

**(2004) 02 DEL CK 0041**  
**In the Delhi High Court**  
**Case No : CW. No. 5341 of 2003**

Bhagirathi Agencies Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 09-02-2004

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226

**Citation :** AIR 2004 Delhi 169 : (2004) 121 CompCas 324 : (2004) 109 DLT 895 : (2004) 73 DRJ 146 : (2004) 3 RCR(Civil) 363

**Hon'ble Judges :** Manmohan Sarin, J

**Bench :** Single Bench

**Advocate :** Sandeep Sethi, for the Appellant; Suresh Kait, For the Respondent No. 1 and S.L. Gupta, For the Respondent Nos. 2 and 3, for the Respondent

## **Judgement**

Manmohan Sarin, J.—This is an unusual case. Normally, it is the Bank or the Lender who is chasing the defaulting Borrower/account holder for realisation of the debt. Here the position is reversed. It is petitioner-Account holder, depositing substantial cash daily without any default, who has come to Court for continuance of his account.

2. This unusual scenario has emerged in the following facts :

(a) Petitioner is a distributor for telecom cash cards. These are sold to customers on cash for use in the cellular phones. This generates a lot of cash for the petitioner which it had been depositing with the respondent-Bank on a daily basis.

(b) Petitioner since the year 1995 has been having an account with the respondent-Bank. Petitioner was granted following revised credit facilities on 26th December, 2001:

Cash Credit Limit (Hypothecation Facility of Rs. 32 lacs);

Overdraft facility (Book debt of Rs. 8 lacs); and Bank guarantee facility of Rs. 2.5 lacs for a period of one year.

(c) Respondent-Bank vide its letter of 8th July, 2002 notified the petitioner that its present resources did not allow the respondent to service and maintain the petitioner's account. It is contended that respondent is a scheduled commercial bank. It cannot be forced to accept business. Especially the business for which it does not have the resources or which cannot be performed efficiently.

(d) Petitioner was advised to shift the account in mutual interest. Petitioner on receipt of the letter from the Bank protested vide its letter dated 11th December, 2002. Petitioner questioned the stand of the Bank that it did not have the resources to service the account. The account having been maintained for the last so many years, especially, even from the time of manual accounting which later on switched over to computerised accounting. The Bank replied that the matter is under consideration of the Head Office.

(e) Petitioner thereafter complained to the Regional Manager as also to the Customer Service Centre of the Bank of the harassment being meted out to the petitioner. After the arrival of the new Branch Manager, petitioner also referred to irritants being caused by the respondent-Bank, such as requiring notes of small denomination being separated in old and new notes. Complaint was also made with regard to bouncing of certain cheques which should have been honoured. Nevertheless, petitioner assured the Bank of its co-operation.

(f) Finally, respondent vide its letter of 30th June, 2003 Annexure P-14 notified its decision not to renew the credit facilities which the petitioner was enjoying and called upon the petitioner to liquidate the outstandings in the accounts opened. It notified the petitioner of the cancellation of all credit facilities from 31st August, 2003.

3. The petitioner has challenged the above action as being a decision actuated by mala fides and harassment of the petitioner. The decision taken by the respondent was arbitrary and capricious, without there being any default by the petitioner.

4. I have perused the petition, counter-affidavit, rejoinder and the documents produced on record. Counsel for the petitioner, Mr. Sethi and for the Bank Mr. S.L. Gupta have been heard at length. The main plank of the petitioner's argument is that the respondent is a public sector bank comes within the ambit of Article 12 of the Constitution of India. It cannot in an arbitrary and capricious manner terminate the Cash Credit Facility with the petitioner without there being any breach of the terms and conditions or a default on the part of the petitioner.

5. The moot question which arises for consideration is whether the respondent-Bank can refuse to do the business or close an account on the ground of it being not in a position to service the account. There is no doubt that the respondent-Bank comes within the purview of Article 12 of the Constitution of India and is bound to act in a reasoned manner. Any action which is wholly arbitrary or discriminatory can be assailed on the touchstone of Wednesbury principles. Mr. Sandeep Sethi submits that the proposed action of the Bank is actuated on

account of mala fides and attitude of high-handedness, where the Branch Manager of the Bank wants to somehow uphold and maintain its decision to close the account of the petitioner without the petitioner having being in default even once. Mr. Sethi submits that the accounts had been continuing without any difficulty for all these years.

6. Mr. S.L. Gupta, Counsel appearing on behalf of the Bank submits that the Bank cannot be forced to continue to have contractual relationship and service the account even if the same is found to be commercially non-viable and beyond the resources of the Bank to manage. It is submitted by Mr. Gupta that the cash deposits by the petitioner on a daily basis exceed the total sanctioned cash limit of Rs. 2.50 lacs. The Bank had been subjected to audit objections on account of excess cash being deposited. The cash deposits of huge amounts by petitioner do not result in any gain to the Bank since the same is withdrawn by issuance of cheques in day or so. Mr. Gupta submitted that pursuant to the complaint made to the Chairman of State Bank of India against the Branch Manager of the respondent-Bank an inquiry was conducted. The complaint of Traders Association of the area was also investigated. The inquiry completely exonerated the Branch Manager and other officers of the charges of harassment.

7. Having noted the rival contentions, it is not necessary for me to dwell on inquiry report for the purposes of disposal of the petition. I have considered the entire conspectus of the matter. The difficulty is arising on account of the petitioner depositing large volumes of cash in small denominations running into Rs. 10 lacs to 15 lacs daily or with gaps of a day or two. The notes deposited in small denomination are required to be counted and sorted out between old and new notes. It entails personnel of the Bank being deployed all the day for counting and reverifying. Immediately thereafter cheques for substantial amounts are drawn resulting in withdrawal of the amount. The audit report of the Bank itself notes and records that cash is being deposited and retained in violation of the cash retention limit of Rs. 2.50 lacs of the Branch. The audit report noted that the cash retention limit of the Branch is Rs. 2.50 lacs and on the date of audit, the cash in hand was found to Rs. 4,51,57,156/- with notes numbering 8,78,218. The branch only has a small strong room. There was no partition between the boxes. It was noted that only one armed guard is deployed, who escorts the cash remittance. When cash remittance exceeds Rs. 10 lacs, more than one guard is required. There was also the aspect of non-adequate insurance coverage. Practical difficulties in counting the small cash denominations were also noted. Mr. Gupta also pointed out that the petitioner had already opened a bank account with another Bank, where it could avail of similar facilities. Petitioner, however, insists that its legitimate grievance must be redressed and his account with the respondent-Bank continued.

8. I find while it is true that the respondent-Bank could not be subjected to excessive cash deposits of Rs. 10 lacs or Rs. 15 lacs, especially when the cash limit sanction for the Branch was Rs. 2.50 lacs. The deposit of large amounts of

cash of small denominations entails substantial administrative effort. The cash deposits followed by immediate withdrawal does not make it a commercially viable proposition for the Bank/Besides the respondents are also justified in stating that the entire sanctioned cash limit cannot be utilised by just one customer. Mr. Sethi on behalf of the petitioner submitted that if the Bank so desires, the petitioner would be willing to pay for the additional administrative costs entailed in counting and receiving deposits of cash on daily basis.

9. Be that as it may, there is also an element of public service, which the Bank is to render to eligible account holders, who comply with the terms and are not defaulters. A possible solution for the Bank could be installation and deployment of counting machines to save the administrative effort. In these circumstances, it was put to the respondent-Bank that if a ceiling was put on the daily cash that could be deposited by petitioner, would the respondent-Bank be willing to provide credit facilities and continue the account? The case was adjourned to 28th January, 2004. Counsel for the respondent informed that the Bank does not propose to levy an administrative charge as the same is not charged from other customers. Instead, he prays that ceiling, as proposed, be reduced. Further, petitioner be required to file on monthly basis the statement of current account with other Banks.

10. In view of the foregoing discussion, the order which commends to the Court and meets the ends of justice, is as under :

(a) The petitioner shall deposit not more than Rs. 75,000/- in cash in a day with the respondent-Bank. Respondent would not be obliged to receive cash of more than Rs. 75,000/- in a day in the account of the petitioner.

(b) Petitioner shall also sort out the notes of different denominations to be deposited in convenient lots. Petitioner shall also furnish on a monthly basis the statement of its current account with other Banks.

(c) The respondent-Bank would within 10 days of the order, notify the petitioner, the information and documents required for opening of the account with cash credit (Hypothecation) and other limit as before. Upon the petitioner's furnishing requisite information and documents, respondents would open the account of the petitioner.

The writ petition is disposed of with the above directions which are acceptable to the parties.