
(2014) 11 MAD CK 0346

In the Madras High Court

Case No : Writ Petition (MD)No. 14627 of 2012 and M.P. (MD)No. 1 of 2012

Ar. Jeyarhuthran

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Reserve Bank of India Act, 1934 — Section 45, 45L

Citation : (2014) 11 MAD CK 0346

Hon'ble Judges : Sanjay Kishan Kaul, C.J;V. Dhanapalan, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.

1.The petitioner, through this public interest litigation, seeks quashing of the communication, dated 03.05.2012, addressed by the Reserve Bank of India to the petitioner.

2. The petitioner had earlier filed a writ petition in W.P.(MD)No. 2206 of 2012, seeking to raise the issue of allegedly exorbitant interest rates being charged from borrowing public by the Non-Banking Financial Companies (NBFCs), more specifically the 4th and the 5th respondents. A Division Bench of this Court, by order dated 24.02.2012, was not inclined to entertain the petition as a Public Interest Litigation but, at the same time, felt that the issue raised was a laudable one and thus the statutory bodies, like the Reserve Bank of India, who are to regulate non-banking institutions, are to examine the matter and the petitioner was given liberty to do so. The petitioner, thus, addressed a letter, dated 25.01.2012, to the Governor, The Reserve Bank of India, raising the same issue, to which the impugned reply, dated 03.05.2012, has been sent in the following terms:

"2. In this connection we advise that as per the extant policy, the Reserve Bank of India is not regulating/fixing the interest rates to be levied by companies registered with RBI as Non Banking Finance Companies (NBFCs), other than

NBFC-Micro Finance Institution, on the loans granted by them. The rate of interest to be charged by the company is governed by the terms and conditions of the loan agreement entered into between the borrower and the NBFCs. However, in order to ensure transparency in such matters, the NBFCs have been advised by RBI to adopt a Fair Practices Code, with the approval of their Boards. The NBFCs have also been advised to lay out appropriate internal principles and procedures in determining interest rates and processing and other charges."

3. We put to the learned counsel appearing for the 2nd respondent, namely the Reserve Bank of India, as to whether there is any rules/regulations framed to the NBFCs to specify any rate of interest, however oppressive it may be. The learned counsel sought to contend that the Reserve Bank of India does not specify any interest rate nor any ceiling rate. However, it does specify guidelines of Fair Practices Codes and where complaints are received, they are examined within the parameters of the guidelines.

4. We find from the typed-set of papers filed by the 2nd respondent, last set of such guidelines were issued on 18.02.2013. The issue of regulation of excessive interest charged by NBFCs has also been dealt with, by reference to Circulars issued by the Reserve Bank of India, such Circulars being dated 24.05.2007 and 02.01.2009. In the Circular dated 24.05.2007, reference has been made to the complaints received on account of excessive interest charged on certain loans and advances by NBFCs. We reproduce the same as under:

"Complaints about excessive interest charged by NBFCs

The Reserve Bank has been receiving several complaints regarding levying of excessive interest and charges on certain loans and advances by NBFCs.

2. Though interest rates are not regulated by the Bank, rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice.

3. Boards of NBFCs are, therefore, advised to lay out appropriate internal principles and procedures in determining interest rates and processing and other charges.

4. In this regard the guidelines indicated in the Fair Practices Code about transparency in respect of terms and conditions of the loans may be kept in view.

5. NBFCs may confirm having put in place appropriate systems in the regard within a period of one month from the date of this circular to the Regional Office of this Department in whose jurisdiction they are registered."

5. We find that there is another circular, dated 22.09.2008, referring to the aforesaid Circular issued to the Regional Offices to confirm whether NBFCs have complied with the Circular, dated 24.05.2007, or not. This circular is followed by the Circular dated 02.01.2009, which reads as under:

"We had vide Company Circular DNBS PD/CC.No. 95/03.05.002/2006-07 dated

May 24, 2007 advised all NBFCs, inter alia, that the rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice. Boards of NBFCs were, therefore, advised to lay out appropriate internal principles and procedures in determining interest rates and processing and other charges.

2. In continuation of aforesaid instructions, Reserve Bank has in exercise of powers under Section 45 L of the RBI Act, 1934 issued Directions regarding excessive rates of interest charged by NBFCs on January 2, 2009. A copy of the said directions Notification No. dated January, 2, 2009 is enclosed.

3. Please acknowledge receipt of this circular to the Regional Office of DNBS under whose jurisdiction the registered office of the company is situated."

The Circular, enclosed the Notification even dated, in turn reads as under:

"Notification No. DNBS.204/CGM)ASR)-2009 dated January 2, 2009. The Reserve Bank of India, on being satisfied that for the purpose of enabling to regulate the credit system of the country to its advantage, it is necessary so to do, in exercise of powers conferred under Section 45L of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, hereby issues the following Directions to NBFCs:

a) The Board of each NBFC shall adopt an interest rate model taking into account relevant factors such as, cost of funds, margin and risk premium, etc and determine the rate of interest to be charged for loans and advances. The rate of interest and the approach for gradations of risk and rationale for charging different rate of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application form and communicated explicitly in the sanction letter.

b) The rates of interest and the approach for gradation of risks shall also be made available on the web-site of the companies or published in the relevant newspapers. The information published in the website or otherwise published should be updated whenever there is a change in the rates of interest.

c) The rate of interest should be annualised rates so that the borrower is aware of the exact rates that would be charged to the account."

6. We are, thus, of the view that the Reserve Bank of India cannot wash its hands off in the face of the Circulars, by its impugned communication dated 03.05.2012, which is clearly misconceived. The own stand of the Reserve Bank is that charging excessive rates would be in violation of the Fair Practices Code. Thus, even if the Reserve Bank does not specify the rates of interest, it is certainly required to keep a tab on the issue of excessive rates being charged, more so when it has issued the aforesaid circulars and make sure that they are sent to all Regional Offices.

7. We cannot but notice the fact that there are a number of not well educated

borrowers, who borrow for personal need, whether against security, gold or otherwise. This country had history of money lenders who charged excessive rates, leading to penury and loss of assets. It has been the professed policy of the Government to remove such a prevalent situation and thus various norms for financial institutions were brought into force, and other steps taken like the nationalisation of banks at the relevant stage. The objective certainly cannot be to create a new class of institutional money lenders, labelled as NBFCs. We are thus surprised that the Reserve Bank of India seeks to wash its hands off the issue by its communication dated 03.05.2012.

8. We thus quash the impugned communication, dated 03.05.2012, and issue directions to the Reserve Bank of India to look into the matter, in terms of its own Fair Practices Code as well as Circulars and Notifications issued from time to time and referred to above.

9. The learned Assistant Solicitor General, appearing for the 1st respondent, also assures us that the aforesaid issue would receive attention of the concerned authorities.

10. Needful to be done within a period of three months, from today.

11. The petition stands disposed of with the aforesaid directions. No costs. Connected miscellaneous petition is closed.