
(2006) 02 JH CK 0020
In the Jharkhand High Court
Case No : LPA No. 72 of 2002

Prabhat Udyog

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2006 Jhar 76 : (2006) 2 JLJR 167 : (2006) 2 JCR 384 : (2006) BankJ 418 : (2006) 43 AllIndCaS 868 : (2006) 2 AIRJharR 219

Hon'ble Judges : R.K. Merathia, J;D.P. Singh, J

Bench : Division Bench

Advocate : Anubha Rawat Choudhary, for the Appellant; M.S. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia and D.P. Singh, JJ.—This Letter Patent Appeal has been preferred against the judgment dated 8.1.2002 passed in the writ petition being CWJC No. 2041 of 2000(R).

2. The petitioner took loan in 1975 from the respondents-Bihar State Financial Corporation (hereinafter referred to as "the Corporation"). It became defaulter. A further loan for rehabilitation was given in 1984. The increasing dues of the Corporation were not paid by the petitioner. Some time in 1993, the Corporation floated a Scheme for one time settlement. The appellant applied under the said Scheme. The Corporation calculated the dues at Rs. 17.97 lacs together with interest at the rate of 16 per cent per annum chargeable on the remaining amount i.e. excluding the application amount. The petitioner filed a writ petition being CWJC No. 2368 of 1996(R), challenging the said amount. The writ petition was disposed of on 9.1.1997 by remitting the matter back to the Corporation to consider the grievance of the petitioner and to take a decision and also reduce the amount under one time settlement by taking" into consideration 31.3.1978 as the date of initial continuous default. The Corporation challenged the said

decision in Letters Patent Appeal which was dismissed. Then the SLP filed by the Corporation in the Supreme Court was also dismissed. The Corporation thereafter reconsidered the objection raised by the petitioner and reduced the amount from Rs. 17.97 lacs to Rs. 12,49,010.42 Paise. The petitioner made representation objecting to the said amount. Thereupon the amount was further reduced to Rs. 11,38,671/- some time in the month of December, 1998 to which the petitioner again raised objection. By letter dated 6.3.2000 (Annexure 12), the Corporation rejected the petitioner's objection. The details of calculation was sent. This letter was challenged by the petitioner in writ petition in question being CWJC No. 2941 of 2000(R). This Court dismissed the writ petition. It was held that the date of continuous default was 31.3.1978. Learned Single Judge observing that even assuming that the petitioner has some case on the question of calculation of interest, dismissed the writ petition on the ground that instead of depositing the finally settled amount, the appellant was raising frivolous objections in order to delay the payment of the dues. The learned Single Judge was of the view that the conduct of the petitioner was not bona fide as he did not deposit at least the amount which, according to him, was payable to the Corporation under one time settlement. This order of the learned Single Judge has been challenged in this Letters Patent Appeal.

3. Mrs. Anubha Rawat Choudhary, learned counsel appearing for the appellant, submitted that the said amount was wrong as :-

(i) The date of initial continuous default has been taken as 31.3.1978 instead of 30.9.1977.

(ii) Interest has been charged @ 18% against the stipulated rate of 16 per cent; and

(iii) No relief under one time settlement scheme is given on Account No. II.

4. First objection is frivolous. It is clearly mentioned in the account of the Corporation (at page 90 of the brief) that the date of continuous default was 31.3.1978. The appellant also mentioned the same date in the earlier writ petition and, accordingly, it was mentioned in the aforesaid order of this Court passed on 9.1.1997 in CWJC No. 2368 of 1996(R). Thus the Corporation had rightly calculated the dues under one time settlement, taking into consideration 31.3.1978 as the date of initial continuous default.

5. The second objection is also not tenable. The interest on the settlement amount, during the period of its repayment was revised from 16% to 18% by the Corporation on 29.6.1996 which was applicable to all the borrowers and not only to the appellant.

6. Regarding third objection based on paragraph 3 of the letter of the Corporation dated 6.3.2000 (Annexure 12) Mr. Mittal appearing for the Corporation submitted that the same is wholly misconceived. Loan was paid to the petitioner under this Account- II from the amount advanced to the

Corporation by Industrial Reconstruction Corporation of India for rehabilitation of the Units. This sum was not the fund, of the Corporation. The rate of interest in this Account-II was subsidised rate of interest i.e. 9.15% + 1% which was less than the rate of interest charged in Account No. I and, no penalty is charged for default in this account. In that context, it was said in the said letter that Account No. II was not covered by one time settlement guidelines.

7. Mr. Mittal referred to paragraph 19 of the judgment of the Supreme Court in Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, .

8. The following legal principles have been laid down by the Supreme Court. While exercising its jurisdiction under Article 226 of the Constitution of India, the High Court does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the Writ Courts into appellate authorities over administrative authorities. In such matters, the Writ Court can interfere only if there is a statutory violation on the part of the Corporation or if the Corporation acts unfairly i.e. unreasonably. Fairness cannot be a one-way street and the fairness required of Financial Corporation cannot be carried to the extent of disabling them from recovering what is due to them. "While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness. Similar principles have been laid down in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, and Delhi Financial Corporation Vs. B.B. Behel, . In Noida Entrepreneurs Association v. U.P. Financial Corporation and Anr., , it was observed that the rate of interest and penal interest cannot be the subject matter of challenge before the Writ Court.

9. Moreover there is nothing to show that the Corporation acted mala fide or there was statutory violation by it. The appellant: while raising objections could have offered the admitted amount to show its bona fide. It is not the case of the appellant that besides the application amount, no further amount was payable by it. We are inclined to agree with learned single Judge that the objections raised by the appellant in the writ petition were frivolous.

10. We also find no merit in this appeal which is accordingly, dismissed. However, there will be no order as to costs.