

Maxima Electronics. Vs. the Tamil Nadu Industrial Investment Corporation Ltd and ors.

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Court : Chennai

Decided On : Jul-19-2012

Judge : K.Chandru, J.

Acts : [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.33892 of 2003; W.P.M.P.No.41065 of 2003 and W.V.M.P.No.33 of 2012

Appellant : Maxima Electronics

Respondent : The Tamil Nadu Industrial Investment Corporation Ltd and ors.

Advocate for Def. : Mr.M.J.Jaseem Mohammed, Adv

Advocate for Pet/Ap. : Mr.T.R.Sundaram, Adv.

Judgement :

Writ Petition filed under Article 226 of the [Constitution of India](#) praying for a Writ of certiorarified mandamus, calling for the records of the 2nd respondent in connection with proceedings Ref.TIIC/SRB/SLM/FUHSR/2003-01 dated 15.10.2003 and quash the same and consequently direct the respondents to consider and pass orders on the petitioner's representation dated 12.09.2003 by strictly applying the conditions laid down under the one time settlement.

ORDER

1. This writ petition came to be posted before this Court on being specially ordered by the Hon'ble Chief Justice vide order dated 26.02.2012.

2. The writ petition was filed by the petitioner seeking to challenge an order of the second respondent viz, Branch Manager, Salem of the Tamil Nadu Industrial Investment Corporation Ltd., (for short TIIC) dated 15.10.2003 and after setting aside the same seeks for a direction to consider and pass orders on the petitioner's representation dated 12.09.2003.

3. The writ petition was admitted on 10.02.2004. Pending the writ petition, an interim stay was granted. Subsequently, an application was filed in WPMP No.544 of 2010 seeking to implead respondents 3 and 4 and that was ordered by this Court on 31.08.2010. WVMP.No.33 of 2010 was filed by the respondent TIIC seeking to vacate the interim order together with supporting counter affidavit dated 30.04.2010. However, this Court extended the interim stay until further orders.

4. It is seen from the records that the petitioner company was sanctioned a term loan of Rs.1,20,000/- by the TIIC on 26.06.1977 for setting up of manufacturing unit at Plot No.8, Electrical and Electronic Industrial Estate, Hosur. The loan is for the purchase of SIDCO shed and purchase of erection of machinery. Originally, the petitioner company was a partnership firm represented by partners. Subsequently, one of the partner by name Sivaramakrishnan retired from the firm and the partnership firm was converted into a proprietary concern. The petitioner executed necessary documents mortgaging the SIDCO Shed and machinery in favour of the respondent TIIC as security for repayment of the loan. The petitioner defaulted in repayment of loan and was not regular in repaying the principal as well as interest instalments. The respondent also extended facilities to the petitioner under Re-finance Scheme for Rehabilitation such as funding of principal overdues of Rs.1.13 lakhs and sanction of fresh term loan of Rs.6.31 lakhs on 26.03.1991 for purchase of additional machinery. Even thereafter, the petitioner defaulted to repay the loan amount and hence, TIIC foreclosed the loan account on 27.11.1992. The petitioner failed to repay the loan even after the foreclosure and hence TIIC took possession of the assets of the concern viz., land, building

and machinery on 05.05.1998 and brought the same for sale in public auction twice. In the first auction held on 07.12.1998, there were no bidders. In the second auction conducted on 19.02.1999, the respondent TIIC received an offer of Rs.11.60 lakhs which did not materialise since the auction purchaser was not willing to pay the commercial tax arrears.

5. Once again the respondent TIIC by letters dated 30.06.2003 and 19.07.2003 advised the petitioner to settle the loan amount under "One Time Settlement" (OTS) Scheme by availing waiver concessions. The wife of the promoter R.Mehaladevi deposited a sum of Rs.25,000/- and promised to pay the balance amount on or before 30.09.2003. But she had failed to make the balance amount and to avail the concessions under OTS. Hence, the respondent TIIC brought the assets for sale in public auction on 24.09.2003. There was a highest offer of Rs.12.65 lakhs from the 4th respondent, which was subsequently enhanced to Rs.16.75 lakhs after negotiation. The petitioner had to settle the loan account as promised under OTS before 30.09.2003 and the offer received in public auction was well within the norms of the Corporation and hence, respondent TIIC confirmed the auction sale on 14.10.2003 in favour of the fourth respondent. The respondent also informed the petitioner about the sale of assets vide letter dated 15.10.2003. The 4th respondent, being the highest bidder remitted the balance amount and the respondent TIIC also handed over the assets to the auction purchaser on 16.10.2003. The highest bidder was advised to produce "No dues certificate" from the Commercial Tax Department before execution of sale deed. The highest bidder cleared the entire commercial tax arrears of Rs.10,60,808/- and furnished the "No dues certificate" issued by the Commercial Tax Department on 29.10.2003 and the respondent has executed the sale deed in favour of the successful bidder on 07.11.2003 and the same was registered with the Sub-Registrar office, Hosur.

6. The petitioner has preferred the present writ petition challenging the order dated 15.10.2003 only after the completion of auction sale proceedings. In fact interim stay itself was granted only on 10.02.2004. A copy of the sale deed was also produced before the Court.

7. The learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in *Anil Kumar Srivastava v. State of U.P. And another* (Appeal (Civil) No.5402 of 2004) dated 20.08.2004 for contending that upset price was not fixed by the respondent TIIC. He also referred to the judgment of this Court in *M/s.Raja and Raja Industries v. The Branch Manager, TIIC* (W.P.(Md)No.431 of 2008) dated 07.12.2011 for similar proposition.

8. However, in the present case, the respondents have bent themselves backwards in placing the petitioner. Even after two auction notices, they offered them OTS, which the petitioner did not choose to avail. The present writ petition itself was filed after the sale was effected. Though the writ petition was filed before this Court on 20.11.2003, it was brought up for admission on 10.02.2004 for reasons best known.

9. It must be noted that the relationship between the petitioner and the corporation was purely contractual. In this context, it is necessary to refer to a judgment of the Supreme Court in *U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd.*, reported in (1993) 2 SCC 299. In paragraphs 3, 12 and 10, the Supreme Court had observed as follows :

"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 sitting as an appellate authority over the appellant-corporation. Not a single provision of law is said to have been violated.

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.

10. It is true that the appellant-corporation is an instrumentality of the State created under the State Financial 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 20 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 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 carried 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 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 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."

10. Further, the Supreme Court in Karnataka State Industrial Investment & Development Corpn. Ltd. v. Cavalet India Ltd., reported in (2005) 4 SCC 456, in paragraph 19 held as follows :

"19.From the aforesaid, the legal principles that emerge are:

(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 businesslike 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.....

(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."

11. In fact, a division bench of this court presided by M. Katju, C.J. (as he then was) in Tamil Nadu Industrial Investment Corporation Ltd. Vs. Millennium Business Solutions Pvt. Ltd., reported in 2004 (5) CTC 689 directed that the courts must keep certain considerations in mind before entertaining the request and in paragraph 18, it was observed as follows:

"18. Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not on mere sympathy or compassion. No doubt, there may be hardship to a party, but unless violation of law is shown the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The Courts must keep these considerations in mind."

12. Further, third party interest has also come in who purchased the property not only paying the amount after private negotiation but also paid the Commercial tax dues, due to the company. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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