
(2007) 01 P&H CK 0159
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13743 of 2006

Harpal Singh

APPELLANT

Vs

Asst. Collector, 2nd Grade and another

RESPONDENT

Date of Decision : 30-01-2007

Acts Referred:

Citation : (2007) 3 RCR(Civil) 13

Hon'ble Judges : M.M.Kumar, J and Vinod K.Sharma, J

Advocate : Mr. I.B. Bhandari, Advocate. Mr. Vikas Mohan Gupta, Advocate.,
Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.—The petitioner by way of present writ petition has challenged the demand notice (Annexure P1) issued by the District Collector, Distt. Mohali, calling upon him to deposit a sum of Rs. 45,84,708/ (Forty five lacs eighty four thousand seven hundred and eight) only by 28th August, 2006. It has also been mentioned therein that on his failure arrest warrant would be issued against the petitioner. This notice has been issued in pursuance to the certificate issued by the Financial Corporation under Section 32(G) of the State Financial Corporations Act (for short 'SFCs Act'). Section 32(G) of the SFCs Act reads as under :

"32(G) Recovery of amounts due to the Financial Corporation as an arrears of land revenue Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as the Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed that any amount is so due, it may issue a certificate for the amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrears of land revenue."

2. The only contention raised by the learned counsel for the petitioner was that the order under Section 32(G) of the SFCs Act which is sought to be executed by way of Annexure P1 was issued without any notice to the petitioner and, therefore, the same being in violation of the principles of natural justice cannot be sustained. In support of his contention, learned counsel placed reliance on a judgment of the Hon''ble Supreme Court in the case of S.K. Bhargava v. Collector, Chandigarh and others, 1998(2) RCR(Civil) 526 : AIR 1998 SC 2885.

3. On notice reply has been filed by respondent No. 2 wherein it was claimed that notice dated 8.8.1997 was issued to the petitioner and other promoters as also to the guarantors calling upon them to pay the amount due to the Corporation. It was further claimed that in the said notice it was made clear that on their failure to deposit the amount, legal action would be initiated against them for recovery. It was also claimed that as the petitioner failed to respond to the said notice, a certificate of recovery under Section 32(G) of the SFCs Act was issued by Ms. Poonam Khetarpal Singh as Specified Authority appointed by the State Government. It was also claimed that subsequently by way of letter dated 16th December, 1998 an opportunity was given to the petitioner to avail concessions and clear the outstanding. In the said letter, it was also mentioned that proceedings under Section 32(G) of the SFCs Act have already been initiated against the petitioner. According to the respondent, once the reply to the said letter dated 16th December, 1998 was sent, it is presumed that the petitioner had the notice regarding initiation of proceedings under Section 32(G) of SFCs Act. Reference has also been made to other letters issued from time to time.

4. We have considered the arguments raised by the learned counsel for the parties and find no force in the submissions made by the learned counsel for the respondents. The letters and the notice referred to by the respondents nowhere indicate that Specified Authority had issued any notice to the petitioner with regard to proceedings under Section 32(G) of the SFCs Act and the said certificate has been issued without complying with the principles of natural justice. The authority relied upon by the petitioner cannot be of any help to him because in the case of S.K. Bhargava (supra) the Hon''ble Supreme Court had considered the provisions of Haryana Public Moneys (Recovery of Dues) Act and was pleased to hold that as the jurisdiction of the Civil Court stands ousted by subsection (4) of Section 3 of this Act, then it is incumbent on the Managing Director under Section 3(1)(b) to determine as to what amount is due from the defaulter. Therefore, it would be necessary to hold proceedings by a quasijudicial authority.

5. The Hon''ble Supreme Court in the case of Delhi Financial Corpn. and another v. Rajiv Anand and others, 2004 SCC 625 has been pleased to lay down that proceeding under Section 32(G) is in the nature of an execution proceeding and cannot be treated as a recovery proceeding pursuant to a decree of the Court. All that required is to have arithmetical calculations or a simple verification. It may be noticed that this very judgment, the Hon''ble Supreme Court has been

pleased to lay down that principles of natural justice have to be complied with, though there is no necessity to pass a speaking or reasoned order. Thus in view of the authoritative pronouncements by the Hon''ble Supreme Court holding therein that the Specified Authority is bound to follow the principles of natural justice while issuing a certificate under Section 32(G) of the SFCs Act, the impugned order cannot be sustained.

Accordingly, the writ petition is allowed. The certificate issued under Section 32(G) of the SFCs Act as well as the order passed (Annexure P1) are quashed. However, it would be open to the respondents to proceed afresh against the petitioner in accordance with law.