

(2001) 12 PAT CK 0030

In the Patna High Court

Case No : C.W.J.C. Nos. 10218 and 11262 of 1999

Sunil Chand Jain and Another

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Citation : (2001) 12 PAT CK 0030

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—These two writ petitions raise common questions with respect to take over and disposal of the same industrial unit in terms of the State Financial Corporation Act, 1951 (hereinafter referred to as "the Act"). Therefore, the two have been heard together and are being disposed of by a common judgment.

2. CWJC No. 10218 of 1999 has been preferred by one of the intending purchasers whose offer has not been accepted by the Bihar State Financial Corporation who are Respondent No. 1 to 3 (hereinafter compendiously referred to as "the Corporation") and instead the offer of Respondent No. 4 (Smt. Sharda Devi) to take over the unit has been accepted. Respondent No. 5 (Smt. Rekha Jain) is the petitioner in the analogous CWJC No. 11262 of 1999, and is a partner of the partnership firm which owns the unit. The partnership firm is the loanee and has been doing business in the name of M/s Kumar Steel Works. The case of Rekha Jain is that her right to retain the property on matching terms, being the original promoter, ought to have been accepted by the Corporation. We shall go by the description of the parties and the facts obtaining in CWJC No. 10218 of 1999, and reference to CWJC No. 11262 of 1999 shall be specifically indicated.

3. M/s Kumar Steel Works was set up and owned by a partnership firm of three persons, namely, Rekha Jain, Yashwant Kumar Jain (since deceased), and his widow, Usha Jain. It appears from the pleadings that Yashwant Kumar Jain died on 30-3-1990. The firm had taken a loan of Rs. 3.43 lakh from the Corporation during the period 2-5-1979 to 22-6-1983 to set up Kumar Steel Worked at Ara,

engaged in the job of steel utensils. The firm did not pay a paise in repayment of its loan and the dues soared. Therefore, the Corporation initiated action u/s 29 of the Act and published advertisement on 26-6-1995 for sale of the unit, a photocopy of which is at page 112 of CWJC No. 11262 of 1999. It showed total outstanding dues of Rs. 22.08 lacs as on 30-6-1995, and the reserve price was Rs. 17.68 lacs. Perhaps, there was no response to this advertisement and, therefore, the same was cancelled followed by another advertisement which appeared in the local dailies on 21 -3-1996, a photocopy of which is at page 110 of CWJC No. 11262 of 1999, on similar terms and conditions except that the outstanding dues shown to be Rs. 23.44 lacs as on 23-12-1995, and the reserve price was scaled down to Rs. 8.22 lakhs. 30-3-1996 was the last date for submission of offers. The advertisement further stipulated that the offer shall be accompanied with A/c Payee Demand Draft for Rs. 20,000/- as earnest money. Respondent No. 4 had submitted her offer for Rs. 6.60 lakh out of which 25% (Rs. 1.65 lakh) was to be deposited in cash within a period of one month and the balance was payable in easy instalments. The offer was accompanied with A/c Payee demand draft for Rs. 20,000/-. According to the petitioner, before the offer of Respondent No. 4 was accepted, the petitioner submitted his offer vide letter date 24-5-1999 (Annexure-1), making an offer of Rs. 7,11,000/- including cash-down payment of 30% of the same, and the balance was to be paid in installments. The offer was accompanied with A/c Payee Cheque for Rs. 20,000/-. The petitioner did not receive any communication from the Corporation and, therefore, submitted his reminder dated 31-7-1999 (Annexure-2) that his offer was negotiable. Accordingly, the petitioner received the Corporation's letter date 23-8-1999 (Annexure-3), conveying the decision rejecting the petitioner's offer on the ground that the earnest money of Rs. 20,000/- was deposited per cheque, instead of Demand Draft. This was followed by the petitioner's letter date 30-8-1999 (Annexure-4), accompanied by a demand draft for Rs. 20,000/-, with the request that his offer should be accepted, being the highest one. The Corporation by its letter date 30-9-1999 (Annexure-5) informed the petitioner that sale of the unit has already been finalised and the petitioner's offer was not found acceptable. The petitioner lodged the present writ petition in this Court on 7-10-1999, and a learned Single Judge of this Court passed order on 12-10-1999, inter alia, to the effect that"....In the meantime, status quo as obtaining today, with respect to the mortgaged assets of M/s Kumar Steel Works shall be maintained."

4. CWJC No. 11262 of 1999 has been preferred by Smt. Rekha Jain, in her individual capacity that her offer made on 19-5-1999 (Annexure-2 to CWJC No. 11262 of 1999) to retain the assets on matching terms should have been accepted by the Corporation which was made on 19-5-1999.

5. While assailing the validity of the impugned action, learned Counsel for the petitioner submitted that the offer of the petitioner (Sunil Kumar Jain) was made before the deal with Respondent No. 4 (Sharda Devi) was finalised. The petitioner had submitted the offer on 24-5-1999 (Annexure-1), and the

Corporation had finalised the deal with Respondent No. 4 on 8-10-1999. His being a higher and better offer, ought to have been accepted. He also submitted that in view of the interim orders passed by this Court, possession of the unit is still with the original promoter.

6. Learned Counsel for Respondent No. 4 submitted that the petitioner had disqualified himself from consideration on at least two grounds, namely, the application was submitted after the last date, and was not accompanied with demand draft for Rs. 20,000/-. An ineligible person has no locus standi to challenge the selection process. He was given 30 days time from 29-9-1999 to deposit 25% of the bid amount which was deposited in time, i.e., on 8-10-1999.

7. Learned Counsel for the Corporation submits that it had before itself the only valid offer of Respondent No. 4 in terms of the advertisement. The offer of the petitioner was received belatedly on 25-5-1999 by which date the Corporation had already taken the decision on 6-5-1999, accepting the offer of Respondent No. 4. The petitioner being an ineligible person has no locus standi to challenge the selection process. In view of the peculiar facts and circumstances attendant on the case, inter alia, in view of the factual position that the original promoter had not paid a farthing towards repayment of the loan and the first advertisement dated 26-6-1995 was a complete failure, the Corporation took the decision to accept the offer made by Respondent No. 4 to safeguard its interest. He relies on the following reported judgments of the Supreme Court:

- (i) U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others,
- (ii) U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, and
- (iii) Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others,

He submitted that the judgment of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, has been considered by the Supreme Court in the case of Naini Oxygen (supra) and Gem Cap (supra). He also places reliance on the judgments of this Court reported in, 1995 (1) PLJR 460. (Koshi Refinery v. Union of India and Ors. and the judgment 2000 (3) BLJ : 2000 (2) PLJR 408, (Hotel Mayurv. State of Bihar and Ors.). He lastly submitted that insofar as the offer of Respondent No. 5 is concerned, the partnership firm which is the original loanee and is the owner of the unit has never approached the Corporation. The Corporation has no confidence in the partnership firm at all. In view of the position that the offer to retain the assets on matching terms by Rekha Jain is in her individual capacity, the same is not covered by the terms of Section 29 of the Act.

8. Learned Counsel for Respondent No. 5 submitted that the offer of Respondent No. 4 having been made on 19-12-1995, was not against the tender in question. Secondly, the bona fide of the Corporation in issuing the second tender is

doubtful. The second tender is tailor-made to suit Respondent No. 4. The reserve price of Rs. 17.68 lakh has been scaled down to Rs. 8.22 lakh. This is not acting like a prudent seller and is not in the best interest of the Corporation, as has been observed by the Supreme Court in Mahesh Chandra's case. The decision was taken four years after the last date of the tender expired, and appreciation of the property in the meanwhile has not been taken into account. He next submits that the Corporation never served any legal notice on Respondent No. 5 before issuing advertisement in terms of Section 29 of the Act. It is incumbent on the Corporation in terms of Section 29 to accept the offer of the original promoter on matching terms. In his submission, therefore, Respondent No. 5 should be allowed to retain the assets on matching terms and conditions.

9. Having considered the rival submissions, I am of the view that this writ petition is fit to be dismissed. Law is well settled that an ineligible person has no locus standi to challenge the selection process or the decision-making process. Judgments of the Supreme Court reported in Dr. Umakant Saran Vs. State of Bihar and Others, and D. Nagaraj and Others Vs. State of Karnataka and Others, are to that effect. It is manifest from the tender notice u/s 29 of the Act that 30-3-1996 was the last date for submission of tenders. The petitioner's tender was submitted on 24-5-1999 (Annexure-1). The application was obviously submitted much after the last date. Further more, the Corporation had already taken the decision on 6-5-1999, accepting the offer of Respondent No. 4 (Sharda Devi). The petitioner rendered himself ineligible for one more reason. The advertisement stipulated that the tender shall be accompanied with a Demand Draft for Rs. 20,000/-. The petitioner had instead enclosed a cheque for Rs. 20,000/-. In that view of the matter, this writ petition is liable to be dismissed on this score alone.

10. Learned Counsel for the petitioner has also submitted that Respondent No. 4 was required to deposit 25% of the amount of her offer within a period of 30 days. In other words, according to the prescribed procedure, the original promoter was to be given 21 to retain the property on matching terms failing which further nine days has to be given to Respondent No. 4 to deposit the amount. According to the Petitioner 6-5-1999 being the date of the decision and 5-6-1999 was the last date for Respondent No. 4 to deposit 25% of the amount. The amount was instead deposited on 8-10-1999. I am unable to accede to the submission. It is manifest from the order date 24-9-1999 (Annexure-6), which is the final sale order in favour of Respondent No. 4, that the issue relating to delay in depositing the amount by Respondent No. 4 was considered by the corporation and had granted extension of time. This Court is in no doubt that it was open to the Corporation to extend the time to deposit the required amount which cannot be challenged by an ineligible person like the petitioner. The requisite amount has in fact been deposited on 8-10-1999. This being an administrative and commercial decision, this Court would be reluctant to interfere with the same, particularly in view of the position that Respondent No. 4 was the only eligible person in the field. Learned Counsel for Respondent Nos. 1 to 3 and Respondent

No. 4, have rightly relied on the judgments of the Supreme Court in the case of U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. (supra), U.P. Financial Corporation v. Naini Oxygen and Acetylene Gas Ltd., (supra), Karnataka State Financial Corporations. Micro Cast Rubber and Allied Products, as well as the judgments of this Court in Koshi Refinery v. Union of India and Hotel Mayur v. State of Bihar. The Supreme Court has observed in Naini Oxygen (supra) that in matters commercial, the Courts should not risk their judgments for the judgments of the bodies to whom that task is assigned.

11. Insofar as CWJC No. 11962 of 1999 is concerned, the said order date 24-9-1999 finalising the sale in favour of Respondent No. 4 states that the partnership firm never approached the Corporation. It was Rekha Jain alone who approached the Corporation in her personal capacity and has moved this writ petition in the same capacity. In that view of the matter, the benefit of retaining the unit on matching terms within a period of 21 days of the decision is not available to Rekha Jain. This aspect of the matter has been considered by the Corporation in its order date 24-9-1999 and has rightly rejected the offer made by Smt. Rekha Jain on 19-5-1999. There is one more aspect of the matter. It appears from the brief of the two writ petitions that the original promoter did not pay a single paisa towards repayment of debt. In such a situation, it appears that the Corporation has had no confidence at all in the original promoter, a decision which cannot be subjected to judicial review. The Supreme Court has observed in U.P. Financial Corporation v. Naini Oxygen and Acetylene Gas Ltd. (supra) as follows in paragraphs 23 and 24 which are relevant in the present context.

23. We are, therefore, of the view that this is not a matter where the High Court should have stepped in and substituted its judgment for the judgment of the Corporation which should be deemed to know its interests better whatever the sympathies the Court had for the prosperity of the Company. In matters commercial, the Courts should not risk their judgments for the judgments of the bodies to whom that task is assigned.

24. If the situation was bad on the date of the impugned judgment, it has become worse today. Between 1999 when the IRBI gave its report and this day, the situation has worsened with the further deterioration of the machinery and the spiralling of the liabilities. To grant any indulgence to the Company at this stage will be akin to flogging a dead horse. In the circumstances, we allow the appeal and set aside the impugned judgment of the High Court. The Corporation will now be free to proceed according to law.

12. In the result, both the writ petitions are dismissed with costs quantified at Rs. 1,000A each. The Corporation should proceed in accordance with law.