(1986) 11 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1025 of 1984

P.C.B. House APPELLANT

Vs

United Commercial Bank and Others RESPONDENT

Date of Decision : 06-11-1986

Acts Referred:
Constitution of India, 1950 — Article 41

Citation : (1987) 35 BLJR 117 : (1990) 69 CompCas 489

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : B.C. Ghosh and Kalyan Roy, for the Appellant; K.N. Prasad, Satish Bakshi and Laljee Sahay, respondent Nos. 2, 3 and 4 and Amreshwar Sahay and Indirani Choudhury for respondent Nos. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—In this writ application, the petitioner''s prayer is to quash annexure 6 and to issue suitable directions to the respondent-bank to comply with annexure 3 and to implement the recommendations of the committee, contained in annexure 17, to which it was a party.

2. The petitioner-company is a registered small scale industrial unit (in short, SSI unit). It claims to be a singular unit in Eastern India, manufacturing printed circuit boards and printed card assemblies. The unit was approved by the respondents in the year 1976 and started its operation in July, 1977. The Small Industries Research Training and Development Organisation (hereinafter referred to as "SIRTDO") rendered services to the petitioner and then the petitioner-company started production with the financial assistance of the respondents. The said SIRTDO is the monitoring agency of the petitioner-company under whose supervision the petitioner is working. In November, 1980, April, 1982, June, 1982, June, 1983, and September, 1983, the said SIRTDO wrote letters to the Divisional Manager, Zonal Manager as also to the head office of the United Commercial Bank, Calcutta (respondent No. 1), highly recommending the

performances of the petitioner and requested the respondents for rendering financial assistance to the petitioner-company. Thereafter, the petitioner obtained various work orders from different institutions and successfully completed the contract work and supplied the products to the parties with full satisfaction. In the year 1979, the respondents sanctioned a loan of Rs. 1.40 lakhs to the petitioner and the petitioner deposited a sum of Rs. 13,000 to their credit account to repay the loan amount. The petitioner further deposited a sum of Rs. 23,000 in the year 1981 and Rs. 15,000 in the year 1983 to their credit account to repay its loan. In the year 1981, the branch manager of the United Commercial Bank, Ranchi, adjusted a sum of Rs. 65,000 in the cash credit account of the petitioner to realise the loan. The branch manager of the United Commercial Bank, Mesra, Ranchi (respondent No. 2), adjusted a sum of Rs. 4,000 in the year 1983 and Rs. 11,000 in May, 1984, in the cash credit account of the petitioner to realise the loan.

3. All on a sudden, as is alleged by the petitioner, respondent No. 2, stopped financing the petitioner from June, 1983. Due to the negligent and arbitrary action of respondent No. 2, the petitioner could not get raw materials in time, the result being that a work order of Rs. 5 lakhs had to be cancelled. The work order was cancelled in October, 1983, whereas the raw materials reached the petitioner in February, 1984, and, therefore, the petitioner refused to accept it because due to the cancellation of the work order, it had become useless but then respondent No. 2 compelled the petitioner to accept the same. Due to the non-co-operation of the respondent-bank, the performance of the unit suffered. In May, 1984, the director of SIRTDO wrote a letter to respondent No. 2 contending that due to the cancellation of the work order, the unit became sick and, therefore, requested respondent No. 2 to take action to revive the petitioner''s unit. The Small Industries Service Institution inspected the petitioner''s unit and sent its report to the respondents declaring the petitioner''s unit as a sick unit. In July, 1984, the Deputy Director, Small Industries Services Institution, wrote a letter to the Divisional Manager, United Commercial Bank, Kanke Road, Ranchi (respondent No. 3), requesting it to send its approval to declare the petitioner''s company as a sick unit. The Assistant Director, SISI, wrote a letter to the General Manager, United Commercial Bank, Calcutta, requesting him to send his comments and suggestions on the draft report to the divisional manager. The petitioner made several representations to the respondents to declare it as a sick unit and also requested them to take action for its revival. The said unit having failed in its efforts, the petitioner then sent a legal notice to the respondents to redress the grievances but the respondents did not consider its case. The petitioner had received orders worth Rs. 6 lakhs from various industries, such as the Indian Telephone Industry Ltd., to supply printed card assemblies and from the TELCO Ltd. to supply some electronic materials. Again, in August, 1984, the petitioner wrote a letter to the general manager for recommendation to the joint report to declare the petitioner-company a sick unit.

4. It is submitted by the petitioner-company that the respondents did not comply

with the guidelines as provided in the Reserve Bank of India manual. The abrupt discontinuation of the advance loan saddled the petitioner with the liability of compound interest on the loan taken by it. The action of the respondents in withholding the loan to the sick unit was arbitrary.

5. The proprietor of the petitioner-company is a graduate in engineering from B. I. T. Mesra, and is a self-employed person. It was urged that he should not have been denied credit merely for want of a third party guarantee or collateral security. The present case involved the career of a technocrat and the arbitrary act of the respondents has jeopardised his career. Withholding of the loan to the petitioner was done on extraneous and irrelevant considerations. In August, 1984, the branch manager of the United Commercial Bank, Mesra, Ranchi, wrote a letter to the petitioner informing him that they have decided to recall the entire advance in various credit accounts to the petitioner. It may be stated that in the year 1983, the respondents had assured the petitioner of financial assistance if the unit was modernised with foreign collaboration. The SISI and BITCO approved the scheme of modernisation of the unit and the petitioner spent a good amount over it. Due to the dilatory tactics of the respondents, the petitioner sustained irreparable injury, loss of goodwill and irreparable damage to the career of the petitioner, a technocrat. It was urged that the action of the respondents in stopping financial assistance to the petitioner was contrary to the scheme. Till 1980, the unit was smoothly running but due to circumstances beyond control of the petitioner, the unit started facing difficulties in its normal functioning. It made a representation to the branch manager of the bank that the delay in refinancing aggravated the situation leading to its total ruin. At the time of extending the revival programme to the petitioner as a sick unit, the respondents demanded various documents which were handed over to the branch manager, but the divisional manager took a defiant view and instead of extending help, by observing the formalities under the revival programme, the petitioner became the victim of official bureaucracy. The petitioner never misused or diverted any of the funds. The petitioner made several representations up to the level of the chairman-cum-managing director and to respondent No. 2 requesting them for sympathetic consideration of its case. It requested that in order to have smooth running of the petitioner''s unit, funds should be allocated and released as early as possible. On account of inaction, abrupt and arbitrary discontinuation of the advance loan as working capital, the petitioner was left with no alternative remedy and filed the present writ application.

6. It is urged that the proprietor of the petitioner-company is an unemployed engineering graduate having completed his training with the B. I. T. Mesra, Ranchi. The respondent-bank, Mesra branch, used to finance the entrepreneur on the recommendation of the SIRTDO under a special scheme which provides that the bank shall give financial assistance to entrepreneurs for purchase of machinery and equipment and working capital required for their business activity. The said scheme is contained in annexure 10.

7. In a detailed counter-affidavit filed on behalf of respondents Nos. 2 and 3, it was submitted that the petitioner was found to be thoroughly incompetent to run the business and it was impossible for him to repay the loans. The problems and difficulties of the petitioner have arisen on account of his mismanagement and incompetence. It was urged that SIRTDO faces no problem in recommending cases of industries to be financed by the bank, but it is not SIRTDO that will be saddled with bad debts and as such the alleged recommendation of SIRTDO or any other agency is entirely out of context, irrelevant and an extraneous matter. The respondents are not obliged to carry on their functions according to the wishes of SIRTDO. The scheme contained in annexure 10 was neither a Government scheme nor a SIRTDO scheme. And even the involvement of SIRTDO is very much limited only to assist and/or monitor projects and to co-ordinate with the State and Central Government Industries, Research and Development Organsations and International Agencies in accordance with law. SIRTDO could not share any involvement in financial matters with any entrepreneurs/units and every SSI unit, though working in close co-operation with SIRTDO, were raising their funds from the bank directly and under an agreement.

8. In a supplementary affidavit by way of reply, it was urged on behalf of the petitioner that the petitioner has been regularly making representations to the Reserve Bank of India and the Reserve Bank of India has been making reference to respondent No. 1 but respondent No. 1 had been declining to act in terms of the scheme of the Reserve Bank of India and the directives of the SIRTDO. The latest communication sent by the Reserve Bank of India in which the petitioner made his specific grievance against respondent No. 1, has been annexed and marked annexure 12. The Reserve Bank of India acknowledged this latest letter on September 20, 1984, and stated that the matter was receiving consideration. The said letter is annexure 13.

9. It is submitted that the entire scheme contained in annexure 10 was in pursuance of the directions issued by the Reserve Bank of India as contained in its manual. Subsequently, in order to clarify the same, the Reserve Bank of India issued fresh instructions and the petitioner has referred to the relevant portion of the manual: in particular, to those contained in paragraph 23 (page 10 of the instructions). Reliance was placed on clauses 13 and 15 of annexure 10 and it is submitted that SIRTDO performed its duties in pursuance of the agreement but notwithstanding the same, bank respondent No. 1, still refused to give financial assistance to the petitioner. The actual financial position appears from the figures prepared by the petitioner in a tabular form (annexure 15). In spite of the aforesaid direction issued by respondent No. 5, respondent No. 1 still refused to render financial assistance to the petitioner. Thus, it is alleged that respondent No. 1 has acted in contravention of the specific direction given by the SIRTDO in terms of annexure 10.

10. The SIRTDO is an instrumentality or agency of the Government of Bihar for

the purpose of development of youthful talent acting under the directions and supervision of the Reserve Bank of India in accordance with article 41 of the Constitution of India. The same would be clear from a brochure issued by the Department of Technology and Birla Institute of Scientific Research. The same has been annexed and marked annexure 16. The entire transaction is on the basis of the scheme and the advance of loan is in terms of the said scheme. The agreement for advance of loans is only under the aforesaid scheme (annexure 10) controlled by the Reserve Bank of India under the Banking Regulation Act.

11. In pursuance of article 41 of the Directive Principles of the Constitution of India, the State which includes the Government of India, Government of the State, Reserve Bank of India and such instrumentalities and agencies of the State, SIRTDO have taken steps to help unemployed youths who have received training in engineering at B. I. T. institute, Mesra. The Reserve Bank of India has issued directions to the nationalised banks, such as United Commercial Bank of India (respondent No. 1) as has been mentioned in paragraphs 6 and 7 of the supplementary affidavit filed by the petitioner. Such directions of the Reserve Bank of India are contained in the Reserve Bank of India manual.

12. Under the Banking Regulation Act, the Reserve Bank of India has power not merely to issue directions but to control loans, etc., and, acting in pursuance of the same, the Reserve Bank of India has issued such directions. In terms of those directions issued by the Reserve Bank of India, respondent No. 1 adopted a scheme to give effect to those directions with respondent No. 4, Small Industries Research Training and Development Organisation, B. I. T. Mesra, the original of which is stated to be in the possession of the bank.

13. Paragraph 7 of annexure 10 states that "the bank on their part will finance at their Mesra (Ranchi) on the recommendation of the SIRTDO, the units sponsored by SIRTDO, the term loan for purchase of machinery and equipment and working capital required for their business activity." The SIRTDO''s inabilities have been specifically provided in paragraphs 13 and 15 of annexure 10. The respondent-bank has not merely refused to comply with the representation of the SIRTDO from time to time, but refused to comply with the directions given by the Reserve Bank of India and to submit to the action taken by the Reserve Bank of India to ensure proper working of the petitioner''s business and the bank''s relation therewith. The bank is now unilaterally trying to enforce its so-called terms on the petitioner.

14. The Director of the Small Industries Services Institute, Industrial Estate, of the Government of India, Ministry of Industries, communicated by annexure 3, the Government proposal to declare certain industries including the petitioner''s industry as a sick industry and to take action for the purpose of its rehabilitation. The committee was appointed to probe into the matter and the committee consisted, amongst others, of an officer of the respondent-bank to go into the matter and the committee had made certain recommendations. The bank was asked to send its comment, etc., on the same so that action could be taken on

the basis of the recommendation of the committee (annexure 2). But the bank refused to comply . with the same. It was, thus, obvious that the bank was not prepared to abide by the scheme (annexure 10) and to submit to the directions of the Reserve Bank of India as also to take steps in terms of the directions issued by the Ministry of Labour, Government of India. The bank was bound by the terms of the scheme under which the loan was advanced. The Reserve Bank of India by its letter dated September 20, 1984 (annexure 13), replied to the petitioner''s representation to the Reserve Bank of India and assured the petitioner. Finally, on February 28, 1985, the SIRTDO recommended for rehabilitation (annexure 14). This was done upon a review of the working of the petitioner-company and stock statement submitted on the basis of the visit by the SIRTDO. This was done in pursuance of paragraphs 13 and 15 of the agreement (annexure 10).

15. The bank respondent No. 1 has been consistently refusing to comply with the various directions issued by the Government of India in the Ministry of Industries and the Reserve Bank of India. The bank virtually cancelled the entire loan transaction by annexure 6. Although the bank is a party to the recommendation contained in annexure 17, it has refused to submit its comments on the said recommendations to the Government of India (annexure 3) and thereby stultified the Government''s efforts to rehabilitate the petitioner''s industry as a sick industry.

16. It may be stated that it is not an ordinary commercial transaction of a private organisation for a banking loan governed by the law of private contract. On the contrary, it was founded on a scheme prepared by the bank, a State organisation acting as an instrument or instrumentality of the State and agency of State functioning for implementation of the State policy as directed by article 41 of the Constitution of India. This function of the bank as an instrumentality or agency of the State in furtherance and objectives of State policy could not be so controlled or circumscribed by any profit-based commercial considerations of a private bank. Various steps taken by the Ministry of Industries, SISI and the Reserve Bank of India are in furtherance of the State policy. The recommendation of SIRTDO (annexure 14) is in the terms of such scheme which provides for implementation of the scheme with the help and co-operation of SIRTDO.

17. In this view, after giving due consideration to the facts and circumstances of the present case, annexure 6 is quashed and the respondent-bank is directed to comply with annexure 3 and is further directed to implement the recommendation of the committee contained in annexure 17 to which it was a party.

18. In the result, this application is allowed but there will be no order as to costs.

