(2001) 08 CHH CK 0006

In the Chhattisgarh High Court

Case No : Writ Petition No. 225 of 2001

The District Industries Association, Bilaspur — APPELLANT

Vs

State of Chhattisgarh and Others — RESPONDENT

Date of Decision : 13-08-2001

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Re-organisation Act, 2000 — Section 59
State Financial Corporations Act, 1951 — Section 29

Citation : (2001) 2 CGLJ 419 : (2002) 1 MPHT 4

Hon'ble Judges : W.A. Shishak, C.J;Fakhruddin, J

Bench : Full Bench

Advocate : Awadh Tripathi, for the Appellant; Ravindra Shrivastava, General, N.K. Shukla, Dy. A.G. and P. Diwakar, for the Respondent

Final Decision : Dismissed

Judgement

Fakhruddin, J.—By this writ petition filed under Articles 226 and 227 of the Constitution of India, petitioner prays for quashing of the impugned tender notice dated 29-1-2001 (Annexure P-1) whereby respondent No. 2, the Madhya Pradesh Financial Corporation, has invited bidders for sale of various units in lieu of non-payment of outstanding loan amounts. The petitioner submits that he is the President of District Industries Association, Bilaspur, which has been formed for the welfare of various industries including those mentioned in the advertisement dated 29-1-2001 published in daily Navbharat, dated 30-1-2001. The petitioner further submits that separate Financial Corporation for the State of Chhattisgarh is likely to be reconstituted and while so reconstituting, some policy may be adopted as such it contends that auction should not take place.

2. Annexure P-1 is the list of Industries to be auctioned which has been published vide advertisement dated 29-1-2001. The respondents have filed the return and have raised objections regarding the maintainability of the petition. It is stated by the respondents that pursuant to the advertisement, tenders have

already been opened on 19-2-2001. The respondents have submitted that the petition though filed in the name of District Industries Association, Bilaspur, which is really in the nature of a petition filed by its President in his individual capacity, but there is no legal representation nor any authorisation in that behalf. It is pointed out that the petitioner has not been able to show which of the industries mentioned in Annexure P-1 are its members and which of the industries have authorised or requested it to file the present petition. Each industry has been established on its own, having separate entity. It is further pointed out in Paragraph 3 of return that the loans borrowed by each Industry had become overdue and many of which were taken over as back as in the year 1995 for their disposal before their value is deteriorated. It is contended in para 4 that the petition also deserves to be dismissed on the ground that the petitioner may at the most represent the industries of Bifaspur whereas the advertisement (Annexure P-1) also contains the industries of other areas like Raipur, Jagdalpur, Durg, etc. It is further pointed out in para 5 that each individual industry is such which can litigate its own grievance, but not by one petition because each individual industry was served with notice being individual case and many of them submitted their replies and have pursued their remedies available and if at all required have to present their own case keeping in view peculiar and distinct case and they are capable of doing so, as such this petition is not maintainable.

3. Details of brief history in respect of each industry have been cumulatively filed vide Annexure R-1. It is relevant here to reproduce the facts contained in Annexure R-1 for just adjudication of this petition. Details of brief history of each industry arc as under:

(1) M/s. Dogar Tools Private Limited, Raipiir :

It goes to show that legal notice was served on 4-2-1987. Ultimately some settlement proceedings were going on and settlement could not take place. Then the borrower Company filed W.P. No. 3634/99 before the High Court of Madhya Pradesh which was dismissed by the Division Bench on 13-8-1999. Against that, a SLP No. 18193/99 was fifed and the Hon''ble Supreme Court dismissed the SLP filed on 16-12-1999. The Single Bench of the High Court of M.P. vide its order dated 8-9-99 stayed the proceedings of recovery. The said petition is pending in the High Court and certain orders have been passed on 8-4-2000 by modifying the interim order. After taking over the Unit, the borrower Company again filed a W.P. No. 2717/2000 against the impugned action of the respondent-Corporation and the Hon''ble High Court finally decided the petition on 8-7-2000 with a direction that the petitioner may place better offer before the respondents and the same shall be considered by the respondents in accordance with law. It was also directed that the respondents shall not finally transfer the mortgaged property to the prospective purchaser in case the petitioner places better offer, till its decision or till 27-7-2001 as the case may be. Against that order, the borrower Company filed L.P.A. No. 185/2000 and the said appeal of the petitioner was also dismissed by Hon''ble the High Court on 4-8-2000. Then again the Company filed W.P. No. 5116 of 2000 regarding adjustment of the Central Investment Subsidy. The said petition is pending.

(2) M/s. Agrasen Surgical Nursing Home, Raipur:

In spite of service of legal notice dated 21-10-1999 nothing has been paid and the Unit has been taken over. An amount of Rs. 19.00 lakhs was sanctioned and disbursed. Amount declared default was Rs. 24.88 lakhs and the amount remained outstanding was Rs. 32.59 lakhs as on 29-2-2000. It is observed that some of the plant & machinery were found missing and therefore, the Corporation has lodged F.I.R.

(3) M/s. Gautam Rice Mill, Raipur:

In spite of service of legal notice dated 18-3-1997, nothing has been paid. An amount of Rs. 19.00 lakhs was sanctioned and disbursed. Amount declared default is Rs. 3.47 lakhs as the same remained outstanding as on 28-2-2001. The Unit has been taken over by the Corporation. The borrower has filed civil suit before the Civil Judge, Raipur, with a request to grant status-quo order. After filing reply, application for injunction has been rejected and the case is still pending before the Court. The State Bank of India has also filed a suit against the borrower for its recovery. In this case, the Corporation is also a necessary party. In this case also, the borrower had filed an application for grant of status-quo order, but the Court after hearing the parties, rejected the said application.

(4) M/s. Shree Digamber Trading Company, Raipur:

In spite of service offegal notice dated 14-5-1999 nothing has been paid and the Unit has been taken over by the Corporation u/s 29 of the S.F.Cs. Act, 1951. An amount of Rs. 3.00 lakhs was sanctioned and Rs. 1.70 lakhs was disbursed. Amount declared default is Rs. 3.63 lakhs as the same remained outstanding as on 28-2-2001. It is observed that due to low offer, the plant & machinery cannot be sold.

(5) M/s. Nutan Poha Mill, Durg:

In spite of service of legal notice dated 9-7-1999 nothing has been paid and the Unit has been taken over. An amount of Rs. 3.00 lakhs was sanctioned and disbursed to the Company. Amount declared default was Rs. 5.67 lakhs as the same remained outstanding as on 28-2-2001. It is staled that the borrower has sold out some plant & machinery without the knowledge of the Corporation, therefore, FIR was lodged against the Company.

(6) M/s. Selemex Reprographics, Raipur:

In spite of service of legal notice dated 30-7-1990 nothing has been paid and the Unit has been taken over u/s 29 of SFCs Act, 1951. An amount of Rs. 5.00 lakhs was sanctioned and disbursed to the Company in the year 1985. Amount declared default was Rs. 8.35 lakhs as the same remained outstanding as on

28-2-2001. Some settlement was reached "between the parties, but has failed. The borrower filed writ petition before High Court of M.P. and the same is pending. There is no stay.

(7) M/s. Bindal Ispat Udyog, Raipur:

In spite of service of legal notice dated 23-7-1998 nothing has been paid and the Unit has been taken over by the Corporation. An amount of Rs. 10.00 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 9.36 lakhs and the amount remained outstanding was Rs. 16.37 lakhs as on 28-2-2001. After the action of Corporation u/s 29 of the Act, the borrower firm has filed a civil suit with an application for injunction before the District Court. The Court had granted status quo order on 21-1-2000. After filing reply, the status quo order has been rejected. Against that order the borrower firm had filed an appeal before ADJ, Raipur and the Court has also passed an ex-parte status quo order, but after hearing the parties the Court had rejected the status quo order and the Court has noted that the borrower firm cannot prove its case and dismissed the appeal.

(8) M/s. Lucrative Polymers, Raipur:

In spite of service of legal notice dated 6-5-1997 nothing has been paid and the Unit has been taken over. An amount of Rs. 9.25 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 3.22 lakhs as the same remained outstanding as on 28-2-2001.

(9) M/s. Zenith Products, Rajnandgaon :

In spite of service of legal notice dated 25-8-1995, nothing has been paid and the Unit has been taken over. An amount of Rs. 1.00 lakh was sanctioned and Rs. 80,000/- was disbursed. Amount declared default is Rs. 3.15 lakhs as the same remained outstanding as on 28-2-2001.

(10) M/s. Navkar Printers, Durg:

In spite of service of legal notice dated 16-7-1999 nothing has been paid and the Unit has been taken over. An amount of Rs. 7.00 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 9.27 lakhs and Rs. 11.37 lakhs remained outstanding as on 28-2-2001.

(11) M/s. Laxmi Polythene, Jagdalpur:

In spite of Demand Notice, nothing has been paid and the Unit has been taken over. An amount of Rs. 8.00 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 11.78 lakhs as the same remained outstanding. It is stated that the promoters of the Unit themselves requested to take over the Unit as they are unable to get working capital and the Unit was taken over by the Corporation.

(12) M/s. Shiv Parboiling Plant, Raipur:

In spite of service of legal notice dated 31-3-1995, nothing has been paid and the Unit has been taken over. An amount of Rs. 9.10 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 18.70 lakhs as the same remained outstanding as on 28-2-2001.

(13) M/s. K.G. Plastics Industry (Pvt.) Ltd., Raipur:

In spite of service of legal notice dated 14-10-1996, nothing has been paid and the Unit has been taken over. An amount of Rs. 19.95 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 32.82 lakhs as the same remained outstanding.

(14) M/s. Polysyn Coatings (P.) Ltd., Bflaspur:

In spite of service of legal notice dated 14-11-1995 nothing has been paid and the Unit has been taken over. An amount of Rs. 13.75 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 59.08 as the same remained outstanding as on 19-9-1997.

(15) M/s. Indola Food Products Private Ltd., Bilaspur:

In spite of legal notice served on 19-1-1996, nothing has been paid and the Unit has been taken over. An amount of Rs. 12.00 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 4.51 lakhs as the same remained outstanding as on 28-2-2001.

(16) M/s. Shree Kalyan Chemicals, Bilaspur:

In spite of legal notice dated 19-1-1996, nothing has been paid to the borrower and the Unit has been taken over. An amount of Rs. 6.95 lakhs has been sanctioned and disbursed to the borrower. Amount declared default was Rs. 6.95 lakhs as the same remained outstanding on the date of re-take over Le., 1-10-1999.

(17) M/s. Chloro-Chera (India), Bilaspur:

In spite of legal notice dated 17-5-1999 followed by a telegraphic notice dated 10-9-1999 nothing has been paid and the Unit has been taken over. An amount of Rs. 10.00 lakhs was sanctioned and disbursed to the borrower. Amount declared default was Rs. 12.00 lakhs and the amount remained outstanding was Rs. 15.00 lakhs as on 28-2-2001. It is observed that at the time of taking over the Unit, the entire plant & machinery was found missing in the Unit, for which an FIR has been lodged in the Police Station, Civil Lines, Bilaspur. It is stated that the proposal of the officers is kept in abeyance in view of Hon''ble the High Court''s order dated 20-2-2000.

(18) M/s, Bharat Rubber Udyog, Bilaspur:

In spite of service of legal notice dated 2-6-1999 nothing has been paid and the Unit has been taken over. An amount of Rs. 11.00 lakhs has been sanctioned and disbursed to the borrower. Amount declared default was Rs. 19.87 as the same remained outstanding till 28-2-2001.

4. No rejoinder to the said return yet has been filed. In view of the facts submitted by the respondents the petitioner has absolutely no right to seek any relief. In fact, it rushed with this petition without knowing material facts. Each Industry/Unit has obtained loan in lakhs of rupees which had become over-due on account of non-payment. It is also borne out that the petitioner''s association had played no role in obtaining the loans from the Corporation. Each individual Unit obtained loan. Each Unit has its special feature and is capable to defend. It is also noted that only five Units are from Bilaspur and the rest of Units are not shown to be related with the petitioner''s association. The petitioner has, on its own, filed the petition on behalf of the other units/industries which have not given any authority to the petitioner to file the instant petition. Nothing is placed on record controverting the facts contained in the return and points raised in unit/ industry wise by the respondents about each and every industry.

5. Learned counsel for the petitioner submits that in the interest of public, the Corporation should not resort to the auction proceedings for sale of these units. Contending contrary, counsel for the respondents submit that in order to avoid loss to the public ex-chequer the Corporation is constrained to take such steps for recovery of loans advanced by the Corporation.

6. On earlier dates of hearing the petitioner was given opportunity to explain its stand and conduct. It is clear from the return that the loans were taken from the Corporation by various industries/units individually after entering into the agreements. They did not pay outstanding loan amounts even though demands were raised. Subsequently, legal notices were also issued. As noted above, many of the individual industries and borrowers have pursued their remedies, of their own, in obtaining loans.

7. While considering the grounds raised by the rival parties, it is relevant to mention the provisions of Section 59 of the Madhya Pradesh Reorganisation Act, 2000 which relates to M.P. State Financial Corporation established under the State Financial Corporations Act, 1951. Section 59 reads as under:--

59. Provisions as to Madhya Pradesh Financial Corporation.-- (1) The Madhya Pradesh State Financial Corporation established under the State Financial Corporations Act, 1951 (63 of 1951) shall, on and from the appointed day, continue to function in those areas in respect of which it was functioning immediately before that day, subject to the provisions of this section and to such directions as may from time to time be issued by the Central Government after consultation with the Government of the successor States;

(2) Any directions issued by the Central Government under Subsection (1) in respect of the Corporation may include a direction , that the said Act, in its application to the Corporation, shall have effect subject to such exceptions; and

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2),

the Board of Directors of the Corporation may, with the previous approval of the Central Government and shall, if so required by the Central Government, convene at any time after the appointed day a meeting for the consideration of a scheme for the reconstitution proposals regarding the formation of new Corporations, and the transfer thereto of the assets, rights and liabilities of the existing Corporation, and if such a scheme is approved at the general meeting by a resolution passed by a majority of the shareholders present and voting, the scheme shall be submitted to the Central Government for its sanction.

(4) If the scheme is sanctioned by the Central Government either without modifications or with modifications which are approved at a general meeting, the Central Government shall certify the scheme, and upon such certification, the scheme shall, notwithstanding anything to the contrary contained in any law for the time being in force, be binding on the Corporations affected by the scheme as well as the share-holders and creditors thereof.

(5) If the scheme is not so approved or sanctioned, the Central Government may refer the scheme to such Judge of the High Court of Madhya Pradcsh as may be nominated in this behalf by the Chief Justice thereof, and decision of the Judge in regard to the scheme shall be final and shall be binding on the Corporations affected by the scheme as well as the share-holders and creditors thereof.

(6) Nothing in the preceding provisions of this section shall be construed as preventing the Government of the State of Madhya Pradesh and Chhattisgarh from constituting, at any time on or after the appointed day, a State Financial Corporation for that Slate under the Slate Financial Corporations Act, 1951.

In view of the aforesaid discussion, it appears to us that this petition has been filed with an ulterior motive. Counsels for the respondents submit that keeping in mind the provisions of Section 59 of the M.P. Reorganisation Act, 2000 and the fact that each individual unit obtained loan on its own and each unit has distinct features to its own knowledge, pursued and litigated on notice being served. It is each unit which borrowed loans, furnished bank guaranlees and amounts are to be realised by the Corporation, as shown in Annexure R-I. Respondent Nos. 2 to 5 in their return stated that many of the units have filed writ petitions, L.P.As., and the matters were even travelled to the Supreme Court which are still pending, and suppressing all these facts without any justifiable cause and without taking permission from each of the respective units, the petitioner has not only rushed with this petition, but also obtained stay, depriving the corporation of proceeding with its lawful realisation of dues which causes heavy losses in crores of rupees. It is borne out that this petition has not been filed with bona fide objects. It has been filed with ulterior motives and that too without verification of the merits of each case.

8. Shri P. Diwakar, learned counsel submits on behalf of respondent No. 2, the Corporation that because of huge loss of interest suffered by the Corporation, the petitioner be imposed heavy costs. Shri Ravindra Shrivastava, learned Advocate

General and Dr. N.K. Shukla, learned Deputy Advocate General, appearing on behalf of the Stale-respondent No. 1 also submit that exemplary costs to the extent of Rs. 2 lakhs be imposed.

9. During the course of arguments, it is borne out that the petitioner has suppressed certain very material facts and circumstances, the lapses committed by each individual unit. Having thus considered the facts and circumstances, material available on record and further having heard counsel for the parties at length as discussed in the preceding paragraphs, in the opinion of this Court, the petitioner has filed this petition without taking legal and proper authorisation from its members and concealed the material facts which have been revealed by the Financial Corporation. Under these circumstances, it is just and proper if the petitioner is imposed exemplary costs of Rs. 50,000/-. In fact, the petitioner deserves to be proceeded further for suppressing the material facts and the lapses committed by it, but we do not proceed further in the matter except warning the petitioner that it/he should be careful in future, as filing of such petitions may affect the interest of certain units which have individual case and also the individual interest. In fact, we had expressed that the petitioner to deposit the costs of Rs. 50,000/- within a month, but on the prayer made by the petitioner''s counsel, we extend the time for two months, failing which the amount will be recovered in accordance with law.

The petition fails and is dismissed with the aforesaid direction.

10. Writ Petition dismissed.

