

(2008) 10 PAT CK 0026
In the Patna High Court
Case No : CWJC No. 12681 of 2008

M/s Super Inducto Steels Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-10-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2008) 10 PAT CK 0026

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—This case is illustrative of how a Public Sector Undertaking abuses its power while dealing with unwary citizens. Petitioner was unfortunate who had taken financial accommodation from the respondent-Bihar State Credit and Investment Corporation Limited (BICICO for brevity). The petitioner's industry was an induction steel plant which, due to various reasons prevalent in Bihar, could not prosper. Petitioner became a defaulter. As there was substantial number of industries in Bihar which have defaulted for various reasons, BICICO came up with a One Time Settlement Policy for permitting an "Honourable exit from defaulters" list". One would expect that the OTS Scheme would be neat, clean and having no hidden agendas to act as traps for defaulter's attempting to make an honourable exit but the facts are otherwise. The petitioner drew attention of one Mr. Alam of BICICO who was required to be conducted for details as per the OTS Policy. Petitioner was first communicated that the OTS amount was Rs. 27,30,000/- with other charges by their letter dated 6.11.2004 (Annexure-3). Apparently on petitioner's protest, that it was a sick unit and was entitled to a different treatment under the OTS Scheme itself, petitioner was then communicated by BICICO by their letter dated 7.4.2005 (Annexure-4) that the OTS amount would be Rs. 15,09,000/-. There were other charges also indicated in the said revised settlement order which total to Rs. 15,50,000/- over which a

surcharge of 1% was added total to Rs. 18,22,000/-. The petitioner responded by its letter dated 29th September, 2005 (Annexure-5) clearly pointing that petitioner was sick unit which had originally taken a loan of Rs. 85,00,000/- and had repaid more than Rs 1.40 crores. It was not in a position to pay anything above Rs. 15 lacs and sought time to pay the same. It sought waiver of surcharge as well. This was responded to by BICICO by their letter dated 22.10.2005 (Annexure-6) wherein it was categorically said that BICICO had the pleasure of accepting the offer of the petitioner and as approved by the Board of Directors, no surcharge would be payable if petitioner subscribed to the OTS before 30th October, 2005. The petitioner accepted the same. In course of time, the petitioner deposited the entire Rs. 15 lacs which is not in dispute, the last payment being on the 2nd of May, 2006. Petitioner then requested for issuance of no dues certificate, release of security of guarantors and directors and return of hypothecation papers. This was responded to by BICICO by their letter dated 6.6.2006 (Annexure-9) wherein it was categorically stated that a further sum of Rs. 50 thousand was still due under OTS Scheme from petitioner. Petitioner protested without any relief and BICICO reiterated by their letter dated 1.7.2006 (Annexure-11) that a sum of Rs. 50,000/- was due. Immediately on finding the anxiety to get rid of BICICO, petitioner agreed and paid the aforesaid amount of Rs. 50,000/- by their cheques dated 4.7.2006 and requested for issuance of no dues certificate. Now having received the additional Rs. 50,000/-, BICICO now wrote another letter on 18.1.2007 (Annexure-13) that in view of Board's decision, a further sum of Rs. 35,019/- and Rs. 15,000/- is also to be paid before no dues certificate could be issued. Even both these amounts, the petitioner paid yet BICICO did not grant no dues certificate. This forced the petitioner to come to this Court. Now a counter affidavit has been filed on behalf of BICICO. The sequence of facts, as noted above, is not denied. What is now stated as the reason for not issuing no dues certificate is that a further sum of Rs. 24,826/- is due from the petitioner. The justification for the demands of this Rs. 24,826/- is that it is the interest on the amount for which the cheques had bounced earlier. Petitioner submits that these demands are wholly unjustified and cannot be recovered. Heard the parties and with their consent, the writ petition is being disposed of at the stage of admission itself.

2. From the facts as noted above, it would be seen that once the petitioner fell into the trap of Honourable exit from defaulters" list", its offer to pay Rs. 15 lacs in full and final settlement was accepted by BICICO. Once BICICO received the full and final payment of Rs. 15 lacs, it then demanded a further sum of Rs. 50,000/-. Even that illegal demand was paid but that does not satisfy BICICO as soon thereafter, there was a further demand of Rs. 35,019/- and Rs. 15,000/- for bounced cheques which again the petitioner paid. While issuing any of these communications either accepting OTS or demanding Rs. 50,000/- or demanding interest and payment for bounced cheques, no further demand was raised or indicated. I may notice here that in the OTS calculations (Annexure-4), there were various other charges shown in addition to the OTS amount but regrettably

none of the charges, as realized subsequently, were shown. Thus, to say that these amounts were payable and BICICO had a right to realize them, cannot be accepted. Petitioner had agreed to pay Rs. 15 lacs in total for an honourable exit which was accepted. No further demands were indicated while accepting the same. Each time when petitioner approached BICICO for no objection certificate, a new demand sprung out of BICICO's hands like a magician. Even after the last demand was paid when nothing came about, petitioner came to this Court and yet another demand has been made in the counter affidavit. This Court feels that the manner in which BICICO proceeded, it only shows callous disregard for citizen's rights. If there were any pending demands then at the very first instance, BICICO have communicated the same. In its communication with regard to OTS Scheme (Annexure-4), it raised various demands in addition to OTS but the said communication was woefully silent with regard to the demands which were raised and paid. These chains of facts only show the harassing attitude of BICICO and its officers. They lay out a trap in which a person falls and then keep extracting money from them at their will and at their pleasure.

3. So far as the demand, as contained in the counter affidavit is concerned, all I can say is that a demand of Rs. 15,000/- was made by BICICO by their letter dated 18.1.2007 in respect of bouncing of cheques but no demand was raised or indicated in respect of interest in respect of the amount covered by the said cheques. No explanation in the counter affidavit has been given as to why from time to time, demands are springing up. This is grossly arbitrary and cannot be permitted.

4. Once petitioner had offered to pay Rs. 15 lacs towards full and final settlement and that was accepted by the BICICO, it became a concluded contract and all other dues stood written off. That was the spirit of OTS otherwise the settlement is not final. BICICO's own advertisement (Annexure-1) shows that it was offering a One Time Settlement for an honourable exit but what has been shown by the fact is that it was hardly One Time Settlement. It was a settlement that has to be sprung up each time petitioner approached for no dues certificate as it has to pay up fresh demand which is yet to end. Once the contract was concluded, all other amounts payable merged in that agreement and no further amount can be demanded unless that was reserved as a part of the agreement itself. No such reservation has been pointed out by the BICICO yet being in a dominating position it thinks it can dictate its term at its will and at any time in total disregard to the rights of parties. I am afraid that is not the position. BICICO, being an instrumentality of State and being State within the meaning of Article 12 of the Constitution of India, is bound by Article 14 of the Constitution of India in all its actions. It has to act fairly and reasonably. It cannot use its dominating position to dictate terms contrary to the agreement as between the parties. Facts here have clearly established that not only the actions of BICICO was grossly arbitrary but was unreasonable as such.

5. In such circumstances, I am left with no option but to hold that the demand

which is now apparently the only demand subsisting, as raised by BICICO, is not payable once One Time Settlement was agreed to. It is beyond the One Time Settlement. Consequently, the demand is quashed and BICICO is directed to forthwith issue no objection certificate to the petitioner, return the surety/ guarantee papers and all other documents of the petitioner forthwith. Consequently, the writ application is allowed.