(1994) 12 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 200/1993

Jammu Ispat (Pvt) Ltd APPELLANT

Vs

State of J&K and others RESPONDENT

Date of Decision : 09-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226

State Financial Corporations Act, 1951 — Section 29

Citation : (1995) JKLR 589 : (1995) SriLJ 173

Hon'ble Judges : V.K.Gupta, J

Bench : Single Bench

Advocate : Parmod Kohli, D.S.Thakur , Advocates appearing for the Parties

Judgement

1. The disputes in this petition under Article 226 of the Constitution of India relates to the efforts being made by the respondent, J and K State

Industrial Development Corporation, (SIDCO, for short) for recovery of the loan advanced by it to the petitioner and the steps being initiated by it

in terms of Section 29 of the State Financial Corporation Act for effecting recoveries.

2. Mr. D.S. Thakur, learned counsel appearing for the petitioner has relied upon the judgment of the Supreme Court in the case of Mahesh

Chandra Vs. Regional Manager, UP. Financial Corporation and Ors reported in AIR 1993 S.C. 935, and submits that it was because of the acts

of omission and commission of the SIDCO that the petitioner was driven to a stage where the unit became unviable and it is in this background that

the repayment of the money taken by the unit could not be adhered to. Mr.Kohli, Learned Counsel for the respondents in turn has relied upon a

subsequent Judgment of the Apex Court In the case of UP. Financial Corporation

Vs. M/S Gem Cap (India) Pvt. Ltd and others reported in AIR

1993 S.C. 1435.

3. I have heard learned counsel for the parties and perused the record.

4. Testing the points involved in this case on the touch stone of the law laid down by the Supreme Court in the case of U.P. Financial Corporation

Vs. M/S Gem Cap(India) Pvt. Ltd. I find that the SIDCO has neither acted unfairly nor arbitrarily in effecting the recovery of the loan amount

which is admittedly due to it and that the exercise of the powers under section 29 of the Financial Corporation Act by it cannot be assailed on any

tangible ground. While laying down the parameters of the fair exercise of this power, their lordships of the Supreme Court in para 10 of the

Judgment in M/S Gem Cap (India) Pvt. Ltd (Supra) have held as under:

It is true that the appellantCorporation is an instrumentality of the State Created under the State Financial Corporation Act, 1951. The said Act

was made by the Parliament with a view to promote industrialisation of the States by' encouraging small and medium industries by giving financial

assistance in the shape of loans and advances, repayable within a period not exceeding 20 years from the date of loan. We agree that the

Corporation is not like an ordinary money lender or a Bank which lends money. It is a lender with a purposethe purpose being promoting the small

and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the

borrower is that of creditor and debtor. The Corporation is not supposed to give loans once and go out of business. It has also to recover them so

that it can give fresh loans to others. The Corporation has no doubt to act within the four comers of the Act and in furtherance of the object

underlying the Act. But this factor cannot be carried to the extent of obligating the corporation to review every sick industry irrespective of the cost

involved. Promoting industralisation at the cost of public funds does not serve the public interest, it merely amounts to transferring public money to

private account. The fairness required of the corporation cannot be carried to the extent of disabling [SIC] to for, recovering what is due to it.

While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in

the name of fairness. Fairness is not a one way street, more particularly in matters like the present one. The above narration of facts shows that the

respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the corporation at bay.

Approaching the Courts through successive writ petitions is but as part of this game. Another circumstance, these corporations are not sitting on

King Solomon's mines. They too borrow money from Government or other financial corporations. They too have to pay interest thereon. The

fairness required of it must be tempered nay determined, in a matter between the corporation and it's 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. While the

former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean?

Does it mean that the HIGH COURT exercising Its jurisdiction under Art. 226 of the Constitution can sit as an Appellate Authority and seek to

correct them? Surely, it cannot be. This is not the function of the High Court under Art. 226. Doctrine of fairness evolved in administrative Law

was not supposed to convert the Writ Courts into appellate authorities over administrative authorities. The constraintsselfimposed undo tedlyof writ

lead to confusion and uncertainty. The jurisdiction may become rudderless.

5. It is only if a defaulting industrial unit satisfies the Court that infact there are positive acts of omission or commission directly attributable to the

financial institutions, which alone could be held responsible for the losses to the unit, or for its nonfunctioning or improper functioning, then the

Courts in exercise of writ jurisdiction could attempt to enquire into the claim of the defaulting unit that it is not liable to pay the amount allegedly due

from it to the financial institution. It is not in each and every case that merely a defaulting unit complains of some acts, that the Court should look

into these complaints, enquire into the entire matter and pass judgment. As observed by their lordships of the supreme Court, and noticed above,

Financial institutions have their own role to play by lending money to the industrial units and have a corresponding duty, being the custodians of

money to effectively recover the amounts which have remained unpaid. Unless therefore as observed earlier positive allegations of unfairness,

malafides or gross arbitrariness, patently on total nonapplication of mind, are leveled against financial institutions, strictly following the aforesaid

principle of law laid down by the supreme Court, the HIGH COURTS do not have power or jurisdiction to interfere in the proceedings initiated

under section 29 of the Financial Corporation Act or any other matters relating to recovery of the amount which are claimed to be due by the

financial institutions against the defaulting industrial units. Whereas in M/S Gem Cap India (Supra) the supreme Court has laid down broad

parameters of law and also points relating to exercise of power by financial institutions, in Mahesh Chandra's case no such well defined proposition

of law have been described by their lordship except the parameters and guideline in para 22/ of the judgment relating to the regulation of auction

proceedings involved in a defaulting unit etc. The directions contained in para 22 of the judgment in Mahesh Chandra's case therefore have

become law of the land and every financial institution has to strictly follow these directions while initiating proceedings for auction of units. In the

present case also the rigors provided in these directions cannot be dispensed with.

6. In view of the above and in the light of the observations made by their lordships of the Supreme Court in Gem Cap (India) Pvt. Ltd therefore, I

have no hesitation in holding that the petitioner has not been able to make out any case for the grant of any relief. The petition is dismissed along

with the connected CMPs. Interim direction if any, shall stand vacated.

