

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.15040 of 1997

Date of decision: **07.01.2015**

M/s Guargum India Private Limited through its Director Shri Hanuman Prashad Goel, R/o A-201, Shivalik Colony, Malviya Nagar, New Delhi, and others.

... Petitioners

versus

Haryana Financial Corporation established under the State Financial Corporation Act, 1951, having its Head Office at 17, 18 and 19, Sector 17-A, Chandigarh-160017, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashok Aggarwal, Advocate,
for the petitioners.

Mr. Kehav Gupta, Assistant Advocate General, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. The petitioners challenge the recovery certificate caused to be issued for an amount of ₹6,90,374/- under the Revenue Recovery Act. The 1st petitioner is the Company which is the principal debtor and the petitioners 2 to 5 are guarantors. The amount purports to represent the dues of the 1st petitioner-Company to the Haryana Financial Corporation arrayed as 1st respondent. The

petitioner-Company's contention is that it had availed of a loan from the 1st respondent-Corporation in the year 1978 and still further in the year 1981 for ₹9,38,000/- and ₹3,80,000/- respectively. While the 1st loan had been issued, the 2nd loan had not been fully disbursed. The petitioner-Company was also entitled to grant of a subsidy under a scheme issued by the State Government in the year 1971. An amount of ₹1,81,797/- had been sanctioned by the Government of Haryana and the amount was also liable to be paid to the petitioner-Company.

2. The petitioners' case was that the subsidy had not been released to the petitioner but the 1st respondent-Corporation adjusted the amount with loan repayment amount and prevented the disbursement of the said sum to the petitioner. The Company had commenced its manufacturing activity in the year 1979 and continued the same till the year 1987-88. The 1st respondent-Corporation took action for recoveries and had got the factory premises attached on 10.03.1988 and sold the unit for alleged unrecovered portion of the accumulation of the loan with interest. The Corporation made a further demand which gave rise to a further liability of ₹4,40,000/-. All the amounts had been settled on 23.04.1996 and a letter was also issued by the 1st respondent under Anneure P5. The grievance of the petitioners is that after the settlement was effected which was acknowledged by the letter

issued in the year 1996, there was no further amount due and payable and the notice issued under the Revenue Recovery Act for alleged arrears was untenable and incompetent. The petitioners' plea was rested on basis that the amount which was sought to be recovered was a subsidy amount which had been ordered to be released by the Government of Haryana and the same having been wrongly adjusted by the Corporation by claiming it from the Government cannot be a matter of further recovery. The relief therefore made a reference to quashing of the recovery “in respect of subsidy disbursed under the agreement dated 13.01.1982.”

3. The respondents contended that the amount of ₹1,81,797/- had not been claimed by the Corporation at any time nor was any adjustment made. On the other hand, the amount was disbursed to the petitioner unit through the Corporation on 13.01.1982. The Corporation would refer to an indenture made by the petitioner-Company that itself recited the fact that an amount of ₹1,81,797/- had been paid as a subsidy by the Corporation as agent of the State Government. As per the terms of the indenture, the petitioner was to remain in production upto 12.01.1987 but since the petitioner unit had failed and had closed even before the said period, the amount paid as subsidy was liable to be recovered.

4. I have seen through the agreement entered into between parties on 13.01.1982. It will be misreading the document to assume

that the subsidy amount had been actually paid to the petitioner. However it does not assume much significance whether the amount was actually paid or was adjusted against the Corporation's loan since on an overall consideration, the amount which was given credit to the petitioner by adjustment against the loan would have subsisted if the Company had carried on the business as per its terms. On the other hand, as per the terms of the indenture if the unit had been closed within a period of 5 years after it went into production or disbursement of subsidy whichever was later, the Director would be competent to recover the whole of the amount adjusted as subsidy together with interest @ 10%. This clause is specifically brought out in the clause 4(x) of the agreement. The respondent's contention is that after the document was made on 13.01.1982, the petitioner was bound to show that it remained in production for a period of 5 years, i.e. upto 12.01.1987. The Corporation would refer to the fact that the notice had been issued on 01.08.1986 under Annexure R1 where it had been stated that the unit had closed its industrial activities and that therefore the subsidy amount that was adjusted against the loan already obtained was liable to be recovered independently. The registered notice had not been served but returned with an endorsement that the unit had been closed. Again a notice had been issued on 27.05.1986 specifically referring to the fact that since the factory had been closed within a

period of 5 years, the amount was liable to be recovered. The endorsement of service has been made at the instance of the Chowkidar Tara Chand since personal notice at the address specified was not capable of being made on the Chief Functionary of the Company in view of the fact that the factory had been closed.

5. The respondent would bring evidence to the fact that the Director of the petitioner-Company knew about the service effected on the Chowkidar and, therefore, in its own notice issued on 04.06.1987, there had been a reference to the fact that the petitioner wanted to make it appear as though that the Company did not go out of production but due to drought conditions prevailing at Rajasthan, the raw material which was *gaur* that was to be supplied, could not be supplied and they had to therefore, curtail the production drastically. The Company attempted to show from the audit statement that the Company had not closed and it was still having its unit running.

6. It is not possible for the court to consider in a writ petition whether the Company had actually ceased its working or it had slowed down its production on account of non-availability of its raw materials. The service of notice on the Chowkidar could only be taken as a prima facie proof that the service on the Director of the Company was not possible and that the service could be effected only on the Chowkidar because the factory operations had come to

stop. Instead of producing merely the audit statement, the Company could have produced documents such as the electricity bills or the salary disbursement vouchers or PF contributions or any other significant and relevant materials that the factory was still being run. If the petitioner would merely refer to its own audit statement, it could be seen only in the context of how the 1st respondent-Corporation itself was unable to serve the notice of demand on any of the chief functionaries of the Company and it found the factory to be closed on two occasions with notices were issued. The issue of whether the factory was closed within a period of 5 years or not is essentially a question of fact and I cannot reopen a situation of how the Corporation had dealt with the issue especially when even the factory had been put up for sale for recovery of the dues at the time when the writ petition was filed. Admittedly, the factory premises itself had been sold and it is not possible for me therefore to vouch for the correctness of the contention that the factory was still being run beyond a period of 5 years, as contended by the petitioners.

7. The recovery of the subsidy was competent in a situation when the functioning of the Company was not shown to have lasted beyond a period of 5 years. With no material available than the mere audit statement, I find no reason to act on the assertion of the petitioners and annul the recovery proceedings initiated under the Revenue Recovery Act.

8. There is no valid ground to interfere with the decision for recovery of the subsidy released to the petitioner and adjusted originally against the loan repayment amount. Admittedly when the amount was not fully recovered even by the sale of the factory premises, the Corporation was entitled to seek for its recovery which was originally given credit to the petitioners.

9. The writ petition is dismissed on the above terms.

(K.KANNAN)
JUDGE

07 .01.2015

sanjeev