
(2010) 03 PAT CK 0162
In the Patna High Court

Rajeshwar Prasad Sinha

APPELLANT

Vs

The Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0162

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, J.—Heard learned Counsel for the parties.

2. M/s Hind Concrete Allies Manufacturing Company was set up as a partnership firm of four partners which was duly registered on 26.6.1984 and the object of the said partnership was to set up an Industrial Unit for manufacturing of P.S.C. electric poles.

3. Since the partners did not have the requisite capital they approached the respondent Bihar State Financial Corporation (hereinafter referred to as "Corporation") for sanction of loan. The loan was sanctioned on 27.12.1985 for a sum of Rs. 9 lacs. The agreement was entered between the original partners as well as the respondents. Over a period of time the unit ran into certain difficulty, default was committed in repayment and therefore the respondent Corporation decided to auction sale the mortgaged or hypothecated assets of the said manufacturing company. A decision in this regard was taken by erstwhile Managing Director which is annexure-B to the counter affidavit filed on behalf of the respondents.

4. The present petitioner who happens to be one of the original promoters decided to approach the High Court making grievance against the action taken against the firm and the assets of the partners in question. Submission is that the proper accounting has not been done. Illegal demands in terms of the figures outstanding are being made. Though the firm was entitled to payment of

substantial amount as way of subsidy in the year 1987 but that subsidy amount of almost Rs. 1, 09000/- and odd was not released or credited into the account of the firm which would have substantially reduced the balance outstanding as of today.

5. Submission is that when one of the partners of the firm in question resigned in the year 1987 the fact was brought to the notice of the respondent Corporation. Reconstitution of the firm with remaining three partners was prayed for. The prayer was allowed by the Corporation in terms of communication dated 7.9.1989 but the reconstitution was subject to certain terms and conditions laid down therein.

6. The stand of the petitioner is that all that was required to be done by them was done by them but for strange reason the respondents insisted on execution of agreement by all the original four partners instead of three partners who remained after the reconstitution. There are many communications to show that the Corporation insisted on execution of agreement by all the four original partners for release of the subsidy when only three remained. Non-execution of the agreement by four partners led to non-release of subsidy in favour of the firm.

7. Learned Senior counsel representing the petitioner submits that due to wrongful insistence on the part of the respondents for executing the agreement by all the four partners despite knowledge of reconstitution has illegally denied the firm the benefit of subsidy. If that Rs. one lacs nine thousand and odd was credited into the account of the firm no substantial outstanding amount would have remained and the partners' liability would have been substantially diluted.

8. The stand of the respondent is that no doubt they did approve the reconstitution of the firm but the reconstitution was conditional subject to execution of certain documents and fulfillment of the conditions laid down in annexure-G to the supplementary counter affidavit. If for some reason the remaining partners did not complete the requirement of reconstitution then the failure was on their part and not on the part of the Corporation. Since the documentation had not been done therefore the Corporation insisted on execution of agreement by all the four original partners.

9. This Court is not very much impressed by the stand taken by the respondent Corporation that there was requirement for execution of agreement by all the four partners when there was clear understanding that the firm had undergone a change and one of the partners had resigned in the year 1987 itself. The reconstitution was allowed which was readily accepted by remaining partners, which is confirmed by their communication to the Corporation. The acceptance was unconditional. If that was the stated position then the stand of the respondent Corporation now that certain formalities were not carried out is a misplaced kind of objection. If there was any requirement or any formality of execution of any other document then the Corporation should have taken steps

in this regard. Leaving the things in limbo has caused the present litigation.

10. The Court must record that insistence of the Corporation for executing the agreement by all four led to non-release of subsidy in favour of the firm and the firm did lose the benefit of subsidy amount which could have been adjusted against the outstanding dues. But it is also a fact that the petitioner and the others did not raise any objection or dispute before any forum with regard to insistence of the respondents for execution of agreement by four partners.

11. When the subsidy was not credited and the last letter in this regard is in the year 1990 then there was a duty cast upon the present petitioner or his partners to approach the court of competent jurisdiction seeking proper direction. Obviously they ignored the above fact and only when the Corporation has taken steps for recovery of the dues or when an offer was made for one time settlement, the petitioner decided to file the present writ application challenging non-release of the subsidy in favour of the firm.

12. In the above circumstances the Court has no hesitation in recording that there has been failure on both sides. The corporation has accepted the reconstitution of the firm but has not deleted the name of another partner who has already retired leading to non-release of subsidy amount by taking a hyper technical view. There is failure on the part of the petitioner as well as he did not approach the court in the year 1990 or soon thereafter when the subsidy was not credited to the account of the firm.

13. In view of above stated position the Court is not inclined to pass any order in favour of the petitioner at such a belated stage more so when subsidy amount cannot be paid as it has lapsed in the year it was released.

14. The petitioner as well as respondent Corporation however will be well advised to sit on a table, work out the liability keeping the totality of the situation in mind. If one time settlement scheme or any other scheme will facilitate any relief to the petitioner the Corporation would be well advised to do so to settle the dispute.

15. This writ application is however dismissed.