

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF APRIL  
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY**

**WRIT PETITION NO : 10602 of 2005**

Between:

M/s. G.S. Industrial Gases Ltd., 8-2-628, Road No.13 Banjara Hilla, Hyderabad  
rep by Majority Share Holder Sri.G. Govinda reddy

**..... PETITIONER**

AND

Andhra Pradesh State Financial Corporation, 22-95, Reddy Complex, Beside LIC  
Office, Near Lingampally Circle, Ramachandrapuram Hyderabad

**.....RESPONDENT**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ or order or direction, more particularly a Writ of Mandamus directing the respondent to release the petitioner company to the share holders closing the loan account NO. 632823 and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MR.K.VIJAYAKUMAR REDDY**

**Counsel for the Respondent : MR.Y.N.LOHITA**

**The Court at the admission stage made the following :**

ORDER:

This writ petition is filed seeking a writ of Mandamus directing the respondent to release the petitioner company to the shareholders closing the loan account No.632823.

The petitioner is a company registered one under the Companies Act. It availed term loan facility provided by the respondent-Corporation. It appears that the company became sick and revived under rehabilitation scheme of IDBI during the year 1989-90. The revival scheme could not in any way improve the position of the company, consequently, one time settlement was offered to the company, which failed to utilize the offer. Thereupon, it filed W.P.No.21289 of 1995 for implementation of one time settlement. It appears that an interim order came to be issued to the respondent to continue the benefit of the scheme of one time settlement to the petitioner company. For implementation of the said interim order, the petitioner filed W.P.No.609 of 2000. Both the writ petitions came to be dismissed by a Division Bench of this Court by an order dated

24.7.2001 vide **GS Industrial Gases (P) Ltd. V. MD,A.P.State Financial Corpn.**

The instant writ petition has been filed by a major share holder of the company on the ground that the company has already paid an excess amount of Rs.40,767.14. It is further averred in the affidavit filed in support of the writ petition that the company paid Rs.55,00,000/- towards principal and interest up to the end of 1994 and therefore the demand of respondent to pay a further sum of Rs.3,21,99,000/- is not justified.

Heard the learned counsel for the petitioner as well as the respondent.

The company earlier filed W.P.No.21289 of 1995 seeking a direction to the respondent to continue the benefit of scheme of one time settlement. The company contended in the said writ petition that the amount arrived at by the respondent was not correct and that there were errors in the accounts maintained by the Corporation.

The contention of the company was repelled by the Division Bench in the aforesaid writ petition. I deem it appropriate to refer the relevant portion of the order of the Division Bench of this Court passed in W.P.No.21289 of 1995 and it reads as thus.

*It is vehemently denied that there were any errors in the accounts maintained by the corporation. It is stated that it is false to state that there were computer mistakes in the accounts and the interest calculations. The respondents stated that it was a financial institution having it full-fledged establishment for the purpose of lending of funds to various borrowers and entrepreneurs. The interest charged by the Corporation was in accordance with the terms and conditions of the loan agreement. It is further stated that the ledgers maintained by the respondent Corporation have presumption of truth under Section 44 of the State Financial Corporations Act and under the provisions of Bankers Books of Evidence Act, 1891. However, it is stated that in case there were any such apprehensions the petitioner could have always come to the Corporation to check the accounts. It will be not out of place to mention the letter dated 14.9.1994 by which the respondents agreed for one time settlement. The letter reads as under:*

*“With reference to the above, we are happy to inform you that our management has accepted your request for one time settlement of the loan account by accepting the payment of Rs.28,56,400-38*

*including Rs.2-00 lakhs paid as advance along with further interest from 1-2-1994 at net simple rate of interest at prevailing rate till the date of closure of loan account. The said payment shall be payable within 6 weeks from the date of this letter.*

*As such the interest amounting to Rs.12,49,242-48 has been waived without further interest from 1-2-1994. You are therefore advised to pay the said amounts before stipulated date failing which the said concessions will be withdrawn.”*

*In this letter it was made clear that an amount exceeding Rs.12-00 lakhs had been waived. It was also made clear to the petitioner that it shall make the payment within six weeks from the date of the letter, but the petitioner did not make the payment. Even thereafter the petitioner was given further time, but it did not make any payment. The only grievance of the petitioner is that calculations were not made correctly. Had the petitioner been honest and had this apprehension been right it would have atleast deposited the undisputed amount. Seven years have passed, the petitioner has not paid a penny. This Court would not be in a position to appreciate whether there were mistakes in the accounts, or not, which will otherwise have presumption of truth. The petitioner has failed to show that the impugned notice is in any way illegal. The petition is accordingly dismissed.”*

It is explicit from the Judgment of the Division Bench that the contention of the company with regard to errors in the statements of account, was not accepted. The instant writ petition has been filed by G.Govinda Reddy on behalf of the company claiming as a majority share holder and he advanced the self same contentions in the present writ petition also. In view of the Judgment passed by this Court in W.P.21289 of 1995, the share holder of the company cannot be permitted to canvass the self same contentions which have been repelled in the earlier round of litigation i.e.W.P.No.21289 of 1995. Even otherwise, the respondent Corporation made its stand very clear to the letter dated 13-10-2004 that if the company chooses to opt one time settlement facility, it has to submit OTS proposal together with down payment within 5 days from the date of receipt of the letter. Without complying the same, the share holder has chosen to approach this Court by way of filing this writ petition so as to protract the litigation.

Admittedly, the respondent has provided an opportunity of one time settlement,

but the petitioner company has not made the down payment within 5 days from the date of letter communication. In such a case, the very filing of the writ petition by the share holder of the company is misconceived.

Accordingly, the writ petition is dismissed at the stage of admission. No costs.

---

29-04-2005

rkk

**Copy to**

1.Andhra Pradesh State Financial Corporation, 22-95, Reddy Complex, Beside LIC Office, Near Lingampally Circle, Ramachandrapuram Hyderabad

**2. Two CD copies.**