(2009) 12 AHC CK 0296

In the Allahabad High Court

Case No : C.M.W.P. No. 19121 of 1996

Murli Manohar Agarwal APPELLANT

Vs

National Small Industries Corporation Ltd. and Others RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 2(1), 3(1), 3(2)

Citation : (2010) 5 AWC 5231

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—Heard Shri Manoj Kumar Pandey, learned Counsel for the Petitioner. Learned standing counsel appears for State Respondents.

2. The Petitioner is aggrieved by a recovery certificate dated 21.3.1996 issued by the National Small Industries Corporation Ltd. to the District Magistrate, Allahabad to recover Rs. 3,97,188 advanced to the Petitioner for purchase of ''Asian Automatic Offset Printing Machine'' ; ''Isothim Fartor Resin Ongrissive Machine'' and ''3 H.P. Motor 4440 Bolt'' under U. P. Public Money (Recovery of Dues) Act, 1972. It is stated in the writ petition that the Petitioner purchased an Automatic Offset Printing Machine and a Cutting Machine oh ''Hire Purchase Basis'' through the agency of Respondent-Corporation under an agreement. According to the schedule and the calculation sheet, the entire amount of Rs. 7,10,031 was agreed to be paid by the Petitioner in 13 years in instalments of Rs. 50,371 per annum. The first instalment was to fall due after one and half years of issuing the R/R.

3. The machines supplied were alleged to be highly defective and were received after inordinate delay. It is alleged that the R/R was issued on 31.3.1990 but the

machines were delivered only in the last week of May, 1990. The Respondent-Corporation did not rectify the defects. The Petitioner, however, continued to partly pay the amount and that as against Rs. 2,50,000 approximately upto 31.3.1996 a sum of Rs. 3,85,200 was paid. The corporation illegally and arbitrarily and on account of some annoyance with the father of the Petitioner, who was also supplied defective machines, and had to be taken back by the Corporation, issued recovery certificate giving rise to this writ petition.

4. An amendment application was filed on 9.12.2001 to amend the writ petition by adding paragraphs 20A to 20F alleging that though the entire amount of loan was liquidated, nevertheless, taking advantage of the fact that there was no interim order, the Sub-Divisional Magistrate attached the immovable and movable properties for several lacs of rupees and sold them out for Rs. 60,000 on 8.3.1997. The properties were not movables as the Off Set Printing Machines were embedded to earth. The sale was confirmed on the same day violating the procedures prescribed in the U. P. Zamindari Abolition and Land Reforms Act. The automatic off set printing machine was valued for not less than Rupees three lacs and cutting machine was valued at not less than Rs. 30,000, and thus the sale consideration was illusory. Prior to the sale, the Petitioner had paid Rs. 5,500 on 4.11.1996 ; Rs. 5,500 on 23.11.1996 ; Rs. 11,000 on 18.11.1996 and Rs. 27,500 on 4.8.1997 and had thus deposited Rs. 49,500. The amendment application was dismissed on 5.3.2002. A restoration application was filed on 23.4.2002 and is pending. There is no good reason given to recall the order. The restoration application is accordingly rejected.

5. We also find that the amendment application filed on 19.12.2001 seeks the prayers to quash the auction sale held on 8.3.1997, and the sale certificate dated 10.9.1997. The application does not give any reason to explain the laches to challenge the sale in favour of a third party, after a period of four years.

6. In the counter-affidavit of Shri K.G.S. Moorthy, Development/Law Officer of National Small Industries Corporation Ltd., it is stated that the Petitioner had applied for purchase of Automatic Off Set Printing Machine on ''hire purchase basis'', under one of the schemes of the Corporation in the year 1988. The application was processed and acceptance was communicated. The total cost in the acceptance letter dated 16.8.1988 was Rs. 3,84,800, which was a tentative offer. The Petitioner had to refund the amount with interest totalling Rs. 7,10,032. The amount "was also specified under the agreement to be paid in instalments of Rs. 48,864. Subsequently the costs of the machine were reduced to Rs. 6,75,006 and the amount of instalments was also reduced to Rs. 47,676. The agreement was amended on 9.3.1989 after which the instalments became due on every 1st October and 1st April of the subsequent year. The first instalment was due on 1.10.1991. It is denied that the delivery of the machines were received late. The R.R. was issued on 10.3.1989 and the delivery was made effective on 30.3.1990. The allegation, that the machines were defective, is also not correct as the Petitioner had himself given O.K. certificate on 15.6.1990, and

afresh O.K. certificates were issued on 13.3.1991 and 4.6.1991. The Petitioner did not comply with the terms of the warranty and did not follow the instructions regarding lubrication. He used the machines round the clock and made complaint to the Corporation, which was forwarded to the supplier on 12.9.1991. The Petitioner himself did not comply with the manufacturers'' instructions regarding lubrication and operating hours. In para 10 of the counter-affidavit, it is stated that the cheques issued by the Petitioner were repeatedly dishonoured by the bank and ultimately the Corporation had to write to the bank on which he assured on 23.12.1995 that such thing will not happen again. Alter the defaults were committed in total number of eight instalments and an amount of Rs. 3,81,408 became due on 31.3.1996, the Corporation sent a recovery certificate to the Collector. The Petitioner deposited only Rs. 2,73,721 upto 1st March, 1996, whereas upto 1.4.1996 ten instalments totalling Rs. 4,76,760 had fallen due.

7. Shri M.K. Pandey, learned Counsel for the Petitioner submits that the Petitioner was regularly paying the instalments inspite of the fact that the amounts were received late and the machines were defective. He submits that in any case the amount due under the hire purchase agreement cannot be recovered as arrears of land revenue under the U. P. Public Money (Recovery of Dues) Act, 1972. He submits that the Corporation has became Judge of his own cause and had adopted illegal methods of recovery. The Collector forcibly recovered part of the amount under the recovery certificate without any authority. The National Small Industries Corporation Ltd. is a Government of India Undertaking. The machines supplied to the Petitioner under the ''hire purchase agreement'' were liable to be returned by the hirer voluntarily. Under Clause 8 of the agreement, in case of default in payment of instalments or poor maintenance of the property or breach of any of the terms of the agreement on his part or the property being returned by the hirer voluntarily the owner may sell the property by private negotiations or public auction or by any other means at its sole discretion without any notice to the hirer and in case of any loss the hirer was to make good the resultant loss. If the sale proceeds of such sale exceeds the hire purchase price of the property, interest on defaulted instalments of hire and any other dues payable by the hirer, such excess amount was to belong to and to be retained by the owner exclusively and the hirer was not to have any claim on it. It is stated that the Corporation against the terms of the agreement, illegally and without any authority sent the recovery certificate to recover the dues from the Petitioner under the U. P. Public Money (Recovery of Dues) Act, 1972 (the Act) with the details of the amounts of hire purchase agreement and the machinery.

8. It is not denied by the Petitioner that the recovery was made by the process of attachment and sale of machinery and not by any other coercive method of arrest of the Petitioner, or attachment and sale of any other property. In the affidavit filed with the amendment application, which has been rejected, the Petitioner has admitted on affidavit that the Sub-Divisional Magistrate, Sadar of

his order dated 8.3.1997 sold out the printing machines and the cutting machines. The sale was thus made in terms of Clause-8 of the agreement, on the defaults committed by the Petitioner.

9. The National Small Scale Industries Corporation Ltd. is a Corporation wholly owned and controlled by the Central Government, and falls within the definition of ''Corporation'', u/s 2(1) of the Act. The agreement of hire purchase with advance of money will fall under the definition of ''Financial Assistance'' under Sub-section (b). The recovery under the Act will thus fall within Section 3(1)(a), which includes agreement of hire purchase of goods by way of financial assistance to the Petitioner. The Collector could therefore recover the dues on receiving the certificate u/s 3(2) of the Act.

10. The method of recovery adopted by the Respondents clearly suggests that the District Magistrate, acting for and on behalf of the Respondent-Corporation, has adopted the method of recovering the public money due from the Petitioner by attachment and sale of the hired properties. The method of realization, therefore, is clearly in terms of the agreement between the Petitioner and the Corporation, and thus no interference is required to be made under the discretionary jurisdiction of the Court under Article 226 of the Constitution of India.

The writ petition is dismissed.

