M/S. Unique Butyle Tube Industries Pvt. ... vs U.P. Financial Corporation & Ors on 20 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 2103, 2003 (2) SCC 455, 2003 AIR SCW 104, 2003 ALL. L. J. 427, 2003 (1) SLT 235, 2003 (3) SRJ 520, (2003) 2 JCR 156 (SC), (2003) 1 BANKJ 485, (2003) 1 ALLMR 1196 (SC), 2003 (1) ALL MR 1196, 2003 ALL CJ 2 1114, 2003 (1) BLJR 666, (2003) 1 UPLBEC 901, (2003) 3 RECCIVR 378, (2003) 113 COMCAS 374, (2003) 2 ANDHLD 52, (2003) 1 SUPREME 333, (2003) 4 ICC 495, (2003) 1 UC 522, (2003) 2 WLC(SC)CVL 471, (2003) 1 BANKCLR 422, (2003) 2 CIVLJ 258, (2003) 2 PUN LR 65, (2002) 9 SCALE 778

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Bench: Syed Shah Mohammed Quadri, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  8624 of 2002
Special Leave Petition (civil)  10315 of 2001

PETITIONER:
M/s. Unique Butyle Tube Industries Pvt. Ltd.

RESPONDENT:
U.P. Financial Corporation & Ors.

DATE OF JUDGMENT: 20/12/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Leave granted.

The only question that falls for determination in this case is whether the proceedings for recovery initiated by U.P. Financial Corporation (hereinafter referred to as 'the Corporation') under the Uttar Pradesh Public Monies (Recovery of Dues) Act, 1972 (in short 'the U.P. Act') on 6.1.2001 are maintainable in view of Section 34 (2) of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 (in short 'the Act').

Factual position sans unnecessary details is as follows:

Certificate was issued under the U.P. Act for recovery of certain dues from the appellant for its alleged failure to comply with the terms and conditions of loan granted to it; similar failure was alleged by three Directors and three guarantors. On 14.2.2001 Citation for recovery was issued by the Tehsildar, Varanasi, for recovery of the alleged dues as arrears of land revenue. Appellant challenged the said action before the Allahabad High Court in CMWP No.13738 of 2001 on the ground that after the enactment of the Act, the proceedings were not maintainable. Reliance was placed on the provisions contained under Section 32(G) of the State Financial Corporation Act, 1951 (in short 'the Financial Act') to contend that no other proceeding is permissible to be taken under the Act. Reference was made to Sections 17 and 34 of the Act to substantiate his stand. Stand of the Corporation before the High Court was that alternative modes of recovery were prescribed under different statutes and one cannot stand on the way of the other mode. Choice was left upon to the Corporation to act either under the Act or under the modes permissible under the Financial Act. Proceedings initiated under the U.P. Act were covered by the said Act. A Division Bench of the High Court on consideration of the rival submissions held that the language of Section 34(2) of the Act placed the position beyond controversy and concluded as follows:

"The choice is clearly left open to the Financial Corporation which may proceed under the D.R.T. Act or may proceed under the other modes of recovering the debts as are permissible under the S.F.C. Act, i.e. it can proceed under the provisions of the U.P. Public Money (Recovery of Dues) Act."

Judgment of the High Court dated 27.4.2001 is under challenge.

In support of the appeal learned counsel for the appellant submitted that the field of operation so far as the Act is concerned, has been clearly delineated in Allahabad Bank vs. Canara Bank and Anr. (2000 (4) SCC 406). Section 34 of the Act confers overriding effect vis--vis others statutes. The only exceptions to such overriding effect are enumerated in sub-section (2) thereof. Proceedings under the U.P. Act are not encompassed by the exceptions. On the contrary, the action permissible so far as Financial Act is concerned, can be spelt out from Section 32 (G) of the said Act.

In response, learned counsel for the Corporation submitted that Allahabad Bank's case (supra) has no application to the facts of the case. Under the U.P. Act, there is no question of any adjudication of dues payable and once there is default, there is statutory empowerment to issue a certificate in terms of Section 3 of the said Act. With reference to the decision of this Court in Director of Industries, U.P. and Ors. vs. Deep Chand Agarwal (1980 (2) SCC 332), it was submitted that validity of the said provisions has been upheld by this Court and the procedure adopted in the present case has been held to be legally permissible. The authorized functionary can take action, the moment there is default and no adjudicatory process is involved. The procedure is not in conflict with any proceeding that can be taken under the Act. The statutory intention for enactment of the Act was to do away with the cumbersome procedures involved for recovery and provisions are not inconsistent with any provision of the U.P. Act, which in terms of Section 3(3) prohibits institution of a case for

recovery of the sums due. Therefore, the High Court was justified in its conclusion. In any event, according to him, the procedures under the Act are in pari material with those which can be taken under the Financial Act. So such a prescription has to be read into sub-section (2) of Section 34 of the Act by application of the principle known as casus omissus and the deficiency, if any, can be reconciled by purposive interpretation by reading the said statute as a whole, and finding out the true legislative intent.

In order to appreciate the rival submissions a few provisions throwing light on the controversy need to be noted.

Act:

> "34: Act to have over-riding effect-
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> (1) Save as otherwise provided in sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
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> (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948(15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989(39 of 1989).

Financial Act:

> "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 authorized 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 specific 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.] U.P. Public Moneys (Recovery of Dues) Act, 1972:
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> 3. Recovery of certain dues as arrears of land revenue (1) Where any person is party
>
> (a).....

(b).....

(c) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern; or

d) to any agreement providing that any money payable thereunder to the State Government or the Corporation shall be recoverable as arrears of land revenue; and such person

(i) makes any default in repayment of the loan or advance or any instalment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any instalment thereof; or .....

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) No suit for the recovery of any sum due as aforesaid shall lie in the civil court against any person referred to in sub-section (1).

(4) In the case of any agreement referred to in sub-section (1) between any person referred to in that sub-section and the State Government or the Corporation, no arbitration proceedings shall lie at the instance of either party for recovery of any sum claimed to be due under the said sub-section or for disputing the correctness of such claim:

> Provided that whenever proceedings are taken against any person for the recovery of any such sum he may pay the amount claimed under protest to the officer taking such proceedings and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may make a reference under or otherwise enforce an arbitration agreement in respect of the amount so paid, and the provisions of Section 183 of the Uttar Pradesh Land Revenue Act, 1901, or Section 287-A, of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as the case may be, shall mutatis mutandis apply in relation to such reference or endorsement as they apply in relation to any suit in the civil court."

Allahabad Bank's case (supra) did not specifically deal with Section 34(2) of the Act. However, certain observations made in the said judgment are of relevance:

> "20. We shall refer to Sections 17 and 18 in Chapter III of the RDB Act which deal with adjudication of the debt:
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> "17. Jurisdiction, powers and authority of Tribunals (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts

due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

18. Bar of jurisdiction On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to the matters specified in Section 17."

It is clear from Section 17 of the Act that the Tribunal is to decide the applications of the banks and financial institutions for recovery of debts due to them. We have already referred to the definition of "debt" in Section 2(g) as amended by Ordinance 1 of 2000. It includes "claims" by banks and financial institutions and includes the liability incurred and also liability under a decree or otherwise. In this context Section 31 of the Act is also relevant. That section deals with transfer of pending suits or proceedings to the Tribunal. In our view, the word "proceedings" in Section 31 includes "execution proceedings" pending before a civil court before the commencement of the Act. The suits and proceedings so pending on the date of the Act stand transferred to the Tribunal and have to be disposed of "in the same manner" as applications under Section

19.

21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) formerly under Section 19(7) to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or 227 of the Constitution). This is the effect of Sections 17 and 18 of the Act.

Section 34 of the Act consists of two parts. Sub- section (1) deals with the over-riding effect of the Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. Sub-section (1) itself makes an exception as regards matters covered by sub-section (2). The U.P. Act is not mentioned therein. The mode of recovery of debt under the U.P. Act is not saved under the said provision i.e. sub- section (2) which is of considerable importance so far as the present case is concerned. Even a bare reading therein makes it clear that it is intended to be in addition to and not in derogation of certain statutes; one of which is the Financial Act. In other words, a Bank or

Financial institution has the option or choice to proceed either under the Act or under the modes of recovery permissible under the Financial Act. To that extent, the High Court's conclusions quoted above were correct. Where the High Court went wrong is by holding that proceedings under the U.P. Act were permissible. U.P. Act deals with separate modes of recovery and such proceedings are not relatable to proceedings under the Financial Act.

Since a plea of casus omissus for purposes of interpretation was urged, we think it necessary to deal with that plea also.

It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

In D.R Venkatchalam and Ors. etc. vs. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842) it was observed that Courts must avoid the danger of apriori determination of the meaning of a provision based on their own pre- conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. vs. P.N.B. Capital Services Ltd. (2000 (5) SCC 515)]. `The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in N.Narasimhaiah and Ors. v. State of Karnataka and Ors. etc. (1996 (3) SCC 88). In State of Karnataka and Ors. v. Nanjudaiah and Ors. (1996 (10) SCC

619) the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the

construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. (1966 AC

557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".] Therefore, the High Court's conclusions holding proceedings under the U.P. Act to be in order are indefensible.

We may notice here that to strengthen his arguments, learned counsel for the appellant referred to the decision of this Court in S.K. Bhargava vs. Collector, Chandigarh and Ors. (1998 (5) SCC 170). The said case related to Haryana Public Moneys (Recovery of Dues) Act, 1979 (in short 'Haryana Act'). With reference to certain observations in paragraph 8 of the said judgment, it was submitted that a process of adjudication is inbuilt, even when the Managing Director of the Corporation takes action. We notice that Section 3 of the Haryana Act is couched differently from Section 3 of the U.P. Act. Reference was made in the said case to Director of Industries's case (supra), and held that while upholding the validity of Section 3 of the U.P. Act, the Court was not called upon to deal with the question as to whether the principles of natural justice were implicit in the said Section. We also do not think it necessary to go into that question.

The impugned order is set aside and the proceedings under the U.P. Act are quashed. It shall be, however, open to the Corporation to take such action under the Act or the Financial Act as is legally available to it. The appeal is allowed without any costs.