
(2008) 11 PAT CK 0001
In the Patna High Court
Case No : CWJC No. 2851 of 1998

Yaduvir Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29, 30

Citation : (2008) 11 PAT CK 0001

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Ajay Kr. Thakur and Gajendra Kumar Jha, for the Appellant; Y.V. Giri, Ashish Giri, Jyoti Saran for the B.S.F.C. and None for the Respondent No. 9, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Petitioner is the proprietor and promoter of one M/s Shiv Enamel Works located in the Industrial Area of Pandaul in the District of Madhubani. He has appeared before the High Court challenging the action of respondents-Bihar State Financial Corporation in taking possession of his plant and machinery as also auction of some of the machineries located in the unit which is evident from Annexure-13 of the writ application. Challenge is also being made to the order dated 3.12.1997 which is the notice for sale as contained in Annexure-14 and order dated 29.12.97 as contained in Annexure-15 which is order passed u/s 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as the Act).

2. The petitioner was supposed to be unemployed educated youth who wanted to start the unit in enamel works and for which he made application before the State Financial Authorities way back in the year 1979. The application of the petitioner was processed and certain loan amounting to the tune of Rs. 12,00,000/- (Twelve lakhs) was sanctioned by the Financial Corporation. This

contributions was supposed to be part of the corpus for the purpose of setting up the unit in question. No doubt, efforts had been made by him to set up the factory and even machinery was purchased in this regard, but from the assertions of the facts, there is no dispute that despite so-called efforts made by the petitioner, the unit never became functional rights upto the year 1994-1995.

3. From the materials on record it would show that the respondent-Financial Corporation was not impressed by the effort of the entrepreneur in setting up of the unit. The outstanding loan and interest thereon kept mounting on the part of the petitioner. Respondents were forced to issue notice to the petitioner either to take corrective steps or repay the loan which was sanctioned to him in this regard. The communication after 1994 was carried on but nothing substantive came out of the same. The authorities decided to take action against the petitioner by exercising power under Sections 30 and 29 of the Act. Subsequently, it seems that a public notice for sale of mortgage property including the unit of the petitioner was published in the Hindustan Times of Patna Edition on Friday, October 10, 1997. In addition to that, sale notice was also issued against the petitioner which has been brought on record as Annexure-14 which is dated 3.12.97. The order contained in Annexure-14 was also communicated to the petitioner as would be evident from perusal of the copy of order which has been brought on record as Annexure-B/1 in the counter affidavit filed on behalf of respondent-Corporation.

4. It seems that no positive step was taken by the petitioner and subsequently the respondents passed order dated 29.12.97 as contained in Annexure 15. Certain plant and machinery was auction sold and possession was given to one Mr. D.K. Pathak, the Proprietor of M/s Amin Metal Machines Works, Worli, Maharashtra.

5. In this situation, petitioner has filed the present writ application challenging the decisions of the respondent-Corporation to be arbitrary and illegal and in breach of statutory provisions.

6. Submission of the learned counsel appearing on behalf of the petitioner is that no open notice was issued to the petitioner, more so u/s 29 of the Act. Annexure-2/1 is the proposal given by B.S.F.C., the Sanctioning Authority, regarding terms and conditions of the loan for setting up the plant.

7. Learned counsel for the petitioner also tried to take prevail and impress upon the Court that some kind of interpolation had been made in the dates which was incorporated in Annexure-13 for delivery of possession of machinery indicated therein and it was pre-planned move by certain vested interest to create the present situation. Averment has also been made that notice with regard to Annexure-13 was issued on 1.1.1998 and on 1.1.1998, the machinery in question was taken possession of in favour of Respondent No. 9, in a pre-planned manner. Petitioner got copy of notice on January 3rd, 1998, when possession had already been given to Respondent No. 9.

8. A detailed counter-affidavit has been filed on behalf of respondent-Financial Corporation. Though, notice was issued to private Respondent No. 9, but there is no representation on their behalf and they have chosen not to appear.

9. Learned Counsel representing the Financial Corporation submits that there is no wrong doing of the part of the respondents and their action is in conformity with the law. Corporation has been monitoring the activities of the unit till 1994. There was no indication from the inspection of the site to show that this unit will ever see production. The authorities decided to take back the loan amount in terms of Section 30 of the Act. They gave some more time to the petitioner in this regard but having failed they insisted to repay the loan amount with interest. They took follow up action for recovering the amount outstanding against the petitioner u/s 29 of the Act.

10. In this regard public notice dated 10.10.97 was published in Newspaper (Annexure-C) and subsequent decisions were taken which are Annexures-14, 15. Corresponding sale and possession of order is Annexure-13. Even prima facie explanation submitted by the petitioner does not appear to be true that the petitioner had no option on the point of repayment or re-possession.

11. In this connection, many correspondences have been made before the consequential action as contained in Annexure-13 was taken against the petitioner. Though, relief has been sought by the petitioner on two decisions of Hon'ble Supreme Court in case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , and in case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , but keeping in mind the decision of Hon'ble Apex Court in case of Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, , it is difficult to accept the position. Hon'ble Supreme Court in para 19 of the decisions lays down the legal principles as under:-

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:-

(a) there is a statutory violation on the part of the Corporation, or

(b) where the Corporation acts unfairly i.e. unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or business

like it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action u/s 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

12. With the above settled position by the Apex Court, the Court is in agreement with the submissions of learned counsel for the respondent-Corporation that there is no scope for this Court to do reappraisal of the action of the Corporation which was taken in the interest of the Corporation.

13. It is certified that the action taken by the respondents against the petitioner is a creation of his own doing. If the Corporation is vested with the power under Sections 30 and 29 of the Act in absence of any wrong doing this Court is not inclined to interfere with the impugned orders. The writ application is dismissed accordingly.