(1983) 02 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No''s. 3180 and 3208 of 1979

A.S.P. Aiyer and Another APPELLANT

Vs

Reserve Bank of India and Another RESPONDENT

Date of Decision : 09-02-1983

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Reserve Bank of India Act, 1934 — Section 45, 7

Citation : AIR 1983 Mad 330 : (1984) 56 CompCas 352

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : K. Radhakrishnan, for the Appellant; S. Ramasubramanian, for the Respondent

Judgement

1. In these writ petitions, the petitioners have challenged the provisions of the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973 (for short "the Reserve Bank Directions, 1973"). The petitioners are partners of the Palghat Credit Corporation, a partnership firm, registered under the Indian Partnership Act. They are also shareholders and directors of the Palghat Chit Funds (P.) Ltd., a company registered under the Companies Act, 1956 (referred to as "the company"). The partnership firm receives deposits from the members of the public and lends money to the members of the public. During financial crisis of the company, the partnership firm helps it by paying money to it to discharge its obligations or undertakes and discharges obligations of the company directly and gets a credit in the books of the company and mother ways. As on December 31, 1976, the company owed to the partnership firm a sum of Rs. 24,43,601.87, which was reduced to Rs. 6,40,000 as on March 31, 1979. The money advanced by the partnership firm to the company was the money deposited with the partnership firm by the members of the public. While so, the Reserve Bank Directions, 1973, placed certain restrictions on non-banking institutions including chit fund companies receiving deposits from the public. The deposits accepted by the non-banking institutions from its

shareholders will be exempted only if a declaration was given by the shareholder to the effect that such money as not been given by him by borrowing or accepting deposit from another person. The said Directions also specified a limit beyond which the non-making institutions could not accept deposits from the public. Since the company received deposits from the partnership firm which had acquired the money deposited from the public and since the amount of deposit also exceeded the limit specified in the Reserve Bank Directions, 1973, the remind respondent filed C.C. No. 2320 of 1979 on the file of the learned 16th Metropolitan Magistrate, against the petitioners on the ground that they have violated the provisions of the Reserve Bank Directions, 1973. It is in these circumstances these writ petitions have been filed.

2. Mr. K. Radhakrishnan, the learned counsel for the petitioners, challenged the validity of the provisions of the Reserve Bank Directions, 1973. In order to appreciate the arguments advanced by the learned counsel, it is necessary to refer to the relevant statutory provisions. Section 45K of the Reserve Bank of India Act, 1934, provides as follows :

"45K. (1) The Bank may at any time direct that every non-banking institution shall furnish to the Bank, in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified by the Bank by general or special order.

(2) Without prejudice to the generality of the power vested in the Bank under sub-section (1), the statements, information or particulars to be furnished under sub-section (1) may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, they are received.

(3) The Bank may, if it considers necessary in the public interest so to do, give directions to non-baking institutions either generally or to any non-banking institution or group of non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest playable on such deposits, and the periods for which deposits may be received.

(4) If any non-banking institution fails to comply with any direction given by the Bank under sub-section (3), the Bank may prohibit the acceptance of deposits by that non-banking institution ....

(6) Every non-banking institution receiving deposits shall, if so required by the Bank and within such time as the Bank may specify, cause to be sent at the cost of the non- banking institution a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the non-banking institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the Bank."

3. In exercise of the powers conferred under the said provisions, the Reserve Bank of India issued certain directions to every non-banking financial company on October 29, 1966. Clause 2(1)(d) of the said Directions, viz., the 1966 Directions, defined a chit fund company. Clause 2(1)(f) defined the word "deposit" thus : "deposit" means any deposit of money with, and includes any amount borrowed by, a company, but does not include : - [(i) omitted]; (ii) any loan raised on terms involving the issue of debentures or the creation of any mortgage, pawn, pledge or hypothecation, charge including floating charge, including floating charge, or lien on the assets of the company or any part thereof; [(iii) to (vi) omitted]; (vii) any loan received from a member of the company or any money received from a member by way of subscription to any shares, stock, bonds and debentures (including calls or deposits received in advance); (viii) in the case of a chit fund company, or any other company carrying on chit or kuri business, any subscriptions received from the members of a chit or kuri series in terms of the contract, variola or other arrangement relating thereto and in the case of a stock exchange or stock-broking company, any money received in connection with the purchase or sale of securities; [(ix) to (xiii) omitted].

4. In view of the definition of deposit under the 1966 Directions, the deposit cannot take in any amount borrowed by the company on the issue of debentures or on mortgage, pawn, pledge or hypothecation or charge on the assets of the company. It will also not take in any loan received from a member of the company or any money received from a member by way of subscription to any shares, stock, bonds and debentures. In the case of a chit fund company, the moneys received by way of subscription from members of a chit will not be considered as deposits.

5. On August 23, 1973, the Reserve Bank of India issued the Reserve Bank Directions, 1973". Clause 3(1)(d) of the said Directions defined "deposit" thus : "deposit" means any deposit of money with, and includes any amount borrowed by a company, but does not include : - [(i) to (v) omitted]; (vi) any money received from a person, who at the time of the receipt of the loan, was or is a director of the company or any money received by a private company from its shareholders : Provided that in the case of any money received on or after the commencement of these directions, the person from whom the money is received has furnished to the company at the time when the money is received, a declaration by such out of funds acquired by him by borrowing or accepting deposits from another person." (see [1973] 43 Comp Cas (St) 255.

6. Clause 4 of the Reserve Bank Directions, 1973, dealt with the acceptance of deposits by miscellaneous non-banking companies, on and from September shall receive any deposit, which together with any other deposits falling under the same category (as specified hereinafter), already received and outstanding in the books of the company, is in excess of the limits hereinafter specified in respect of each of the following categories of deposits, namely, (i) in the case of a deposit

received against an unsecured debenture, or from a shareholder (not being a deposit received by a private company from its shareholder on a declaration as is referred to in the proviso to sub-clause (vi) of clause (d) of sub-para. (1) of para. (3)) or a deposit guaranteed by a person, who, at the time of giving of the guarantee was or is a director of the company, twenty-five per cent. of the aggregate of the paid-up capital and free reserves of the company; (ii) in the case of any other deposit, twenty-five per cent. of the aggregate of the paid-up capital and free reserves of the company : Provided that for the purpose of clause (b), ''deposit'' shall not include any loan secured by the creation of a mortgage or pledge of the assets of the company or any part thereof

7. Clause 5 deals with existing deposits of miscellaneous non-banking companies. Clause 5 contains and Explanation to the effect that in arriving at the aggregate of the paid-up capital and free reserves for the purposes of this paragraph and para. 4, there shall be deducted from the aggregate of the paid-up capital and free reserves, as appearing in the balance-sheet of the company, the amount of accumulated balance of loss, if any, disclosed in the balance-sheet.

8. The substance of the definition of the word "deposit" under the Reserve Bank Directions, 19973, is that the money received from a person, who at the time of the receipt of the loan, was or is a director of the company will not fall within the meaning of th term "deposit". Similarly, any money received by a private company from its shareholders will also not fall within the definition of "deposit". The proviso, however, provides that in respect of any such money received after the commencement of the said Directions, the person from whom the money is received, should have furnished to the company at the time when the money is received a declaration in writing that the money has not been given by such person out of funds acquired by him by borrowing or accepting deposits from another person.

9. Again, in 1977, the Reserve Bank of India issued the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977 (called "the Reserve Bank Directions, 1977"), in supersession of the earlier Directions issued in 1973. In the Reserve Bank Directions, 1977, ''deposit'' is defined thus : "deposit shall have the same meaning as assigned to it in s. 45-I(bb) of the Act. Clause 4 of the Reserve Bank Directions, 1977, deals with non-applicability of the directions to certain types of deposits of money. It states :

"Nothing contained in paragraphs 5 to 9B and 13 of these Directions shall apply to the following types of deposits received by a miscellaneous non-banking company, namely : .....(vi) any money received from a person who, at the time of the receipt of the money was or is a director of the company or any money received from its shareholders by a private company including a private company deemed to be a public company by virtue of the provisions of section 43A of the Companies Act, 1956 (1 of 1956) :

Provided that, in the case of any money received on or after the commencement of these directions, the person from whom the money is received has furnished to the company at the time when the money is received, a declaration in writing that the money has not been given by him out of funds acquired by him by borrowing or accepting deposits from another person. Clauses 5 reads :

"On and from the 1st July, 1977, no miscellaneous non-banking company shall - ....

(b) receive or renew -

(i) any deposit against an unsecured debenture of any deposit from a shareholder (not being a deposit received by a private company from its shareholders as is referred to in clause (vi) of paragraph (4) or any deposit guaranteed by any person who, at the time of giving of such guarantee, was or is a director of the company, if the amount of any such deposit, together with the amount of such other deposits, of all or any of the kinds of deposits referred to in this sub-clause, already received and outstanding in the books of the company as on the date of acceptance or renewal of such deposit exceeds fifteen per cent. of its net owned funds;

(ii) any other deposit, if the amount of such deposit, together with the amount of such other deposits, not being deposits of the kinds referred to in sub-clause (i) of this clause, already received and outstanding in the books of the company as on the date of acceptance or renewal of such deposit, exceeds twenty-five per cent. of its net owned funds.

Explanation. - For the purpose of this paragraph ''net owned funds'' shall mean the aggregate of the paid-up capital and free reserves as appearing in the latest audited balance-sheet of the company as reduced by the amount of accumulated balance of loss, deferred revenue expenditure and other intangible assets, of any, as disclosed in the said balance-sheet.

10. Section 45-I(bb) of the Act defines deposit thus :

"Deposit shall include, and shall be deemed always to have included, any money received by a non-banking institution, by way of deposit, or loan or in any other form, but shall not not include amounts raised, by way of share capital, or contributed as capital by partners of a firm."

11. The contention of Mr. Radhakrishnan, on behalf of the petitioners, is that, in view of th effect that the Reserve Bank Directions, 1977, defined a deposit as having the same meaning assigned to it under s. 45-I(bb) of the Act, the Reserve Bank of India would have no jurisdiction to restrict the receipt of deposit by non-banking institutions in any manner. In this connection, the learned counsel referred to the decisions in Commissioner of Income Tax, Bihar and Orissa Vs. Maharaja Pratapsingh Bahadur of Gidhapur, and Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others, as regards the effect of a deeming provision found in a statute. According to the learned counsel, the definition of deposit in the Reserve Bank Directions, 1977, would render the 1973

Directions as bad in law. According to the learned counsel, the restrictions placed by the 1973 Direction would violate the right of the petitioner under art. 19(1)(g) of the Constitution.

12. The validity of the Reserve Bank Directions, 1966 was challenged before a Bench of this court in Mayavaram Financial Corporation Ltd. and Others Vs. Reserve Bank of India and Others, . A batch of writ petitions were filed by three chit fund companies. They sought for the issue of a writ of mandamus restraining the Reserve Bank of India from enforcing the provisions of the Non-Banking Financial Companies (Reserve Bank) Directions, 1966, framed under s. 45J of the Reserve Bank of India Act. In those writ petitions, the validity of Ss. 45J to 45L of the Act was questioned. The 1966 Directions were also attacked as illegal and inoperative and ultra vires the powers conferred on the Reserve Bank of india under the Act. This court upheld the provisions of the Act as valid. This court also upheld the validity of the 1966 Directions. It was pointed out by this court that the notification was necessitated because of the necessity for the Reserve Bank of India to have an effective control over deposits received by non-banking financial institutions which had risen to nearly Rs. 209.1 crores in March, 1965. The Bench also noticed the fact that non-banking institutions were receiving deposits from the public and utilising the same to advance money to others. The Bench observed that the bilk of the amount received by the chit fund companies by way of deposit from the public is lent out to third parties at higher rates of interest and that consequently the impugned directions were valid. Exception was taken before the Bench regarding the particulars to be furnished in advertisements soliciting deposits which was not accepted. I am unable to appreciate the contention of Mr. Radhakrishnan how the amendment of the word "deposit" in the 1977 Directions would in any way alter the situation.

13. There is no substance in the contention that the fundamental rights of the petitioners under art. 19(1)(g) of the Constitution is in any manner affected. So far as a chit fund company is concerned, the Directions do not in any manner affect the business of the company as it only restricts the power of the company to borrow from certain quarters and in a particular matter. I am unable to understand how the petitioners'' fundamental right can be affected when the Directions only place restrictions on the power of the chit fund company to borrow. I, therefore, reject the argument based on art. 19 of the Constitution.

14. I am, therefore, of the view that the decision in Mayavaram Financial Corporation Ltd. and Others Vs. Reserve Bank of India and Others, clearly applies and the 1973 Directions are valid.

15. One other contention that was urged by Mr. Radhakrishnan was that the Directions have been issued by the Deputy Governor of the Reserve Bank of India and that he has no power to issue such directions. In this connection, the learned counsel referred to s. 7 of the Reserve Bank of India Act. Section 7 states :

7. (1) The Central Government may from time to time give such directions to the Bank as it may, after consultation with the Governor of the Bank, consider necessary in the public interest.

(2) Subject to any such directions, the general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank.

(3) Save as otherwise provided in regulations made by the Central Board, the Governor and in his absence the Deputy Governor nominated by him in this behalf, shall also have powers of general superintendence and direction of the affairs and the business of the Bank, and may exercise all powers and do all acts and things which may be exercised or one by the Bank.

16. The argument of the learned counsel was that the Deputy Governor could act only in the absence of th Governor and that the notification does not show that the directions are being issued by the Deputy Governor on the absence of the Governor. I do not find any merit in this contention. The 1973 Directions have been signed by the Deputy Governor only on behalf of the Reserve Bank of India. Section 58 of the Act deals with the power of the Central Board to make regulations. It states that the central Board may, with the previous sanction of the Central Government, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect the provisions of this Act. Pursuant to the power conferred under s. 58 the Act, General Regulations, 1949, have been framed. Regulation 17(1) status :

"Subject to the provisions of the Act, any rules made by the Central Board in regard to expenditure to be incurred by or on behalf of the Bank and any directions, which may be given by the Governor either generally or in any particular case in regard to the conduct of the business of the bank, the Deputy Governors and Executive Directors are hereby severally empowered to exercise any or all the powers and do any or all acts and things which may be exercised or done by the Bank.

17. This regulation has not been challenged by Mr. Radhakrishnan. I am, therefore, of the view that the Directions, which had been issued by the Deputy Governor in the name of the Reserve bank of india, are valid. In the circumstances, the writ petitions are dismissed. No costs.

