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**(1994) 09 GUJ CK 0013**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 1378 of 1983**

Hasmukhrai K. Thakar

APPELLANT

Vs

State Bank of India

RESPONDENT

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**Date of Decision :** 05-09-1994

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** AIR 1995 Guj 95

**Hon'ble Judges :** J.N. Bhatt, J

**Bench :** Single Bench

**Advocate :** M.J. Trivedi, for the Appellant; A.C. Gandhi, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

J.N. Bhatt, J.—The petitioner has questioned the decision of the respondent-State Bank of India in discontinuing various credit facilities and recalling the account by letter dated 14-9-1981, by invoking aids of the provisions of Article 226 of the Constitution of India.

2. According to the case of the petitioner, the respondent bank had sanctioned various credit facilities as elaborately enumerated in para 7 of the petition, by its Wadhwan branch. The manager of the said branch recalled the account of the petitioner and discontinued the credit facilities. The case of the petitioner is that the action of the respondent bank is illegal and, therefore, the respondent bank should be directed to continue the financial facilities granted to the petitioner.

3. There is no dispute about the fact that the petitioner was granted various credit facilities under the scheme for financing small industries by the respondent bank. The frame-work of the said scheme is manifested and highlighted in annexure "A". By virtue of the said scheme, the respondent bank offered financial assistance by setting up small scale unit and small advances and thereby encouraging entrepreneurs. The scheme is also guaranteed by the Reserve Bank of India. Various types of credit facilities are available under the

said scheme of the eligible small units and business entrepreneurs.

4. The petitioner had applied on 23-3-1978 for various credit facilities and the bank had granted such facilities on 25-4-1978 in connection with the said scheme on various terms and conditions which are manifested in the document executed by the petitioner. The petitioner had thereafter applied for enhancement of the credit facilities by giving an application dated 14-3-1980 to the respondent bank. The application of the bank was processed and the limit of advances and the amount of various credit facilities came to be reconsidered and revised by the respondent bank which is very clear from the letter dated 5-9-1980 produced at annexure "D".

5. Later on, the respondent bank, on review, found that there were irregularities and unsatisfactory performance and unsoundness of business of the petitioner unit. Therefore, the respondent bank through its branch manager of the Wadhwan branch by issuing letter at Annexure E dated 14-9-1981 recalled the credit account and discontinued such facilities. Hence, this petition.

6. The learned-advocate for the respondent at the outset raised a preliminary objection against the maintainability of the petition. This could have been considered had this petition been heard within reasonable time, after its institution. Since more than a decade's time has elapsed in between, it would not be expedient at this juncture to go into the maintainability of the petition and dispose it of on technical grounds and relegate the parties even if it is found favour with, to the alternative remedy, if any. Therefore, merits of the "maintainability of the petition on technical grounds are not examined in greater details.

7. After writing of the impugned letter by the respondent bank on 14-9-1981, discounting the credit facilities of the petitioner, the petitioner has replied the said letter on the nextday, like that, on 15-9-1981 which is very important in this petition. The petitioner has clearly admitted that there were irregularities in respect of the, amount of Rs. 1,57,788.36 and not Rs. 2,34,476.58 as claimed by the respondent bank. It is also clearly mentioned and admitted in reply that the unit was having slow sales and, therefore, the resultant loss to the extent of Rs. 2 lacs. Thus, the petitioner has inter alia admitted in reply that the unit was not progressing, sale was slow and there was loss. The other allegations made in the letter dated 14-9-1981 are disposed.

8. According to the case of the bank, the position of the unit was highly unsatisfactory. It is borne out from the said letter dated total limit was to the tune of Rs. 3,60,000/- in cash credit account. That apart, D.P. as on 9-7-1981 was to the tune of Rupees 3,20,000/-; whereas, the outstanding "amount came to Rs. 5,54,975.58. Thus, according to the contention of the bank, irregularities were to the tune of Rs.2,34,75.58 out of which, the petitioner has admitted only to extent of 1,57,788.36. Rest of the amount of irregularities is disputed. Can such a dispute be resolved in a petition under Article 226 will be again an

important question.

9. Secondly, the unit of the petitioner was visited by the manager of the bank and he found upon the visit that most of the machines were lying idle, proper books of account were not kept and even the stock registers were not available for verification. It was also pointed out by the bank that the petitioner has not submitted financial statement to the bank and on deep probe, it was noticed by the bank that there was accumulated loss of Rs. 2 lacs which was conveniently left undisclosed and hidden from the bank. As noticed hereinabove, the petitioner admitted that there was no loss of Rs. 2 lacs but the total loss according to him, came to Rs. 1,04,892.61.

10. Again, the respondent bank has stated in the said letter that the petitioner approached Dena Bank, Dariapur, Ahmedabad for a letter of credit facility which was in total violation of the bank's stipulations as concurrent borrowings are not allowed under the terms and conditions of the credit facilities. Further, it was noticed by the respondent bank that the term loan sanctioned by GSFC was in substantial arrear in respect of repayment of instalments. At that time, the bank had noticed that bills aggregating to Rs. 38,105.22 drawn on the Coimbatore branch purchased by the bank had been returned unpaid. Such important other irregularities were also pointed out by the bank in the said letter. Taking into account various irregularities and committing breach and violation of the terms and conditions of the credit facilities agreement, the respondent bank issued the impugned letter discontinuing the credit facilities. It is also pointed out by the learned advocate for the petitioner relying upon the last para of the scheme for financing small industry or business produced at annexure A, has contended that repayment was not the condition for the facilities provided under the said scheme.

It may be mentioned that it is further noted in the said para that such facilities are reviewed once a year to renew with increase, decrease or at the same level as per the requirements. The guidelines and the procedure mentioned in the scheme for various credit facilities are recorded. It cannot be contended that there is breach of the said guidelines in the last para of the scheme as per annexure A. Soundness of the unit and viability of the business should be the uppermost anxiety and concern for the lender or financed. The respondent bank observing the said concern and the anxiety and that too after the visit made by the manager of the bank, the impugned letter was issued. Therefore, the learned advocate for the petitioner while placing reliance upon the last para of the said scheme was not in a position to make any slice of profit out of it.

11. It was contended by the learned advocate for the petitioner that the impugned letter written by the manager of the respondent bank, Wadhwan branch is without any authority. This contention is without any substance. Nothing has been pointed out which would show that the manager of the bank is not authorised to recall the account or discontinue such facilities. On the contrary, the manager concerned made a visit of the premises of the unit and on

spot, found various irregularities and thereafter the impugned letter was written by him, It cannot be said that it was written by him in his individual capacity. It was written as an agent of the bank. Firstly, proper branch should get in close touch with the unit in order that the terms and conditions upon which such credits, are granted are observed in their due spirit. Therefore, the said contention of the learned advocate for the petitioner is unacceptable and is, therefore, rejected.

12. Secondly, it is contended on the behalf of the petitioner that the bank has failed to perform its statutory duty. The Court is at great loss to understand as to which statutory duty is not performed by the respondent bank. On the contrary, by writing the impugned letter dated 14-9-1981, produced at annexure E, is the clear performance of the statutory duty, if at all which is a contractual obligation cast on the bank. There is no dispute about the fact that the factory is closed since 1983, for a period of more than a decade. The contention raised by the learned advocate for the petitioner is that the unit became sick on account of unauthorisedly discontinuing the credit facilities given to the petitioner. This contention is also without any substance. On the contrary, it is obvious from the record that because the unit was becoming sick the bank performed its duty as a custodian of public money. This contention is, therefore, required to be rejected.

13. The learned advocate for the petitioner has placed reliance on the two decisions of the apex Court :

(i) Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, .

(ii) U.P. Financial Corporation v. Gem Cap (I) Pvt. Ltd. AIR 1993 SC 1435.

There can hardly be any quarrel with the principles laid down in the aforesaid two decisions of the apex Court. When an organ of the State/Statutory authority is functioning, it is bound to exhibit and show fairness and justness in the exercise of its statutory duties. If the Court finds that there is violation of the statutory duty or unfairness on the part of the statutory authority or an organ of the State, the Court would be ready to come down to exercise its powers under Article 226 of the Constitution. Both the aforesaid decisions are not helpful to the facts of the present case. Not only that, it is found that there is no violation of the terms and conditions by the bank and no breach of any statutory duty on the part of the respondent bank. Consequently, the aforesaid decisions are not helpful to the petitioner.

14. In view of the facts and circumstances narrated hereinabove, apart from the fact that relationship has arisen out of the contract between the creditor and the debtor or that there are several disputed questions of fact, this Court has found that the petitioner has committed violation of various terms and conditions and some of them are admitted in the reply dated 15-9-1981. It is stated at the bar that the bank had also filed Special Civil Suit No. 26 of 1984 in the Court of the learned Civil Judge (S.D.) at Surendranagar for recovery of an amount of Rs. 9,06,077.66 which is pending.

15. Having regard to the facts and circumstances emerging from the record of the present case, there is no violation of any fundamental rules nor there is any breach of statutory duty on the part of the respondent bank. On the contrary, the petitioner has committed violation of the terms and conditions of the credit facility agreements.

16. In the net result, obviously, there is no case worth the candle to invoke exercise of the extraordinary discretionary remedy under the proviso of Article 226 of the Constitution, with the result, this petition deserves to be dismissed with costs. Accordingly, it is dismissed with cost which is quantified at Rs. 2,000/-. Rule is discharged.