

(2008) 01 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13514 of 2006

Choudhry Traders

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 8
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 — Section 8
Banking Regulation Act, 1949 — Section 21, 21A, 35, 35A, 35B
Constitution of India, 1950 — Article 12, 14, 21, 226
Reserve Bank of India Act, 1934 — Section 3
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)
State Bank of India Act, 1955 — Section 18, 22, 39

Citation : (2008) 3 ALD 670 : (2008) 4 ALT 193

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Narender Reddy, for the Appellant; M.P. Ugle, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri T.V.L.Narasimha Rao, learned Counsel representing the Writ Petitioner, Sri M. Narender Reddy, learned Counsel representing the first respondent and Sri M.P. Ugle, learned Counsel representing the second respondent.

2. The counsel for the petitioner had taken this Court through the contents of an affidavit filed in support of the Writ Petition, respective stands taken by R1 and R2 in the counter affidavits and would maintain that in the facts and circumstances of the case, the writ petitioner is entitled to the reliefs prayed for in the Writ Petition in the light of Sections 21, 35E of the Banking Regulation Act, 1949 and also in the light of the Articles 14 and 21 of the Constitution of India. The learned Counsel also would maintain that the petitioner is bound to succeed in the Writ Petition even on the strength of the doctrine of "the legitimate

expectation". The learned Counsel would conclude that under law and also on the ground of equity suitable directions are to be issued in favour of the Writ Petitioner.

3. Sri Narender Reddy, learned Counsel representing the first respondent had taken this Court through the contents of the counter affidavit filed by the first respondent and would maintain that these guidelines are not enforceable in Court of law and hence the Writ Petition is liable to be dismissed.

4. Sri Ugle , learned Counsel representing the second respondent had taken up the preliminary objection regarding the maintainability of the Writ Petition and also had taken this Court through the contents of the counter affidavits and specifically pointed out to several decisions covered in his favour and would maintain that in the light of the same, the Writ Petition being devoid of merit and the same is liable to be dismissed.

5. Heard the learned Counsel on record and perused the respective pleadings of the parties and also the material produced before this Court.

6. This Court issued Rule Nisi on 4.7.2006. The present Writ Petition is filed for Writ of Mandamus declaring the inaction of the first respondent bank on the representation dated 28.3.2006 of the petitioner for grant of OTS-2005 being violation of Mandatory Guidelines under OTS 2005 of the second respondent as also discriminatory, indiscrete and contrary to Sections 21 and 35A of the Banking Regulation Act, 1949 and also in violation of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India and consequently directing the first respondent Bank to accept amount from the petitioner as per OTS-2005 Scheme for full and final settlement of NPA C.C.A/c No. 01600006246 and pass such other order or further orders as this Hon''ble Court may deem fit and proper in the circumstances of the case.

7. The first respondent and the second respondent filed their counter affidavits.

8. It is the case of the Writ Petitioner that the first respondent is a Statutory Corporation constituted under the Reserve Bank of India Act, being an instrumentality of the State, would fall under Article 12 of the Constitution of India.

9. It is also stated that the second respondent is a Statutory Corporation constituted under Reserve Bank of India Act, for the purpose of taking over the Management of the Currency from the Central Government and of carrying on the business of Banking besides being the Licensing, Controlling and Monitoring Authority of Commercial and Cooperative Banking outfits and their business. Its entire capital is owned and held by the Government of India and thus it is an "instrumentality of the State" in terms of Article 12 of the Constitution of India.

10. It is also the case of the petitioner that the petitioner had been engaged in the wholesale dealing of Sugar, food grains as also in commission agency from the year 1984.

11. The first respondent bank granted a cash credit facility of Rs. 72 lakhs to the petitioner on 24.2.2001 vide A/c No. 01600006246 and thereafter, the Unit faced business crisis due to steep fall in the prices of sugar. Thus the Unit registered substantial fall in its profitability and it worsened further due to deterioration in his health condition at the age of 78 years. It is further stated that adding fuel to the fire, his wife Mrs. Shantibai expired on 20.4.2005 leading to more depressing business levels.

12. It is further averred that the credit facility with the first respondent bank became non-performing asset i.e., (NPA) as on 31.3.2003 as the Account was irregular consecutively for six months from 1.10.2002. The said NPA C.C. No. 01600006246 Account had become Doubtful Asset as on 31.3.2004.

13. Further, it is averred that the interest applied C.C.Account No. 01600006246 for the months from 1.10.2002 to 28.2.2003 amounting to Rs. 4,01,492.08 should have been reversed on 31.3.2003 and the interest of Rs. 83,644.52 should not have been applied to the Account on 31.3.2003 for the month of March 2003 as per mandatory guidelines of the second respondent. Thus, the notional balance as on the date of NPA i.e. as on 31.3.2003 should have been Rs. 71,18,821.96. This is because the Account has admittedly been NPA as on 31.3.2003 vide first respondent letter dated 2.11.22004.

14. Further it is stated that the first respondent continued to apply interest to the said NPA CC Account of the petitioner up to March 2004 from April 2003 contrary to the guidelines of the second respondent, which aggregates to Rs. 10,51,235.14. Thus the total interest, which should not have been applied to the C.C. Account of the petitioner is Rs. 15,35,171.74. It is further stated that in addition to the above authorized application of interest, the first respondent had made unauthorized debit to the NPA C.C. Account of the petitioner to the tune of Rs. 33,357/- towards incidental and other charges after 31.3.2003.

15. It is further averred that notional balance in petitioner's NPA C.C. Account as on the date of the status of doubtful asset i.e. as on 31.3.2004 excluding the repayments made would be Rs. 71,18,821.96, which is nothing but the notional balance that should have been outstanding, as on the date of NPA i.e. as on 31.3.2003.

16. It is further averred that the total amount repaid by and on behalf of the petitioner to the credit of the aforesaid NPA C.C. Account is Rs. 50,94,106 up to 30.6.2006 since the date of NPA i.e., since 31.3.2003. The petitioner's NPA C.C. Account is eligible to be covered under OTS-2005 declared by the second respondent as per their letter Ref. No. RPCD.PLNFS.BC. No. 39/6.2.31/2005-06 dated 3rd September 2005. Thus it is stated that the petitioner had to pay a further sum of Rs. 20,24,715.96 being the amount net payable after deducting Rs. 50,94,106/- from Rs. 71,18,821.96 in terms of RBI Guidelines i.e., the second respondent.

17. The petitioner had filed a letter to the first respondent bank on 20.11.2003

for waiver of interest, while expressing its readiness to repay the entire crystallized amount with due concession at one stroke. However, the first respondent chose to be silent on the said letter. The petitioner arranged the written consent of the guarantors to the first respondent bank to enable it to credit the monthly rent of about Rs. 1,50,000/-payable by them to the guarantors on the premises taken on lease by the former to the subject NPA C.C.A/c of the petitioner with effect from January, 2004. Thus by the end of the year, 2004 the subject NPA C.C.A/c got a credit of nearly Rs. 23 lakhs.

18. The first respondent-Bank, despite the regular repayment credits, caused legal notice on 29.1.2005 for a claim of Rs. 63,03,945/- and Anr. notice u/s 13(2) of the Securitization Act on 31.3.2005 for a claim of Rs. 60,03,219-73 excluding interest from 1.4.2004. As things stood thus, the subject NPA C.C.A/c got further repayment credits of nearly Rs. 20 lakhs during the year 2005.

19. The first respondent-Bank chose to cause another legal notice on 16.3.2006 to the petitioner and Anr. 6 persons claimed as guarantors for a claim of Rs. 58,43,580-72 despite there was a total repayment of nearly Rs. 43 lakhs from the year 2004 to 2005.

20. The first respondent-Bank continued to put pressure on the petitioner through legal notices despite there being no warranting circumstances while regular monthly repayments have been made to the aforesaid NPA C.C. Account which are nothing but the rents payable by the first respondent itself towards the premises occupied by it at Hyderguda for its service branch from January, 2004. The net rent works out to be more than Rs. 20 lakhs per year.

21. Further it is stated that the petitioner had applied on 28.3.2006 for settlement of its dues in terms of OTS-2005 declared by the second respondent, which is mandatory, non-discretionary and non-discriminatory and which works out to Rs. 20,24,715-96 as on 30.6.2006. However, the petitioner gave suitable reply on 31.3.2006 to the legal notice dated 16.3.2006 issued by the first respondent.

22. Further it is stated that the petitioner had adequately established their bonafides even after the Account has been categorized as NPA through repayment of about Rs. 51 lakhs since the date of NPA. The first respondent did not bother to process the petitioner's OTS representation dated 28.3.2006 till this date. In such circumstances, the Writ Petitioner approached this Court and certain grounds had been specifically raised in the affidavit filed in support of the writ petition.

23. In the counter affidavit filed on behalf of the first respondent, specific stand had been taken i.e., the guidelines dated 3.9.2005 issued by the second respondent for one time settlement of the debts due to the Banks, is not applicable to the case of the petitioner. Further it is stated that the guidelines issued by the second respondent are applicable for SME Sector i.e., for industrial units with investments in plant and machinery. The Local Head Office of the State

Bank of India also issued circular dated 25.10.2005 to all its Branches in Hyderabad circle giving clarifications in the matter. It is further stated that the petitioner is a Proprietary concern represented by its Proprietor Sri R. Choudhary and is dealing in the business of wholesale distribution of sugar in bulk quantities and thus is a Trader and is not covered under the definition of a SME Sector and therefore, the guidelines dated 3.9.2005 issued by the second respondent are not applicable and therefore the Writ Petition is liable to be dismissed.

24. Further, it is averred that the petitioner is a Proprietary concerned represented by its Proprietor Sri R. Choudhary availed working capital cash credit (hypothecation) limit of Rs. 72 lakhs, after executing the security documents on 24.2.2001 from the first respondent-Bank. The loan was also secured by the personal guarantees of Sri R. Choudhary, Sri Mhaveer Prasad Choudhary, Sri Ramkumar Choudhary, Smt Shobha W/o Sri Ram Kumar Choudhary and Smt. Shobha W/o Sri Mahaveer Prasad Choudhary and also their immovable property security bearing H. No. 3-5-865 situated at Hyderguda, Hyderabad.

25. It is also stated that the petitioner committed default in repaying the loan amount together with interest to the first respondent-Bank and the first respondent-Bank filed an application O.A. No. 71/2006 on 26.4.2006 before the Debts Recovery Tribunal at Hyderabad against the petitioner and its guarantors for recovery of the sum of Rs. 59,37,201.73 ps together with future interest and costs.

26. It is also stated that the petitioner was duly served with the statement of account explaining the charging of interest and also informed its liability to the first respondent-Bank after calculating the interest as applicable to the account. As the petitioner committed default, legal notices were served claiming the debt due from the petitioner. All the credits received from the petitioner and its guarantors were duly credited to the loan account. The unapplied interest to the loan account from 1.4.2004 to 20.4.2006 was Rs. 15,88,363/- and the debit balance in the loan account (excluding the interest 1.4.2004 to 20.4.2006) was Rs. 43,48,838-73 ps. Therefore, the first respondent-Bank filed the application O.A. No. 71 of 2006 on 26.4.2006 claiming a total debt of Rs. 59,37,201.73 ps (inclusive of interest). Therefore, the allegation of the petitioner that its dues in terms of OTS-2005 works out to Rs. 20,24,715-96 ps, as on 30.6.2006 is not correct and the said allegation is denied. As the petitioner is a Trader and is not eligible for settlement of its dues under OTS-2005 and the same scheme is applicable to SME sector. Therefore, the allegation of the petitioner that the action of the first respondent-Bank is discriminatory, indiscreet and contrary to Sections 21 and 35A of the Banking Regulation Act, 1949 and also in violation of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India, is not correct. The petitioner is not entitled for the relief prayed for in the Writ Petition.

27. In the counter affidavit filed by the second respondent, preliminary objections had been taken regarding maintainability of the Writ Petition. It is

averred that the Reserve Bank of India (the Bank), is a body corporate constituted u/s 3 of the Reserve Bank of India Act, 1934 to regulate the issue of Bank notes and keeping the reserves with a view to securing monetary stability in India and to operate the currency and credit system of the country to its advantage. The Bank is the sole note-issuing authority. Bank Notes issued by the Bank are legal under Sections 22 and 39 of the Reserve Bank of India Act. The Bank regulates and controls the money supply in the country. The Bank also acts as statutory banker to the Government of India and all State Governments and also manages their public debts. The Bank regulates and supervises commercial banks and cooperative banks in the country. The Bank exercises various powers and discharge various statutory functions under Foreign Exchange Management Act, 1999, Banking Regulation Act, 1949, Reserve Bank of India Act, 1934 etc.

28. It is also stated that the Bank issued guidelines dated 3rd September 2005 in exercise of the powers conferred u/s 36 of the Banking Regulation Act, 1949 to Public Sector Banks at the request of Government of India.

29. Further, it is stated that the public sector banks are governed by statutes constituting them like, State Bank of India Act, 1955, State Bank of India (Subsidiary Banks) Act, 1959, Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Board of Directors of public sector banks are appointed by Central Government in consultation with Reserve Bank. Public Sector Banks constitute a different and distinct class by themselves. In terms of Section 18 of State Bank of India Act, 1955 and Section 8 of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, SBI, its subsidiary banks and other Nationalized Banks are governed by the directions issued by the Central Government in consultation with Governor, Reserve Bank of India.

30. The Government of India, Ministry of Finance prepared a policy package for stepping up credit to Small and Medium Enterprises (SMEs) and placed the same before the Parliament on 10 August 2005. The Government forwarded the policy paper vide letter dated 11 August 2005 to Reserve Bank of India and other public sector banks requesting therein to take all necessary steps to follow the policy in letter and spirit. The policy paper in paragraph 5 provided inter alia, as under:

One time settlement scheme to apply to small scale NPAs account in the books of the bank as on March 31, 2004 will be introduced. The scheme will be in force up to March 31, 2006.

31. It is further averred that as required by the Government of India, the Reserve Bank vide letter RPCD PLNF.BC. No. 31/06.2.31/20 dated 19th August 2005 issued the policy package for stepping up credit to SMEs to Chairman/ Managing Director of all public sector banks. As the policy was placed by the Government before the Parliament and was addressed to public sector bank, the same was considered for issuance to public sector banks. One time settlement scheme was formulated by the Reserve Bank on the basis of statement made by

the Hon^{ble} Finance Minister before the Parliament on 10.08.2005 in the policy paper submitted for stepping up credit to SMEs and the Reserve Bank issued guidelines on one time settlement scheme for SME account vide RPCD.PLNFS.BC. No. 39/06.2.31/2005-06 dated 3rd September 2005. Para 4 of the said guidelines specifically provide that any deviation from the above settlement guidelines for any borrower shall be made only by the Board of Directors. These guidelines have not been issued u/s 35A of the Banking Regulation Act, 1949, therefore, they are only directory in nature and each bank has to apply its decision in individual cases.

32. Respondents rely on the decision of the Supreme Court in Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others, , which is popularly known as Palai Central Bank case. In paragraph 45 of the judgment, the Supreme Court has observed, inter alia, as under:

In view of the history of the establishment of the Reserve Bank as a central bank for India, its position as a Bankers' Bank, its control over banking companies and banking in India, its position as the issuing bank, its power to license banking companies and cancel their licenses and the numerous other powers, it is unanswerable that between the Court and the Reserve Bank, the momentous decision to wind up a tottering or unsafe banking company in the interest of the depositors, may reasonably be left to the Reserve Bank. No doubt, the Court can also, given the time, perform this task. But the decision has to be taken without delay, and the Reserve Bank already knows intimately the affairs of banking companies and has had access to their books and accounts. If the Court were called upon to take immediate action, it would almost always be guided by the opinion of the Reserve Bank. It would be impossible for the Court to reach a conclusion unguided by the Reserve Bank if immediate action was demanded. But the law which gives the same position to the opinion of the Reserve Bank is challenged as unreasonable. In our opinion, such a challenge has no force.

33. The Supreme Court of India in Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, , has observed as under: "Reserve Bank of India which is banker's bank is a creature of Statute. It has large contingent of expert advice relating to the matters affecting the economy of entire country and nobody can doubt the bonafides of the Reserve Bank, in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate banking system in the country." The Supreme Court further observed as under:

Courts are not to interfere with economic policy, which is the function of experts. It is not the function of the courts to sit in judgment over the matters of economic policies and it must necessarily be left to the expert bodies.

34. Karnataka High Court in E. Sathyanarayana v. RBI (Karn.) reported in (2002) 112 Comp Cas 272 (Karn) while considering the guidelines issued by Reserve

Bank of India on 27 May 1999 for constitution of Settlement Advisory Committees and guidelines for settlement of debts due to nationalized banks observed on page 276 as under:

Section 21 of the Act referred above contemplates, that if the RBI is satisfied that it is necessary or expedient for it in public interest or in the interest of depositors or banking policy to it and to determine the policy in relation to the advance of loans to the persons to be followed by the banking companies in particular and when the policy has been determined all banking companies as the case may be shall be bound to follow the policy to be determined. By perusing the guidelines mentioned in the circular issued by the Chief Manager of RBI, it is not mentioned as to whether the RBI is satisfied and found that it is expedient in public interest or in the interest of depositors or in the interest of the banking policy to accept the said guidelines issued by the Chief General Manager. By reading the entire document of the circular produced by the petitioners and the so called guidelines purported to have been issued by the RBI it is clear that the petitioners have not shown that the said guidelines have been issued by the RBI as defined under the Reserve Bank of India Act of 1934, except contending that the Chief General Manager of RBI, who is competent authority under the provisions of the Act has issued the circular. Even in the said circular, it is not disclosed that the same has been issued by him either in the interest of the public or the depositors or the banking policy. In this view of the matter, this Court has to record a finding and hold that the guidelines contained in the circular referred to above upon which much relevance is placed upon by the petitioners counsel placing reliance upon the judgments of the apex court, this Court and Andhra Pradesh High Court are not the guidelines issued in terms of Section 21 of Banking Regulation Act, 1949.

The Court has further observed as under:

Apart from the said undisputed facts, there is no existing legal right accrued in favour of the petitioners to demand the respondent nationalized banks in these petitions to enforce the guidelines against them upon which they are relying and there is no corresponding statutory obligation to be performed by the respondent banks. On the other hand, the petitioners/debtors are bound by the loan agreement entered into with the respective nationalized banks to enforce the same against the petitioners/debtors as per the terms and conditions of the loan agreements.

35. The Delhi High Court in *MONO CAPS (INDIA) v. STATE BANK OF INDIA* and Ors. reported in (2004) 122 Comp. Cas 517 has observed as under:

The question whether guidelines would apply to cases where decrees have been passed, had been considered by the High Court of Bombay, in Writ Petition No. 973 of 2003 titled *Chemosyn Ltd. v. Union Bank of India*. The Reserve Bank of India clarified the position with regard to the guidelines:

These guidelines do not cover the cases where decrees have already been

passed. The objective of the RBI guidelines is to provide a fast track channel of recovery of NPAs. Whereas in the case of decreed debts, the banks can straightway executed the same and recover their dues. In the case of decreed debts the question of compromise/settlement does not arise

This approach has a rationale inasmuch as the cases in which decrees have been obtained, the bank can straightaway execute the same and recover the dues. It would therefore be seen that the circulars are directory in nature and do not have the status of guidelines issued in terms of Section 21 of the Banking Regulation Act, 1949.

36. Division Bench of Allahabad High Court in SARDAR PREM SINGH v. BANK OF BARODA, decided on 24.2.2004 reported in 2004 (3) CCC 205 has observed in paras 4 and 5 as under:

4. Granting one time settlement is really re-scheduling of the loan, and only the Bank can do that. This Court under Article 226 of the Constitution cannot direct for one time settlement. The Court can only interfere when there is violation of law, but no such violation has been pointed out.

5. Learned Counsel for the petitioner has referred to the guidelines of the Reserve Bank of India for recovery of non performing assets mentioned in the letter of Respondent No. 1 dated 24.8.2000 (Annexure 1 to the petition). In our opinion these guidelines are only for the internal guidance of the Banks and the Financial Institutions, but a party who has taken the loan cannot derive any benefit from these guidelines, and these guidelines of the Reserve Bank of India do not confer any right on a party which has taken the loan to get one time settlement. These guidelines are purely execute instructions and not statutory directions. Hence, no right can be claimed by anyone on their basis.

37. It is submitted that in the similar writ Petition No. 7994 of 2005 filed by Tuticorin Town Merchants Central Association in Bombay High Court was considered by a Division Bench vide order dated February 2, 2006 wherein, the High Court has observed, inter alia, as under:

...It is set out that the circular dated 3rd September 2005 is in the nature of guidelines to public sector banks at the instance of Government of India and are issued u/s 36 of Banking Regulation Act, 1949, which are directory in nature. In other words, what is set out is that these guidelines are not binding on the banks and it is further set out that the private sector banks are free to formulate their own policy....

38. The guidelines dated 3rd September 2005 issued by the Second respondent to all public sector banks containing the scheme of one time settlement in respect of NPAs of SME accounts of public sector banks shall cover NPA's in SME sector which have become doubtful or loss as on March 31st 2004 with outstanding balance of Rs. 10 Crore and below on the date on which the account was classified as doubtful. The one time settlement guidelines issued by Reserve

Bank on 3rd September 2005 were meant for public sector banks in terms of the policy package for stepping of credit to SME sector announced by the Union Finance Minister in the Parliament on 10th August 2005. "Small and Medium Enterprise" (SME) is defined as an industrial undertaking in which investment in plant and machinery exceeds Rs. 1 Crore and upto R. 10 crore. The OTS guidelines on SMEs are not applicable to traders and this petition is liable to be dismissed. While answering the averments made in the affidavit filed in support of the Writ Petition all the averments specifically had been denied.

39. Section 21 of the Banking Regulation Act, 1949 reads as under:

21. Power of Reserve Bank to control advances by banking companies:

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest (or in the interests of depositors) (or banking policy) so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under Sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particulars, (as to, --

(a) the purpose for which advances may or may not be made. (b) the margins to be maintained in respect of secured advances.

(c) The maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company, to any one company, firm, association of persons or individual,

(d) The maximum amount up to which, having regard to the considerations referred to in Clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) The rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given)

((3) Every banking company shall be bound to comply with any directions given to it under this section).

40. Section 35B of the said Act reads as hereunder:

35-B. Amendments of provisions relating to appointments of Managing Directors, etc., to be subject to previous approval of the Reserve Bank:

(1) In the case of a banking company,---

(a) no amendment of any provision relating to the maximum permissible number of Directors or the appointment or reappointment or termination of appointment, or remuneration of a Chairman, a Managing Director or any other Director, whole time or otherwise) or of a Manager or a Chief Executive Officer by whatever name called, whether that provision be contained in the company's Memorandum or Articles of Association, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of Directors shall have effect unless approved by the Reserve Bank.

(b) no appointment or re-appointment or termination of appointment of a Chairman, a Managing or whole-time, Director, Manager or Chief Executive Officer by whatever name called, shall have effect unless such appointment, reappointment or termination of appointment is made with the previous approval of the Reserve Bank.

41. The specific stand taken in the counter affidavit of the first respondent is to the effect that the guidelines are not applicable at all to the present case. Even otherwise, the second respondent had relied on to the several decisions, which had been already referred to supra and had taken a specific stand that these guidelines are not enforceable in a court of law and no positive directions, as such, can be issued on the strength of such guidelines. The doctrine of "legitimate expectation" had been pressed into service and certain other grounds also had been raised in the affidavit filed in support of the Writ Petition.

42. The learned Counsel representing the 1st respondent placed strong reliance on the decision of the Madras High Court in Writ Petition No. 2528 of 2006, dated 14.2.2006, wherein the learned Judge of the Madras High Court observed as hereunder:

On a perusal of the guidelines dated 3.9.2005 issued by the Reserve Bank of India, I find that the said guidelines do not refer to either Section 21 or Section 35A of the Banking Regulation Act, or state any terms contained therein. A further reading of the various terms contained in the guidelines would show that they are not in consonance with the terms contained in the above referred two provisions viz., Sections 21 and 35A of the Banking Regulation Act. The guidelines are more in the nature of providing enabling situations either for the bank or for any borrower to seek for settlement of a loan transaction, and for recovery of non-performing assets below Rs. 10 crores. Therefore, it is very difficult to hold that the guidelines dated 3.9.2005 issued by the Reserve Bank of India should be construed as one issued u/s 21 or 35A of the Banking Regulation Act.

As far as the decision relied on by the learned Counsel for the petitioner as reported in AIR 1998 SCC 3000 (supra) is concerned, the Hon'ble Supreme Court have specifically mentioned that the circulars issued therein by the Reserve Bank of India were the circulars issued under Sections 21 and 35A of the Banking Regulation Act. Therefore, when the circulars were issued specifically under the

relevant provisions, whatever observation given by the Hon''ble Supreme Court, will definitely have greater implications in those circulars, which we are concerned are not the one issued either u/s 21 or 35A of the Banking Regulation Act. It cannot also be held that merely because such guideline was issued by the Reserve Bank of India, it will have statutory force and that the respondents are bound to follow the said circular.

As far as the decision reported in AIR 2001 SCC 3095 (supra) is concerned from paragraph 51 onwards, the Hon''ble Supreme Court has only laid down the proposition of law as regards the directions issued under Sections 21A and 35A of the Banking Regulation Act.

In the light of the same...which we are concerned is not the one issued either u/s 21 or 35A of the Banking Regulation Act, the ratio laid down in the above referred two decisions cannot be applied.

On the other hand in the decision reported in Digivision Electronics Ltd. Vs. Indian Bank, , the Division Bench has specifically held to the effect that the Writ Petition under Article 226 of the Constitution of India cannot lie to alter the terms of the contract between the borrower and the banking institution. The Division Bench has held as under:

Some of learned Counsel submitted that the Court should direct one time settlement or fixing of instalments or rescheduling the loan. In Tamil Nadu Industrial Investment Corporation Ltd. Vs. Millenium Business Solutions Pvt. Limited and Another, it has been held that this Court cannot pass any such order in writ jurisdiction, since directing one time settlement or granting installments is really rescheduling the loan, which can only be done by the bank or financial institution which granted the loan. This Court under Article 226 of the Constitution cannot reschedule a loan. A writ is issued when there is violation of law or error of law apparent on the face of the record, and not for rescheduling loans. The Court must exercise restraint in such matters, and not depart from well settled legal principles.

43. In the light of the facts and circumstances, the stand taken in the counter affidavit of R1 to the effect that the very guidelines are inapplicable to the present case and also in the light of the clear stand taken in the counter affidavit of R2 and in the light of the decisions of the Madras High Court referred to supra, this Court is of the considered opinion that the said guidelines are not enforceable in a Court of law and on the strength of such guidelines, no positive directions inclusive of a Writ of Mandamus to be issued by a Writ Court and hence the Writ Petition is being devoid of merit and the same is accordingly dismissed. No order as to Costs.