

A.D. Wire Pvt. Ltd. and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Mar-02-2000

Judge : Sudhir Kumar Katriar, J.

Acts : [State Financial Corporations Act, 1951](#) - Sections 24 and 25; [Banking Regulation Act, 1949](#) - Sections 21

Appeal No. : Civil Writ Jurn. Case No. 2919 of 1993

Appellant : A.D. Wire Pvt. Ltd. and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : S.K. Sinha, Sr. Adv. for Bank, Shravan Kumar and Shola Sandhwar, Adv.

Advocate for Pet/Ap. : K.K. Singh, Adv.

Disposition : Petition dismissed

Judgement :

Sudhir Kumar Katriar, J.

1. This Writ Petition has been preferred with the prayer to issue an appropriate writ or order or direction, commanding the Bihar State Financial Corporation (hereinafter referred to as 'the corporation'), to release the balance of the amount

as per the agreement, for a direction to the Bihar Government to release a sum of Rs. 4.27 lacs by way of capital subsidy, and also for a direction to the North Bihar Industrial Area Development Authority, Muzaffarpur (hereinafter referred to as 'the Authority'), to release a sum of Rs. 1,12,500/- by way of seed money and for consequential reliefs. It is also prayed to issue an appropriate direction to the State Bank of India (hereinafter referred to as 'the Bank'), to release the amount of working capital.

2. The petitioner is a Private Limited Company and applied to the corporation for term loan. The corporation sanctioned a sum of Rs. 26.80 lacs on 24-3-1988, out of which a sum of Rs. 3.52 lacs was disbursed

on 23-3-1989, and further sums in 12 instalments were released up to 30-10-1991. Thus a total sum of Rs. 19.90 lacs was disbursed, and the balance sum has not till been released. The Petitioner-Company had also applied to the Bihar Government for release of capital subsidy which was sanctioned on 23-3-1991, but has not till date been released. The petitioner's further case is that it had applied to the Authority for sanction and release of the seed money. It is entitled to a sum of Rs. 1,12,500/-. The petitioner also prays for the consequential reliefs relating to payment of interest etc. The petitioner also complains that the State Bank of India should be commanded to release the amount of working capital.

3. Learned counsel for the petitioner submitted that the Corporation had entered into an agreement with the petitioner to grant a loan of Rs. 26.80 lacs. It has so far released a total sum of Rs. 19.90 lacs only and, therefore, the Corporation is bound to release the balance sum of Rs. 6.90 lacs. The petitioner has invested Rs. 9 lacs of his own. He places reliance on the provisions of Ss. 24 and 25 of the State Financial Corporation Act, 1951 (hereinafter referred to as 'the Act'). He has also relied on the judgment reported in (1993) 2 SCC 279 : (AIR 1993 SC 935) (Mahesh Chandra v. Regional Manager, U.P.F.C.), (1993) 2 BLJR 816 (Durga Cast (I) Pvt. Ltd. v. BSFC), and the judgment reported in (1999) 3 Pat LJR 727 : (2000 CLC 1700) (M/s Swaad Pharmaceuticals Pvt. Ltd. v. BSFC). Learned counsel for the respondents have rebutted the contentions.

4. Having considered the rival submissions, I am of the view that the contentions advanced on behalf of the petitioner have to be rejected. Learned counsel for the Corporation has rightly submitted that for reasons entirely attributable to the petitioner, the loan agreement dated 22-2-1989 had expired after a sum of Rs. 4.5 lacs was disbursed. Taking a lenient view of the matter, the corporation had revalidated the agreement on 19-8-1991. The petitioner did not avail of the balance amount during the stipulated period after the agreement was revalidated and the balance amount has lapsed. He is further right in his submission that the disbursement was progress linked. The petitioner was unable to report satisfactory progress of installation of the unit and, therefore, the further sums could not be released. He is further right in his submission that a sum of Rs. 3.61 lacs, being the operational cost could be released after the unit came into production. Since the unit never came in production, there was no question of releasing the sum of Rs. 3.61 lacs.

5. It is thus manifest that the petitioner-company was negligent in setting up the unit, and never lived up to the conditions of the agreement inter-partes. It always violated the conditions stipulated therein and, therefore, rendered itself Ineligible for release of balance of the instalments. I get an impression that the Corporation was rather indulgent to the petitioner and condoned the failings of the petitioners at various stages. In that view of the matter, the reliance placed by the petitioner on the provision of Section 24 of the Act appears to be misplaced. Section 24 reads as follows :--

'24. General duty of the Board. -- The Board in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests of industry, commerce and the general public.'

This Court is in no doubt that the Corporation did act on business principles, having due regard to the interest of industry, commerce, and the general public. The fact that the Corporation was quite indulgent to the petitioner, which committed mistakes on various occasions and yet the agreement was revalidated shows that the interest of the Industry was surely taken into account by the petitioner. In that view of the matter, the reliance placed by the petitioner on the

aforesaid judgment of the Supreme Court in the case of Mahesh Chandra also seems to be misplaced. As stated above, this Court is in no doubt that the Corporation made every effort to promote the petitioner-company, but the latter failed to avail the same. Further more, interest of industry is not the only aspect to be taken into account under Section 24 of the Act.

5.1 The Division Bench judgment of this Court in the case of Durga Cast (I) Pvt. Ltd. (1993 (2) BLJR 816) (supra) is not applicable to the facts and circumstances of the present case, Inasmuch as the Division Bench in that case found as issues of facts that the Corporation had failed to fulfil its promise, whereas I have found hereinabove that the Corporation was negligent and the Corporation was indulgent towards it. Insofar as the

Judgment of the learned Single Judge of this Court in the case of M/s Swaad Pharmaceuticals Pvt. Ltd. (2000 CLC 1700) (supra) is concerned, as the judgment stands, the learned Single Judge observed that the Corporation has to make sincere efforts to make the proposed unit viable and in working condition, and that the proposed unit could not come into production on account of gross lapses on the part of the State Agencies. On the contrary, the factual position in the present case is fundamentally different. Furthermore, I am informed at the Bar that operation of the judgment has been stayed by a Division Bench of this Court by order dated 1-2-2000, passed in L.P.A. No. 1207 of 1999. I have, therefore, no hesitation in rejecting the contention advanced on behalf of the petitioner, and hold that the corporation was Justified in refusing to release the balance amount of Rs. 6.90 lacs to the petitioner.

6. Learned counsel for the Corporation has rightly Invited my attention to paragraph 7 of Its Counter Affidavit which reads as follows :--

'7. That the Corporation has to pay interest to the principal Financier, namely, the I.D.B.I. (Industrial Development Bank of India) and S.I.D.B.I. (Small Industries Development Bank of India), etc., the charging of interest cannot be waived against the disbursed loan.'

It is thus manifest that the corporation must act according to business principles because it functions on borrowed money and has to pay interest to its lenders. If the corporation does not act according to business principles, or if it is not allowed to act accordingly, then the Corporation will itself reach the stage of liquidation. Subject to the well-known grounds of judicial review which are of extremely restricted nature, the corporation is the sole Judge of the business principles, The petitioner has not been able to make out even semblance of a case for interference on the limited grounds of review in such cases.

7. Learned counsel for the Corporation has rightly relied on the judgments of the Supreme Court reported in (1993)2 SCC 299 : (AIR 1993 SC 1435) (U.P. Financial corporation v. Gem Cap (I) Pvt. Ltd.), the judgment reported in (1995) 2 SCC 754 : (1995 AIR SCW 254) (U.P. Financial Corporation v. Naini Oxygen and Acetylene Gas

Ltd.) and an unreported judgment dated 14-10-1999 of a Division Bench of this Court in L.P.A. No. 804 of 1999 (Haridwar Choubey v. The Managing director, Bihar State Financial Corporation) (AIR 2000 Patna 315). paragraph 19 of which is relevant in the present context and is set out hereinbelow for the facility of quick reference :

'19. The facts of the case in Mahesh Chandra v. U.P. Financial corporation (AIR 1993 SC 935) (supra), which is the sheet-anchor of the appellant's case, were completely different. As regards the guidelines laid down therein I am satisfied that they have substantially complied with. In the absence of any proof of mala fide, therefore, it is not possible to interfere with the impugned orders. The learned Single Judge has relied on the decisions of the Supreme Court in the cases of Gem Cap (India) Pvt. Ltd. (supra) and Naini Oxygen & Acetylene Gas Ltd. (supra). In the former case, it has been stated,

'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 acts unfairly i.e. unreasonable.'

In the other case, the Court observed,

'However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action 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 wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.'

8. I am reminded of the judgment dated 2-3-2000, passed by me in C.W.J.C. No. 4557 of 1997 (AIR 2000 Patna 275) (M/s Hotel Mayur (P) Ltd. v. The State of Bihar), where comparable issues were discussed, paragraph 13 of which is relevant in the present case, and is set out hereinbelow for

the facility of quick reference :

'13. This Court is also reminded of the classic judgment of the Court of Appeal in England reported in (1947) 2 All ER 680 (Associated Provincial Picture Houses v. Wednesbury Corporation), where similar issues have been dealt with by the Court of Appeal. Before dealing with the judgment, I must state that to the grounds of interference enunciated in the said judgment have to be added the additional grounds available to the petitioner under the Constitution of India. It should also be stated for the sake of completion of record that the principles enunciated in the aforesaid judgment, which have come to be known as Wednesbury reasonableness and has become classical in legal literature, has been followed by Indian Courts including the Supreme Court of India times without number, the latest being the judgment of the Supreme Court reported in (1994) 6 SCC 651 : (AIR 1996 SC 11) (Tata Cellular v. Union of India). I myself applied the principle of Wednesbury reasonableness in my judgment dt. 14-12-1999, passed in CWJC No. 4475 of 1999 (AIR 2000 Patna 160) (Ram Ashray Prasad Sinha v. Union of India), paragraph 4.1 of which is relevant in the present context, and is set out

hereinbelow for the facility of quick reference :--

'4.1. learned counsel for the

respondent No. 5, has rightly submitted that the powers of this court under Articles 226 and 227 to interfere with such administrative decision and/or decision pursuant to a policy decision are normally immune from judicial review ability. I am in this connection reminded of the illuminating decision of England, reported in (1947) 2 All ER 680 (Provincial Picture Houses Ltd. v. Wednesbury Corpn) wherein, speaking for the Court, Lord Green observed with a remarkable felicity of expression that the Courts must always remember that the act deals, not with the judicial act, but with an executive act. The limited ground on which such an administrative order can be subjected to judicial review have also been indicated (herein which are bad faith, dishonesty, unreasonableness, attention given to extraneous circumstances, disregard of public policy etc. The following portions occurring at page 682 of the report illumine the position, and is set out for the facility of quick reference :

'The contention of the authority, in my opinion, is based on a misconception of the effect of the Act in granting this discretionary power to local authorities. The Courts must always remember, first, that, the Act deals, not with a judicial act, but with an executive act; secondly, that the conditions which, under the exercise of that executive act, may be imposed are in terms put within the discretion of the local authority without limitation; and thirdly, that the statute provides no appeal from the decision of the local authority. What, then, is the power of the Courts? The courts can only interfere with an act of an executive authority if it be shown that the authority have contravened the law. It is for those who assert that that the local authority have contravened the laws to establish that proposition. On the face of it, a condition of this kind is perfectly lawful. It is not to be assumed prima facie that responsible bodies like local authorities will exceed their powers, and the court, whether it is alleged that the local authority have contravened the law, must not substitute itself for the local authority. It is only concerned with seeing whether or not the proposition is made good. When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion

can only be challenged in the Courts in a very limited class of case. It must always be remembered that the Court is not a Court of appeal. The law recognizes certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any Court of law.

What, then, are those principles? They are perfectly well understood. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in case where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the

court. Bad faith, dishonesty -- those, of course, stand by themselves -- unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matter which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word 'unreasonable'. It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must 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 the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In

another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head.'

I am afraid, the petitioner has not been able to make out a case under any of the exceptional clauses indicated by the distinguished Master of the rolls. The contention is, therefore, rejected.'

13.1. Applying the aforesaid principles including the principle of Wednesbury reasonableness to the facts and circumstances of the present case, it is manifest that the act in the present case deals, not with a judicial act, but with an executive act. The discretion of the Corporation is little short of unlimited, and there is no provision of appeal under the Act. Naturally, therefore, powers of this court to interfere with such an order are extremely limited. The petitioner has not been able to make out a case within the parameters enunciated in the aforesaid judgment of the court of Appeal. Furthermore, the impugned

decision is a commercial decision which is wholly within the domain of the Corporation, and this Court is satisfied that the same has been properly arrived at. The action taken by the Corporation is in no way unreasonable. On a consideration of the entire materials before the Board of Directors, it has taken a decision which cannot be faulted on any ground. This Court is not a Court of appeal where the court may possibly have been in a position to take another view on the same factual premise.'

9. I am equally reminded of the well known judgment of the House of Lords reported in (1986) 1 A.C. 484 (Puhlhofer v. Hillingdon London Borough Council): (1986) 1 All ER 467. The applicants therein, a married couple, lived with two young children of the family in one room at a guest house. No cooking or laundry facilities were available at the premises, and no meals except breakfast were provided. The applicants applied to the local housing authority for accommodation under the Housing (Homeless Persons) Act, 1977. The application was refused by the housing authority on the ground that the room constituted accommodation that was available for the family's occupation within the meaning of Section 1(1) of the Act and that the applicants were, therefore, neither homeless nor threatened with

homeless so as to impose any duty on the housing authority to secure, pursuant to Section 4(5), that accommodation become available to them. The Housing authority subsequently reconsidered the application, but, having taken into account the housing conditions prevailing in their area, they confirmed their original decision. The applicants applied for judicial review of the housing authority's decision. Granting the relief, the judge held that for accommodation to be available for occupation by a person and his family within the meaning of Section 1(1) of the Act, the accommodation had to be appropriate to the needs of the family and that no reasonable housing authority could have come to the conclusion that the accommodation in question was appropriate. The Court of Appeal allowed an appeal by the housing authority. On appeal, House of Lords held that it is not appropriate that judicial review should be made use of to monitor the actions of local authorities under the Act of 1977, save in the exceptional case. Where the existence or non-existence of a fact is left

to the Judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision making power where it is obvious that the public body, consciously or unconsciously, is acting perversely.

10. In so far as amount of capital subsidy to be released by the State Government, and the amount of seed money to be released by the Authority, are concerned, the same are to be routed through the Corporation. The Corporation has stated in paragraph 6 of its counter Affidavit that the same were never disbursed to the Corporation and, therefore, could not be adjusted against the Corporation's loan to the petitioner. Learned counsel for the respondents rightly submit that release of those amounts were progress-linked. Since the petitioner did not register sufficient progress in setting up the unit and, in fact, there was no question of releasing the amounts under the two heads seed money The contention of the petitioner for release of the amount of capital subsidy and seed money are. therefore, rejected.

11. Learned counsel for the petitioner next submitted that the Bank was bound to release the amount of working capital to the petitioner. He invites my attention to

the letter dated 12-2-1987 (Annexure 2), issued by the Bank to the petitioner whereby the petitioner company had taken the decision to set up the unit. Learned counsel submitted that in spite of the promise made therein, the respondent Bank has refused to accede the petitioner's application for grant of working capital. Relying on the provision of Section 21 of the [Banking Regulation Act, 1949](#), he submits that the circulars issued by the Reserve Bank of India are binding on the Bank. He submits that the Reserve Bank of India has issued as Circular that the Corporation and the Bank should act in tandem in disbursing industrial loans. I am unable to accede to the contention of the petitioner. Learned counsel for the Bank has rightly invited my attention to paragraph 5 of its counter affidavit which is to the effect that the loan proposal of the petitioner was examined and it was found that the Unit was not economically viable. The production cost was found to be very high, in the Bank's

estimation, would be unable to cope up with the financial burden of borrowing, and that the market prospects were also not encouraging as several such units in the town were already functioning. Furthermore, the question of grant of working capital arises only after the unit commences production. In the present case, the petitioner never commenced production and, therefore, there was no question at all of granting capital subsidy.

12. In the result, this Writ Petition is dismissed.

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