
(2013) 05 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4220 of 2013

Archana Sharma	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Constitution of India, 1950 — Article 12
Securities and Exchange Board of India (Amendment) Act, 2002 — Section 13(2)

Citation : (2013) 171 PLR 393

Hon'ble Judges : Ritu Bahri, J; Hemant Gupta, J

Bench : Division Bench

Advocate : N.S. Panwar, for the Appellant; D.K. Singhal for Respondent No. 2 and Ms. Vandana Malhotra, for the Respondent

Final Decision : Disposed Off

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the possession notice dated 10.08.2012 (P-7) served by respondent No. 2-State Bank of Patiala from whom late husband of the petitioner has taken loan of Rs. 10 lacs for construction of the house in March, 2010. The respondent-Bank has taken master policy from State Bank of India Life Insurance Company Ltd. (for short "Life Insurance Company"), which is the group insurance for the benefit on the borrowers availing housing loan from the respondent-Bank. In terms of the policy, the husband of the petitioner was charged a sum of Rs. 36,625/- as the premium when the loan account of the husband of the petitioner was debited on 09.03.2010. Unfortunately, the husband of the petitioner died on 05.11.2012 leaving behind three minor children i.e. one son and two daughters and the present petitioner.

2. The petitioner is the house wife and had challenged the action initiated by the Bank for recovery of the amount of Rs. 11,11,040.37 lacs as on 21.05.2012 with further interest and incidental expenses in the present writ petition. The grievance of the petitioner is that in fact the husband of the petitioner had paid

Rs. 5,99,000/- as per the record of the husband of the petitioner found after his death but still the respondent-Bank is claiming over Rs. 11 lacs from the petitioner. It is also pointed out that the husband of the petitioner has taken a life insurance policy at the instance of the Bank, for which premium was paid, but the benefit of such policy is not being given to the Petitioner. It is contended that if such benefit is given, there will be no outstanding amount from the loan account of her husband.

3. In reply, respondent No. 2-Bank has produced the loan application along with other documents and asserted that the deceased failed to maintain the financial discipline in the loan account and the account was declared as Non Performing Assets on 25.02.2012. In view of the said fact, a notice u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for short "the Act") was served upon the late husband of the petitioner but since the amount was not deposited, the Bank has rightly initiated proceedings for recovery of the amount by publication of notice in the newspapers, namely, "Indian Express" and "Dainik Bhaskar". It is also pointed out that Bank has tie up with the Life Insurance Company for insurance under the Group Insurance Scheme for the borrowers of the housing loan. The respondent-Bank has debited an amount of Rs. 36,625/- from the loan account and sent the proposal along with the said amount to the Life Insurance Company, but on 16.04.2010, the Life Insurance Company has informed the borrower that questionnaire with regard to health was not filled properly and requested the late husband to send duly filled and signed form. It is, thus, contended that the petitioner is a defaulter of the loan amount and thus, action of the Bank in initiating the recovery proceedings cannot be faulted in any manner.

4. In a separate reply filed by respondent No. 3, one of the preliminary objections raised is that Life Insurance Company is not the "State" within the meaning of Article 12 of the Constitution of India. It is a company incorporated under the Companies Act, 1956 (for short "the 1956 Act"). It is pleaded that in case of group insurance scheme, a master policy is issued to the master policy holder to cover the eligible member under the group insurance scheme. One master policy bearing No. 93000000302 under group insurance scheme was issued to respondent No. 2 to cover the eligible members. To grant coverage under the policy, the eligible members have to opt for the scheme of insurance by submitting the necessary documents like Membership Form and the requisite premium. The insurance cover is to be granted only after completion of all the formalities and the insured is given a certificate of insurance. It is pointed out that the husband of the petitioner has filled up his proposal form at Sonapat on 29.03.2010, which was received along with draft dated 09.03.2010. The proposal form and the demand draft were found to be incomplete as the medical questionnaire was not filled by the proposer. As the health questionnaire had not been filled by the proposer, therefore, it was not possible for the respondents to accept the proposal form and consequently, an intimation was sent on 16.04.2010 through Speed Post vide AWB No. EP015687594IN on 19.04.2010. A

copy was also sent to respondent No. 2 for information. The original document received from respondent No. 2 i.e. the proposal form and the demand draft were sent back to the source branch of respondent No. 2 i.e. State Bank of Patiala, Sonapat. It is, thus, contended that since the proposal has not been received with complete requirements in respect of the proposed insurance cover, therefore respondent No. 3 is not liable for any amount payable to the petitioner or to the Bank.

5. We have heard learned counsel for the parties and find that the stand of respondents No. 2 and 3 is not only incorrect but is false. Firstly, we will deal with the preliminary objection raised by respondent No. 3 that the said Insurance Company is not the State within the meaning of Article 12 of the Constitution of India. Such objection is based on the fact that it is a company incorporated under the 1956 Act Respondent No. 3 has not given any information as to who are the share holder so as to determine whether the said Life Insurance Company is other authority and thus State within the meaning of Article 12 of the Constitution and to find out as to whether the State has deep and pervasive control over the affairs of respondent No. 3.

6. Hon''ble the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, has laid down the test to determine, as to when a corporate entity can be said to other authority amenable to the writ jurisdiction. It was held to the following effect:

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority* case (supra) as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case (supra), be an "authority" and, therefore, "State" within the meaning of the expression in Article 12.

7. A perusal of master policy (A-2) shows that logo of State Bank of India, a statutory entity established by a Central Act, has been used. It has registered office in the State Bank Bhavan, Corporate Centre, Madame Cama Road, Mumbai. It appears to be an entity established by Respondent Bank alone. Therefore, we are unable to agree with the objection raised that the respondent No. 3 is not the State within the meaning of Article 12 of the Constitution. A perusal of the record further shows that the loan account of the borrower was debited with the premium amount of Rs. 36,625/- on 09.03.2010. It is also apparent from the reply of respondent No. 3 that the demand draft of the said amount was received by respondent No. 3 on 12.04.2010. The proposal is said to have been returned on 16.04.2010 through Speed Post but as per the petitioner, she has not received any communication nor any proof has been attached with the reply of sending such communication. There is no receipt of the said communication by the addressee. Inasmuch as the credit of Rs. 36,625/- deducted on account of insurance premium given, is not credited in the loan account. Therefore we find difficult to accept the stand of respondent No. 3 that communication was sent to the petitioner in respect of returning of the proposal. The Life Insurance Company has not produced any record to show as to in what manner, the questionnaire regarding health was incomplete. In any case, it is between respondents No. 2 and 3 to settle amongst themselves as to which respondent has defaulted in not communicating to the proposer or as to why, the amount was not credited in the loan account, if the proposal had been returned. But as far as the petitioner is concerned, a valid insurance policy has come into existence when the insurance premium is deducted by the Bank in pursuance of the master policy and not proved to be returned. In terms of the master policy, if the beneficiary is between the age of 18 to 60 years, the life insurance coverage amount is Rs. 7.5 lacs. Therefore, respondent No. 2 is directed to give credit of the said amount whether or not respondent No. 3 pays amount to respondent No. 2. Respondent No. 2 shall communicate revised calculation to the petitioner after adjustment of Rs. 7.5 lacs within four weeks. The petitioner shall pay the

remaining amount within four weeks, if any, thereafter. It shall be open to respondent No. 2 to claim the amount of insurance from respondent No. 3 in accordance with law.

Consequently, the writ petition stands disposed of.