

RAJASTHAN HIGH COURT

Rajasthan Financial Corpn.

Vs.

Chetak Electric and Iron Industries

Civ. Spl. Appeal Nos. 1202, 1006 and 997 of 1997
(Narayan Roy, C.J. and Mohammad Rafiq, J.)

25.01.2008

JUDGEMENT

Mohammad Rafiq, J.

1. All these three special appeals are directed against the common judgment dated 25-7-97 passed by the learned Single Judge of this. Court. Out of them, two appeals are filed by M/s. Chetak Electric and Iron Industries Ltd. against the Rajasthan Financial Corporation (for short, "R.F.C."). In these appeals, it is prayed that sale of its assets made in favor of one Ved Prakash be cancelled and the said property be directed to be re-auctioned after giving due publicity in at least two news papers having wide circulation in Rajasthan. One appeal is filed by the auction purchaser challenging the judgment of the single bench whereby auction sale has been set aside.

2. Learned single Judge upon hearing of the parties allowed the writ petitions with a direction to the petitioner to deposit the bid amount with Rajasthan Financial Corporation within a period of four months, whereupon the RFC shall hand over the possession of the property to him and in case no such deposit is made, the RFC may re-auction the unit in accordance with law, after proper publication of notice in at least two newspapers having circulation in locality a well. It was further directed that the petitioner shall also be free to bring any customer for purchase of property if more price can be fetched. With these directions, auction made in favor of respondent No. 3 Ved Prakash was set aside and all consequential actions taken pursuant thereto during the pendency of the petition, were quashed.

3. We have heard Shri Rakesh Sinha, learned counsel for the appellant Rajasthan Financial Corporation, Shri Narender Singh learned counsel appearing on behalf of M/s. Vinayak Metals and Sri S.L. Jain learned counsel appearing for the respondent M/s.

Chetak Electric and Iron Industries.

4. Shri Rakesh Sinha learned counsel for the appellant Rajasthan Financial Corporation has argued that a loan of Rs. 3,90,000/- was sanctioned in favor of original writ petitioner as far as back on 8-2-90. Even though the petitioner was under obligation to repay the loan in easy installments, he made frequent defaults in making payment, so much so that he could repay only a sum of Rs. 70,000/- by the time notice under Section 30 of the State Financial Corporations Act, 1951 (hereinafter referred to be as "the Act of 1951") was served upon him on 6-11-93 for recovery of sum of Rs. 3,87,157/-. He applied for re-schedulement of the payment of loan but that was not considered feasible. However, during the intervening period when he did not make the payment of the due installments, another notice was served on him on 24-11-94 and finally possession of the unit was taken over by R.F.C. on 2-3- 1995. Thereafter, advertisement was published in Rajasthan Patrika dated 12-3-95 for auction of the property on 20-3-95. Intimation of this notification was immediately given to the writ petitioner vide letter dated 13-5-95. However, no bidder turned up at the time of auction. Thereafter, in similar fashion, advertisement was again issued for auction of the property on 21-6-95. On that date also, no bidder turned up. Learned counsel argued that again advertisement for auction of the unit was published in Navbharat Times in its issue dated 5-8-95 for auction of the unit on 23-8-95. This information was sent to the writ petitioner on 7-8-95 but he failed to respond to the same. Only two bids were received in auction dated 23-8-85. The first bid was for Rs. 3.25 lacs and whereas the second bid for Rs. 3,51,000/- was received from respondent No. 3 Ved Prakash. However, the bid was not accepted and advertisement was again issued on 25-9-95 for re-auction of the unit on 18-10-95 mentioning therein that the last highest bid received was of Rs. 3.51 lacs. Information to this effect was also sent to the writ petitioner again on 10-10-95 but petitioner/respondent still did not make any efforts either to repay the loan or produce any other higher bidder. In these circumstances, when the auction was held on 10-10-95, no one turned up and, therefore, notice was again published on 20-11-95 for fresh auction on 5-12-95, duly mentioning therein that the last highest bid received was of Rs. 3.51 lacs. Intimation of this fact was again sent to the writ petitioner vide letter dated 21-11-95 as also to the two bidders referred to above. During the auction which was held on 5-12-95, Ved Prakash who earlier gave the bid of Rs. 3.51 lacs increased his bid to Rs. 3.61 lacs. Looking to the fact that in spite of the repeated and best efforts made by the Corporation, it could not get more price than this, property committee recommended the acceptance of the highest bid of Ved Prakash.

5. It was at that stage that the Rajasthan Financial Corporation vide letter dated 13-12-95 informed the petitioner and its guarantors about final bid by registered post and asked them to bring any other higher bid than this in a period of fortnight. When the original petitioner failed to do so, ultimately the sale was approved in favor of respondent No. 3 Ved Prakash. The agreement was executed between the Rajasthan Financial Corporation and M/s. Vinayak Metals on 28-2-96 because Ved Prakash participated in the bid in the capacity of its Manager and thereafter the sale deed was registered in the name of the said firm on 1-3-96.

6. Learned counsel argued that the learned Single Judge was not justified in holding that sufficient publicity was not given to the notice of the auction and as a result of this, only two bidders participated in the bid. It was further argued that advertisement of the notice was made in the combined edition of Rajasthan Patrika circulated throughout the State and not just in its Jodhpur edition. Besides this, the advertisement was published in Nav Bharat Times also. An agreement was executed with M/s. Vinayak Metals and sale deed was registered in its favor because Ved Prakash described himself in the bid as its Manager. M/s. Vinayak Metals having taken possession of the property in question has been successfully running the Unit for more than a decade and in the intervening period, has made substantial investment therein. Learned counsel argued that the learned Single Judge has proceeded to apply the principles of law and the guidelines laid down by the Hon'ble Supreme Court in *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation and Ors.*¹ holding that efforts should have been made to rehabilitate the industrial unit for reviving it. No such efforts were, however, put in by the Rajasthan Financial Corporation to rehabilitate the unit. Apart from the fact that the petitioner had deposited a sum of Rs. 70,000/- out of the loan amount of Rs. 3,87,157/-, if the subsidy amount of Rs. 43,000/- was adjusted, the money would have risen to more than Rs. 1,00,000/-. In these circumstances request of the petitioner for re-schedulement of payment should have been accepted.

7. Learned counsel argued that re-schedulement of the payment could have been allowed to the writ petitioner only if his actions matched with his conduct. The petitioner, even though made request for re-schedulement, did not ever make any efforts to deposit the loan amount. During the intervening period of about two years when the appellants initiated the process for auction of the said property, he never exhibited his intention for depositing the amount. The writ petitioner was a chronic defaulter. The appellants had acted in most fair, reasonable and transparent manner

while auctioning the property in question. Guidelines contained in Mahesh Chandra, (AIR 1993 Supreme Court 935) (supra), no longer hold good because that judgment has since been overruled by the decision of the three Judges Bench of the Supreme Court in *Haryana Financial Corporation v. Jagdamba Oil Mills*,² Learned counsel for the appellants also argued that even though the learned Single Judge in concluding part of the judgment had directed the writ petitioner to deposit bid amount i.e. Rs 3,61,000/- within four months. Upon his doing so, the Rajasthan Financial Corporation was further directed to hand over possession of the property. He however failed to avail of that liberty and thereby he has disentitled himself for grant of any relief whatsoever. It was therefore, submitted that in view of the lapse of long period of more than ten years now further direction issued by the learned Single Judge to put the unit to fresh auction upon failure of the petitioner to deposit the amount within the stipulated time, ought not be enforced because in the meantime, M/s. Vinayak Metals has been successfully running the unit and has also made substantial investments.

8. Learned counsel for the appellants in support of their arguments relied on the judgment of the Supreme Court in the matter of *Karnataka State Industrial Investment v. Cavelet India and Ors.*,³ *Maharashtra State Financial Corp. v. M/s. Suvarna Board Mill and Ors.*,⁴ *UP State Financial Corp. v. Nainy Oxygen*,⁵ *State of Bihar v. Jain Plastic*⁶ and *Chemist*,⁷ *Chairman and Managing Director SIPCOT and Ors. v. Contromix Pvt. Ltd.*⁸ *Karnataka State Financial Corp. v. Micro Cast Rubber*,⁹ *Orissa State Financial Corp. v. M/s. Hotel Jogender*¹⁰ *UP Financial Corp. v. Gem Caps (India) P. Ltd.* and Division Bench of this Court in *Som Prakash v. Rajasthan Financial Corporation*,¹¹

9. On the other hand, Shri S.L. Jain learned counsel appearing for the original writ petitioner i.e. respondent M/s. Chetak Electric Iron Industries, opposed the appeal and argued that the judgment passed by the learned Single Judge does not suffer from any infirmity. He argued that the learned Single Judge has rightly allowed the writ petition because no efforts were made by the Rajasthan Financial Corporation to revive or rehabilitate the unit by rescheduling the payment of loan in spite of the petitioner having prayed there for. It was argued that already petitioner had deposited the amount in the sum of Rs. 70,000/- whereas when the notice under Section 30 of the Act was issued, complete sanctioned loan amount was not yet disbursed. As per the guidelines laid down by the Hon'ble Supreme Court in Mahesh Chandra, (AIR 1993 Supreme Court 935) (Supra), the Rajasthan Financial Corporation was duty bound to give a chance to the petitioner for reviving the unit rather than rushing to lock the factory and

put it to auction. Benefit of subsidy amount of Rs. 43,000/- was also not given to the petitioner. If that had been given to the petitioner, this would have helped the petitioner to re-start the factory and repay the loan amount. It was further argued that learned Single Judge has rightly held that the proper publicity was not given to the notice of auction and as a result of this, sufficient number of bidders did not participate in auction and only two persons expressed their interest in the auction. The unit which was worth Rs. 12,00,000/- was sold just for Rs. 3,61,000/-. The learned counsel further argued that respondent did offer to deposit the said amount with the Rajasthan Financial Corporation and in this connection he produced copy of the letter dated 3-9-1997 but the Rajasthan Financial Corporation did not accept the payment and, therefore, the original-petitioner (respondent herein) cannot be blamed for non-deposit of the loan amount within the period of four months. Learned counsel argued that in any case, however, non-deposit of the amount as directed above would result in the restoration of the direction of the learned Single Judge to re-auction the unit after giving proper publicity if and when present appeals are dismissed. Learned counsel for the respondent relied on the judgment of the Supreme Court in Mahesh Chandra (Supra) and argued that the special appeals be dismissed.

10. We have bestowed our anxious and thoughtful consideration to the rival submissions and respectfully studied the cited case laws and perused the material forming part of the record.

11. We may at the outset notice that the guidelines laid down by the Supreme Court in Mahesh Chandra, (AIR 1993 Supreme Court 935) (Supra) have weighed heavily with the learned Single Judge when he held that if the unit holder is willing to offer the sale amount, the same facility be given to him and remaining arrears be recovered from him in easy installments and if he brings a third party who may offer higher bid than the highest bid, that offer should be accepted. That direction of the learned Single Judge in turn is based on two findings, namely (i) that proper publicity was not given to the auction notice; and (ii) efforts were not made by R.F.C. to rehabilitate the unit by rescheduling the payment of loan amount. Guidelines laid down by two-judge bench of the Supreme Court in Mahesh Chandra (Supra) were not approved of by the Supreme Court in Jagdamba Oil Mills, (AIR 2002 Supreme Court 834) (Supra) which was by a three-Judge bench. It was held therein that "view in Mahesh Chandra case, AIR 1993 Supreme Court 935, appears to have been too widely expressed without taking note of the ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a

dishonest borrower. It would not further the interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance." The Supreme Court in Jagdamba Oil Mills supra, however concurred with the view expressed in the later judgment in Gem Caps, (AIR 1993 Supreme Court 1435), supra, and observed that "view expressed in Gem Cap case appears to be more in line with legislative intent." It was held that "indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected." It was held that when not even minimum payment of the principle amount has been paid, that factor cannot be lost sight of by the Courts. It was further held that though there can be no doubt "that the approach has to be public-oriented. It can operate effectively if there is regular realization of the installments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the installments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception."

12. Upon applying the ratio of the above judgment to the facts of the present case, we find that as against the sanctioned loan amount, the respondent had paid only sum of Rs. 70,000/- by the time notice under Section 30 was served upon him on 6-11-93 for recovery of sum of Rs. 3,87,157/-. Thereafter, even another notice dated 24-11-94 was served and possession of the unit was taken on 2-3-95. The Corporation then published advertisement on 12-3-95 followed by intimation sent to the petitioner on 13-3-95. When no one turned up on the date of auction on 20-3-95, again the advertisement of the auction notice was made on 5-8-95 and information to this effect was sent to the petitioner on 7-8-95 for the auction to be held on 23-8-95 in which two bids were received. Information was also sent to the petitioner on 10-10-95 about receipt of two bids in the auction held on 23-8-95 which were not accepted. The auction was again held on 18-10-95 but the same was not attended by any bidder. Advertisement of auction was again published on 20-11-95 clearly mentioning therein that the highest bid last received was of Rs. 3,61,000/-for next auction to be held on 5-12-05. Intimation of this was sent to the petitioner vide letter dated 21-11-05 also informing him of the earlier bids. In the auction notice, the amount of the last highest bid was mentioned. Finally again, when the auction was finalized on 5-12-95 in favor of Ved Prakash, intimation was sent not only to the petitioner but also to his guarantors with specific request to them to bring any other higher bidder, if they could.

13. Sequence of the efforts put in by the appellants clearly indicates that the Rajasthan

Financial Corporation has acted in a just, fair and reasonable manner with utmost transparency and openness. At no point of time during all this period of two years, did the petitioner exhibit any intention of either repaying of loan amount by depositing any amount whatsoever or producing any buyer or any bidder with higher bid amount.

14. Principles of law as laid down in various judgments of the Supreme Court referred to above were, in our considered view, fully adhered to. The Hon'ble Supreme Court in Karnataka State Industrial Investment, supra, while propounding the scope of judicial review in such matters has gone to the extent of holding that High Court while exercising its jurisdiction under Section 226 of the Constitution of India does not act as an appellate authority over the acts and deeds of the Financial Corporations and seek to correct them. Doctrine of fairness does not convert the Writ Courts into appellate authorities over administrative authorities. It is essentially a matter between the Corporation and its debtors. Writ Courts have no say in the matters except in two situations namely (i) where there is a statutory violation on the part of the Corporation or (ii) where the Corporation acts unfairly and unreasonably. In commercial matters, the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned. Unless the action of the Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or for the third party to substitute its decision, however, more prudent, commercial or business like it may be. In the decision of the Financial Corporation, the dominant consideration has to be to secure the best price for the property to be sold. Fairness cannot be a one-way street. Fairness required by the Financial Corporation cannot be carried to the extent of disabling them from recovering what due is to them.

15. In the facts and circumstances of the present case, we find that efforts were made by the Rajasthan Financial Corporation to fetch the best of the price by repeatedly putting the property to auction and due publicity of the notice of auction was given by getting the same published in the combined edition in Rajasthan Patrika and also in the Nav Bharat Times. Every time when the auction notice was published, intimation was given to the petitioner for the auction of the property that either he might repay the loan amount or bring any other suitable bid. Lastly when the bid was finalized, such intimation was given to not only the original petitioner/respondent but also to his guarantors who were all specifically asked to bring any other higher bid, if they could. Last two auction notices also indicated the highest bid so far received. Entirety of circumstances, therefore, reflects efforts made in that direction on the part of R.F.C. and does depict a picture where the Rajasthan Financial Corporation cannot be said to

have acted unfairly or unreasonably. On the contrary, its action only shows that it acted in just and reasonable manner. In fact, the Supreme Court in the case of *SJS Business Enterprises (P) Ltd. v. State of Bihar*,¹² has held that power vested in State Financial Corporation under Section 29 of the Act must be exercised *bona fide* and fairly and that if they do so, their action cannot be called in question under Article 226 of the Constitution of India. There would be a presumption in favor of public officials that they would discharge their duties honestly and in accordance with law. Such presumption however, may be rebutted by establishing circumstances which might probablise abuse of power. In the present case, we do not find any such material on record which might even remotely suggest *mala fide* or for that matter, lack of bona fide; on the part of officials of the Rajasthan Financial Corporation.

16. There is another aspect of the matter which need to be considered at this juncture. No efforts whatsoever were made by the original petitioner/respondent to repay the loan amount during the period all this exercise was undertaken by R.F.C. He did not deposit the bid amount even when the learned Single Judge granted liberty to him to deposit such amount within four months. The petitioner has not been able to place any material on record which might suggest that he genuinely made any efforts to deposit the amount within the period stipulated. In fact, the letter dated 3-9-1997 which was produced by the learned counsel for the respondent/original petitioner during arguments merely suggests that request was made by him to the Rajasthan Financial Corporation that the amount be got deposited. But no other contemporaneous material suggesting so has been produced by him even to probablise the assertion, let alone prove such assertion. It has not been shown by the petitioner when did he actually offer to deposit the amount and that too, whether in cash or by demand draft or otherwise, to show that such amount was withdrawn by him from his bank account or by producing any other evidence to substantiate his stand. If at all, he by writing letter to the Rajasthan Financial Corporation wanted to deposit the amount and that was not accepted, nothing prevented him from bringing this fact on record of the present proceedings. Now at this belated stage, when these proceedings have remained pending for over a decade, such a bald assertion made on his behalf cannot be accepted by mere ipse dixit of the original-petitioner. Moreover, even the argument that the property could not be registered in favor of M/ s. Vinayak Metals, cannot be accepted because apart from the fact that bidder Ved Prakash who is its manager, participated on behalf of M/s. Vinayak Metals to whom the unit was handed over, the same has been successfully running the unit for last more than a decade and has in the interregnum period, made substantial investments. In our view, this would not be a

sound exercise of judicial discretion to divest it of the said property at the instance of a chronic defaulter only because it chose to participate in the auction through its manager. And in any case, after more than a decade now, the original writ-petitioner cannot be even otherwise required to repay the complete loan amount with entire interest for intervening period requiring the Rajasthan Financial Corporation to re-auction the property.

17. We, therefore, do not find ourselves in agreement with the view taken by the learned Single Judge and for the reasons aforementioned, are persuaded to allow all the three appeals. All these three appeals filed by the appellants are accordingly allowed and the judgment dated 25-7-1997 passed by the learned Single Judge is set aside. In the facts and circumstances of the case, however, we leave the parties to bear their own costs.

Appeals allowed.

Cases Referred.

1. 1993 (2) SCC 279: (AIR 1993 SC 935)
2. (2002) 3 SCC 496: (AIR 2002 SC 834)
3. 2005 (4) SCC 456
4. 1994 (5) JT (SC) 280
5. 1995 (2) SCC 754: (1995 AIR SCW 254)
6. AIR 2002 SC 206
7. 1995 (4) SCC 595: (AIR 1995 SC 1632)
8. 1996 (6) JT 37
9. 1996 (5) JT 322
10. 1993 (2) SCC 299: (AIR 1993 SC 1435)
11. 2006 (6) RRD 3510.
12. 2004 (7) SCC 166: (AIR 2004 SC 2421)