

(1997) 08 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Contempt Petition No. (C) 16 of 1997

M/s. Himachal Paper Products and Another

APPELLANT

Vs

Prem Kumar, Managing Director HPFC

RESPONDENT

Date of Decision : 13-08-1997

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 15

Himachal Pradesh State Financial Corporations Act, 1951 — Section 29, 31

Citation : (1998) 1 ShimLC 80

Hon'ble Judges : M. Srinivasan, C.J.; A.L. Vaidya, J

Bench : Division Bench

Advocate : M.S. Sethi and P.P. Grewal, for the Appellant; Kuldip Singh, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The first Petitioner herein filed CWP No. 71/90 in this Court against the State of Himachal Pradesh, through Secretary Industries Government of Himachal Pradesh, Himachal Pradesh State Financial Corporation and Union of India through the Secretary Ministry of Petroleum, New Delhi. The prayers in the writ petition were: (1) to issue mandamus directing the concerned Respondent to sanction the requisite quota of paraffin of 64.8 Metric tonnes per annum; (b) issue a mandamus commanding Respondents No. 1 and 2 not to charge any interest much less penal interest during the period when the necessary raw material was withheld from the Petitioner and award damages to the tune of rupees five lacs for the lapses on the part of the Respondents; and (C) issue a mandamus directing the Respondents to refrain from taking over both the Units of the Petitioner u/s 29 of the H.P. State Financial Corporation Act, 1951.

2. That writ petition was filed on the issue of notice by the second Respondent therein which will be referred hereinafter as "the Corporation", u/s 29 of the H.P. State Financial Corporations Act, 1951 (for short, "the Act") intimating the Petitioner that the Industrial Units of the Petitioners would be taken over by the

Corporation on account of the default committed by the Petitioners in repayment of the amount lent by the Corporation to the Petitioners. When the writ petition was filed an application for stay was moved by the Petitioners and an order of stay was passed initially. By order dated 30th July, 1991. the Court refused to vacate the stay order granted earlier in favour of the Petitioners. The Court permitted the Petitioners to deposit a sum of Rs. 50,000/- in monthly instalments of Rs. 5000/- each. The first instalment was to be deposited by September 7, 1991, and the remaining instalments by the 7th of each succeeding month. Before issuing such a direction the Court made the following observations in its order on July 30, 1991:

What was urged with some emphasis and, in our prima facie, opinion, with justification by Shri Sethi was that the Petitioner had installed the industry on an assurance given jointly by the State of Himachal Pradesh and the State Financial Corporation, as is clear from the proceedings of which a copy has been appended Annexure-R 2 with the reply of the second Respondent. Prima- facie, therefore, we feel that the Respondents were under an obligation to supply to the Petitioner reasonable quantity of paraffin wax to enable the Petitioner to work the unit for manufacturing wax paper bags largely dependent upon it....

Shri LS. Panta, appearing for the State of Himachal Pradesh, has drawn our attention to the averments made in the affidavit dated July 13, 1990, sworn by Director industries, Himachal Pradesh. saying that inspite of recommendation of the State of Himachal Pradesh to the Union of India. which was the appropriate authority to release supply of paraffin wax to the State, the Union of India had not come forward to release adequate quantity of paraffin wax for being supplied to entrepreneurs in the State.

On June 10, 1991, we had passed an order that the Petitioner should deposit a sum of Rs. 50,000/- in cash or through a bank draft with the second Respondent before the next date fixed to prove his bona fides. Admittedly, no amount, what soever, out of this amount of Rs. 50,000/-. has been deposited by the Petitioner. Shri Sethi has attempted to justify the failure on the part of the Petitioner in making the deposit or any part thereof, on the ground that it was not possible for the Petitioner to do so inspite of the fact that even his personal assets had been liquidated by the Managing Director of the Petitioner to meet the liability in connect with the industry which was set up by the Petitioner on the assurance held out by the first two Respondents to the Petitioner. He has drawn our attention to some averments contained in paragraph 28(d) of the amended writ petition, in particular.

There is no dispute between the parties that the amount of loan, which was sanctioned in the year 1977 and, thereafter, paid to the Petitioner, was a sum of Rs. 4 exclusive of the liability for interest thereon. It has also not been disputed before us that, by now, a total sum of about Rs. 3,69,000/- has been deposited by the Petitioner with the second Respondent. According to Shri Sethi, the aforesaid deposit was partly towards interest and partly towards repayment of

the principal amount of loan. Shri A.K. Goel, however, urged that the entire payment aforesaid of about As. 3,69,000/- had to be appropriated towards the liability of interest on account of the specific terms of the loan as also had been admitted by the Petitioner in Annexures-R5 and R6, appended to the reply filed on behalf of the second Respondent.

Without going into this matter any further it appears clear to us that during the period of nearly 12 years past a total sum of Rs. 3.69.000/- has been deposited by the Petitioner with the second Respondent out of the amount of Rs. 4,28,000/- which had been advanced to the Petitioner. That leaves a gap of about Rs. 49,000/-. Having regard to this figure we had directed the Petitioner to deposit at least a sum of Rs. 50,000/- in our order dated June 10, 1991.

After having heard the learned Counsel aforesaid at some length, we feel that the Petitioner should be required to deposit with the second Respondent a sum of As. 50,000/- though in monthly instalments of Rs. 5000/- each, the first instalment being deposited by September, 7, 1991, and the remaining instalments by the 7th of each succeeding month. This will be without prejudice to the stand taken by the parties in this writ petition.

We further feel that the learned Deputy Advocate General should be asked to file yet another affidavit to bring on record that latest position about availability of the paraffin wax and the quantity which can be allowed to the Petitioner by the State Government to enable the Petitioner to work the unit which was set up to manufacture wax paper bags. This supplementary affidavit may be filed within two weeks from today. The case shall be listed again after two weeks, when appropriate directions in the light of the facts disclosed in the supplementary affidavit, may be made to the Union of India in that respect.

An impassioned appeal was made by Shri Goel, appearing for the State Financial Corporation, for vacation of the stay order granted earlier. In the totality of the circumstances of this particular case we are not inclined to accede to the request made by Shri Goel. The interim order shall continue.

It is stated that the said direction to deposit Rs. 50,000/- in instalments has been complied with by the Petitioners. The Corporation issued a Notification on 1-10-1991, withdrawing its earlier notice dated 16-12-1989 in the following terms:

We are to say that the taking over proceedings initiated u/s 29 of the State Financial Corporations Act, 1951 " your industrial concern by the Corporation for recovery of its outstanding loan dues vide its letter No. HPFC/21-100-79-111/24904-13 dated 16-12-1989 is hereby withdrawn for the present.

3. Based on that withdrawal of Notification, a representation was made by the learned Counsel for the Corporation before the Court on 6-11-1991. It was also represented to the Court that in view of the same, no relief was being claimed

against the Corporation by the Petitioners in the writ petition. That position was conceded by the learned Counsel for the writ Petitioners and the counsel represented to the Court that the name of the second Respondent may be deleted from the memorandum of parties. Regarding the said concession made by the learned Counsel for the writ Petitioners, the Court ordered the deletion of the second Respondent therein, i.e., the Corporation, from the Memorandum of parties. The Court also added that consequently, the interim order dated 9-2-1990 and continued on 30-7-1991 stood vacated pertaining to the second Respondent in the writ petition. That order was passed on 6-11-1991.

4. In 1993, the Corporation issued a notice to the Petitioners calling upon the Petitioners to pay the amount due with interest thereon. As per the notice, a sum of As. 14,79,766.99 was due to the Corporation. It was also stated in the notice that if there was default in payment of the amount within one month from the receipt of the notice, appropriate legal proceedings will be started by the Corporation for recovery of its dues, or the Corporation may take over the possession of the industrial concern and the mortgaged properties by virtue of powers vested in it u/s 29 of the State Financial Corporations Act, 1951 with the right to transfer the same by way of lease or sale for recovery of its dues from the lease money/sale proceeds thereof. That notice was sent both by registered post and under certificate of posting. A copy of the postal receipt issued by the Post Office evidencing the sending of the notice by registered post has been produced before us in Annexure R-9. The record showing that the letter was sent under Postal Certificate to various parties has also been produced before us by the Corporation as Annexure R-10. Item No. 14 therein contains the name of the first Petitioner herein. The address contained in both the notice as well as copy of the Certificate of Posting is the same as that of the Petitioners given in the present proceedings. but according to the Petitioners, such a notice was not received by them.

5. Thereafter, the Corporation filed an application u/s 31 of the Act in the Court of District Judge, Solan which was taken on file as 1-S/2 of 1994. In that application, notice appeared to have been served on the Petitioners and they entered appearance through a counsel. The Corporation filed an application for withdrawing the said petition before the District Judge. That application was filed on 2-1-1996. In the application, it was stated that the Corporation had decided to initiate recovery proceedings against the Petitioners herein under the H.P. Public Monies (Recovery of Dues) Act, 1973 or any other mode of recovery as per law and as such, it has been decided to withdraw the said petition. On the same day, the District Judge passed an order as follows:

Application for withdrawal of the petition filed, in view of the statement of the learned Counsel for the applicant and the application filed by him, the petition is dismissed as withdrawn.

6. Thereafter, the Corporation issued a Notice u/s 29 of the Act on 18-2-1997. A reply was sent by the Petitioners on March 4, 1997 to the said notice. In the

reply, the Petitioners made a reference to the proceedings in this Court in the writ petition and the orders passed thereon. The Petitioners stated in the reply that the question of interest remained to be settled and the High Court found that the State Government as well as the H.P. Financial Corporation were remiss in performing their obligation and assurances and in that context, the Bench ordered the Petitioners to pay the principal amount only.

7. The present petition was filed on 25-3-1997 by the Petitioners u/s 12 read with section 15 of the Contempt of Courts Act, against the Managing Director of the Corporation. According to the Petitioners, the Respondent herein is guilty of committing contempt of the Court and he shall be awarded severe punishment.

8. In the petition, it is stated that the Respondent has adopted a contrivance or a stratagem which would amount to flouting the orders of the Court and lower the esteem of the Court in the minds of the public.

9. In the reply filed by the Respondent, the facts stated above are set out and it is pointed out that the Corporation was well within its limits in issuing a notice u/s 29 and exercising the statutory rights conferred upon it by the Act for recovering the amount due to the Corporation.

10. A rejoinder was filed by the Petitioners. Apart from other denials in the rejoinder and reiteration of what has been stated in the petition for contempt, it is stated categorically by the second Petitioner that the Petitioners were not aware at all of the proceedings before the District Court u/s 31 of the Act and no notice had been received by them in such proceedings.

11. Before us, learned Counsel for the Petitioners contends that this Court has given categorical findings in the order dated 30-7-1991 that the Corporation was also liable to supply paraffin and it had failed to fulfil its agreement. According to learned Counsel, the Bench has found that there was a remiss on the part of not only the State Government, but also on the part of the Corporation. Secondly, it is stated that the Bench has found that the claim of the Corporation for interest could not be accepted prima-facie and it was a matter to be gone into later in detail in the writ petition and interest of justice would be met by directing the Petitioners in the writ petition to make payment of the principal amount, namely, Rs. 4,28,000/- which was lent by the Corporation to the Petitioners. According to learned counsel, it was on that basis the Petitioners were permitted to deposit a sum of As. 50,000/- to fulfil the gap of As. 49,000/-, which existed between the amounts already paid by the Petitioners to the Corporation and the amount lent by the Corporation to the Petitioners. It is, therefore, contended that in view of the said findings in the order dated July 30, 1991, the Corporation chose to withdraw the Notification u/s 29 issued earlier. Having withdrawn that notice and brought it to the notice of the Court without reserving any liberty to issue fresh notice u/s 29, it was not open to the Corporation to issue Anr. notice u/s 29 of the Act. According to learned Counsel, that conduct of the Corporation would itself amount to adopting a stratagem or contrivance to flout the orders of this

Court. It is further argued that the corporation having approached the District Court u/s 31 of the Act and withdrawing those proceedings with a statement that it would proceed under the H.P. Public Moneys (Recovery of Dues) Act, 1973, has no right to issue a notice u/s 29 of the Act. Again, this conduct, in the opinion of the learned Counsel, amounts to contempt of Court.

12. In support of this contention reliance is placed upon a judgment of the Madras High Court, a short note of which appears in the AIR 14 194. The relevant short note reads as follows:

There can be no comprehensive or final definition of what would constitute contempt of Court; but any conduct which has the effect of diminishing the prestige and authority of the Court, which is likely to lower the esteem of the Court in the minds of the public and which gives an impression that, with impunity the orders of the High Court could be disobeyed by mere stratagem or contrivance, would certainly amount to contempt.

13. We are unable to accept these contentions urged by the learned Counsel for the Petitioners. In the first place we cannot agree with the learned Counsel that this Court has given a finding to the effect that there was an undertaking by the Corporation to supply paraffin and that it had failed to fulfil its undertaking.

Reliance is placed upon the following sentence in the order:

What was urged with some emphasis and in our prima facie opinion with justification by Shri Sethi was that the Petitioner had installed the industry on an assurance given jointly by the State of Himachal Pradesh and the State Financial Corporation....

Reliance Is also placed upon the last sentence in that paragraph" prima-fade, therefore, we feel that the Respondents were under an obligation to supply to the Petitioners reasoanble quantity of paraffin wax to enable the Petitioner to work the unit for manufacturing wax paper bags....

14. We do not understand these sentences to mean that the Bench had decided at that stage that the Financial Corporation was also liable to supply paraffin wax. The first prayer in the writ petition itself is only as follows:

... That writ, order or direction in the nature of writ of mandamus be issued directing the concerned Respondents to sanction the requisite quota of paraffin of 64.8 metric tonnes per annum....

There were three Respondents in the writ petition and the prayer refers to concerned Respondents. If, according to the Petitioners, all the Respondents including the Corporation was liable to supply paraffin, the prayer would not have included the word "concerned."

15. Secondly, the Corporation Was allowed to go out of the record and its name was deleted by order dated 6-11-1991. If the case of the Petitioners was that the Corporation was also liable under the joint agreement to supply paraffin to the

Petitioners, it would not have agreed to the deletion of the name of the Corporation from the records on 6-11-1991. The order dated 6-11- 1991 shows that when the counsel for the Corporation informed the Court that the notification u/s 29 of the Act had been withdrawn and that in view of the same no relief was claimed against the Corporation in the writ petition, learned Counsel for the writ Petitioners conceded that position and said that Respondent No. 2 may be deleted from the memorandum of parties. If the first prayer was directed against the Corporation also, learned Counsel for the Petitioners would not have conceded that position. That leads to the conclusion that the two sentences in the paragraph referred to above in the order of the Court dated 30-7-1991, cannot be understood in the manner in which the learned Counsel for the Petitioners wants us to understand today.

16. Learned Counsel submits that so long as the supply of paraffin was not made, as per the agreement, the Corporation was not entitled to charge interest and that was the contention raised before the Court. Whatever it may be, the prayer in the writ petition was for the issue of mandamus to the Respondents concerned for the supply of paraffin and the second prayer was to direct the respondents not to charge interest and on the other hand pay damages to the Petitioners. If the Corporation was allowed to go out of the record on the concession of the learned Counsel for the Petitioners in the writ petition, it is not known how the two prayers could be maintained because it was the Corporation which had lent money to the petitioners and it was the Corporation which had to charge interest against the Petitioners. While conceding that the name of the second Respondent can be deleted from the record of the writ petition, the Petitioners could not at the same time contend that they were insisting upon waiving of the interest because of the non supply of paraffin. Without the second Respondent being a party to the writ petition such a relief could not have been thought of at all in the writ petition.

17. In any event the question before us is whether there has been a contempt on the part of the Respondent herein. Now that we have found that the order dated 30-7-1991 cannot be understood as to contain a finding given by the Court that the Corporation was liable to supply paraffin under the agreement. The second question is whether the Court has also found that the Corporation is not liable to charge any interest. There is no such finding in the order though the Court had directed the Petitioners to deposit only a sum of Rs. 50,000/- which would make up the total of the principal amount lent by the Corporation which was the amount of Rs. 3,69,000/- already deposited by the Petitioners with the Corporation was to be taken into account: That does not mean that the Court had arrived at the conclusion even prima facie at that stage that the Petitioners shall not be liable for payment of interest.

18. In any event, the order dated 6-11-1991 did not prevent the Corporation from resorting to the statutory remedies u/s 29 of the Act at a later date.

19. We have already pointed out that the Notification dated 1-10-1991 expressly

stated that the earlier Notification dated 6-12-1989 was withdrawn "for the present". Thus, there was no assurance on the part of the Corporation that the Notification was withdrawn permanently or that the Corporation would not take any proceedings at a later date u/s 29 of the Act.

20. The withdrawal of the notification was in October 1991. The Corporation waited for two more years for the payment to be made by the Petitioners herein. In 1993, the Petitioners were called upon to pay the amount due. According to the Petitioners, they did not receive that notice. It may be so, but, when the proceedings were taken u/s 31 of the Act before the District Judge, the Petitioners have been put on notice that the Corporation was making a demand for the amount due to it from the Petitioners. That proceeding was, no doubt, withdrawn with a representation to the Court that the Corporation would resort to Public Debt Recovery Act or any other law which may be available to them. It may be pursuant to that, that notice u/s 29 has been issued by the Corporation. We are unable to agree with the counsel that this conduct of the Respondent would amount to a stratagem or contrivance on the part of the Respondent to disobey the orders of the Court or to lower the esteem of the Court in the minds of the public.

21. It is rightly pointed by the learned Counsel for the Respondent that Corporation is only trying to recover a huge amount due, which is public money the Corporation cannot be lax in taking steps for recovery. As we do not find any order of the Court preventing the Corporation from taking steps under the provisions of the Act even u/s 29, we do not accept the contention that the Respondent is guilty of contempt of Court.

22. In the result, this petition fails and it is dismissed. Notice discharged. No costs.