Gujarat State Financial Corporation

Vs

M/s. Lotus Hotels Pvt. Ltd.

Civil Appeal No. 1099 of 1982

(R. B. Misra, D. A. Desai JJ)

03.05.1983

JUDGMENT

DESAI, J.-

1. This appeal was dismissed by an order made by us which reads as under :

> Having heard Mr. R. P. Bhatt, learned counsel for the appellant and Mr. F. S. Nariman, learned counsel for the respondents, we dismiss C. A. No. 1099 of 1982 and vacate all interim orders made by this court.

We further direct that the appellant-Corporation shall release Rs 10 lakhs in favour of the respondent within one month form today, the time of one month being fixed at the request of the appellant. The balance is required to be spread over a reasonable period so as not to inconvenience the parties. If any difficulty arises, liberty to move. Reasons will follow.

2. Here are the reasons.

3. How a public sector corporation set up to give impetus to industrial development of the country, a promise of planned economy aimed at job expansion to liquidate the curse of unemployment, and larger production helping price stabilisation acts in a manner contrary to its raison d'etre and becomes counter-productive is aptly illustrated by the facts of this case.

4. The Gujarat State Financial Corporation ('Corporation' for short) is a corporation set up under Section 3 of the State Financial Corporation Act, 1951. It was an instrumentality devised to provide medium and long term credit to industrial concerns inter alia Hotel Industry. Respondent M/s Lotus Hotels Pvt. Ltd. ('Company' for short) is a private limited company incorporated on October 7, 1971 under the Companies Act, 1956. The object clause of the memorandum of association shows that Company was incorporated mainly to carry on the business of hotel, restaurant, cafe etc. The company Proposed to set up a 4-star hotel under the name and style of Lotus Hotels. One Shri Chandulal Jethalal Jaiswal is the Promoter. After acquiring land, where the proposed 4-star hotel was to be set up at Baroda, on December 7, 1977, the Company approached the Corporation for a loan of Rs 30 lakhs and omitting, for the time being, the correspondence exchanged between the parties, the Corporation by its letter dated July 24, 1978 sanctioned a loan of Rs. 29.93 lakhs, on certain terms and conditions. On August 2, 1978, the respondent wrote a letter accepting the terms and conditions on which the Corporation agreed to advance the loan. As a part of the deal, the Company had to create an equitable mortgage in favour of the Corporation for securing the loan. It is advantageous to refer at this stage, to the term bearing on the question of rate of interest that

would be chargeable on the loan, as agreed to be advanced by the Corporation to the Company. It inter alia provided that : 'the rate of interest will be 12 1/2 per cent per annum if refinance is available from Industrial Development Bank of India (IDBI) at 9 per cent per annum otherwise it will be 13 per cent per annum.

5. The trouble erupted when in October 1978 two pseudonymous letters purporting to have been written by Ramanlal V. Patel and Chandrakant Pandya addressed to the Chief Minister, Gujarat State and Chairman, Industrial Development Bank of India, Bombay, respectively were received making serious allegations against the promoter Shri Jaiswal about his character and creditworthiness and also pointing out that he was facing several prosecutions in various courts on account of his nefarious activities. Presumably, acting on this letter, the IDBI who was approached for refinancing the loan addressed certain enquiries to the office of the Corporation and then started on enquiry which led to the delay in processing the promised loan. Ultimately by its letter dated February 13, 1979 IDBI informed the Corporation that in view of the pending police enquiry against the promoter Shri Jaiswal, the application for refinance is treated as closed, leaving an option to the Corporation to resubmit the application on receipt of satisfactory report from the concerned authorities in regard to the pending enquiry against the main promoter. By that time, the promised equitable mortgage by the Company was created in favour of the Corporation. All other documents, required to be executed by the Company in favour of the Corporation enabling it to receive the loan were also executed. However, the appellant did not disburse the loan in terms of the agreement entered into between the parties. Ultimately, after protracted correspondence, the Board of the Corporation at its meeting held on April 20, 1979 resolved not to disburse the loan to the respondent Company and the President conveyed the information of the decision to the Company. There is some dispute between the parties about when the intimation about the resolution of the appellant was conveyed to the respondent but that is hardly relevant.

6. Ultimately, the respondent moved a petition under Article 226 of the Constitution in the High Court of Gujarat at Ahmedabad. A learned Single Judge issued a mandamus directing the appellant to disburse the promised loan to the Company forthwith in accordance with its letter of offer dated July 24, 1978 followed by the agreement dated February 1, 1979. The Corporation preferred L. P. A. No. 78 of 1981. The Division Bench hearing the L. P. A. agreed with the conclusion reached by the learned Single Judge and dismissed the appeal. Hence this appeal by special leave.

7. Mr. R. P. Bhatt, learned counsel who appeared for the appellant urged that the sanctioning of the loan by the Corporation in favour of the respondent was conditional upon the IDBI undertaking to refinance the loan and as IDBI declined to refinance the loan, the Corporation cannot be compelled by a mandamus to grant the loan. It was also incidentally urged that the dispute raised between the parties is in the realm of contract and at best the Corporation can be charged with breach of contract for which the remedy is by way of damages or any other remedy available to the respondent for breach of contract; but, in any case, a writ of mandamus cannot be issued compelling the Corporation to perform its part of the contract. There is no merit in either of the contentions.

8. The first contention of Mr. Bhatt appearing for the appellant is that the sanctioning of the loan by the Corporation in favour of respondent was conditional upon IDBI agreeing to and undertaking to refinance the loan and as IDBI has declined, for the time being, to refinance the loan, the Corporation cannot be compelled to undertake the onerous liability of financing a huge loan to one undertaking and therefore the appellant was discharged from performing its part of the contract. Both the learned Single Judge and the Division Bench of the High Court have concurrently held that the sanctioning of the loan by the Corporation in favour of the respondent was not conditional upon

IDBI agreeing and undertaking to refinance the loan. In this connection, a reference to Clauses 2 and 5 of the letter dated July 27, 1978 by the appellant to the respondent setting out the terms and conditions subject to which loan was sanctioned would be advantageous :

> 2. Rate of interest will be 12 1/2 per cent p. a. if refinance is available from Industrial Development Bank of India at the rate of 9 per cent p. a. otherwise it will be at the rate of 13 per cent p. a. Higher rate of interest at 6 per cent over the normal rate of interest will be charged on the amount in default.
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> 5. Commitment charge at the rate of 1 per cent p. a. on the amount of loan not drawn out of the loan sanctioned shall be paid from the date as advised by the Industrial Development Bank of India, if refinance is sanctioned. In case, refinance is not sanctioned by the Industrial Development Bank of India, commitment charge at the rate of 1 per cent p. a. on the amount of loan undrawn out of loan sanctioned shall be paid from the expiry of six months from the date of sanction.

A bare perusal of the clauses would show that the loan sanctioned by the appellant in favour of the respondent was not specifically subject to the condition upon the IDBI agreeing and undertaking to refinance the loan. In fact, refinancing of the loan by IDBI had an impact on the rate of interest only. This clearly transpires form Clause 2 which provides that if refinance is available from IDBI at 9 per cent p. a., the rate of interest payable by the respondent to the appellant will be 12 1/2 per cent p. a. otherwise it will be 13 per cent p. a. In Clause 5 it is stated that commitment charge at 1 per cent p. a. on the grant of loan not drawn out of the sanctioned amount shall be paid from the date as advised by IDBI if refinance is sanctioned but in case refinance is not sanctioned by IDBI commitment charge at 1 per cent p. a. on the amount of loan undrawn out of the loan sanctioned shall be paid from the expiry of six months from the date of sanction. Thus refinancing of the loan by IDBI was to have an impact on the rate of interest and the commitment charge and the sanctioning of the loan was not conditional upon refinance from IDBI available. In fact consequences of IDBI not agreeing to refinance loan are appellant in the agreement. The consequence was not that the appellant would be discharged from performing the agreement but it would only be entitled to higher rate of interest and liability to commitment charge from a certain date, but the agreement to advance loan would remain unaltered and binding. When these two clauses were pointed out to Mr. Bhatt, he could hardly pursue the point any more. The parties had envisaged a situation where the refinance of the loan may not be available from IDBI. The obligation undertaken by the appellant to sanction the loan was independent of a refinancing of loan available from IDBI. In such situation, the first contention of Mr. Bhatt cannot be accepted.

9. It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late in the day to contend that the instrumentality of the State which would be 'other authority' under Article 12 of the Constitution can commit breach of a solemn under taking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr. Bhatt, it musts be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporation Act. 1955 is an instrumentality of the State and would be 'other authority' under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated February 1, 1979 the

appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs. 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. In Motilal Padampat Sugar Mills Co. (P.) Ltd. v. State of U. P., this court observed as under : [SCC para 8, p. 425 : SCC (Tax) p. 160]

The true principle of promissory estoppel, therefore, seems to be that where one party has by his words of conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

10. Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent.

11. Jit Ram Shiv Kumar v. State of Haryana which slightly differs from the view taken by this court in the aforementioned decision at any rate would not help the appellant because it only lays down that the principle of promissory estoppel cannot be invoked for preventing the Government from discharging its functions under the law. Even then, it was held that when the officer authorised under a scheme enters into an agreement and makes a representations under a scheme enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the court is entitled to regulate the officer to act according to the scheme and the agreement or the representation. The officer cannot arbitrarily on his mere whim ignore his promise on some undefined and undisclosed grounds of necessity or changed the conditions to the prejudice of a person which had acted upon such representation and put himself in a disadvantageous position. On this point, both the decisions concur and the ratio would govern the decision in this appeal. The respondent acting upon the solemn promise made by the appellant incurred huge expenditure and if the appellant is not held to its promise, the respondent would be put in a very disadvantageous position and therefore also the principle of promissory estoppel can be invoked in this case.

12. Viewing the matter from a slightly different angle altogether it would appear that the appellant is acting in a very unreasonable manner. It is not in dispute that the appellant is an instrumentality of the Government and would be 'other authority' under Article 12 of the Constitution. If it be so, as held by this court in R. D. Shetty v. International Airport Authority of India the rule inhibiting arbitrary action by the Government would equally apply where such corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be conformity with some principle which meets the test of reason and relevance.

13. Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by 'other authority' as envisaged by Article 12.

14. The High Court accordingly was fully justified in issuing a writ of mandamus to disburse the loan and therefore the appeal fails.

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