
(2006) 07 DEL CK 0105
In the Delhi High Court
Case No : WP (C) 1830 of 1993

O.P. Sharma and Another

APPELLANT

Vs

Delhi Financial Corpn. and Others

RESPONDENT

Date of Decision : 17-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29, 32G

Citation : (2006) 90 DRJ 602

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Mamta Mehra, for the Appellant; Gautam Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This writ petition filed in the year 1993 has a long and chequered history. Respondent No. 4 Vashisht Enterprises Private Limited was sanctioned a Term Loan of Rs. 18.25 Lacs and a Soft Loan of Rs. 1.5 Lacs on 18.12.1984 by the Delhi Financial Corporation, respondent No. 1. Of the sanctioned term loan, a sum of Rs. 16,43,500/- was disbursed and of the soft loan, a sum of Rs. 1,13,500/- was disbursed. A mortgage deed was executed by respondent No. 4 company whereby the machinery in the plant of the said company stood mortgaged to the respondent No. 1 Corporation. Simultaneously, a bond of guarantee was executed by five persons including the petitioner No. 1, Shri O.P. Sharma and petitioner No. 2 Rakesh Sharma, both of whom were stated to be its promoter Directors. The said five persons stood as guarantors for the repayment of the loan borrowed by respondent No. 4 company.

2. As a result of default in repayment of the loan, a show cause notice u/s 29 of the State Financial Corporations Act, 1951 (Act) was issued to respondent No. 4 on 8.02.1989 by the respondent No. 1 Corporation. This was followed by a notice dated 18.06.1990. When efforts to take possession of the unit failed, the

respondent No. 1 Corporation filed an application u/s 32(G) of the Act "before the Competent Authority for issuing a certificate to the Collector (Recovery), Delhi for recovery of a sum of Rs. 45.95 Lacs exclusive of interest w.e.f. 1.08.1991. Section 32(G) of the Act reads as follows:

32(G). Recovery of amounts due to the Financial Corporation as an arrears of land revenue - Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority as that Government may specify in this behalf is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrears of land revenue.

Thereupon, on 23.06.1992, a show cause notice was issued to the guarantors, including the petitioners herein, by the Competent Authority. Ultimately on 10.02.1993, a recovery certificate was issued by the Competent Authority to the Collector directing that the sum of Rs. 59,10,994.17/- be recovered from the petitioners herein. The petitioner thereafter filed the present writ petition seeking inter alia the quashing of the recovery certificate dated 10.02.1993 issued by the Competent Authority.

3. When the writ petition came up first for hearing on 31.03.1993, this Court was informed that the plant of machinery belonging to respondent No. 4 company was in possession of respondent No. 1 Corporation since 1990 and that therefore, it should be asked to first dispose of those properties before proceeding against the petitioners. While directing notice to be issued to the respondents, this Court stayed the demand notice dated 11.03.1993 issued by the Collector till the next date of hearing and restrained the petitioners from disposing of their properties without the permission of the court.

4. Thereafter, the matter appears to have remained pending in this Court with numerous adjournments having been granted at the request of the petitioners. On 7.12.2000, this Court passed a detailed order disposing of miscellaneous application CM No. 2951 of 1993 filed by the petitioner herein seeking certain interim reliefs. The said order which details the history of this case till that date reads as under:

We find that on 31st March 1993 while issuing notice, as an interim measure, it was directed that demand notice dated 11th March, 1993 (Annexure 9) shall remain stayed till the next date. The petitioners were restrained from disposing of their properties, without the permission of the Court. We find that subsequently, it was indicated to this Court that the petitioners have arranged a buyer, who is prepared to purchase the machinery and the plant for a sum of Rs.

5.15 lakhs and the buyer was ready to deposit the amount with DFC. Respondent No. 4 prayed that it should be granted an opportunity to bring a buyer who can offer a higher amount. The Bench hearing the matter observed that, respondent No. 4 was permitted to arrange, if possible, a buyer for higher amount and in case respondent No. 4 is able to find a buyer for higher amount, the said higher amount shall be deposited with DFC within a period of two weeks. In case that is not done, petitioners were directed to deposit a sum of Rs. 5.15 lakhs. It appears that no amount has been paid by either petitioners or respondent No. 4. We further find that on 19th September 1997, it was conceded that there was no challenge to the vires of any statutory provision in the petition and therefore the decision of another Division Bench need not be awaited. Reliance has been placed to-day by petitioners on a decision of this Court in *Rajeev Anand and Others Vs. Union of India and Others*, to contend that Section 32G is inoperative as the Managing Director is the person, who is to judge his own case. We find from paragraph (17) of the said decision that there was restriction on challenge to any notice or action prior to the date of the judgment, which is 20th February 1998. In the instant case, as indicated above, there was a concession that there was no challenge to the vires of any provision in the petition. We further note that by order dated 19th August, 1999, it was clarified that the amendment to the petition was operative from the date of the order i.e 19th August, 1999. In view of this position, all the interim orders need to be varied and stand vacated. However, restraint on the petitioners to dispose of the properties shall be operative. CM stands disposed of.

5. Thereafter, the matter was getting adjourned awaiting the decision of the Hon"ble Supreme Court in the *Rajiv Anand Case* (supra) case involving the validity of Section 32(G) of the Act. That case decided by the Hon"ble Supreme Court on 24.03.94 by a judgment reported in *Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others*, wherein it was held that provisions of Section 32(G) of the Act applies to sureties as well. It was further held that Section 32(G) merely provided an additional mode of recovery to a State Financial Corporation. The Court expressly rejected the submission that there had to be an adjudication and a finding prior to the invoking of Section 32(G) of the Act. The challenge to the validity of Section 32(G) of the Act on the ground that it was arbitrary and discriminatory was rejected. It was held that the doctrine that "no man can be a judge of his own cause" can only be applied to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. It has also been held that mere appointment of officer of the Corporation cannot in itself bring into play the doctrine of no man can be a judge of his own cause". Thus, the points raised in the present writ petition stand covered against the petitioners by the aforementioned judgment of the Hon"ble Supreme Court. Consequently, respondent No. 1 filed CM 12025/2005 seeking the hearing and disposal of the writ petition in the light of the judgment of the Hon"ble Supreme Court in *Delhi Financial Corporation v. Rajiv Anand* in Civil Appeal No. 4014-17/98 dated 24th March, 2004.

6. Thereafter, this writ petition kept getting adjourned on several occasions. It was heard at some length on 29.03.2006, when the principal plea of violation of natural justice was dealt with and thereafter, a detailed order was passed. The relevant portion of the order after noticing the untenability of the plea of violation of natural justice as evident from the pleadings, passed on that day, reads:

The learned Counsel for the petitioner was thereafter asked whether de hors the pleas raised in the writ petition and subject to the adjustment of the amount secured by auction of machineries, her client is prepared at least to deposit in this Court the principal amount paid to her client. She sought time to obtain instructions of the petitioners. List on 3rd May, 2006.

7. On 3.05.2006, this Court was informed by the counsel for petitioner that the machinery which had been mortgaged to the respondent No. 1 Corporation could have been sold for about Rs. 6 lakhs at least. This Court then passed the following order:

The learned Counsel for the petitioner states that the machinery could have been sold for about Rs. 6 lakhs at least. In order to test the bona fide of her contention, after giving credit at this stage for the said sum of Rs. 6 lakhs of the value of the machinery, the balance amount remaining out of the principal amount disbursed to the petitioner, shall be deposited in this Court before the next date of hearing.

List on 12th July, 2006.

8. When the matter was listed on 12.07.2006, we were informed by the counsel for petitioners that her clients are not in a position to make any payment even in terms of the order dated 3.05.2006 passed by this Court which had given a rebate of Rs. 6 lakhs from the principal amount disbursed to the petitioners.

9. Consequently, we are of the view that there is no merit in the writ petition. The principal plea of violation of natural justice has already been dealt with by this Court by order dated 29th March, 2006 as noted above. In so far as the question of bias and the legality of simultaneous proceedings u/s 32G and Section 29 is concerned, the issue is fully covered by the judgment of the Hon'ble Supreme Court in Delhi Financial Corporation v. Rajiv Anand in Civil Appeal No. 4014-17/98 dated 24th March, 2004.

10. In this view of the matter, nothing survives in the writ petition. We have also noted that even after the petitioner were only asked to deposit the principal amount of loan minus the sum of Rs. 6 lakhs alleged to be the price of machinery, even that deposit had not been made. In view of this recalcitrant and obdurate attitude of the petitioners, no interference is called for under Article 226 of the Constitution of India. The writ petition is thus dismissed.