
(1994) 09 OHC CK 0032

In the Orissa High Court

Case No : Original Jurn. Case No. 2085 of 1994

M.D. Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-09-1994

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 1995 Ori 52

Hon'ble Judges : R.K. Patra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : P. Palit and D. Mohanta, for the Appellant; Additional Government Advocate, B.M. Patnaik, S.K. Padhi, M.M. Das, K.K. Jena, B.R. Sarangi and P.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The seizure of the industrial unit called M/s. Incast Metals (P.) Limited, in exercise of power u/s 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as the "Act") by opposite parties 2 and 3 is being assailed by the petitioner with the further prayer that they may be directed to release the unit in favour of the petitioner and opposite parties 1 to 6 be directed to implement the rehabilitation package for revamping the unit.

2. The petitioner's case in nutshell is that the industrial unit in question is a joint venture of the petitioner and the Orissa Small Industries Corporation. It manufactures sophisticated high-precision castings in stainless steel and other special alloys which are supplied to vital industries in the national sector like Defence, Aerospace, Telecommunication, Railways etc. The entrepreneur has been successful in utilising materials available in the State of Orissa for the manufacture of the goods which has helped in minimising the project cost. The petitioner himself is a Metallurgical Engineer who had rich experience by serving in Hindustan Steel Limited, Hindustan Aeronautics Limited, Industrial Development Corporation of Orissa Ltd. and while he was continuing as the Chief

Engineer in Hindustan Aeronautics Limited, he conceived the project and applied for a licence to the Government of India. The licence was immediately granted, but as finances could not be arranged, the petitioner could not run the risk of resigning his post and take up the project. The project remained in a dormant stage until the Scientific Adviser to the Government of India initiated the matter by writing a letter to the Managing Director, IPICOL, to provide assistance to the petitioner for setting-up the industry which would be in the national interest. After some negotiation the petitioner finally decided to set up the industry and accordingly resigned from his service in the year 1983. The Orissa State Financial Corporation (OSFC) as well as the IPICOL sanctioned different amounts and I.D.B.I. sanctioned a seed capital assistance of Rs. 8.3 lakhs interest free. The project cost at that stage was only Rupees 71 lakhs. The land was acquired in 1985 July and building was constructed in June, 1986. The plants and machinery were installed in December, 1986, but on account of lack of funds for working capital, the goods could not be produced till March, 1987. The State Bank of India sanctioned working capital to the extent of Rs. 7.5 lakhs as against the requirement of Rs. 28 lakhs and commercial production started in December, 1987. The entrepreneur could face the difficulty of continuing production in the absence of working capital and intimated the Bank for increase of the working capital which was ultimately increased to Rs. 19.5 lakhs in March, 1988. The unit in question could raise the capacity utilisation to only 20 per cent of the rated capacity. As the petitioner was facing difficulties in having the finance, he apprised all concerned and on the intervention of the Government of Orissa, the State Bank of India convened a joint meeting of OSFC, IPICOL, OSIC and the Promoter. The reasons for sickness and the prospects of viability were discussed threadbare and it was unanimously accepted that inadequacy of the working capital was the main cause of sickness and it was decided that a rehabilitation package would be provided to the unit by all concerned including the State Bank of India. But as a condition precedent, they wanted an additional equity of Rs. 5 lakhs from the promoter. The petitioner, therefore, inducted some new Directors and collected the additional equity of Rs. 5 lakhs and requested the financial institutions to provide the rehabilitation package. But to the utter misfortune, the rehabilitation package as promised was never put into effect and the unit in question became sick day by day. The petitioner also with the hope of getting the rehabilitation package brought in further Directors to keep the unit alive, but when the new Directors lost hope of any financial assistance from the financial institutions in accordance with their decision for rehabilitation package, they got fed-up and a dispute arose amongst the Directors of the unit. They wanted to take out their money which they had put and there was in-fighting among the Directors. The petitioner, therefore, sought the intervention of the State Government and, in fact, a second meeting was initiated by the Director of Industries which was attended to by the OSFC, State Bank of India and IPICOL. Some decision was taken for revamping the unit, but ultimately, that was not given effect to and, therefore, by December, 1991, there was a serious conflict between the petitioner and the new Directors. The industry in question was

accumulating loss and its liabilities grew day by day. The OSFC sanctioned a package in February, 1992, but that was a conditional one subject to the Bank sanctioning its part in accordance with the decision. The Bank, however, did not show any sign of its sanction though petitioner has been persuading the Bank time and again. The dispute between the petitioner and the new Directors was also resolved to some extent by mediation of the Chairman, O.S.I.C., and the new Directors were declared to be financiers. The two other Directors Shri K.C. Tripathy and Shri S.K. Chatterjee were paid back a sum of Rs. 10 lakhs and Dr. N.K. Das decided to continue in the Company. The O.S.I.C. had agreed to provide short-term credit against bill purchase facilities, but the procedure adopted was so cumbersome that timely finance was a problem and the petitioner with all his efforts failed to achieve the desired production for survival of the unit and ultimately for default on his part in the payment of the instalment dues, the unit has been seized by the State Financial Corporation in exercise of its drastic power u/s 29 of the Act. The petitioner alleges that incapacity of the industry to repay the instalment dues is basically because of the fact that the financial institutions including the Bank did not sanction the necessary funds though it was unanimously agreed to revamp the unit as a rehabilitation package and ultimately an industry with great potentiality is being wasted. It is further alleged that the petitioner having made all out efforts and yet having failed, the authorities should have come forward with a helping hand to promote the industry in question and should not have taken the drastic action of seizing the unit and thereby impeding the manufacturer of a most sophisticated item which is essentially required in Defence installations. According to the petitioner, the State Financial Corporation has not acted with a business-like manner and with an attitude to help the promotion of the industry as decided by the apex Court in the case of Mahesh Chandra v. Regional Manager, U. P. Financial Corporation AIR 1993 SC 936AIR 1993 SC 936.

3. The OSFC has filed a counter-affidavit indicating therein that it sanctioned a term loan of Rs. 28 lakhs and a soft loan of Rs. 2 lakhs. Similarly, the IPICOL also sanctioned Rs. 25 lakhs and the IDBI had sanctioned Rs. 8.3 lakhs as seed loan. The working capital had been given by the State Bank of India, the O.S.I.C. participated as a shareholder, but on account of gross mismanagement and internal misunderstandings between the Directors, the Company became sick from the beginning. Even the Company took personal loan from the market, but that did not improve the matter. The repayment to the financial institutions was meagre and as on 31-3-1993, the default position so far as OSFC was concerned, was to the tune., of Rupees 27,19,506/- in respect of the term loan and Rs. 99,347/- in respect of the soft loan. So far as the IDBI Seed capital loan is concerned which was disbursed through OSFC, the default position was to the extent of Rs. 2,50,962/-. The State Financial Corporation having requested several times to the petitioner to repay the defaulted amounts, but the petitioner having failed, finally a recall notice was issued on 7-5-1993. But even then when there was no response, the Corporation had no other option than to take

possession of the unit in exercise of power u/s 29 of the State Financial Corporation Act on 14-6-1992. The Corporation then decided to sell the unit and issued advertisement on 19-6-1993. but because the petitioner approached this Court there has been no sale of the unit in question. It has also been stated in the said counter-affidavit that there was internal dispute amongst the Directors and it being established that the petitioner misappropriated the Company's money, the financial powers of the petitioner were taken away and he was not allowed to manage any financial matter of the Company in accordance with the decision of the Board of Directors dated 3-5-1993. In this view of the matter, it is stated that the petitioner does not deserve any sympathetic consideration and the discretion of this Court cannot be invoked in favour of such a person.

4. The State Bank of India has also filed a counter-affidavit stating therein that the petitioner as the promoter had grossly neglected the financial management of the Company's affairs and he was seldom sincere in timely compliance of the Bank's requirements. The rehabilitation package was dropped as soon as it was brought to the notice of the State Bank of India that the petitioner has committed serious financial irregularities and the integrity of the promoter being doubtful, the Bank did not venture to go ahead with the rehabilitation package. The Bank took into account the non-functioning of the Company as well as the loss of credibility of the Company in the market and, therefore, the Bank finding no other way out and having lost its hope of getting repayment has already filed a suit which is now pending in the Court of the Senior Civil Judge, Bhubaneswar.

5. The IPICOL has also filed a counter-affidavit being sworn to by its Manager indicating therein that the dues against the petitioner-Company as on 19-5-1994 so far as the IPICOL is concerned is Rs. 49,10,141/-. It supports the action of seizure by OSFC as the petitioner never paid the instalment dues.

6. The Orissa Smalls Industries Corporation Ltd. has also filed a counter-affidavit being sworn to by its Assistant Manager, Law. The stand taken in the counter-affidavit is that the OSFC has tried its best to keep the industry alive, but mismanagement on the part of the petitioner and financial irregularities committed by him which developed a sense of distress amongst the Directors and non-sanction of funds in time stood on the way and the industry.

7. In course of hearing of the writ application, Mr. Palit appearing for the petitioner reiterated the stand taken by the petitioner in the writ application and contended that if the unit in question is handed over to the petitioner, then additional funds from any other financial institution will not be necessary and the unit will regenerate its own resources to square up the liability and in that view of the matter, the Court should intervene and issue necessary direction. But to a question posed by us as to whether the petitioner will be willing to pay at least a sum of Rs. 5 lakhs as a gesture of his bona fides so that the petitioner's prayer could be considered, Mr. Palit stated that the petitioner is not in a position to pay even a single pie towards the defaulted amount, the admitted default position of the petitioner, so far as the loan given by the OSFC is, concerned is to the tune

of Rupees 27,19,806/- towards the term loan and Rs. 99,347/- towards the soft loan as it stood on 31-3-1993. Within a period of one year the position must be much more by now. The liability to the IDBI is to the tune of Rs. 2,50,968/- and the liability of the petitioner towards IPICOL is Rs. 49,10,141/- as on 19-5-1994. So far as the State Bank of India is concerned, it has already filed a suit for recovery of the loan amount with which we are not concerned. The petitioner is also liable to pay to the Orissa Small Industries Corporation.

The grievance of the petitioner that the industry become sick on account of delay in disbursement of loan and on account of not revamping the unit by implementing the re habilitation package cannot be said to be without any forte. But the question that arises for consideration is that on the admitted default position, as stated above, would it be appropriate for the Court to direct the release of the industrial unit in favour of the petitioner particularly when the petitioner ex presses its inability even to deposit a paltry sum of Rs. 5 lakhs as compared to the huge defaulted amounts, already indicated. Mr. Palit appearing for the petitioner relying upon the observations made by their Lord ships of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, strenuously argue that the guidelines indicated by the apex Court that every endeavour should be made to make the unit viable and be put on working condition has not been followed in this case and, on the other hand, even though it was decided to rehabilitate the unit that was not given effect to. According to Mr. Palit, default in payment of loan, no doubt, confers power on the financial institution to take possession of the unit u/s 29 of the State Financial Corporation Act, but default alone is insufficient either to take possession or to sell the property and it should not be resorted to unless it is imperative. According to Mr. Palit in view of the potentiality of the unit which is not disputed and in view of the dues which the unit is entitled to get towards its supplies to Defence organisations, the financial institution should be directed to deliver possession to the petitioner and some time being given the petitioner will be able to pay up the instalment dues.

It is of course, true as held by the Supreme Court in Mahesh Chandra's case (supra) that the approach of the financial inatitution should be public-oriented, helpful to the loanee, but at the same time without any loss to the Corporation. But in view of the staggering default position of the unit, as indicated earlier, it is difficult for us to held that while exercising power u/s 29, the OSF has not acted in a business-like manner.

In the case of U. P. Financial Corporation v. Gem Cap (India) Ltd. AIR 1993 SC 1436 their Lordships of the Supreme Court examined the question of taking over possession by the corporation u/s 29 and held that the relationship between the corporation and the borrower is that of creditor and debtor and the corporation is not supposed to give loans once and to go out of business. It has also to recover the loans so that it can give fresh loan to others and promoting industrialisation at the cost of public fund does not serve the public interest and it merely

amounts to transferring public money to private account and, therefore, the fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. In that case, their Lordships also considered the power of the High Court in an application under Article 226 and held (at p. 1439 of AIR):--

".....Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an appellate authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be, that is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints -- self-imposed undoubtedly -- of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless."

The High Court in exercise of its power under Article 226 of the Constitution cannot substitute its judgment for the judgment of the administrative authority and only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, then only the court can intervene. In the facts and circumstances of the present case, whatever may be the potentiality of the industrial unit, the petitioner having admittedly defaulted in paying the instalments, the action of the financial institution in taking over in exercise of power u/s 29 of the State Financial Corporation Act can neither be said to be unfair or unreasonable. In that view of the matter, we are not in a position to interfere with the impugned decision taken by the State Financial Corporation.

8. The writ application is accordingly devoid of merit and the same is dismissed. There will, however, be no order as to costs.

R.K. Patra, J.

9. I agree