

(2003) 12 JH CK 0017
Jharkhand High Court
Case No: Writ Petition (C) No. 6616 of 2002

K.P. Mineral Pvt. Ltd.

APPELLANT

Vs

Bihar State Credit and
Investment Corporation Ltd. and
Others

RESPONDENT

Date of Decision: Dec. 9, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 52 BLJR 30 : (2004) 1 JCR 337

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Y.B. Giri and A.R. Choudhary, for the Appellant; Delip Jerath, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Tapen Sen, J.

In this application, the petitioner prays for quashing of the sale notice dated 24.11.2002 as contained in Annexure 29 insofar as it relates to the petitioner. The petitioner also prays for quashing the order dated 1.8.2002 passed by the respondent No. 2 purporting to be in pursuance of the earlier judgment of this Court delivered on 16.7.2002 in W.P. (C) No. 2991 of 2002 as contained in Annexure 24. The petitioners further prays for quashing the Notice of Dishonour of Cheque dated 9.10.2002 as contained in Annexure 27 informing the petitioners that their cheque No. 644231, dated 5.8.2002 for a sum of Rs. 21,07,654/- had been dishonoured and therefore, they were directed to pay the said sum within 15 days from the date of the notice. The petitioners also pray for quashing the letter dated 4.9.1992 (Annexure 3); 31.12.1993 (Annexure 5) and 9.9.1994 (Annexure 6) in relation

to informing the petitioners with regard to the rates of interest payable by it. The petitioners have also made a prayer for a direction upon the respondents to make a fresh calculations as per the agreed interest and not to charge interest, interest on penal interest and penal interest on penal interest. They have also made a prayer that the respondents should be directed to raise demands after waiving the entire penal interest as well as 60% interest as per judgment passed in an earlier judgment in W.P. (C) No. 1997 of 2002 (Annexure 20) read with the order passed in W.P. (C) No. 2991 of 2002.

2. The petitioner, a private limited company, in order to set up an industrial unit, filed an application in the year 1980-89 before the BICICO for a term loan as financial assistance for setting up an industrial unit.

3. Pursuant to the said application, a term loan of Rs. 76,00,000/- was sanctioned by letter dated 20.3.1990 (Annexure 1) along with terms and conditions. The sanction of the term loan was subject to sanction of re-finance by the Industrial Development Bank of India (I.D.B.I.) and the loan was to be repaid in 10 years which included a moratorium of 2-1/2 years from the date of first disbursement.

4. Accordingly, the petitioner entered into an agreement in the year 1990-91 whereafter BICICO issued cheques/drafts. The petitioner received a total amount of Rs. 70,69,378/- as the first disbursement of Rs. 49,73,000/- was made by cheque dated 31.3.1990.

5. It is apparent that subsequently disputes arose between the petitioner and the BICICO which led to filing of three earlier Writ Applications.

6: Let it be recorded that in relation to one of the prayers made in this writ application for quashing the notice dated 9.10.2002, the same was in the nature of informing the petitioners about dishonour of their cheques amounting to Rs. 21,07,654/- but from the order dated 20.12.2002 passed in this case it is apparent that three Crossed Demand Drafts bearing Nos. 357023, 357024, 357025 all dated 14.12.2002 for the amounts of Rs. 7,07,654/- (Rupees seven lakh seven thousand six hundred fifty four); Rs. 7,00,000/- (Rupees seven lakh); and Rs. 7,00,000/- (Rupees seven lakh) respectively, totaling to Rs. 21,07,654/- (Rupees twenty one lakh seven thousand six hundred fifty four) were handed over to the learned counsel appearing for BICICO by the learned counsel appearing for the petitioner and the said drafts were also handed over by the learned counsel for the respondents to one Mr. S.P. Singh, Deputy Manager, BICICO who was present in Court. In that view of the matter, this prayer now becomes redundant.

7. In relation to the dispute that now seemingly appears to be the bone of contention between the parties and as is also evident from the order dated 2.7.2003 passed in this case, is the rate of interest inasmuch as while the respondents claim that they are entitled to charge interest at the rate of 19% per annum, the petitioner, on the other hand, asserts that it is liable to pay interest only at the rate

of 14% per annum.

8. In that view of the matter, it is not necessary for this Court to go into the details and facts pleaded save and except to record that in the earlier Writ Applications, the following orders were passed in the following manner :--

(A) In C.W.J.C. No. 666 of 1992 (R) [Annexure 4], it was ordered as follows :--

"This writ application is disposed of on the following terms :--

(a) A writ of mandamus is issued to respondent Nos. 5 and 6 to disburse the balance of the subsidy due to the petitioner forthwith in the light of Annexure-11.

(b) The Corporation should not demand penal from the petitioner. The petitioner, however, is not absolved of its liability to pay any interest to the respondents Corporation in relation to any amount other than the adjustment of capital subsidy. If the Corporation is not in a position to waive interest amount and interest shall be payable by the State of Bihar. The revised interest under IDBI financial scheme demanded from the petitioner vide Annexure-13 shall not be given effect unless opportunity is given to the petitioner to substantiate his case that as the loan agreement was entered prior to 1.5.1992 the rate of interest was chargeable as per loan agreement and not on the basis of revised rate. There shall be no order as to costs."

(B) In W.P. (C) No. 1997 of 2002 (Annexure 19), an agreed order was passed which reads as follows :--

"During the course of arguments, all parties have agreed that this writ petition be disposed off on the following terms and conditions :--

(A) The petitioner or its authorised representative shall meet the Managing Director of the BICICO on or before 24th of April, 2002 and shall produce a copy of this order before him;

(B) The Managing Director, in his turn, shall immediately recalculate the entire remaining dues legally payable by the petitioner and upon such calculation, he shall hand over the same to the petitioner or its authorised representative by 26th April, 2002;

(C) On receipt of the aforementioned fresh calculation/demand and, within a period of (1) one month from the date of such receipt, the petitioner, without any further reference to any other former or any other Court, shall pay the same in one lump sum;

(D) The Managing Director of BICICO in his turn shall, while calculating the remaining balance in the manner indicated above, and as undertaken by the learned counsel for the BICICO, also waive penal interest and shall give all possible deductions/remissions permissible as per policy, including deductions/remissions in

interest.

As agreed by all the parties in the manner stated above, this writ petition stands disposed off making the terms and conditions (A) to (D) above absolute."

(C) In W.P. (C) No. 2991 of 2002 (Annexure 24), it was observed and held as follows :--

"24. The submission of the petitioners is that the respondents have illegally and unilaterally calculated the amount at the rate of 19% on the basis of the IDBI/SIDBI circulars. In this context, it would be worthwhile to refer to the relevant language of the circulars revising the rates of interest and which have been brought on record by the Writ Petitioners. The first revision was indicated by Annexure 3 which states that the revised rates of interests of term loan would be 19%. Under the SIDBI circular at Clause (A) thereof it is mentioned that the above rates would come into force with effect from 1.5.1992 and would be applicable to loans where loans agreement had been executed on or after 1.5.1992 and in all cases where the term loan and refinance had been sanctioned prior to 1.5.1992 and not disbursed so far. So far as the IDBI circular is concerned, the same has also been mentioned at Clause (B) thereof indicating that the interest at the rate of 20% would be applicable to all cases where the term loan and refinance thereto had been sanctioned prior to 1.5.1992 and not disbursed so far. Similar language has been used in the other revision circulars including the one dated 14.1.1994 which also says that rate of interest would be charged at the revised rate and would come into effect on all loan agreements executed on or before 8.9.1993 but not disbursed so far. Similarly, similar is the position with regard to revision circular dated 9.8.1994 as contained at Annexure-6.

25. The admitted case of the parties is that the entire loan was disbursed between the period 31.3.1990 to 15.10.1990 and therefore, the aforementioned revision circular cannot be said to be applicable upon the petitioners. On the contrary, the interest which is applicable upon the petitioner is the interest that was fixed as per the term loan agreement and which clearly says that the rates of interest would be 14% per annum. Undoubtedly, there is a stipulation that the interest may be revised at the discretion of the lender. However, what is important is that the revision circulars are themselves so specific that the language of the said circulars themselves make it clear that those revision circulars apply on loan "not disbursed so far".

26. In this case, a counter affidavit has been filed on behalf of respondent Nos. 1 to 6. While highlighting the constitution of BICICO and its aims and objectives and also the fact that it takes loans from different organizations, has been stated that the writ petition tacitly reveals that a huge amount of money is lying outstanding and which is payable, to them and that no payment has been made in the last few years. They have, further stated that upon an application made by the petitioner for grant of term loan the respondent corporation sanctioned a term loan of Rs. 76 lakhs out

of which an amount Rs. 74.15 was disbursed to the petitioner company in keeping with the terms and conditions of the loan and as per the contribution made by the promoters of the petitioner unit in a manner brought out below :--

Date	Amount
31.03.1990	49,73,000.00
20.09.1990	12,00,000.00
15.10.1990	12,42,000.00
74.15 lakhs	

27. They have also stated at paragraph 14 that the petitioners are chronic defaulters and that till the year 2001, they have paid a sum of Rs. 133.14 lakhs.

28. They have further stated that pursuant to the order of this Court passed in W.P. (C) No. 1997 of 2002 it has waived the entire penal interest of Rs. 4.65 lakhs and the 60% of the accrued interest as on 31.3.2002 amounting to Rs. 6.24 lakhs.

29. From the counter-affidavit, however, no explanation seems to be coming forth from the side of the respondents, as to whether these Revision Circulars are applicable upon the petitioners or not? Although prima facie and from the language used therein it appears that perhaps these circulars may not be applicable upon the petitioners, but it would not be proper for this Court to give any adjudication in relation thereto in favour of the petitioners as this aspect lies exclusively within the domain of the respondents to say so. In that view of the matter, the impugned order dated 24/25.4.2002 is set aside and the matter is remanded to the respondents to pass a speaking order in accordance with law. They must conclusively and finally state giving reasons as to whether these Revision Circulars are applicable or not applicable upon the petitioners. Once such an order is passed, the respondents shall then make fresh calculations on the basis of the said speaking order and after making such calculations, they will serve the same upon the petitioners. Thereafter the petitioners must act as per the agreed order dated 18.4.2002 passed in W.P. (C) No. 1997 of 2002.

30. With the above mentioned observations and directions, this writ petition is disposed off."

9. According to Mr. Giri, learned counsel for the petitioner, the agreed order dated 18.4.2002 passed in W.P. (C) No. 1997 of 2002 makes it clear- that the entire remaining dues legally payable should have been calculated and as per (D) thereof while calculating the same and as undertaken by the learned counsel for the BICICO, penal interest was required to have been waived and all possible deductions/remissions permissible as per the policy including deductions/remissions in interest were also to be given. After the aforementioned agreed order had been passed on 18.4.2002, the respondents by communication dated 24/25.4.2002 (Annexure 21), have raised the amount, which has been

calculated earlier (See Page 147) to the extent of Rs. 37,430/- to Rs. 43.54 lakh, which however, was reduced to Rs. 32.64 lakh. According to Mr. Giri, this calculation is based on rates of interest at the rate of 19% and not 14%.

10. It is evident that in the judgment passed in earlier Writ Application also (W.P. (C) 2991 of 2002), there is an indication at paragraph 25 that the admitted case of the parties was that the entire loan was disbursed between the period 31.3.1990 and 15.10.1990, therefore the revision circular could not be said applicable upon the petitioners and as per the loan agreement, the rates of interest were to be at the rate of 14% per annum. However, there was a clear stipulation that the rate of interest may be revised at the discretion of the lenders.

11. Now the petitioners, in this Writ Application, once again make a grievance that whatever calculation has been made is not as per earlier orders and that they cannot be made liable to pay more than 14% interest.

12. From paragraph 29 of the earlier Judgment delivered in W.P. (C) No. 2991 of 2002 and which has been quoted above, it is evident that this Court noticed that although prima facie and from the language, used in the revision circulars it appeared that perhaps these circulars may not be applicable upon the petitioners, but however, this Court did not give a positive finding as to whether the respondents could charge at the rate of 14% or 19% because it was observed that it would not be proper for this Court to give any adjudication in relation thereto as this lay exclusive with domain of the respondents. The matter, therefore, was left open and the respondents were directed to finally decide as to which of the revision circulars were applicable. The aforementioned observations in paragraph 29 of W.P. (C) No. 2991 of 2002 has to be read therefore, with the earlier agreed order dated 18.4.2002 where the Managing Director of BICICO was given the responsibility of recalculating the entire remaining dues legally payable.

13. Pursuant to the aforementioned orders, the respondents have passed the order dated 1.8.2002 (Annexure 26) and this Court after having gone through it, does not find the same to be either irregular, illegal or in any manner contrary to the judgments delivered earlier. In that view of the matter, whatever observations that this Court made on 17.9.2003 were prima facie observations, but after having considered this matter in its entirety, this Court does not find any reason to interfere any further.

The Writ Application is therefore, dismissed. There shall however, be no order as to costs.