
(1998) 11 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4007 of 1996

Smt. Sudha Tripathi

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 07-11-1998

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 1999 MP 188

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : H.S. Agrawal, for the Appellant; Anurag Choudhary, Panel Lawyer, Kamlesh Tripathi, Party in person, V.K. Shukla, Nitin Pendharkar and Abhay Sapre, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—Invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India the petitioner has prayed for quashment of Annexure P-10 agreement entered into by Madhya Pradesh Financial Corporation (hereinafter referred to as "the Corporation") with the respondent No. 5 and letter dtd. 13-8-1996, Annexure P-12 whereby the District Industries Centre, General Manager has cancelled the lease granted in favour of the petitioner. The further prayer of the petitioner is to call for the records of the tenders dated 20-12-1995, 7-2-1996 and 23-5-1996 and deprecate the action of the Corporation as it has in a hurried manner effected the sale overlooking the actual price. In essence, the prayer is to set aside the same.

2. The facts as have been unfurled in the petition are that the petitioner had availed a term loan of Rs. 2,10,000/- for opening of an industry, namely, Sudha Chholdari Tent & Tarpoline Industries at Varadih in the District of Satna. It is to be noted here that a lease deed was executed by the D.I.C. Satna in favour of the petitioner to have the aforesaid industry. The agreement was executed between the petitioner and the Corporation at the time of grant of loan and

terms and conditions were envisaged for payment of such loan. Respondent No. 3, Kamlesh Tripathi, husband of the petitioner, stood as Guarantor for grant or such loan. As the petitioner had become a defaulter in payment of the instalments steps were taken by the Corporation which recalled the loan and proceeded to seize the Unit u/s 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as "the Act"). After the loan was recalled and the Unit was seized an advertisement was published for its sale. Eventually the Unit in question has been sold in favour of the respondent No. 5 for a sum. of Rupees 2,75,000/-. The present writ application relates to challenge of the said sale. Though various averments have been made challenging the exercise of the power u/s 29 of the Act, it is principally set forth in the petition that the sale in favour of the respondent No. 5 is unsustainable inasmuch as the guidelines given by the Apex Court in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and other various decisions have not been taken into consideration; no opportunity was given to the petitioner to fetch higher bidder who could have given more than 20 lacs for the Unit the Corporation has failed in its , sacrosanct duty to get the better price; it has also committed gross illegality by not inviting respondents No. 3 and 4 for negotiation; the action taken by the Corporation exposes the mala fide of the Corporation which eventually makes the sale an illegal one. It is also pleaded that non-granting of time to the respondent No. 4 the purchaser arranged by the petitioner, speaks in volumes about the conduct of the Corporation to favour respondent No. 5 It is also putforth in the petition that in absence of proper notice to the Guarantor, respondent No. 3 the entire action of the Corporation is senistively susceptible. While assailing the sale by the Corporation on the aforesaid ground the petitioner has also called in question the propriety of the letter contained in Annexure P-12 hereby the lease granted in her favour has been cancelled by the D.I.C., Satna on the ground that there has been violation of the principle of natural justice as the petitioner has not been afforded an opportunity of hearing before such cancellation.

3. A return and an additional affidavit have been filed by the Corporation, respondent No. 2 herein. It is contended by the Corporation that the petitioner had been given number of opportunities to deposit the dues but she had failed to comply with the same. It is also pleaded that the petitioner had challenged the action taken by the Corporation u/s 29 of the Act before this Court but the same had not met with success. It is also highlighted that the Guarantor had also called in question the propriety of the action taken by the Corporation u/s 29 of the Act but the same also did not meet with success.

It is also brought on record that the purchaser who was arranged by the petitioner had also approached this Court but his approach did not bear any fruit. It is also putforth that after the property was seized u/s 29 of the Act there was an advertisement and three offers were received and after due-negotiation an agreement was executed in favour of the respondent No. 5. It is also stated that the notice was given to the respondent No 3, the guarantor, but he did not pay

heed to clear the dues of the Corporation. It is also stated in the counter-affidavit that the petitioner and the respondent No. 3 are the wife and husband and they have adopted dilatory tactics and, in fact, dragged the Corporation before the Court having no justifiable reason.

4. The guarantor, respondent No. 3 has filed his return contending, inter alia, that though notice had been served on him he was not given adequate opportunity to. make good the loan as accounts were not submitted by the Corporation when demanded by him. It is also put forth by him that there has been unhealthy collusion between the Corporation and the respondent No. 5 which vitiates the agreement-sale in the eye of law. It is also pleaded that the Corporation has failed in its duty to obtain maximum price for the Unit in question, and hence this Court should interfere in setting aside the sale.

5. The respondent No. 4 has supported the stand of the petitioner and has put forth that the case of the respondent No. 4 was brushed aside by the Corporation in a sweeping manner without granting him reasonable opportunity which makes the action of the Corporation unjust and arbitrary.

6. A return has been filed by the respondent No. 5 taking the stand that the Corporation has behaved in a prudent manner and put forth the unit for sale as per the proper procedure. It is contended that there has been due advertisements in daily newspapers and after proper negotiation the price was fixed.

7. I have heard Mr. H.B. Agrawal, learned counsel for the petitioner; Mr. Anurag Choudhary, learned Panel Lawyer for the respondent No. 1; Mr. V.K. Shukla, learned counsel for the respondent No. 2; Mr. Kamlesh Tripathi, respondent No. 3 who is present in person; Mr. Nitin Pendharkar, learned counsel for the respondent No. 4 and Mr. Abhay Sapre, learned counsel for the respondent No. 5. As directed by this Court. Mr. V.K. Shukla, learned counsel appearing for the Corporation has produced the original file for perusal.

8. The core question that arises for determination is whether the sale of the Unit belonging to the petitioner by the Corporation is vitiated being violative of the guidelines stipulated by the Apex Court in various decisions.

9. Before I address myself to the aforesaid proposition which has been highlighted by Mr. Agrawal, I think it is appropriate to refer to the previous litigations which had arisen before this Court. The petitioner had approached this Court in W.P. No. 1120/95. In the said case, this Court on 10-5-1995 passed the following order:--

"The possession of the petitioner's factory has been taken over on 15-3-1995 in exercise of power u/s 29 of the State Financial Corporation Act, 1951. The respondent/Corporation is going to auction the said factory on 15-5-1995. The petitioner submits that the total amount of loan was not granted to him, only Rs. 2 lacs were advanced therefore, the said amount was not sufficient to establish

the factory, therefore, the Financial Corporation cannot exercise powers u/s 29 of the said Act as they have committed a breach of the agreement.

After hearing counsel, if the petitioner deposits Rs. 1 lac within 30 days and on that condition the auction which may take place on 15-5-1995 shall not be finalised.

10. Thereafter, in the aforesaid writ petition on 19-7-1995, the following order was passed:--

"Shri Agrawal submits that because of the financial stringencies and non-availability of the fund, he could not deposit the amount of Rs. 1 lac as directed by this Court in its order dtd. 10-5-1995. He submits that the petitioner is still trying best to manage for the money and he is likely to deposit the amount within a period of one month.

On the other hand, Shri Khaskalam submits that though the auction was scheduled for 15-5-1995 but in view of the order passed by this Court, further proceedings were stayed and the auction was not held. He submits that the respondents are entitled to auction the property and the earlier order deserves to be vacated and at least clarified to the extent that if the petitioner has not deposited the amount, the respondents may auction the property. He submits that the whole process is likely to take 3-4- weeks.

In view of the submission, it is directed that the petitioner should deposit Rs. 1 lac on or before 28-8-1995, failing which the respondents shall be free to proceed further with the auction."

11. Thereafter, by order dtd. 12-12-1995 this Court observed that the earlier orders have not been complied with and the amount in question, has not been deposited. Eventually, the petition was dismissed as withdrawn. It is to be noted here that after the stay order was vacated the Corporation had readvertised on 3-12-1995 as is explicit from R-18. In pursuance of the advertisement three offers were received. Ultimately the agreement was executed with the respondent No. 5 on 1-6-1996. The sustainability of the agreement shall be dealt with later on by me. Presently I would deal with regard to the conduct of the petitioner in arranging a purchaser for the Unit in question and what transpired in the meantime. As the fact situation unfolds the petitioner arranged the respondent No. 4 as buyer who had made an offer of Rs. 6,30,000/-. It is submitted by Mr. Agrawal, learned counsel for the petitioner that as reasonable time was not granted to the said offerer the action of the Corporation is vulnerable. To appreciate the aforesaid contention, the fact situation has to be studied in a proper perspective. The, said respondent No. 4 had approached this Court in W.P. No. 854/97, challenging the action of the Corporation and had prayed for quashment for the agreement which has been entered into between the Corporation and the respondent No. 5. While dealing with the application of the respondent No. 4 this Court has held as follows:

"...The respondent No. 2 i.e. M.P. Financial Corporation on 4-1-1996 issued a letter informing Smt. Sudha Tripathi about the offer made of Rs. 2.36 lacs and asked her to bring any other higher offer by 15-1-1996 whereupon she on 11-1-1996 brought the offer of petitioner, Anil Pradeep Abbi for Rs. 6.20 lacs on cash down payment within 90 days. The petitioner and Smt. Sudha Tripathi were called upon through telegram dtd. 2-2-1996 for negotiation on 7-2-1996 and were also required to deposit 25% of the tendered amount so as to show their bona fides, but they failed to do so. They were again vide letter dtd. 6-3-1996 advised to deposit 25% of the amount within 10 days and to pay balance price of Rs. 4,72,500/- within 80 days in that it was also clarified that in case, the petitioner failed to pay initial payment of 25% i.e. Rs. 1,18,125/- of the offered amount or/and full sale price within stipulated time, the deal shall stand cancelled. The petitioner and Smt. Sudha Tripathi did not pay even 25% of the amount within 10 days, hence the deal was cancelled. Thereafter the respondent No. 3 was called upon for further negotiation and enhanced the amount to Rs. 2,75 lacs which was accepted and was deposited, and an agreement was entered into on 1-6-1996 and possession was delivered.

Now the grievance of the petitioner is twofold. Firstly, there has been heavy loss to the respondent No. 2, M.P. Financial Corporation and the liability to be fixed on a person who has caused the loss and secondly he himself has suffered a loss.

It is not for this Court to decide the agreement which has become final and the possession is handed over. If any loss is caused to the petitioner, he may pursue remedy before appropriate forum."

In view of the aforesaid, contention relating to grant of opportunity to respondent No. 4 is concerned, has no force. Thus, the contention of the learned counsel for the respondent No. 4 that the Corporation has faulted in not providing proper/ adequate/reasonable opportunity to him is devoid of any substance.

12. The next contentions raised by Mr. Agrawal are to be appreciated in the aforesaid factual backdrop. It is submitted by Mr. Agrawal that there was loss caused by the Corporation to the petitioner and proper price has not been fixed. He has referred the decision rendered in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, wherein the Apex Court while dealing with the role of Financial Corporation in disposing the property seized u/s 29 of the Act held as follows:

"22. Keeping these various factors giving rise to conflicting interest the following directions are necessary to be issued to be observed by the Corporation while exercising power under S. 29:

Every endeavour should be made, to make the unit viable and be put on working condition. If it becomes unworkable:--

(1) Sale of a unit should always be made by public auction.

(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit-holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it should be tested and may be accepted.

(b) Sale by private negotiation should be permitted only in every huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account."

Submission of Mr. Agrawal is that these guidelines have not been kept in view by the Corporation. He has also placed heavy reliance on the decision rendered in the case of, Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, , to highlight that if the ratio of the aforesaid decision is applicable then in the case at hand, there would be inherent illegality in the action of the Corporation and it is to be lanced. In this context Mr. V.K. Shukla, learned counsel for the respondent No. 2 has brought to the notice of this Court about the decisions rendered in the case of Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, ; Orissa State Financial Corporation and Another Vs. Hotel Jogendra, and U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, . He has also placed heavy reliance on an unreported decision of this Court rendered in the case of Mangalam Minerals Processors Pvt. Ltd. v. Managing Director (W.P. No. 1013/97) decided on 4-8-1997.

13. In the case of, U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd., AIR 1993 SC 1435 it has been held that the Corporation has to act fairly but simultaneously, their Lordships observed as under:--

"The Corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose the purpose being promoting the small and

medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The Corporation is not supposed to give loans once and to out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved.

Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one." (Quoted from Placitum)

At this juncture, I may profitably refer to the decision rendered in the case of Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, wherein their Lordships of the Apex Court have held were the defaulter industrial concern has despite being given opportunities could not obtain higher offer of sale of the property by inviting tenders followed by negotiations is not contrary to the dictum of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . To quote their Lordships (at Pp. 1635 and 1636 of AIR):

"12. In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at public auction. In that event, the other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These considerations which govern the sale of public property have been held to be applicable to a sale of property by the State Financial Corporations u/s 29 of the Act in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . In that case this Court has held that sale by public auction is universally recognised to be the best and most fair method and is beyond reproach and, if it is not possible to adopt the said method, sale may be held by inviting tenders, but in that event every endeavour should be made to give wide publicity to get the maximum price. The said decision cannot, therefore, be

construed as laying down that a sale by tender is impermissible and invalid. The learned Judges, in that case, have referred to the decisions of this Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, and *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*, wherein it has been held that one of the modes of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. It cannot, therefore, be said that a sale by inviting tenders is ipso facto invalid. The validity of such sale will have to be considered in the light of the facts and circumstances of the particular case."

In the case of *Orissa State Financial Corporation and Another Vs. Hotel Jogendra*, it has been laid down that direction issued by the Supreme Court, in the case of *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, , are in the nature of guidelines and if followed substantially the action is not liable to be interfered with.

14. In this context, it is apposite to refer to the decision rendered by the Apex Court in the case of *Orissa State Financial Corporation and Another Vs. Hotel Jogendra*, , wherein their Lordships while dealing with the conduct of the loanees have observed as under:--

"8. It would, thus, be seen that the respondent is only interested in delaying the repayment of the dues and has abused the process of the Court taking indulgence of the Court's direction. Under these circumstances, we find that no indulgence would be shown to such a recalcitrant defaulter in repayment of the loan. Public money is meant to be recycled to all the needy entrepreneurs. The dilatory tactics defeat the public policy and the Court process becomes an instrument of abuse. Court would protect only honest and sincere litigants."

From the aforesaid pronouncement, it is quite clear that substantial compliance with the guidelines enumerated in the case of, *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, would suffice. As is apparent from the orders passed by this Court on the earlier occasion in the writ petitions preferred by the present petitioner as well as the respondent No. 4 that they did not pay need to clear the loan of the Corporation. This Court dismissed the writ petition preferred by the petitioner as withdrawn. As the writ petition has been dismissed as withdrawn it is not open to the petitioner to challenge with regard to exercise of power bestowed on the Corporation u/s 29 of the Act. That apart, the auction by the Corporation stands concluded. The only thing that really arises for determination whether the Corporation has acted fairly in disposing of the unit in question. As has been indicated earlier Mr. Agrawal has highlighted that there has been undue haste by the Corporation. On a perusal of the original file, I find that Corporation after vacation of the stay order re-advertised for sale of the unit. Three offers were received. Offer of the respondent No. 5 was Rs. 2.36 lacs which was later on enhanced to Rs. 2.75 lacs. The petitioner had not been paying dues of the Corporation and the Corporation had duly advertised the sale of the property and it has been sold by inviting the tender. It cannot be said that

there has been non-compliance with the guidelines in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . The petitioner has been quite recalcitrant and the methods adopted by others are apparently dilatory. A loanee or a borrower has to approach the Court with clean hands and so is not the situation in the instant case. In view of the aforesaid premises. I do not find any error in sale of the property.

15. It is next contended by Mr. Agrawal that there had not been proper notice to the guarantor. The guarantor has supported the stand of the petitioner. It is his submission that though initially notice was given to him, he wanted the Corporation to furnish him details of the dues so that he can clear the same but the said request was not paid heed to and steps were taken to dispose of the property. Controverting the aforesaid submission, Mr. V.K. Shukla, learned counsel for the Corporation has submitted that the notice was given to the parties. He has referred to the extracts of the meetings of the Zonal Office of the Default Recovery Committee held on 7-2-1996, wherein it has been mentioned as follows:--

"Latter on, the Committee palled Smt. Sushma Tripathi the borrower, however, Mr. Kamlesh Tripathi husband of the proprietor and guarantor appeared on behalf of the borrower and he was asked to bring the offerer as has been mentioned by him in his letter dated 7-2-1996 for which he informed that if the Committee allows one month's time, he can bring the offer for higher amount."

It is contended by the guarantor that the Corporation has fabricated certain documents as no proper notice was issued to the guarantor. I find by the letter dtd. 8-5-1996 the Corporation had corresponded with the guarantor requiring him to clear the dues. Keeping in view the entire gamut of facts and totality of circumstances, I am not inclined to accept the stand of the guarantor that the Corporation has manipulated any record. Quite apart from the above, the Guarantor had known about the seizure. That apart, he challenged the seizure in W.P. No. 3316/96. The said writ petition stood dismissed by order dated 21-8-1996. Besides this, the petitioner is the wife of the guarantor. Nothing has been putforth that there has been any severance of the status.

Considering the facts and circumstances of the case, it cannot be said that the petitioner had ho knowledge with regard to seizure of the industry. From the documents produced by the Corporation, it is crystal clear that the guarantor was apprised of the fact of the seizure and steps taken by the Corporation for disposal of the property and he was also afforded an opportunity to pay the loan. Thus, the contention is totally devoid of substance.

16. In view of the aforesaid premises, there is no merit in the writ application and accordingly, it is dismissed. However, there shall be no order as to costs.