

(1997) 02 CAL CK 0019
In the Calcutta High Court
Case No : C.O. No. 732 (W) of 1995

Ma Ananda Oil Mills Pvt. Ltd. and Others	APPELLANT
Vs	
W.B.F.C. and Others	RESPONDENT

Date of Decision : 24-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 30

Citation : AIR 1998 Cal 285 : (1997) 2 CALLT 224

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : D.R. Basu Mallik, for the Appellant; Jaydeep Kar and D.N. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—Both the aforementioned writ applications with the consent of the parties were taken up for hearing together and are being disposed of by this common judgment.

2. The fact of the matter is not much in dispute.

3. On 26th April, 1991 a term loan of 6.44 lacs was sanctioned by the respondent-corporation on terms and conditions contained in the sanctioned letter which was released in between the period January, 1992 and May, 1992. The petitioner admittedly defaulted in making the quarterly instalments and on a prayer made for extension of repayment schedule, the moratorium period was extended by an order dated 20th July, 1993. On 18-2-94 and 22-8-94 the petitioner prayed for extension of time of moratorium period as also extension of time to pay principal and interest and by an order dated 5-10-94 the prayer for replacement was allowed by the respondent-corporation.

4. The matter was, thereafter, referred to the Debt Recovery Committee of the Tribunal and by a letter dated 8th December, 1994 the decision of the Committee

upon a discussion with the petitioner which is to the following effect was communicated to the petitioner :--

"The following decision was taken by the committee considering the affairs of the CO. :

1. Net interest for Sept. '94 quarter was to be paid forthwith.
2. Present over dues of Rs. 39888.18 in the FITL a/c was to be paid immediately.
3. Current interest, as and when due, shall have to be paid in time, starting from Dec. '94 quarter.

On receipt of the payments against SI. Nos. 1 and 2 above within 19 DECEMBER '94. your proposal for further rephasing of the already rephased schedule may be taken up for consideration by the appropriate authority."

5. As the petitioner did not comply with the said request, a notice was issued u/s 30 of the State Financial Corporation Act by the respondent-corporation on 2nd January, 1993 calling upon the petitioner to pay a sum of Rs. 8,66,031.63 P.

6. On 11-1-95 the petitioner filed C.O. No. 732(W)/95 not only against the respondent-corporation but also against the United Bank of India, inter alia, alleging that the respondent-bank did not pay the working capital sanctioned for running the factory. In the said writ application the petitioners", inter alia, made several prayers.

7. Altamas Kabir, J. by an order dated 24-1 -1995 directed the petitioner to deposit a sum of Rs. 53,184.24 P. in two equal instalments, the first such instalment was to be paid within 31st January, 1995 and the second instalment was to be paid by 15th February, 1995. The petitioner was further directed to deposit the monthly instalment in terms of paragraph 2 of the letter dated 5th October, 1994 as contained in Annexure "B" to the writ application. However, liberty was granted to the respondent concerned to proceed in accordance with law and the payments to be made by the petitioner without prejudice to the rights and contentions of the parties and subject to the final result of the writ petition. Admittedly the petitioner paid the first instalment but did not pay the second instalment and, thus a notice u/s 29 had been issued and pursuant thereto the respondent-corporation took over possession.

8. On 16th March, 1995 an application for interim order was filed but the same was not moved. In the meantime on 16th November, 1995 a publication issued in Ananda Bazar Patrika for sale of the unit where after a second interim application for interim order was filed but the same was also not moved.

9. On 15th December, 1995 the West Bengal Financial Corporation issued a letter to the effect that they have received an offer of Rupees 7,00,000/- and it granted an opportunity to the petitioner to place better offer whereafter a third application was filed on 2nd January, 1996 for the self-same relief. On 3-1-1997 a fourth interim application was filed but the same had not been pressed. The

second writ application was filed by the petitioner on 29th January, 1997 ex parte, inter alia on the allegation that the earlier writ application was specially fixed on 23rd December, 1996 under an erroneous cause title and as the matter was not marked by the petitioners' advocate, the same was dismissed for default. However, from the order sheet dated 23rd December, 1996 it does not appear that the writ petition was dismissed for default but as nobody appeared on behalf of the petitioner, the matter was directed to go out of list.

10. In the second writ application an ex parte interim order was obtained on 30th January, 1997 which was extended from time to time. Both the matters with the consent of the parties were directed to be placed as listed motion and was heard on 21-2-1997 by an order dated 17-2-97.

11. Mr. Debranjana Basu Mallick, the learned Counsel appearing on behalf of the petitioners submitted, inter alia, that in the second writ application the petitioner has, inter alia, questioned the right of the respondent-corporation to charge interest at a rate which was in excess of the sanctioned letter and, thus it is not entitled to said amount. It was submitted that the petitioners were prevented from running the factory by reason of non-payment of the working capital by the respondent-bank and in that view of the matter, the respondent-corporation should be directed to stay its hand in proceeding with the auction sale in exercise of power u/s 30 of State Financial Corporation Act.

12. Mr. Joydip Kar the learned Counsel appearing on behalf of the respondent No. 1 submitted that from the facts stated in the writ application itself it would be evident that the petitioner had defaulted in complying with this Court's order and, thus the respondent was at liberty to take over possession of the properties in question. According to the learned Counsel from the events as narrated hereinbefore, it would be absolutely clear that the petitioner despite having been given several chances to repay the debt, did not avail the opportunity and, thus it is not entitled to any relief far less any equitable relief from this Court. It was further submitted that from the contemporaneous documents being the petitioners' letters dated 20-1-93, 18-2-94 and 22-8-94 it would be evident that the petitioner had never questioned the rate of interest charged on the principal amount and, thus the second writ application has been filed by way of an after thought and the same being related to the self-same question, it should not be entertained. An affidavit-in-opposition has been filed by the respondent-bank wherein, inter alia, it has been stated that despite sanction of a sum of Rs. 1,92,000/-, the petitioner failed to comply with the conditions prescribed therefore, and thus the working capital could not be advanced. It is one of those cases which depicts as to how some litigants take recourse to the abuse of process by Court by filing repeated application. As noticed hereinbefore, the petitioners not only defaulted in complying with the Court's order but filed four interim applications, in the first writ application but did not move the same. Even the second writ application had been filed, inter alia, stating that the earlier writ application was dismissed for default and a restoration application was pending.

It is in this situation that this Court directed both the writ applications to be heard together. If certain subsequent events had occurred, the petitioner either could bring the said subsequent events to the notice of the Court or file any application for amendment of the writ petition. It, however, filed a second writ application ex parte without service of the notice upon the respondents and obtained an interim order by showing extreme urgency.

13. It is now well known that this Court in exercise of its power under Article 226 of the Constitution of India cannot arrogate itself to the jurisdiction of an appellate Court. It cannot pass any order only on the ground of sympathy. The parties have entered into a contract and except in exceptional cases, the Court shall not interfere with the decision of the respondent-corporation.

14. The scope and power of judicial review of this Court under Article 226 of the Constitution of India in such matters, has been stated succinctly by the Apex Court in U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, in the following terms at pages 262 (of AIR SCW) :--

"However, we cannot lose sight of the fact that 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 the decision it takes are on the basis of the information in its possession and 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, not prudent, commercial or business like, it may be for the decision of the Corporation. Hence, whatever the wisdom (or the lack of-it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

15. The aforementioned decision has been considered by me in The Indian Hotels Company Ltd. v. Calcutta Municipal Corporation being Matter No. 3743 of 1994 disposed of on 27th February, 1995.

16. In the said decision this Court had also taken into consideration the decision of the Supreme Court of India in U. P. Financial Corporation v. Gem Cap (India) Pvt, Ltd., reported in AIR 1993 SC 1435 : (1995 All ER 515).

17. In view of the aforementioned decisions of the Apex Court, there cannot be any doubt whatsoever that scope of judicial review of this Court under Article 226 of the Constitution of India visa-vis the activity of the Corporation being limited, it cannot interfere with the impugned decision unless it is said to be mala fide.

18. In M/s. Gem Cap (India) Pvt. Ltd. (supra), the Apex Court in no uncertain terms stated that 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 or unreasonably. While deciding the question as to whether the

Corporation had acted unfairly and unreasonably or not this Court cannot act as an appellate Court and seek to correct them.

19. So far as the alleged non-grant of the working capital by the respondent-bank is concerned, as noticed hereinbefore, the affidavit-in-opposition has made the position clear. In any event, non-grant of the working capital would not be a ground for non-payment of the amount payable to the respondent-corporation particularly in view of the fact that the Corporation had granted all reliefs prayed for by the petitioner either by way of extending the Moratorium period or by Rephasement of loan. As indicated hereinbefore, the petitioner even did not comply with the order of this Court as it filed second writ application on suppression of material facts.

20. For the reasons aforementioned the prayer of the petitioner cannot be allowed and the writ applications are accordingly dismissed. However, it would be open to the petitioners to take part in the auction and/or files a suitable representation before the Managing Director of the respondent-corporation which may be considered on its own merits but in the facts and circumstances of this case there will be no order as to costs.