(2020) 11 KL CK 0094

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 22084 Of 2020 (I)

Anvardeen. K APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 24-11-2020

Acts Referred:
Constitution Of India, 1950 &mdesh; Article 226

Citation : (2020) 11 KL CK 0094

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : Sajan Vargheese K., Liju. M.P, Jophy Pothen Kandankary, Sunil Shanker, P. Vijayakumar

Final Decision : Dismissed

Judgement

1. The proprietor of a Micro, Small and Medium Enterprise (MSME) running tissue culture lab and nursery, has filed this Writ Petition aggrieved by

the rejection of its request for a loan under Ext.P5 scheme, by the respondent Bank as per Ext.P10 letter.

2. The Central Government floated a Credit Guarantee Scheme for Subordinate Debt (CGSSD) in order to provide guarantee coverage for CGSSD to

provide subdebt support for restructuring of MSMEs. 90% guarantee coverage would come from scheme/trust and remaining 10% from the

concerned promoters. The aim of the scheme is to provide personal loan through banks to the promoters of stressed MSMEs for infusion as

equity/quasi equity in the business eligible for restructuring, as per RBI guidelines for restructuring of stressed MSMEs. The credit product for which

guarantee is provided under the scheme is named CGSSD. For the purpose of the scheme, a credit guarantee fund trust is set up by the Government of India and SIDBI for Micro and small enterprises for the purpose of guaranteeing credit facility extended by the member lending institutions to the

eligible borrowers. Distressed assets fund is defined as a fund of Rs.4,000/- crore created by the Government of India for providing guarantee

coverage to the loans given/extended to the promoters of the eligible MSME under the scheme.

3. As per Ext.P6 letter dt.9.7.2020, the petitioner had requested the Manager of IOB branch at Palakkad â?" the 4th respondent, to grant a sum of

Rs.15 lakhs including the financial credit guarantee when the firm continued to operate. It was stated in this letter that the company was unable to

function after the lock down and that stock culture was decayed and contaminated. It was stated that funds are required for further operation of the

company.

4. As per Ext.P7 letter dt.28.7.2020, the 4th respondent called for various documents from the petitioner. The petitioner had submitted the same along

with Ext.P8 letter and requested for early action. The 4th respondent thereafter issued Ext.P9 letter dt.15.09.2020 directing the petitioner to clear the

arrears to the tune of Rs.2,28,036/- within 7 days of the receipt of the said notice stating that there is every likelihood of the loan availed by the

petitioner being declared as a non performing asset. The petitioner thereupon remitted the amount demanded in Ext.P9. Thereafter, as per Ext.P10

letter dt.17.09.2020 the petitioner was informed as follows:

â??xxx In this regard, we wish to advice that there is no apparent stress on your account based on the audited financials as on 31.03.2019

and 31.03.2020 with the firm making consistent profits, adequate cash flows and solvency and liquidity ratios at acceptable levels.

Being so, we advice you to please concentrate on improving your business and turn over in cash credit account and to make timely and

prompt payments of loans. In this connection we request your attention to our oral reminders for clearing the overdue portion which we

observe as follows,

xxxxxâ??

Thereupon the petitioner again submitted a representation Ext.P11 stating that the tissue culture lab being run by him incurred a loss due to flood

consequent to which the bank had sanctioned loan under the 2019 flood moratorium. It is stated that the lab did not operate for more than 2 months in connection with the Covid 19 lock down in March, 2020. The tissue in which it is involved is a perishable one. The mother culture stocks are required for production of plants. As the mother culture was destroyed due to the lock down, the petitioner had purchased it from outsources.

5. According to the petitioner, the stand adopted by the bank in Ext.P10 is absolutely unjust and illegal because the request of the petitioner was for granting the benefit of the scheme evolved by the Government of India.

6. The learned Standing Counsel has filed a statement on behalf of the respondent Bank, according to which, the petitioner would not come under the definition of eligible borrower under the scheme which can only be a promoter of MSME unit which is stressed namely SMA II and which has become NPA as on 30.04.2020 and which can become commercially viable as per the assessment of lending institutions. According to the Bank, the scheme is applicable only for the MSMEs whose accounts have been in regular operations, either as standard account or as NPA accounts during the financial year 2018-19 and 2019-20. It is further stated that the promoter of MSME unit shall be eligible for credit facility equal to 15% or 75 lakhs whichever is lower as per the last audited balance sheet and the promoters are required to bring in 10% of sub debt amount as collateral which shall be kept under lien. It is stated that as per the last audited balance sheet in the case of the petitioner company, the capital funds of the proprietor is Rs.36,84,503/- and the proprietorship business achieved is 86.80 lakhs making a profit of 6.25 lakhs. At the same time, the outside liabilities are only 26.60 lakhs as against the proprietor contribution of Rs.36.84 lakhs. It is stated that the solvency and liquidity ratios in respect of the petitioner are comfortable as per the audited balance. According to the respondents, the purpose behind this CGSSD scheme is to provide assistance to needy accounts who are eligible for restructuring as per RBI guidelines. According to them, there is no stress in the account of the petitioner. It is further stated that the overdues in the loan account is only because of the non routing of sale transactions through the account with the respondent bank. The audited financial and business account would show that the petitioner is making consistent profit with adequate cash flows and the liquidity and solvency ratios are at acceptable levels. It is further stated that the request of

the petitioner for restructuring the loans and to grant him a fresh loan to

the tune of Rs.15 lakhs cannot be considered. In case a proposal is received from the petitioner for restructuring, the respondent bank would take

appropriate decision in the matter.

7. However, the learned counsel for the petitioner asserts that the petitioner is entitled to get the benefit of Ext.P5 and the bank cannot stand in the

way of that based on unreasonable contentions. Pointing out the definition of eligible borrower, stressed MSME unit, etc. it was argued that there is

nothing in Ext.P5 scheme which stands in the way of the petitioner from enjoying the benefit of the scheme. It is also pointed out that the benefit is

declared by the Government of India and that cannot be curtailed by any other agencies.

8. Therefore, it is necessary to have a look at the definition of the relevant terms given in the scheme. From Clause 3 of the scheme it is clear that the

objective of the scheme is to provide personal loan to promoters of stressed MSMEs eligible for restructuring as per RBI guidelines for restructuring.

Under clause 5v `eligible borrower' and under clause 5xix `stressed MSME Unit' are defined as follows:

â??Clause 5v. â??Eligible borrowerâ? means the promoters of MSME units which are stressed , viz.SMA-2 and NPA accounts as on

30.04.2020 and can become commercially viable as per the assessment of the lending institutions. The scheme is applicable for other SMSEs

whose accounts have been standard as on 31.03..2018 and have been in regular operations either as standard accounts, or as NPA

accounts during the financial year 2019-20 . However fraud accounts and willful defaulters will not be considered under the proposed

scheme. In cases where recovery proceedings are underway and banks assess that with the facilities provided under the scheme the account

will be viable the banks shall withdraw the recovery proceedings before going ahead with restructuring, etc.â??

â??Clause 5xix. Stressed MSME unit means MSME units which are stressed viz.SMA-2 and NPA accounts as on 30.04.2020 as on

30.04.2020 as per the guidelines issued by the Reserve Bank of India from time to time. â??

Though under clause 8.1, the scheme is applicable for those MSMEs whose accounts are standard as on 31.03.2018 and have been in regular

operations either as standard accounts as on or as NPA during the financial year 2018-19 and 2019- 20, sub clause iv therein states that the scheme is

valid for MSME units which are stressed viz. SMA-2 and NPA accounts as on 30.04.2020 who are eligible for restructuring as per RBI guidelines on

the books of the lending institutions. Apart from that in clause 19, the scheme provides for the responsibilities of the lending institutions under the

scheme, according to which sub clause (ii) provides â??the lending institutions shall evaluate applications by using prudent banking judgment and shall

use business discretion/due diligence in selecting commercially viable proposals and conduct accounts of the borrowers with normal banking prudence.

9. Though the learned counsel for the petitioner vehemently argued that the eligibility of the petitioner is purely a matter in tune with the Ext.P5

scheme and the bank cannot deny the benefit of the same, I am of the view that in order to become eligible for the benefit of the scheme, the

petitioner has to fulfil the conditions in the said scheme. There are rival claims as to the eligibility by the petitioner on one hand and the bank on the

other side. Mere interpretation of the provisions alone is not sufficient to determine the eligibility of the bank. When the respondent bank, after

referring to the objective of the scheme and the provisions contained in the scheme, considered the request of the petitioner with reference to the

audited balance sheet of the relevant financial years and the accounts of the petitioner maintained by it found that the petitioner is not a stressed

SMSE and is not eligible for the benefit, after evaluating the request in accordance with their prudent banking judgment and business discretion, this

Court which is not equipped with any such prudence in banking would not be in a position to either declare the eligibility of the petitioner or direct the

Bank to allow the request of the petitioner, under Article 226 of the Constitution of India. The respondents have stated that if the petitioner makes any

proposal for restructuring they will take appropriate decision in accordance with the applicable schemes. The petitioner would be free to avail the

same.

In this view of the matter, the petitioner cannot have any right to insist for any direction to the bank to allow his request or to grant the benefit of the

scheme to him when the competent authorities have found that he is not eligible for the same. Hence the petitioner cannot be granted any relief in this Writ Petition.

The Writ Petition is accordingly dismissed.