(2008) 10 OHC CK 0076

In the Orissa High Court

Pramod Kumar Rath APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Citation : AIR 2009 Ori 84 : (2009) 1 CLR 482 : (2008) 2 OLR 1101 Supp

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed for issuing direction to the opposite parties to consider and pass appropriate order on the proposal for One Time Settlement submitted by the petitioner.

2. The facts and circumstances giving rise to the case are that the petitioner being the proprietor of M/s. Anand Electronic & Co., a Firm at Sambalpur applied for Cash Credit facility before the opposite party-bank on 22-2-1993. The bank after scrutiny and completing formalities sanctioned Rs. 2,00,000/- which was further enhanced to Rs. 30,00,000/-. As the amount of outstanding dues was not paid, the bank started recovery of the outstanding dues. Petitioner wanted settlement as per his desire. The matter was brought to the Court by filing W.P. (C) No. 10489 of 2003 which was disposed of giving certain directions vide judgment and order dated 16-1-2008. The grievance of the petitioner is that the proposal for One Time Settlement (hereinafter called ''OTS'') submitted by him is not being considered in accordance with law. Hence this petition.

3. Learned Counsel for the petitioner has argued the matter at length. However, he has fairly conceded that there was no Clause contained in the agreement between the parties for OTS nor it is provided in the statute or Statutory Rules etc. Petitioner has not filed any copy of any guidelines issued by the Reserve Bank of India in this regard.

4. The issue of OTS has been considered by the Division Bench of the Allahabad

Court in M.M. Accessories and Another Vs. U.P. Financial Corporation and Another, wherein the Court held that no direction can be issued to a party under the Statute where the duty is discretionary and authority, upon whom the duty vests, has exercised its discretion reasonably and within its jurisdiction. While deciding the said case, reliance has been placed on the judgments of the Hon''ble Apex Court in The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, ; Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, ; Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, ; and Dr. Umakant Saran Vs. State of Bihar and Others, . In respect of competence of the Court for issuing direction to reach OTS the Court held as under:

What the petitioners want now is that their proposal for one time settlement, which contains terms advantageous to them, specially a rate of interest lesser than what they had agreed upon at the time of entering into the contract and disbursement of the loan, be accepted. The State Financial Corporations Act, which governs the working of the UPFC, does not contain any provision for entering into a one time settlement. A Court cannot issue any direction to a party to enter into a compromise or settlement. By the very nature of things, a settlement involves consent and it is voluntary act of the party. In a matter where a creditor is enforcing its liability upon the debtor, the debtor has no legal right to claim that the claim be settled on favourable terms proposed by him whereby the claim of the creditor is reduced."

(Emphasis added).

The Court further observed as under:

Industrialisation is prime requirement of the country for generating employment and economic upliftment of the people.... If some favourable settlement is entered into, the industrial concern may continue with its activity and may be able to revive. Which particular course of action should be taken by the Financial Corporation, would depend upon a variety of factors. It is likely that the revival of an industrial concern may be in larger public interest. By way of example, if the industrial concern is employing a large workforce, its closure may throw a large number of persons out of employment. The industrial concern may be situated in a backward area which the Government wants to develop and its closure may have a serious adverse impact as it may deter other enterpreneurs in setting up industry in that area. It may be carrying on a business which is of public utility and its closure may adversely affect a large cross-section of people. In these types of cases, the Financial Corporations, having regard to the public interest involved, may enter into a settlement so that the industrial concern may not be closed and the production activity may go on. There may be cases where the nature of the activity of the industrial concern may not be of such a character and its closure may not have any adverse impact of any significance. The need to enter into a settlement may also depend upon the fact as to how best the money of the Financial Corporation can be retrieved.

5. The Court further expressed its anguish upon entering into such uncalled for OTS in a unwarranted case, observing that every person would like to get one-time settlement in his favour as every person like to get his liability reduced and pay less than what he is liable to pay under the contract executed by him.

6. In Oriental Bank of Commerce Vs. Sunder Lal Jain and Another, , the Hon''ble Supreme Court held that the guidelines issued by the Reserve Bank of India providing for O.T.S. are only in the nature of internal guidelines for the banks and financial institutions. They are purely executive instructions and have no statutory force. They do not create any right in favour of the borrowers.

7. Similar view has been reiterated by a Division Bench of Punjab & Haryana High Court in D.S. Mechanical Works v. State Bank of India and Anr. AIR 2008 P&H 162.

8. It is settled law that a person who suffers1 from legal injury only can challenge the act/action/order etc. Writ petition under Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by the petitioner that there is a breach of the statutory duty on the part of the respondents. Therefore, there must be judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction. The State of Orissa Vs. Madan Gopal Rungta, ; Saghir Ahmad Vs. The State of U.P. and Others, ; The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; Kalyan Singh v. State of U.P. AIR 1962 SC 1183; The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, ; Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, ; Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others, ; Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , Mani Subrat Jain and Others Vs. State of Haryana and Others, ; Thammanna Vs. K. Veera Reddy and Others, ; State of Kerala Vs. Smt. A. Lakshmikutty and others, ; State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, ; Mithilesh Garg, Vs. Union of India and others etc. etc., ; Rajendra Singh Vs. State of Madhya Pradesh and others, ; Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. and Others, ; Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., ; Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others, ; and Ghulam Qadir Vs. Special Tribunal and Others, .

9. In M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, , the Hon''ble Supreme Court considered the matter at length and placed reliance upon a large number of its earlier judgments, including The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, and held that petitioner should be asked to disclose the legal injury suffered by him.

10. In The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, , after referring to the earlier decisions in Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, ; Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, and Dr. Umakant Saran Vs. State of Bihar and Others, , Supreme Court observed as follows:

...There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.... In the instant case, it has not been shown by respondent No. 1 that there is any statute or Rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. l was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue. The same.

11. Therefore, the Court cannot issue a writ of mandamus to the Authority concerned unless it is satisfied that by non-performance of its duty by the said authority, petitioner has suffered an legal injury or the said Authority is bbtihd to consider the proposal for OTS made by the petitioner.

12.In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the Apex Court considered the issue of non-payment of dues of the Financial Institution and held as under:

...Regular payment is the Rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the need of the intended borrowers with the available finance.

Non-payment of the instalment by a defaulter may stand in the way of a deserving borrower getting financial assistance.

...That basic feature cannot be lost sight of. A Corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given...fairness cannot be a one way street. Corporations borrow money from the Government or other Financial Corporations and are required to pay interest thereon. Where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that the Corporation was not acting fairly even if requisite procedures have been followed.

Therefore, the writ Court has to examine such issues more seriously taking into account the aforesaid factors.

13. In the instant case, learned Counsel for petitioner could not point out as under what circumstances the writ petition can be entertained or how can claim relief for issuance of direction to the opposite parties to accept the OTS proposal made by him. He does not even place any scheme/guidelines issued by the Reserve Bank of India for this purpose. In such a fact situation, no relief can be granted to the petitioner.

14. The petition is totally misconceived and is accordingly dismissed.

B.N. Mahapatra, J.

15. I agree.

