

(1992) 01 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ Petition No. 752 of 1980

T.R. Juneja

APPELLANT

Vs

Rajasthan State Industrial Development and Investment
Corporation Ltd. and Others

RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (1992) 2 WLC 90 : (1992) 2 WLN 464

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Judgement

M.B. Sharma, J.—The dispute relates to M/s J.T. Precision Castings Pvt. Ltd. (for short, Private Company) respondent No. 2 and the petitioner, an Ex-Director of the Company has prayed that this Court may declare that the re-entry effected by the Rajasthan State Industrial and Mineral Development Corporation (for short, the Corporation), now converted into Rajasthan State Industrial Development and Investment Corporation (RIIC) O, in the factory of the Private Company is illegal and the Corporation be ordered to hand over the possession of the factory to the Private Company and it be further ordered to pay compensation to the petitioner.

2. The necessary facts for the disposal of this writ petition are these. The Corporation is a company under the Companies Act, 1956 and it was incorporated under the aforesaid Act on March 7, 1969. One of the objects of the corporation was to promote, establish and execute industries, projects or enterprises for manufacture and production of goods, plant, machinery, tools, implements, materials or substances of any description whatsoever which in the opinion of the company are likely to promote or advance the industrial development of Rajasthan. According to the petitioner the Corporation is a public body under the control of the Government of Rajasthan both directly and indirectly, as not only as per the fourth annual report of the Corporation, the

Government of Rajasthan made available to the Corporation an amount of Rs. 25 lacs towards share capital, it also to act as an agent of the Government of Rajasthan and the Government of Rajasthan has the control over the Corporation.

3. A project was introduced by the Government of India for assisting educated unemployed persons. As per this project the Corporation proceeded to notify "Learn and own your Industry Scheme "(Annr. 1). A perusal of the aforesaid scheme will show that the scheme was promoted to help the engineers who after completing their studies, either found it difficult to get a suitable job or to start their own industry. Atleast two unemployed engineers were to be encouraged to set up their industries on small scale and they were to be selected from those who have received training sponsored by the Small Industries Service Institute under the Government of India's Scheme for employed engineers. After some time as soon as the industries are put on sound footing, the Corporation was to hand over the unit independently to the engineers. The Corporation was to enter into an agreement with the engineers defining each side's powers and liabilities. The agreement was to bind the engineers to remain associated with the Project and they were to work actively for it for a minimum period of three years and not to leave it except on payment of liquidated damages. The promise of owning the unit independently was the main consideration for the engineers. Till the unit is transferred solely to the engineers, they shall be paid a minimum subsistence allowance of Rs. 250/- per month each provided that this allowance may be revised by the Board of Directors of their Company as and when considered appropriate. The Corporation was to guarantee loans and the engineers were personally have to guarantee the payment of loans and also arrange two sureties. The industry to be set up was to be a Private Limited Company. The said project provides that in case the entrepreneur does not have any resources, the Company shall be formed with a nominal share capital out of which 75% or above shall be contributed by the young engineers and the Corporation shall invest to more than 25% of the Issued Equity Capital. Each of the engineers was required to subscribe Rs. 2500/- towards equity capital of the company. The Corporation could also purchase Debentures of the Company at 9.5% interest for a sum not exceeding Rs. 70,000/- to Rs. 75,000/-. The balance shall have to be met by loans from financial institutions. The debentures purchased by the Corporation shall be repaid out of the profits in maximum ten equal annual instalments which shall commence after two years of the unit starting commercial production.

4. The petitioner and one Jhanwarlal Jain, two technocrats (unemployed engineers) entered into a promotional agreement with the Corporation on April 22, 1970. Thereafter, a supplementary agreement dated August 5, 1970 was also entered into and under the said supplementary agreement dated August 5, 1970., Clause 1 of the principal agreement was omitted. Similarly, Clause 6 of the principal agreement was substituted and some other changes were also made. It will appear from a perusal of the aforesaid principal agreement and supplementary agreement that a private limited company was to be promoted with

the authorised capital of Rs. 2 lacs divided into 100 equity shares of Rs. 10/- each and the technocrats were to invest 51% of the share capital and the Corporation was to invest not exceeding 49% of the equity share capital. The company took loans for the purchase of machinery etc. and for other working capital on hypothecation and the Corporation, if so required, was bound to guarantee the payment of the said loan. Not only this, the Corporation was required to invest the balance of funds in the form of redeemable cumulative preference shares carrying 9 1/2% repayable within a period of 12 to 15 years and the security of this loan shall be a second charge on all the assets of the company. All rights and privileges were to cease to have any effect as and when the redeemable cumulative preference shares are fully redeemed or the loan is repaid in full or the liability of the corporation as a guarantee is waived by the financier. There were to be five directors out of which the Corporation had a right to appoint 3 Directors and one of them was to be the Chairman of the Board of Directors, who was to be nominated by the Corporation and who was not to be the subject to retirement by rotation. It was not necessary that the Directors should hold any qualification share. The Articles of Association of the Private Company were to be so formed as to give the above rights to the Corporatio.

5. After the aforesaid agreement were entered in between the petitioner and other technocrate jointly with the Corporation, the J.T. Precision Castings Private Ltd., was formed and the Private Company obtained loan from (1) Rajasthan Financial Coporation, (2) National Small Industries Corporation New Delhi, and (3) State Bank of India amounting to Rs. 75,000/-, Rs. 4,20,000/- and Rs. 50,000/- respectively. So far as a sum of Rs. 75,000/- it is said that the petitioner utilised the same in the construction of shed and tools room, machines and Rs. 4,20,000/- were utilised in the purchase of pressure die castings machine on hire purchase basis and the remaining amount of Rs. 50,000/- was said to be utilised for the purpose of raw material and dies. Debentures to the extent of Rs. 1,56,000/- were floated and utilised and loan was also provided by the RIMDC.

6. The machinery having been installed by the year 1972, the Private Company requested the Corporation to secure order for the die casting components for the Aravali Swachalit Vahan Ltd., but the Corporation did not agree to this. This Company also sought financial assistance for manufacture being commenced from the Corporation but the Corporation did not release any funds for that purpose. The funds are required to the tune of Rs. 2 lacs to Rs. 3 lacs for the purchase of tools and dies. With no alternative, the Private Company approached the Central Bank of India for grant of loan to it and the Central Bank of India agreed to do so provided the Corporation stood guarantee for the same as per agreement Annexure 2. But the Corporation did not, for the reasons best known to it, stand guarantor for that purpose, though according to the petitioner, it was obligatory on it as per the terms and conditions of the agreement. The Private Company therefore could not commence its work. The petitioner and his other colleague had not the necessary finances so as to enable them to purchase the tools and dies for the company and therefore, the manufacture could not start

and the business of the Private Company remained stand still. It remained as it was still born. As it did not commence the manufacture, the Private Company was not able to pay loans to National Small Industries Corporation, New Delhi and also to the Rajasthan Financial Corporation.

7. As a result of the above state of affairs, Mr. Jain, the other technocrat left the company in utter disgust and transferred all his shares to the petitioner.

8. The case of the petitioner is that the Corporation did not act as per the terms and conditions of the agreements and the best part of his life which, he gave to the company has gone in vein. In between, the petitioner was given appointment on compassionate grounds on July 15, 1977, on a salary of Rs.750/- in the pay scale of Rs. 750-1350, being the salary of a foreman, but that too was discontinued since January 7, 1980. Since then the petitioner is totally unemployed. According to the petitioner, after a notice from the advocate in August, 1976, under which the company was called upon to pay the arrears of accumulated amount from the year 1973 to 1976, which notice was not served upon the petitioner, on November 18, 1976, the Corporation effected the paper re-entry in the factory without authority of law. There has been theft in the factory because even a chowkidar was not appointed and machinery are being damaged. It is further the case of the petitioner that without any resolution of the company the Corporation transferred the unit from it to the Rajasthan Small Industries Corporation, another government owned company on the directions issued by the State Government, but under the order of the Government dated April, 1 1976 the control of the company again came to be transferred to the Corporation.

9. The petition is contested on behalf of the Corporation and its case is that the Private Company failed to pay the instalments of loan due to it not only to the Corporation but also to the RFC and to M/S National Small Industries Corporation. The Rajasthan Financial Corporation took possession of the assets of the Private Company for realisation of its loan. It paid the amount to the Rajasthan Financial Corporation who had entered into possession of the factory. A suit had been filed by M/S National Small Industries Corporation, New Delhi and the Company has resolved that the amount of Rs. 3,21,619/- may be paid to NSIC by RCMDC and it was only after the resolution of the Private Company that the amount was paid to Rajasthan Financial Corporation and to NSIC. The Corporation was bifurcated into two companies, one by the name of Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO) and the other by the name of Rajasthan State Mineral Development Corporation Ltd. (RSMDC) and the entire amount of the Private Company along with its assets has been in possession of RIICO which has been trying its best to revive the same, but to no effect.

10. It may be stated that during the pendency of the present writ petition the efforts were made to see whether the Private Company can be revived and if so, on what conditions, proposals and counter proposals were submitted by the

parties. It will be seen that as per the case of RIICO upto 1980, the following amount was due as per its account-books.

(i) In equity share capital Rs. 40/- (ii) In debentures Rs. 1,56,000/- (iii) Temporary loan. Rs. 1,41,061/- (iv) Amount paid by RIICO to National Small Industries Corporation, New Delhi on account of machinery obtained from them by Pvt. Co., before Delhi High Court Rs. 3,21,619/- (v) Amount paid by RIICO to RFC Rs. 73,822/- (vi) Interest on said amount upto 1980 Rs. 2,61,0768.87

Total: Rs. 9,53,629.87

Besides the above amount, as per the case of RliCO the Private Company has also to pay the lease amount of the plot allotted to it and the said amount is due since 1972 itself. The petitioner as per directions of this Court gave his proposal on August 8, 1991 and it appears that even as per his case lot of repairs of the building as well as the shed and the roof etc. are required. But the pressure and die casting machine which is the main plant in the actory has to be totally replace because its repair and revival would be even more costly than the purchase of new machine. As per the talks of the petitioner with manufacturer of machine, Mr. Gordia, it was informed that most of the parts of the machine have been imported from Germany and they were not available in India. The repair of that machine would be too costly and would also be time consuming. The replacement of the machine would come to Rs. 19,10,990/-. The other machineries lying in the factory premises can be repaired in an estimated cost of Rs. 61,500/-. The petitioner requires amount Rs. 10 lacs as running capital. It will therefore be clear that the petitioner's factory can be revived only after incurring an expenditure of Rs. 29 to 30 lacs. It will also be seen that the petitioner annexed the eport of Mr. Satish Chandra Grover who is said to be a Technical & Industrial Consultant, Supervisor and Loss assessor, and from a perusal of which it will be clear that the total cost of revival of the factory, plant and machinery would come to Rs. 21,30,990/-. Besides this, raw material of Rs. 2.5 lacs will also be required.

11. This Court under its order dated December 14, 1990 had though it proper to issue notice to the Rajasthan Financial Corporation to produce or cause to be produced the documents in respect of loan to the Private Company and all the documents in respect of taking possession of the assets of the Private Company in exercise of the powers of Section 29 of the State Financial Corporations Act, 1951 (for short, the Act) and the case of RIICO was that after having taking possession of the Private Company in exercise of the aforesaid powers, the Rajasthan Financial Corporation handed over the possession to it on payment of the amount of more than Rs. 70,000/- which was advanced by the RFC to the Private Company. Despite service, the documents were not produced.

12. The question is as to what relief the petitioner can be said to be entitled ? Sop far as the relief that the petitioner or for that matter the Private Company should be allowed to re- enter the factory and the RliCO should be directed to hand over the factory to the Private Company is concerned. I am of the opinion

that it is not possible as revival of the factory to me does not appear even remotely possible. I have already in the earlier part of this order dealt with the case of the petitioner and it can be said that for revival of the factory and its running, the petitioner requires about Rs. 30 lacs in addition to amount which was due to the RIICO against the Private Company upto 1980. We are in the year 1992 and there can be no dispute that the interest amount of few lacs of rupees must have been accumulated and therefore, I completely rule out the possibility of revival of the unit. That apart, it appears that even earlier efforts were made for revival of the unit. I look at Annexure R 1/6 in this connection is necessary which is dated December 13, 1976 and it is a copy of the resolution No. 12 of the Minutes of the meeting of the industrial committee of the Board of Rajasthan State Industrial & Mineral Development Corporation Ltd., as it was known before its bifurcation. Some decisions were taken in the aforesaid resolution and it was decided that the Private Company may be given on lease/sale to M/S Universal Supply Corporation, Jaipur and the amount of lease/sale money may be appropriated in the manner indicated therein and the matter was again considered by the said committee in the meeting. It appears that the matter of possession over factory of the Private Company on account of non-payment of dues against the same as well as filing of the suit by NSIC for realisation of the dues was considered by the Private Company in the meeting of the Board of Directors held, on July 10, 1978 and a decision was taken for payment of the amount to NSIC and to the effect that the Private Company has no objection in transferring the ownership of the pressure die casting machine by NSIC in favour of RSMDC Ltd, the Private Company resolved that it has no objection for sale or mortgage of assets by the RFC to RSMDC for Rs. 72,822.01 and further that if the Private Company at any time will be in a position to pay the amount to RSMDC, it will have no objection to transfer the machine to the Private Company. The Minutes of the Board of Directors as aforesaid have been annexed as Annr. Rule 1/7. Thus, as said earlier there is and can be no possibility of revival of the unit and the Private Company or for the matter any other financial institution cannot be compelled to invest a huge sum of Rs. 30 lacs for revival of the industry.

13. The only question is as to whether as claimed by the petitioner this Court can and should award any compensation to the petitioner as the career or the petitioner, a young entrepreneur who was a young engineer at the time when the agreement was entered into, has come to an end and if so, what should be the amount of compensation awarded to him and against whom ?

14. A reference to the scheme "learn and own your industry scheme" and its aims and objects, has already been made in the earlier part of this order and at the cost of repetition, it may be said that the scheme was to encourage the young engineers to set up industry on small scale basis with the managerial and commercial help from the Corporation and atleast two entrepreneur were to join for each scheme. It will further appear that agreement was to be entered in between the two unemployed engineers and RSMDC Ltd. as it was known before

its bifurcation into RIICO and RSMDC. A reference to the agreements, principal as well as supplementary, has already been made in the earlier part of this order which were entered into between the petitioner and another unemployed engineer on one hand and RSMDC on the other as far back as in 1970. A reference to the various terms and conditions has also been made and a bare reading of the scheme and agreement will show that the two unemployed engineers who have no financial resources of their own were given assurance of financial assistance by RSMDC Ltd. either in debentures or temporary loans or was to stand as guarantors to the financial institutions who were to advance loan to the Private Company. It will further appear that ultimate aim of the aforesaid scheme as well as the two agreement was that as soon as the industry was to be put on sound footings, the Corporation was bound to hand over the unit to the engineers and in such of the cases where the entrepreneurs have no resource of their own, a company was to be formed with a nominal share capital out of which 75% or above was to be contributed by the young engineers, and the Corporation was to invest not more than 25% of the issued equity capital. It was as a result of the aforesaid agreement that out of 20 equity shares of the total value of Rs. 200/-, 16 equity shares of the total value of Rs. 160/- were of the two entrepreneurs and only 4 equity shares of Rs. 10/- each, the total value of which was Rs. 40/- were held by the Corporation. Not only this, it will further appear from a perusal of Clause 4 of the principal agreement that the corporation was to invest the balance requirement of funds in the form of redeemable cumulative preference shares carrying 9 1/2% dividend repayable within a period of 12 to 15 years. Further as per Clause 3 of the principal agreement, though the private company was required to obtain loan from the Bank or some other financial institutions, who may be able to advance for the purchase of machinery, construction of buildings, and other fixed assets as well as cash, credit and other facilities for working capital on the hypothecation/pledge/mortgage of fixed and movable assets of the company, but the corporation was required to guarantee the payment of the loan. The words used are "and the corporation shall if so required guarantee the repayment of such loan". The Private Company had applied to the Central Bank of India for working capital of Rs. 41 lacs and term loan of Rs. 1,10,000/-. The Central Bank of India under its letter dated February 8, 1973, Annr. 3, informed the Chairman of the Corporation that the Private Company has applied to the aforesaid capital and term loan and a request was made to the Corporation by the Bank to look into the requirement of the private company and to favour the Bank with their detailed report regarding technical feasibility and economic viability of the unit's project, but nothing was done. It can therefore be said that the working capital which is a must for the working of a unit was asked for by the working capital which is a must for the working of a unit was asked for by way of loan from the Bank and as per the agreement, the Corporation was bound to stand as guarantor, but it appears that despite the aforesaid letter by the Bank to the Corporation, no concrete step was taken by the Corporation toward's that end & the working capital could not be made available & therefore the private company could not start manufacture. As a

result of this attitude of the Corporation, which has been bifurcated into RIICO and RSMDC, the brilliant career of an employed engineer was put to an end. The agreement was entered into in 1970 and the unit could not start manufacture prima facie and primarily as a result of unco-operative attitude of the Corporation and further as a result of the Corporation not meeting its obligation under the agreement. An assurance was given by the Corporation to the petitioner and other unemployed engineer under the aforesaid scheme and the agreement was entered into and because they have no financial resources of their own, all facilities including the standing as a guarantor to the financial institutions were to be extended to them. Acting on the aforesaid assurance the petitioner and the other unemployed engineer acted to their detriment, put their heart and soul and all other energies to establish the unit, but it could not start because of lack of finances and moreover because at the last moment the Corporation refused to stand as guarantor for the Central Bank for running capital which was necessary to be provided to the Private Company to start manufacture. Not only this, as said earlier, despite notice to the RFC neither the RFC nor RIICO has been able to produce documentary evidence that RFC entered into the possession of the unit in exercise of the power u/s 29 of the Act, which entry is said to have been made in the year 1977 during emergency. Be that as it may, I am of the opinion that taking into consideration all the facts and circumstances of the case because of unco-operative attitude of the Corporation for which RIICO, which has taken over the assets and liabilities is liable for the unit not starting manufacture and thereby the brilliant career of an unemployed engineer has virtually come to an end, the petitioner should be awarded compensation and looking to the facts and circumstances of the case a sum of Rs. 1 lac, should be awarded to the petitioner as compensation against the RIICO for its failure to perform its obligation under the principal as well as supplementary agreements and thereby not allowing the unit to function.

15. Consequently, I partly allow this writ petition and award a sum of Rs. 1,00,000/- (Rs. One lac) as damages to the petitioner against the respondent No. 1, Rajasthan State Industrial Development and Investment Corporation Ltd. The amount of damages should be paid to the petitioner within a period of three months failing which the petitioner will be entitled to interest thereon at the rate of 12% p.a. till the amount is paid. The petitioner shall also get Rs. 2,000/- (Rs. Two Thousand) as costs of this petition from the respondent No. 1.