
(1998) 07 CAL CK 0007

In the Calcutta High Court

Case No : Constitutional, Writ Jurisdiction, W.P.No. 6515 of 1998

M/s. Prabhat Oil Mill and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

State Financial Corporations Act, 1951 — Section 29, 29(1), 30, 31

Citation : (1998) 3 CALLT 280

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Mr. A.K. Dandhaniala, Mr. Syed Shamsur Arefin, for the Appellant; Mr. Tarun Roy and Miss Alpana Banerjee, for the Respondent

Judgement

B.M. Mitra, J.—In this writ proceeding multiple prayers were canvassed, namely, to recall a notice dated 11.3.98 and also substantially for a prayer not to charge any interest or add interest over the amount due on the principal amount. These are the basic prayers in the writ petition. It appears from the perusal of the necessary annexure particularly from Annexure "B" dated 6.4.90 wherein in terms of the annexure attached to the said notice there appears to be a clause of interest mentioning the rate. Attention of this court has been drawn by Mr. Roy on behalf of the State-respondents with regard to clause of interest that it will not affect the right of the Corporation to realise the defaulted interest on the entire loan thereof by legal steps or otherwise. It appears that in absence of any challenge being thrown with regard to the basic agreement, it becomes debatable as to whether the petitioner can challenge one of the pertinent clauses in the said agreement relating to interest. So far as prayer (a) is concerned the same is directed against issuance of a notice dated 11.3.98 vide Annexure "H" issued by the West Bengal Financial Corporation u/s 29(1) read with section 30 of the State Financial Corporation's Act, 1981. The notice ipso facto cannot be challenged unless the petitioner succeeds in making out a prima facie case that the issuance of notice is without jurisdiction or the notice had to be read as void

ab initio. In absence of making out of their case in specific term it is not open to the petitioners to come to this court with a prayer as couched in prayer (a) of the writ petition. Next substantial prayer is prayer for remission or deletion of clause of interest. In the backdrop of the same. Mr. Dhandania. the learned advocate has referred to and relied upon the decision in the case of U.P. Financial Corporation v. Gem Cap. (India) Put. Ltd, & others reported in AIR 1993 SC 1435 and specific attention of this court was drawn to para 10 of the said judgment wherein it has been observed by the apex court that the Corporation is not supposed to give loan once and go out of business, it is also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act but this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. While not insisting upon the borrower to honour the commitments undertaking by him. the Corporation alone cannot be shackled hand and foot in the name of fairness. It has been further observed by the Supreme Court that these Corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other financial Corporations. They too have to pay interest thereon. Next reference was made to the decision in the case of Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, and attention of this court has been drawn to para 18 of the said judgment and Supreme Court has cautioned that Parliament gave the Corporation the right to proceed u/s 31 of the Act preserving at the same time its right and remedy u/s 29 of the Act so that the Corporations are not chocked by the defaulting debtors by adopting frustrating or dilatory tactics in the proceedings in the court initiated u/s 31 of the Act. Mr. Dhandanla. the learned Advocate has also referred to U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, . and attention of this court has been drawn to paragraph 21 thereof and it has been observed therein that unless the action of the Corporation is mala fide, even a wrong decision taken by it is not open to challenge. Mr. Dhandania has also referred to the last decision in the case of CMssa State Financial Corporation & Anr. v. Hotel Jogendra reported in (1996) 3 Company Law Journal page 161 wherein it has been observed that no indulgence should be shown to recalcitrant defaulter in repayment of loan. Public money is meant to be recycled to all the needy entrepreneurs. Dilatory tactics defeat the public policy and the court process becomes an instrument of abuse. Court would protect only honest and sincere debtors.

2. Considering the judgments cited from the Bar. this court is of the view that so far as prayer is concerned, the same is not open to challenge in the absence of a challenge thrown to the contract or agreement and particular more so when it is concluded contract. If the contract is not challenged then it is doubtful whether notice u/s 29 is amenable to challenge unless it can be shown that it is ex Jade without jurisdiction or by a colourable exercise. So far as remission due to mistake in calculating the rate of interest is concerned that will be decided at the time of proper proceeding if at all initiated by the West Bengal Financial

Corporation. As such this court in the light of the decisions pronounced consistently by the Supreme Court does not find any support nor the materials warrant an inference to interfere in the pending writ petition.

3. Accordingly, the writ petition stands dismissed on contest.

4. If urgent certified xerox copy is applied for, the department concerned is directed to issue the same as early as possible.

5. Petition dismissed