

(1997) 10 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16127 of 1996 and C.M. No. 18659 of 1997

Northland Sugar Complex Limited and Others

APPELLANT

Vs

Punjab State Industrial Development Corporation Limited and Others

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

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

Citation : (2000) 100 CompCas 51 : (1998) 119 PLR 262 : (1998) 1 RCR(Civil) 124

Hon'ble Judges : Jawahar Lal Gupta, J; Balwant Rai, J

Bench : Full Bench

Advocate : H.L. Sibal and Arun K. Bakshi, for the Appellant; Vinod Sharma and Atul Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner, a public limited company, complains that the action of the respondent-corporation in taking over possession of the sugar mill by invoking Section 29 of the State Financial Corporations Act, 1951, is arbitrary and violative of article 14 of the Constitution. Is it so ? The relevant facts may be briefly noticed.

2. In the year 1990-91, the State of Punjab decided to set up three sugar mills in the co-operative sector, letters of intent were issued by the Government of India in favour of the Punjab State Federation of Sugar Mills Limited, Chandigarh, for setting up the mills at Dasuya, Amloh and Patran. The State Government acquired the land. However, the progress was not satisfactory. On October 13, 1992, a high level meeting presided over by the Chief Minister, Punjab, was held to consider the steps which could be taken to accelerate the setting up of the mills. It was decided to implement the mills in the corporate sector instead of the co-operative sector. In the year 1993, the sugar mills were taken over by the Punjab State Industrial Development Corporation, respondent No. 1. It was

further decided that the mills shall be handed over to the private sector. On March 5, 1993, a memorandum of understanding was signed between the first respondent and Maini Brothers with regard to Dasuya Sugar Mills. On March 29, 1993, the petitioner-company was incorporated. Similarly, it was decided that the mills at Amloh and Patran be implemented in collaboration with Naher Spinning Mills and Piccadily Holiday Resorts. On April 29, 1993, the Secretary of Industries, Government of Punjab, informed the Government of India that the "PSIDC and the co-promoters have already started taking effective steps for early implementation of these mills". He requested that the letters of intent may be transferred in the name of the three companies. On June 24, 1993, an agreement was executed between the petitioner and respondent No. 3. A copy of this agreement has been produced as annexure P-3 with the writ petition. By this agreement, the petitioner-company undertook "to pay the State of Punjab directly on behalf of PSIDC a sum of Rs. 13,65,45,876.91 . . .". On June 26, 1993, physical possession of the sugar mills was handed over to the petitioner. On October 22, 1993, the petitioner addressed a communication to the managing director of respondent No. 1 stating, inter alia, that "according to the agreement entered into with you, we have to pay Rs. 13,65,45,876.91 to the Punjab Government and we propose to pay the money as per the protective repayment schedule attached as annexure A". In annexure A, the petitioner had proposed the following schedule of payment :

Rs.

1. First installment before or on March 31, 1995

2,65,45,876.91

2. Second installment before or on March 31, 1996

5,00,00,000.00

3. Third and final installment before or on March 31, 1997.

6,00,00,000.00

Total

13,65,45,876.91

3. A photo copy of the letter dated October 22, 1993, was produced by Vinod Sharma, counsel for the respondent-corporation. Vide letter dated December 3, 1993, the managing director of the first respondent informed the petitioner that the proposal for payment in instalments was being accepted "subject to the approval of the board of directors of the Corporation. ..". It was further observed that the company shall "pay interest as charged by the financial institutions calculated from the date of signing of agreements . . .". Thereafter, on August 30, 1994, a fresh agreement was executed between the petitioner and the first respondent. It was recorded that the petitioner had "requested the PSIDC to treat the payment due as term loan" which had been accepted on the conditions

contained in Schedule III. It was further stipulated that "the borrower shall pay the lenders interest on the principal amount of the loan outstanding from time to time at the rate of 19 per cent, per annum. The interest shall be paid with half yearly rests on January 31, and July 31, each year". Various terms and conditions were also laid down.

4. The petitioner alleges that on September 2, 1994, it paid about Rs. 92 lakhs towards compensation for the land which had been acquired by the State Government. Simultaneously, it wrote various letters in the year 1995, requesting the respondent to get the letter of intent and title deed transferred in its favour and also to revise the schedule of repayment. Vide letter dated December 21, 1995, the first respondent rejected the petitioner's request for deferment of payment. On January 30, 1996, it served a notice u/s 29 of the State Financial Corporations Act, 1951, calling upon the petitioner "to pay a sum of Rs. 13,65,45,876.91 along with interest at the institutional lending rate from the date of taking possession of the assets in pursuance of the agreement till the date of payment within 15 days...". It was further observed that in case of failure to make the payment, "the assets and management of your unit shall be taken (over) by the Corporation in exercise of powers conferred u/s 29...". The petitioner sent a reply to this notice vide letter dated March 6, 1996. The petitioner alleges that on March 29, 1996, a meeting was held. The notice and all proceedings were dropped. In spite of that, on July 12, 1996, an order was passed for the take over of the sugar mill u/s 29. A copy of this order has been produced as annexure P-26 with the writ petition. The respondent published a notice in the press for the sale of the sugar mill on July 24, 1996. The petitioner represented to the Chief Minister. On July 24, 1996, the petitioner even gave a cheque for Rs. 50 lakhs. On August 2, 1996, the petitioner represented that if the letter of intent and conveyance deed are executed in its favour, it will pay Rs. 25 lakhs every month. Vide its letter dated August 9, 1996, the company handed over "current and post-dated cheques" for a total sum of Rs. 5 crores to respondent No. 1. In spite of that, on October 2, 1996, a notice inviting tenders for the sale of the sugar mill was published in the press. Aggrieved by this action, the petitioner filed the writ petition. The respondents filed a reply. Along with that, a copy of an undated order passed by the deputy chairman and managing director of respondent No. 1 was produced as annexure R. 2. By this order, it was directed that the assets of the company be taken over u/s 29 for recovery of the amount due to the PSIDC. The petitioner amended the petition to even impugn this order. It is alleged that the action of the respondents in ordering the take over of the unit is wholly discriminatory, arbitrary and illegal. The petitioner prays that the orders regarding the take over of the sugar mill u/s 29 be quashed and the possession restored to it. The petitioner further alleges that 19,000 bags of sugar have been misappropriated after the take over and that the respondents should be directed to make good the loss.

5. The respondent-corporation contests the petitioner's claim and has filed a written statement. The respondent challenges the maintainability of the writ

petition, inter alia, on the ground that the agreement provides for reference of the dispute to arbitrators and that the petitioner having failed to repay its debts, it has no right to claim intervention of this court under article 226 of the Constitution. On the merits, it has been pointed out that the petitioner was one of the promoters selected for setting up the sugar mill at Dasuya in the assisted sector. The project was to be transferred on "as is where is" basis along with all the assets and liabilities. An amount of Rs. 13,65,45,876.91 had already been spent in implementation of the project at the time of the execution of the agreement with the petitioner-company. The mill was to be transferred in favour of the petitioner in consideration of payment of this amount. It was "to be paid at the time of take over of the unit and it was only thereafter that any other action could be taken. The petitioner-company without making any payment in terms of Clause 3 of the agreement executed between the parties, took over the possession of the unit. The petitioner failed to make payment in spite of the demand having been raised". Later on, a request was made by the petitioner for conversion of this amount into a term loan. For this purpose, an agreement dated August 30, 1994, was executed. It was also agreed that interest shall be paid. The machinery was hypothecated in favour of the respondent. Thus, it was clear "that the amount was payable by the petitioner before it could seek transfer of letter of intent or land in its favour". It has been admitted that the Government of India was requested vide letter dated April 26, 1993, to transfer the letter of intent. However, "it was noticed that the intention of the petitioner-company was not clear as it had failed to make any payment towards the take over of the assets the petitioners before seeking any such transfer were bound to pay the amount which was the basic consideration which was liable to be paid simultaneously with take over of the assets in terms Clause 3 of the agreement .., The petitioner-company deliberately and intentionally avoided to make the payment ... it was also revealed that the petitioner had also failed to make payment to the cane growers . . . The non-transfer of letter of intent was on account of the default on the part of petitioner No. 1 in not making payment as envisaged in the agreement for transfer". It has also been pointed out that the petitioner had taken possession even prior to the date on which it was actually given and "had also utilised the material which had been rejected by the Dasuya Co-operative Sugar Mills Limited, Dasuya. This fact was admitted by the representative of the petitioner-company during the arbitration proceedings. . .". It has been pointed out that the "balance-sheet as on March 31, 1993, as prepared by the Dasuya Sugar Co-operative Mills, Dasuya, was annexed to the agreement executed between the parties. The petitioner-company on the assurance that the payment would be made, has taken possession even before the execution of agreement". It has been admitted that the estimated cost of the work is Rs. 40.65 crores. It has been further pointed out that in spite of raising public issue, the petitioner had failed to make payment which was required to be made and that on September 30, 1996, the amount payable to respondent No. 1 was Rs. 24,94,83,468.54. The respondent maintains that the conveyance deed could be executed only if the petitioner had made the payment. Since the

petitioner-company had failed to make the payment in spite of the fact that it had started running the sugar mill, no conveyance deed could be executed. The petitioner was seeking cooperation of the respondent without meeting its own obligations. The averment that a revised schedule for payment was accepted, has been controverted. It has been categorically averred that "there was no question of any revision of schedule of payment, as the amounts in the instalments were duly agreed to in the agreement executed between the parties and the assets were transferred on as is where is basis". It has been pointed out that conveyance deeds and title deeds had been handed over to the other two companies, viz., Nahar Sugar and Allied Industries Limited, Ludhiana and Piccadilly Sugar and Allied Industries Limited, Chandigarh, as they have "since paid" the amount. A favour was shown to the petitioner-company. Its request for converting the amount into term loan was accepted. It had to pay the amount in instalments along with the interest. However, it failed to make any payment. The payment of the amount to the Land Acquisition Collector, if any, was to be over and above the amount due to the respondent and it had no relevance or concern with the payment made to the Collector. The land could not be transferred in favour of the petitioner-company till the amount due to the respondent was paid. The petitioner "with an ulterior motive, was not getting the conveyance deed executed by making the payment due from it so as to avoid creation of charge which was agreed to be created vide annexure P-7". Since the petitioner-company was completely ignoring its liabilities towards payment of money, it cannot complain of discrimination vis-a-vis the other sugar mills as they had "discharged their obligations and did not raise false claims as was being done by the petitioner-company". It has been pointed out that "both these companies had made the payment of the consideration amount and only the claim with regard to interest is in dispute whereas the petitioner-company has not paid even a single penny". It has been averred that "as the petitioner-company did not make any payment, an order was passed on May 16, 1996, u/s 29 of the State Financial Corporations Act by the answering respondent for take over of the assets and in pursuance of the order passed on May 16, 1996, after hearing the representatives of the petitioner-company and the answering respondent, an order was passed on July 12, 1996, for take over of the assets of the petitioner mill u/s 29 . . .". The averment that the proceedings were dropped has been denied. It has been averred that "the possession of the unit was taken over in accordance with law with the assistance of local authorities". It has been admitted that the representation was made on which a note was made by the Hon"ble Chief Minister. A representative of the petitioner was called to discuss the matter. It was made clear to him that the petitioner "should pay immediately at least a sum of Rs. 5 crores and give a proposal for the payment of balance amount along with the interest . . ." Instead of paying the amount, the petitioner deposited "a bank draft for Rs. 50 lakhs and post-dated cheques for the balance amount and, thus, did not pay the agreed amount of Rs. 5 crores and gave a schedule for the balance payment". As the payment was not in terms of the agreement, "the draft and the cheques were not encashed". The respondent

maintains that the action is in conformity with the provisions of Section 29. Various allegations made by the petitioner have been controverted. In paragraph 36 of the written statement, it has been asserted that the order at annesure P-1 was passed on March 29, 1996. However, at the hearing, it was pointed out that the formal order had been actually passed on May 16, 1996. It was in pursuance of this order that the order dated July 12, 1996, was passed by the managing director. Various averments as made by the petitioner to challenge the order have been controverted. It has been prayed that the writ petition may be dismissed.

6. The petitioner has filed a replication to reiterate the averments made in the writ petition and to controvert the pleas on behalf of the respondents in the written statement.

7. Counsel for the parties have been heard. Hira Lal Sibal, learned counsel for the petitioners, has vehemently contended that the impugned order suffers from the vice of discrimination. It is violative of article 14 of the Constitution and is, thus, vitiated. It has also been contended that the impugned order does not conform to the provisions of Section 29. Consequently, it is untenable. Since the respondent-corporation had failed to get the letter of intent transferred in favour of the petitioner-company, it was barred by the rule of estoppel from passing the impugned order.

8. On the other hand, it was contended by Vinod Sharma that the petitioners had failed to pay the sale consideration. They were, thus, not entitled to claim transfer of either the letter of intent or the land, etc., still further, the petitioners had not paid a penny in spite of the lapse of a long time. They could not claim parity with the other two promoters as they had actually made the payment. The petitioners having failed to pay, the respondent had no choice but to take over.

The questions that arise for consideration are :

(i) Is the action of the respondents in proceeding to take over possession u/s 29 discriminatory and arbitrary ?

(ii) Is the action violative of the provisions of Section 29 of the State Financial Corporations Act, 1951 ?

(iii) Is the action barred by the principle of estoppel ?

Reg : (i)

9. Mr. Sibal contended that the three sugar mills had been sold to three different firms, viz., the petitioner, Nahar Sugar and Allied Industries Limited and Piccadily Sugar and Allied Industries Limited. All the three had entered into similar agreements. They were, thus, similarly placed. However, the petitioner has been singled out for action u/s 29 for no valid reason. The transaction is, thus, violative of article 14 of the Constitution. Is it so ?

10. It is true that the Government had decided to transfer the three sugar mills

from the co-operative to the corporate sector. It is also true that three promoters had agreed to run the mills. The respondent-corporation had entered into similar agreements with all the three. Yet, in the circumstances of this case, it cannot be said that all the three were similarly placed.

11. Firstly, it is the admitted position that Nahar Sugar and Allied Industries Limited had paid the entire price which had been agreed to between the parties in January, 1994. Piccadily Sugar and Allied Industries Limited had given a cheque for Rs. 11 crores and a draft for an amount of Rs. 49 lakhs on March 14, 1996. It had only raised a contention that it was not liable to pay any interest. Subsequently, the dispute regarding interest was agreed to be referred to arbitration. Subject to that, the firm had tendered fresh cheques which were encashed by the respondents. Thus, the factual position is that both the firms have already made the payment while the petitioner has not. Secondly, it has not even been suggested that any of the two firms had requested the respondent-corporation to convert the amount of sale consideration into a term loan. It was not even suggested that any of them had executed an agreement like the one produced by the petitioner as annexure P-7 with the writ petition. This agreement was executed by the petitioner on August 30, 1994, whereby it had agreed to treat the sale consideration as a loan which carried interest and laid down the time schedule for payment. No such agreement was executed by either Nahar Sugar and Allied Industries Limited or Piccadily Sugar and Allied Industries Limited.

12. In view of the above, it is clear that the agreements between the parties were different. Even the factual position was different inasmuch as the petitioner is alleged to have made no payment while the other two had paid the full price subject to the dispute regarding interest. In this situation, it cannot be said that the two were similarly placed. That being so, the charge of discrimination is apparently unfounded.

13. There is another aspect of the matter. Let us assume that the two firms had defaulted in making the payment like the petitioner. In spite of that, no order u/s 29 was passed against them. Still, it cannot be said that two wrongs will make a right or that the respondent was debarred from taking any action against the petitioner.

14. Mr. Sibal referred to the decision of their Lordships of the Supreme Court in *Mediwell Hospital and Health Care Pvt. Ltd. Vs. Union of India and others*, to contend that the action was violative of Article 14 of the Constitution. In this case, the claim of the petitioner for grant of exemption from customs duty was rejected by the Government. The action was upheld by the High Court. However, on appeal, it was held by their Lordships that "a diagnostic centre run by a private individual purely on commercial basis may not be entitled to the exemption under the notification issued by the Central Government. The conclusion of the Central Government as well as that of the High Court on this score, may not be held to be incorrect and the appellant may not be entitled to

seek for issuance of mandamus to respondent No. 2 on this ground". However, in para. 10, their Lordships were pleased to observe that "when respondent No. 2 has already granted certificates in favour of several such diagnostic centres, as alleged in the special leave application, refusal on his part to grant such certificate to the appellant without any justifiable reason tantamounts to a discriminatory treatment meted out to the appellant which on the face of it is violative of Article 14 of the Constitution of India". Sibal relied heavily on these observations to contend that the authority could not have singled out the petitioner for passing orders u/s 29 and that its action in doing so violated Article 14 of the Constitution. On the other hand, Vinod Sharma pointed out that the court cannot compel an authority to perpetuate a wrong. He relied on the decision of their Lordships of the Supreme Court in *Yadu Nandan Garg Vs. State of Rajasthan and Others*, wherein it was, inter alia, observed that (page 181) "the wrong exemption under wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination". Similarly, in *Chandigarh Administration and another Vs. Jagjit Singh and another*, , it was observed as under :

"Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose."

15. In view of the above, it is clear that the discretionary power under Article 226 cannot be invoked to compel an authority "to repeat the illegality or to pass another unwarranted order". Still further, the necessity for a detailed examination of this matter is obviated by the fact that the decisions of their Lordships of the Supreme Court in *Mediwell Hospital and Health Care Pvt. Ltd. Vs. Union of India and others*, has itself been reconsidered by a larger Bench in *M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others*, It has been held that the decision does not lay down the correct law. It is, thus, clear that an illegal order cannot form the basis of a charge of discrimination; under Article 14 of the Constitution. Consequently, it is held that the plea of discrimination as raised by the petitioner is not tenable.

It was then contended that the action was arbitrary.

16. Evert this contention is misconceived. Admittedly, the State Government had acquired 164 acres of land for the setting up of the mill. Certain civil works had been executed and equipment purchased. Thus, an investment of Rs.

13,65,45,876.91 had already been made. The agreement executed on June 24, 1993, categorically provided that the petitioner had undertaken to pay this amount "spent by the sugar mill towards payment for acquisition of land, payment made to the machinery suppliers, amount spent towards construction work and under administrative heads, etc. . . .". Clause 3 of the agreement provides as under :

"That in consideration of payment by the company from the date of agreement, PSIDC shall transfer all assets and liabilities along with undertakings, rights, securities whatsoever and wherever situated of the sugar mill to the company and the company shall hence be entitled to complete the "project"."

17. A perusal of the above clearly shows that the amount in question was the consideration on receipt of which the assets, etc., had to be transferred. The petitioner did not make the payment. It took possession of the property. Thereafter, it requested for conversion of the sale consideration into a loan. Even the time schedule was given. This request was accepted-- vide letter dated December 3, 1993. A new agreement was executed on August 30, 1994. According to this agreement the petitioner had to make the payment of the first instalment of Rs. 2,65,45,876.91 on or before March 31, 1995. It had also to pay the interest. The petitioner did not. On January 30, 1996, the respondent gave a notice to its counsel calling upon the petitioner to pay the entire amount. The petitioner submitted the reply through its counsel vide letter dated March 6, 1996. The parties were heard. It is thereafter that the impugned order was passed on July 12, 1996. In spite of this, the petitioner was given another opportunity to pay Rs. 5 crores. This amount was less than even the principal which had fallen due under the agreement. The petitioner did not pay. In fact, it is clear that the petitioner did not repay even a penny. In this situation, it cannot be said that the respondents had acted arbitrarily or illegally. It is true that State action has to be fair. In the present case, the respondents have been more than fair. They have given every possible opportunity to the petitioner to repay. They have intervened only when further delay would have jeopardised the recovery of public money. The action was nei ther arbitrary nor unfair.

18. In view of the above, the first question is answered against the petitioner. It is held that the action was neither discriminatory nor arbitrary. It is not violative of Article 14 of the Constitution.

Reg : (ii)

Mr. Sibal contended that the impugned order is contrary to the provisions of Section 29 of the State Financial Corporations Act, 1951. Is it so ?

Section 29(1) provides as under :

"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 obligation, 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."

19. This provision is calculated to enable the Corporation to speedily recover its dues without having to "wade its way through the meandering lanes and by-lanes of law courts". Whenever any industrial concern which is under a liability to make payment of any loan, etc., makes a default in meeting its obligation, the Corporation has the right to "take over the management or possession or both of the industrial concern . . .". In the present case, the petitioner has admittedly made a default. It did not pay the amount as stipulated in the agreement dated June 24, 1993. Thereafter when the petitioner's request for treating the amount as a loan was accepted, a new schedule for repayment was fixed vide agreement dated August 30, 1994. The petitioner had to pay the first instalment on March 31, 1995, and the second instalment on or before March 31, 1996. It failed to repay. There was, thus, a default. The ingredients of Sub-section (1) of Section 29 were fulfilled. The right of the Corporation to take over possession and management was clearly made out. The Corporation did so. It acted within the provisions of Section 29.

20. Mr. Sibal contended that the Corporation had to get the letter of intent transferred in favour of the petitioner. Even the conveyance deed for the land had to be executed. If this had been done, the petitioner-company would have been in a position to get loans from the financial institutions and make payment. In other words, learned counsel submitted that the transfer of the letter of intent and the execution of the conveyance deed were conditions precedent for repayment. Is it so ?

21. Admittedly, vide agreement dated June 24, 1993, the petitioner had undertaken to pay a sum of Rs. 13,65,45,876.91 to the State Government on behalf of the respondent-corporation. It was in consideration of the payment by the petitioner that the obligation to transfer the assets and liabilities, etc., would have arisen. The petitioner did not carry out its part of the obligation. The occasion for the respondent to execute the conveyance deed or to transfer the property, thus, never arose.

22. Mr. Sibal placed strong reliance on clause 6 of the agreement where-under it was provided that "the PSIDC shall arrange to get the letter of intent transferred in favour of the company through the State Government".

23. It is the admitted position that even before the execution of this agreement, a letter dated April 26, 1993, had been sent by the Secretary, Industries who was also looking after the Corporation, to the Government of India, It is also not disputed that even thereafter, certain letters were sent by the State Government.

One of these letters was sent by the then Chief Secretary, A.S. Chatha, on August 19, 1993. A photo copy of this letter was produced by Sharma, counsel for the respondents along with various other documents. Copy was furnished even to counsel for the petitioner. It was in pursuance of these communications that the letter of intent was actually transferred in favour of the promoters of the sugar mill at Amloh on October 18, 1993, and regarding the other mills subsequently. However, it was not transferred in favour of the petitioner for the obvious reason that it had failed to carry out its obligation under the agreement. In any event, whatever may be the position with regard to the other two mills, there is nothing on record to show that the respondent-corporation was under any obligation to get the letter of intent transferred or to execute a conveyance deed in favour of the petitioner without getting the price of the property or the repayment of the loan.

24. Sibal relied on the decision of their Lordships of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, to contend that the power u/s 29 should not have been invoked merely because there was a default.

25. It is true that their Lordships in the above-mentioned case were pleased to observe that the power u/s 29 (page 11) "It should be exercised to effectuate the purpose of the Act... It demands a purposeful approach. The exercise of discretion should be objective. The test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged". On the facts, it was found by their Lordships that "the Corporation did not release the balance loan and no explanation came forth". However, in the circumstances of the present case, it cannot be said that the respondents had acted arbitrarily or unfairly. In fact, it appears that for three years, the petitioner was given every kind of co-operation. Yet, it did not carry out any of its obligations. In fact, it was the failure of the petitioner to carry out its obligations that had forced the respondent-corporation to take action u/s 29. Still further, the decision in Mahesh Chandra v. U. P. Financial Corporation [1993] 78 Comp Cas 1 has been considered by their Lordships of the Supreme Court in U. P. Financial Corporation v. Gem Cap (India) P. Ltd. [1993] 78 Comp Cas 408 SC : AIR 1993 SC 1435. Their Lordships were pleased to observe as under (page 415) :

"The relationship between the Corporation and the borrower is that of creditor and debtor. The Corporation is not supposed to give loans once and go out of business. It has 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 and in furtherance of the object underlying 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. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what

is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one."

The above test is fully satisfied in the present case.

26. Mr. Sibal relied on the decision in *Tata Cellular Vs. Union of India*, to contend that even the procedure adopted by an authority for arriving at a decision should be fair.

27. Learned counsel is absolutely right in his contention. However, in the present case, there is nothing to indicate that the respondent-corporation had adopted an unfair procedure. It had handed over possession of the mill to the petitioner even without getting a penny. It had later on accepted the petitioner's request to convert the sale consideration into a loan. It had even accepted the request for payment according to a time schedule. The Corporation had executed a fresh agreement on August 30, 1994. In spite of that, the petitioner did not carry out its obligation to repay even the first instalment which had fallen due on March 31, 1995. It was after waiting for a considerable length of time that the Corporation had given a notice dated January 30, 1996, to the petitioner. The petitioner had submitted a reply. It was duly considered. Thereafter, the impugned order was passed on July 12, 1996. In spite of this order, the corporation had shown willingness to reconsider the matter if the petitioner deposited an amount of Rs. 5 crores. This was even less than the principal amount of Rs. 5,65,45,876.91 which had fallen due till March, 1996. The petitioner did not pay even a penny.

28. The facts clearly show that the petitioner was given opportunity to pay. It was also given an opportunity to put forth its explanation. It was after consideration of the entire matter that the impugned orders were passed. In this situation, the petitioner can have no legitimate complaint regarding the procedure adopted by the authority before passing the impugned order.

29. Mr. Sibal also pointed out that in the impugned order a copy of which has been produced as annexure P-26 with the writ petition, it has been observed that "in view of the orders passed on May 16, 1996, and in exercise of the powers conferred by Section 29 of the State Financial Corporations Act, 1951...", the possession of the assets was ordered to be taken. Counsel submitted that no order which may have been passed on May 16, 1996, had been produced. Vinod Sharma stated that the order, a copy of which has been produced as annexure P-51 with the writ petition, had in fact been passed on May 16, 1996. This was controverted by counsel for the petitioner by referring to the averments in paragraph 36 of the written statement wherein it had been categorically stated that the order had been passed on March 29, 1996.

30. After hearing counsel for the parties, it appears that there is an inaccuracy regarding the date of passing of the order at annexure P-51 in the written

statement filed on behalf of the respondents. The sequence of events appears to be that a notice dated January 30, 1996, was given to the petitioner by the respondent-corporation. A reply was submitted by the petitioner on March 6, 1996. The parties were given a hearing on March 29, 1996, by Ramesh Inder Singh, the then deputy chairman and managing director of the respondent-corporation. The formal order was passed by him on May 16, 1996. However, since the hearing had been granted on March 29, 1996, it was stated in the written statement that the order had been passed on March 29, 1996. Though the order at annexure P-51 bears no date yet, learned counsel appears to be right in his assertion that it was actually recorded on May 16, 1996. It was on this basis that an observation was made in the impugned order dated July 12, 1996, that the order had been passed on May 16, 1996. In any event, this inaccuracy is of no consequence so far as the factual position is concerned.

31. In view of the above, the second question is answered against the petitioner. It is held that the impugned order is in conformity with the provisions of Section 29 of the Act.

Reg : (iii)

32. It was lastly contended that the respondents having failed to carry out their obligation to get the letter of intent transferred and to execute the conveyance deed, they are estopped from invoking the provisions of Section 29.

33. As already observed, the petitioner was under an obligation to pay the consideration money. It did not do so. In spite of that, the respondents had requested the competent authority to transfer the letter of intent. However, in the circumstances of the case, it cannot be said that the respondents were bound to even transfer the land in favour of the petitioner. It was not in public interest to do so. The petitioner having continuously defaulted cannot complain that the respondents had failed to carry out their obligations or that they were estopped from resorting to the provisions of Section 29.

34. Mr. Vinod Sharma pointed out that the petitioner had not carried out its obligations in making the payment to the respondent-corporation. Still further, he stated that Company Petition No. 45 of 1996 had been filed for the winding up of the petitioner-company. A notice dated September 8, 1997, had appeared in the press. He had even produced a copy of the notice of the company-petition.

35. A perusal of the documents produced by the petitioner on record belies the claim that the respondents were bound to transfer the letter of intent and the land before asking for money or resorting to the provisions of Section 29. Learned counsel for the petitioners was unable to refer to any specific provision in any of the agreements in support of his contention. Secondly, even in the letter issued in August, 1996, a copy of which is at annexure P-35 with the writ petition, the petitioner did not complain that the respondent-corporation had failed to get the letter of intent transferred or to execute the conveyance deed. At best, it was stated that if the conveyance deed had been executed, the

petitioner may have been able to get the loan.

36. Taking the totality of the circumstances into consideration, the plea of estoppel cannot be sustained. It is, accordingly, rejected. The third question is also answered against the petitioners.

37. It was suggested that the respondent-corporation had misappropriated a large number of sugar bags. Even a prayer for an order in that behalf was made. However, learned counsel had stated that the petitioner would separately seek its remedy in this behalf. Consequently, this matter need not be examined.

38. No other point has been raised.

39. In view of the above, there is no merit in any of the contentions raised on behalf of the petitioners. Resultantly, the writ petition is dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.