

the non obstante clause, notwithstanding anything contained in this Act, has to be born in mind while coming to the conclusion whether Section 94 of the Act excludes the applicability of Section 34 of the Act in the case of an insured cooperative bank.

(7) In this view of the matter, we are of the opinion that in case of an insured cooperative bank, special provisions contained in Section 94 of the Act would be applicable and not Section 34 of the Act.

(8) The law framers kept in view the special rights of an insured co-operative bank and for that reason made a special provision as is contained in Section 94 of the Act, wherein it was provided that if action is to be taken against an insured cooperative bank, it will be taken if so required by the Reserve Bank. In this case, there is no such requirement by the Reserve Bank of India and in the absence thereof Registrar under Section 94 of the Act could not take action against the Managing Committee or the Board of Directors.

(9) The action taken under Section 34 of the Act, is therefore, without jurisdiction. Even if the Deputy Registrar had mentioned that he was taking action under Section 94 of the Act but without being so required by the Reserve Bank of India, it would have been without jurisdiction.

(10) For the reasons recorded above, we allow the writ petition and quash order Annexure P-6 with costs, quantified at Rs. 1,000. Since the initiation of proceedings by the Registrar was without jurisdiction, order of suspension, Annexure P-1 is also quashed.

(11) However, this order will not stand in the way of the Registrar to take action afresh against the delinquent Board of Directors on the same allegations if so required by the Reserve Bank of India.

R.N.R.

Before : J. V. Gupta, A.C.J. & M. S. Liberhan, J.
VIKRAM STEERINGS & LINKAGES (PVT.) LTD.,
BHIWANI,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.
Civil Writ Petition No. 10433 of 1989.

8th May, 1990.

Constitution of India, 1950—Art. 226—State Financial Corporations Act (63 of 1951)—S. 32G—S. 32G as introduced in the Act by

Vikram Steerings and Linkages (Pvt.) Ltd., Bhiwani v. State of Haryana and others (M. S. Liberhan, J.)

Central Act 43 of 1989—Haryana Public Moneys (Recovery of Dues) Act, 1979—S. 3—Recovery of amount due as arrears of land revenue—Power to issue certificate for recovery u/s 32G without hearing challenged—State, however, defending recovery u/s 3 of the Haryana Act and not u/s 32G—Petitioner alleging sickness to apathy and inaction of Haryana Financial Corporation—Such plea raising disputed questions cannot be determined in writ jurisdiction—Mode for speedy recovery of dues u/s 3—Not unreasonable—Such provisions reasonably classified and bearing nexus with object of the statute.

Held, that where the recovery was being effected under the provision of Haryana Public Moneys (Recovery of Dues) Act, 1979 and no action was being taken under section 32G of the State Financial Corporation Act, the State of Uttar Pradesh provided u/s 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1965 which is almost in *Pari materia* with a provision of section 3 of the Haryana Act, 1979, a mode for speedy recovery of dues, the vires of which were challenged almost on the same ground *viz.* that the remedy is discriminatory, the High Court following the rule laid down by the Supreme Court in the case of *The Director of Industries, U.P. and others v. Deep Chand Agarwal*, A.I.R. 1989 S.C. 801 upheld the vires of the recovery provision of the Haryana Act, 1979.

(Paras 4 & 5)

Held, that where the petitioner had become a sick unit because of the apathy and inaction of the Financial Corporation, this disputed question cannot be determined in writ jurisdiction.

(Para 6)

Civil Writ Petition under Article 226/227 of the Constitution of India praying that :

- (a) *the record of the case be summoned and after perusal a writ of certiorari quashing the impugned action of the respondents in recovering the amount as arrears of land revenue be issued ;*
- (b) *A writ of prohibition restraining the respondents from recovering the amount by way of attachment and sale of the property etc. of the petitioner-Company as arrears of the land revenue be issued ;*
- (c) *issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and appropriate in the circumstances of the case ;*

(d) *Exempt the petitioner-Company from the service of advance notice on the respondents ;*

(e) *award cost of this petition to the petitioner.*

It is further prayed that during the pendency or the writ petition, the recovery of the amount as arrears of land revenue and arrest of the petitioner-Company's Managing Director (Shri R. K. Malik) may kindly be stayed.

P. C. Mehta, Sr. Advocate with S. N. Saini, Advocate, for the Petitioner.

N. K. Kapur, Advocate, for the Respondents.

JUDGMENT

M. S. Liberhan, J.

The petitioner-Company challenged the recovery of loan amount by way of arrears of land revenue. A loan of Rs. 15.65 lacs was sanctioned on March 27, 1984, which was repayable in fourteen half-yearly instalments. The petitioner started the project, but because of rise in prices of the machineries it ran into difficulties. The petitioner failed to meet the demand for re-payment of the loan. A certificate for recovery of the loan amount was issued in pursuance to which the collector, Bhiwani attached the industrial unit of the petitioner. The petitioner challenged the said recovery in a civil suit and further sought an injunction restraining the respondents from recovering the amount. Temporary injunction was granted subject to conditions imposed by the learned trial Court, which order was affirmed in appeal. However, it was pointed out that the suit was being withdrawn as a preliminary objection was raised that the civil Court had no jurisdiction to entertain and try the suit. The failure to repay the loan was attributed to the apathy and inaction of the Haryana Financial Corporation and it was stated that the unit had become a sick unit because of the attitude of the Financial Corporation.

(2) The petitioner challenged the vires of section 32-G of the State Financial Corporation Act. It was urged that the recovery certificate had been issued without hearing the petitioner and had an opportunity been given the petitioner would have satisfied the Corporation for not adopting such a harsh method. Reference to the other provisions of the State Financial Corporation Act was

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made. The main challenge to section 32-G of the Act is that the Authorities could issue a certificate for recovery of amount for arrears of land revenue to the Collector under section 32-G without providing an opportunity of hearing or notice to the industrial concern. Section 32-G as introduced in the Act by Central Act 43 of 1989 reads as under:—

“32-G. *Recovery of amount due to the Financial Corporation as an arrear of land revenue.*—Whereas any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector, shall proceed to recover that amount in the same manner as an arrear of land revenue.”

(3) The writ petition was filed as far back as on August 16, 1989 and the recovery was stayed. A number of opportunities were given to the petitioner to settle the matter. Finally, on February 5, 1990, the counsel for the petitioner wanted time to approach the Financial Corporation for making arrangement for payment. It was made clear that in case no arrangement was made by March 3, 1990, the stay of recovery shall stand vacated. In spite of that, another opportunity was afforded but nothing substantial happened.

(4) The learned counsel for the respondents refuted the submissions made by the counsel for the petitioner and contended that the recovery was being effected under the provisions of section 3 of the Haryana Public Moneys (Recovery of Dues) Act, 1979 and no action was being taken under section 32-G of the State Financial Corporation Act. The U.P. State provides under section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1965 (25 of 1965), which is almost *pari materia* with the provisions of section 3 of the Haryana Public Moneys (Recovery of Dues) Act, 1979, a mode for speedy recovery of the dues, the vires of which were challenged almost on the same ground, viz, that the remedy is discriminatory.

(5) In *The Director of Industries, U.P. and others v. Deep Chand Agarwal*, (1) their Lordships of the Supreme Court while upholding the vires of the provisions of the Act observed as under:

"The Act is passed with the object of providing a speedier remedy to the State Government to realise the loans advanced by it or by the Uttar Pradesh Financial Corporation. The State Government while advancing loans does not act as an ordinary banker with a view to earning interest. Ordinarily it advances loans in order to assist the people financially in establishing an industry in the State or for the development of agriculture, animal husbandry and for such other purposes which would advance the economic well-being of the people. Moneys advanced by the State Government have got to be recovered expeditiously so that fresh advances may be made from the State Government. It is with the object of avoiding the usual delay involved in the disposal of suits in civil Courts and providing for an expeditious remedy, the Act has been enacted. It cannot, therefore, be said that there is no reasonable basis for the classification made by the statute and the classification does not have a reasonable relation to the object of the statute. It is no doubt true that there is no express provision in the Act containing guidelines. That, however, is not sufficient to hold that section 3 of the Act confers arbitrary power on the State Government and makes a hostile discrimination. An officer authorised by the State Government to issue the certificate is expected ordinarily to avail himself of the speedier remedy provided under the statute. The Act which is passed with the object of providing a speedier remedy itself provides sufficient guidance to the officer concerned as to when he should resort to the remedy provided by it."

(6) Again, it was submitted that the situation has reached where the petitioner had become a sick unit because of the apathy and inaction of the Financial Corporation. We are afraid, this disputed question cannot be determined in writ jurisdiction.

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(7) No other point has been raised to interfere with the recovery of the amount by the State Financial Corporation, in exercise of writ jurisdiction.

(8) The writ petition is dismissed with the above observations. There shall, however, be no order as to costs.

R.N.R.

Before : J. V. Gupta, A.C.J. & M. S. Liberhan, J.

HARDWARI LAL,—Appellant.

versus

UNION OF INDIA AND OTHERS,—Respondents.

L.P.A. No. 743 of 1984

10th May, 1990.

State Bank of India (Subsidiary Banks) Act, 1959—Ss. 29, 32 & 63—State Bank of Patiala (Officers') Service Regulations, 1979—Regl. 2(e) & 3(e) & 20—Resignation—Withdrawal of—Managing Director, the competent authority to accept resignation—M.D. on leave—General Manager accepting resignation during the absence of M.D.—G.M. vested only with financial and administrative powers of Managing Director in his absence—In exercise of such power G.M. accepting resignation—Acceptance confirmed by executive committee and thereafter by the Chairman of State Bank of Patiala—Managing Director as delegate of the Board of Directors cannot further sub-delegate his power—In temporary absence of M.D. of subsidiary bank only State Bank of India has power to appoint any other person to officiate as M.D. u/s 32—G.M. not competent to accept resignation—Employee continues in service—Effect of ratification of the order of the G.M. by the executive committee and the Board—Ratification by an authority who has no power to perform act cannot save the order—Power to accept resignation is not mere administrative power—Acceptance of resignation is a condition of service—G.M. is not clothed with this power.

Held, that there is no provision either under the State Bank of India (Subsidiary Banks) Act, 1959 or the State Bank of Patiala (Officers') Service Regulations, 1979 or any Resolution of the Board of Directors, authorising the Managing Director to further delegate his powers conferred upon him by the Board of Directors.

(Para 18)