

A BIHAR STATE FINANCIAL CORPN. AND ORS.
v.
M/S. CHEMICOT INDIA PVT. LTD. AND ORS.

AUGUST 24, 2006

B [S.B. SINHA AND DALVEER BHANDARI, JJ.]

Constitution of India, 1950:

C *Articles 136 and 226—Statutory organization—Orders—Judicial review*
D *of—State Financial Corporation—Entering into agreement with a small scale*
E *unit to disburse loan to it—Later, refusal to disburse the loan on the ground*
F *that the condition of producing DGTD registration certificate not fulfilled by*
G *the Unit—Writ petition of the Unit allowed by High Court—Held, Corporation*
H *being a statutory organization, ordinarily Court in its writ jurisdiction should*
not interfere with a decision taken by Corporation, but doctrine of promissory
estoppel would apply against Financial Corporation if a case is made out
therefor—However, in view of the subsequent events i.e., Unit lying closed for
years and its revival disputed, it would be futile to issue a writ of mandamus
directing the Corporation to pay the amount to the Unit—Administrative Law—
Promissory Estoppel—Subsequent events.

Respondent no. 1, a small scale industrial unit, applied to the appellant-State Financial Corporation, for sanction of loan. The loan was approved and agreements for loan were executed. Later, the respondent decided to expand its existing unit, and the Corporation agreed to sanction an additional amount of Rs.15 lakhs on the terms and conditions, *inter alia*, that the concern would submit DGTD Registration Certificate. The agreement was registered though no DGTD certificate was furnished. However, the Corporation refused to advance the amount as respondent no.1 had failed to furnish the requisite certificate. Respondent no. 1 filed a writ petition before the High Court which directed the Corporation to disburse the loan to respondent no. 1. Aggrieved, the Corporation filed the present appeal.

It was contended for the appellant-Corporation that as respondent no. 1 did not fulfil its obligation to repay the amount in terms of the earlier agreements, no writ of *mandamus* could issue. It was also submitted that

the factory was closed for years and was not in a position of revival. A

Allowing the appeal, the Court

HELD: 1.1. The appellant-Corporation is a statutory organization. Ordinarily, the Court in exercise of its writ jurisdiction, should not interfere with a decision taken by the Corporation, but, it is well settled, that the doctrine of promissory estoppel would apply as against the Financial Corporation if a case is made out therefor. The High Court proceeded on the basis that the Corporation being a statutory organization, could not take a stand different from the one taken in its order. The High Court may not be entirely correct in its approach as the transactions were governed by a statute and were essentially commercial in character. Unfortunately, however, the contentions, which have been raised before this Court, were not raised before the High Court. [315-G-H; 316-B] B C

2.1. This Court in exercise of its jurisdiction under Article 136 of the Constitution of India, indisputably, can take note of the subsequent events. Rightly or wrongly the amount of subsidy has not been paid to the Corporation for more than 15 years. Admittedly, now the unit is lying closed. No purpose would be served by directing the Corporation to pay unto the respondent the said amount of Rs.15 lakhs at this point of time. There is a serious dispute in regard to the viability of revival of the entire unit. This Court evidently cannot determine such a disputed question of fact in these proceedings. In the peculiar facts of the case, it would be futile to issue a writ of or in the nature of *mandamus* directing the Corporation to pay the amount of Rs.15 lakhs to the respondent-Company. The impugned judgment cannot be sustained and is set aside. [316-C-G] D E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 908 of 2000. F

From the Judgment and Order dated 5.6.1995 of the High Court of Judicature at Patna, in C.W.J.C. No. 1691/1990.

M.P. Jha, Ram Ekbal Roy, Harshwardhan Jha and Anil K. Chopra for the Appellants.

S.B. Sanyal, Ranjan Mukherjee, Gopal Singh and Anukul Raj (for B.B. Singh) for the Respondents. G

The Judgment of the Court was delivered by

S.B. SINHA, J. The 1st respondent herein had set up a small scale industrial unit. The appellant herein is an establishment constituted under the H

A State Financial Corporation Act, 1951. An application for sanction of loan in the Corporation was submitted by the respondent-Company. It was approved. The necessary agreements for loan were executed in terms whereof the properties of the 1st respondent were mortgaged.

B It was decided to expand the existing unit and procure some machinery therefor. The Respondent also placed orders for other and further equipments/machinery necessary for expansion of the said scheme. Allegedly, the Managing director of the Corporation visited the 1st respondent's factory on 29.1.1988 and having satisfied himself that there existed justification for expansion of the capacity utilization had agreed to sanction an additional term loan to the tune of Rs.15 lakhs on terms and conditions mentioned therein, some of which are as under :

“*Clause 7* : The concern will have to submit the following papers before the execution of the legal documents :-

D (a) Income Tax Clearance Certificate under section 230(A) of the Income Tax Act, 1961 in respect of the Directors.

(b) Original title deed in respect of land.

(c) Valid SSI, Registration Certificate.

E *Clause 24* : The concern shall have to submit D.G.T.D., Registration Certificate.”

F The agreement was registered on 31.3.1988, although no D.G.T.D. Certificate had been furnished. According to the 1st respondent, its unit being a small one, furnishing of such certificate was not necessary and in any event, the same was not granted by the authorities concerned. The Corporation refused to advance any amount on the terms that the 1st respondent had failed to furnish the said certificate, which according to it was necessary.

G A writ petition was filed by the respondent before the Patna High Court which was marked as C.W.J.C. No.1691/1990. On a finding that the Corporation has waived its right to insist upon the Respondent to furnish such certificate in view of the fact that the agreement was registered, the Corporation was directed to disburse the term loan to the respondent-Company. The Corporation is, thus, before us.

H Mr. M.P. Jha, learned counsel appearing on behalf of the Corporation,

submitted that in view of the fact that as the respondent did not fulfil its obligation to repay the amount in terms of agreement in respect of the loan taken by it on 10.3.1983, 20.3.1986 and 24.3.1987, no Writ of *Mandamus* could issue. It was submitted that the Allahabad Bank, from which the 1st respondent had also taken loan, has also filed a suit for recovery of the loan granted to it. A

Mr. S.B. Sanyal, learned Senior counsel appearing on behalf of the respondent, on the other hand, contended : B

(i) The Corporation could not have refused to fulfil its solemn promise to advance the additional subsidy of Rs.15 lakhs.

(ii) The requirement of furnishing of D.G.T.D. Registration Certificate was not applicable in the case of a Small Scale Industry and in any event, the Corporation having registered the said documents, the order sanctioning the amount could not have been refused to be honoured. C

At the outset, we may notice that on a query made by this Court as to whether the respondent-Company would be in a position to start the factory and commence production of Absorbent Cotton if the amount of loan was directed to be paid to it, an affidavit has been filed on behalf of the respondent-Company stating that the Corporation itself was responsible for the present state of affairs of the respondent as the sanctioned loan has not been disbursed in time. It was stated before us that the factory can be revived. The Corporation, however, in its affidavit stated : D E

“That it is submitted that the whole factory including the Machine rooms are in such a bad position that there is no machine available at the site and as per inspection done on 10.7.2006 by U.L. Karn, Branch Manager, Bihar State Financial Corporation, the petitioner herein, the main gate is locked for years. No one was seen since years as learnt from the neighbourhood, walls and structure of the factory are in damaged condition. There is no one attending the factory, there are no watch and ward staff, generators rooms are locked, machines rooms are empty, stores are locked, shutters are rotting in rain.” F G

The Respondent, however, denies and disputes the said statements.

The Corporation is a statutory organization. Ordinarily, the Court in exercise of its writ jurisdiction, should not interfere with a decision taken by it, but, it is well settled, that the doctrine of promissory estoppel would apply as against the financial corporation if a case is made out therefor. H

A In the writ petition the High Court was not concerned with the question as to whether the respondent had complied with the terms and conditions of the loan agreement in the matter of repaying of the installments in time, but was concerned with the question as to whether the Corporation being a statutory organization, could take a stand different from the one passed in its order.

B The High Court evidently proceeded on the basis that it could not have been done. The High Court may not be entirely correct in its approach as the transactions were governed by a statute and were essentially commercial in character. Unfortunately, however, the contentions, which have been raised before us, were not raised before the High Court.

C This Court in exercise of its jurisdiction under Article 136 of the Constitution of India, indisputably, can take note of the subsequent events. Rightly or wrongly the amount of subsidy has not been paid to the corporation for more than 15 years. Admittedly, now the unit is lying closed. The High Court and this Court having not been called upon to determine the question as to who was responsible therefor. Even otherwise, it is unnecessary to go

D into the said question. Fact, however, remains that no purpose would be served by directing the Corporation to pay unto the respondent the aforementioned amount of Rs.15 lakhs at this point of time. There is a serious dispute in regard to the viability of revival of the entire unit. This Court evidently cannot determine such a disputed question of fact in these

E proceedings.

We, therefore, in the peculiar facts of this case, are of the opinion that it would be futile to issue a writ of or in the nature of *mandamus* directing the Corporation to pay the aforementioned amount of Rs.15 lakhs to the respondent-Company. We may, however, hasten to add that we have not

F gone into the question as to whether the respondent-Company had paid any amount to the Corporation as against the loan amount which had admittedly been received by it. If the respondent-Company had not done so, the Corporation may take such steps in relation thereto, as it may be advised in this behalf but it goes without saying that it would be open to the respondent-

G Company to raise such contentions, including the payment of additional subsidy to it and/or effect thereof in the proceedings, which may be initiated by the Corporation. We are, therefore, of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly.

The appeal is allowed with the aforementioned observations. No costs.

H R.P.

Appeal allowed.