(2010) 07 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22760 of 2010 (S)

Akhila Thiruvithamcore Mala Araya Maha and C.P. Krishnan, President — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Citation : (2010) 07 KL CK 0046

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Sreedevi Kylasanath, for the Appellant; M.K. Chandra Mohandas, for the Respondent

Judgement

C.N. Ramachandran Nai, J.—First petitioner is an Association of Scheduled Tribes and second petitioner is it''s President. The grievance of the petitioners is that it''s members apprehend recovery proceedings for recovery of arrears of loan taken by them from various Banks particularly, respondents 4, 5, 6 and 7. During admission we heard Special Government Pleader representing matters pertaining to Scheduled Caste and Scheduled Tribe in this Court. We do not think there is any need to consider the contentions raised by the petitioners on merit because individual borrowers are not before us and unless facts pertaining to each loan is considered, there is no scope for our considering entitlement for waiver of loan by the borrowers under any Government scheme. Petitioners have a case that Government has granted waiver of loan taken by members of Scheduled Caste and Scheduled Tribe upto 31st March, 2006. According to the petitioners, there is discrimination in as much as loan upto the limit stated above taken by members of Fishermen community are given the benefit without any time limit. The orders granting such benefit to Fishermen community are produced as Exts.P6 and P6(a). Special Government Pleader appearing for respondents 1 and 2 submitted that borrowers will be entitled to get benefit only in terms of Government Orders. Counsel for the petitioner highlighted the difficulty of the members of Scheduled Tribe community to get the benefit by properly representing the matters before

Revenue authorities or taking up the matter to court. We find force in this contention because a member of the Scheduled Tribe community may be ill-informed about their rights and may not know even the benefit granted by the Government and, therefore, they may not be able to enjoy the benefit on account of ignorance. We, therefore, dispose of the W.P. with the following directions:

(i) Respondents 1 and 2 are directed to consider petitioners'' allegation of discrimination in regard to waiver granted with reference to the date fixed for the loan availed i.e. 31st March, 2006. If waiver is granted to members of Fishermen community for loans taken even after March 2006, we see no reason why it should not be extended to members of the Scheduled Tribe community who are probably no way better positioned than the members of the Fishermen community. In any case it is for the Government to consider the matter with reference to established principles of law and our observation need not be treated as a direction. However, if waiver is extended subject to ceiling without any time limit, immediately orders should be issued to all recovery authorities so that the benefit reaches each and every member of the Scheduled Tribe community.

(ii) Every case of recovery should be referred by the Tahsildar or other recovery authority who initiates it, to the District Collector with reference to claim for waiver under Government Orders and recovery should be made only if the borrower is not entitled to waiver in terms of Government Orders already issued or modified orders yet to be issued based on above directions.

(iii) It is for the Government to recoup the waived amount to the Banks and other institutions in terms of the Government Order so that they do not suffer on account of the benefit granted by the Government. In other words, the right of the Banks and financial institutions in claiming the benefit from Government pursuant to waiver granted, if any, can be taken up by them with the Government and if necessary, to the court.

2. We make it clear that no recovery shall be proceeded with without a clearance from the District Collector who will approve recovery only after considering the specific case of the borrower for waiver based on the Government orders.

