(1990) 08 KAR CK 0064

In the Karnataka High Court

Case No : Writ Petition No''s. 14887 of 1986, C/W 7140 of 1987 and 4067 and 4068 of 1988

M/s. Shilpa Products and etc. APPELLANT

Vs

Karnataka State Financial Corpn. and Others RESPONDENT

Date of Decision : 28-08-1990

Acts Referred:
State Financial Corporations Act, 1951 — Section 29, 3

Citation : AIR 1991 Kar 108

Hon'ble Judges : M.M. Mirdhe, J;M. Rama Jois, J

Bench : Division Bench

Advocate : S.K.V. Chalapathy, N.B. Bhat and T.H. Rangaraju, for the Appellant; C.B. Nandiswar and B. Srinivasa Gowda, for the Respondent

Judgement

Rama Jois, J.—In these three writ petitions, the petitioners have questioned the constitutional validity of S. 29 of the Karnataka State Financial Corporations Act, 1951.

2. The brief facts of the case are these.

The Karnataka State Financial Corporation has been established by the State Government, by virtue of the power vested in it under S. 3 of the Karnataka State Financial Corporations Act, 1951, (the ''Act'' for short). S. 24 of the Act provides that the Board of a State Financial Corporation in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests of industry, commerce and the general public. S. 25 of the Act, specifies the kinds of business which the Financial Corporation should carry on under the Act. One of the powers of the Corporation is guaranteeing, on such terms and conditions as may be agreed upon; loans raised by industrial concerns which are repayable within a period not exceeding twenty years, and are floated in the public market and granting loans or advances to, or subscribing to debentures of, an industrial concern, repayable within a period not exceeding 20 years from the date on which they are granted or subscribed to.

3. S. 29 of the Act, the validity of which is challenged in this petition, reads :--

"29. (1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof (or in meeting its obligations in relation to any guarantee given by the Corporation) or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the (right to take over the management or possession or both of the industrial concern), as well as the (right to transfer by way of lease or sale) and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers, under sub-sec. (1), shall vest in the transferee all rights in or to the property transferred (as if the transfer) had been made by the owner of the property,

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) (Where any action has been taken against an industrial concern) under the provisions of sub-sec. (1), all costs, (charges and expenses which in the opinion of the Financial Corporation have been properly incurred) by it (as incidental thereto) shall be recoverable from the industrial concern and the money which is received by it, shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto).

(5) (Where the Financial Corporation has taken any action against an industrial concern) under the provisions of sub-sec. (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of (the concern)."

4. The petitioner in Writ Petition No. 14877/1986, is a partnership firm, established on 8th January, 1980. The petitioner in this writ petition has taken loans, one in a sum of Rs. 2,76,000/- and another in a sum of Rs. 55,000/-, for establishing a power mill, having executed necessary documents and bonds in the prescribed manner. As the petitioner failed to repay the amount due to the Corporation, action was sought to be taken under S. 29 of the Act. At this stage, the petitioner has presented this writ petition, questioning the constitutional validity of S. 29 of the Act.

5. The petitioner in Writ Petition No. 7140 of 1987, who is an Engineering Graduate, had been sanctioned a loan of Rs. 2.72 lakhs at the initial stage and an additional loan of Rs. 43,000/- was also sanctioned. In all Rs. 3.15 lakhs was sanctioned as loan. Out of which this petitioner availed a sum of Rs. 2,86,000/-.

The peti- tioner availed a sum of Rs. 2,86,000/-. The petitioner has executed the necessary documents agreeing to repay the amount in instalments. As the petitioner failed to repay the amount, action was proposed to be taken under S. 29 of the Act and at this stage, this writ petition has been presented,

6. In Writ Petitions Nos. 4067 and 4068 of 1988 the first petitioner had taken a loan of Rs. 1,82,000/- for the purchase of a Ashok Ley land vehicle, agreeing to repay the same in 50 instalments and the rate of instalment was Rs.3,640/- per month. He executed the necessary documents, but he failed to repay the instalments. His please however, was that the vehicle met with an accident and thereby he was under difficulty and, therefore, he was not in a position to repay the instalments. The second petitioner had taken loan of Rs. 1,95,000/- for the purchase of a Ashok Leyland vehicle, agreeing to pay the loan in 50 equal instalments of Rs.3,900/- each, per month. He also executed the necessary documents in the prescribed manner. As the petitioner failed to pay the amounts in terms of the agreement, the Financial Corporation seized the vehicle and has taken possession of the same.

7. Questioning the legality of the action taken under S. 29 of the Act and the validity of S. 29 itself, the petitioners have presented this petition. Sri Devadas, learned Government Advocate submitted that the validity of the section was upheld in Ravi Printers Vs. Karnataka State Financial Corporation and others,

8. In the said judgment, Shivashankar Bhat, J., has, on consideration of all aspects of the matter, upheld the validity of the section. The learned Judge held that having regard to the nature of the duties and powers conferred on the Corporation, which includes advancing of loans to entreprenuers, the Corporation being an instrumentality of the State should be invested with the power of recovery and further the power conferred on the Corporation under S. 29 was reasonable. The learned Judge also pointed out, that when the power is conferred on the instrumentality of the State, it has to be presumed that the power will be exercised reasonably, because every instrumentality of the State is under a duty and is empowered to act only reasonably and. therefore, the power under S. 29 can be exercised only when the person who has taken the loan has failed to repay it and there is no other go than to take action under S. 29 of the Act, in order to recover the loan advanced by the Corporation to the individual concerned.

9. We are in respectful agreement with the view expressed by the learned Judge, It is well settled position in law that the principles of natural justice must be regarded as super added to any statutory provision which confers power on any public authority, unless by necessary implication it is excluded. (See A.K. Kraipak and Others Vs. Union of India (UOI) and Others, S. 29 confers powers on the Corporation to seize the property belonging to the person who has taken loan, for recovering the amount due from him. It therefore follows that before resorting to the power under S. 29, the Finance Corporation must inform the party concerned as to the actual amount due from him to the corporation and if

in any given case the person concerned furnishes any reply stating that there is any mistake in computation of the liability or that any amount paid has not been given deduction to, it is the duty of the Corporation to look into the matter and take a final decision as to the actual amount due and thereafter to proceed to exercise its power under S. 29 of the Act.

10. For the aforesaid reasons, we uphold the validity of S. 29 of the Act, but at the same time indicating that a limited opportunity of contesting the computation as to the extent of liability of the person concerned made by the Corporation should be afforded to him, before resorting to the steps, which the Corporation is authorised to take, under S. 29 of the Act.

11. In the result, we make the following order:--

ORDER

(1) The writ petitions are dismissed, subject to the observations made in paragraphs 9 and 20 of the order.

(2) The petitioners shall however be at liberty to approach the Financial Corporation praying for grant of any relief and the Financial Corporation shall be at liberty to grant any relief to the petitioners, if it considers fit and expedient to do so, on the facts and circumstances of the case notwithstanding the dismissal of these petitions.

12. Petitions dismissed.

