**(1985) 02 OHC CK 0038**

**Orissa High Court**

**Case No:** Original Jurisdiction Case No''s. 340 and 427 of 1984

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| Kharavela Industries Pvt. Ltd. | | APPELLANT |
| | Vs | |
| Orissa State Financial Corporation and Others | | RESPONDENT |

**Date of Decision:** Feb. 5, 1985

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Contract Act, 1872 - Section 59, 60
- Evidence Act, 1872 - Section 101 , 102, 103, 104
- State Financial Corporations Act, 1951 - Section 29, 29(1), 30, 31

**Citation:** AIR 1985 Ori 153 : (1985) 1 OLR 345

**Hon'ble Judges:** P.C. Misra, J; G.B. Patnaik, J

**Bench:** Division Bench

**Advocate:** Bipin Behari Mohanty, for the Appellant; R.N. Sinha, S.N. Sinha, B.K. Mohanty and P.K. Misra, for the Respondent

**Judgement**

G.B. Patnaik, J.

In these two writ petitions, the action of the financial institution, namely, the Orissa State Financial Corporation (hereinafter referred to as the "Corporation") is being impugned by the entrepreneur essentially on the ground that the action of opposite party No. 1, the Corporation, is arbitrary and is calculated to confer undue favour on the Orissa Ceramic Industries Limited (opp. party No. 3 in O J.C. 340 of 1984 and opp. party No. 2 in O J.C. 427 of 1984). The petitioner also alleges that no due notice of the impugned action being given to the petitioner, there has been a flagrant violation of the principles of natural justice and consequently, the action of the Corporation is vitiated.

2. After the country became independent, the Industrial Finance Corporation Act came to be enacted in 1948 to set up a Corporation called ''Industrial Finance

Corporation'' with the object that the said Corporation would provide long-term credits to industrial undertakings. With the rapid growth of industries in different States, and to facilitate the object of industrialising the States, it was felt that financial institutions should also be set up in different States and for that purpose, the Parliament enacted the State Financial Corporations Act, 1951 (Central Act LXIII of 1951). The said Act authorises the State Government to establish a Financial Corporation whose main object would be to provide long-term loans to industrial concerns as well as to guarantee loans raised by such industrial concerns. The said Act also provides for recovery and confers on the Corporation the right to take over the management and possession of the industrial concern in case an industrial concern makes any default in repayment of loan or advance or any instalment thereof or fails to comply with the terms of the agreement with the Financial Corporation.

3. According to the case of the petitioner, the Corporation sanctioned a loan of Rs. 6.75 lakhs on 20th January, 1978 and the stipulation in the agreement was that the loan would be repaid by eighteen half-yearly instalments of Rs. 37,500/- each beginning from 28th of October, 1979. The rate of interest was agreed to at 151/2% per annum with quarterly rest. The total amount of loan was disbursed to the petitioner in different instalments between 27-4-1978 and 11-9-1980. The industrial concern went into production by 1979 and the petitioner asserts in paragraph 13 of the writ application in O.J.C. 427 of 1984 that the total assets of the petitioner-company would be about Rs. 35 lakhs, The petitioner-company made some repayments and according to the assertions made in the writ petitions, the total amount of repayment made by the petitioner is Rs. 4.95 lakhs (vide Annexure-5 in O.J.C. 340 of 1984). The Corporation, however, disputes this figure and asserts in paragraph-4 of the additional counter affidavit filed on 3-9-1984 in O.J.C. No. 340 of 1984 that the total amount of repayment is Rs. 3.68 lakhs. Be that as it may, the petitioner-Company had failed to make payment of some instalments and ultimately for such non-payment, the Corporation had taken recourse to action u/s 29 of the State Financial Corporations Act, 1951. This action of the Corporation has been challenged in the present writ petitions.

4. Mr. B. B. Mohanty, the learned counsel for the petitioner mainly raises two contentions, apart from some corollary submissions : --

(i) the narration of events unmistakably points out that the authorities of the Corporation acted arbitrarily and in bad faith with the motivated object of bestowing some favour on opposite party -- Orissa Ceramic Industries Limited (opposite party No. 2 in O.J.C. 427/84) and, therefore, the said action of taking over is bad in law; and

(ii) before taking action u/s 29 of the Act, no notice having been given, there has been a flagrant violation of the principles of natural justice and on that score the action of taking over is vitiated.

Mr. R. K. Mohapatra, the learned counsel appearing for the Corporation, strongly refutes the aforesaid contentions of the learned counsel for the petitioner and submits that the conditions precedent for exercise of power u/s 29 of the Act having been fully satisfied and the petitioner-Company having defaulted in making payments in spite of repeated valid notice, the decision of the Corporation to take over the industrial concern in exercise of power conferred u/s 29 of the Act cannot be said to be arbitrary or whimsical and the further allegation that it was motivated to bestow some favour on opposite party No. 2 is baseless. Mr. Mohapatra also submits that the statute, more particularly, Section 29 of the Act does not postulate a notice for hearing before taking any action u/s 29 and, at any rate, repeated demands having been made and yet the Company not having paid it cannot make a grievance of violation of principles of natural justice. He also contends that there are large number of disputed questions of fact which cannot be appropriately adjudicated upon in this writ petition and accordingly the petition is liable to be dismissed.

Mr. B. K. Mohanty the learned counsel appearing for opposite party, Orissa Ceramic Industries Limited while supporting the contentions of Mr. Mohapatra, the counsel for the Corporation, contends that the company not having pointed out any mistake in the earlier calculation indicating the default on the part of the Company, the contention of the petitioner on that score is an after thought and further vague and bald assertions of arbitrariness and mala fides without giving any particulars must be ignored and the petitioner''s contention on that score is liable to be rejected.

5. In order to appreciate the correctness of the rival contentions, it would be necessary to refer to some of the documents and chronological events. Though there is some dispute with regard to the amount of repayment of loan, it is not disputed that the petitioner-Company had not repaid the instalments in accordance with the stipulation in the agreement. The petitioner also does not dispute this position. But the most important aspect of the case is to find out the conduct of the Corporation in taking over possession of the industrial concern u/s 29 of the Act and putting the same to sale. The Corporation in its counter in O.J.C. No. 340 of 1984 has annexed the three demands as Annexures A/1. B/1 and C/1. Annexure-A/1 indicates the position as on 31-7-1982; Annexure-B/1 indicates the position as on 30-6-1983 and Annexure-C/1 dated 23-12-1982, the Corporation directed the petitioner-Company to make immediate arrangement for full payment of dues within fifteen days from the date of issue of the letter. The total amount, indicated therein was Rs. 3,76,182.62. In Annexure-B/1., dated 18-8-1983, the Corporation indicated that substantial payment should be ensured failing which the matter would be seriously viewed. The default amount indicated therein was Rs. 5,78.599.49. In Annexure-C/1 dated 24-12-1983, the Corporation directed that the entire outstanding dues must be paid by 5-1-1984 failing which the Corporation proposed to take over the unit u/s 29 of the Act. The total amount indicated in Annexure-C/1 was Rs. 10,60,255.31. The learned counsel for the petitioner

challenges the correctness of the figures and the learned counsel for the Corporation is unable to enlighten us with reference to the original documents as to how these figures have been arrived at. The best way of proving the same would have been to produce the ledger itself which was not produced before us and it was also seriously contended by the learned counsel for the petitioner that the figures indicated in these demands do not reflect the correct position, Prima facie, the petitioner''s contention on this score appears to be well founded, but we are not in a position to come to a definite conclusion as to how the error has crept in. Petitioner''s counsel also does not dispute the fact that the Company has defaulted in making due payments to the Corporation. Therefore, even if there may have been some errors in these figures, it is admitted by the petitioner''s counsel that the Company has not been able to pay up the instalments in accordance with the stipulations in the loan agreement.

At this stage it would be appropriate to dispose of one submission made on behalf of the counsel for the petitioner to the effect that the payments made by the Company must be adjusted first towards the principal and not towards interest and according to the learned counsel for the petitioner that was the real intention of the parties under the loan agreement. We, however, fail to find out from the loan agreement that what has been contended by the petitioner is correct. The normal rule is that in the case of a debt due with interest, any payment made by the debtor is in the first instance to be applied towards satisfaction of interest and thereafter towards the principal. (See Meghraj and Others Vs. Mst. Bayabai and Others, , para-6). In this view of the matter, we unhesitatingly reject the submission of Mr. Mohanty, the learned counsel for the petitioner.

6. Mr. Mohanty, the learned counsel for the petitioner, then submitted that Annexure-C/1 dated 24-12-1983 being a notice of recalling u/s 30 of the Act, it was obligatory on the part of the Corporation to take recourse to Section 31 and not Section 29 of the Act when the petitioner-Company defaulted in complying with the order under Annexure-C/1. This contention, in our opinion, is devoid of force, inasmuch as Section 31 itself says that recourse to the same may be taken without prejudice to the provisions of Section 29 of the Act. Thus, merely because the Corporation has issued a notice u/s 30 and the Company makes a default in complying with the same, the Corporation cannot be forced to take recourse to Section 31 and it is open to the Corporation to take recourse to Section 29 of the Act. In that view of the matter, Mr. Mohanty''s contention must be rejected.

7. Annexure-1 in O.J.C. No. 340 of 1984 purports to be an order of the Managing Director dated 6-1-1984 taking over possession of the petitioner''s industry on "as is where is" basis u/s 29 of the Act and the petitioner has prayed to quash the same in O.J.C. No.340 of 1984. In the counter-affidavit filed by the Corporation no reply has been given in connection with the notice dated 6-1-1984 and on the other hand it has been asserted that possession u/s 29 of the Act was taken over on 27-1-1984

(vide paragraph 17 of the counter-affidavit of the Corporation in O.J.C. No. 340 of the 1984). It appears from the writ petition that on receiving the notice dated 6-1-1984, the petitioner through its Managing Director approached the authorities of the Corporation on the same date and prayed for sometime to make some deposits as indicated in the letter annexed as Annexure-2 to the writ petition in O.J.C. No. 340 of 1984. Thereafter the petitioner through its Managing Director : Mr. Mehta personally approached the Branch Manager of the Corporation and had a thorough discussion with him and the said Branch Manager agreed that the petitioner should be : given an opportunity of paying instalments as indicated in the letter dated 6-1-1984 and in fact the petitioner paid on 23-1-1984 a sum of Rs. 30,000/- (vide paras 15 and 16 of the writ petition in O.J.C. No. 427 of 1984). The receipt indicating the factum of payment of Rs. 30,000/-has been annexed as Annexure-2 (in O.J.C. 427 of 1984). The petitioner also indicated that the amount of Rs. 29,000/- which had already been sanctioned to the petitioner Company as subsidy should also be adjusted and, therefore, according to the petitioner a sum of Rs. 59,000/-has been paid to the Corporation in January, 1984. According to the petitioner, notwithstanding the aforesaid understanding with the Branch Manager a notice was pasted on the factory gate of the petitioner-Company on 28-1-1984 purporting to be one u/s 29 of the Act. The said notice has been annexed as Annexure-3 to the writ petition in O.J.C. No. 427 of 1984. It is thus quite clear, and which is also the stand of Corporation, that the purported notice u/s 29 of the Act dated 6-1-1984 which is being impugned in O.J.C. No. 340 of 1984 was not given effect to and instead by order dated 27-1-1984 (Annexure-3 to the writ petition in O.J.C. No. 427 of 1984) the Managing Director of the Corporation took over the possession of the petitioner-industry on "as is where is" basis u/s 29 of the Act. Thereafter an advertisement was given in a local newspaper on 28 1-1984 inviting tender to be submitted on 31-1-1984 with down payment of Rs. 50,000/- and in the said advertisement sale was fixed to 1-2-1984. The sale notice as published in "The Samaj" has been annexed an Annexure-4 to the writ petition on O.J.C. No. 427 of 1984. It bears the date "25-1-1984". In the meantime, the petitioner had approached this Court against the notice dated 6-1-1984 in O.J.C. No. 340 of 1984 and on 2-2-1984, a Bench of this Court had passed orders granting interim stay of sale of the industry in the presence of the counsel for the Corporation and also it was indicated in the said order that the petitioner may approach the Corporation with the proposal of immediate payment of Rs. 30,000/- and further payment of Rs. 1 lakh within a month from that date. The petitioner then filed an application for injunction and when that petition was listed for orders on 6-2-1984, the counsel for the Corporation indicated that possession of the industry pursuant to a sale had already been delivered to Orissa Ceramic Industries who was subsequently added as a party in O.J.C. No. 340 of 1984, though the petitioner asserted that possession still continued to be with the petitioner. The petitioner then challenged the order of the Corporation dated 27-1-1984 in O.J.C. No. 427 of 1984 and in the said writ petition by order dated 20th of February, 1984, this Court restrained the

Corporation from executing any sale deed with respect to the concerned industry in favour of the Orissa Ceramic Industries. It was, however, clarified that the said order would not have any bearing on the question of possession of the industry and its premises. From the averments in the writ petition as well as the counter-affidavit, it is now clear that the premises of the industry have been in possession of Orissa Ceramic Industries (opposite party No. 2 in O.J.C. No. 427 of 1984) though no sale deed has been executed by the Corporation.

8. The averments in the writ petition as well as the documents annexed thereto make it crystal clear that the order dated 6-1-1984 was not at all given effect to and the Corporation did not take into consideration the fact of payments made on 6-1-1984 as per Annexure-2 to the writ petition in O.J.C. No. 340 of 1984 as well as the adjustment of subsidy amount of Rs. 29,000/- before taking action u/s 29 of the Act by order dated 27-1-1984. In our opinion, non-consideration of the factum of payment made on 6-1-1984 as well as the adjustment of subsidy amount before taking final decision to take over possession u/s 29 of the Act on 27-1-1984 vitiates the decision i of taking over on 27-1-1984. There cannot be any manner of doubt that the power given to the Corporation u/s 29 of the Act is an extraordinary power and the same must be resorted to only when the Corporation bona fide forms the opinion after taking into consideration all relevant factors including all payments made by the entrepreneur till the date of the order that the pre-conditions of Sub-section (1) of Section 29 of the Act have been fully satisfied. If the Corporation fails to take into account the upto date payments made by the entrepreneur while deciding to take action u/s 29 of the Act, then even though the conditions prescribed under Sub-section (1) might have been satisfied, yet the decision will be vitiated on account of non-consideration of relevant materials. If Section 29(1) is literally interpreted and if the power of the Corporation to take over the industry is conceded as soon as one of the instalments falls due notwithstanding some payments being made in the interregnum, then that would be contrary to the purpose for which the Corporation has been set up. The corporation has not been set up with the object of carrying on a money-lending business by the Government through the Corporation, but with the avowed object of promoting industries in the State and giving such financial assistance to the industries concerned. After the independence, in a State like Orissa where there has been not much of industrialisation, it should be the primary, object of such Corporations like opposite party No. 1 to render all assistance to the entrepreneurs to bring the State on the industrial map of the country and the Corporation should work with that object in view. By saying so, we are not encouraging dishonest entrepreneurs in any manner and the Corporation would be well within its right conferred under the statute to take such coercive measure as it thinks fit, but before taking any such measure it must consider all the relevant materials, namely the total amount of loan advanced, the total amount of payments made on the date, the total outstanding dues to the Corporation; the stage at which the industry is functioning and all other relevant

factors. The Corporation is , supposed to be possessing all the expertise in this regard and it is not appropriate for the Court to indicate exhaustively what all would be relevant materials and, therefore, we have indicated only a few of them which would be a guide. Having given our anxious consideration to the materials on record, we cannot but hold that the purported action of the corporation dated 27-1-1984 is vitiated since admittedly the authorities did not take into consideration the payments made after 6-1-1984 and also the adjustment made by the petitioner in respect of the subsidy grant received from the Corporation.

9. We would then come to discuss as to what happened subsequent to the order dated 27-1-1984. It appears that on 28-1-1984, it was published in the local newspaper that the industry in question would be sold on 1-2-1984 at 10,00 a.m. and the tender papers should be submitted before 5.00 p.m. of 31-1-1984. Though in the schedule, petitioner''s industry appears to be one for sale, but in the body of the notice, nothing has been indicated from which it can be inferred that the said industry was going to be sold on 1-2-1984. The body of the notice only refers to sale of Tata Bus, Tata Truck, Ashok Leyland Truck, Hindustan J-6 Trucks, Mahindra Mini Truck and Car seized u/s 29 of the Act. In pursuance of the said sale notice, opposite party No. 2 in O.J.C. No. 427 of 1984 gave tender and ultimately the Disposal-cum-Advisory Committee in its meeting on 1-2-1984 decided to accept the offer of Orissa Ceramic Industries (opposite party No. 2). The extract of the proceedings of the Disposal Committee dated 1-2-1984 which has been annexed as Annexure-5 to the writ petition in O.J.C. No. 427 of 1984 indicates that the Managing Director of the petitioner-Company also appeared before the said Committee and requested for some time to make payments, but the same was not found favour with the members of the Committee, as the petitioner-Company was found to have defaulted to a huge extent. There is lot of controversy between the parties in respect of the recording of the aforesaid resolution of the disposal Committee, as has been averred in paragraph 23 of the writ petition and denied in the counter-affidavit, but we are not going into that aspect since it is not possible for us to embark upon an enquiry into those disputed questions of fact and come to any definite conclusion about the same. But one thing is clear that the Corporation has been unusually hasty to sell the industry in question in this particular case. An industry with assets of several lakhs, as averred in the writ petition had been taken over possession on 27-1-1984 and the sale notice of the same had been published on 28th fixing 31st as the last date for receipt of tender. This, in our opinion, is an action with uncanny haste which would not fetch the proper price in open market in the State of Orissa. When the Corporation decides to sell the industry in question, it must see not to sell it at a throw-away price'', but it must take all steps so that the maximum price of the industry can be obtained. Sufficient publicity must be given and sufficient time must elapse so that any other entrepreneur would come forward to offer the market price of the industry. The dates indicated by us earlier give us the impression that the Corporation was determined to sell the industry at whatever

price it fetches and the Corporation failed in its duty to take appropriate steps so as to get the maximum price for the industry in question. In this view of the matter, we are of the opinion that the sale conducted on 1-2-1984 is vitiated and consequently the possession of the Orissa Ceramic Industries Limited (opposite party No. 2) becomes unauthorised.

10. There have been some averments in the writ petition alleging collusion between the Orissa Ceramic Industries and the Corporation which have been denied both by the Corporation as well as the Orissa Ceramic Industries (opposite party No. 2). We are of the opinion that on the materials produced, it is not possible for us to hold that there was any collusion between the corporation and the said firm and accordingly the said allegation in the writ petition must be rejected. As has been said by the Supreme Court, the allegations of mala fides are very often made than proved and the burden of establishing mala fides is very heavy on the person who alleges it. The seriousness of such allegations damands proof of a high order of credibility : see E. P. Royappa v. State of Tamil Nadu AIR 1974 SC 555. Keeping the aforesaid dictum in view, we are fully satisfied that the petitioner has not been able to prove the so-called collusion between the Corporation and opposite party No. 2, the Orissa Ceramic Industries Limited and accordingly we unhesitatingly negative the said assertion of the petitioner.

11. We would then examine the question whether there has been a violation of the principles of natural justice, inasmuch as no notice has been given before taking action u/s 29 of the Act on 27-1-1984. According to the learned counsel for the petitioner, although the Corporation has a right to take over the management and possession of the industrial concern and then put the same to lease or sale when the said Industrial concern defaults in repayment of loan or advance or any instalment thereof, yet, the rules of natural justice require that the said industrial concern must be given a notice before the Corporation actually decides to take over the industrial concern in exercise of its power u/s 29 of the Act. Mr. Mohapatra appearing for the Corporation, on the other hand, submits that there is no requirement of either giving a notice or hearing to the industrial concern in Section 29 of the Act and, therefore, it would not be appropriate for the court to implant rules of natural justice in Section 29 of the Act. That apart, in the case in hand, Mr. Mohapatra submits, sufficient notice had been given and, therefore, the petitioner cannot complain of violation of principles of natural justice. The rule of audi alteram partem has undergone a drastic change by passage of time to meet diversified complex situations. But even at the earliest point of time it was an established principle that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him unless, indeed, the legislature has expressly or impliedly given an authority to act without that necessary preliminary (See, Bonaker v. Evans, (1850) 16 QB 162. Decisions established that the said rule governed the conduct of professional bodies and voluntary associations in exercise of their disciplinary functions and, indeed, of

every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals. In the latter half of the nineteenth century came a vast increase in the regulatory functions of public authorities especially in the fields of housing and public health. Where a statute authorising interference with property or civil rights was silent on the question of notice and hearing, the Courts, drawing upon the authority of the older cases, invoked "the justice of the common law" to "supply the omission of the legislature". In Ridge v. Baldwin 1964 AC 40, it was stated that the duty to observe rules of natural justice should be inferred from the nature of the power conferred upon the authority. It has been suggested that whether the nature of the power requires such an inference to be drawn may be determined by considering the following three aspects; first, the nature of the complainant''s interest, second, the conditions under which the administrative authority is entitled to encroach on those interests and third, the severity of the sanction that it can impose. This is the position of law with regard to its application in England (See, de Smith''s Judicial Review of Administrative Action, 4th. Edn., pages 158, 160 and 176). These principles have more or less been accepted in this country.

12. The Supreme Court in the case of Suresh Koshy George Vs. University of Kerala and Others, , has held that the rules of natural justice must apply to an enquiry made against the misconduct of a student in a University examination, but the said rules are not embodied rules and, therefore, the question whether the requirements have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case, the constitution of the tribunal and the rules under which it functions. It has been indicated in that case that if the person accused knows the nature of the accusation made, he is given an opportunity to state his case and further where the tribunal acted in good faith, then this rule must be held to have been satisfied.

In the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Supreme Court held:--

"The aim of the rules of natural justice is to secure justice of to put in negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under

which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry....."

In the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the Supreme Court observed in paragraph 58 of the Judgment : --

".....Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action....."

After quoting a passage from the address of Lord Morris in Bengham Club and further quoting several authorities of the English courts as well as the Supreme Court of India, Bhagwati, J. proceeded to discuss further and held : --

"Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Monies of Borthy-Gest, from "fair play in action", it may equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion. There are certain well recognised exceptions to the audi alteram partem rules established by judicial decisions and they are summarized by S.A. de Smith in Judicial Review of Administrative Action, 2nd. Edn. at pages 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word ''exception'' is really a misnomer because in these exclusionary cases, the audi alteram partem rule is held inapplicable not by way of an exception to fair play in action'', but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law ''lifeless, absurd, stultifying, self defeating or plainly contrary to the common sense of the situation''. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experimental test, be excluded if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law

and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that ''natural justice is pragmatically flexible and is Amenable to capsulation under the compulsive pressure of circumstances''. The audi alteram partem rule, is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise....."

The majority view in the case of Swadeshi Cotton Mills Vs. Union of India (UOI), , held thus :--

"In short, the general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order of merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fairplay ''must not be jettisoned save in very exceptional circumstances where compulsive necessity so ''demands''. The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

Keeping these principles in view, if we examine the provisions of the State Financial Corporations Act, more particularly Section 29 thereof, we find that the Act is intended to regulate the activities of the financial corporation and the main object of such corporation is to finance medium and small-scale industries. With the rising tempo of industrialisation of the country, it became necessary to enlarge the field of

operation of the State Financial Corporation and to meet the growing needs of industries to offer financial assistance to augment the resources sufficiently, the Act has been amended to enable the Corporation to transact new kinds of business like guarantee loan raised by the industrial concern from scheduled banks and guarantee default payment due from the industrial concern in connection with its purchase of goods within India. With those as primary objects, the Corporation has also been conferred the power to take over the industrial concern when the said concern makes any default in repayment of loan. There is no provision for appeal or review against the said decision of taking over and there cannot be any manner of doubt that the decision to take over involves civil consequences of a grave nature. A reading of Section 29 of the Act, in our opinion, does not in terms exclude the application of the principles of natural justice. In our view, therefore, the said rules must be complied with before the corporation takes action u/s 29 of the Act. But whether in a given case, the said rules have been complied with or not, depends upon the facts and circumstances of that case.

13. In paragraph 17 of the counter-affidavit filed by the Corporation in O.J.C. No. 340 of 1984, it has been asserted that in spite of several notices of demand and persuasion and negotiation by the Corporation, the petitioner failed to pay its dues to the corporation and as such the Corporation decided to take over the property mortgaged/pledged /hypothecated to the Corporation by the said Industrial unit in exercise of its rights u/s 29 of the State Financial Corporation Act and in fact took over the same on 27-1-1984 by issuing a notice u/s 29, which notice has been annexed as Annexure-H/1 to the said counter. From the documents filed, it appears that under Annexure-A/1 dated 23-12-1982, the Corporation had intimated the petitioner indicating the default position as on 31-7-1982 and requested the petitioner to make payment within fifteen days of the date of issue of the letter, failing which the Corporation would be compelled to take coercive action as per law. Under Annexure-B/1, dated 18-8-1983, the Corporation indicated the position as on 30-6-1983 requesting the petitioner to make substantial payment within fifteen days failing which the matter would be seriously viewed. Under Annexure-C/1, dated 24-12-1983, the Corporation issued another notice purporting to be one u/s 30 of the Act indicating the position as on 31-12-1983 and requested the petitioner that the entire outstanding dues indicated therein should be paid by 5-1-1984 failing which the Corporation would take action u/s 29 of the Act. Then came the cruder dated 6-1-1984 which has been annexed as Annexure-l to the writ petition in O.J.C. No. 340 of 1984 by which order the Corporation purports to have taken over possession of the industrial unit of the petitioner on "as is where is" basis. On the very same date, the petitioner appears to have addressed a letter to the Deputy General Manager of the Corporation giving an undertaking that the petitioner would make payment by instalments indicated therein and the petitioner asserts in the writ petition that the Branch Manager of the Corporation had a thorough discussion with the petitioner and after some negotiation it was agreed and

understood that the notice dated 6-1-1984 shall not be acted upon. Though this part of the petitioner''s case has been denied by the Corporation in its counter-affidavit, but all the same the stand of the Corporation is that notice dated 6-1-1984 was not at all served on the petitioner. But one further fact which needs mention is that on 23-1-1984, the petitioner paid in cash Rs. 30,000/- to the Corporation receipt whereof has been annexed as Annexure-2 and also by that period the petitioner was entitled to get a subsidy of Rs. 29,000/- from the Corporation regarding which the petitioner intimated that it should be adjusted as a payment to the Corporation. Thus, subsequent to 6-1-1984 and prior to the impugned order dated 27-1-1984, there has been a payment and/or adjustment to the tune of Rs. 59,000/-. No further document appears to have been issued by the Corporation to the petitioner and finally the order under Annexure-H/1 was served on the petitioner and the Corporation assumed possession on the same date, i.e. on 27-1-1984.

The aforesaid narration of events indicates that prior to issuance of the order dated 6-1-1984, sufficient opportunity was afforded to the petitioner and the order of the Corporation dated 6-1-1984 cannot be said to be in contravention of the principles of natural justice, inasmuch as the Corporation gave due notice to the petitioner as to the default position and further its decision to take over possession on petitioner''s failure to pay the instalments. But subsequent to 6-1-1984, the petitioner having deposited a sum of Rs. 30,000/- and further having indicated that the subsidy amount to the tune of Rs. 29,000/- be adjusted, it must be held, and in fact the stand of the Corporation is also so, that the order dated 6-1-1984 was never given effect to. In that event, before issuing Annexure-H/1 u/s 29 of the Act and taking oyer possession of the Industrial concern on 27-1-1984, no further notice appears to have been given to the petitioner though in the meantime there has been a payment and/or adjustment to the tune of Rs. 59,000/-. Consequently, in our opinion, in the altered situation, the Corporation failed in its duty to give a reasonable time and notice to the petitioner that the Corporation was going to take over the industrial concern u/s 29 of the Act and a minimum opportunity to the petitioner to put forth its case before the corporation. Thus, though the order dated 6-1-1984 did comply with the principles of natural justice, but was not given effect to, the order dated 27-1-1984 must be held to be bad in law not having complied with the principles of natural justice and must be set aside. If the order dated 27-14984 is set aside, all subsequent actions including handing over the possession of the industrial concern to Orissa Ceramic Industries Limited is also bad in law and the petitioner would be entitled to get back possession of the industrial premises.

14. Before we direct the delivery of possession of the industrial premises to the petitioner, one other fact also has to be taken note of. There is no dispute that the petitioner was in default though there is dispute amongst the parties as to the exact quantum. In Annexure-2 dated 6-1-1984, the petitioner had indicated that by 31-3-1984, the Company would be able to pay Rs. 1,55,000/- in different instalments. The agreement for sale between the Corporation and the Orissa Ceramic Industries

Limited which has been annexed as Annexure-8 to the writ petition in O.J.C No. 427 of 1984 indicates that there has been a cash payment of Rs. 3,61,000/- and the next instalment for payment is due on 1-3-1985. Therefore, we assume that the Orissa Ceramic Industries Limited has made the payment of Rs. 3,61,000/- to the Corporation. The Orissa Ceramic Industries Limited was quite conscious of the pendency of the writ petition as well as the interim order granted by this court prohibiting the Corporation to execute any sale deed in favour of the said Orissa Ceramic Industries Ltd. and, therefore, the said Orissa Ceramic Industries Ltd. cannot claim any equity on the ground that the possession had been taken over by it. But it would be just and proper that it should get back the money which it has paid on 1-2-1984. In the circumstances, we direct that the petitioner should deposit a sum of Rs. 4 lakhs within a month from today and on such depositing, the Corporation would pay back the amount received by it from the Orissa Ceramic Industries Limited and further deliver possession of the industrial premises to the petitioner immediately thereafter. On getting possession of the premises, the loan agreement between the petitioner and the Corporation would be worked out and after adjusting the payments of rupees four lakhs, the Corporation may rephase the instalments so that the petitioner will not be put to undue hardship and also the Corporation will not lose the money.

15. In the ultimate result, therefore, we quash Annexure-3 dated 27-1-1984 in O.J.C. No. 427 of (984 and hold that all actions subsequent to the taking over of possession of the industrial concern of the petitioner including the action of taking over itself are illegal and inoperative and we hereby set aside the same. We further direct that the opposite parties should put the petitioner into possession of the industrial concern immediately after receiving a sum of rupees four lakhs as directed in this judgment within a period of one month from today. O.J.C. No. 427 of 1984 is thus allowed with costs to be paid by the Corporation alone. Hearing fee is assessed at Rs. 200A. The writ application in O.J.C. No. 340 of 1984 is disposed of accordingly.

P.C. Misra, J.

16. I agree.