U.P. Financial Corporation vs Gem Cap (India) Pvt. Ltd. And Ors on 2 March, 1993

Equivalent citations: 1993 AIR 1435, 1993 SCR (2) 149, AIR 1993 SUPREME COURT 1435, 1993 (2) SCC 299, 1993 AIR SCW 1189, 1993 ALL. L. J. 515, (1993) 2 JT 226 (SC), (1995) 5 COMLJ 559, 1993 (2) ALL CJ 853, (1993) 2 SCR 149 (SC), 1993 (2) JT 226, (1997) 2 BANKLJ 363, (1994) 2 BANKCLR 95, (1993) 78 COMCAS 408, (1993) 2 ALL WC 1125, (1993) 1 CURCC 581, (1993) 2 MAD LJ 23, 1993 BBCJ 128

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, Kuldip Singh

PETITIONER:
U.P. FINANCIAL CORPORATION

Vs.

RESPONDENT:
GEM CAP (INDIA) PVT. LTD. AND ORS.

DATE OF JUDGMENT02/03/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
KULDIP SINGH (J)

CITATION:
1993 AIR 1435 1993 SCR (2) 149
1993 SCC (2) 299 JT 1993 (2) 226
1993 SCALE (1)747

ACT:
State Financial Corporations Act, 1951:
Section 29. Company--Loan by Corporation-Default in payment of loan by Debtor-Company-Proceedings by Corporation for recovery of amount due- Validity of-Corporation's obligation to Act fairly extent of-Held obligation to act fairly does not extend to revive and resurrect every sick industry-Fairness required of Corporation cannot be carried to the extent of disabling it from recovering what is due to Corporation.
Constitution of India, 1950. Article 226
High Court-Jurisdiction-Limitation on exercise of-Review of

action of administrative authorities-High Court cannot act as an appellate authority.
Article 12-State-Financial Corporation is instrumentality of state.
Administrative Law.
Judicial Review of Administrative action-Scope of.
Doctrine of fairness.

HEADNOTE:
The respondent-Company obtained loan from the appellant-Financial Corporation. Soon after obtaining the loan it ceased to, operate and was declared a sick unit. Consequently, it did not make any repayment of loan as stipulated in the agreement and the hypothecation deeds. Thereafter, the appellant-Corporation issued notice under section 29 of the State Financial Corporations Act, 1951 for taking over the respondent's unit for recovery of the amount due Rs.38.57 lakhs. Ile respondent-Company filed a writ petition in the Allahabad High Court questioning the appellant's action. Ile High Court allowed the petition and directed (1) expeditious rehabilitation of the concern and (2) to restore back the
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possession of the unit to the respondent-Company. Against the judgment of the High Court the Financial Corporation riled an appeal in this Court.
Allowing the appeal and setting aside the order of the High Court, this Court,
HELD : 1. It is true that the appellant-Corporation which Is an instrumentality of the State created under the State Financial Corporations Act, 1951 is not like an ordinary money- lender or a Bank which lends money. It is a lender with a purpose the purpose being promoting the small and medium industries. At the same time, It is necessary to keep certain basic facts In view. The relationship between the Corporation and the borrower is that of creditor and debtor. the Corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. Corporations too borrow monies from Government or other financial corporations and they too have to pay interest thereon. No doubt it has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved.
[156H, 157A-C,F,]
Promoting industrilisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent

of disabling it from recovering what Is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled band and foot in the name of fairness. Fairness is not a one way street more particularly in matters like the present one. The fairness required of it must be tempered nay, determined in the light of all these circumstances. In the instant case the respondents have no intention of repaying any part of the debt.They were merely putting forward one or other ploy to keep the Corporation at bay. [157D-F]

Mahesh Chandra v. Regional Manager, U.P. Financial Corporation Ors., (1992) 2 J.T.. 326, held Inapplicable.

2. In a matter between the corporation and Its debtor, a writ court has no say except in two situations : (1) there is a statutory violation on the part of the Corporation or (2) where the Corporation acts unfairly i.e.

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unreasonably. The High Court exercising its jurisdiction under Article 226 of the Constitution cannot sit as an Appellate Authority over the acts and deeds of the Corporation and seek to correct them. Doctrine of fairness. evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints self-imposed undoubtedly of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction way become rudderless. [157G-H, 158A]

2.1. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the Rule of law and to prevent failure of justice. This doctrine is complementary to the principle of natural justice which the Quasi-judicial Authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin. But even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities. The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervenes. [158C-F]

A.K Kraipak & Ors. v. Union of India & Ors., A.I.R. 1970 S.C. 150; Secretary of State for Education v. Talimeside Metropolitan Borough Council, 1977 A.C. 1014 and Associated Provincial Picture Houses Ltd., v. Wednesbury Corporation, (1948) 1 K.B. 223, relied on.

3. While passing the impugned order the High Court has not kept in mind the well-recognised limitations of its

jurisdiction under Article 226 of the Constitution. While reviewing the administrative action it was not justified in acting as an appellate court. [153D,159C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 830 of 1993. From the Judgment and Order dated 6.4.87 of the Allahabad High Court in Civil Misc. W.P. No. 20544 of 1986. S. Markandeya for the Appellant Pankaj Kalra for the Respondents.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. The appeal is directed against the judgment and order of a Division Bench of the Allahabad High Court allowing Writ Petition 20544 of 1986 with certain directions. The first respondent Gem Cap (India) Pvt. Ltd. is a private limited company. Second respondment is its Managing Director. At the request of the respondents, the appellant, U.P. Financial Corporation, sanctioned a loan of Rs. 29.70 lakhs. The terms and conditions of loan and the manner of repayment of the loan are contained in the agreement and hypothecation deeds executed in 1981. Suffice it to note that loan was repayable in certain specified instalments alongwith interest. A sum of Rs. 26, 29, 578 was released to the respondents. The first respondent went into production in December 1982. Within a few months i.e., in March 1983 its operations ceased. By an order dated February 21, 1984 the first respondent-unit was declared a sick unit. The respondents did not make any repayment as stipulated in the agreement and hypothecation deeds whereupon the Corporation took steps to take over the unit under Section 29 of the State Financial Corporations Act, 1951 for recovering an amount of Rs. 38.57 lakhs due to it by that date vide notice dated July 10, 1984. Then started a series of Writ Petitions by the respondents, all designed to stall the appellant from taking over and/or recovering the amount due to it. It is not necessary to trace the course of the several writ petitions except the one from which the present appeal arises.

Writ Petition 20544 of 1986 was filed questioning the taking over of the first respondent-unit by the appellant- Corporation under Section 29 of the Act and for a direction to the appellant to reschedule the repayment of debt in accordance with the earlier orders of the High Court. The writ petition has been allowed with the following directions :

> "(1) Having regard to the discussion made above we direct the U.P. Financial Corporation :-
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> (1) to consider expeditiously the resolution dated 29.1.1986aimed at the rehabilitation of the industrial concern in question in the light of the feasibility report of the U.P. Industrial Consultants Ltd. the Financial aid forthcoming from the Bank of Baroda and other financial institutions and the reports of the managing director of the corporation dated 18.12.85 and 29.1.1986;

(2) to restore back possession of the unit to the petition No. 1 forthwith.

The notice dated 11.6.1986 issued by the Corporation under Section 29 of the State Financial Corporation Act, 1951 shall, however, remain alive it being open to the Corporation to proceed further in pursuance thereof in case the rehabilitation deal is given a fair trial but does not bear fruit.

The petition is allowed accordingly with no order, however, as to costs."

With great respect to the Learned Judges who allowed the writ petition we feel constrained to say this : a reading of the judgment shows that they have not kept in mind the well- recognised limitations of their jurisdiction under Article 226 of the Constitution. The judgment reads as If they were setting as an Appellate Authority over the appellate- Corporation. Not a single provision of law is said to have been violated. The exclusive concern of the court appears to be to revive and resurrect the respondent-Company, with the aid of public funds, without giving any thought to the interest of public financial institutions. The approach is : "the Corporafion is supposed to act in the best interest of the industrial concern with the object primarily to promote and advance the industrial activity without, of course, undue involvement or risk of its financial commitment's..... It needs no emphasis to say that the Corporation is conceived '.Regional Development Bank with the principal object to accelerate the industrial growth in the State by providing financial assistance mainly to small and smaller of the medium scale industries. The approach has to be business like in conformity with the declared policy of the State Govt. If the unit is potentially viable or such as maY be capable of being rehabilitated, it would deserve being administered proper treatment and not lead to its liquidation." Here was a company which drew substantial public funds and became sick within three months of its going into production. One of the main reasons for its sickness appears to be the inter-necine fight between the two groups controlling the Company. The unit was closed. It was not paying a single pie in repayment of the loan neither the principal nor the interest. Already a huge amount was due to the appellant. There was no prospect of its recovery. And yet other financial corporations were being asked by the court, four years after its closure, to sink more money into the sick unit. Though a passing reference is made to the financial risk of appellant. this concern was not translated into appropriate directions. The Corporation was not allowed to sell the unit when it wanted to in 1984-85. Now, it is difficult to sell it, because it has been lying closed for about 8 years and more. The machinery must have become junk. While the Company could not be revived, the appellant-corporation now stands to lose more than a crore of rupees all public money in this one instance. To continue the factual narration against the judgment of the Allahabad High Court aforesaid (dated April 6, 1987) the appellant filed this appeal and on May 8, 1987 this Court while issuing notice on the SLP directed stay of operation of the judgment of the High court. After the respondents filed a counter affidavit this Court made the following order on September 18, 1987 :

> "Stay made absolute with the direction that there shall be no sale of the industrial unit. Hearing expedited. To be heard alongwith Civil Appeal No. 568 of 1987."

The S.L.P. could not be heard finally though it was posted for hearing on certain dates. On November 13, 1991, the counsel for the respondents made an offer which is recorded in the order of that date. It reads "This matter is adjourned for 11.12.91. Mr. Shanti Bhushan, Sr. Adv., suggests that in view of the lapse of time of more than 5 years the position has changed and the Corporation

should now consider the feasibility of taking over the assets in liquidation of the dues by making an assessment and consider relieving the directors from their personal responsibilities to the corporation and the other creditors."

The subsequent order dated December 12, 1991, however, shows that the appellant-corporation refused to bite the bait. The amount due to it had risen to over a crore of rupees by now. Whereupon, this Court passed the following order :

> "The appellant in consultation with the other creditors is permitted to put-up the industrial undertaking of the firstrespondent for sale. It may do so either by public auction or by inviting tenders or by an combination of both. It may proceed to do so within a period of two months from today. While permitting the appellant to take steps for the sale, we make it clear that before accepting the offers, the appellant should obtain prior permission of this Court. List this matter after 10 weeks, i.e., in the first week of March, 92."

It is clear as to why the unit could not be sold . On March 13, 1992, this Court passed the following further order:

> "We have heard learned counsel on both sides. Apart from the merits of the issues raised, it appears to us that the present impasse is to nobody's advantage. The dispute has to be resolved in some meaningful way. We accordingly direct the respondent-Company and Sri K.P. Chaturvedi, who claims to be in- charge of the affairs of the Company, to confirm in writing to the petitioner-Cor- poration within three weeks from today that they unconditionally agree to settle the claims of the. Financial Corporation at a figure which would represent the principal amount said to be Rs. 26.30 lacs and interest thereon from the inception at 13.5% per year with half yearly rests calculated upto 25.7.1986.
>
> If such an offer is made, the Financial Corporation will assess the merit and acceptability of that offer and take within six weeks thereafter, an appropriate decision including the manner in which and the period over which the payment should be completed, and if the Financial Corporation agrees to grant time for payment, the rate of interest for the deferred period. The decision taken by the Corporation will be placed before this Court.
>
> If, however, any offer, as indicated above, is not communicated by the company or Sri Chaturvedi within a period of three weeks from today, then the Financial Corporation shall be at liberty to initiate, with notice to the respondents, steps for the sale by public auction of the subjectmatter of the security in its favour and to treat and hold the proceeds of sale as substituted security in the place of the subject-matter of the security, subject to the final result of this S.L.P. Call this matter in the 3rd week of May, 1992."

Pursuant to the said order the second respondent, Managing Director of the first respondent-Company merely wrote a letter addressed to the appellant-Corporation, to the following effect :

> "We, herewith, attach a photo copy of the captioned order which is self explicit. We, however, unconditionally agree to abide with the directions given to us by the Hon'ble Supreme Court.
>
> Further, as the Corporation is aware that the Unit (Company) as well as The Registered Office of the Company, both are in possession of the Corporation, we shall feel obliged if you kindly communicate your views to us at the below given address."

It is evident that the letter written by the second respondent is not in terms of the order to this Court dated March 13, 1992. No figure is mentioned-nor is it mentioned as to how and in what manner the said huge debt is sought to be repaid by the respondents. Evidently, the appellant- corporation could not pay any heed to such a letter. When the matter came before this Court the second respondent appeared in-person stating that he has discharged his advocate and that he will argue the matter himself. The matter again came up before us on 19.2.1993 when we heard the appellant's counsel and the second respondent in-person. We allowed the appeal stating that the reasons would follow. There are the reasons for the order.

It is true that the appellant Corporation is an instrumentality of the State created under the State Finance Corporation Act, 1951. The said Act was made by the Parliament with a view to promote industrialisation of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a period not exceeding 20 years from the date of loan. We agree that the Corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, mote particularly it? matters like the present one. The above narration of facts shows that the respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the Corporation at bay. Approaching the Courts through successive writ petitions is but a part of this game. Another circumstance. These Corporation are not sitting on King Solomon's mines. They too borrow monies from Government or other'financial corporation. They too have to pay interest thereon. The fairness required of it must be tempered

nay, determined, in the light of all these circumstances. Indeed, in a matter between the Corporation and its debtor, a writ court has no say except in two situation : (1) there is a statutory violation on the part of the Corporation or (21) Where the Corporation acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an Appellate Authority over the acts and deeds of the corporation and seek to correct them ? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints self-imposed undoubtedly of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

The obligation to act fairly on the part of the administrative authorities was evolved to ensure the Rule of Law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the Quasi-Judicial Authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak & Ors. v. Union of India & Ors., AIR 1970 S.C. 150. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi- judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred' (Lord Diplock in Secretary of State for Education v. Tameside Metropolitan Borough Counsel, 1977 AC 1014 at 1064). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene MR in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, (1948) 1 KB at 229.

> "It is true the discretion must be exercised reasonably. Now what does than mean ? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.' While this is not the occasion to examine the content and contours of the doctrine of fairness, it is enough to reiterate for the purpose of this case that the power of the High Court while reviewing the

administrative action is not that of an appellate court. The judgment under appeal precisely does that and for that reason is liable to be and is herewith set aside.

On behalf of the appellant reliance has been placed upon the decision of this court in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors., (1992) 2 J.T.

326. We have perused the decision. That was a case where the debtor was anxious to pay off the debt and had been taking several steps to discharge his obligation. On the facts of that particular 'case it was found that the corporation was acting reasonably. In that context certain observations were made. The decision also deals with the procedure to be adopted by the Corporation while selling the units taken over under Section 29. That aspect is not relevant in this case. We are, therefore, of the opinion that the said decision is of no help to the appellant herein.

The appeal is accordingly allowed. The respondents shall pay the .costs of the appellant assessed at Rs. 10,000 consolidated.

T.N.A. Appeal allowed.