
(2001) 12 AHC CK 0065
In the Allahabad High Court
Case No : C.M.W.P. No. 36144 of 2001

M.M. Accessories and Another	Vs	APPELLANT
U.P. Financial Corporation and Another		RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2002 All 96 : (2002) 1 AWC 242

Hon'ble Judges : R.P. Mishra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Manish Goyal, for the Appellant; Satish Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

G. P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed for issuance of certain directions to the U. P. Financial Corporation.

2. The case set up in the writ petition is that petitioner No. 1 is a firm which was constituted for carrying on business of manufacturing cycle spokes. The petitioners approached the U. P. Financial Corporation (for short, U.P.F.C.) for loan and an amount of Rs. 15 lakhs was sanctioned on 24.7.1993 and an additional amount of Rs. 3.80 lakhs was sanctioned on 31.3.1996. The manufacturing unit of the petitioners was closed in 1997. The petitioners made a request to the U.P.F.C. to re-schedule the loan and the said request was accepted and the loan was re-scheduled on 20.4.2000. Sometime thereafter on 24.9.2001, the petitioners made a proposal to the respondents for one-time settlement whereunder they offered to deposit the balance of the principal amount plus 10 percent of the outstanding simple interest. The petitioners also deposited Rs. 1.80 lakhs through a demand draft which represented 10 per cent of the total outstanding dues as per the settlement offered by them. The respondents sent a reply dated 10.10.2001 that one-time settlement can be considered on full liability basis and not on the terms proposed by the petitioners. The respondents

also sent a letter dated 24.10.2001 asking the petitioners to participate in the meeting of the core group for finalising the terms of the proposal of one-time settlement. In the meeting convened for the purpose, the General Manager of the U.P.F.C. informed the petitioners that the proposal of one-time settlement could not be accepted on the terms offered by them. The case of the petitioners further is that their proposal was on the same terms in which one-time settlement had been accepted in the case of M/s. D. B. Ice Factory and Cold Storage, and by rejecting their proposal, they have been discriminated against. The principal reliefs claimed in the writ petition are that the order dated 10.10.2001 passed by the respondents be quashed, a writ of mandamus be issued commanding the respondents to produce the entire record of M/s. D. B. Ice Factory and Cold Storage, and the U.P.F.C. be commanded to enter into one-time settlement with the petitioners on the same terms and conditions as was done in the case of the aforesaid unit. A further prayer has been made that a writ of prohibition be issued for restraining the respondents from initiating any recovery proceedings against the petitioners.

3. Sri Manish Goyal has submitted that after the loan had been sanctioned and money had been disbursed to the petitioners, they had commenced production but on account of recession in the market, the unit was closed in the year 1997. The petitioners have been making necessary efforts to repay the loan amount by making deposits from time to time. The request for re-schedulement of loan was accepted by the respondents on 20.4.2000 but on account of closure of business, the petitioners were finding it difficult to deposit the instalments as fixed in the re-scheduled plan and, therefore, they made a request on 24.9.2001 to the respondents to enter into one-time settlement. The terms and conditions of the one-time settlement proposed by the petitioners were similar to that which had been accepted by the respondents in the case of M/s. D. B. Ice Factory and Cold Storage. Learned counsel has submitted that the respondents having entered into one-time settlement with M/s. D. B. Ice Factory and Cold Storage on the same terms and conditions as was proposed by the petitioners, they committed manifest illegality by not accepting the proposal made by the petitioners and the impugned order passed on 10.10.2001 rejecting the proposal is wholly arbitrary and discriminatory.

4. It is averred in paragraph 6 of the writ petition that the petitioners had approached the respondents for re-schedulement of its loan and this request was accepted by them and the loan was re-scheduled on 20.4.2000. It was thereafter on 24.9.2001 that the petitioners made a proposal to the respondents for one-time settlement. What the petitioners want is that a writ of mandamus be issued commanding the respondent-U.P.F.C. to accept the proposal of the petitioners" for one-time settlement.

5. Before considering whether such a prayer can be granted, it is necessary to understand the precise meaning of the word "settlement". In the context in which the word is used here, its meaning in the New Shorter Oxford Dictionary is

settling or payment of an account ; the action of coming to terms with a person. In Black's Law Dictionary, its meaning is adjustment or liquidation of mutual accounts ; the act by which the parties who have been dealing together arrange their accounts and strike a balance ; an adjustment of difference or accounts ; a coming to an agreement. In Law Lexicon by P. Ramanatha Aiyar, the meaning of the expression "settlement of accounts" is a compromise or a contract between two parties by means of which they ascertain the state of the accounts between them and strike a balance ; a determination by agreement ; a mutual adjustment of accounts between different parties and an agreement upon the balance. Therefore, the dictionary meaning of the word shows that settlement presupposes consent of both the parties whereunder a creditor relinquishes his claim to a sum of money due to him and voluntarily agrees to take a lesser amount for the liquidation of the liability of the debtor. It is obvious that there can be no settlement without the consent of both the parties, especially that of the creditor. The agreement or consent of the creditor is sine qua non for a settlement and in absence of his consent, there can be no settlement of accounts.

6. The principal relief claimed by the petitioners is that a writ of mandamus be issued commanding the respondents to enter into one-time settlement with the petitioners on the terms proposed by them. The principles on which a writ of mandamus can be issued have been stated as under in *The Law of Extraordinary Legal Remedies* by F.G. Ferris and F.G. Ferris, Jr. :

"Note 187.--Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192. --Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and Tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute ; mandamus lies as well for the enforcement of a common law duty.

Note 196.--Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court, subject always to the well-settled principles which have been established by the Courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on

one side and not denied on the other are taken as true, and Judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the Court may, and should, look to the larger public interest which may be concerned--an interest which private litigants are apt to over-look when striving for private ends. The Court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.--.....

The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action."

7. These very principles have been adopted in our country. In *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, after referring to the earlier decisions in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, ; *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, and *Dr. Umakant Saran Vs. State of Bihar and Others*, the Apex Court observed as follows in paragraph 15 of the reports :

"..... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

8. Therefore, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The petitioners have not been able to show that there is any statute or rule having the force of law which casts a duty on the U.P.F.C. to accept the proposal of one-time settlement made by a borrower whereunder he has given his own terms. It

is important to note that at the time when the loan was disbursed to the petitioners, a contract was entered into by them which provided for the rate of interest and mode and manner of payment. The amount of instalment and the date by which it had to be paid was also mentioned therein. The U.P.F.C. is not acting contrary to the terms of the contract which has been entered into between the parties. The request made by the petitioners for re-schedulement of the loan was also accepted by the U.P.F.C. and the loan was rescheduled. What the petitioners want now is that their proposal for one-time settlement, which contains terms advantageous to them, specially a rate of interest lesser than what they had agreed upon at the time of entering into the contract and disbursement of the loan, be accepted. The State Financial Corporations Act, which governs the working of the U.P.F.C., does not contain any provision for entering into a one-time settlement. A Court cannot issue any direction to a party to enter into a compromise or settlement. By the very nature of things, a settlement involves consent and it is a voluntary act of the party. The only statutory provision which requires the Court to achieve a settlement between the parties is Section 9 of the Family Courts Act. This section lays down that in every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceedings. The matters dealt with by the family courts are of entirely different nature where invariably the best solution for all the disputes is an amicable settlement between the parties. But even here, the only requirement of law is that the Court shall make an endeavour to assist and persuade the parties in arriving at a settlement. The Family Court cannot compel or force the parties to arrive at a settlement nor any such direction can be issued. In a matter where a creditor is enforcing its liability upon the debtor, the debtor has no legal right to claim that the claim be settled on favourable terms proposed by him whereby the claim of the creditor is reduced. Therefore, in our opinion, the prayer made by the petitioners that this Court should issue a writ of mandamus to the respondents to accept the proposal of one-time settlement made by them cannot be granted as it does not come within the principles on which a writ of mandamus can be issued under Article 226 of the Constitution.

9. The petitioners contend that the proposal for one-time settlement made by them was similar to that made by M/s. D. B. Ice Factory and Cold Storage, and by non acceptance of the same, they have been discriminated against. They have also prayed that the respondents be directed to produce the relevant records relating to the settlement with the aforesaid concern. Industrialisation is prime requirement of the country for generating employment and economic upliftment of the people. The Financial Corporations have been established to provide medium and long term credit to the industrial undertakings which fall outside the normal activities of the commercial banks. The Financial Corporations advance loans and provide capital for setting up an industry. Once the industrial unit

becomes viable, it attains the position to start repayment of that loan. Unless the Financial Corporations get back the money advanced by them, they cannot advance loans to others and the very object of establishing them would be defeated. Therefore, it is absolutely necessary that the money advanced by the Financial Corporations is repaid to them along with interest so that more and more people are able to take advantage of it by setting up more industries which may provide employment to large number of people and generate economic wealth. If an industrial undertaking comes under a financial crisis and is not in a position to meet its commitment regarding repayment of loan, the State Financial Corporation Act provides several remedies to a Financial Corporation for recovering its dues. It may proceed u/s 29 of the Act. take over the management or possession or both of the industrial concern and may transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to it. It can proceed u/s 31 of the Act and apply to the District Judge for an order for sale of the property pledged, mortgaged, hypothecated or assigned to it, or for transferring the management of the industrial concern to it. The taking over of possession or transfer or sale of the unit often results in closure of the industrial concern. Broadly speaking, two options are open to the Financial Corporation if an industrial concern has defaulted in repayment of the loan. It may proceed u/s 29 or Section 31 of the Act which will invariably result in closure of the unit, or it may re-schedule the loan or enter into a settlement on some favourable terms to the borrower. If some favourable settlement is entered into, the industrial concern may continue with its activity and may be able to revive. Which particular course of action should be taken by the Financial Corporation, would depend upon a variety of factors. It is likely that the revival of an industrial concern may be in larger public interest. By way of example, if the industrial concern is employing a large workforce, its closure may throw a large number of persons out of employment. The industrial concern may be situated in a backward area which the Government wants to develop and its closure may have a serious adverse impact as it may deter other entrepreneurs in setting up industry in that area. It may be carrying on a business which is of public utility and Its closure may adversely affect "a large cross-section of people. In these types of cases, the Financial Corporations, having regard to the public interest involved, may enter into a settlement so that the industrial concern may not be closed and the production activity may go on. There may be cases where the nature of the activity of the industrial concern may not be of such a character and its closure may not have any adverse impact of any significance. The need to enter into a settlement may also depend upon the fact as to how best the money of the Financial Corporation can be retrieved. If the industrial concern has valuable land or building or machinery, its sale may give sizeable amount. However, if the condition of the industrial unit is such where sale of its unit or hypothecated property may not give sufficient money, it may be prudent to enter into a settlement. The human element also cannot be ignored altogether. The unit may be substantially damaged on account of some natural calamity like earthquake, flood or fire or some calamity may fall upon the main person

running the industrial concern like death or serious ailment. In such a situation, the Financial Corporation, taking a humanitarian view, may enter into a settlement. These are matters to be examined and determined by the experts of the Financial Corporation as to what will be the ideal course to be adopted in a given case. The courts have neither the expertise nor the knowledge to go into all these questions and then to examine why in one case the offer of one-time settlement was accepted and why in another case it was refused. The exact idea of the nature and position of the industrial concerns can never be had by the affidavits filed by the parties. This will require an inspection of the spot, the assessment of the valuation of the land, building and machinery and a host of other factors. It is well-nigh impossible for the courts to enter into such kind of exercise in proceedings under Article 226 of the Constitution. It is also noteworthy that if a prayer is entertained on the part of a defaulting unit to compel or direct the Financial Corporation to enter into one-time settlement on the terms proposed by it, then a profit making industrial concern which is capable of paying its dues as per the terms of the agreement entered into by it, would also like to get a one-time settlement in its favour. Who would not like to get his liability reduced and pay less than what he is liable to pay under the contract executed by him?.

10. The plea of the petitioners is that they have been discriminated against by rejection of the proposal of one-time settlement made by them while similar proposal of M/s. D. B. Ice Factory and Cold Storage, has been accepted. As the name shows, it is a cold storage and an ice factory. A cold storage renders valuable service to agriculturists and farmers by storing their agricultural produce like potatoes, etc. Often the labour and earnings of farmers depend upon the fact whether they are able to properly store their produce and sell in the market at an appropriate time. Therefore, it is in public interest that a cold storage is not closed. Similarly, production of ice is also necessary as it is an article of mass consumption. May be, on an overall consideration of the various aspects, including retrieval of their money, the respondents thought it prudent to enter into one-time settlement with the aforesaid concern. The petitioners' unit was manufacturing cycle spokes where hardly any public element is involved. Therefore, the plea as urged on the ground of discrimination cannot be entertained by this Court.

11. Learned counsel has placed reliance on *Subedar Singh v. State of Haryana* 2001 (4) AWC 2778 ; *W.B. State Electricity Board v. Patel Engineering Company*. (2001) 2 SCC 451 *L.I.C. India v. Consumer Education JT.* (4) SC 366 and *Lakshmanasami Gounder Vs. Commissioner of Income Tax , Selvamani and Others*, . These are decisions on the principle of fairness which has to be adopted by public authorities. In our opinion, there is no violation of principle of fairness on the part of the respondents by not accepting the offer of one time settlement made by the petitioners.

12. Sri Goel has also referred to a document, copy of which has been filed as

Annexure-10 to the writ petition, in support of his submission that the respondent-U.P.F.C. should have entered into one-time settlement. These guidelines have been issued by Reserve Bank of India for recovery of Non-Performing Assets and are meant for Public Sector Banks. Paragraph 3 of the guidelines mention that they are operative till 31.3.2001. Clearly, they have no application to a loan given by a Financial Corporation.

13. For the reasons mentioned above, we are of the opinion that there is no merit in the writ petition, which is hereby dismissed summarily at the admission stage.