
(1990) 10 MP CK 0001
In the Madhya Pradesh High Court
Case No : C.R. No. 122 of 1987 (G.)

M/s Hotel Vivek Continental Pvt. Ltd. Bazar, Lashkar	APPELLANT
Vs	
M.P. Financial Corporation	RESPONDENT

Date of Decision : 16-10-1990

Acts Referred:

State Financial Corporations Act, 1951 — Section 2(c)(iii), 32(1)

Citation : (1990) MPJR 761

Hon'ble Judges : T.N. Singh, J; Sacheendra Dwivedi, J

Bench : Division Bench

Advocate : U.K. Jain, for the Appellant; J.D. Suryavanshi, for the Respondent

Judgement

Dr. T.N. Singh, J.

Admittedly, the Petitioner is an "industrial concern" within the meaning of the term employed in Section 2 (c) (iii) of the State Financial Corporations Act, 1951, for short, the "Act". He moved this Court on 30-7-1987 against an order passed on 29-6-1987 by learned District Judge, Gwalior u/s 32 (1) of the Act, attaching properties of the Petitioner mentioned in Schedules A and B of the application filed u/s 31 (1) of the Act by the non applicant and prohibiting the revisionist from alienating that property. By the same order which was passed exparte, notice was issued to the instant revision list fixing 1-9-1987.

While admitting the revision, a specific direction had been made to clear the purport of the impugned order that the Hotel was not to be locked up and the revisionist would be entitled to carry on his existing hoteleering business though he shall remain injuncted as directed under the impugned order and shall not dispose of the pledged property pending disposal of the revision. For final hearing, the matter was listed before the Hon'ble the Chief Justice, sitting singly and he took the view that the question agitated by the Petitioner being of substantial importance, the matter should be heard by a Division Bench. The question mooted was that without hearing the industrial concern, passing of

exparte order attaching the security was not contemplated u/s 32 (1) of the Act

Coming immediately in the wake of the Republican Constitution, the Act must be regarded as a measure to boost industrial growth in the country by accelerated means and methods to overcome industrial backwardness of the colonial era. It has to be looked upon as a measure of economic justice to fulfil legitimate constitutional aspirations of the free people. As such, State funding of industrial ventures has been guardedly promoted. Financial Corporations set up in different States for carrying out the purpose of the Act are required to function efficiently observing financial discipline in the matter of proper utilisation and circulation of financial resource available to them for the common good of the largest number of eligible industrial concerns for an even and speedy industrial development of each State. We have no doubt, therefore, that the provisions of Sections 29, 30, 31 and 34 subserve the Policy that resources of the Corporations are efficiently husbanded and managed and their finances are not looked up with any particular industrial concern unduly and for that, special procedure for summary disposal of applications for encashment of securities pledged with the Corporations is contemplated thereunder at the level of the District Judge. We read intrinsic evidence in Section 24 for our view and that provision is the tone-setter of Chapter III which spans across Sections 24 to 326, Corporation's duty is stated therein to "action business principle, due regard being had by it to the interest of industry, commerce and general public."

Power is vested u/s 29 in the Corporation in case of default in repayment of any loan or advance or any instalment thereof, to take over the management or possession or both of the industrial concern and u/s 30, it has also been given the power to call for repayment before the agreed period. The marginal notes of Sections 31 and 32 deserve special mention because they refer respectively to "Special provisions for enforcement of claims by Financial Corporation" and "Procedure of District Judge in respect of applications u/s 31". In the application contemplated u/s 31 (1) which may be made by the Corporation to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business, the following reliefs can be claimed:

- (a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or
- (aa) for enforcing the liability of any surety; or
- (b) for transferring the management of the industrial concern to the Financial Corporation; or
- (d) for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

However, we extract also relevant portions of Section 32 (1), (3), (4), (5), (6) and (8):

(1) When the application is for the reliefs mentioned in Clause (a) and (c) of Sub-section (1) of Section 31, the district judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken u/s 31, with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(3) Before passing any order under Sub-section (1) of Sub-section (2), or Issuing a notice under Sub-section (1 A), the district judge may, if he thinks fit, examine the officer making the application.

(4) At the same time as he passes an order under Sub-section (1), the district judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

(5) If no cause is shown on or before the date specified in the notice under Sub-section (2) and (4), the district judge shall forthwith make the ad interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment or sale of property in execution of a decree as the Financial Corporation were the decree-holder.

On a plain reading, Section 32 (1), in our view, admits no ambiguity, because, the District Judge is explicitly authorised thereunder to "pass an ad interim order attaching the security". We do not think if the expression "ad interim" is an abracadabra as would result in obfuscation of the provision. That is a latin word, commonly used in legal parlance whose plain and simple meaning is-"for the meantime" or, "in the meantime" (See Chambers 20th Century Dictionary, 1983 Edition; Black's Law Dictionary, Fifth Edition). Sub-section (4) has to be read along with Sub-section (1) which clarifies further the import of the term and also the purport of the provision concerning manner of exercise of the power under Sub-section (1). Passing of ex-parte order u/s 31 is explicitly contemplated and the only requirement saddled on the exercise of the power is that there should be order simultaneously passed for issuance of notice to the industry concerned. Evidently, the order to be passed under Sub-section (1) of Section 32 is of

limited duration to take care of situation contemplated in the meantime, before the industrial concern shows cause under sub-section (6) pursuant to the notice issued under Sub-section (4) or the order is made absolute otherwise under Sub-section (5). The provision subserves the underlying policy of the Act which we have discussed earlier. Reference to Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, case, is also relevant and legitimate in this content. It was observed that "reason for a statute is the safest guide to its interpretation" and that "the words of a statute take colour from the reason for it."

Whether it is necessary at all to read the requirement of audi alteram partem in Section 32 (1) is indeed the most question to which we have to address ourselves. Shri Jain relied mainly on Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, to submit that by necessary implication, despite absence of that requirement in Section 32(1), that is to be read therein as the industrial concern would be otherwise condemned unheard. Counsel also cited Prafulla Chandra AIR 1968 Ori 18, wherein in the Bench hearing the matter had read in the requirement of natural justice that of hearing the delinquent employees of the Port Authority who had complained that adverse remarks were made against them in the report of the enquiry authority. In our view, reliance on neither, by learned Counsel, would avail to revisionist's benefit. It is true that in Maneka Gandhi, their Lordships held that even in the absence of positive words in the statute requiring the aggrieved party to be heard, justice of the Common Law will supply the omission of the Legislature and that the principle of audi alteram partem is part of the rules of natural justice. In that case, however, the provision in question impinged on fundamental rights of the Petitioner envisaged under Articles 14, 19 and 21 by curtailing arbitrarily her right to go abroad despite her holding a valid passport. Their Lordships merely clipped the draconian power of the Executive to impound the passport by a surprise move. In the Orissa case, it was a question of procedure to be followed in an administrative enquiry and not a question of construction of any statutory provision. The decision rested on sound, salutary and well-established principle of administrative law.

An occasion arose in Swadeshi Cotton Mills Vs. Union of India (UOI), case for explaining the dictum in alteram partem Maneka Gandhi in expounding a statutory provision. It was observed that to adjust and harmonise the need for speed and obligation to act fairly, the rule Audi alteram partem can be modified and the measure of its application can be cut short in reasonable proportion to suit the exigencies of the situation. That the requirement of the Rule can be complied with by hearing which may even be a post-decisional one and need not necessarily be a pre-decisional one was also recognised. In Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, case the dichotomy was further expounded and explained, also in regard to a statutory provision. The Court went to the extent of saying that, ex parte interim orders may always be made without a pre-decisional opportunity or without the order itself providing for a post-decisional opportunity, the principles of natural justice which are never excluded

will be satisfied if a post-decisional opportunity is given if demanded". In construing the relevant provision which was in two parts, they held it is necessary to give pre-decisional hearing therein in regard to one stage of investigation and the post-decisional hearing in regard to another case of allotment of imported goods under the provisions of Imports and Exports (Control) Act, 1947. Because an order of "abeyance" was contemplated under clause S-B post-decisional hearing was held sufficient compliance of the Rule; right contemplated under clause S-E was found less substantial and the consequence of the action under Clause S-E found not to be "imminently harmful".

The other decisions of the Apex Court also buttress the foresaid proposition. A three-Judge Bench in *K.L. Tripathi Vs. State Bank of India and Others*, case observed, "the basic concept in fair play in action administrative, judicial or quasi-judicial, and that the said concept "must depend upon the particular case." It was further held, "whether any particular principle of natural justice would be applicable to a particular situation, or the question whether there has been any infraction of the application of that principle, has to be judged in the light of facts and circumstance of each particular case", The only important requirement was that, "the decision must be arrived at in a just and objective manner with regard to relevance of the material and reasons". *Union of India and Another Vs. Tulsiram Patel and Others*, case, the constitution Bench observed, "legislation and the necessities of a situation can exclude the principles of natural justice including the Audi Alteram Partem rule". While construing the provisions of the Bhopal Gas Disaster (Processing of Claims) Act, 1985, another Constitution Bench repelled challenge to the vires of the enactment on the ground that the Rule was not a strait jacket formula. The Court reiterated the view that even if it was necessary to assert primacy to principles of natural justice in all adjudications, "these must be applied in a particular manner in particular cases having regard to the particular circumstances" See *Charan Lal Sahu Vs. Union of India*,

Bearing in mind the above principle, we have found no warrant to accept counsel's advice that we read in Section 32 (1) the requirement of audi alteram partem. The ambit of the order that can be passed thereunder is clearly set out and it cannot be said, the order under any circumstances would be "imminently harmful" to the industrial concern. Only two types of orders can be passed, of attaching the security and of injunction restraining the industrial concern from transferring its plants or machinery etc. Sub-section (4) contemplates issuance of notice pari passu to afford the industrial concern an opportunity to show cause against the order and when that is done, full investigation is contemplated in the course of it, the industrial concern would have full opportunity of hearing and establishing that the interim order passed under Sub-section (1) requires to be vacated or modified. In any case, even if the order is made absolute, when no cause is shown, the industrial concern is not likely to suffer any serious detriment inasmuch as provisions of C.P.C. are required to be followed in

carrying into effect the order of attachment or sale of property in due compliance with the provisions of Sub-section (8). The effect of attachment of immovable property is indicate in Order 21 Rule 24, C.P.C. The judgment-debtor is prohibited by that order from transferring or charging the property in any way and it results in denying to the transferee benefit of such transfer or charge, if made. Evidently, more attachment does not result in total deprivation of the industrial concern in the matter of exercise by it of its right to run the industry unless that right is in any manner affected by any other specific direction in that regard. Legislature advisedly did not vest that power in the District Judge as in passing the order of ad interim injunction, he is empowered only to restrain the industrial concern from transferring or from removing its property, plant or machinery. He is empowered to enjoin the industrial concern in no other manner.

Corporation's counsel, Shri Suryavanshi also cited a large number of decisions to which we may briefly refer to reward his labour. In Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, while expounding the scope of the application u/s 31 (1), their Lordships observed that the application cannot be regarded as one made for repayment of the loan or "to prevent an anticipatory loss". In Everest Industrial Corporation and Others Vs. Gujarat State Financial Corporation, the earlier view is buttressed in holding that the proceedings contemplated u/s 31 (1) "is something akin to an application for attachment of property in execution of a decree" in refuting the claim of Maganlal Vs. Jaiswal Industries, Neemach and Others, case was on Section 32 (B), but the significant observation made therein is noteworthy. The Court observed that order passed under Sections 31 and 32 of attachment and sale did not result in extinguishing the right of redemption of the property pledged by the industrial concern because provisions of Order 34 Rule 5 C.P.C. would apply. A Division Bench decision in Thressiamma Varghese Vs. Kerala State Financial Corporation and Others, made it clear that the area of remedies and relief contemplated under the Act would prevail against the provisions of other laws such as Transfer of Property Act and C. P. E. as the Act deserved primacy.

Before a learned Single Judge in Shreeshyla Crowns v. Union of India AIR 1983 Kar 130 vires of several provisions of the Act were unsuccessfully challenged, among others, Sections 29-31. Before us, however, that misadventure is wisely avoided. The same question, however, was posed to a Bench in Molly Jose Vs. Kerala Financial Corporation and Others, and it was held that Section 31 was not hit by Article 14 of the Constitution. The view expressed by a Full Bench in State Financial Corporation Ltd. Vs. Satpathy Brothers and Nanda Co. (P.) Ltd. and Others, was accepted. The Orissa High Court expressed the view that the provisions of the Act, including Section 31, were more liberal and in any case they were progressive because parties would get better and quicker justice which was not obtainable in a civil suit. Provisions of C. P. C., were to be followed except to the extent expressly derogated from and as such, apprehension of any substantial hardship were ill founded, We respectfully concur, reiterating yet the Act's overarching primacy as a special law.

The upshot of the discussion is that the District Judge passing any order u/s 32 (1) can validly act thereunder following provisions of Sub-section (4). He can pass an ex-parte ad-interim order of attachment and/or injunction, but he must simultaneously issue notice also to the industrial concern. There is no warrant to read in Section 32 (1) any requirement of pre-decisional hearing to be given to the industrial concern for passing that order.

In the result, the petition fails and is dismissed, Parties are left to bear their own costs in this Court.