

**(1987) 01 OHC CK 0038**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 1341 of 1980

Madan Mohan Rajguru

APPELLANT

Vs

Orissa State Financial Corporation and Another

RESPONDENT

**Date of Decision :** 09-01-1987

**Acts Referred:**

Orissa State Financial Corporation Act, 1951 — Section 29, 30, 31

**Citation :** (1987) 63 CLT 312

**Hon'ble Judges :** P.C. Misra, J;B.K. Behera, J

**Bench :** Division Bench

**Advocate :** A.K. Misra and B.S. Misra, for the Appellant; R.N. Sinha, S.N. Sinha and G.C. Rout, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.C. Misra, J.—Petitioner, an ex-defence personnel who had purchased an Ashok Leyland Bus by obtaining loan from the Orissa State Financial Corporation (opp. party No. 1) (hereinafter called as "Corporation") challenges the seizure and auction of the truck by opposite party No. 1 in exercise of its powers u/s 29 of the Orissa State Financial Corporation Act and prays to quash the same.

2. Being approached by the Petitioner the Corporation granted a loan of Rs. 1,32,600/- to the Petitioner out of which a sum of Rs. 1,09,000/- was spent for purchase of the bus. The Petitioner spent an amount of Rs. 48,000/- for construction of the body of the bus whereafter it was registered as O.S.S. No. 320. The Petitioner obtained a route permit from Sambalpur to Gochhara which he found to be unprofitable for which he approached the Transport Commissioner for a longer route. But the route permit was only extended by 12 kilo metres. In spite of best of his efforts he could not succeed in getting a better route and consequently he could not pay the instalments payable to the Corporation regularly. The Petitioner had paid a sum of Rs. 20,000/- to the Corporation after the route was extended, but he had to spend a sum of Rs. 20,000/- as the condition of the bus deteriorated on account of its plying on bad road during

rainy season. According to the Petitioner he was not served with any notice for payment of the defaulted amount or for seizure of the bus, but the bus was suddenly seized by the Corporation on 29-3-1980 and was brought from Sambalpur to Cuttack. It has been alleged that the Petitioner was given to understand by the Corporation that a settlement would be made if the Petitioner pays a certain sum pursuant to which the Petitioner was arranging the required amount. But later on he came to know that the bus has been sold away by way of auction to opposite party No. 2. Opposite party No. 2 has been plying the bus by obtaining temporary route permit in the name of the Petitioner. The Petitioner has further alleged that the bus has been sold at under valuation. The aforesaid action of the opposite party No. 1 is said to be illegal and discriminatory by which the Petitioner has been put to great loss and prejudice. According to the Petitioner the entire action of opposite party No. 1 including the purchase of the bus by opposite party No. 2 is void as there has been a gross violation of the principles of natural justice both at the time of seizure as well as at the time of auction sale. According to him, he has become liable for an amount of Rs. 15,000/- along with interest to the State Transport Authority which amount he had borrowed from it as seed margin money and a further sum of Rs. 20,000/- payable to the Road Transport Authority, Sambalpur as passenger tax. On these allegations, he has prayed for quashing the seizure as well as the auction of the bus bearing registration No. O.S.S. 320.

3. The Corporation filed its counter denying the allegations made in the writ application. According to the Corporation a loan of Rs. 1,33,000/- with 15% as margin of security was sanctioned in favour of the Petitioner. In all the Corporation paid a sum of Rs. 1,09,216.32 as the cost of the chassis and engine. The Petitioner in the deed of hypothecation agreed that in case of failure of any of the terms he will hand over the bus in favour of the opposite party No. 1 who will sell the same by auction or by private negotiation and in case of any deficiency the Petitioner shall make good the loss. It was also one of the terms of the agreement that the Corporation by notice may require the Petitioner to discharge its liability in full. The loan amount together with interest was to be repaid in 42 monthly instalments beginning from 18-10-1976 and ending on 18-3-1980. The interest was stipulated to be paid at the rate of 15 1/2% per annum with quarterly rest with a rebate of 2% per annum for timely payment. The detailed account of the further amounts advanced by the Corporation has been given in the counter according to which a sum of Rs. 1,32,519.66 from the sanctioned amount of loan of Rs. 1,33,000/- has been paid by the Corporation out of which the Petitioner has paid only a sum of Rs. 8,080/- and also the seed capital loan of Rs. 15,600/-. According to the calculation given by the Corporation the defaulted amount is Rs. 1,89,788.43 P. as on 31-3-1980 which the Corporation demanded both by notice and personal approach on a number of occasions. The last of such demand was by a letter issued by the Corporation dated 19-3-1980 wherein it was made clear that if the Petitioner would not clear up his dues, the vehicle would be taken away and sold in auction. In spite of the

notice the Petitioner intentionally avoided payment for which the Corporation seized the vehicle and sold away the same after advertisement in the local daily "The Samaj". Before the sale was effected the Petitioner was called to appear before the Disposal Committee of the Corporation where he appeared but expressed his inability to pay up the outstanding dues. His offer before the Disposal Committee was that he is capable of paying Rs. 10,000/- at the maximum which suggestion was not acceptable by the Disposal Committee consisting of the Director, Industries and three other Directors of the Corporation. It has, therefore, been sub-mitted that there has been no illegality in the actions taken by the Corporation for seizure and sale of the vehicle which was sold at Rs. 1,60,000/- with a down payment of Rs. 60,000/-. On the basis of these assertions made in the counter affidavit, the Corporation prays that the writ application is liable to be dismissed having no merits whatsoever.

4. The main contention of the Petitioner is that the Corporation was obliged under law to issue notice to the Petitioner before the vehicle was seized and there has been gross violation of the principles of natural justice in selling away the vehicle without prior intimation to the Petitioner and without giving him an opportunity of paying up the defaulted amount. In this connection learned Counsel for the Petitioner has referred to the provisions contained in Sections 30 and 31 of the State Financial Corporation Act and contends that a notice of demand is mandatory before taking action u/s 29 of the said Act. We do not find any merit in the aforesaid argument in as much there are two independent remedies provided u/s 29 and Section 30 of the Act. Section 31 itself lays down that the action shall be taken under that Section without prejudice to the provisions of Section 29 of the Act. In the decision reported in *Rose Potteries Vs. West Bengal Financial Corporation*, , the same plea had been taken and it has been decided that the provisions of Section 29 is not controlled by procedure prescribed in Section 31 of the Act. During the course of hearing we wanted the original records of the Corporation to examine if the Corporation had issued notices to the Petitioner calling upon him to pay up the defaulted amount and whether the Petitioner appeared before the Disposal Committee pursuant to a notice issued in that behalf. The said record was produced before us and we are satisfied that the Petitioner had appeared before the Disposal Committee and was given a fair opportunity to pay the outstanding dues before the bus was sold in auction. The Petitioner being bound by the terms of the agreement entered into by him, at the time of sanction of loan he was duty bound to pay back the loan as per the stipulated instalments or to reap the consequences of the default. In the circumstances, we find no justification to quash the seizure or sale of the bus.

5. In the result, the writ application is dismissed having no merits. No costs.

B.K. Behera, J.

6. I agree.