

(1992) 08 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4205 of 1992

M/s. Haryana Chlorochem

APPELLANT

Vs

UCO Bank and another

RESPONDENT

Date of Decision : 27-08-1992

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 227
Mines and Minerals (Development and Regulation) Act, 1957 — Section 9(2)

Citation : AIR 1993 P&H 139

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Mr. J.S. Brar, for the Appellant; Mr. H.C. Gupta, for the Respondent

Judgement

1. The petitioner M/s. Haryana Chlorochem, a partnership concern, highlights the rough treatment meted out to it by the respondent nationalised bank which has resulted in choking it before it could even take off. The prayer in ultimate analysis is to issue a writ of mandamus directing the respondent-Bank to perform its statutory duties and honour all other commitments made vide letter dated April 27, 1991 and accordingly disburse the loan which was promised to it. The relief as indicated above stems from the following facts :--

The petitioner concern was set up in order to instal a manufacturing plant for the manufacture of Chlorinated Paraffine Wax and Hydrochloric Acid at village Kakkar Majra, Tehsil Naraingarh, District Ambala. A detailed project report for the installation of the factory was prepared but inasmuch as the petitioner fell short of funds and was unable to carry out the manufacturing exclusively with its own funds, it approached the financial Institution for raising loan. The branch of respondent-Bank at Naya Gaon -- being closest to the Head Office of the petitioner, it became more convenient for the petitioner to approach the same for the desired loan. The necessary formalities were gone into and the respondent-Bank had sanctioned loan vide letter dated 27-4-1991. It has been mentioned in the letter sanctioning loan (Annexure PI) "that under-mentioned New proposal

for advance has been sanctioned, subject to the conditions mentioned thereunder". Under the heading "Special Stipulations", there is condition No. 16 which requires a special mention. The same reads thus :--

"Deposits of Rs. 10.00 lacs to be obtained by the branch from the partners and/or their sources within April, 1991"

The case of the petitioner is that having considered all the aspects of the case and various securities and mortgages offered by the petitioner vide Annexure P1, a loan to the tune of Rs. 12 lacs was sanctioned against the bills purchase covering supply of finished products and further a term loan of Rs. 10 lacs was sanctioned against hypothecation of the plant and the machinery purchased and installed, further an amount of Rs. 10 lacs was sanctioned against Inland L/ C on D.P. basis which was against the supply of raw material. In as much as all the conditions that were imposed by the Bank had been fulfilled by the petitioner, in anticipation of sanctioning of the loan, an amount of Rs. 5.68 lacs was released on 3-4-1991, The petitioner had offered three equitable mortgages, one of house No. 661 Sector 20-A Chandigarh valued at Rs. 8.56 lacs. The second equitable mortgage was against 1 and measuring a Kanals 12 Marias in village Kakkar Majra which was assessed at Rs. 5.59 lacs as also the cost of factory existing thereon. The third equitable mortgage was by way of deposit of title deeds of land measuring 322 square yards together with shops constructed which was valued at Rs. 13.21 lacs. The Bank had even got verified the title of the properties referred to above by M/s. S.B. Singla and associates, valuers. To be doubly sure the Bank had also got titles verified by Raj Kumar Goyal an Advocate of the Bank. Even though everything was done by the petitioner to the entire satisfaction of the Bank yet with an intent not to perform its statutory duty, the respondent-Bank addressed a letter to the petitioner on 2-8-1991 wherein it was said that one of the conditions had not since been fulfilled. It may be mentioned here that the condition said not to have been complied with by the petitioner was one which has been reproduced above. It is pleaded that the aforesaid letter was issued by completely ignoring the fact that the petitioner had in fact detained through its sources a deposit of Rs. 25 lacs from the Punjab Housing Development Board, Chandigarh. Besides, the petitioner had helped the Bank by opening yet another account which was fixed deposit of Rs. 2 lacs. The petitioner, thus, clarified the position and informed the Bank vide letter dated 9-8-1991 Annexure P2/A. Meanwhile the petitioner having been assured the disbursement of the remaining amount had committed itself to various other agencies by entering into a number of agreements. It had placed orders for the purchase of machinery at Delhi and Jaipur, electrical goods from various agencies at Chandigarh and commitments were made with the constructions agencies, as well. In the very nature of things, the commitments involved heavy recurring expenses. After the petitioner had written letter Annexure P2/A on 9-8-1991, one of its partners Shri Suresh Kumar Jain kept on approaching the Branch Office and the Zonal Office for the release of the remaining amount in accordance with the sanction letter but the cause of the petitioner was coldshouldered up to August

1991. The production, as per planning of the petitioner concern, was to start on 1-9-1991 but on account of non-release of the amount of loan, it was not done. Meanwhile another letter was received by the petitioner on 10-10-1991 whereby the respondent Bank again insisted upon the condition reflected in clause 16 giving further period of 14 days after which, it was threatened that the sanction would lapse. The petitioner had already mortgaged all the property at its disposal and was left in a precarious condition being unable to approach any other financial Institution. The Bank started demanding from the petitioner more stringent commitment. Therefore, it contacted the office of the Bank and begged for the release of the amount already sanctioned. An advice was given that it should forego the remaining term loan to the tune of 4.14 lacs and give additional security. The prevailing circumstances made the petitioner succumb to the pressure exerted upon it and finding no alternative in the matter, accepted the demand of the respondents. Vide letter dated 24-10-1991, in accordance with the demand of the Bank, the petitioner agreed to forego the term loan of Rs. 4.14 lacs and offered additional security by way of mortgage of Shop-cum-Office No. 16, Sector 11-D, Chandigarh which is of the value of Rs. 15 lacs. Even this foregoing of the loan did not stir the respondent-Bank, thus forcing the petitioner to borrow money from the market at exorbitant interest rate lest the unit may not become sick before its insinuation. The petitioner, however, received letter on 30-10-1991 (Annexure P6) that the Bank promised to release the working capital limits. The partner of petitioner firm Shri Suresh Kumar Jain, however, kept on approaching the officers of the Branch and Zonal levels but the commitment made was not honoured. Yet another letter was addressed to the Bank bringing to light to enormous losses that the petitioner was suffering and apprising the Bank regarding the urgency in the matter. The letter was kept in cold storage for sometimes and ultimately on 15-2-1992 the loan already released was recalled along with interest.

2. The petitioner, in the circumstances, that have been narrated above, finding no solace from the respondent financial Institution which is meant to cater for the needs of the petitioner and the like has approached this Court praying for issuance of a writ in the nature of mandamus as indicated in the beginning of the judgment and also praying that order Annexure P8 vide which loan has been recalled along with interest be quashed.

3. The matter has been contested by the respondents and by way of preliminary objections, it has been pleaded that the writ petition raises disputed questions of fact which cannot be gone into by this Court in its writ jurisdiction under Articles 226/227 of the Constitution of India, so the petitioner be shown the door of the Civil Court as also that the petitioner has failed to perform his part of the agreement and, therefore, the entire question is based on contract, breach of which cannot be agitated by way of a writ petition. There are other preliminary objections as well but in as much as they all deal with the case on merits, no specific mention of the same at this stage is felt necessary. The same as also the case of the Bank on merits of the controversy is that even though it had

sanctioned the loan in the manner made out by the petitioner, yet in as much as the petitioner did not fulfil the terms and conditions of the sanctioned loan, it had no choice but for the recall the same. The petitioner is to be blamed for not fulfilling its part of the contract as it did not comply with the conditions stipulated in clause 16 of the agreement. It is also maintained that the Bank had written letters Annexures R1 and R2 to fulfil the conditions but since the petitioner had failed to do so, the Bank vide its order dated 15-2-1992 had rightly cancelled the loan limits and directed the petitioner to deposit the entire outstanding amount of the term loan. It is also stated that the deposit of Rs. 25 lacs from the Punjab Housing Development Board which is ta certificate of deposit for a period of 91 days and that too at a commercial rate of interesf cannot be termed or equated as deposit fulfilling clause 16 of the sanctioned letter. It is stated that the petitioner had applied for the grant of loan and the respondent-Bank after considering the proposal sanctioned the following loan limits vide their sanction letter dated 22-4-1991 :--

1)

Cash Credit(Hypothecation)

=Rs. 12 lacs.

2)

D.P. Documentary

=Rs.3/-lacs

3)

Term loan for Machinery.

=Rs. 10/- laps

4)

Inland L/C on D. P. basis.

=Rs. 10/-lacs.

4. The terms and conditions of the sanctioning of the above said loan limits, it is stated were duly conveyed to the petitioner and condition mentioned in para 16 as reproduced above is said to have been not fulfilled by the petitioner. Besides, the preliminary objections mentioned above, the case of the respondent in justifying its stand is rather exclusively based upon non-fulfilment of condition No. 16 of the agreement.

5. The learned counsel appearing for the petitioner vehemently contends that when all legal conditions as contemplated for advancement of loan like furnishing of equitable mortgages, hypothecation and personal guarantees were complied with and the Bank had secured against all kinds of risks and had released an

amount of Rs. 5.86 lacs, the action of the Bank in not releasing the other sanctioned loan limits and in fact passing order Annexure P8 recalling the loan is wholly arbitrary. It is also contended that even clause 16 of the agreement was duly complied with on the deposit of Rs. 25 lacs from the Punjab Housing Development Board Chandigarh and also fixed deposit of Rs. 2 lacs and that non-compliance of condition 16 is only being raked up to deny to the petitioner the loan to which it is entitled. Even otherwise, condition 16, it is argued is wholly illegal, unwarranted, arbitrary, irrelevant and it has no nexus or rationale. It is said that in case the petitioner was to give a deposit of Rs. 10 lacs or 25 lacs for a long term, there was absolutely no necessity at its end to ask for loan which Would admittedly be on far higher rate of interest than the one, petitioner or others who would give deposit to the Bank would get. It is also contended that demand of Rs. 10 lacs or more as deposit is not contemplated by any of the Rules, governing the sanction or release of the loan and, thus, it could not be made the basis for the release of the sanctioned loan. The principle of equitable estoppel is also being pressed into service and in that regard the counsel contends that the petitioner having been promised that the sanctioned loan will be released entered into various agreements with various agencies. All this was done after a solemn undertaking was given to the petitioner by the Bank. At the end, the learned counsel contends that in view of all these circumstances the Bank would be estopped from withdrawing the sanction of the loan and recalling the same.

6. The learned counsel appearing for the Bank has, however, remained content by repeatedly arguing that this pre-eminently is a case which involves disputed questions of fact and should not be permitted to be raked in the writ jurisdiction of this Court.

7. After hearing the learned counsel for the parties, I am of the considered view that a grave injustice has been caused to the petitioner by obdurate, wholly unjustified, unwarranted and arbitrary action of the respondents. The petitioner has been left at such cross roads that even best efforts made by it now would not put it on rails for a considerable long time. Before, however, I come to the core of the controversy, it will be better to deal with the preliminary objections raised by the respondent-Bank. As noticed, the Bank wants the petitioner to knock the door of Civil Court as disputed questions of fact are involved in the present petition. Narration of facts, given-above, however, would reveal that nothing at all on facts has been disputed. That the loan was sanctioned is not disputed. It is also not disputed that the petitioner had submitted various securities with a view to secure loan. The loan was sanctioned and an, amount of Rs, 5.86 lacs was disbursed prior thereto is not disputed. The petitioner had got deposited an amount of Rs. 25 lacs, a short. term deposit and also opened a fixed deposit account by 2 lacs is alsn not disputed. The only question that has been urged is that such a deposit was not in term and tune with Cl. 16 but that, however, would not be a question of fact although the same shall have to be dealt with to find out as to whether it was or not strictly in compliance with said

clause, as to whether the said condition, in the circumstances of this case, could be strictly adhered to. Be that as it may, I do not find any fact pleaded by the petitioner on which a serious dispute might have been raised requiring recording of evidence to determine as to whether it is the facts pleaded by the petitioner which are correct or vice versa. The learned counsel, however, relied on a judgment of *Jai Singh Vs. Union of India and Others*, to canvass that the disputed questions of fact cannot be permitted to be agitated in writ jurisdiction. The facts of the case aforesaid would go to show that the appellant took on lease 180 acres of land from the Government of Rajasthan on June 18, 1962 for the purpose of mining gypsum for a period of 20 years. According to S. 9(2) of the Mines and Minerals (Regulation and Development) Act, 1957 the holder of a mining lease granted on or after the commencement of the said Act had to pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral. As per Second Schedule the rate has been mentioned on which the gypsum (sic) was to be paid. According to that item, at the relevant time, the royalty was to be at the rate of Rs. 1.25 per tonne of gypsum containing 85 per cent and above and at the rate of .75 paise per tonne of gypsum containing less than 85 per cent. Royalty was demanded from the appellant in respect of gypsum won by him at the rate of Rs. 1.25 per tonne. The case of the appellant was that the gypsum which was won by him contained less than 85 per cent. As against that, the stand taken by the respondent was that the appellant failed to furnish the analysis reports from a standard laboratory to show that gypsum won by him contained less than 85 per cent. Nothing more is required to be said as the facts narrated above clearly indicate a serious dispute on the question of fact which necessarily required evidence to find out the truth. The judgment cited by the learned counsel is wholly inapplicable to the facts of the present case.

8. Coming now to the second preliminary objection again pertaining to the non-maintainability of the writ petition, as it involves enforcement of contract, the learned counsel for the respondent-Bank relies upon *State of Punjab v. Balbir Singh* AIR 1977 SC 1717 and contends that where an action is based upon mutually agreed conditions, the same should not be permitted to be agitated under Arts. 226/227 of the Constitution of India in writ jurisdiction of High Court. The facts of aforesaid case reveal that M/s. Balbir Singh & Sons, was the higher bidder at an auction for country liquor vends relating to certain villages in the district of Ferozepore. Under the terms of the license issued to respondent M/s. Balbir Singh & Sons on conditions specified before the auction, the auction fee and the security had to be deposited before lifting the minimum quota of liquor fixed under the licence. The firm did not lift the minimum quantity of liquor fixed under the licence, it also did not pay the full amount of licence fee as undertaken by it. The Excise authorities, thus, demanded payment of the still-head duty due on the entire minimum quantity of liquor which the firm was required to lift

under the licence. The High Court allowed the writ petition on the ground that the firm had not been given an opportunity of being heard. While relying upon earlier decision given by it *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, the appeal of the State was allowed by the Supreme Court. The relevant passage that was relied upon to allow the appeal of the respondent runs thus :--

"Those interested in running the country liquor vends offered their bids voluntarily in the auction held for granting licences for the sale of country liquor. The terms and conditions of auctions were announced before the auctions were held and the bidders participated in the auctions without a demur and with full knowledge of the commitments which the bids involved. The announcement of conditions governing the auctions were in the nature of an invitation to an offer to those who were interested in the sale of country liquor. The bids given in the auctions were offers made by prospective vendors to the Government. The Government's acceptance of these bids was the acceptance of willing offers made to it. On such acceptance, the contract between the bidders and the Government became concluded and a binding agreement came into existence between them. The successful bidders were then granted licences evidencing the terms of contract between them and the Government, under which they became entitled to sell liquor. The licencees exploited the respective licences for a portion of the period of their currency, presumably in expectation of a profit. Commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of the trading transactions. Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot be writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force."

9. In my considered view, the judgment relied upon by the learned counsel has no parity with the facts that are available in this case. A Financial Institution like a nationalised Bank has duties to perform under the Act, Rules and Regulations governing it and admittedly one of its duties is to advance loans. The learned counsel appearing for the respondent-Bank does not deny that it is the statutory Rules as also the guidelines of the Reserve Bank of India which are binding both on deposits as also loans. If a citizen is able to point out non-performance of such duties by a nationalised Bank which is "other authority" within the meaning of Art. 12 of the Constitution of India, a writ of mandamus can well be issued by the High Court in the jurisdiction vested in it under Art. 226 of the Constitution of India. This precise matter came before the Supreme Court in *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, and while dealing with the matter, it was held thus(at p. 851):--

"It is too late in the day to contend that the instrumentality of the State which would be "other authority" under Art. 12 of the Constitution can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract."

10. The facts of the cited case show that by its letter of offer and the subsequent agreement the Gujarat State Financial Corporation entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs. 30 lakhs to M/s. Lotus Hotels Private Limited. Acting on the said undertaking, the Company proceeded to undertake and execute the project of setting up a 4 Star Hotel. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the Statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the Company incurred expenses, suffered liabilities to set up a hotel. If the loan was not forthcoming, the Company may not have undertaken such a huge project. Acting on the promise of the Corporation, the Company suffered further liabilities to implement and execute the project. In the back drop of this uncon-trovertible facts, it was held that the principle of promissory estoppel would come into play. That being the position of law, the second preliminary objection raised by the respondent-Bank is also repelled.

11. As mentioned above, the only discordant note the Bank has endeavoured to strike is that the petitioner itself is to be blamed for it did not fulfil condition No. 16 of the agreement and that in itself was more than sufficient for it not to advance any further loan and rather recall the loan with interest. Cl. i6, as has been reproduced above, does not appear to convey what the Bank intends to prove. The same came into being only with a view to see and vouchsafe seriousness on the part of the petitioner for carrying out its project and in fulfilling the other conditions of contract which were far more material. If the aforesaid clause is interpreted to mean as the Bank wants that a party obtaining loan has to invest a substantial amount of Rs. 10 lacs either itself or through its sources and that too for a long term then the very purpose of obtaining loan would be totally defeated. It would run counter to the very purpose of taking loan. Obviously, an individual or Institution needs loan as it cannot provide for everything that is desired at its own ends. Obviously, the necessity of loan arises when the sources at the end of individual or Institution are not sufficient and if with a view to cover up the deficiency, it has first to create sources at its own end then there will be no necessity at all to raise a loan as the same already stands raised at its own end. It is not disputed that the Bank charges more interest on loans than it gives on deposits as it is only through the said margin that it runs its business. The party which applies for a loan can never possibly settle such a condition that may work loss to it. In the circumstances, it is to be held that condition No. 16 was more in the nature of seeking assurance and winning confidence of a borrower than of anything else. Be that as it may, the fact is that the petitioner through its sources gave a deposit of Rs. 25 lacs and

also opened fixed deposit by Rs. 2 lacs. It is nowhere provided in Cl. 16 of the agreement that the deposit of Rs. 10 lacs from the partners or their sources had to be for long term. The petitioner had, thus, complied with the aforesaid clause of the agreement and the Bank by demanding a long term deposit defeated the claim of the petitioner on wholly unjustified and arbitrary grounds. No amount of pleading employed by the petitioner ever stirred the officers dealing with its matter. The petitioner had suffered heavy losses as it had incurred lot of liabilities in the earnest hope instilled by the Bank in it that it will get the loan but the request made, thus, to disburse the remaining amount fell on deaf ears. Even forgoing of the remaining term loan of 4.14 lacs by way of additional security did not bring about any sense of providing healing touch to the petitioner. I am of the considered view that the attitude adopted by the respondent-Bank was wholly unbecoming of a financial Institution and deserves to be condemned in severest words.

12. From the facts that have been narrated above, there is no doubt left in the mind of this Court that the petitioner had meticulously complied with all the terms and conditions of the agreement and the Bank created unnecessary, unwarranted and unjustified hurdles in its way. The respondent-Bank also did not adhere to the Rules governing advancement of loans, thus, causing immense loss to the petitioner. The Supreme Court in Gujarat State Financial Corporation's case (supra) held thus (at page 852) :--

"If the appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory Corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Art. 226 of the Constitution would certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Art. 12".

13. It also held that the principle of promissory estoppel would certainly stop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent.

14. For the reasons stated above, this petition is allowed with costs. A writ in the nature of mandamus is issued to the respondent directing it to release the loan sanctioned and promised. However, inasmuch as the petitioner had forgone term loan to the tune of Rs. 4.14 lacs, the same would not be disbursed whereas all remaining amounts shall be paid forthwith. Order Annexure P8 is quashed. The costs are quantified at Rupees 5,000/-.

15. The petitioner has also prayed for holding the respondent-Bank liable for the losses incurred on the ground of delay in releasing the loan sanctioned in April, 1991. I am convinced in the facts and circumstances of the present case, the petitioner must have suffered loss on account of arbitrary action on the part of

the respondent-Bank but no meaningful relief can be granted to the petitioner in these proceedings as the quantum of damages has to be assessed on the appraisal of evidence for which purpose it shall be open to the petitioner to seek the said relief from the Civil Court.

16. Order accordingly.