IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 978 of 2015

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Harish Chandra Samaiyar son of Late Ram Chandra Prasad resident of Mohalla : Magadh Colony, Road no. 11, Police Station : Magadh Medical College Police Station, District : Gaya. At present residing at 12 C, Khangar Gali, Deewan Mohalla, Police Station : Khajekallan, District : Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Industries Department, New Secretariat, Patna.
3. The Managing Director, Bihar State Financial Corporation, Bihar State Financial Corporation Building, Frazer Road, Patna.
4. The Director, Industries, Industries Directorate, New Secretariat, Patna.
5. The Branch Manager, Bihar State Financial Corporation, Magadh Branch, Gewal Bigha, District: Gaya.

.... Respondents

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Appearance:

For the Petitioner	:	Mr.Dhirendra Kumar Jha, Advocate
		Mr. Kumar Dhirendra Pratap Singh,Advocate
For the State	:	Mr. R.K.Priyadarshi, SC 32
For the B.S.F.C.	:	Mr. Ashish Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-08-2015

Heard learned counsel for the petitioner and learned counsel for the Respondents.

2. The present writ petition has been filed for a direction to the Respondent Bihar State Financial Corporation (hereinafter referred to as "the BSFC") to allow the benefits of OTS Scheme to the petitioner.

3. The petitioner is an S.S.I. Unit engaged in business of manufacture of G.I. buckets. It was sanctioned a term loan of Rs. 4.50 lacs by the BSFC, out of which it is claimed that a sum of Rs.3.91 lacs only was disbursed. The same could not however be repaid owing to compelling circumstances. A One Time Settlement Scheme-2009 was introduced by the BSFC fixing the settlement

amount as 110% of the principal outstanding amount in all the loan accounts as on 31.03.2010 for which the date of commencement was 17.08.2010 and ongoing till 15.11.2010. The same could not however been availed by the petitioner owing to serious illness of his son-in-law suffering from chronic liver disease, ultimately leading to his death in mid May, 2015.

4. Learned counsel for the petitioner submits that the BSFC has now introduced "BSFC OTS Scheme 2014" for settlement of dues of selected categories of loan accounts and the petitioner, being eager to pay up his dues, approached the BSFC for being permitted to avail of the benefits of the OTS Scheme-2014, which request however, was rejected.

5. Learned counsel for the petitioner submits that he was unable to apply under and avail of the OTS Scheme-2009 owing to circumstances beyond his control and he ought to have been permitted to settle the dues belatedly on payment of interest for which he expressed his willingness. In the alternative, it is submitted that he ought to have been permitted to settle the dues under the OTS Scheme 2014, but his application thereunder has been rejected arbitrarily and without justification. Reliance is placed on the decision of a learned Single Judge of this Court in ***Dr. G.N. Singh vs. The Bihar State Financial Corporation and Ors., 2004 (4) PLJR 433*** wherein prayer for extension of time for making payment of the remaining amount by the petitioner and charging interest thereon to be appropriately fixed was permitted.

6. Learned counsel for the Respondent BSFC on the other hand opposes the writ petition on the ground that the OTS Scheme-2009 does not contain any provision for extension of time for persons who failed to apply within the prescribed time, which in the instant case ended on 15.11.2010. It is further submitted that the OTS Scheme-2014 is not applicable to the petitioner. The

petitioner's claim to be considered under the category 'educated unemployed' under the OTS Scheme 2014 was rightly not entertained inasmuch as initially the loan was never sanctioned as such, which is evident from the memorandum placed before the D.G.M., BSFC on 12.02.1987 which discloses that the petitioner at the relevant time was acting as an authorized agent of National Savings Scheme attached to Patna Post Office under G.P.O. and his annual earning from the said agency was reported to be about Rs.20,000/-. It is further submitted that the request of the petitioner has rightly been rejected as he is neither eligible for being considered under the OTS Scheme 2009 having not applied within the time frame prescribed thereunder, nor under the OTS Scheme 2014 as the loan itself was not sanctioned under the category 'educated unemployed'. Learned counsel for the Respondent BSFC relies on the decision of a Division Bench of this Court in the case of ***Bihar State Financial Corporation vs. Kedar Nath Lohani disposed of by order dated 22.03.2010 in LPA No. 277 of 2008.***

7. Having heard the parties at length, this Court is unable to accept the submissions of the petitioner. The main hurdle is that the petitioner did not apply within the permissible time which expired on 15.11.2010 for settlement under the OTS Scheme 2009 which was a pre-requisite for availing the benefits thereunder. It is also not disputed that the said Scheme did not contain any provision for extension of time for making application. Granting indulgence to the petitioner permitting him to apply under the OTS Scheme 2009 beyond the terms and conditions of the Scheme itself would render the Scheme an everlasting one and contrary to the spirit of the Scheme which was introduced as an extraordinary measure for settlement of dues. This Court is in agreement with the submissions of the learned counsel for the Respondent BSFC that the benefit of OTS Scheme

2014 is also not available to the petitioner in view of the loan not having been sanctioned under the special category of 'educated unemployed'. In Bihar State Financial Corporation vs. Kedar Nath Lohani (*supra*) it was held by the Division Bench as follows :-

> ***" 18.Admittedly, the last date of application under OTS Scheme vide Circular No. 2 of 2004-05 referred to and relied by the Respondent writ petitioner in his writ petitioner had expired on 25.5.2005 much earlier prior to the sale notice dated 30.1.2008 and the writ application filed by respondent-writ petitioner assailing the same on 12.2.2008. In such circumstances, a direction to the Corporation to settle the dues of respondent-writ petitioner in a non-existing OTS scheme on date of passing the impugned order cannot be sustained. This Court in exercise of power under Article 226 of the Constitution cannot direct the Corporation to do something by way of One Time Settlement which is not permissible in law and that too against non-existing OTS Scheme in vogue.***
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> ***19. Judicial Review of the scheme under one time settlement has been gone into by this Court in the case of M/s. Mayur Hotel Private Ltd. Vs. the State of Bihar reported in 2000(2) PLJR 408 wherein it has been held that one time settlement scheme is available only to specified category to those who are not willful defaulter. Such transaction being commercial in nature cannot be interfered by the Court as the Corporation is best judge of it."***

8. The decision in the case of Dr. G .N. Singh vs. The Bihar State Financial Corporation and Ors. (*supra)* relied upon by learned counsel for the petitioner does not come to his aid being distinguishable on facts as that was a case where the petitioner had duly made an application and even made repayment of part of the loan amount under the relevant BSFC OTS Scheme and it is only

for the remaining amount that extension of time had been granted. In the present case, the petitioner had not even applied in the OTS Scheme 2009 and thus could not claim the benefit of extension of time.

9. In the circumstances therefore, this Court does not find any merit in the writ petition which accordingly stands dismissed.

(Vikash Jain, J)

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