
(2015) 08 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition Nos. 1839 of 2010 and 1377 of 2011 (M/S)

Vinod Kumar Agarwal

APPELLANT

Vs

U.P. Financial Corporation and Others

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Contract Act, 1872 — Section 151, 152

State Financial Corporations Act, 1951 — Section 29, 31, 32-G

Citation : AIR 2015 Utt 148 : (2016) 1 BC 574 : (2016) 1 UC 90

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Piyush Garg, for the Appellant; Naresh Pant and A.K. Joshi, Addl. C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.—Both the writ petitions are interconnected, therefore, with the consent of learned counsel for the parties, both the writ petitions are heard together and are being disposed of by this common judgment. Brief facts of the present case, inter alia, are that M/s. Everest Wools Pvt. Ltd., was incorporated in the year 1986; U.P. Financial Corporation (hereinafter referred to as "UPFC") was approached by the petitioner Company and term loan of Rs. 35.60 lakhs was sanctioned in favour of the petitioner company, out of which, only Rs. 34.10 lakhs were disbursed to the petitioner company; production, in the petitioner company, was commenced in the month of October, 1987; however, earlier management of the Company was irregular in payment of installments of the term loan as agreed between the Management and the UPFC till 1989; Management of the petitioner company was changed to make it financially sound and Vinod Kumar Agarwal (petitioner in WPMS No. 1839 of 2010) was inducted as Managing Director of the petitioner Company; change in the management was approved by the UPFC; on the request of new management of petitioner company, repayment of loan was rescheduled by the UPFC; petitioner company

intended to expand the business, therefore, with the consent of UPFC, the Pradeshia Industrial and Investment Corporation of U.P. Ltd. (hereinafter referred to as the "PICUP") was approached for financial assistance; PICUP was pleased to sanction Rs. 47 lakhs for expansion of the petitioner Company in the year 1991; however, sum of Rs. 41.60 lakhs only were disbursed to the Company till March, 1992; petitioner company had purchased plant and machinery for the expansion of the Company amounting to Rs. 55,19,950.52 only, as indicated in the report of the Chartered Accountant dated 26.05.1992, out of the loan of Rs. 41.60 lakhs disbursed by the PICUP, and balance of the cost was borne by the petitioner Company from its own sources; UPFC, having received some secret informations, has issued one letter to the petitioner Company on 15.09.1992 that company has taken some machinery illegally from M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd. costing to Rs. 6.75 lakhs knowing well that M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd. was having financial liability of UPFC and UPFC was having charge over every plant and machinery of the M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd., therefore, no plant and machinery could have been alienated or transferred; petitioner Company was asked, vide same notice dated 15.09.1992 itself, to explain its action, failing which to face action under Section 29 of the State Financial Corporations Act; petitioner Company submitted show-cause to the notice dated 15.09.1992 saying that no machinery was purchased/taken, by the petitioner company from M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd. and, in fact, all the machineries were purchased by the petitioner company from M/s. Surjeet Engineering Works, Ludhiana; UPFC has issued another notice dated 24.09.1992 asking the petitioner company either to pay entire outstanding amount or to face action under Section 29 of State Financial Corporations Act; F.I.R. was got registered by the UPFC against M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd. impleading Vinod Kumar Agarwal (petitioner in WPMS No. 1839 of 2010) as one of the co-accused saying plant and machinery of M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd. were pledged with the UPFC and same were illegally removed/stolen from the premises of M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd.; investigation was handed over to U.P.C.B.C.I.D.; meanwhile, UPFC has taken possession of the assets of the petitioner Company on 13.11.1992 pursuant to the notice dated 15.09.1992 as well as notice dated 24.09.1992; having investigated the matter, U.P.C.B.C.I.D. was pleased to file charge-sheet against the management of M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd. and against few officers of UPFC, however, petitioners were exonerated and it was found that no machinery, belonging to M/s. Uttarakhand Woolen Yarn Udhog (Pvt.) Ltd., was taken by the petitioners herein; petitioners made several requests to the UPFC to return the assets of the petitioner company, however, all in vain; PICUP has also authorised UPFC to take action for recovery of the outstanding amount of loan against the petitioner, on behalf of PICUP too; UPFC has decided to invoke personal guarantee of the Directors of the petitioner Company as well, therefore, recovery certificates were issued to the Collector to recover the outstanding amount as arrears of land revenue under the U.P. Public Moneys (Recovery of Dues Act), 1972; feeling

aggrieved, two writ petitions were preferred before the Allahabad High Court, one by the Company, being Writ Petition No. 34059 of 1999 and another by the Managing Director, being W.P. No. 41848 of 1999; both the writ petitions were heard together, however, were dismissed by the Allahabad High Court vide judgment dated 29.09.1999; feeling aggrieved, petitioners have approached Hon''ble Apex Court by way of filing SLPs (Civil) which were later on converted into Civil Appeal Nos. 2707 - 2708 of 2003; vide judgment and order dated 14.12.2007, appeals filed by the petitioners were allowed and both the writ petitions were remanded back to this Court for deciding afresh with liberty to the petitioners to carry out amendment in the writ petitions challenging the action of UPFC taking possession of the assets of the petitioner Company under Section 29 of the U.P. State Financial Corporations Act;" after the remand, WPMS No. 34059 of 1999 was renumbered as WPMS No. 1377 of 2011 and Writ Petition No. 41848 of 1999 was re-numbered as 1839 of 2010; petitioners were permitted to carry out amendments and, now, after the amendments in the present petitions, citations issued by the Collector for recovery of the outstanding amount as arrears of land revenue as well as action taken by the UPFC under Section 29 of the State Financial Corporations Act are under challenge; petitioners are also claiming damages to the tune of Rs. 10 crores for meeting out ill- treatment at the hands of officers of UPFC and PICUP.

2. I have heard Mr. Piyush Garg, learned counsel for the petitioners, Mr. Naresh Pant, learned counsel appearing for respondent Nos. 1 & 2 and Mr. A.K. Joshi, learned Addl. C.S.C. appearing for the District Magistrate and the Tehsildar.

3. The first question which has arisen in the present petitions is - as to whether outstanding amount of financial assistance provided by both the Corporations can be recovered as arrears of land revenue?

4. I had occasion, in the case of Micky Palta and others v. State of Uttarakhand and others, reported in 2015 (1) UD 324 : (AIR 2015 (NOC) 354 (Utr)), to deal with the provisions of UP Public Moneys (Recovery of Dues) Act, 1972. While placing reliance on the judgment of Hon''ble Apex Court in the case of Iqbal Naseer Usmani Vs. Central Bank of India and Others, , it was held in the case of Micky Palta (supra) that outstanding amount of Term Loan (Commercial Loan) cannot be recovered under Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972 (for short, Act of 1972) and only such amount can be recovered as arrears of land revenue, which falls within the four-corners of Section 3 of the Act of 1972.

5. In the case of Sri Ravikant and another v. Uttar Pradesh State Financial Corporation, reported in 2015 (1) UD 452, I had occasion to deal with the power of the UPFC under Section 32-G of the State Financial Corporations Act, 1951.

6. In the case of Sri Ravikant (supra), this Court has held as under:

"5. "Bare perusal of Section 32-G of the Act would demonstrate that Financial Corporation in respect of any assistance granted by it to any industrial concern,

the Financial Corporation or any person authorized by it in writing in this behalf, may without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

6. Undisputedly, in the present case, Financial Corporation has not made any request to the State Government seeking permission to recover the amount as arrears of land revenue nor the State Government has examined the matter nor the State Government has issued any recovery certificate to the Collector to recover the amount as arrears of land revenue."

7. In the present case too, UPFC has not made any request to the State Government seeking permission to recover the amount as arrears of land revenue nor the State Government has examined the matter nor the State Government has issued any recovery certificate to the Collector to recover the amount as arrears of land revenue and recovery certificate was directly issued by the Corporation to the Collector for recovery of the outstanding amount as arrears of land revenue. Therefore, impugned citations are without jurisdiction.

8. The next question which arises for consideration of this Court in the present case is - as to whether UPFC was justified, in the peculiar facts and circumstances of the case, in taking possession of the assets of the company by exercising the power under Section 29 of the State Financial Corporations Act, 1951?

9. Hon"ble Apex Court in its judgment dated 14.12.2007 passed in Civil Appeal Nos. 2707-2708 of 2003 has held as under:

"15. The High Court, in our opinion, was not correct in passing the impugned order. The Corporation, no doubt, is entitled to realize its dues, but it must be borne in mind that it had been conferred with a special statutory power in terms of Sections 29 and 31 of the Act of 1951 therefor. Such a power in the Corporation was conferred by an Act of Parliament, inter alia, keeping in view the fact that it being a statutory authority and, thus, being a "State" within the meaning of Article 12 of the Constitution of India, will act fairly and reasonably. The entire loan was recalled not only because the appellants were defaulters but also on the allegation that they had purchased second hand plant and machinery from another financial institution in breach of the contract, which having been found to be wholly incorrect, it must be held that it had acted on extraneous consideration."

10. Undisputedly, possession of assets of petitioner Co. was taken over by the UPFC, by exercising the powers under Section 29 of the Act, on two grounds, one petitioner has taken some machineries illegally from M/s. Uttarakhand Woolen

Yarn Udhog (Pvt.) Ltd., knowing well that entire plant and machineries of that Company was under the charge of UPFC, second on the ground that petitioner has committed default in repayment of loan amount.

11. There is no dispute that first allegation/ground to invoke Section 29 of the Act was found to be incorrect by U.P.C.B. C.I.D. in its investigation. Therefore, first ground to invoke Section 29 goes.

12. Let me, now, examine second ground justifying invocation of Section 29 of the Act.

13. It is not in dispute that before taking possession, by exercising the powers under Section 29 of the State Financial Corporations Act, financial capacity of the petitioner company to repay the loan amount was not assessed by the Corporation nor the petitioner company was declared as non-performing asset nor it was observed that the management of the petitioner company may close down the unit and may run away making the recovery difficult. Moreover, on the date of taking over the assets of the petitioner Company by the UPFC, petitioner Company was indulging in goods production. Factory was in running condition. As per the report of the Chartered Accountant cost of total assets, plant and machinery of the petitioner Company was much more than the outstanding amount of both the creditors.

14. In view of the above discussion, action of the UPFC, taking possession by exercising powers under Section 29 of the Act was totally arbitrary, un-called for, unjustified, thus, was hit by Article 14 of the Constitution of India.

15. In view of the above findings, what relief the petitioners are entitled for?

16. As per the report of the Regional Manager of UPFC itself dated 30.11.1991, before taking loan from the PICUP, cost of the plant and machinery installed in the premises was Rs. 28.97 lakhs. As per the report of the Chartered Accountant dated 25.5.1992, petitioner company has purchased new plant and machinery of Rs. 55,19,952.52. It is admitted by the UPFC before Hon"ble Apex Court, during hearing of the appeals, machinery costing about Rs. 45 lakhs were stolen from the factory premises after possession and control of the assets was taken over by the UPFC. As per the report of Mr. Manish Mishra, Civil Judge, Dehradun, who was appointed to prepare the inventories in compliance of the interim order issued by Hon"ble Apex Court, all other plants and machineries found in the premises were not in working condition and have been damaged to the extent that cannot be restored to its normal working and were full of rust.

17. Sections 151 and 152 of the Indian Contract Act, 1872 read as under:

"151. Care to be taken by bailee -- In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed."

"152. Bailee when not liable for loss, etc., of thing bailed -- The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151 ."

18. The bare reading of Section 151 of the Contract Act would demonstrate that bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods and as per Section 152 , if the bailee, has taken the same amount of care as described in Section 151 , the bailee, in the absence of any special contract is not responsible for the loss, destruction or deterioration or the thing bailed.

19. Mr. Naresh Pant, learned counsel for the UPFC and PICUP does not dispute that after possession and control is taken over by exercising power under Section 29 of the State Financial Corporations Act, the Corporation act as a bailee on behalf of the owner of the factory. Mr. Pant, however, contends that an FIR was got registered against the security agency, which was deputed in the factory for theft committed.

20. On being asked repeatedly, Mr. Naresh Pant, learned counsel for both the Corporations, is unable to demonstrate or to point out any material available on the record to show that despite deputing the sufficient security, machinery was stolen. In the absence of any material that Corporation has taken due care to protect the plant and machinery, I have no hesitation to hold that Corporation and its officers were totally negligent in taking care and protection of the plant and machinery installed in the factory. Therefore, they are liable to make good loss in view of the mandate of Sections 151 and 152 of the Contract Act.

21. Since, the assets of the petitioner company were taken over in possession by arbitrary exercise of the powers vested in the Corporation under Section 29 of the State Financial Corporations Act, therefore, in my humble opinion, after 30.11.1991, Corporation is not legally entitled to recover any interest over the outstanding amount from the petitioners. Undisputedly, cost of the total plant and machinery as per the report of Regional Manager of the UPFC and Chartered Accountant dated 30.11.1991 and 26.5.1992 was 28.97 lakhs+ 55,19,952.52 (total Rs. 84,16,952.52) which has either been stolen or has been destroyed completely for the fault of the Corporations. Therefore, cost of such machinery has to be paid by the Corporations to the petitioner.

22. Since, there is nothing on the record to assess the loss suffered by the petitioner due to arbitrary exercise of the power vested to the Corporation, therefore, I am not inclined to grant damages of Rs. 10 crores as claimed by the petitioners, however, in my humble opinion, damages of Rs. 10 lakhs would be justified.

23. In the result, both the writ petitions succeed and are hereby allowed.

Impugned citations are hereby quashed. Notice under Section 29 of the State Financial Corporations Act dated 15.5.1992 as well as 27.11.1992 are hereby quashed. UPFC is directed to return the possession of the assets to the petitioners within four weeks from today and at the time of delivering back the possession, inventory shall be prepared in the presence of the petitioners and the representatives of the Corporations. No interest shall be charged by both the Corporations over the amount due as on 30.11.1992 after 30.11.1992 till possession is handed over back to the petitioners. Respondent Corporation shall pay Rs. 8416952.52 cost of the machinery stolen or damaged to the petitioners within four weeks from today. Respondent Corporation shall also pay Rs. 10 lakhs towards the damages for loss suffered by the petitioners to the petitioners within four weeks from today. Cost of machinery and amount of the damages as awarded, hereinbefore, shall be adjusted against the total outstanding amount of loan as on 30.11.1992. No order as to costs.