
(2002) 04 MP CK 0101

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4651 of 1998

Kochar Oil Mills Ltd. and others

APPELLANT

Vs

M.P.S.I.D.C. Ltd. and others

RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2003) 1 MPLJ 171

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Manoj Sharma, for the Appellant; Ajay Mishra for Respondent No. 1 and V.K. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The petitioner is challenging the action of M.P. State Industrial Development Corporation Ltd. in taking over the unit u/s 29 of the State Financial Corporation Act, 1951. Subsequently the unit has been sold to Ajay Solvex Ltd. The sale was confirmed on 15-6-1999.

Petitioner Kochar Oil Mills Ltd. installed a Solvent Extraction Plant. The petitioner used to manufacture refined vegetable oil in the brand name "Pakwan". The petitioner also used to manufacture soya seeds. The petitioner suffered heavy losses in the year 1987-88. The production went down in the year 1987-88 on account of natural calamity and adverse circumstances leading to paucity of supply of soya seeds. The petitioner Company which suffered heavy losses in the year 1987-88 was still recouping and in the year 1996-97, 15th annual report was submitted by the petitioner Company giving all details of the total turnover, profit and loss and the outstanding term loan. Perusal of the annual report shows that the Company has not been supported by Punjab National Bank. The petitioner Company has obtained term loan from M.P.S.I.D.C. Ltd. and as per the

terms of agreement, the M.P.S.I.D.C. has secured the loan by first charge by way of equitable mortgage by deposits of title deeds in favour of M.P.S.I.D.C. on all the immovable properties subject to second charge in favour of Punjab National Bank. The petitioner Company has obtained term loans from M.P.S.I.D.C. and there has been delay in repayment on account of circumstances beyond the control of the petitioner company because of natural calamities. Notice was issued to the petitioner Company u/s 29 of the State Financial Corporation Act, 1951 for taking over the unit and sale thereof because of the outstanding dues. Notice was issued on 29-8-1996 Annexure P.3. The petitioner Company protested against this notice and explained the facts and circumstances to M.P.S.I.D.C. which caused delay in repayment of the term loans. M.P.S.I.D.C. came to a conclusion that there is no necessity for taking action against the petitioner company u/s 29 of the State Financial Corporation Act while the petitioner company was in the process of recovering and was re-establishing itself, received a legal notice dated 6-3-1998 from Punjab National Bank to pay the outstanding dues. Credit facilities of the petitioner Company were stopped by respondent No. 2 Punjab National Bank creating unprecedented and unethical problems to the petitioner company. Ultimately respondent No. 2 stopped the operation of accounts. The action of respondent No. 2 in stopping the accounts resulted in financial hardship to the petitioner company. M.P.S.I.D.C. issued the legal notice on 2-7-1998 u/s 29 of the State Financial Corporation Act for taking over the industrial unit of the petitioner company for the purpose of sale. The petitioner company was informed regarding taking over of the unit. The credit facilities were withdrawn in spite of the fact that the petitioner company was recouping from losses and was progressing in its production every year. M.P.S.I.D.C. has taken over the unit of the petitioner company but has not given detailed list of fixed and current assets to the petitioner. The unit has been taken over on the basis of a notice issued way back in the year 1996. The petitioner company was facing financial crisis. A proposal submitted by petitioner was also not accepted by M.P.S.I.D.C. Annexure P. 10. M.P.S.I.D.C. should have waived penal interest, compound interest and other charges as it has done for other units which are in financial crisis without following the guidelines taken by the Apex Court. Petitioner further submitted that in case petitioner company is sold without giving proper opportunity, the petitioner will suffer irreparable loss. Hence, the petitioner seeks the quashment of legal notice Annexure P.3 dated 29-8-1996, notice Annexure P. 8 dated 2-7-1998 and letter Annexure P. 9 dated 1-8-1998.

The respondent No. 1 M.P.S.I.D.C. in the return submits that it had sanctioned a term loan of Rs. 61 lacs, additional term loan of Rs. 28 lacs, State Investment Subsidy of Rs. 10 lacs and State Investment Pioneer Subsidy of Rs. 6,04,500.00 to petitioner company for setting up of a Solvent Extraction and Oil Refinery at village Rani Piparia, Tehsil Sohagpur, Piparia, District Hoshangabad. The petitioner company remained not only a persistent defaulter in repaying the dues of Rs. 4,56,78,000.00 plus other expenses. The petitioner was given ample time. In spite of giving enough opportunity the petitioner has failed to settle the dues.

The possession was taken over on 27-7-1998 u/s 29 of the State Financial Corporation Act and handed over to a prospective buyer. The petitioner company was also requested to submit better offer before finalising, the sale vide letter dated 8-10-1998 Annexure R-I/1. The sale proceeds are not sufficient to settle the liabilities. The petitioner did not make any better offer nor deposited the amount of sale price. He was also asked to make down payment of Rs. 10 lacs in order to facilitate one time settlement. It was also not deposited by the petitioner. No offer was made. Thus, it is clear that petitioner did not intend to make any deposit whatsoever. The proposal Annexure P. 10 filed in the year 1989 cannot be said to be a proposal after lapse of time.

Respondent No.3 M.P.F.C. submits that it had also advanced a loan of Rs. 30 lacs in the year 1984. The petitioner did not repay the loan as per agreement. A legal notice of demand was issued to the petitioner on 17-7-1998. It had to recover a total sum of Rs. 45,86,152 = 22 from the petitioner company. It has been intimated by M.P.S.I.D.C. that the unit has been taken over and it has been transferred to M/s Ajay Solvex Ltd. for a total sum of Rs. 88 lacs Annexure R-3/4.

Learned counsel for the petitioner submits that the petitioner suffered natural calamity in the year 1987-88. Then proposal for rehabilitation was submitted which was not considered. Notice was issued in the year 1996 which could not be acted upon. In all fairness petitioner should have been given opportunity to make down payment and settle the dues, which opportunity was not afforded. Thus, the action taken u/s 29 of the State Financial Corporation Act and that of subsequent sale is bad in law.

Learned counsel appearing for the respondents submit that the petitioner has no intention of making the payment. The petitioner himself has disclosed that he was continuously not depositing from the year 1987. One notice Annexure P. 3 was served in the year 1996 thereafter opportunities were given to the petitioner to make default but still petitioner did not intend to pay amount and hence another notice Annexure P. 8 was served on 2-7-1998 and thereafter the action was taken u/s 29 of the State Financial Corporation Act which cannot be said to be based on mala fide and the unit has already been sold. There is no relief claimed in the instant petition to quash the sale proceedings. Petitioner has also not been impleaded as respondent.

After hearing the learned counsel for the parties, in my opinion, the proposal submitted in 1989 cannot be said to be surviving with lapse of time. Petitioner did not submit any proposal after notice in 1996 and 1998. The petitioner company was informed that in exercise of powers conferred u/s 29 of the State Financial Corporation Act, the M.P.S.I.D.C. has taken over the charged securities i.e. mortgaged fixed assets of the unit on 27-7-1998 in order to recover its dues of term loan of Rs. 61 lacs and addl. term loan of Rs. 28 lacs. The Corporation had invited tender for sale of mortgaged fixed assets in its possession. The Corporation received one bid which has been negotiated before the Tender committee meeting dated 28-9-1998 and it has been decided to confirm the sale

of mortgaged fixed assets in favour of prospective buyer at a price of Rs. 82 lacs on cash down payment basis. The petitioner company was called upon to submit a better proposal along with terms of payment than the aforesaid price personally or through any other party within 15 days from the date of receipt of letter or on before 22-10-1998 failing which M.P.S.I.D.C. will presume that petitioner company was no more interested in purchasing the aforesaid mortgaged fixed assets of the unit and in conclusion the sale of mortgaged fixed assets will be confirmed by M.P.S.I.D.C. in favour of prospective buyer. In case better offer is made than the available offer from the Corporation in a stipulated period, then the same will be examined on its merits. On acceptance of such an offer being made by the petitioner, the sale proceeds will be adjusted against the take over and other expenses and balance if any, out of the recalled loan amount as per legal notice dated 31-8-1996. In case of failure in payment of this amount, the Corporation will be at liberty for enforcing personal guarantees offered for securing the term loan. It appears that petitioner did not make any offer as required by Annexure R-I/1. The M.P.S.I.D.C. finalized the sale of mortgaged free-hold land and building and plant and machinery in favour of Ajay Solvency Ltd. who was ready to purchase the same at Rs. 88 lacs. The petitioner was given another opportunity to purchase the mortgaged property on the same price and terms, within 15 days from the date of receipt of letter, otherwise the sale will be confirmed in favour of the intending purchaser. Again petitioner failed to make any better offer. Hence sale was ultimately confirmed as per Annexure R-3/4. Action has been taken in fair and reasonable manner which cannot be resulted with.

In the facts and circumstances of the case, it is clear that reasonable opportunities were given to the petitioner. Two notices Annexure P. 3 and P. 8 were issued to the petitioner in the year 1996 and thereafter in the year 1998 u/s 29 of the State Financial Corporation Act. Thereafter the unit was taken over. The action cannot be said to be arbitrary or mala fide in any manner. The Apex Court in State Financial Corporation and another vs. M/s Jagdamba Oil Mills and another, AIR 2002 SCW 500, considered the scope of interference in prosecuting u/s 29 of the State Financial Corporation Act and it was held that under Articles 14 and 226 of the Constitution. It is obligatory for administrative authorities to act fairly and the Courts cannot act as appellate authority over decision taken by authorities cannot substitute its judgment unless action of administrative authority is unfair and unreasonable.

The obligation to act fairly on the part of the administrative authorities was envolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi judicial authorities are bound to observe. It is true that the distinction between a quasi judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If

the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred". The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation*, 1947(2) All ER 680.

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, 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 what 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, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

While this is not the occasion to examine the content and contours of the doctrine of fairness, it is enough to reiterate for the purpose of this case that the power of the Courts while reviewing the administrative action is not that of an appellate Court.

In the above case the decision of *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, was overruled and decision in *U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others*, , *U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another*, and *Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others*, , their Lordships considered where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that Corporation was not acting fairly, even if requisite procedures have been followed. The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The Apex Court in *M/s Jagdamba Oil Mills*" case (supra) (in para 13 and 18 of Report in SCC) held:

The fairness required of the Corporation cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at

from another angle. The Corporation 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 decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision 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, for the decision of the Corporation. As was observed by this Court in U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , in commercial matters the Courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, , in the matter, of action by the Corporation in exercise of the powers conferred on it u/s 29 of the Act, the scope of the judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of the State Financial Corporation, or, (b) where the State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short "the Constitution"), the High Court does not sit as an appellate authority over the acts and deeds of the Corporation. Similarly, the Courts other than the High Courts are not to interfere with action u/s 29 of the Act unless the aforesaid two situations exist.

The subsequent decisions of this Court in Gem Cap's (supra), Nairn Oxygen (supra) and Micro Cast Rubber (supra) run counter to the view expressed in Mahesh Chandra's case. In our opinion, the issuance of the said guidelines in Mahesh Chandra's case are contrary to the letter and the intent of section 29. In our view, the said observations in, Mahesh Chandra's case do not lay down the correct law and the said decision is overruled.

In the instant case, the action cannot be said to be mala fide in the light of the principles laid down by the Apex Court in Jagadamba Oil Mill's case (supra). When the notice was issued to the petitioner, there is no document filed by the petitioner indicating that he submitted any detailed rehabilitation proposal for payment or reschedulement after service of notice u/s 29 of the State Financial Corporation Act nor deposited any part of outstanding dues. Thus, the action taken by the authorities cannot be said to be unreasonable or arbitrary or mala fide calling for an interference. The loan was advanced long back. Petitioner has made persistent defaults after 1987-88. Petitioner has not been able to recover till 1998 when unit was taken over loan liability had multiplied. Unit was not only taken over but sold to Ajay Solvex (P) Ltd. Before sale the petitioner was asked to make better offer to submit proposal which he did not submit. His letter written in 1999 is vague. No concrete acceptable offer was placed for consideration, he was asked to make payment of 10 lacs out of 4.5 crores, even that amount, he did not care to deposit to show his bona fide and intention to

pay. Petitioner has not challenged the sale proceedings nor has impleaded the purchaser in the writ petition. Conduct of petitioner appears to be any how delaying recovery. The action initiated u/s 29 of the State Financial Corporation Act was absolutely proper, just and reasonable in the facts and circumstances of the case.

I find no merit in this writ petition. It is dismissed. There shall be no order as to the costs.