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S.K. BHARGAVA

v.

THE COLLECTOR, CHANDIGARH AND ORS.

APRIL 23, 1998

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[B.N. KIRPAL AND S.S. MOHAMMED QUADRI, JJ.]

*Haryana Public Moneys (Recovery of Dues) Act, 1979/ State Financial Corporation Act, 1951 :*

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*S.3(1)(b)/ S.31—Issuance of recovery certificate—Opportunity of hearing to defaulter—Held, it is not a mere claim which is forwarded to Collector for realisation—It is 'sum due' as determined by Managing Director of Haryana Financial Corporation which alone is recoverable—The determination cannot be done without notice to alleged defaulter—As no opportunity of hearing was given to alleged defaulter while determining the*

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*sum due and before issuance of recovery certificate u/s 3(2) of 1979 Act, both determination of sum due and recovery certificate are vitiated and are set aside Administrative law—Principles of natural justice.*

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The Appellant was the Director of company which committed default in repayment of loan obtained by it from Haryana Financial Corporation. A winding up petition against the company was filed before the High Court. The company was ordered to be wound up. Haryana Financial Corporation filed an application under s. 31 of the State Financial Corporation Act, 1951. The Company Judge held the Corporation to be a preferential creditor. The assets of the company were sold and from the sale proceeds some amount was paid to the Corporation and in order to recover the balance, the Corporation took recourse to proceedings under s. 3(3) of Haryana Public Moneys (Recovery of Dues) Act, 1979. A recovery certificate was issued to the Collector for realisation of the said amount from various persons including the appellant.

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The appellant filed a writ petition before the High Court contending that no liability under the recovery notice could be fixed on him as he was not afforded an opportunity of being heard before issuance of the recovery certificate. He also pleaded that he had resigned as a Director of the Company. The High Court held that the guarantor was not entitled to any other notice

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before the amount sought to be realised could be recovered as the amount

due had been found to be recoverable in judicial proceedings. Aggrieved, the appellant filed the present appeal. A

Allowing the appeal, this Court.

**HELD : 1.1.** Before a certificate under sub-section (2) of Section 3 of Haryana Public Moneys (Recovery of Dues) Act, 1979 can be issued by the Managing Director of a Corporation or a Government Company to which the amount is due, he must determine the 'sum due' from the defaulter as enjoined upon him by Section 3(1)(b). It cannot be said that any such determination can take place without notice to the defaulter. The jurisdiction of the civil courts to go into the question as to what is the amount due is expressly ousted by sub-section (4) of Section 3. In its place, the power has been given to the Managing Director under Section 3(1)(b) to determine as to what is the amount due from the defaulter. Any such determination by the Managing Director will result in civil consequences ensuing. The determination being final and conclusive, would have the result of the passing of a final decree, inasmuch as the defaulters from whom any amount is found to be due, would become liable to pay the amount so determined and the Collector will have the right to recover the same as arrears of land revenue. B C D

[1163-B-D]

**1.2.** Even though Section 3 of 1979 Act does not expressly provide for an opportunity being given to the alleged defaulter to explain as to whether any amount is due or not but in view of the nature of the said provision, the principles of natural justice must be read into it. The requirement of determination of the sum due, by the Managing Director must be regarded as providing for the Managing Director hearing the alleged defaulter before coming to the conclusion as to what is the sum due. The very use of the words 'determine' and 'sum due' implies that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director. It is not a mere claim of the Corporation which is forwarded to the Collector for realisation, but it is the 'sum due' as determined by the Managing Director which alone is recoverable. This determination cannot be done without notice to the alleged defaulter. [1163-E-F] E F

*Director of Industries, U.P. & Ors., v. Deep Chand Aggarwal, [1980] 2 SCR 1015, distinguished* G

**2.** Determination by the Managing Director of the Corporation under s. 3(1)(b) of the sum due from the defaulter and the consequent certificate issued under s. 3(2) of the Act both are vitiated for non-compliance with H

A principles of natural justice, and are, therefore, set aside. The Managing Director will be at liberty to take proceedings afresh for recovery of the amounts due in accordance with law and in the light of the observations made in this judgment. [1164-D-E]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 599 of 1986.

From the Judgment and Order dated 26.7.85 of the Punjab & Haryana High Court in C.W.P. No.3203 of 1985.

C N.N. Goswami, Ms. Renu George and D.K. Garg for the Appellant.

Ms. S. Janani and Ms. Rukhsana Choudhary for the Respondent No. 3.

Pawan Kumar Bahl for P.K. Jain for the Respondent No. 5.

D Ms. Kamini Jaiswal for the Respondent No. 6.

The Judgment of the Court was delivered by

E **KIRPAL, J.** The short question which arises for consideration in this appeal by special leave is whether the Collector was justified in proceeding against the appellant, who was a Director of a company which is alleged to have defaulted in repayment of loan to the Haryana Financial Corporation, without affording the appellant an opportunity of being heard under the provisions of the Haryana Public Moneys (Recovery of Dues) Act, 1979.

F Briefly stated the facts are that the appellant was appointed as one of the Directors of M/s. Depro Foods Pvt. Ltd., which was subsequently converted into a public limited company. In 1971 and in 1973 the said company took loans on two occasions from the Financial Corporation. According to the appellant, he resigned as a Director of the company on 25th February, 1974 and the factum of his resignation was communicated to the Registrar of Companies on 11th March, 1974. It is further the case of the appellant that after he ceased to be a Director of the company, another loan of a sum of Rs. 3 lakhs on the basis of a registered mortgage was taken by the company on 12th November, 1974.

H It appears that default was committed by the company in repayment of the loan and the interest thereon. This led to the filing of the winding up

petition in the Punjab & Haryana High Court. On 18th September, 1978, the Haryana Financial Corporation filed an application under Section 31 of the State Financial Corporation Act, 1951 for an order for the recovery of Rs. 52,78,227.48 (Rs. 30,07,621,86 plus interest thereon) being the outstanding amount against the loans taken by the company on three different occasions. It may here be stated that by order dated 21st August, 1980, the company was ordered to be wound up. Thereupon in an application which was filed, the Company Judge by order dated 3rd December, 1981 held the Haryana Financial Corporation to be a preferential creditor in respect of the amounts which were due to it. Thereafter, the assets of the company were sold and from the proceeds thereof some amount was paid to the Haryana Financial Corporation. After adjusting the amount so paid, there remained a shortfall of Rs. 18,22,178.05 plus interest thereon.

In order to recover the shortfall of Rs. 18,22,178.05, the Corporation took recourse to proceedings under Section 3(3) of the Haryana Public Moneys (Recovery of Dues) Act, 1979 and a Recovery Certificate was thereupon issued to the Collector, Chandigarh for realisation of the said amount from various persons including the appellant. This certificate was transferred to the Collector, Delhi for effecting recovery. Thereupon, to cut a long story short, when the appellant did not get any redress from the Collector's office, he filed a writ petition in the Punjab & Haryana High Court, *inter alia*, contending that as he had resigned as a Director, no recovery could be effected from him. It was also stated therein that he had never been informed or made party to any of the proceedings before any authority whatsoever and no liability could be fixed on him merely by issuing a recovery notice. By a short judgment dated 26th July, 1985, a Division Bench of the High Court came to the conclusion that as the amount of Rs. 18,22,178.05 had been found to be recoverable in judicial proceedings, it did not think that the guarantor was entitled to any other notice before the amount which was sought to be realised, could be recovered. It is this decision which has been challenged in this appeal.

The Haryana Public Money (Recovery of Dues) Act, 1979 was enacted to provide for speedy recovery of certain classes of dues. Assuming that the appellant, who was a Director of the defaulting company at least at the time when loans were taken on two occasions, can be regarded as a 'defaulter' within the meaning of that expression occurring in Section 2(c) of the said Act, the question arises whether any determination of the amount due is required before recovery is effected under Section 3 of the Said Act.

A Section 3 of the said Act deals with the recovery of the dues as arrears of land revenue and reads as under :-

“3 (1) Where any sum is recoverable from a defaulter -

B (a) by the State Government, such officer as it may, by notification, appoint in this behalf;

(b) by a Corporation or a Government company, the Managing Director thereof, shall determine the sum due from the defaulter.

C (2) The Officer or the Managing Director, as the case may be, referred to in sub-section (1), shall send a certificate to the Collector mentioning the sum due from the defaulter and requesting that such sum together with the cost or proceedings be recovered as if it were an arrear of land revenue.

D (3) A certificate sent under sub-section (2) shall be conclusive proof of the matters stated therein and the Collector, on receipt of such certificate, shall proceed to recover the amount stated therein as arrear of land revenue.

(4) No civil court shall have jurisdiction -

E (a) to entertain or adjudicate upon any case; or

(b) to adjudicate upon or proceed with any pending case,

F Relating to the recovery of any sum due as aforesaid from the defaulter. The proceedings relating to the Recovery of the sums due from the defaulters, pending at the commencement of this Act in any civil court, shall abate.”

G It is not in dispute that before a certificate was sent by the Managing Director to the Collector for recovering the amount of Rs. 18,22,178.05, no notice was given to the appellant. Section 3(1) provides a procedure where any sum is recoverable from a defaulter. Section 3(1)(b) requires the Managing Director of Corporation or a Government company to whom amount is due to determine the sum due from the defaulter. It is that sum so found due in respect whereof certificate is sent by the Managing Director under sub-section (2) of Section 3. The certificate so sent is by sub-section (3) regarded as conclusive proof of matters stated therein and the Collector, on receipt of the said certificate, is required to proceed to recover the amount stated therein  
H as arrear of land revenue. Sub-section (4) ousts the jurisdiction of the civil

court to entertain or adjudicate upon any case or proceedings relating to the recovery of any sum due from the defaulter. A

It is clear from the perusal of the above quoted Section that before a certificate can be issued by the Managing Director under sub-section (2) of Section 3, he must determine the 'sum due' from the defaulter as enjoined upon him by Section 3(1)(b). It is difficult to appreciate the contention of the learned counsel for the respondent Financial Corporation that any such determination can take place without notice to the defaulter. The jurisdiction of the civil courts to go into the questions as to what is the amount due is expressly ousted by sub-section (4) of Section 3. In its place, the power has been given to the Managing Director under Section 3(1)(b) to determine as to what is the amount due from the defaulter. There can be no doubt that any such determination by the Managing Director will result in civil consequences ensuing. The determination being final and conclusive, would have the result of the passing of a final decree, inasmuch as the defaulters from whom any amount is fund to be due, would become liable to pay the amount so determined and the Collector will have the right to recover the same as arrears of land revenue. B C D

In our opinion, even though Section 3 does not expressly provide for an opportunity being given to the alleged defaulter to explain as to whether any amount is due or not but in view of the nature of the said provision, the principles of natural justice must be read into it. The requirement of determination of the sum due by the Managing Director must be regarded as providing for the Managing Director hearing the alleged defaulter before coming to the conclusion as to what is the sum due. The very use of the words 'determine' and 'sum due' implies that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director. It is not a mere claim of the Corporation which is forwarded to the Collector for realisation, but it is the 'sum due' as determined by the Managing Director which alone is recoverable. As already observed, this determination cannot be done without notice to the alleged defaulter. E F

Ms. S. Janani, learned counsel for the respondent Financial Corporation sought to rely upon the decision of this Court in *Director of Industries, U.P & Ors. v. Deep Chand Aggarwal*, [1980] 2 SCR 1015. In that case, the validity of Section 3 of the Public Moneys (Recovery of Dues) Act, 1965 of U.P. was challenged. That Section enabled the State Government to recover the sums advanced as arrears of land revenue and it was sought to be contended that the said provision was discriminatory and violative of Article 14 of the H

- A Constitution. The validity of the said Section 3 was upheld, but we find that the court was not called upon to deal with a question as to whether the principles of natural justice were implicitly enshrined in the said Section. In any case, this decision is of no assistance to the respondent for the simple reason that Section 3 of the U.P. Act is not identical with Section 3 of the Haryana Act, inasmuch as the U.P. Act did not contain a provision similar to
- B Section 3 (1)(b) of the Haryana Act which requires determination by the Managing Director of the sum due from the defaulter. We, however, do not express any opinion that where a provision like Section 3(1)(b) of the Haryana Act is not incorporated in a statute, whether the principles of natural justice would require a notice being given before any amount is sought to be
- C recovered as arrears of land revenue.

For the reasons hereinabove as, admittedly, principles of natural justice were not complied with, it must be held that determination of the Managing Director under Section 3(1)(b) and the consequent certificate issued under Section 3(2) of the Haryana Act, both were vitiated.

- D We, accordingly, allow this appeal, set aside the judgment of the High Court as well as the certificate issued to respondent No. 1 and the determination by the Managing Director under Section 3(1)(b). The Managing Director will be at liberty to take proceedings afresh for recovery of the amounts due in accordance with law and in the light of the observations made in this judgment.

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There will be no order as to costs.

R.P.

Appeal allowed.