

A KARNATAKA STATE FINANCIAL CORPORATION  
v.  
MICRO CAST RUBBER AND ALLIED PRODUCTS  
(P) LTD. AND ORS.

B JUNE 3, 1996

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

C *State Financial Corporations Act, 1951—Section 29—Sale of unit by State Financial Corporation—Writ petition before High Court challenging the sale—Writ Petition dismissed with direction to the Corporation to comply with certain Directions—In the facts of the case, the Directions held as complied with, hence act of the Corporation not liable to be interfered with.*

D *Constitution of India, 1950—Article 226—Judicial review—Scope of—Sale by State Financial Corporations u/s 29 of State Financial Corporation Act, 1951—No statutory violation or unfair action by the Corporation—Interference of High Court—Held, interference unjustified, since judicial review permitted only when Corporation violates statutes or acts unfairly—While exercising its jurisdiction U/A 226, the High Court does not sit as an appellate authority over the acts and deeds of the Corporation.*

E Appellant, a State Financial Corporation, extended financial help to Respondent No. 1 (a company, registered under Companies Act) for setting up a unit for manufacture of rubber and like products. Respondent-1 failed to pay the loan, due to loss incurred by it. Appellant re-scheduled the payment of loan and sanctioned further loan, and still  
F further extended rehabilitation assistance under RSR Scheme of IDBI and sanctioned loan, treating the unit as sick unit. In spite of all the facilities, respondent-1 defaulted in payment of the loans.

G On October 23, 1990, the appellant took over the unit u/s 29 of State Financial Corporations Act, and took steps for its sale. The Unit was evaluated for Rs. 28 lakhs. In response to the advertisement, on August 5, 1991, offers were received. Offer of 'C' for Rs. 24 Lakhs was the highest. The offer was approved by the board of appellant, but it was decided that the communication of the approval would be made after October 15, 1991,  
H so as to give opportunity to respondent-1 to bring any other higher offer.

Respondent-1 brought no offer. It indicated that it would submit proposal for revival of the unit, but it failed to come up with any concrete proposal. In the meantime, 'C' had also withdrawn its offer. Appellant issued fresh advertisement for sale on August 25, 1992. Pursuant thereto, three offers were received, i.e. by 'C' for Rs. 23 lakhs for the land, building and machinery, by 'P' for Rs. 18 lakhs for land and building only and, by 'S' for 6 Lakhs for plant and machinery only. In the joint meeting of offerers respondent-1 was also invited and a tentative decision to accept the offers of 'P' and 'S' was taken. Respondent-1 was given 15 days time to make payment and submit proposal for revival of the unit. Respondent-1 sought further time of 15 days i.e. till December 15, 1992. On January 4, 1993, respondent-2 submitted offer of Rs. 25 Lakhs for the entire unit.

The proposals of 'P', 'S' and respondent-2 were considered and it was decided to accept the proposals of 'P' and 'S', since it was higher than the offer of respondent-2, because they envisaged to pay the dues to Electricity Board themselves; their time for payment was shorter; their down payment was higher; and they were to deposit the earnest money while respondent-2 was not to pay the same.

Agreement was made to sell the entire unit to 'P' and 'S'. Respondents-1 & 2 filed Writ Petition before High Court challenging the sale. Single Judge allowed the petition, quashing all the proceedings subsequent to receipt of the tenders pursuant to public notice and appellant was directed to observe the directions 2, 3, 4 in Para 22 of the judgment in *Mahesh Chandra's* case, the directions being that the unit should be evaluated; the highest price on tender to be accepted and to be intimated to the unit holder; and to provide facility to unit holder to pay sale price as tenderer and to test the third party brought by unit holder. Appellant filed Writ Appeal which was dismissed.

In appeal to this Court, the appellant contended that in the facts and circumstances of the case, the directions in *Mahesh Chandra's* case have been substantially complied with. Respondent-1, contended that his offer was much higher than the offers by 'P' and 'S' and that he also offered to pay Rs. 10 lakhs in addition to Rs. 25 Lakhs to Canara Bank in final settlement of dues of respondent-1 to the bank.

Allowing the appeal, this Court

A HELD: 1.1. The action of the State Financial Corporation is not liable to be interfered with if it has acted broadly in consonance with the guidelines contained in Para 22 of *Mahesh Chandra's* case. In the facts and circumstances of this case, the directions Nos. 2, 3 and 4 in those guidelines have been substantially complied with by the appellant. There was compliance with direction No. 2 in as much as before issuing the first advertisement for sale of the unit in March, 1981, the unit had been evaluated at Rs. 28 Lakhs. Keeping in view the various offers, it cannot be said that the said evaluation was improper. Directions Nos. 3 and 4 were also fulfilled in as much as Respondent No. 1 was made aware of the various offers, and respondent No. 1 was given sufficient opportunity to submit proposal for revival of the unit or to obtain higher offers. [46-H, 47-A-C]

B  
C  
D 1.2. The offer of payment of Rs. 10 Lakhs by respondent No. 2 to Canara bank does not enhance the value of the said offer, because the liability of Respondent No. 1 towards Canara Bank is secured by second charge on the land, plant and machinery that was being sold by the appellant. The said sale by the appellant was subject to the said charge. Every purchaser was bound to discharge the said liability. [47-G-H]

E  
F  
G 2. The High Court was not justified in interfering with the action of the appellant in accepting the offers of 'P' and 'S' for the sale of the unit of respondent No. 1. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation. In the matter of a sale by the State Financial Corporation in exercise of the power conferred on it under Section 29 of the Act, the scope of judicial review is confined to two situations, namely, (1) there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, i.e. unreasonably. It has not been pointed out that there is any statutory violation on the part of the appellant in accepting the offers of "M/s. 'P'" and "M/s. 'S'" and in rejecting the offers of respondent No. 2. Nor can it be said that the action of the appellant in not accepting the offers of respondent No. 2 and accepting the offers of "M/s. 'P'" and "M/s. 'S'" was unfair or unreasonable. [48-B-F]

H *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Others*, [1993] 2 SCC 279, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8989 of 1996. A

From the Judgment and Order dated 15.2.94 of the Karnataka High Court in W.A. No. 3297/93.

S. Ravindra Bhat for the Appellant. B

P. Mahale, Rajesh Mahale and P.K. Manohar for the Respondents.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. Special Leave granted. C

The Karnataka State Financial Corporation, appellant herein, is a State Financial Corporation established under the provisions of the State Financial Corporations Act, 1951 (hereinafter referred to as 'the Act'). Respondent No. 1, a company registered under the Companies Act, set up a unit for the manufacture of rubber and like products. The appellant extended finance to the tune of Rs. 14.15 lakhs to respondent No. 1 on March 21, 1981. In August 1981 the unit of respondent No. 1 commenced production but from its very inception it continued to incur losses. In order to make the unit viable the appellant, on December 14, 1981, re-scheduled the payment of the loan. A further sum of Rs. 1.65 lakhs was sanctioned in March 1984 for the purpose of purchasing a Diesel Generating Set. On October 10, 1986 the appellant extended rehabilitation assistance under the RSR Scheme of IDBI and treating the unit as a sick unit sanctioned a further amount of Rs. 3.93 lakhs. In spite of these facilities respondent No. 1 continued to make default in payment of instalments for repayment of the loan. On October 23, 1990 the appellant took over the possession of the unit of respondent No. 1 in exercise of the powers conferred on it under Section 29 of the Act. Thereafter the appellant took steps for sale of the unit and for that purpose a number of advertisements were issued inviting offers. No suitable offer was received in response to the first two advertisements. In response to third advertisement issued in August 1991, five offers were received. Out of them, the offer of Shri P.K. Joseph on behalf of M/s Chemtech Industries for a sum of Rs. 24 lakhs was the highest and the Board of the appellant approved the said offer and decided that the communication for acceptance of the offer should be sent only after October 15, 1991 so as to give an opportunity to respondent No. 1 to bring any other offer for a higher amount. Respondent No. 1 did not bring any D  
E  
F  
G  
H

A offer. But, in the meanwhile, Shri P.K. Joseph withdrew his offer on November 30, 1991. Thereafter respondent No. 1 indicated that it would submit a proposal for the revival of the unit but it failed to come up with any concrete proposal. Therefore, a fresh advertisement for the sale of the unit was issued on August 25, 1992. In response to the said advertisement, three offers were received. One offer was of M/s. Chemtech Industries for Rs. 23 lakh for land, building and machinery. The second offer was of M/s. Prime Inputs (India) Ltd. for a sum of Rs. 18 lakhs in respect of land and building only and the third offer was of M/s. Shakti Rubbers for Rs. 6 lakhs for plant and machinery only. A joint meeting of the offerers was held on September 28, 1992. Respondent No. 1 was also invited. After considering the said offers, a tentative decision was taken to accept the offers submitted by M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers. Respondent No. 1 sent a letter dated October 21, 1992 seeking 15 days time to make payment and submit a proposal for revival of the unit. By letter dated November 12, 1992, further time was sought by respondent No. 1 till December 15, 1992. On January 4, 1993, an offer was submitted by respondent No. 2 to purchase the entire unit including land, building, plants, furnishings and fixtures for Rs. 25 lakhs. The said proposal of respondent No. 2 as well as the offers received earlier were considered by the Board of the appellant and it was decided to accept the offers of M/s. Prime Inputs (India) Ltd. and M/s Shakti Rubbers. On January 25, 1993, agreement was entered for the sale of entire unit to them. Thereafter, respondents Nos. 1 and 2 filed the writ petition (CWC 3591 of 1993) in the Karnataka High Court which has given rise to this appeal. The said writ petition of respondents Nos. 1 and 2 was allowed by the learned single Judge of the High Court by judgment dated August 11, 1993 whereby all proceedings subsequent to receipt of tenders pursuant to public notice were quashed and the appellant was directed to observe the directions Nos. 2, 3 and 4 contained in paragraph 22 of the judgment of this Court in *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation and Others*, [1993] 2 SCC 279. Writ Appeal No. 3297 of 1993 filed by the appellant against the said judgment of learned single Judge was dismissed by the Division Bench of the High Court by judgment dated February 15, 1994. Hence this Appeal.

As indicated earlier, the learned single Judge, while allowing the writ petition filed by respondents Nos. 1 and 2, has directed the appellant to observe directions Nos. 2, 3 and 4 contained in paragraph 22 in the

judgment of *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors.*, (supra). The said directions are as follows : A

"(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price. B

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4) (a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount. C

(b) If he brings third parties with higher offer it would be tested and may be accepted." (p.297) D

Shri S. Ravindra Bhat, the learned counsel appearing for the appellant, has submitted that in the facts of the present case the said directions had been substantially complied with by the appellant. In this regard, the submission of the learned counsel is that a number of efforts were made to sell the unit of respondent No. 1 by issuing advertisements from time to time but no suitable offer was received in response to the first two advertisements that were issued in 1991 and the offer for a sum of Rs. 24 lakhs made by Shri P.K. Joseph on behalf of M/s. Chemtech Industries which was received in response to the third advertisement in 1991 was withdrawn by him on November 30, 1991. Thereafter, respondent No. 1 was given an opportunity to bring a better offer or to submit a proposal for revival but it failed to do so and, therefore, a fresh advertisement for sale of the unit was issued on August 25, 1992. In response to the said advertisement, three offers were received and offers submitted by M/s Prime Inputs (India) Ltd. for land and building and M/s. Shakti Rubbers for plant and machinery were found to be better than that submitted by M/s. Chemtech Industries. When the matter was under consideration, respondent No. 2 made an offer on January 4, 1993. The learned counsel has submitted that the said offer of respondent no. 2 was considered by the appellant and it was found that it was not better than the offers received from M/s Prime Inputs (India) E  
F  
G  
H

A Ltd. and M/s Shakti Rubbers for the following reasons:

(a) The offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers envisaged payment of dues of the Karnataka Electricity Board by the offerers, whereas the offer of respondent No. 2 proposed the said dues to be paid by the appellant;

B

(b) There was shorter time for payment of consideration in the offers of M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers inasmuch as the entire consideration was payable within 4 years, whereas offer of respondent No. 2 was a conditional offer and payment was to be completed in 5 years after initial commencement of production;

C

(c) In the case of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers, down payment of 25% amounting to Rs. 6 lakhs was made. In the case of respondent No. 2, only Rs. 2 lakhs was offered, and

D

(d) In the case of respondent No. 2, no earnest money was paid. All other parties deposited earnest money.

E

The appellant, therefore, did not accept the offer of respondent No. 2 and accepted the offers of M/s Prime Inputs (India) Ltd. and M/s. Shakti Rubbers. It is urged that the High Court was not justified in interfering with the said decision of the appellant.

F

Shri P. Mahale, the learned counsel appearing for respondent No. 1, has submitted that the offer of respondent No. 2 was much higher than the offers made by M/s. Prime Inputs (India) Ltd. and M/s Shakti Rubbers inasmuch as respondent No. 2 had also offered to pay a sum of Rs. 10 lakhs to Canara Bank in final settlement of dues of respondent No. 1 to the said Bank which had a second charge on the land, building and machinery and that this amount of Rs. 10 lakhs is in addition to Rs. 25 lakhs to be paid to the appellant.

G

The directions contained in paragraph 22 of the judgment in *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors.* (supra) are in the nature of guidelines for the exercise of the power under Section 29 of the Act. The action of the State Financial Corporation is not liable

H

to be interfered with if it has acted broadly in consonance with these guidelines. In the facts and circumstances of this case, we are of the opinion that the directions Nos. 2, 3 and 4 in these guidelines had been substantially complied with by the appellant. There was compliance with direction No. 2 inasmuch as before issuing the first advertisement for sale of the unit in March 1981 the unit had been evaluated at Rs. 28 lakhs. Keeping in view the various offers that have been received, it cannot be said that the said evaluation was improper. Directions Nos. 3 and 4 were also fulfilled inasmuch as respondent No. 1 was made aware of the various offers that had been received in response to the advertisements that were issued from time to time and respondent No. 1 was given sufficient opportunity to submit proposal for revival of the unit or to obtain higher offers. The only question is whether in accepting the offers of M/s. Prime Inputs (India) Ltd. and M/s Shakti Rubbers the appellant has rejected the higher offer of respondent No. 2. As pointed out earlier, the offer made by respondent No. 2 was not accepted by the appellant for the reasons that on proper evaluation it was found that it could not be regarded higher than that made by M/s Prime Inputs (India) Ltd. and M/s. Shakti Rubbers because it was found that the offer made by respondent No. 2 envisaged the payment of dues to the Karnataka Electricity Board by the appellant, whereas the offers made by M/s Prime Inputs (India) Ltd. and M/s. Shakti Rubbers envisaged payment of such dues by the offerers. It was also found that there was shorter time for payment of consideration in the offers of M/s Prime Inputs (India) Ltd. and M/s. Shakti Rubbers inasmuch as under the said offers the entire consideration is payable within 4 years, whereas in offer of respondent No. 2 the payment is to be completed in 5 years after initial commencement of production. Furthermore, it was found that in offers of M/s Prime Inputs (India) Ltd. and M/s. Shakti Rubbers, down payment of 25%, amounting to Rs. 6 lakhs, was being made, while in case of respondent No. 2 only Rs. 2 lakhs was offered. Moreover, in the offer of respondent No. 2 no earnest money was to be paid, while earnest money was to be deposited by other offerers. As regards the undertaking by respondent No. 2 to pay Rs. 10 lakhs to Canara Bank in final settlement of the dues of respondent No. 1, it may be stated that the said liability towards Canara Bank is secured by second charge on the land, plant and machinery that was being sold by the appellant. The said sale by the appellant was subject to the said charge. Every purchaser was bound to discharge the said liability of the Canara Bank and the offer of payment of Rs. 10 lakhs by

A

B

C

D

E

F

G

H

A respondent No. 2 to Canara Bank does not, therefore, enhance the value of the said offer.

B In the matter of a sale by the State Financial Corporation in exercise of the power conferred on it under Section 29 of the Act the scope of judicial review is confined to two situations, namely, (1) there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, i.e., unreasonably. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation. See : *U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. and Others*, [1993] 2 SCC 299 at p. 306. It has not been pointed out that there is any statutory violation on the part of the appellant in accepting the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers and in rejecting the offer of respondent No. 2. Nor can it be said that the action of the appellant in not accepting the offer of respondent No. 2 and accepting the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers was unfair or unreasonable. The High Court was, therefore, not justified in interfering with the action of the appellant in accepting the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers for the sale of the unit of respondent No. 1. The writ petition filed by respondents Nos. 1 and 2 is, therefore, liable to be dismissed.

E During the pendency of this appeal in this Court, respondent No. 1 had placed before the Court an offer made by M/s. Sunny Brooks to purchase the unit for Rs. 28 lakhs. The said offer cannot be said to be substantially higher than the offers made by M/s. Prime Inputs (India) Ltd. and M/s Shakti Rubbers in September 1992 so to justify interference with the sale by the appellant in favour of the said offers. We are, therefore, not inclined to uphold that impugned judgment of the High Court in view of the said offer.

G In the result, the appeal is allowed, the impugned judgment of the Division Bench of the High Court dated February 15, 1994 as well as the judgment of the learned single Judge dated August 11, 1993 are set aside and writ petition filed by respondents Nos. 1 and 2 is dismissed with costs.

K.K.T.

Appeal allowed.