
(2002) 03 MAD CK 0135

In the Madras High Court

Case No : Writ Petition No's. 12427 of 1998 and 960 of 2001 and W.M.P. No's. 18894 and 18895 of 1998 and 1309 of 2001

Lambda ELCOT Limited

APPELLANT

Vs

State Industries Promotion Corporation of Tamil Nadu Limited
(SIPCOT), Egmore, Chennai

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29, 30, 31
Transfer of Property Act, 1882 — Section 69

Citation : (2002) 03 MAD CK 0135

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : George Cherian, for the Appellant; P. Rajagopal, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Since the petitioner in these writ petitions is the same and the relief claimed is also similar, they are being disposed of by the following common order.

2. Aggrieved by the proceedings of the respondent dated 27-07-98, in and by which the respondent decided to proceed u/s 29 of the State Financial Corporations Act to take possession of the mortgaged assets of the company, the petitioner-Lambda ELCOT Limited has filed Writ Petition No. 12427 of 98 to quash the said order and for further direction to the respondent to consider the repayment schedule in terms of the revival package as contained in the respondent's Memorandum/Note for the Board Meeting held on 25-02-98 and to consider and hold a joint meeting of the respondent, the petitioner company and ELCOT as requested by the petitioner in its letter dated 10-04-98 and confirmed by ELCOT's letter 25-06-98 to find an amicable solution. The very same petitioner in W.P. No. 960 of 2001 challenges similar proceedings of the

respondent initiated on 9-01-2001.

3. The case of the petitioner is briefly stated hereunder:- The petitioner company approached the respondent-State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT) for a term loan to finance the purchase of the fixed assets. After considering the petitioner company's project report, the respondent granted a term loan assistance of Rs.85,00,000/- on 24-2-93. The loan was to be repaid in 20 quarterly instalments after an initial moratorium of two years from the date of first drawal of the loan. The repayment was to be completed on or before 1-12-2000. The petitioner company commenced production in December, 1995. Though the petitioner company was sanctioned Rs.85,00,000/- of term loan, it voluntarily availed of only Rs.46,19,000/- due to curtailing of its manufacturing activity by limiting itself to the manufacture of only 3 types of electronic equipment due to the changed market condition. The petitioner company was eligible for a subsidy under the term loan sanctioned. After negotiation, the subsidy was disbursed after a considerable delay by the respondent and the same was adjusted by the respondent against the arrears due by the petitioner company. The petitioner company also prayed for a joint meeting of the respondent with the petitioner company and ELCOT who was a 50 per cent equity holder in the petitioner company. At the meeting, the petitioner company was asked to submit a feasibility report which was forwarded to the respondent by a letter of recommendation dated 5-12-97 from the Chairman and Managing Director of ELCOT, to consider the feasibility report favourably. Despite the above, the respondent issued a foreclosure and recall order dated 23-03-98 foreclosing the loan and calling upon the petitioner company to repay the entire term loan of Rs.46,19,000/- and interest of Rs.17,13,626/- within 15 days of the receipt of the above said notice. They also issued a notice informing that they had decided to proceed further u/s 29 of the State Financial Corporations Act, 1951 to take possession of the mortgaged assets of the company, against which the petitioner filed W.P. No. 12427/98. The petitioner had paid Rs.26,41,920/- after filing the earlier writ petition and in all paid totally Rs.42,37,308/-. Regarding interest amount dues, it is a subject matter of discussion between the petitioner and the respondent in respect of concessions and waivers. The respondent is not justified in issuing the impugned proceedings.

4. The respondent filed a separate counter affidavit in both the writ petitions. In W.P. No. 12427 of 98 it is stated that the respondent sanctioned a term loan of Rs.85.00 lakhs on 24-2-93 subject to the terms and conditions stipulated in the sanction order. The petitioner availed a sum of Rs.46.19 lakhs out of sanctioned amount of Rs.85.00 lakhs. The balance sanctioned amount was lapsed due to non-completion of the project as envisaged. The petitioner was not regular in repayment of the amounts and was a chronic defaulter. So a show cause notice was issued on 27-7-96. Subsequently a joint meeting was convened on 13-9-96 and 25-11-97. Out of eligible subsidy amount of Rs.19.53 lakhs a sum of Rs.14.77 lakhs had been disbursed to the petitioner. During the inspection of the factory on 27-2-97, it was noticed that a portion of the administrative block was

let out to a private party on a monthly rent of Rs.40,000/- without obtaining prior permission from the respondent which is a violation of the terms and conditions of the sanction order. The viability report submitted by the petitioner was examined by the Board of SIPCOT at its meeting held on 25-2-1998 and decided to re-call the loan. In pursuance of the decision taken by the Board, a fore-closure order dated 23-3-98 was issued. Even after the fore-closure order, the petitioner did not pay the amount. So the respondent issued a notice dated 27-7-98 u/s 29 of the State Financial Corporations Act, 1951 to take possession of the mortgaged assets of the company. Pursuant to the orders of this Court, a joint meeting was convened on 18-9-1998 among SIPCOT, ELCOT and Indian Overseas Bank and the petitioner company. In the joint meeting, the Managing Director of the petitioner company informed that he would submit a proposal for one time settlement. But the petitioner without filing a proposal filed a complaint before the State Consumer Redressal Commission, Chennai in Complaint No. 226 of 98 on 9-11-98 claiming a sum of Rs.19.79 lakhs towards compensation for the damages and loss alleged to have been sustained by the petitioner due to the negligence and deficiency in service of the respondent. The delay is not on the part of the SIPCOT in disbursing the subsidy amount. The subsidy was adjusted as per the request of the petitioner. The company neither submitted a revival proposal nor taken any action to clear the SIPCOT's over dues. Only at the review meeting held on 25-11-97, the promoter came forward to prepare a viability report to avoid further action from SIPCOT. The same was considered by the Board and felt that the revival proposal proposed by the company was not feasible and it has been decided to recall the loan for realising the dues of SIPCOT. The petitioner failed and has not taken any effective steps to revive the company on payment of dues to SIPCOT. The petitioner is in arrears of a sum of Rs.73.30 lakhs as on 31-12-1999. The respondent has also filed similar counter affidavit in W.P. No. 960/2001 and submitted that by observing all the procedural formalities the respondent took over the mortgaged assets of the unit on 18-1-2001 on 11-30 A.M. in the presence of one Mr. M. Vijayakumar, P.A. to Managing Director of the petitioner company.

5. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as respondent.

6. I have already referred to the case of the petitioner as well as respondent. There is no dispute regarding sanction of term loan of Rs.85.00 lakhs by the respondent to the petitioner on 24-2-93. It is also not disputed that the petitioner availed a sum of Rs.46.19 lakhs out of the sanctioned amount of Rs.85.00 lakhs. It is further seen that the balance sanctioned amount was lapsed due to non-completion of the project as envisaged. It is the case of the respondent that the petitioner was not regular in repayment of the amounts and was a chronic defaulter, accordingly they issued a show cause notice on 27-7-96. It is further seen that a joint meeting was convened on 13-9-96 and 25-11-97 during which time the petitioner was asked to give an opportunity to clear the interest over dues and also prepare viable report to justify the request for re-

schedulement, funding of interest. Learned counsel for the petitioner by drawing my attention to the request made by the petitioner to the respondent to accede a second charge on the fixed assets of the petitioner company for availing working capital sanction extended by the Indian Overseas Bank for Rs.20.00 lakhs, contended that due to non-acceptance of the request by the respondent, the petitioner was unable to avail the working capital from the Indian Overseas Bank. However, it is seen from the materials placed on the side of the respondent that since the petitioner was in arrears, they were advised to clear the same (arrears) for claiming second charge for working capital assistance of the petitioner company.

7. Mr. George Cherian, learned counsel for the petitioner, by taking me through the correspondences between the petitioner and the respondent, contended that because of the failure on the part of the SIPCOT and due to their non-cooperation in acceding to their request for availing working capital from the Indian Overseas Bank, they were not in a position to clear of the loan amount. For this, Mr. P. Rajagopal, learned counsel for the respondent, has brought to my notice that subsequent to the order of this Court dated 19-8-98, a joint meeting was convened on 18-9-98 among SIPCOT, ELCOT, Indian Overseas Bank and the petitioner company. In the joint meeting, Mr. K.V.B. Prasad, Managing Director of the petitioner company informed that he would submit a proposal for one time settlement. It is the case of the respondent that instead of submitting a proposal for one time settlement, as agreed, the petitioner filed a complaint before the State Consumer Redressal Commission in complaint No. 226 of 98 on 9-11-98, claiming a sum of Rs. 19.79 lakhs towards compensation for the damages and the loss alleged to have been sustained by the petitioner due to the negligence and deficiency in service of the respondent. In this regard, Mr. P. Rajagopal has placed before me the order dated 19-8-98 passed by this Court in W.M.P. Nos. 18894 and 18895 of 98 in W.P. No. 12427 of 98. A perusal of the said order shows that while granting interim stay for a period of four weeks, this Court recorded the statement of the senior counsel for the petitioner that "there is possibility of settlement and one time payment within a period of 4 weeks. He has also submitted that the interest of the ELCOT, one of the Undertakings of the State Government is also involved; accordingly prays for some reasonable time for full settlement. The above statement was recorded." Pursuant to the said order, a joint meeting was held on 18-9-98. The Minutes of the meeting find a place at page 4 of the typed-set of papers filed by the respondent. A perusal of the said Minutes would go to show that Mr. K.V.B. Prasad, Managing Director of the petitioner company, expressed that he would submit one time settlement proposal to SIPCOT on 21-9-98 in which he would give the mode of payment, schedule of payment and the source from which the payment would be made. It is further seen that on the side of the SIPCOT, it was explained to him that the revival package submitted by him was analysed in detail and was found that the unit was not viable and the servicing of the debt to SIPCOT would be difficult for the unit, accordingly he was advised to submit the one time settlement proposal

proposed by him immediately for examining his request. Thereafter, on receipt of letters dated 19-9-98 and 3-10-98, the General Manager sent a reply dated 14-10-98 to the Managing Director, petitioner company stating that they are agreeable for one time settlement and payment of Rs.72,29,199/- (as on 30-11-98) towards term loan dues besides other liabilities towards subsidy, IFST etc., if any subject to approval of the Board and as per the terms and conditions stipulated at the time of approval. At this stage, it is to be noted that the petitioner company has not taken sincere efforts to comply with the one time settlement as suggested in the letter of the respondent on 14-10-98. Instead, the petitioner filed a complaint against the respondent in the State Consumer Redressal Form, Chennai. It is clear that though the SIPCOT has agreed for one time settlement of payment of Rs.72,29,199/-, subject to certain terms and conditions and approval by their Board, I am satisfied that the petitioner has not availed the said opportunity and instead, rushed to the Consumer Forum finding fault with the respondent. In such a circumstance, I am unable to accept the argument of Mr. George Cherian finding fault with the SIPCOT. I hold that it is the petitioner who failed to honour the one time settlement conveyed by the General Manager, SIPCOT in his letter dated 14-10-98.

8. In Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , the Supreme Court has held that the Court can interfere in the action taken by the Financial Corporation only if there is unreasonableness or arbitrariness. In U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , the Supreme Court has held that unless the action of the Corporation has mala fide, even a wrong decision taken by them is not open to challenge. In Shri Kandavel Industries, M/s. etc. v. The Tamil Nadu Industrial Investment Corporation Ltd., and another, reported in 1994 Writ L.R. 281, a Division Bench of this Court had an occasion to consider Section 29 of the State Financial Corporations Act and powers of this Court in interfering their action under Article 226 of the Constitution of India. After referring to various decisions of the Supreme Court as well as this Court, the Division Bench has culled down the following principles:- (para 16)

"16. In our view, the following principles emerge from the various decisions referred to above:

i) The High Court exercising jurisdiction under Article 226 of the Constitution of India will not ordinarily interfere in respect of acts and deeds of the SFC, as though exercising appellate powers over such actions unless

(1) there is a statutory violation on the part of the Corporation; or

(2) Where the SFC acted so unfairly or unreasonably that no reasonable person would have taken such an action complained of.

(ii) When a notice is issued u/s 30 of the Act and the demands made therein are not complied with, the SFC shall be at liberty to choose to take any one or more of the actions contemplated u/s 31 of the Act, and Courts exercising jurisdiction

under Article 226 of the Constitution of India may not, as a matter of course, interfere with such action taken.

(iii) The High Court will not sit as an appellate authority over the acts and deeds of the Corporation and seek to correct them at every stage before properties of the individual concerned are brought for sale and in cases where resort is made to Section 69 of the Transfer of Property Act, 1882, the party aggrieved shall invoke his remedies only before ordinary Civil Courts and recourse to Article 226 of the Constitution shall be firmly discouraged.

(iv) The terms and conditions of the contract between the SFC and the borrower with regard to the repayment can be waived or modified depending upon the facts and circumstances of each case. If the default in payment of dues was shown by the borrower to have been occasioned due to reasons beyond the means and control of the borrower and/or are not attributable to the SFC or its officers. Of course, it cannot be waived or modified against the wishes of one to the advantage of another. The High Court can subject to the above and for sufficient and valid reasons order reshedulement of payment in proper and genuine cases, keeping in view the basic principle that promoting industrialisation is not to be at the cost of public funds.

(v) No special notice u/s 29 of the Act is necessary before action is taken under the said provision and a demand made earlier calling upon the payment of the outstanding arrears would by itself be sufficient. It is necessary for the borrower to prove breaches before the action of the Corporation is struck down or set aside.

(vi) If in the opinion of SFC there is no reasonable scope for any endeavour to make the unit viable and put in working condition and the unit becomes unworkable, the sale of the unit shall be made by following the guidelines set out fully and as directed by the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, which have been extracted in paragraph 6 above.

(vii) Even if the sale is considered to have been in violation of the guidelines, the unit should not be automatically delivered to the borrower and opportunity shall be given to the borrower to pay the entire liability either in instalments or in lump sum and till such time the SFC should be in possession and protect as well as keep the unit running wherever possible, and if the borrower fails to pay the entire amount, the unit should be sold in public auction. The Court shall always have power to give directions depending upon the peculiar facts and circumstances of the particular case, including in a particular case order for delivery of the unit to the borrower if substantial sum is paid, so that the borrower can also run the industrial concern and pay off the balance of the debt due to the SFC."

By applying the above principles and in the light of the factual details referred to above, I am satisfied that the petitioner has not made out a case for interference

by this Court exercising jurisdiction under Article 226 of the Constitution of India.

9. By drawing my attention to the guidelines issued by the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , learned counsel for the petitioner contended that the action of the respondent cannot be appreciated and the same is liable for interference by this Court. In the said decision, two Judge Bench of the Hon''ble Supreme Court issued certain guidelines for observance by the Corporation while exercising power u/s 29 of the Act. The very same decision was considered by 4 Judge Bench of the Hon''ble Supreme Court in Haryana Financial Corporation v. M/s Jagadamba Oil Mills, reported in 2002 (1) CTC 503. After analysing the scope of Section 29 of the State Financial Corporations Act, and considering the scope of interference of the High Court in writ jurisdiction in the action taken by State Financial Corporation, Their Lordships have arrived at a conclusion that the observations in Mahesh Chandra's case do not lay down the correct law. Their Lordships have held thus: (paras 18 and 19)

"18. The aforesaid guidelines issued in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, place unnecessary restrictions on the exercise of power by the Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, will only lead to further delay in realization of the dues by the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible.

19. The subsequent decisions of this Court in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, do not lay down the correct law and the said decision is overruled."

As rightly pointed out by Mr. P. Rajagopal, learned counsel for the respondent, the guidelines issued in Mahesh Chandra's case placing unnecessary restrictions on the exercise of power by the Financial Corporation have been overruled in the subsequent decisions referred to above; accordingly the contention of Mr. George Cherian relying on Mahesh Chandra's case is liable to be rejected.

10. In the light of what is stated above, I do not find any merit in the claim made by the petitioner; consequently both the writ petitions are dismissed. No costs. Connected W.M.P. Nos. 18894, 18895/98 and 1309/2001 are also dismissed.