

(1993) 03 SC CK 0023

In the Supreme Court Of India

Case No : Civil Appeal No. 830 of 1993 (Arising out of S.L.P. (C) No. 5292 of 1987)

U.P. Financial Corporation

APPELLANT

Vs

Gem Cap (India) Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 02-03-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 1993 SC 1435 : (1993) 2 JT 226 : (1993) 2 MLJ 23 : (1993) 1 SCALE 747 : (1993) 2 SCC 299 : (1993) 2 SCR 149

Hon'ble Judges : Kuldip Singh, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Jeevan Reddy, J.—The appeal is directed against the judgment and order of a Division Bench of the Allahabad High Court allowing Writ Petition 544 of 1986 with certain directions. The first respondent-Gem Cap (India) Pvt. Ltd. is a private limited company. Second respondent is its Managing Director. At the request of the respondents, the appellant, U.P. Financial Corporation, sanctioned a loan of Rs. 29.70 lakhs. The terms and conditions of loan and the manner of repayment of the loan are contained in the agreement and hypothecation deeds executed in 1981. Suffice it to note that loan was repayable in certain specified installments alongwith interest. A sum of Rs. 26,29,578/- was released to the respondents. The first respondent went into production in December 1982. Within a few months i.e., in March 1983 its operations ceased. By an order dated February 21, 1984 the first respondent-unit was declared a sick unit. The respondents did not make any repayment as stipulated in the agreement and hypothecation deeds whereupon the Corporation took steps to take over the unit u/s 29 of the State Financial Corporations Act, '1951 for recovering an amount of Rs. 38.57 lakhs due to it by that date - vide notice dated July 10, 1984. Then started a series of Writ Petitions by the respondents, all designed to stall the

appellant from taking over and/or recovering the amount due to it. It is not necessary to trace the course of the several writ petitions except the one from which the present appeal arises.

2. Writ Petition 544 of 1986 was filed questioning the taking over of the first respondent-unit by the appellant-Corporation u/s 29 of the Act and for a direction to the appellant to reschedule the repayment of debt in accordance with the earlier orders of the High Court. The writ petition has been allowed with the following directions:

(1) Having regard to the discussion made above we direct the U.P. Financial Corporation:

(1) to consider expeditiously the resolution dated 29.1.1986 aimed at the rehabilitation of the industrial concern in question in the light of the feasibility report of the U.P. Industrial Consultants Ltd. the Financial aid forthcoming from the Bank of Baroda and other financial institutions and the reports of the managing director of the corporation dated 18.12.85 and 29.1.1986;

(2) to restore back possession of the unit to the petition No. 1 forthwith.

The notice dated 11.6.1986 issued by the Corporation u/s 29 of the State Financial Corporation Act, 1951 shall, however, remain alive it being open to the Corporation to proceed further in pursuance thereof in case the rehabilitation deal is given a fair trial but does not bear fruit.

The petition is allowed accordingly with no order, however, as to costs.

3. With great respect to the Learned Judges who allowed the writ petition we feel constrained to say this: a reading of the judgment shows that they have not kept in mind the well-recognised limitations of their jurisdiction under Article 226 of the Constitution, The judgment reads as if they were setting as an Appellate Authority over the appellant-Corporation. Not a single provision of law is said to have been violated. The exclusive concern of the court appears to be to revive and resurrect the respondent-Company, with the aid of public funds, without giving any thought to the interest of public financial institutions. The approach is: "the Corporation is supposed to act in the best interest of the industrial concern with the object primarily to promote and advance the industrial activity without, of course, undue involvement or risk of its financial commitments.... It needs no emphasis to say that the Corporation is conceived as Regional Development Bank with the principal object to accelerate the industrial growth in the State by providing financial assistance mainly to small and smaller of the medium scale industries. The approach has to be business like in conformity with the declared policy of the State Govt. If the unit is potentially viable or such as may be capable of being rehabilitated, it would deserve being administered proper treatment and not lead to its liquidation." Here was a company which drew substantial public funds and became sick within three months of its going into production. One of the main reasons for its sickness appears to be the

internecine fight between the two groups controlling the Company. The unit was closed. It was not paying a single pic in repayment of the loan - neither the principal nor the interest. Already a huge amount was due to the appellant. There was no prospect of its recovery. And yet other financial corporation were being asked by the court, four years after its closure, to sink more money into the sick unit. Though a passing reference is made to the financial risk of appellant, this concern was not translated into appropriate directions. The Corporation was not allowed to sell the unit when it wanted to in 1984-85. Now, it is difficult to sell it, because it has been lying closed for about 8 years and more. The machinery must have become junk. While the Company could not be revived, the appellant-corporation now stands to lose more than a crore of rupees - all public money - in this one instance.

4. To continue the factual narration - against the judgment of the Allahabad High Court aforesaid (dated April 6, 1987) the appellant filed this appeal and on May 8, 1987 this Court while issuing notice on the SLP directed stay of operation of the judgment of the High Court. After the respondents filed a counter affidavit this Court made the following order on September 18, 1987:

Stay made absolute with the direction that there shall be no sale of the industrial unit Hearing expedited. To be heard alongwith Civil Appeal No. 568 of 1987.

5. The SLP could not be heard finally though it was posted for hearing on certain dates. On November 13, 1991, the counsel for the respondents made an offer which is recorded in the order of that date. It reads: "This matter is adjourned for 11.12.91. Mr. Shanti Bhushan, Sr. Adv., suggests that in view of the lapse of time of more than 5 years the position has changed and the Corporation should now consider the feasibility of taking over the assets in liquidation of the dues by making an assessment and consider relieving the directors from their personal responsibilities to the Corporation and the other creditOrs."

6. The subsequent order dated December 12, 1991, however, shows that the appellant-corporation refused to bite the bait. The amount due to it had risen to over a crore or rupees by now. Whereupon, this Court passed the following order:

The appellant in consultation with the other creditors is permitted to put-up the industrial undertaking of the first-respondent for sale. It may do so either by public auction or by inviting tenders or by an combination of both. It may proceed to do so within a period of two months from today. While permitting the appellant to take steps for the sale, we make it clear that before accepting the offers, the appellant should obtain prior permission of this Court.

List this matter after 10 weeks, i.e., in the first week of March, 92.

7. It is not clear as to why the unit could not be sold. On March 13, 1992, this Court passed the following further order:

We have heard learned Counsel on both sides.

Apart from the merits of the issues raised, it appears to us that the present impasse is to nobody's advantage. The dispute has to be resolved in some meaningful way. 30 We accordingly direct the respondent-Company and Sri K.P. Chaturvedi, who claims to be in-charge of the affairs of the Company, to confirm in writing to the petitioner-Corporation within three weeks from today that they unconditionally agree to settle the claims of the Financial Corporation at a figure which would represent the principal amount - said to be Rs. 26.30 lacs - and interest thereon from the inception at 13.5% per year with half yearly rests calculated upto 25.7.1986.

If such an offer is made, the Financial Corporation will assess the merit and acceptability of that offer and take within six weeks thereafter, an appropriate decision including the manner in which and the period over which the payment should be completed, and if the Financial Corporation agrees to grant time for payment, the rate of interest *# for the deferred period. The decision taken by the Corporation will be placed before this Court.

If, however, any offer, as indicated above, is not communicated by the Company or Sri Chaturvedi within a period of three weeks from today, then the Financial Corporation shall be at the liberty to initiate, with notice to the respondents, steps for the sale by public auction of the subject-matter of the security in its favour and to treat and hold the proceeds of sale as substituted security in the place of the subject-matter of the security, subject to the final result of this SLP. Call this matter in the 3rd week of May, 1992.

8. Pursuant to the said order the second respondent, Managing Director of the first s respondent-Company merely wrote a letter addressed to the appellant-Corporation, to the following effect:

We, herewith, attach a photo copy of the captioned order which is self explicit. We, however, unconditionally agree to abide with the directions given to us by the Hon'ble Supreme Court. Further, as the Corporation is aware that the Unit (Company) as well as the Registered Office of the Company, both are in possession of the Corporation, we shall feel obliged if you kindly communicate your views to us at the below given address.

9. It is evident that the letter written by the second respondent is not in terms of the order of this Court dated March 13, 1992. No figure is mentioned-nor is it mentioned is as to how and in what manner the said huge debt is sought to be repaid by the respondents. Evidently, the appellant-corporation could not pay any heed to such a letter. When the matter came before this Court the second respondent appeared in-person stating that he has discharged his advocate and that he will argue the matter himself. The matter again came up before us on 19.2.1993 when we heard the appellant's counsel and the second respondent in-person. We allowed the appeal stating that the reasons would follow. These are the reasons for the order.

10. It is true that the appellant Corporation is an instrumentality of the State

created under the State Finance Corporations Act, 1951. The said Act was made by the Parliament with a view to promote industrialisation of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a period not exceeding years from the date of loan. We agree that 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 30 and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be earned 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 40 in the name of fairness. Fairness is not a one way street, -more particularly in matters like the present one. The above narration of facts shows that the respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the Corporation at bay. Approaching the Courts through successive writ petitions is but a part of this game. Another circumstance. These Corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tempered - nay, determined, in the light of all these circumstances. Indeed, in a matter between the Corporation and its debtor, a writ court has no say except in two situations: (1) There is a statutory violation on the part of the Corporation or (2) where the "Corporation s acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an Appellate Authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints - self-imposed undoubtedly - of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

11. The obligation to act fairly on the part of the administrative authorities was evolved is to ensure the Rule of Law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the Quasi-

Judicial Authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well-known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred" (Lord Diplock in *Secretary of State for Education v. Tameside Metropolitan Borough Council* 1977 AC 1014 at 1064. The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene MR in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* 1948 (1) KB 223 at 229.

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he was to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

12. While this is not the occasion to examine the content and contours of the doctrine of fairness, it is enough to reiterate for the purpose of this case that the power of the High Court while reviewing the administrative action is not that of an appellate court. The judgment under appeal precisely does that and for that reason is liable to be and is herewith set aside.

13. On behalf of the appellant reliance has been placed upon the decision of this Court in *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, . We have perused the decision. That was a case where the debtor was anxious to pay off the debt and had been taking several steps to discharge his obligation. On the facts of that particular case it was found that the corporation was acting reasonably. In that context certain observations were made. The

decision also deals with the procedure to be adopted by the Corporation while selling the units taken over u/s 29. That aspect is not relevant in this case. We are, therefore, of the opinion that the said decision is of no help to the appellant herein.

14. The appeal is accordingly allowed. The respondents shall pay the costs of the appellant assessed at Rs. 10,000/-, consolidated.