

(2012) 05 P&H CK 0117

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 24151 of 2011

Gats Financial Reconstructors
Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 29, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 227
- Right to Information Act, 2005 - Section 8(d), 8(j)
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, 13(2), 13(4), 14

Citation: (2013) 1 BC 609

Hon'ble Judges: Gurmeet Singh Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: V.K. Jindal and Mr. Vipul Jindal, for the Appellant; Kapil Kakkar, Advocate for the Respondent Nos. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

Ajay Kumar Mittal, J.

Challenge in this writ petition filed under Articles 226/ 227 of the Constitution of India is for quashing the impugned order dated 29.6.2011, Annexure P.9 depaneling the petitioner without payment of outstanding dues and affording any opportunity of hearing. A few facts relevant for the decision of the case, as narrated in the petition may be noticed. The petitioner is a Public Limited Company incorporated under the provisions of the Companies Act, 1956. The respondent-State Bank of India is a Public Sector Bank constituted under the provisions of the State Bank of India Act. After the enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act"), the respondent-Bank issued a public advertisement inviting applications for appointment of Enforcement Agents, Recovery Agents and Resolution Agents. In

response to the advertisement, several persons including the petitioner offered their services to the respondent Bank to act as Enforcement Agent. After the interview, 29 persons including the petitioner were appointed as Enforcement Agents on 13.3.2003, Annexure P.4. The name of the petitioner is at Sr. No. 7. According to the petitioner, although no formal agreement was signed between it and the respondent Bank but a copy of the fee structure to specify the fee payable was supplied to it. The respondents had a uniform fee structure, copy of which is attached as Annexure P.5 with the petition. The petitioner was entrusted several cases from time-to-time. The letter appointing the petitioner as an Enforcement Agent was issued separately in each case. Copies of two such letters are attached as Annexures P.6 and P.7 with the petition. As per the said letters, the petitioner was only to handle a particular case and the fee was payable to it strictly in terms of the schedule approved by the appropriate authorities of the Bank. The Bank was required to serve a notice u/s 13(2) of the SARFAESI Act on the borrowers and in case of default, the secured assets were required to be possessed in terms of Sections 13(4) of the Act with the help of the orders from the District Magistrate u/s 14 of the SARFAESI Act. As and when the matter was entrusted to the petitioner, the petitioner after following due process as required under Sections 13(4) and 14 of the SARFAESI Act was able to take actual physical possession in most of the cases with the help of the District Administration but thereafter the matter used to be kept in abeyance by the officers of the Bank. According to the petitioner, the respondent Bank was not interested in early recovery and after the actual physical possession of the secured assets was taken over by the petitioner by virtue of Sections 13 and 14 of the SARFAESI Act, the matter remained in abeyance because of the arbitrary attitude of the authorised officers as the valuation was not got done for several months and in certain cases for years and the petitioner was told to keep on maintaining the actual physical possession. In this way, the payments of the petitioner were being delayed and ultimately vide communication dated 29.6.2011, Annexure P.9, the petitioner was informed that it stood depanelled from the approved list of Enforcement Agents. Hence this petition.

2. Learned Counsel for the petitioner submitted that the respondent-Bank vide Annexure P.9 has depanelled the petitioner Company from the Bank's panel of approved Enforcement/Resolution Agents with immediate effect. According to the Counsel, the same has been done in violation of principles of natural justice as no hearing has been afforded to the petitioner before de-paneling it. Relying upon the judgments of the Apex Court in [Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another](#), and [Zonal Manager, Central Bank of India Vs. Devi Ispat Ltd. and Others](#), , the action of the respondents in de-paneling the petitioner has been challenged.

3. Opposing the prayer of the petitioner, learned Counsel for the respondent-Bank referred to the written statement and in particular to Annexure R-2/2 which related to certain correspondence addressed by the petitioner to the respondent-Bank.

Attention was drawn to the following averments and the language used therein:-

Please be noted that the Bank is not a private organization, where one cannot enquire about the internal issues and administrative matters which is exempted under Sections 8(d) and 8(j) of RTI Act, 2005. We are not enquiring about the colour and quality of your under garments, which may be your personal top secret information but we are enquiring about how you people are flouting the Bank norms to wind and befooling the general public for reasons best known to you.

We are once again sending you the bills (excluding the bills for State J&K) and hope this will be resolved within next 15 days. We advise that since you have miserably failed to safeguard the Service Provider's interest and the Bank's legacy, you should voluntarily put in your resignation, for others to show their talent and that no further public money is being wasted in payment of your salary and perks, etc. You must appreciate that you are being paid from the public money for the services to be done, which includes the above also.

(ii) The Bank is not yours. You are only a servant/employee. We, the general public, are the owners of the Bank. Have you ever seen the servants instructing the owners. Please remain in your limit and mind your words.

XXX XXX XXX

(vi) Since you have been sleeping over the matter for the last 9 months, you are directed to deposit your earnings for the period with the Bank, as you had miserably failed to comply with the constitutional duties. It is not your prerogative to tell us that we will be eligible or not but it is our right to tell you how to behave. Please mend your ways and language.

We hope you will find the above in order and will arrange to visit us for finalization of the execution in these cases within 7 days of the receipt of this letter, failing which your services will be terminated and no communication in this context will be acknowledged.

4. Learned Counsel for the respondent Bank further submitted that empanelment of the petitioner did not confer any legal right on it and in view of the peculiar facts as noticed hereinabove, the action of the respondents was justified and with reference to language used in the correspondence and the attitude of the petitioner expressed in the communications addressed to the Bank, the petitioner is also not entitled to any relief from this Court. It was also submitted that the petitioner had filed 11 cases against the Bank in the Civil Court and, therefore, the petitioner could not claim continuation of empanelment with the Bank in such circumstances.

5. After giving thoughtful consideration to the respective submissions of learned Counsel for the parties, we do not find any merit in the writ petition.

6. A perusal of the letters addressed by the petitioner to the Bank which are appended as Annexure R.2/2 collectively shows that the petitioner had been using intemperate language against the officers of the respondent-Bank and at the same time is claiming to continue with the Bank. The petitioner had not controverted the aforesaid averments by filing any replication and, thus, the communications addressed by the petitioner to the respondent Bank appended as Annexure R.2/2 stand admitted. Further, learned Counsel for the petitioner was unable to show that there was any legal right for continuation as approved Enforcement/Resolution Agent of the respondent-Bank. In the absence of any legal right created by any agreement, it cannot be said that the action taken by the respondents in depanelling the petitioner was vitiated.

7. Adverting to the judgments relied upon by learned Counsel for the petitioner, the Apex Court in *M/s. Erusian Equipment and Chemicals Limited (supra)* observed that person who was put on the black list by the State Government was entitled to a notice to be heard before his name was put on the black list. In *M/s. Devi Ispat limited's* case (*supra*), the Hon"ble Supreme Court held that where the action of a public authority in discharging public functions is shown to be arbitrary and discriminatory, unfair and unreasonable, the same would be violative of Article 14 and open to judicial review by the High Court. Those were not the cases relating to depanelment and the Apex Court was dealing with the factual matrix therein and, therefore, no benefit can be derived by the petitioner by relying upon those judgments. In the present circumstances, the absence of any prior notice before taking action by the respondents in depanelling the petitioner cannot be held to be bad in law. Accordingly, we do not find any merit in the writ petition and the same is dismissed. It is, however, observed that in case the petitioner has any claim in respect of outstanding dues on account of fees, it shall be open to the petitioner to take recourse to remedy of recovery in accordance with law.