

(2000) 03 PAT CK 0060

In the Patna High Court

Case No : Civil Writ. Jur. Case No. 4557 of 1997

Hotel Mayur (P) Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2000 Patna 275 : (2000) 2 PLJR 408

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Advocate : Mihir Kumar Jha, for the Appellant; Shrawan Kumar, Rai Shivaji Nath, N.K. Sinha and Rajiv Nayan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—This writ petition is directed against the order bearing letter No. 281 dated 8-5-1997 (Anriexure 21), of the Board of Directors. Bihar State Financial Corporation (respondents Nos. 2 to 7), whereby application of the petitioner company for one-time Settlement ("OTS" for short), has been rejected, and for the further direction to restrain the respondents from taking any coercive step including taking possession of Hotel Mayur situate on Frazer Road, Patna, or in any manner giving effect to the impugned order dated 8-5-1997.

2. The petitioner company had initially started its business as a partnership firm. The firm constructed a building on the land given on lease by respondent No. 19, situate on Frazer Road, in the township of Patna; The petitioner company is engaged in the business of hotel and restaurant set up in the said building, and portion of which has been let out on commercial basis. The firm had applied for financial accommodation with respondent No. 2 for construction of the hotel building and setting up the business, and an amount of Rs. 9.90 lacs was sanctioned and paid on 31-3-1975. The last instalment toward repayment of the loan amount was payable on 1-6-1987. The firm was further sanctioned and paid

another loan of Rs. 5 lacs on 13-3-1978, and the last instalment was payable on 1-6-1988. The firm was converted into a Private Limited Company with effect from 19-6-1979 and a further loan of Rs. 5.57 lacs was sanctioned and paid to the petitioner company, the last instalment of which was payable on 1-1-1991. The petitioner never paid the dues of the Corporation as per agreement though it was although in good business, was earning well, the payment was completely stopped after 9-11-1992. and the overdues on the said three loan accounts accumulated to a staggering sum of Rs. one Crore (approx).

3. Failure or refusal on the part of the petitioner company to pay its debts has engaged it in a continuous chain of writ petitions before this Court. The petitioner preferred CWJC No. 5518 of 1994, before this Court which was directed against the Corporation's notice dated 28-6-1994, issued u/s 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"). This Court passed the order dated 30-6-1994, directing the petitioner to deposit Rs. 5 lacs by 14-7-1994, and a further sum of Rs. 10 lacs by 28-7-1994, and, in the meantime, the parties were required to take steps for settlement of the dispute. The petitioner did not deposit the amount at all and withdrew the writ petition on 7-7-1994. In the meantime, the respondent Corporation had come out with a scheme for settlement of the dues of its defaulters of the Corporation bearing Circular No. 01/ MDC/93.94, 22-7-1993 (Annexure 1), known as the Scheme of one - Time Settlement, which would be discussed at the appropriate stage. The petitioner preferred CWJC No. 8998 of 1994 before this Court for the direction to the Corporation to make one-time Settlement with respect to the petitioner's dues in terms of the said policy, and also to quash the order by which the sale had been finalised. A learned single Judge of, this Court has passed an interim order dated 1-11-1994 (Annexure 5), directing, the petitioner to deposit Rs. 9.10 lacs by 2-11-1994, in which event the Corporation was directed to hand over possession of the hotel back to the petitioner. The money was deposited in time, and possession of the hotel was restored to the petitioner. This Court had also directed the petitioner on 1-11-1994 to deposit a further sum of Rs. 6 lacs by 1-12-1994, which the petitioner deposited after hiccups and extension granted by this Court. At a later stage of the proceeding in CWJC No. 8998 of 1994, this Court directed the petitioner to deposit a sum of Rs. 15 lacs which it declined to do. However, the Court had directed the Corporation to consider the petitioner's application for one-time settlement.

4. Under the aforesaid scheme for OTS (Annexure 1), the petitioner was required to Deposit 10% of the outstanding dues along with the application which was to be adjusted against its dues in any event. The petitioner refused to deposit this amount for various reasons as a result of which the Corporation declined to consider the petitioner's application for OTS and, therefore, it felt to take action u/s 29 of the Act. This prompted the petitioner to prefer CWJC No. 2357 of 1997, before this Court which was disposed of by a learned single Judge of this Court by judgment dated 20-3-1997 (Annexure 13), whereby this Court directed the petitioner to deposit a sum of Rs. 10,20 lacs, being 10% of the outstanding dues

along with the application for OTS, apart from certain other directions with respect to disposal of the same. The petitioner thereafter deposited 10.20 lacs with the Corporation as a result of which its application for OTS was considered by the Board of Directors on merits, and has been rejected by the impugned order dated 8-5-1997 (Annexure 21), that the OTS was not applicable, inter alia, on the following grounds :--

".....

The Board noticed that the One Time Settlement was not applicable to wilful defaulters.

The Board noticed that the said concern, in addition to the income from the Hotel business, was also garnering huge amount from the rent of the premises of the hotel let out to different tenants and payment to the Corporation was deliberately withheld.

From the schedule of repayment received by the Corporation from the unit, it was quite obvious that no payment was made by the concern between 9-11-1992 to 14-11- 1994.

Even after 14-11-1994, no payment was made until coercive actions were taken by the Corporation and the Hon'ble Court directed the concern to make payment.

The Board also noticed that the payments made by the said unit in the past years was totally erratic and disproportionate to the agreed schedule of payment.

Under the circumstances, by majority vote of 8-1 (Sri Ram Swarath Rai, Director, dissenting), resolved that the said unit was not eligible for consideration under One Time Settlement Scheme and accordingly rejected the application.

Managing Director was authorised to take further action in accordance with the Law for realisation of the dues of the Corporation.

....."

5. While assailing the validity of the impugned order Mr. Mihir Kumar Jha, learned counsel for the petitioner, submitted that the same is in violation of the principles of natural justice. The Corporation has refused to disclose to the petitioner its sources of income which has been made the basis for the impugned order. The Corporation has also failed to supply a copy of the memorandum placed before the Board of Directors on the basis of which the Board took the impugned decision. He next submitted that the Board's finding as to wilful default is based on non est ground. No such material has been disclosed to the petitioner which has led the Board to believe that the petitioner is solvent and in a position to pay. He further submitted that the impugned order is discriminatory. Inasmuch as similarly circumstanced persons whose record of repayment was poorer than the petitioner has been granted the benefit of OTS. He also submitted that the impugned order has not taken into account the directions of the High Court while passing the impugned order, and an order in violation of the directions of this

Court is void. He lastly submitted that the petitioner has been deprived of the benefit of the OTS entirely on account of the personal bias of then Managing Director who was always illdisposed towards the petitioner, and was making every effort to defeat the petitioner at every stage, learned counsel has relied on the judgment of the Supreme Court reported in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, .

6. Mr. Shravan Kumar, Senior Advocate, appearing for respondent Nos. 2 to 7, submitted that the petitioner has to make out a case within the four corners of the scheme in question. On the basis of the materials within the knowledge of the Board, it came to a definite conclusion that the petitioner has had regular sources of income and was in a position to repay its debts and wilfully did not pay. In his submission, it is basically and entirely a commercial decision. The cases of others cited by the petitioner to whom the benefit of OTS has been granted were not wilful defaulters. He next submitted that it was overall a near unanimous decision of the Board of Directors with only one dissent, and the objective approach of the Board of Directors cannot be doubted. He further submitted that this Court has been over-indulgent to the petitioner to the great detriment of the Corporation. But for the Court's interference, its entire dues would have been recovered. He further submitted that the writ petition is also hit by principles of res judicata.

7. Mr. Rai Shivaji Nath, Sr. Advocate, appears for respondent No. 19, who is the owner and the lessor of the land on which the hotel building in question stands. He submits that he is vitally interested in the subject-matter of the writ petition and wishes to assist this Court in reaching the right conclusion. The lease of the demised land has expired on 15-5-1997, and has not been renewed till date. He further submits that the petitioner has not approached this Court with clean hands. The petitioner has taken contradictory stand in the present writ petition, in the eviction suit at the instance of the lessor, and another suit at the instance of the lessee.

8. Having considered the rival submissions of the parties. I am of the view that this writ petition has to be dismissed. Learned counsel for the Corporation is right in his submission that the petitioner has failed to make out a case for OTS within the frame and the scope of the scheme (Annexure 1). It is available in any one of the two circumstances, namely, the outstandings have exceeded the value of the mortgaged assets with the Corporation, or for those who could not set up the industry and come into production. The scheme makes it clear that the same is not applicable to wilful defaulters in either of these categories. The same was available upto 31-12-1993, and I am informed at the Bar that the same was extended more than once. Learned counsel for the Corporation has rightly stated that on consideration of the entire materials within the knowledge and possession of the Corporation, it came to a definite conclusion that the petitioner has had regular income from the hotel business, bar and restaurant business, as well as rental from its tenants. He has taken me through various paragraphs of

the counter affidavit in an effort to establish that the petitioner has had substantial income, was always in a position to pay, and has deliberately refused to pay the instalments allowing the arrears to soar. The documents produced by the petitioner before this Court in an effort to establish that the petitioner was running in loss, unable to pay the debts, and cannot be treated to be a wilful defaulter, are issues of facts and issues which really fall in the commercial realm and a large number of diverse factors have to be taken into consideration. The Court is always very reluctant to examine commercial aspects of the matter. This Court is of the view that the conclusion arrived at by the Board of Directors namely, the petitioner is a wilful defaulter is a possible conclusion.

8.1. How difficult and indiscreet would it be for this Court to examine and interfere with such commercial matters is clearly demonstrable on the facts of the present case itself. In an effort to establish discriminatory treatment, the petitioner has brought on record a chart prepared by them to demonstrate that the default on the part of the other debtors who received more as loan amount from, and returned much less to, the Corporation, than the petitioner, but were granted the benefit of OTS. According to this chart (Annexure 29 to the supplementary affidavit of the petitioner), all the debtors mentioned therein except two did not refund at all to the Corporation. The position reflected in the chart is rebutted by the Corporation in paragraph 13 of the Corporation's counter affidavit. A combined reading of the two versions to the extent relevant in the present context is as follows :--

Name of the Unit According to the petitioner, the amount refunded by the Unit to BSFC According to the Corporation, the amount refunded to it by the Unit (Rs. in lacs)

1. M/s. Lakshman Wires, Patna NIL 10.73
2. M/s. Jamshedpur Pipes & Allied Industries NIL 21.35
3. M/s. Gupta Bros., Ranchi NIL 8.91
4. M/s. Bihar Enterprises, Ranchi NIL 12.09
5. M/s. Industrial Chemical Mineral Co., Bokaro City NIL
6. M/s. Chotanagpur Polythene, Ranchi NIL 9.76
7. M/s. Sri Durga Rice Mill, E. Champaran 1,801.26p.
8. M/s. Anquest Phase II, Jamshedpur NIL 3.49
9. M/s. Mahabir Ice Factory, Siwan NIL 4.20
10. M/s. Automobile Engg. Muzaffarpur NIL 1.22
11. M/s. Motel Premanand, Daltonganj NIL 1.00
12. M/s. HiTech Chemical, Jamshedpur 11,22,479.00 23.18

It is thus manifest that such matters of business, according, and facts are essentially commercial in nature, and the Corporation is the best judge of it. Subject to the exceptional grounds of interference in such matters and indicated in the judgments of high authority discussed elsewhere in this Judgment, the decision of the Corporation is final. No such case within those exceptional grounds have been made out by the petitioner so as to warrant interference by this Court.

9. Learned counsel for respondent Nos. 2 to 7 is further right in his submission that the effort on the part of the petitioners to compare its case with those of the others is not only factually incorrect, but also commercially incompatible. Whether or not others were wilful defaulters, whether or not they could set up the factory and commence production, whether or not the assets of the other debtors is enough for realization of the debts, are the diverse factors which go into the making a commercial decision. For example, a company may have vast stretch of land which would be taken into account by the Corporation while making the judgment under the scheme. Learned counsel for the Corporation is right in his submission that the petitioner has since the commencement of business been continuously doing good business in a prime commercial locality of Patna, practically next door to the Patna Railway Station. The petitioner did not pay at all from 9-12-1992 to 14-11-1994, and paid Rs. 25.30 lacs under orders of the Court after 14-11-1994. It is manifest from the chart showing the payment position that the petitioner's record is extremely unsatisfactory, particularly in view of the fact that it has been doing business although, except a brief period when the corporation had taken possession of the hotel building in exercise of its powers u/s 29 of the Act.

10. The composition of the Board of Directors is quite impressive, most of the Directors are from other financial institutions, are in senior positions, and appear to be men of experience. The impugned decision was taken against the petitioner by a near unanimous vote with only one dissent.

11. Learned counsel for the Corporation is right in his submission that this Court has been very indulgent to the petitioner. This Court has made every effort to protect the petitioner at every stage and the trust has been abused by the petitioner. The Corporation had earlier issued its notice dated 28-6-1994, u/s 29 of the Act, which was challenged by the petitioner in this Court by preferring CWJC No. 5518 of 1994. The Court had directed the petitioner by order dated 30-6-1994, to deposit Rs. 5 lacs by 14-7-1994, and Rs. 10 lacs by 27-8-1994, in order to facilitate the settlement between the parties. The petitioner did not deposit the amount at all and withdrew the writ petition on 7-7-1994. Thereafter the Corporation took possession of the hotel u/s 29 of the Act, and finalized its sale for consideration of Rs. 95 lacs with another party. The petitioner had preferred CWJC No. 8998 of 1994 to quash the order of sale and a further direction to the Corporation to consider the petitioner's case for OTS in terms of its policy, which was disposed of by judgment dated 16-8-1996, whereby the

Court, in spite of its unhappy experience in the aforesaid CWJC No. 5518 of 1994, had once again made an effort to protect the petitioner, and passed interim order dated 1-11-1994, directing it to deposit Rs. 9.10 lacs by 2-11-1994, in which event the Corporation shall hand over possession of the hotel to the petitioner, and the further direction to deposit another sum of Rs. 6 lacs on 31-12-1994. The petitioner promptly paid Rs. 9.10 lacs and regained possession of the hotel, but paid Rs. 6 lacs after hiccups and extension granted by this Court. This Court is constrained to recapitulate the factual position noticed by this Court in its judgment dated 16-8-1996, passed in CWJC No. 8998 of 1994 (Annexure 5), that the same was then listed before the Court after a two years which speaks volumes. This Court had called upon the petitioner on 16-8-1996 to deposit a sum of Rs. 15 lacs within one month which it had declined to do, This Court was, therefore, pained to observe in its order dated 16-8-1996 (Annexure 5), whereby the writ petition was finally disposed of, that". . . .

This shows that the petitioner having been put in possession of the hotel does not want to deposit any further sum and this, in our view, is not a proper and reasonable stand on behalf of the petitioner

. . .The admitted fact is that the Corporation has taken possession of the hotel and in pursuance of our order, the petitioner has been put in possession in November, 1994" However, this Court had directed the Corporation to consider the petitioner's application for OTS on merits. The learned single Judge has further held in his judgment dated 16-8-1996 (Annexure 5), as follows :--

"..... The petitioner's earlier application against the sale of the hotel has been withdrawn from this Court. Thus, it cannot be permitted to challenge, the action of the Corporation on merits. However, it is asserted on behalf of the petitioner that its case for one time settlement has not been considered in term of the policy decision contained in Annexure 14.

Having considered the facts and circumstances of this case, we are of the view that the case of the petitioner shall be considered for one time settlement if its case is covered by the policy decision of the Corporation. Accordingly, we direct the Managing Director of the Corporation to decide the question of one time settlement before 30th August, 1996. The petitioner is directed to appear before 26th August, 1996, before the Managing Director of the Corporation, who will fix a date to dispose of the matter. No other matter except one time settlement matter should be considered. If the proposal for one time settlement is not accepted by the Corporation then the Corporation should take back the possession of the hotel and other articles the possession of which were given to the petitioner by order of this Court. . . .

11.1. Thereafter the petitioner refused to make the deposit of 10% of the balance outstanding as per the scheme in question, Therefore, the petitioner preferred CWJC No. 2357 of 1997, which was disposed of by order dated 20-3-1997 (Annexure 13), whereby the petitioner was directed to deposit the

amount of Rs. 10-20 lacs, being 10% of the outstanding dues, with the further direction , inter alia, for disposal of the petitioner's application for OTS.

11.2. It is, thus, manifest that this Court has been over indulgent to the petitioner in protecting him, and yet the petitioner has abused the trust placed in it. It has not paid at all after it deposited the said sum of Rs. 10.20 lacs under compulsion, I fully agree with the observations in the order dated 16-8-1996 (Annexure 5), in CWJC No. 8998 of 1994, that the petitioner made a volte-face after it regained possession of the hotel under orders of the Court and refused to make payments thereafter. If this Court had refused to interfere with the Corporation's order dated 1-11-1994, it would have been able to recover its entire debts by selling the hotel at a price of Rs. 95 lacs. In fact, the deal had been finalized with a third party. The net result of this Court's interference is that that the Corporation has not been able to realize the huge outstanding from the petitioner so far, and seems to be engaged in an interminable as well as internecine litigation.

12. Learned counsel for the Corporation is right in his submission that it is not easy to find buyers. This Court is, therefore, convinced that the Court should be extremely reluctant to interfere with the commercial decisions of financial institutions. Learned counsel for the Corporation has, therefore, rightly relied on the judgments of the Supreme Court reported in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, , and U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, . He has also relied on an unreported judgment dated 14-10-1999, passed by a Division Bench of this Court, in LPA No. 804 of 1999 (Haridwar Choubey v. Mg, Director, Bihar State Financial Corpn.), paragraph 19 of which is relevant in the present context, and is set out hereinbelow for the facility of quick reference :--

"19, The facts of the case in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , which is the sheet-anchor of the appellant's case, were; completely different. As regards the guidelines laid down therein I am satisfied that they have substantially complied with. In the absence of any proof of mala fide, therefore, it is not possible to interfere with the impugned orders. The learned single Judge has relied on the decisions of the Supreme Court in the cases of Gem Cap (India) Pvt. Ltd. AIR 1993 SC 1435 (supra) and Shivalingappa Kallayanappa and others Vs. State of Karnataka, . In the former case, it has been stated.

"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."

In the other case, the Court observed, "However, we cannot lose sight of the fact that the Corpn. 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 possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, 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 wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

13. This Court is also reminded of the classic judgment of the Court of Appeal in England, reported in (1947) 2 All ER 680 (*Associated Provincial Picture Houses v. Wednesbury Corpn.*), where similar issues have been dealt with by the Court of Appeal. Before dealing with the judgment, I must state that to the grounds of interference enunciated in the said judgment have to be added the additional grounds available to the petitioner under the Constitution of India, it should also be stated for the sake of completion of record that the principles enunciated in the aforesaid judgment, which have come to be known as *Wednesbury* reasonableness and has become classical in legal literature, has been followed by Indian Courts including the Supreme Court of India times without number, the latest being the judgment of the Supreme Court reported in *Tata Cellular Vs. Union of India*, . I myself applied the principle of *Wednesbury* reasonableness in my judgment dt. 14-12-1999, (reported in *Ram Ashray Prasad Sinha Vs. Union of India (UOI) and Others*,) . passed in CWJC No. 4475 of 1999 (*Ram Ashray Prasad Sinha v. Union of India*), paragraph 4.1 of which is relevant in the present context, and is set out hereinbelow for the facility of quick reference :--

"4.1. learned counsel for respondent No. 5, has rightly submitted that the powers of this Court under Articles 226 and 227 to interfere with such administrative decision and/or decision pursuant to a policy decision are normally immune from judicial reviewability. I am in this connection reminded of the illuminating decision of England, reported in (1947) 2 All 680 (*Provincial Picture Mouses Ltd. v. Wednesbury Corpn.*) wherein, speaking for the Court, Lord Green observed with a remarkable felicity of expression that the Courts must always remember that the act deals, not with the judicial act, but with an executive act. The limited ground on which such an administrative order can be subjected to judicial review have also been indicated therein which are bad faith, dishonesty, unreasonableness, attention given to extraneous circumstances, disregard of public policy etc. The following portions occurring at pages 682 of the report illumine the position and is set out for the facility of quick reference :

"The contention of the authority, in my opinion, is based on a misconception of the effect of the Act in granting this discretionary power to local authorities. The Courts must always remember, first, that the Act deals, not with a judicial act, but with an executive act; secondly, that the conditions which, under the exercise of that executive act, may be imposed are in terms put within the discretion of the local authority without limitation; and thirdly, that the statute provides no appeal from the decision of the local authority. What, then, is the

power of the Courts? The Courts can only interfere with an act of an executive authority if it be shown that the authority have contravened the law.

It is for those who assert that that the local authority have contravened the laws to establish that proposition. On the face of it, a condition of this kind is perfectly lawful, it is not to be assumed *prima facie* that responsible bodies like local authorities will exceed their powers, and the Court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for the local authority. It is only concerned with seeing whether or not the proposition is made good. When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the Courts in a very limited class of case. It must always be remembered that the Court is not a Court of appeal. The law recognizes certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any Court of law.

What, then, are those principles? They are perfectly well understood. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the Court. Bad faith, dishonesty those of course, stand by themselves unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matter which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word "unreasonable". It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. WARRINGTON, L. J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith, in

fact, all these things largely fall under one head."

I am afraid, the petitioner has not been able to make out a case under any of the exceptional clauses indicated by the distinguished Master of the Rolls. The contention is, therefore, rejected."

13.1. Applying the aforesaid principles including the principle of Wednesbury reasonableness to the facts and circumstances of the present case, it is manifest that the act in the present case deals, not with a judicial act, but with an executive act. The discretion of the Corporation is little short of unlimited, and there is no provision of appeal under the Act. Naturally, therefore, powers of this Court to interfere with such an order are extremely limited. The petitioner has not been able to make out a case within the parameters enunciated in the aforesaid Judgment of the Court of Appeal. Furthermore, the impugned decision is a commercial decision which is wholly within the domain of the Corporation, and this Court is satisfied that the same has been properly arrived at. The action taken by the Corporation is in no way unreasonable. On a consideration of the entire materials before the Board of Directors, it has taken a decision which cannot be faulted on any grounds. This Court is not a Court of appeal where the Court may possibly have been in a position to take another view on the same factual premise.

14. Learned counsel for the Corporation has submitted that the issues raised in the present writ petition are hit by the principles of res judicata. The contention is partially unacceptable to the Court, inasmuch this Court by its order dated 16-8-1996 (Annexure 5), passed in CWJC No. 8998 of 1994, as well as the Judgment dated 20-3-1997 (Annexure 13), passed in CWJC No. 2357 of 1997, had clearly directed the Corporation to consider the petitioner's application for OTS, provided the application money was deposited. The petitioner did deposit the same and, therefore, the issue relating to the validity of the impugned order can be challenged before this Court, as has been done in the present writ petition. However, learned counsel for the Corporation is right in so far as the other aspect of the matter is concerned, namely, the Corporation's decision u/s 29 of the Act is hit by the principles of res judicata, having been finally disposed of by this Court by aforesaid order dated 16-8-1996. This Court in unequivocal terms had observed that". . . the petitioner's earlier application against the sale of the hotel has been withdrawn from this Court. Thus it cannot be permitted to challenge the action of the Corporation on merits. . . . " The issue relating to the Corporation's right to take over the management or possession or both of the petitioner company as well as the right to transfer on lease or sale in terms of Section 29 of the Act has become final, is hit by the principles of res judicata, and cannot be allowed to be raised any more.

15. I am unable to agree with the contention of the learned counsel for the petitioner that the proceedings before the Board was in violation of the principles of natural Justice. The Board of Directors had undoubtedly given a personal hearing in the matter and, in fact, the petitioner was represented by a lawyer.

The Board has disposed of the petitioner's application for OTS by a reasoned order which cannot be faulted in view of the aforesaid judgments relied on by the learned counsel for the Corporation. This Court is equally unable to agree with the contention of the learned counsel for the petitioner that the Board's finding as to wilful default rests on non est ground, The question whether or not the petitioner was a wilful defaulter is basically and fundamentally a commercial decision and this Court, in view of the law enunciated in the aforesaid judgments, is precluded from taking a different view on the same materials. The Corporation being a specialized body, its Board of Directors comprising of experienced and specialized persons who are experts in that field, and were justified in taking the view that they have taken.

16. This takes me on to question of bad faith and mala fides adverted to by the learned counsel for the petitioner, he had submitted during the course of his main argument that he does not want to set up a case of mala fides, but in reply made submissions attributing mala fides personally to the then Managing Director of the Corporation. I express my inability to consider the same for the reason that it was raised only during the course of the petitioner's reply as a result of which the respondents did not have the opportunity to rebut it. Secondly, law is well settled that if the impugned order is valid on merits, then the plea of bad faith and mala fides etc. lose all force. Reference may in this connection be made to my judgment dated 14-12-1999 (reported in Ram Ashray Prasad Sinha Vs. Union of India (UOI) and Others,), passed in CWJC No. 4475 of 1999 paragraph 5 of which is relevant in the present case, and is set out hereinbelow for the facility of quick reference (at p. 162 of AIR) :--

"5. learned counsel for the petitioner submitted that the decision to upgrade railway Halt to a railway station has been taken for mala fide reason the factual foundation of which has, according to him been laid in paragraphs 9, 12 and 14 of the writ petition. He further invites my Attention to the order dated 10-8-1999, passed by this Court, calling upon the learned counsel for the respondent No. 6 to answer to the allegations made therein against him personally. Not having been replied, in the submission of the learned counsel, it will be deemed to have been admitted on account of non-traverse, i am once again unable to accede to this contention for the reason that if the order under scrutiny has been passed in accordance with law, then allegations of mala fide lose all force. This Court is reminded of the judgment reported in Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others, , wherein the Supreme Court has observed in paragraph 19 that" if the Tribunal held , as it should have rightly held, that the offence was established, no question of victimisation could arise " An earlier judgment of the Supreme Court reported in (1959) 1 LLJ 450 : AIR 1959 SC 529 (Burn & Co. v. Their Workmen), has laid down to the same effect."

17. In the result, this writ petition is dismissed, and the impugned order dated 8-5-1997 (Annexure 21), is hereby upheld. it will be open to the respondent

Corporation to realize its dues against (he petitioner by taking action in accordance with law, including action u/s 29 of the Act which issue is concluded by the earlier judgments of this Court.