Delhi Fin. Corpn. And Anr. vs Rajiv Anand And Ors. on 24 March, 2004

Equivalent citations: [2006]131COMPCAS285(SC), 122(2005)DLT546(SC), (2004)11SCC625, AIRONLINE 2004 SC 731

Bench: S.N. Variava, H.K. Sema

ORDER

1. All these Appeals can be disposed of by this common Judgment. In all these cases monies has been borrowed from Financial Corporations. Action was initiated under Section 32G of the State Financial Corporations Act, 1951. The State Government having appointed the respective Managing Directors as the authority under Section 32G.

2. Certificates of Recovery were issued by the Managing Directors. Writ Petitions were filed in the Delhi High Court and the Punjab and Haryana High Court challenging the appointment of Managing Director as the authority and the Certificates of Recovery.

3. The Delhi High Court has, in the Judgment impugned in Civil Appeal Nos. 4014-4017 of 1998 and 4018-4021 of 1998, held that the appointment of the Managing Director was against the principle that 'no man can be a judge in his own cause' and struck down the appointment of the Managing Director and accordingly struck down the Certificate of Recovery. On the other hand, the Punjab and Haryana High Court has in the Judgment, impugned in Civil Appeal No. 7818 of 2002, disagreed with the view of the Delhi. High Court and has upheld the appointment of the Managing Director. However, on facts of that case, it was held that the opportunity of being heard had not been granted and the matter was referred back for giving a hearing to the party and passing a fresh order. The Financial Corporations being aggrieved by the Judgment of the Delhi High Court have come in Appeal against that Judgment. The party being aggrieved by the Judgment of the Punjab & Haryana High Court has come in Appeal against that Judgment.

4. At this stage it must be mentioned that even though the Delhi High Court allowed the Writ Petitions on the above mentioned ground, all other points raised in the Writ Petitions were answered against the party. Mr. Mehta relied upon the authorities of this Court in the cases of Management of Northern Railways Co-operative Society Ltd. v. Industrial Tribunal, Rajasthan, Jaipur and Anr. and Employees in Relation to the Management of India Cable Co. v. Their workmen and submitted that even though the findings on the other points were against his clients and the Appeal had only been filed by the Financial Corporations the Respondents could still support that Judgment on all available points. We have accepted that proposition. We therefore heard these Appeals on all points canvassed before us.

5. The first question which arises is whether the Managing Director of a Corporation can be appointed by the State Government as the authority contemplated under Section 32G of the State

Financial Corporations Act. Section 32G reads as follows:-

> "32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue. - Where 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."

6. The Delhi High Court relied upon, amongst others, the Judgments of this Court in the cases of A.K. Kraipak and Ors. v. Union of India and Ors. ; Gullapalli Nageswara Rao and Ors. v. Andhra Pradesh State Road Transport Corporation and Anr. and Krishna Bus Service Pvt. Ltd. v. State of Haryana and Ors. . On the basis of these Judgments, the Delhi High Court held that Section 32G was not unconstitutional. The Delhi High Court however held that. Section 32G postulates appointment of an independent person. The Delhi High Court held that the Managing Director or any other official of the Financial Corporation could not be appointed by the State Government as an authority under Section 32G of the Act. The Delhi High Court has held that the question was not whether the Managing Director would be biased or not. It is held that the real question was whether his appointment as an authority under Section 32G would inspire confidence of the entrepreneur or not. The Delhi High Court has held that his appointment would not inspire confidence as the question was not of the bias but of the reasonable likelihood of bias. The Delhi High Court has held that it is against all canons of justice to make a man a judge in his own cause. It is held that justice should not only be done but should be seen to be done as well.

7. The Punjab and Haryana High Court has disagreed with this view. It has held that the decision of the Delhi High Court appears to be based on the assumption that the function of the authority was akin to the determination of a lis/dispute between the parties. The Punjab and Haryana High Court has held that the procedure laid down for issuance of Recovery Certificates does not involve adjudication of a lis in a strict sense. It has held that the only thing which the State Government or the specified authority is to do before issuing a Certificate is to go through the contents of the application filed on behalf of the Corporation and the objection, if any, raised by the persons to whom notice is issued. The Punjab & Haryana High Court has held that ordinarily, the loanee, would know his liability which is to be repaid to the Corporation along with interest at the specified rate. It was held that the loanee would know the total period of default and the amount which could be recovered by the Corporation. It was held that even then he was free to raise all permissible objections. It was held that likewise the guarantor would always be aware of the terms and conditions and could raise objections to the issuance of a Recovery Certificate. The Punjab and Haryana High Court has held that all that the State Government or the Specified Authority was required to do was to make a mathematical calculation of the amount due in accordance with the terms of the agreement including the rate of interest and then pass the necessary order for issuance

of a Recovery Certificate. It was held that in such cases no question arises of any departmental or institutional bias. It is held that such appointments cannot be vitiated on the ground of bias or on the ground of violation of the rule that 'no man can be a judge in his own cause'.

8. To consider which view is correct one needs to look at the law laid down by this Court. In the case of Gullapalli Nageswara Rao and Ors. v. Andhra Pradesh State Road Transport Corporation and Anr. a scheme was published by the General Manager of the Andhra Pradesh State Transport undertaking. Objections were invited to that scheme. Those objections were, pursuant to an order of the Chief Minister, heard by the Secretary to the Home Department. The Secretary to the Home Department then placed his note and comments before the Chief Minister who then passed the order approving the scheme. The scheme was challenged, inter alia, on the ground that the principles of natural justice had been violated inasmuch as the authority empowered to decide the matter could not have heard the objections. The Constitution Bench of this Court took note of the fact that the Secretary was in charge of the Transport Department and as such he was also head of the State Transport Corporation. It, was found that the Secretary had been responsible for framing of the scheme; that he had then received and heard objections; made notes and presumably discussed the matter with the Chief Minister before the latter approved the scheme. It was noted that even though formal orders were passed by the Chief Minister, the inquiry was conducted and personal hearing was given by one of the parties to the dispute itself. On these facts, it was held that persons who are entrusted with the duty of hearing a case judicially should be one who have no personal bias in the matter. On these facts, the majority of the Judges applied the principle that 'no man can be a judge on his own cause' and struck down the scheme. However Justice Wanchoo and Justice B.P. Singh held that the action of the Government was purely administrative and that in such cases it does not follow that the Secretary was an improper person, to hear the objections.

9. This question again came up for consideration before a Constitution Bench of this Court in the case of Lachhman Das on behalf of Firm Tilak Ram Bux v. State of Punjab and Ors. . The facts of this case are almost identical to the facts of the present case. In Lachhman Das's case (supra) the statute provided a special procedure of recovery. Under the provisions of the statute the head of the department, was authorised to determine the exact amount due and recoverable from defaulters. Under the statute the head of the department was the Managing Director of the Patiala State Bank. The Constitutional validity of that procedure was challenged. The question was whether in such cases the doctrine that "no man can be a judge in his own cause" applies. The Constitution Bench of this Court considered this question and unanimously held as follows:-

> "We must next refer to the hierarchy of officers constituted under the Act. At the top are the Ministers; then there is a Board of Directors; next comes the Managing Director, and subordinate to him are a host of officers in charge of the several departments and branches. The Board of Directors is to consist of the Prime Minister, Finance Minister three members nominated by the Ruler, two of whom are non-officials representing important clients of the Bank, and the Managing Director. The Managing Director has power to sanction loans on personal security up to Rs. 3,000/- and on pledge of goods up to Rs. 25,000/-. Beyond that limit it is the Board that can sanction loans.

> We may now examine how far the contention of the appellants that the procedure prescribed by the Act and the Rules is opposed to rules of natural justice is well founded. The first complaint is that it is it the Managing Director, who is in charge of the day to day administration of the Bank, and that therefore he is not the proper person to decide the dispute, because his own action must be under challenge. We see no force in this contention. The Managing Director is a high ranking official on a salary scale of Rs. 1,600-100-2,500, with a free furnished residence. He has no personal interest in the transaction and there is no question of bias, or any conflict between his interest and duty. Loans are sanctioned by the appropriate authorities under the Rules, and the customer operates on the account through cheques and deposit receipts, and there could be no question of any attack on the actions of the Managing Director. How unsubstantial this objection is will be seen from the fact that the loan dated May 23, 1953, with which we are concerned could have been sanctioned under the Rules, not by the Managing Director, but only by the Board."

At this stage even though this does not concern this point the further observations made may also be reproduced as they have a bearing on other points urged before us: -

> "It is then said that the hearing before the Managing Director is perfunctory, that under Rule 6, he is only to examine the objections stated in the written statement "in the light of the relevant records of the department" and decide the dispute, and that there is thus no real opportunity afforded to the parties to present their case. This argument proceeds on a misconception of the true scope of Rule 6. It does not bar the parties from examining witnesses or producing other documentary evidence. The Managing Director, has, under this Rule, to examine the statement and the records of the Bank, in so far as they bear on the points in dispute and that normally, would be all that is relevant. But he is not precluded by the Rule from examining witnesses or taking into account other documentary evidence, if he consider that that is necessary for a proper determination of the dispute. And whether he should do so or not is a matter left to his discretion. Discussing a somewhat similar question arising on the language of Section 68-D(2) of the Motor Vehicles Act, 1939, this Court observed in Malik Ram v. State of Rajasthan:
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> "It will therefore be for the State Government, or as in this case the officer concerned, to decide in case any party desires to lead evidence whether firstly the evidence is necessary and relevant to the inquiry before it. If it considers that evidence is necessary, it will give a reasonable opportunity to the party desiring to produce evidence to give evidence relevant to the enquiry and within reason and it would have all the powers of controlling and giving and the recording of evidence that any court has. Subject therefore to this over-riding power of the State Government or the officer giving the hearing, the parties entitled to give evidence either documentary or oral during a hearing under Section 68-D(2)."

10. Faced with this authority, it was submitted that the observations made by the Constitution Bench are per incuriam inasmuch as this authority has not taken note of the Judgment in Gullapalli Nageswara Rao's case (supra). We are unable to accept this submission. It is to be seen that there is a big difference in the facts of the two cases. The doctrine that 'no man can be a judge in his own cause' can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a Corporation is named to be the authority, does not by itself bring into the operation the doctrine 'no man can be a judge in his own cause'. Of course in individual cases bias may be shown against a particular officer but in the absence of any proof of personal bias or connection merely because officers of a particular Corporation is named as the authority does not mean that those officers would be biased. As has been held by the Constitution Bench a Managing Director is a high ranking officer. He is not personally interested in the transaction. There is no question of any bias or conflict between his interest and his duty. In Gullapalli Nageswar Rao's case (supra) the Secretary who had framed the scheme then proceeded to hear the objections and advise the Chief Minister. It is because of the personal involvement of the Secretary that the majority took the view. Even then two Judges held that it did not follow that he was an improper person to hear the objections.

11. At this stage it must also be mentioned that the control of the State Financial Corporation Act, by virtue of Section 9, vests in a Board of Directors. Of course the Board of Directors would take the assistance of the Executive Committee and the Managing Director. But the control remains that of the Board of Directors and therefore there is no question of presuming that there was any conflict of duty or that the Managing Director would not act fairly.

12. Reliance was also placed upon the decision of another Constitution Bench of this Court in the case of A.K. Kraipak and Ors. v. Union of India and Ors. . In this case the Acting Inspector General of Forest of Jammu & Kashmir State was himself a candidate for selection to the Indian Forest Service. Even though he was a candidate he became a Member of the Selection Board constituted under Regulation 5 for preparing a list of officers of State Forest Service. In the list which was prepared his name was shown as No. 1. It was pointed out that the Acting Inspector General of Forest did not sit in the Selection Board at the time when his name was considered by the Selection Board. This Court held even though he may not have sat in the Selection Board at the time his name was considered but he did participate when the names of his rivals were being considered. It was held that he was bound to have influenced the other members whilst the names of his rivals were being considered. Here also, the facts were completely different. It was shown that the Acting Inspector General had a personal interest in seeing that he got selected.

13. Reliance was also placed upon the case of Krishna Bus Service Pvt. Ltd. v. State of Haryana and Ors. . In this case the General Manager Haryana Roadways was given powers under the Punjab Motor Vehicles Act and the Rules framed thereunder which could be exercisable by a Deputy Superintendent of Police. The Court noted that the General Manager of the Haryana Roadways was personally responsible for proper management of the activities of the Haryana Roadways. The Court noted that prosperity and profitability of Haryana Roadways would depend upon competition from private operators. The Court noted that the powers given to the General Manager would cast a duty to ensure compliance of the provisions of the Act and that this would include checking, inspection,

search and seizure of offending Motor vehicles. It was held that even vehicles belonging to the Haryana Roadways may have to be checked, inspected, searched and/or seized. It was noted that he would have to take steps to prosecute the officers and this might include officers of his own department and may even include himself. On these facts it was held that, with the duties entrusted to him as a General Manager, he could not be expected to discharge the above mentioned functions fairly and reasonably as an unobstructed operation of motor vehicles by private owners would affect the earnings of the Haryana Roadways. It was held that there was every likelihood that he would be over zealous in stopping, searching and/or seizing motor vehicles belonging to others and at the same time be lenient to the vehicles belonging to the Haryana Roadways. It was held that if he was too lenient in inspecting vehicles, the interests of the travelling public at large would be in peril. It was held that either way there was a conflict between his duty on the one hand and his interest on the other.

14. In the case of Accountant and Secretarial Services Pvt. Ltd. and Anr. v. Union of India and Ors. the appointment of an officer of the Respondent Bank as an Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was challenged on the ground that it was violative of Article 14 of the Constitution of India. This Court held that in the very nature of things, only an officer or an appointee of the Government, statutory authority or Corporation can be thought of for implementing the provisions of the Act. This Court held that personal bias cannot be attributed to such officers either in favour of the bank or against any occupant who is being proceeded against, merely because he happens to be an officer. Thus, the authorities disclose that mere appointment of an officer of the Corporation does not by itself bring into play the doctrine that 'no man can be a judge in his own cause'. For that doctrine to come into play it must be shown that the concerned officer has a personal bias or a personal interest or has personally acted in the concerned matter and/or has already taken a decision one way or the other which may be interested in supporting. This being the law it will have to be held that the decision of the Delhi High Court is erroneous and cannot be sustained and the view taken by the Punjab and Haryana High Court is correct. It will therefore have to be held that Managing Director of a Financial Corporation can be appointed as an Authority under Section 32G of the Act.

15. It is next urged that Section 32G of the Act can only apply to a principal debtor and not against a surety. In support of this submission it is pointed out that prior to amendment of Section 31 in 1985, a Court had taken a view that the provisions of Section 31 could not be invoked against a surety or a guarantor. In support of this submission reliance was placed upon the authority of the Allahabad High Court in the case of Munnalal Gupta v. Uttar Pradesh Financial corporation and Anr. . A Full Bench of the Allahabad High Court, on a consideration of the Sections 29, 31 and 32 of the State Financial Corporation Act held that Section 31 could not be invoked against a surety. It was submitted that in view of this decision the Legislature amended Section 31 by incorporating therein Sub-clause (aa). It was submitted that Section 32 was amended by incorporating Sub-sections (1A), (4A) and (7da) therein. It was submitted that the Legislature was specifically incorporating provisions, in Sections 31 and 32, enabling Financial Corporations to proceed against sureties. It was submitted that by the same Amendment Act Section 32G was also incorporated. It was submitted that the Legislature did not specifically provide, in Section 32G, that it could be availed of against a surety. It was submitted that this clearly indicated that the intention of the Legislature was

that Section 32G was meant to be used only against the industrial concern who had borrowed the amounts.

16. We see no substance in this submission. A plain reading of Section 32G negates such an argument. Section 32G provides that "when any amount is due" to Financial Corporation an application can be made to the State Government "for recovery of the amount due". The amount would be due to a Financial Corporation either from the industrial concern and/or from a surety/guarantor. If the intention was to limit the procedure under Section 32G only to the principal debtor then Legislature would necessarily have had to use the words "amount due from the principal debtor" or "amount due from the industrial concern". The Legislature has purposely omitted to use those words. Further Section 32G is being incorporated by the same Amending Act which incorporated provisions for enforcement against a. surety. The fact that it is incorporated at the time when provisions permitting proceedings against a surety are being incorporated indicates that the Legislature was aware that proceedings under Section 32G could apply even against a surety. If at this time the Legislature intended that Section 32G was not to apply to a surety then the Legislature would have specifically so provided. It is therefore clear that the remedy under Section 32G is available even against a surety.

17. In support of the submission that the Legislature did not intend to apply Section 32G to a surety, reliance was placed upon the case of P.K. Unni v. Nirmala Industries and Ors. wherein it has been held that the Court must proceed on the assumption that the Legislature did not make a mistake and that it intended to say what it said. It was held that assuming there is a defect or an omission in the words used by the Legislature, the Court cannot correct or make up the deficiency. It was held that the Court cannot add words to a Statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. It is held that the Court is not authorised to alter a word or provide a casus omissus. Reliance was also placed on the case of Union of India v. Elphinstone Spinning and Weaving Co. Limited and Ors. reported in (2001) 4 SCC 139 which is to the similar effect. There can be no dispute with these propositions. It is on this basis that this Court is holding that words cannot be added in Section 32G. To accept Mr. Mehta's submission would require this Court to add words to Section 32G to the effect "due from the industrial concern" after the words "amount due to the Financial Corporation". It is presumed that the Legislature made no mistake when it omitted to use these words. It is presumed that the Legislature intended what it said, namely, that Section 32G is to apply wherever any amount is found due to the Financial Corporation.

18. It was next submitted that Section 32G is akin to an execution proceeding. It was submitted that before it can be invoked there must be an adjudication and a finding that an amount is due. It is submitted that only after such adjudication the provision of Section 32G could be invoked. In other words, the submission is that resort must be first had to a Civil Court before the provisions of Section 32G could be invoked.

19. In support of this averment, counsel drew our attention to Section 33C of the Industrial Disputes Act, 1947 which reads as follows:-

"33C. Recovery of money due from an employer - (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB] the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue :

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Curt as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]."

20. It was submitted that the wordings of Section 33C(1) and 32G are identical. Reliance was then placed upon the authority of this Court in the case of Fabril Gasosa v. Labour Commissioner and Ors. wherein Section 33C was considered. It was held that Section 33C is in the nature of an execution proceeding designed to recover the dues of the workmen. The distinction between Sub-sections (1) and (2) was noticed and it was held that this distinction is mainly in the procedural aspect and not with any substantive rights of workmen. It was held that after the determination is made by the labour court under Sub-section (2), the amount so determined can be recovered through the summary and speedy procedure provided by Sub-section (1). It was held that Sub-section (1) does not control or affect the ambit and operation of Sub-section (2) which was wider in scope than Sub-section (1). It was held that the rights conferred under Sub-section (2) were in additional to any other mode of recovery which the workman had under the law. It was further held that Sub-section (1) dealt with cases where the money is due to a workman from an employer under a settlement or an award whereas Sub-section (2) dealt with the cases where a workman is entitled to receive from the employer any money or benefit which is capable of being computed in terms of money. It was held that where the amount due to the workmen, flowing from the obligations under a settlement, was predetermined and ascertained or could be arrived at by arithmetical calculation or simpliciter verification and the only inquiry was required to be made was whether it was due to the workman or not, recourse to the summary proceedings under Section 33C(1) of the Act was not only appropriate but also desirable. It was held that where the amount due was predetermined amount like the Variable Dearness Allowance then the same would be covered by Sub-section (1) as only a calculation of the amount is required to be made.

21. In our view, far from helping the Respondents, this authority is against them. It shows where an amount can be ascertained by simple arithmetical calculations or by simple verification then only inquiry as contemplated by Sub-section (1) of Section 33C is required. In cases of amounts due to Financial Corporations all that is required is a simple arithmetical calculation or a simple verification. It is for that reason that in Section 32G only a provision identical to Section 33C(1) has been incorporated. The Legislature has knowingly omitted to incorporate a provision like Section 33C(2). It must be presumed that Legislature intentionally omitted such a provision. The reason of such omission being that the Legislature wanted the recovery of dues to Financial Corporation in a summary manner on a simple arithmetical calculation or a simple verification. A plain reading of Section 32G shows that there is no lis or adjudication contemplated under Section 32G. The Punjab & Haryana High Court is right in holding that all that is contemplated is a mere mathematical calculation after looking into the papers. The borrower and the surety or the guarantor know what are the amounts due, they know what amounts have been repaid, they know when the amounts were to be repaid, what has not been repaid or how belatedly amounts have been repaid. They knew what the rate of interest is. Thus a mere calculation has to be made to ascertain the amount due. If on such calculations it is found that an amount due is due to the Financial Corporation then a Certificate of Recovery can be issued. Undoubtedly, the provision is the nature of an execution proceeding but it is not a recovery proceeding pursuant to a decree of a Court. It is a recovery proceeding on the amount being found to be due by a simple verification by the State Government or the authority appointed by it. Further to accept the interpretation suggested by counsel would be to go against the very purpose and object of the Act which is to ensure speedy recovery. With that object in that Sections 29, 31 and 32 have been enacted. These have been found to be inadequate. Thus by Section 32G one more remedy of recovery is given to a Financial Corporation. Merely for execution of a decree of a Court no such provision is required. Once a decree is passed it can be executed in the normal manner. That Section 32G is not for execution of a decree of a Court is also clear from the fact that it does not use the word decree. All that Section 32G contemplates is that where an amount is due an officer will make an application to the State Government, the State Government or an authority appointed by them would, after following procedure as may be prescribed, issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount as arrears of land revenue.

22. It must also be noted that in the case of Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr. , it has been held that the State Financial Corporations as instrumentalities of the State deal with public money. It has been held that there can be no doubt that the approach has to be public-oriented. It is held that such approach can only operate effectively if there is regular realization of the installments. It is held that even though the Corporation is expected to act fairly there is also corresponding duty cast upon the borrowers to repay the amounts in time. It is held that regular payment is the rule and non-payment due to extenuating circumstances is the exception. It is held that if the repayments are not received, as per the scheduled time-frame, it would disturb the equilibrium and financial arrangements of the Financial Corporations. It is held that these corporations do not have unlimited funds at their disposal. It is held that they have to cater to the needs of the intended borrowers with the available finance and non-payment of the installment by a defaulter stand in the way of a deserving borrower getting financial assistance. It is held that the Corporation cannot be shackled hand and foot in the name of fairness. It has been held

that fairness cannot be a one-way street. It is noted that the Financial Corporations borrow money from the Government or other Financial Corporations and are required to pay interest thereon. It has been held that a borrower who has no genuine intention to repay and who adopts pretexts and ploys to avoid repayment cannot make a grievance that the Financial Corporation was not acting fairly, even if the requisite procedure have not been followed. It is held that the fairness required of the Financial Corporation cannot be carried to the extent of disabling them from recovering what is due to them. Thus a provision incorporated by the Legislature with intention to enable Financial Corporations to speedily recover amounts due to them cannot be whittled down by giving an interpretation which would render it nugatory.

23. It was next submitted that under Sections 31 and 32 an elaborate procedure has been established. It was submitted that unlike that Section 32G does not lay down any procedure. It was submitted that this Court must thus strike down Section 32G as being arbitrary. It was submitted that such a draconian provision can be exercised without giving any reasons in writing and in the absence of any procedure. It was submitted that absence of procedure means that the principles of natural justice need not be followed. It was submitted that no right of Appeal has been provided against the issuance of a Certificate of Recovery issued under Section 32G. In support of the submission that such a provision must be struck down, reliance was placed upon the case of Excel Wear etc. v. Union of India and Ors. wherein Sections 25(O) and Section 25(R) of the Industrial Disputes Act, 1947, as they then stood were, struck down as being constitutionally invalid amongst others on the ground that the provisions did not require any reasons to be given and that there was no provision for an appeal. However, it must be noted that the abovementioned Sections were struck down not only on these two grounds but on a number of other grounds also. Reliance was also placed upon certain observations in the case of Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay and Ors. reported in (1974) 1 SCC 402. However, in this case this Court upheld that validity of the provision on the ground that there was provision in the Act for giving notice to the party effected after specifying the grounds on which the order of eviction is proposed to be made. The person concerned can file his objections, produce documents and is entitled to be represented by lawyer. It was held that these were sufficient safeguards and that in any case appeal against the order of the Commissioner lies to the principal Judge of the City Civil Court in the city and to the District Judge in the District. It was also held that resort could also be had to the High Court under the provisions of Article 226 or Article 227 of the Constitution of India.

24. The case of Maganlal Chagganlal was considered by this Court in the case of Director of Industries, U.P. and Ors. v. Deep Chand Agarwal . The question in that case was whether a loan amount could be recovered as arrears of land revenue. The recovery was sought to be made by resorting to Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1965 which provided that the Government could send a certificate to the Collector mentioning the sum due from the person and requesting that the sum be recovered as arrears of land revenue. The vires of the Section was challenged. It was held that the object of the Act was to provide a speedier remedy. It was held even though there was no express guidelines however it still could not be held that Section 3 conferred arbitrary powers on the State Government and/or that it made hostile discrimination. It was held that the recovery as arrears of land revenue could only be on the basis of the certificate issued. It was held that the officer issuing certificate was expected ordinarily to avail himself of the speedier

remedy. It was held that when speedier remedy was available, resort should not be had to the dilatory procedure of the ordinary civil court. It was held that such a Section is not discriminatory and is not violative of Article 14 of the Constitution.

25. There is no provision barring jurisdiction of Civil Courts. Thus a suit can be filed or resort can always be had to the High Court under Article 226 or Article 227 of the Constitution of India. Section 32G provides that the State Government or the authority will issue a certificate after following the procedure. The words 'after following the procedure' necessarily indicates that principles of natural justice have to be complied with. Thus, notice would have to be issued, the party concerned would have to be heard and then only the order would be passed. We see no substance in the submission that the order must always be a speaking order or a reasoned order. Considering the fact that the provisions only contemplate arithmetical calculations or simple verification, the question of any reasoned or speaking order does not arise. All that is to be stated is that the amount is found due. On that basis the Certificate of Recovery is to be issued. We, therefore, see no substance in the submission that the provision is arbitrary or discriminatory.

26. We are told that now a procedure has been prescribed. Even though no procedure was prescribed earlier, it could not be denied that principles of natural justice were followed. Notices were issued to the concerned parties. They were given a hearing. Their objections were taken into consideration and in their cases speaking orders are passed. Pursuant to those orders the Certificates of Recovery were issued.

27. It was next submitted by the Respondent in Civil Appeal Nos. 4014-4017 of 1998 that she had only stood as a surety for the term loan of Rs. 39,15,000/- and the soft loan of Rs. 2 lakhs. It was submitted that, apart from these two, the principle debtor had also been given a seed capital loan of Rs. 11,50,000/- and that she had not stood surety for that amount. It is submitted that she, therefore, cannot be made liable for the entire amount due from the principal debtor. To this, it has been pointed out that the seed capital loan already stands repaid in its entirety and nothing is due in respect of that amount. It is pointed out that what is due arid payable is only under the terms loan and the soft loan. The question raised is a disputed question of fact which could not be gone into in a Writ Petition. As the Respondent has not filed a suit, we, at this stage, see no reason to interfere on this ground.

28. In this view of the matter, the Judgment of the Delhi High Court is set aside to the extent that it holds that the Managing Director could not have been appointed and to the extent it quashes the Certificates of Recovery. The other findings are upheld. The Judgment of the Punjab & Haryana High Court is upheld.

29. Civil Appeal Nos. 4014-4017 and 4018-4021 of 1998 are partly allowed to the extent set out above. Civil Appeal No. 7818 of 2002 stands dismissed. There will be no order as to costs.