should always be made by public auction and if tenders are invited then the highest price on which the tender is to be accepted, must be intimated to the unit holder and if unit holder is willing to offer sale price as the tenderer then he should be offered same facility and unit should be transferred to him. The arrears remaining thereafter should be re-scheduled to be recovered in instalment with interest

after payment of last instalment fixed under the agreement entered into as a result of tendered amount. In the instant case it is manifest from the material on record that Petitioner is not a firm rather one of the partners of the firm. The loan was disbursed to the firm and instalment was not paid by the firm in spite of repeated demands and as such action was taken u/s 29 of the State Financial Corporation Act for sale of the unit. Initially advertisement was published on 4.3.1995 in daily, Newspaper "Hindustan Times" and subsequently re-advertised for wider publicity in "Hindustan Times" on 10.1.1997 and again on 14.1.1997 in Hindi daily "Hindustan". The Corporation accepted the highest offer of the tenders, namely, Sunil Kumar Singh and Akhilesh Kumar Singh i.e. Rs. 40 lacs. The sale order was issued in their favour on 10.3.1997. A notice vide memo No. 433 dated 10.3.97 was sent to the unit holder to retain the unit on matching terms of the sale order but the promoter did not offer to retain the unit on matching terms rather the firm filed Title Suit for setting aside the sale order in favour of Sunil Kumar Singh and Akhilesh Kumar Singh, the first tenderers. Injunction petition was filed which was rejected. However, tenderers did not deposit the initial 25% of the consideration money and as such sale in their favour was withdrawn. Therefore, it is evident that the guidelines laid down by the Apex Court in Mahesh Chandra (supra), was complied with but the firm did not offer to retain the unit.

5. Respondent No. 3 no doubt approached the Corporation for issue of sale/order and on negotiation he offered Rs. 401000/- (sic) i.e. more than offer made by first tenderer and, accordingly, offer of Respondent No. 3 was accepted. Sale order was issued in favour of Respondent No. 3 on 24.9.1998 and possession of the unit was also handed over to him. It has been alleged by the Petitioner that no notice to the sale order in favour of Respondent No. 3 was issued to the Petitioner, though the Petitioner who is partner of the firm filed an application on 12.10.98, Annexure-1 for time for consultation with the partners for payment of the amount. Subsequently also filed a petition on 20.10.1998, Annexure-2 stating that the unit did not deposit the instalment but now the Petitioner is able to deposit the money and as such permission be given for deposit of the amount and running the mill.

6. It is evident from the material on record that Petitioner is not the firm rather one of the partners of the firm. The notice was given to the firm i.e. unit holder to retain the unit on the matching terms of sale order in favour of Sunil Kumar Singh and Akhilesh Kumar Singh, the first tenderer but the unit holder did not offer to retain the unit on the matching terms. However, sale order in favour of first tenderer was withdrawn as initial 25% of the consideration money was not deposited by them. The 2nd tenderer, Respondent No. 3 offered more than first tenderer and as such his offer was accepted and sale order was issued. The guideline laid down in the case of Mahesh Chandra (supra) does not say that all the times offer has to be made to the unit holder to retain the unit on the matching terms. Moreover, the firm i.e. unit holder has not come before this Court for quashing the sale order in favour of resp. No. 3, the 2nd tenderer,

whose offer is more than first tenderer. The Petitioner is one of the partners of the firm and as such usually he cannot claim notice to retain the unit on matching terms as the law does not say that each partner of the firm shall be given notice to retain the firm on matching terms. The Corporation is statutory body and its money is at stake. Therefore, it has liberty to take action u/s 29 of State Financial Corporation Act. The limitation is that its action should not be malafide or unreasonable. On consideration it appears for the material on record, as discussed above, that action of the Respondent-Corporation is neither malafide nor unreasonable. When the unit holder did not offer to retain the unit on matching terms the negotiation was made with the 2nd tenderer and, accordingly, his offer was accepted as it was more than first tenderer. He deposited initial amount 25% of the consideration money. Sale order was issued. Agreement was executed and possession was handed over to him. Thus in my view, there is no violation of the guideline laid down in the case of Mahesh Chandra, (supra).

7. It is evident from the material on record that when the unit holder failed to deposit the instalments in spite of repeated demands action u/s 29 of State Financial Corporation Act was taken. In the case of U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, , the Apex Court on consideration of the facts and circumstances and also the case of Mahesh Chandra (supra), has held as follows:

In a matter between the Corporation and its debtor, a writ court has no say except in two situations: (1) there is a statutory violation on the part of the Corporation, or (2) where the Corporation acts unfairly i.e. unreasonably. The obligation to act fairly on the part of administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. Though the distinction between a quasi-judicial and the administrative action has become thin, but even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities it follows equally that it can not do so in the case of administrative authorities. In the matter of administrative action more than one choice is available to the administrative authorities: they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred". The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. Doctrine of fairness, evolved in administrative law is not supposed to convert the writ courts into appellate authorities over administrative authorities.

8. Similarly in the case of U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , the Apex Court has held as follows:

However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is malafide, 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 Corporation. Hence, what-ever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

9. It is thus obvious from the above mentioned decision that while exercising writ jurisdiction the Court cannot sit as appellate authority over the decision and orders of the quasi judicial authority or in case of administrative authorities. The Court can not substitute its judgment. The Court can interfere with the order only when action of the administrative" authorities is unfair and unreasonable that no such reasonable person would have taken such decision. Further more, in the case of U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, the Apex Court has held that it is not open to challenge the action of the authorities unless it is malafide though it is wrong decision. In the instant case it has already been held that action of the Respondent-Corporation is neither malafide nor unreasonable. Therefore, in my view, the above mentioned decision is fully applicable in the facts and circumstances of the case and no interference is required in the order passed By the Corporation.

10. Thus on consideration as discussed above, I find no merit in this application. Accordingly, writ petition is dismissed But without cost.