(2006) 01 DEL CK 0077

In the Delhi High Court

Case No : Writ Petition (C) No. 10569-70 of 2005

Jamshed M. Pandey and Another — APPELLANT

Vs

Indian Renewable Energy Dev. AG — RESPONDENT

Date of Decision : 23-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 21

Citation : (2006) 4 BC 245 : (2006) 87 DRJ 222

Hon'ble Judges : Markandeya Katju, C.J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Yashank Adhyaru and Priank Adhyaru, for the Appellant;

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This writ petition has been filed for a writ of certiorari setting aside the impugned order of the Debt Recovery Appellate Tribunal 7.6.2005, copy of which is Annexure P-7 to the writ petition. The petitioner has also prayed for quashing of the judgment and decree of the DRT-I Delhi dated 19.6.2003 in OA 237/2000.

2. Heard learned counsel for the parties and perused the record.

3. Petitioner No.1 is a Director of petitioner No.2 which is a company registered under the Indian Companies Act. Petitioner No.1 is also a guarantor of petitioner No.2 which has been held liable for the decretal amount jointly and severally.

4. It appears that the petitioners took a loan in respect of which the DRT Delhi passed an order dated 19.6.2003 allowing the claim of respondent No.1.

5. By that decree the DRT directed the recovery of an amount of Rs.1,58,36,919.00 with cost and pendente lite and future interest at the rate of 10% p.a. from the defendants. The petitioners were held jointly and severally liable. True copy of the judgment dated 19.6.2003 is Annexure P-1.

6. Against the order dated 19.6.2003, an appeal was filed before the DRAT on 25.9.2003, copy of which is Annexure P-2. In the meantime, the Recovery Officer had already taken steps for auction sale of assets of the petitioners.

7. The petitioners filed an application u/s 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Act) for waiver of the amount to be deposited.

8. Section 21 of the Act states:-

Deposit of amount of debt due, on filing appeal "Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent. of the amount of debt so due from him as determined by the Tribunal u/s 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

9. A perusal of the Section 21 shows that 75% of the amount determined by the Tribunal u/s 19 has to be deposited as a pre-condition for entertaining the appeal. However, the proviso to Section 21 states that the Tribunal may, for reasons to be recorded, waive or reduce the said amount.

10. In this petition, the validity of Section 21 has also been challenged. In our opinion, there is no merit in this contention

11. In The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc., , the Supreme Court referred to its earlier decision in Vijay Prakash D. Mehta v. Collector of Customs (Preventive) 1968 4 SCC 402 wherein the Supreme Court observed:

The right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

12. In The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, the Supreme Court held that the right of appeal is a creature of the statute and it is for the Legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.

13. In Elora Construction Company Vs. The Municipal Corporation of Gr. Bombay and Others, , the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required pre-deposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of Supreme Court in Gujarat Agro Industries Co.Ltd. v. Municipal

Corporation of the city of Ahmedabad and Ors. (supra). The Supreme Court has also referred to its decision in Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, in which a similar provision was upheld.

14. It may be noted that in Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the city of Ahmedabad and Ors. (supra) the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax. In other words, a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.

15. In view of the above decisions of the Supreme Court we uphold the validity of Section 21 of the Act.

16. Learned counsel for the petitioner then submitted that the petitioner has no means to pay the amount mentioned in Section 21 and hence the same may be waived. The same plea has been taken before DRAT as is evident from a perusal of the impugned order. The DRAT has after detailed consideration of the case held that nothing had been placed before it by the petitioners to show that it could not comply with the conditions of Section 21. This is a finding of fact and we cannot interfere with the same in the writ jurisdiction. Thus, there is no force in this petition and it is dismissed.