Case No. 20

1993 Writ law Reporter 273

MADRAS HIGH COURT
(FULL BENCH)
Ratnam, Srinivasan and Somasundaram, JJ.

31st July,1992/Writ Appeal No.73 of 1992

R. Paramasivam
Vs
1.The Tamilnadu Industrial Investment Corporation Ltd.,
represented by the General Manager Arul Mani,
27, Whites Road, Madras - 600 014

2. The Branch Manager, The Tamilnadu Industrial Investment Corporation Ltd., 33, Promonade Road, K.R.T. Building, Cantonment, Trichy - 620 001

3. S. Ameer

Section 29 of State Financial Corporation Act - No notice before seizure - seizure not illegal - subsequent sale after notice valid.

The writ petition out of which this appeal had arisen was dismissed in limine and the prayer in the writ petition was, to issue a Writ of Mandamus directing respondent 1 and 2 to accept the outstanding amount due from the petitioner and release the lorry by declaring the auction conducted by the second respondent as null and void and illegal. When the Writ Appeal was admitted by the Division Bench an order was made referring the appeal to a larger Bench. The Order of Reference by the Division Bench (Per Mishra, j.) is extracted in para 10 of the Judgment of the Full Bench.

HELD: There is no merit whatever in the appeal. The facts of the case fully justify the dismissal of the writ petition in limine. Nothing has been placed before the court to show that the action was not conducted fairly or properly. The appellant cannot makqe any grievance against the auction as such. There is absolutely nothing to show that the Corporation had acted vindictively or arbitrarily against the appellant.

It cannot be stated as an absolute proposition of law that in every case any action

taken by the Corporation under S.29 of the State Financial Corporations Act without notice to the borrower is contrary to the principles of natural justice and vitiated thereby. It has to be decided In each case by the Court whether the particular action taken by the Corporation required the issue of a prior notice to the borrower. Such decision will naturally depend on the exigencies of the situation and the nature of the hypothecated assets.

There is nothing in S.29 of the Act which would prevent the corporation from enforcing the terms of the contract by seizure of the hypothecated assets, without notice of seizure. S.29 of the Act confers particular rights to take over the management or possession or both, of the industrial concern and to realise the property pledged, mortgaged, hypothecated or assigned by transfer, either by lease or sale.

It should be remembered at this stage that one of the objects of the State Financial Corporations Act is to enable financial institutions to recover the money invested by an advancement of loans as speedily as possible. Before the Act was passed, financial institutions were finding it difficult to freely invest their money in Industrial concerns as they were required to adopt lengthy and cumbersome procedure of sale through Courts in cases of defaults by the borrowers. Thus, the funds of the financial institutions were getting locked up for a long time and were not available to as many industrial concerns and as quickly as possible. For the purpose of quick industrial progress it was felt necessary that the flow of credit remained smooth, unimpaired and quick. It was for that reason, the Parliament enacted the State Financial Corporations Act and incorporated Ss.29 to 31 conferring certain rights on the Corporation. The scheme of the Act shows that the Parliament wanted special financial institutions to be established for giving financial accommodations to industrial concerns and at the same time confer on them special rights for recovery of their dues in case of defaults by the borrowers. Such recovery is made possible even without an adjudication by judicial authorities. S.29 of the Act confers particular rights to take over the management or possession or both of the industrial concern and to realise the property pledged, mortgaged hypothecated or assigned by transfer either by lease or sale.

Ss.29 to 31 of the Act should be read together. S.29 there of enable the financial Corporation to take over the management or possession or both of the industrial concern, which is under a liability to the Corporation under an agreement and which makes a default in repayment of loan or advances or any instalment thereof or in meeting its obligations in relation to any guarantee given to the Corporation….S.31

of the Act shows that if a notice is issued under S.30 of the Act and not complied with, the Corporation is empowered to exercise (1) its rights under S.29 of the Act, (2) its rights under S.69 of the Transfer of Property Act, and (3) its rights under S.1 of the Act. The Corporation may choose any one of them.

It is seen from the facts of the present case that a notice of foreclosure had been issued under S.30 of the Act and the impugned auction has been held only after sufficient time had elapsed after the receipt of such notice by the appellant. Even after the publication of the notice of public auction, the appellant did not take any steps to pay the amount due. Hence, there is no illegality whatever in the auction held by the respondents.

Though there was no necessity for a notice of seizure before the lorry was seized, factually there was a notice calling upon the appellant to pay the amount due as on 1-9-1991. That notice was dated 26-8-1991. In spite of the notice to pay, the appellant did not move his little finger. Naturally, the corporation was obliged to take action in order to protect the interests of the corporation by seizing the lorry. There was no violation of any principle of natural justice in the seizure of the lorry, particularly when the corporation was enforcing the terms of the contract and exercising its power under Cl.10 of the hypothecation deed.

As rightly pointed out by learned counsel for the respondents, if a notice of seizure has been given, the vehicle would have disappeared from the normal area of operation. The appellant would have taken it beyond the reach of the respondents, anywhere in the country as he is holding a National permit. There is no substance in the contention that the seizure is illegal in the absence of notice of seizure. Cl.10 of the hypothecation deed provides expressly for seizure of the hypothecated assets in the event of default in the payment of amounts due to corporation. The Corporation is certainly entitled to exercise its powers and enforce the terms of the contract.

A.I.R. 1985 S.C. 1416
A.I.R. 1990 Gujarat 105 and
Judgements Today 1992 (2) S.C. 326 - 1992-2- L.W. 708 - Referred to
A.I.R. 1985 Orissa 153 - Distinguished.

Writ Appeal Dismissed

Mr. R. Singaravelan for Appellant.

Mr. R. Viduthalai for Respondents.

JUDGMENT: Srinivasan, J.

1. Though in our view the reference to the Full Bench is unnecessary in this case, we have proceeded to hear the appeal as the entire case is placed before us. We have also taken into account the fact that the parties would be put to unnecessary hardship, if we return the reference.

2. The appellant borrowed a sum of Rs.2,10,000 from the first respondent Corporation for the purchase of a lorry to be plied as a public carrier with a National permit. The loan was sanctioned subject to the terms and conditions specified and the appellant accepted the same. The entire loan was disbursed in three instalments as follows:

1.	5-3-1987	-	Rs. 1,71,500.00
2.	13-3-1987	-	Rs. 28,564.25
3.	24-4-1987	-	Rs. 9,935.75

The amount was to be repaid in 56 monthly instalments commencing after three months from the date of first disbursement. A Schedule of repayment was stipulated in the sanction order as follows:

First 10 monthly instalments of Rs. 4600;	46,000
Next 10 monthly instalments of Rs. 4300;	43,000
Next 10 monthly instalments of Rs. 4200;	42,000
Next 10 monthly instalments of Rs. 4100;	41,000
Next 10 monthly instalments of Rs. 3200;	32,000
Last 6 monthly instalments of Rs. 100;	6,000
	2,10,000

It was agreed that interest at the rate of 14.5% per annum with a rebate of 2% per annum for prompt payment, should be paid along with the principal. The repayment commenced from 1-7-1987 and was to end on 1-3-1992. The vehicle, which was purchased bearing registration number TCY 5425 was given as a security under a hypothecation bond dated 23-2-1987.

3. The appellant admittedly did not adhere to the schedule of repayment. He was making payments irregularly. The lowest payment was Rs.413.90 and the highest payment was Rs.20,000. He was not making payments every month. He chose to pay as and when he pleased. Thus, the appellant had been committing default from the beginning. But the Corporation had not taken any steps to enforce the repayment schedule. By notice dated 29-8-1991, the Corporation informed the appellant that a sum of Rs.1,93,601.81 was due towards principal and a sum of Rs.25,756.25 was due towards interest as on 20-8-1991 and he was required to pay the same. The notice also called upon him to intimate the Corporation within a fortnight of the receipt thereof if there was any discrepancy in the figures mentioned as per his records, failing which it would be construed that the liability to the Corporation as stated in the notice had been accepted by him. There was no response and admittedly the appellant did not make any payment after that notice. The Corporation seized the lorry on 1-10-1991 by exercising its powers under C1.10 of the hypothecation agreement, which empowered the Corporation to take possession of the hypothecated assets in default of payment of monies and/or instalments due to the Corporation. Thereafter, the appellant made a payment of Rs.15,000 on 4-10-1991. According to the Corporation, he promised to pay the entire amount due within one month therefrom. The appellant gives a different version to which we will make a reference a little later. The fact remains that no amount was paid thereafter by the appellant to the Corporation. A notice was issued on 14-11-1991 by the Corporation styling itself as foreclosure notice. The appellant was called upon to pay the entire amount due under the transaction within 15 days from the receipt thereof. The appellant was informed that if there was a failure on his part to clear the dues, the Corporation would, without any further intimation or reference to him, proceed to enforce the rights reserved under hypothecation deed including the right to exercise the power of sale etc., under the provisions of the state Financial Corporations Act. The last paragraph of the notice reads thus:

"Please note that we will be constrained to take action under S.29 and/or S.2G of the S.F.C. Act without prejudice to our other rights of recovery of your failure to repay the amount as indicated above."

4. The appellant claims to have sent a letter by registered post on 26-11-1991 praying for grant of one month's time to pay the balance and close the account. According to the Corporation, it did not receive such a letter. The Corporation made a newspaper publication on 6-12-1991 that the lorry would be sold in public auction on 12-12-1991. The auction was held on 12-1-2-1991 and the third respondent herein

was the highest bidder for Rs.2,58,500. His bid was accepted by the Corporation and the sale was confirmed in his favour as he had complied with the terms of auction and paid the entire amount.

5. The writ petition, out of which this appeal arises, was presented in this Court by the appellant on 6-1-1992. In the affidavit filed in support of the petition, the appellant admitted that he had not been paying the instalments within the stipulated time limits. According to him, the lorry was seized on 3-10-1991 without any prior notice of seizure or a memo calling upon him to repay the amount due within a stipulated time limit. He proceeded to state in the affidavit as follows:

"However, immediately after seizure, I had gone to the office of the second respondent and met him personally on 4-10-91. I had explained my inconvenience and grievances in detail and requested him to release the vehicle on payment of Rs.15,000. He had agreed to release the vehicle on payment of the said amount and I paid the amount on 5-10-1991. After the payment of Rs.15,000 made by me, the second respondent refused to release the vehicle and asked me to pay a further sum of Rs.50,000 for the release of the vehicle granting me 3 weeks time. Accordingly, I had gone to the office of the second respondent with a sum of Rs.50,000 and met him on 17-11-1991. but he refused to accept the said amount and asked me to bring a further sum of Rs.35,000. Thus he asked me to pay a total sum of Rs.85,000 for the release of the vehicle. I requested him to accept the amount of Rs.50,000 at first. But, for no reasons stated, he had refused to accept it. Hence, I turned back vexatiously. While I was making arrangement for collecting a further sum of Rs.35,000 a notice dated 14-11-1991 in Ref. No. TIIC/TRX/Re/Legal 91-92 was served on me by registered post with acknowledgement due for closing the loan and calling upon me to pay to the first respondent within 15 days from the date of receipt of the said notice, a sum of Rs.2,12,337-16 being the entire principal amount of the loan and the interest, etc., thereon upto 13-11-1991 and other charges and dues amounting to Rs.200 aggregating to Rs.2,12,537-16 with further interest and additional interest at the prevailing rates till the date of payment and other charges and dues. In the said notice it had been stated that a sum of Rs.1,90,601.81 being the instalments of principal and a sum of Rs.18,735.35 being the interest upon 13-11-1991 were over dues besides commitment charges, sundry dues, expenses and other charges.

I humbly submit that the above said notice was served on me on 19-11-1991 and immediately after receiving the same I had forwarded a letter dated 26-11-1991 by registered post with acknowledgement due to the second respondent herein agreeing

to repay the entire amount due to be paid to the first respondent within 30 days as 15 days time granted by the second respondent was not sufficient. I have not yet received the acknowledgement from the second respondent. After forwarding the above dated letter, I had been making arrangements for the entire payment due to the first respondent Corporation.

6. He claimed to have gone to the office of the second respondent on 16-12-1991 to make the entire payment due and get the vehicle released, where he was informed that the vehicle was sold in public auction on 12-12-1991. According to him, he requested the second respondent to cancel the auction accepting the entire amount from him but the latter refused to do so. It was stated in the affidavit that he went again on 20-12-1991 and 23-12-1991 to meet the second respondent. According to him, on 23-12-1991 the second respondent refused to accept his offer of payment and directed the third respondent to pay the balance due as per the auction terms.

7. A reference was made thereafter to the petition given by the appellant to the General Manager (Follow up) of the first respondent Corporation on 31-12-1991requesting him to accept the balance of money and return the lorry to him. According to him his offer was not accepted and hence he moved this court with writ petition under Art.226 of the Constitution of India. The prayer in the writ petition was to issue a writ of Mandamus directing respondents 1 and 2 to accept the outstanding amount due from the petitioner and release the lorry by declaring the auction conducted by the second respondent as null and void and illegal.

8. Before proceeding further, it is necessary to point out that the averments made by the appellant in the affidavit filed in support of the writ petition were not true ass is evident from the records placed before us. The passage in the affidavit extracted above is one relating to the happenings between 4-10-1991 and 17-11-1991. According to the aforesaid portion, when a sum of Rs. 15,000 was paid by him after the seizure of the lorry, he was directed to pay a sum of Rs. 50,000 in the first instance and then a further sum of Rs. 35,000 when he took the sum of Rs.50,000 to be paid to the second respondent. He had given a different story in his letter dated 31-12-1991 written to the General Manager (Follow up) of the first respondent. A copy of the letter has been produced by the appellant himself and included in his typed set. According to the said letter the payment made by him before 30-10-1991 were sufficient only to meet the interest. After the seizure of the lorry on 30-10-1991 he met the Branch Manager, who wanted him to pay a sum of Rs.25,000 and he paid the same. He was directed to pay a further sum of Rs. 75,000 and before he

could make the money ready, the lorry was sold fore a low price and that the Branch Manager was not willing to give the lorry in spite of his offer to pay the entire balance. The letter bears the date 31-12-1991 and the affidavit in the writ petition bears the date 6-1-1992. Within an interval of a week, the appellant has chosen to give two different versions contradictory to each other. Hence, the appellant is not entitled to invoke the extraordinary jurisdiction of this court under Article 226 of the constitution of India, as ha has failed to disclose the facts truthfully and correctly.

9. The writ petition was dismissed in limine by a learned single judge of this court on 7-9-1992. The learned judge held that the fore closure notice dated 14-11-1991 issued by the Corporation was sufficient in law for the purposes of S.29 of the State Financial Corporation Act,1951 and rejected the contention of the appellant that the principles of natural justice has been violated. It was also held by the learned judge that after the third respondent had purchased the vehicle in the auction, it was not for this court to interfere with the exercise of rights of parties flowing from the bilateral contracts merely because one of the parties happens to be a State undertaking and the remedy of the appellant was only to vindicate his rights if so advised before some other forum in accordance with law. Obviously, the learned judge meant that the appellant had to approach only the civil court if he had any right to be vindicated.

10. Aggrieved by the dismissal of the writ petition, the appellant preferred this appeal. When it came for admission, a Division Bench of this Court admitted the same and ordered notice to the respondents. But, at the same time, the Division Bench passed an order referring the appeal to a larger Bench and directed the records to be placed before the Hon'ble the Chief Justice for posting the case before a Full Bench. The order made by the Division Bench reads as follows:

"Sitting alone to dispose of Writ Petition No. 12959 of 1989, one of us observed with reference to S.29 of the State Financial Corporation Act as follows:-

"Whether action has been taken under S.29of the Act or not, however, is a different question. But without giving any formal notice to the loans, (sic) in default to thus without complying with the requirements of principles of natural justice, a contention may naturally arise, whether the Corporation infringed any legal right of the petitioner or not. This question however has been answered by a Division Bench of the Court in (K.Vidhya Kumari v. Managing Director, The Tamil Nadu Industrial Investment Corporation) saying that the very terms of the borrowing impelled (sic)

the borrower to make payment and it will not be proper to insist that there should be a formal notice before action is taken. I am however bound by the said pronouncement of the Bench, but, feel like observing that it is one thing to say that the terms of the borrowing contemplate action in the event of default under S.29of the Act. But it will be against the rules of fair play, if it is always assumed that the Corporation omitted no wrong even if it (which) ignored the defence of the borrower and decided to take action under S. 29 of the Act, Proper procedure to be adopted for the purpose of realisation of its claims for the borrower would be to first give a notice and if default is unexplainable take action under S.29. The case in hand is one in which such a plea may arise. Parties are at dispute as to whether there has been any default in the payment of the instalments or not. How to assume that Corporation is right and the borrow is wrong in asserting that there has been a default or there has been no default? On a notice being to the petitioner informing him that he had fallen in default and that Corporation intended to proceed against him under S.29 of the Act, the petitioner would have brought to the notice of the competent authorities in the Corporation that there was no deliberate default and that the Financial Corporation would not be justified in taking action against the petitioner in accordance with S.29 of the Act. While some Courts in India have taken the view that S.29 excludes the application of the principles of natural justice, some courts have taken the view that S.29 does not exclude the application of principles of natural justice-See M/s Kbaravela Industries Pvt. Ltd. v..Orissa State Financial Corporation. In view of the conflict arising on account of the Bench decision of this Court. I would have decided to refer the cast to a Division Bench had I been satisfied that the Corporation's action falls under S.29 of the Act…..."

The instant appeal is one, in our opinion in which this court should give an authoritative judgement. Accordingly we refer the appeal to larger bench…"

11. Frankly speaking, we are unable to appreciate the course followed by the Division Bench. The writ petition was dismissed in limine without notice to the respondents and there was no opportunity to the respondents to place the facts before the court. When the appeal was admitted and notice was directed to the respondents, in the normal course, the court should have waited for the service of notice and given an opportunity to the respondents to state their case before deciding the scope or formulating the questions which arose for consideration in the appeal. Without doing so, the Division bench has chosen to make a reference straightaway to a full bench observing that an authoritative judgement should be given in this appeal. A reference to a Full Bench can be made if there is a conflict of opinions already

between the judgements of this court or if a question of law of general importance arises, which requires to be decided by a bench comprising more than two judges.

12. Here, there was no pre-existing conflict of opinions. The observations contained in the judgment in W.P. No.12959 of 1989 made by a single judge and referred to in the Order of Reference were obiter licta and unnecessary for the judgment in that case as is evident even from the passage extracted in the Order of Reference. In the said case, there was a seizure of R.C. Book of a hypothecated vehicle by a Thasildar of the Corporation, which was held by the learned single judge to be not an action falling under S.29 of the State Financial Corporation Act. The learned judge said clearly that he was bound by the pronouncement of the Bench in K. Vidhya Kumari v. Managing Director, The Tamil Nadu Industrial Investment Corporation and another. He proceeded to dispose of the writ petition on the footing that S.29 of the said Act was not applicable to the action taken by the Thasildar of the Corporation and the same was without jurisdiction. Consequently, he allowed the writ petition and directed the return of the R.C. book to the writ petitioner therein without delay. There was an appeal against the said order in W.A No. 104 of 1991. A Division Bench, one of the members of which was a party to the earlier judgment in K. Vidya Kumari v. Managing Director, Tamil Nadu Industrial Investment Corporation and another dismissed the appeal on 19-3-1991 without admitting it, holding that there was no dispute before them that there was no sanction in law for the seizure of the R.C. Book of the vehicle. As the proposition of law laid down by the learned single judge that the seizure of R.C. Book of a vehicle did not fall under S.29 of the Act, was not challenged before the Bench, the latter dismissed the appeal after recording the fact that the direction given by the learned single Judge to return the book had been complied with by the appellants before them.

13. Thus there was no conflict between the judgment of the Division Bench in K. Vidhya Kumari v. Managing Director, Tamil Nadu Industrial Investment Corporation and another and any other judgment of this Court. A reference was made to the judgment of the Orissa High Court in M/s. Kheravela Industries Pvt. Ltd. v. Orissa State Financial Corporation in the order made in W.P. No.12959 of 1989. If the Division Bench in the present case had opined that the view taken by this Court in K. Vidhya Kumari v. Managing Director, Tamil Nadu Industrial Investment Corporation and another was in conflict with the view taken by the Orissa High Court and that the Division Bench preferred to agree with the view of the Orissa High Court, it should have stated so in the Order of Reference. We do not find any such statement either in the Order of Reference or in the order of the single judge in W.P. No.12959 of

1989. In the absence of any expression of an opinion which would run counter to the decision taken In K. Vidhya Kumari v. Managing Director, The Tamil Nadu Industrial Investment Corporation and another by a Division Bench of this Court, which is binding on this Court until it is overruled by a larger Bench, no question of reference to a Full Bench will arise.

14. It is also not stated in the Order of Reference that even if there is no conflict of opinions, the question which arises for consideration in the present case is one of such great importance as to be decided by a Bench comprising of more than two judges. The Division Bench has neither decided the facts of the case, nor formulated any question of law. It is seen from the facts that a notice had been admittedly issued on 14-11-1991 to the appellant calling upon him to pay the entire amount due within 15 days therefrom and informing him in unmistakable terms that on his failure to do so, action will be taken under Ss.29 and 32-G of the State Financial Corporations Act without prejudice to the other rights of recovery of the Corporation. The learned single judge, who has dismissed the writ petition in limine, has given a clear finding that the said notice, dated 14-11-1991 satisfies the requirements of the provisions of the Act. Without considering the question whether the finding of the learned single judge is correct or not, we are at a loss to know how a reference to a Full Bench can be made by the Division Bench. The proper course for the Division Bench would have been to wait for the respondents to appear before Court on receipt of notice and after ascertaining their stand to decide whether the notice, dated 14-11-1991 satisfies the requirements of the Act, and if they had differed from the view taken by the learned single Judge, then only the Division Bench could have made a reference to a larger Bench.

15. However, as stated earlier, we were not inclined to return the reference, as such a course would only delay the disposal of the matter and cause hardship to the parties. Thus, as the entire appeal has been referred to us by the Hon'ble the Chief Justice, we have heard counsel on both sides fully on the merits of the appeal.

16. The main contention urged by learned counsel for the appellant is that the principles of natural justice had been violated and before any action under S.29 of the State Financial Corporations Act, a notice should be given to the borrower as to the proposed action and adequate opportunity should be given to him to make his representations. Reliance is placed on the judgment of the Orissa High Court in M/s. Kheravela Industries Pvt. Ltd. v. Orissa State Financial Corporation for the proposition that S.29 of the Act does not exclude the application of the principles of natural

justice and unless the said principles are complied within a particular case, the action taken by the Corporation is null and void. According to him, the seizure of the vehicle in this case was without any notice and it was therefore, illegal. It is argued that as the seizure was illegal, the auction sale of the vehicle is null and void and the respondents are bound to hand over the vehicle to the appellant after accepting the entire amount due. It is also submitted that the instructions contained in the Legal Manual issued by the Corporation have not been followed in the present case and, therefore, the auction held by the respondents is vitiated. It is further submitted that the appellant has been repeatedly making attempts to pay the amount due, after the seizure of the vehicle and the respondents had highhandedly refused to accept the same and proceeded with the auction sale and confirmation of the same.

17. We have already referred to the facts chronologically and also pointed out that the version given by the appellant In the affidavit filed in support of the writ petition is not true. We have referred to the notice dated 29-8-1991 informing the appellant the amount due as on 20-8-1991 and calling on him to pay the arrears as well as the instalments due on 1-9-1991. The appellant was also told by the notice that if he disputed the figures mentioned therein on the basis of his records he should intimate the Corporation within a fortnight of the receipt thereof. In spite of the receipt of such notice, the appellant did not take steps to make any payment. That is an admitted fact. It is only thereafter, the respondents seized the vehicle on 1-10-1991, while, in the affidavit filed in support of the writ petition the appellant has stated that the vehicle was seized on 3-10-1991, in a letter dated 18-2-1992 written by him to the Motor Vehicles authority, he has given the date as 2-10-1991. A copy of that letter is included in the typed set by the appellant himself. That letter is written after the admission of the Write Appeal. There is no explanation for the discrepancy in the dates given by him. However, it does not matter whether the vehicle was seized on 1-10-1991 or 2-10-1991 or 3-10-1991. The grievance of the appellant is that the vehicle was seized without a notice of seizure. As rightly pointed out by learned counsel for the respondents, if a notice of seizure had been given, the vehicle would have disappeared from the normal area of operation. The appellant would have taken it beyond the reach of the respondents, anywhere in the country as he is holding a National permit. There is no substance in the contention that the seizure is illegal in the absence of notice of seizure. C1. 10 of the hypothecation deed provides expressly for seizure of the hypothecated assets in the event of default in the payment of amounts due to the Corporation. The Corporation is certainly entitled to exercise its powers and enforce the terms of the contract.

18. There is nothing in S.29 of the State Financial Corporation Act which would prevent the Corporation from enforcing the terms of the contract by seizure of the hypothecated assets, without notice of seizure.

19. It should be remembered at this stage that one of the objects of the State Financial Corporation Act is to enable financial institutions to recover the money invested by an advancement of loans as speedily as possible. Before the Act was passed, financial institutions were finding it difficult to freely invest their money in industrial concerns as they were required to adopt lengthy and cumbersome procedure of sale through courts in cases of defaults by the borrowers. Thus, the funds of the financial institutions were getting locked up for a long time and were not available to as many industrial concerns and as quickly as possible. For the purpose of quick industrial progress it was felt necessary that the flow of credit remained smooth, unimpaired and quick. It was for that reason, the Parliament enacted the State Financial Corporation Act and incorporated Ss.29 to 31 conferring certain rights on the Corporation. The scheme of the Act shows that the Parliament wanted special financial institutions to be established for giving financial accommodations to industrial concerns and at the same time confer on them special rights for recovery of their dues in case of defaults by the borrowers. Such recovery is made possible even without an adjudication by judicial authorities. S.29 of the Act confers particular rights to take over the management or possession or both of the industrial concern and to realise the property pledged, mortgaged, hypothecated or assigned by transfer, either by lease or sale.

20. In our view, Ss. 29 to 31 of the Act should be read together, S. 29 thereof enable the financial Corporation to take over the management or possession or both of the industrial concern, which is under a liability to the Corporation under an agreement and which makes a default in repayment of loan or advance or any instalment thereof or in meeting Its obligations in relation to any guarantee given to the Corporation. The section also provides that the Corporation has a right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to it. S. 30 of the Act provides hat notwithstanding anything in any agreement to the contrary, the Financial Corporation may, be notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forth with in full its liabilities to the Financial Corporation. The contingencies in which such notice may be issued are set out in Cls. (a) to (f). Suffice it to refer to clauses (b) and (f) thereof. C1. (b) reads:

21. It is seen from the facts of the present case that a notice of foreclosure has

been issued under S. 30of the Act and the impugned auction has been held only after sufficient time has elapsed after the receipt of such notice by the appellant. The notice was admittedly received by the appellant on 19-11-1991. The auction sale was announced and advertised by publication in newspapers on 6-12-1991. The auction was fixed to take place on 12-12-1991. The appellant had 23 days after the receipt of the foreclosure notice, to pay the amount and stop the auction. Even according to him, he wanted only a month's time for payment of the entire amount and he wrote a letter praying for grant of such time on 26-11-1991. If he had made an attempt to pay the money or a substantial part thereof before 12-12-1991, the Corporation would certainly have accepted the same and stopped the auction. Even after the publication of the notice of public auction, the appellant did not take any step to pay the amount due. Hence, there is no illegality whatever in the auction held by the respondents on 12-12-1991.

22. As pointed out already, there was no necessity for a notice of seizure before the lorry was seized. But factually there was a notice calling up in the appellant to pay the amount due as on 1-9-1991. That notice was dated 29-8-1991. In spite of the notice to pay, the appellant did not move his little finger. Naturally, the Corporation was obliged to take action in order to protect the interests of the Corporation by seizing the lorry. There was no violation of any principle of natural justice in the seizure of the lorry, particularly when the Corporation was only enforcing the terms of the contract and exercising its power under C1. 10 of the hypothecation deed.

23. The judgment of the Orissa High Court cited by the appellant's does not lay down any absolute proposition of law as contended by him. The facts in that case were somewhat peculiar. A notice was given by the Financial Corporation to the industries as to the default position and its decision to take over possession on failure of the Industries to pay the instalments. Subsequently, the industries made some payments and the earlier order to take over possession was not given effect to. Again, another order for taking possession of the industries was passed, without giving any notice, though substantial payments had been made by the industries. In those circumstances, the Division Bench held that the Corporation had failed in its duty to give reasonable notice to the industries that it was going to take over the concerns and a minimum opportunity to the concerns to put forth their case before the Corporation ought to have been given. It was held that the earlier order of the Corporation complied with the principles of natural justice, but the subsequent order failed to give any opportunity whatsoever and, therefore, the action taken by the Corporation was struck down. However, the Bench took care to observe that in a

given case, whether the rules of natural justice have been complied with or not depends upon the facts and circumstances of that case. Hence, it cannot be stated as an absolute proposition of law that in every case an action taken by the Corporation under S. 29 of the Act without notice to the borrower is contrary to the principles of natural justice and vitiated thereby. It has to be decided in each case by the Court whether the particular action taken by the Corporation required the issue of a prior notice to the borrower. Such decision will naturally depend on the exigencies of the situation and the nature of the hypothecated assets.

24. Referring to the judgment of the Orissa Bench, a Division Bench of the Gujarat High Court in Alka Ceramice v. Gujarat State Financial Corporation, Ahmedabad, observed as follows:-

"However, we wish to make it clear that merely because there is some subsequent payment, it would not nullify the earlier notice and action u/s. 29 unless the payment is substantial; say about one third of the outstanding and there is concrete and reasonable proposal and promise to pay the balance within a reasonable period. If such substantial payment and proposal are made, the Corporation has to consider afresh whether to proceed under S.29 after taking into account the reasonableness and reliability of the offer."

Therefore, it is clear that the Orissa Bench has not laid down any proposition of law in the abstract without any reference to the facts of the case.

25. At this stage it is worthwhile referring to the dictum of the Supreme Court in Union of India v. Tulsiram Patel on the principles of natural justice. The relevant passage are as follows:-

"Though the two rules of natural justice namely, memo judex in causaa sua and audi alteram parterm, and have now a definite meaning connotation in law and their content and implications are well understood and firmly established, they are none the loss not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible.

So, far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard

before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right case also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi's case.

Therefore, it is futile to contend that though S.29 of the Act does not provide for issue of notice before taking action thereunder, principles of natural justice require such a notice to be issued in every case before any kind of action is taken. The fact that the legislature has made a provision for notice in S.29 is not without significance.

26. Reliance is placed by learned counsel on the judgment of the Supreme Court in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors. It was a case in which the Financial Corporation did not disperse the loan fully and when the industrial concern was in need of funds, the Corporation acted indifferently and took action under S.29 of the Act. Condemning the action taken by the Corporation in the context of the facts of the case, the Supreme Court laid down that the basis philosophy enshrined in S.24 of the Act should be kept in mind before any action Is taken under S.29 of the Act. The Court also prescribed the guidelines for exercising the power under S.29 of the Act. S.24 of the Act to which reference was made by the Supreme Court requires the Board of Directors of the Financial Corporation to discharge its functions on business principles, due regard having been had to the interests of industry, commerce and the general public. It was held by the Court that on the facts of the case it was clear that the interests of the industry were completely ignored by the Financial Corporation. The following passage is referred to by learned counsel:-

"15. S.29 confers very wide power on the Corporation to ensure prompt payment by arming it with effective measure to realise the arrears. But the simplicity of the language is not an index to enormous power stored in it. From notice to pay the arrears, it extends to taking over management and even possession with a right to transfer it by sale. Every wide power, the exercise of which has far reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discre-

tion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason. Power under S.29 of the Act to take possession of a defaulting unit transfer it by sale requires the authority to act cautiously, honestly, fairly and reasonably. Default in payment of loan may attract S.29. But that alone is insufficient either to assume possession or to sell the property. Neither should be resorted to unless it is imperative. Even though no rules appear to have been framed nor any guideline framed by the Corporation was placed, yet the basic philosophy enshrined in S.24 has to be kept in mind. Rationale has to be judged in the light of it. Lack of reasonableness or even fairness at either of the two stages renders the take over and transfer invalid."

Nothing in the above passage suggests that a special notice should be issued under S.29 of the Act. On the other hand, the Court has referred only to a notice to pay arrears. Nowhere in the judgment of the Apex Court do we find any prescription of a special notice being issued under S.29 of the Act before taking action. The ruling does not help the appellant in any manner, particularly when in this case a notice to pay has been issued on 29-8-1991 before the seizure of the lorry and a foreclosure notice has been issued on 14-11-1991 before the auction sale informing clearly the appellant that action will be taken under Ss.29 and 32-G of the Act.

27. Learned Counsel for the appellant places reliance on the instructions contained in the legal manual issued to the officers of the corporation. According to him, they are regulations within the meaning of S. 48(2) of the Act. Under S.48 of the Act, the Board of Directors after consultation with the Development Bank and with the previous sanction of the State Government, may make regulations nor inconsistent with the Act and the rules made there under, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Certain categories have been set out in sub-section (2) thereof, without prejudice to the generality of the power given in sub-clause (1) of S.48 of the Act. Cl.(1) of sub-section(2) of S.48 of the Act provides for taking over of the manage-

ment of any industrial concern an a breach of its agreement with the Financial Corporation. Sub-section (3) enjoins that all Regulations made under the Section shall be published in rule Official Gazette and any such Regulation shall have effect from such earlier or later date as may be specified in the Regulations. Thus, if the Board makes any Regulation, they shall be published in the Official Gazette in order to be treated as Regulations. The Legal Manual containing instructions to the Officers of the Corporation is not admittedly a Regulation framed under S.48 of the Act by the Board. It was not published in any official Gazette. It is conceded that they are not Regulations as contemplated under S.48 of the Act. But however, it is contended that the instructions contained in the Manual confers a right on the borrowers and they are enforceable at the instance of the borrowers. We do not agree. The instructions are merely guidelines to be generally followed by the Officers in order to avoid legal tangles. Moreover, the paragraphs in the Legal Manual which are relied on by learned counsel relate only to taking over of industrial units and taking possession of immovable properties. We agree with the view taken by the learned single judge in this case that the instructions contained in the Legal Manual referred to by learned counsel for the appellant do not apply to seizure of vehicles or the sale thereof.

28. Learned counsel submits that a lorry or a motor vehicle is also an industrial concern as defined by the Act. We do not find any substance in the contention. According to him, S.2(c) (iv) of the Act would mean a motor vehicle. The said sub-Section reads thus:-

"Industrial concern", means any concern engaged or to be engaged in

…….. …….

(iv) the transport of passengers or goods by road or by water or by air or by ropeway or by life,:

The expression used by the Section is "concern". The Act does not define that expression. One of the meanings of 'concern' is a business." A lorry or motor vehicle is not a business, though it may be a business asset. Hence, the contention that a lorry is an industrial concern within the meaning of the Act cannot be accepted.

29. Nothing has been placed before us to show that the auction is not conducted fairly or properly. On the other hand, the records show that proper public notice was given by publication in the newspapers and several members of the public had taken part in the auction. Ultimately, the vehicle has been sold for a sum of Rs.2,58,500

which is more than the amount due to the Corporation. The Corporation has stated in its counter affidavit filed here before us that a sum of Rs. 30,000 is remaining as a surplus, which Is payable to the appellant herein. Thus, the appellant cannot make any grievance against the auction as such. There is absolutely nothing to show that the Corporation had acted vindictively or arbitrarily against the appellant. He was given more than ample opportunity to discharge the debt due by him. Yet, he had not availed of the same.

30. We find no merit whatever in the appeal. We are entirely in agreement with the view taken by the learned single Judge. The facts of the case fully justify the dismissal of the writ petition in limine. In fine, the writ appeal suffers dismissal. In view of the fact that the appellant has made false statements in his affidavit filed in the writ petition, we direct him to pay costs in this appeal. Counsel's fee Rs.1, 000/ .