

(2014) 07 MAD CK 0164

In the Madras High Court

Case No : Writ Petition (MD) No. 12658 of 2012

Deposit Insurance and Credit Guarantee Corporation

APPELLANT

Vs

The Liquidator

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Constitution of India, 1950 — Article 133(1)(b)

Deposit Insurance and Credit Guarantee Corporation Act, 1961 — Section 16(1),
16(4), 18, 2, 21

Tamil Nadu Co-operative Societies Act, 1983 — Section 137(ii)

Citation : (2014) 07 MAD CK 0164

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Judgement

V. Ramasubramanian, J.—Madurai Urban Co-operative Bank Limited was established about 100 years ago, as an institution of co-operative micro financing. The institution flourished well until the year 2001. But as has happened in the case of every co-operative institution (except perhaps the milk co- operatives), this institution was also plundered both by the elected office bearers and by the staff. Therefore, after the year 2001, the bank started committing default in making payment to its depositors most of whom were retired pensioners and poor peasants.

2. Consequently, the Reserve Bank of India cancelled the licence of the bank and restrained it from carrying on any banking business by an order dated 28.08.2003. Therefore, the Joint Registrar of Co-operative Societies, Madurai Region by an order dated 07.01.2005, directed the liquidation of the bank in terms of Section 137(ii) of the Tamil Nadu Co- operative Societies Act, 1983. Ever since then, the Liquidator is in charge of the affairs of the bank.

3. The Madurai Urban Co-operative Bank Limited has been insured under the provisions of the Deposit Insurance and Credit Guarantee Corporation Act, 1961. Therefore, the Liquidator of the bank made an application to the Deposit

Insurance and Credit Guarantee Corporation for sanctioning the maximum guaranteed amount of Rs. 1 lakh to the depositors. In pursuance of the application so made by the Liquidator of the Co-operative bank, the Corporation sanctioned a sum of Rs. 31.89 crores. However, the Corporation ultimately, released only a sum of Rs. 25.04 Crores.

4. In the meantime, several depositors started filing cases on the file of this Court seeking directions to the Liquidator to make payment on the ground that they were either in the final lap of their journey or waiting to perform the wedding of their wards or awaiting medical treatment. When the Official Liquidator could not manage, a few depositors joined together and came up with a Writ Petition in W.P(MD)No. 3751 of 2008 seeking the issue of a writ of Mandamus to direct the Deposit Insurance and Credit Guarantee Corporation to disburse the amounts to the tune of Rs. 20,28,77,943/-. When this writ petition came up before a Division Bench on 23.06.2009, the Bench (to which one of us (VRSJ) was a party) directed the Liquidator of the Madurai Urban Co-operative Bank Limited to be present in Court on 26.06.2009. He submitted that huge amounts are not only repayable by the bank to its depositors but also recoverable from the borrowers. The borrowers had taken advantage of the fact that the bank had gone into liquidation and the borrowers were stalling of recovery proceedings by employing all legal methods. Therefore, on 26.06.2009 we passed an order directing the Liquidator to file a statement on 10.07.2009, containing the following details:-

- (a) The names and addresses of the debtors of the bank,
- (b) The amount due from each of those debtors
- (c) The list of properties of debtors that could be brought to sale;
- (d) The proceedings initiated by those debtors in any Court, against the recovery proceedings and
- (e) The aggregate maturity amount of deposits payable by the bank to the deposit holders.

5. In pursuance of the said order, the Liquidator filed a few volumes of papers. From the extract of the volumes 1 and 2, furnished by the Liquidator, it was found that there were 147 mortgage loans 187 self employment scheme loans, 18 housing loans and 35 hire purchase loans, in respect of which recoveries were to be made by the bank. The principal amount outstanding in respect of the self employment scheme loans alone was found to work out to Rs. 11,18,93,892/-. Therefore, to remove all impediments, on the part of the Official Liquidator from making recovery of these amounts, we passed an order on 13.07.2009 directing the Official Liquidator to issue notices to the borrowers, initially to 50 persons, directing them to be present in Court on 27.07.2009.

6. Accordingly, he issued notices and the borrowers appeared before this Court on 27.07.2009. The borrowers were represented by counsel and they were

directed to file statement of accounts indicating the principal amount borrowed, the amounts repaid by them till then and the amount which is still due even admittedly by them to the co-operative bank. This order was passed to facilitate at least the collection of the admitted amount in the first instance and the resolution of the dispute one way or the other. We also directed notices to be issued to the next set of 50 borrowers who had granted their properties to the urban co-operative bank.

7. The notices so issued, produced fairly good outcome, with the borrowers offering to settle at least the admitted amounts. Therefore, the matter was referred to the Mediation and Conciliation Centre. Thereafter, several orders came to be passed from time to time, including the directions to the Liquidator to take all steps to recover the dues, to receive claims from depositors and to process the same to deposit the money in a nationalized bank etc.

8. It appears that from out of the amount of Rs. 25.04 Crores collected by the Liquidator from the Deposit Insurance and Credit Guarantee Corporation, repayments were made to those depositors who had invested up to Rs. 1 lakh. Simultaneously, the Liquidator also recovered monies from the borrowers. Since the money recovered from the borrowers was to be made first to the Deposit Insurance and Credit Guarantee Corporation, the Official Liquidator started repaying money to the Corporation. As on date, a sum of Rs. 2.75 Crores has been refunded by the Liquidator to the Deposit Insurance and Credit Guarantee Corporation, leaving a balance of Rs. 22.29 Crores.

9. Due to the efforts taken by this Court in summoning the borrowers and preventing them from obtaining stay orders from various Courts through out the State, the Official Liquidator has now recovered a sum of Rs. 25 Crores from the borrowers. In normal circumstances, the Official Liquidator is obliged to pay Rs. 22.29 Crores to the Deposit Insurance and Credit Guarantee Corporation from out of the money that he has on hand namely Rs. 25 Crores. This will leave only a sum of Rs. 2.71 crores with the Official Liquidator for disbursement to the remaining depositors. But in view of the cry of the depositors, some of whom have died, some of whom are in the final lap of the earthly journey, the Official Liquidator has not paid, the amount of Rs. 22.29 Crores to the Deposit Insurance and Credit Guarantee Corporation.

10. Therefore, when the first Writ Petition in W.P.(MD)No. 3751 of 2008, wherein a few depositors had sought directions to the Deposit Insurance and Credit Guarantee Corporation came up for hearing, learned counsel for the Deposit Insurance and Credit Guarantee Corporation made a plea that their amounts are to be settled first.

11. Learned counsel for the Deposit Insurance and Credit Guarantee Corporation relied upon the provisions of Section 21(2) of the Deposit Insurance and Credit Guarantee Corporation Act, 1961. But the depositors and the Official Liquidator relied upon Section 45 of the very same Act, which empowered the Central

Government to issue directions in public interest. Therefore, a Bench of this Court passed an order on 23.08.2010 to the following effect:-

4. The depositors are waiting for their due for quite a long number of years. It is submitted that majority of the depositors are pensioners and five depositors died while writ petitions are pending. The amount collected is not sufficient even for consideration of disbursement of the same to the depositors in view of their statutory liability of the Bank. Section 45 of the Act reads thus:-

45. In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matter of policy involving public interest as the Central Government may after consulting the Reserve Bank give to it in writing, and if any question arises whether the direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

5. Section 21(2) of the Act, of course, in the way of the Liquidator to disburse the amount to the depositors in preference to the Deposit Insurance and Credit Guarantee Corporation. Nevertheless, Section 45 of the Act empowers the Central Government to advise the Bank in Liquidation, in consultation with the Reserve Bank of India, in regard to the disbursement of amount to the depositors as well, in preference to the claim of the Deposit Insurance and Credit Guarantee Corporation.

6. Taking into consideration the plight of the depositors in this case, we only direct the Liquidator to make a detailed proposal, with claim details, to the Central Government for exploring the possibility of invoking the power under Section 45 of the Act. Once such a proposal is made by the Liquidator, the Central Government may, in consultation with the Reserve Bank of India, in writing issue appropriate advice to the Liquidator for disbursement. By this order, it should not be understood that we are giving any direction to the Central Government for ordering disbursement of amount to the depositors as such but, it should be strictly in terms of Section 45 of the Act. The Liquidator shall make the proposal to the Central Government, as directed, within a period of two weeks from today and on receipt of such a proposal the Central Government may act as expeditiously as possible.

12. Accordingly, the Official Liquidator sent a representation dated 05.09.2010, to the central Government. But the Central Government passed an order dated 22.03.2011, rejecting the request under Section 45.

13. Thereafter, the Deposit Insurance and Credit Guarantee Corporation has come up with a writ petition in W.P(MD)No. 12658 of 2012 seeking the issue of a Writ of Mandamus to direct the Official Liquidator to pay a sum of Rs. 22.29 to the Deposit Insurance and Credit Guarantee Corporation from out of the money lying with them. This prayer, is opposed not only by the Official Liquidator but also by the depositors.

14. We have heard Mr.T.Poornam, learned counsel for the Deposit Insurance and Credit Guarantee Corporation which is the petitioner in the writ petition and Mr.T.Lajapathi Roy, learned counsel for the Official Liquidator.

15. The short ground that arises for consideration is as to whether the Liquidator of the Madurai Urban Co-operative Bank is obliged to pay to the Deposit Insurance and Credit Guarantee Corporation, an amount of Rs. 22.29 Crores, in preference to the depositors waiting for a long time or not.

16. Mr.T.Poornam, learned counsel for the Deposit Insurance and Credit Guarantee Corporation submitted that the object of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 was to insure deposits in commercial banks, up to a particular limit. Initially, the limit of liability of the Deposit Insurance and Credit Guarantee Corporation was fixed at Rs.1,500/- only but it was raised to Rs. 5,000/- with effect from 01.01.1968 Rs. 10,000/- with effect from 01.4.1970, Rs. 20,000/- with effect from 01.01.1976, Rs. 30,000/- with effect from 01.07.1980 and Rs. 1 lakh with effect from 01.05.1993. As on date, the liability of the Deposit Insurance and Credit Guarantee Corporation is confined only to Rs. 1 lakh per depositor. The primary reason as to why a ceiling is fixed is that the maximum number of small depositors stand to benefit in the event of the failure of a bank.

17. According to the learned counsel for the Deposit Insurance and Credit Guarantee Corporation, the Deposit Insurance and Credit Guarantee Corporation actually settled the claims of the depositors of the Madurai Urban Co-operative Bank Limited to the total extent of Rs. 32.60 Crores which included the adjustment of an amount of Rs. 7.55 Crores available with the Liquidator. Therefore, the amount repayable by the Madurai Urban Co- operative Bank Limited to the Deposit Insurance and Credit Guarantee Corporation stood at Rs. 25.04 Crores out of which an amount of Rs. 2.76 Crores has been paid leaving a balance of Rs. 22.29 Crores as on date.

18. Section 21(2) of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 obliges the Liquidator of a bank to repay the amount recovered by him, first to the Deposit Insurance and Credit Guarantee Corporation. Section 21(2) reads as follows:-

Section 21(2) On receipt of the information under sub section (1), notwithstanding anything to the contrary contained in any other law for the time being in force:-

(a) The Liquidator shall, within such time and in such manner as may be prescribed, repay to the Corporation out of the amount, if any payable by him in respect of any deposit such sum or sums as make up the amount paid or provided for by the Corporation in respect of that deposit;

(b) The insured bank or, as the case may be, the transferee bank, shall, within such time and in such manner as may be prescribed, repay to the Corporation

out of the amount, if any to be paid or credited in respect of any deposit after the date of the coming into force of the scheme referred to in section 18, such sum or sums as make up the amount paid or provided for by the Corporation in respect of that deposit.

19. Regulation 22 of the Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961 also prescribes the mode of payment of the amount, recovered by the Liquidator which reads as follows:

22. The amounts repayable to the Corporation under sub section (2) of Section 2 of the Act shall be paid from time to time by:-

(a) The Liquidator as soon as the realisations and other amounts in his hands, after making provision for expenses payable by that time, are sufficient to enable him to declare a dividend of not less than one paisa in the Rupee to each depositor.

(b) The insured bank or the transferee bank, as the case may be, as soon as the realisations and other amounts in its hands, after making provision for expenses payable by that time in respect of such realisations or other amounts in its hands are sufficient to enable it after the date of coming into force of the scheme referred to in section 18 of the Act, to pay or credit in respect of each depositor a sum not less than one paisa in the Rupee.

20. In the light of the object of the Act and in the light of the express provisions of Section 21(2) of the Act and Regulation 22, it is contended by Mr.T.Poornam, learned counsel for the Deposit Insurance and Credit Guarantee Corporation that they should first be paid the amount of Rs. 22.29 cores. According to the learned counsel, this is the very condition subject to which the Deposit Insurance and Credit Guarantee Corporation released payment of about of Rs. 31 Crores to the bank in liquidation and that therefore, the condition should be honoured. Furnishing some mind boggling statistics, that justify the stand of the Deposit Insurance and Credit Guarantee Corporation, learned counsel submitted that as on date, the total liability of the Deposit Insurance and Credit Guarantee Corporation is Rs. 36 lakh Crores and that the funds available with the Deposit Insurance and Credit Guarantee Corporation is only Rs. 42,000 Crores. Since the object behind the Act is to cover the risk of small depositors who had invested up to Rs. 1 lakh, learned counsel contended that the larger public interest that the Deposit Insurance and Credit Guarantee Corporation seeks to serve for the depositors of all such banks, may have to prevail over the public interest sought to be achieved in making payment to the depositors of this Urban Co- operative Bank Limited who had invested over Rs. 1 lakh.

21. We have carefully considered the above submissions of the learned counsel for the Deposit Insurance and Credit Guarantee Corporation.

22. Before we proceed to consider the legal submissions, we should also bring on record some statistics with regard to the Urban Co-operative Bank which is in

liquidation. The statistics are as follows:-

No. of Depositors Amount now due (Rs. in Crores) Depositors who had invested their deposit and requested the deposit received 1 lakh 1036 9.84 Deposits from temples and institutions 99 3.03 Depositors who were not requested the deposit 1710 0.86 Interest to be paid on deposits up to date of cancellation of license - 5.00 Amount required for discharging the liability of the depositors 2845 18.73

23. In the light of the above statistics, Mr.T.Lajapathi Roy, learned counsel representing the Liquidator submitted that in an ideal situation, the Liquidator would like to settle all the depositors to the total tune of Rs. 18.73 Crores and pay to the Deposit Insurance and Credit Guarantee Corporation, the balance amount of Rs. 6.27 Crores. According to the learned counsel, the depositors can be paid in preference to the Corporation and that the same is also the scheme of Section 45 of the Act.

24. It appears from Section 21(2) of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 that the provisions of the Act will have effect, notwithstanding anything contained in any other law for the time being in force. Therefore, in terms of clause (a) of Sub Section (2) of Section 21, the Liquidator should repay to the Corporation out of the amount if any payable by him in respect of any deposit, such sum as make up the amount paid by the Corporation. Regulation 22(a) states the same mandate in simple terms by holding that the Liquidator is obligated to pay to the Deposit Insurance and Credit Guarantee Corporation as soon as he receives the realisations and other amounts in his hands. But the payment shall be made by the Liquidator after making provisions for expenses payable at that time, to enable him to declare a dividend at not less than one paisa in the Rupee to each depositor. Therefore, the mandate appears to be very clear and the stand taken by the Deposit Insurance and Credit Guarantee Corporation is technically valid.

25. It appears that a writ petition was filed on the file of the Bombay High Court in W.P.No. 651 of 2007 challenging the validity of Section 16(1) and Clause (b) of Section 16(4) and Section 21 of the Act to be unconstitutional. The Division Bench of the Bombay High Court upheld the validity of the Act by an order dated 16.08.2007 holding that the protection of interest of depositors only up to the extent of Rs. 1 lakh was not unreasonable. Therefore, there can be no quarrel with the legal position, that as soon as the depositors who had invested up to Rs. 1 lakh is paid, the liability of the Corporation ceased and whatever amounts are recovered by the commercial bank or Liquidator from whatever sources should be repaid to the Deposit Insurance and Credit Guarantee Corporation. It appears that the Supreme Court is also seized of the issue in Civil Appeal No. 1035 of 2008.

26. But the case on hand, appears to stand on a different footing. The recovery of money by the bank in the liquidation from its borrowers and the disbursement of the money to the depositors is actually being monitored by this Court. The

bank in question is a co-operative bank. No doubt, by virtue of Section 91(5) of the Tamil Nadu Co-operative Societies Act, 1950, the Co-operative Bank is also under the same obligation as stipulated in Section 21(2) of the Deposit Insurance and Credit Guarantee Corporation Act, 1961. But since the bank is a co-operative bank and also since at the initial stages, the depositors started flooding this Court with a series of petitions for a direction to the bank to repay their deposits, the Court is virtually monitoring the recovery. There is also one more reason as to why the Court has started doing this. Persons who borrowed money from the bank in liquidation have filed several cases before several Courts such as Civil Courts, Arbitrators etc., and obtained stay of recovery. It is only because of this Court's intervention that the bank in liquidation could collect a huge amount of Rs. 25 Crores from the borrowers as on date. The matter has also not come to an end today. The main writ petition in W.P(MD)No. 3751 of 2008 is still pending and there are a lot of borrowers, who were willing to repay the money to the bank in liquidation. Therefore, the Deposit Insurance and Credit Guarantee Corporation will certainly be paid their dues namely 22.29 Crores before the curtain is drawn at the main litigation. Therefore, in the background of this peculiar fact namely, that the Deposit Insurance and Credit Guarantee Corporation will be repaid in full, we have to look into statutory provisions.

27. Section 45 of the Deposit Insurance and Credit Guarantee

Corporation Act, 1961 reads as follows:-

45. In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matter of policy involving public interest as the Central Government may after consulting the Reserve Bank give to it in writing, and if any question arises whether the direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

28. A careful look at the Section 45 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 Act, would show that in the discharge of its functions under the Act, the Corporation is to be guided by the directions issued by the Central Government in matters of policy involving public interest. Today as per the statistics that is available on record, the Madurai Urban Co-operative Bank Limited in liquidation is liable to pay to the individual depositors, only a sum of Rs. 9.84 Crores. There is additional liability to the extent of Rs. 9 Crores, but the same relates to temples, institutions, interest etc., In other words, if the Liquidator of the Urban Co-operative Bank Limited is allowed to retain Rs. 9.84 Crores, out of the amount of Rs. 25 Crores available with him, the Liquidator will be able to pay all the depositors of the Urban Co-operative Bank, the principal amount due to them. The Liquidator will still be able to pay, Rs. 15.16 Crores to the Corporation if this is permitted.

29. Since the Corporation is obliged to be guided by public interest, we are of the view that in public interest, the Deposit Insurance and Credit Guarantee

Corporation may have to do some sacrifice, and that too only for a temporary period. Today, the entire liability of the Madurai Urban Co-operative Bank Limited to the Deposit Insurance and Credit Guarantee Corporation stands at Rs. 22.29 Crores. The amount available with the Liquidator is Rs. 25 Crores. The amount payable by the Liquidator to the individual depositors is only Rs. 9.84 Crores, with the rest being payable only to institutions etc., Therefore, if a direction is issued to the Liquidator to pay Rs. 15.16 Crores to the Deposit Insurance and Credit Guarantee Corporation and disbursed the balance amount of Rs. 9.84 Crores to the depositors, there will be a substantial compliance of the provision of Section 21(2) of the Act and Regulation 22(2). Public interest will also be satisfied in such an event. The balance amount payable by the Madurai Urban Co-operative Bank Limited to the Deposit Insurance and Credit Guarantee Corporation, would work out only to Rs. 7.13 Crores (after deducting Rs. 15.16 Crores from Rs. 22.29 Crores). It is not as though the Deposit Insurance and Credit Guarantee Corporation will not be able to recover this amount of Rs. 7.13 Crores. This Court is monitoring the recovery of money from the borrowers of the co-operative bank. Therefore, it could be ensured that all future inflows are diverted to the Deposit Insurance and Credit Guarantee Corporation, before any repayment is made either in the form of interest or in the institutional depositors.

30. In view of the above, the writ petition is allowed with the following directions:-

(i) Out of the amount of Rs. 25 Crores now lying with the Liquidator of the Madurai Urban Co-operative Bank Limited, he shall pay to the Deposit Insurance and Credit Guarantee Corporation a sum of Rs. 15.16 Crores immediately. The balance amount of Rs. 9.18 Crores lying with him shall be disbursed by the Liquidator of the Madurai Urban Co-operative Bank Limited to the individual depositors alone. The amounts payable by way of interest and the amounts payable to the institutional depositors shall await further orders.

ii) After payment of Rs. 15.16 Crores, to the Deposit Insurance and Credit Guarantee Corporation as per the preceding clause, the outstanding payable by the Madurai Urban Co-operative Bank Limited to the Corporation will get reduced to Rs. 7.13 Crores (Rs. 22.29-15.16). This amount shall be paid by the Liquidator of the Madurai Urban Co-operative Bank Limited, as and when further recoveries are made from the borrowers of the Madurai Urban Co-operative Bank Limited. In other words, any future recovery by the Madurai Urban Co-operative Bank Limited from its borrowers, shall first go to satisfy the claim of the Madurai Urban Co-operative Bank Limited, to the extent of the amount that would be left namely Rs. 7.13 Crores. No costs.

After we pronounced orders, the learned counsel for the Corporation sought certificate of leave under Article 133(1)(b) of the Constitution. But in view of the fact that we have partly allowed the writ petition directing the respondents to pay a major portion of the amount due and just postponed the payment of the remaining amount on the ground that we are monitoring the recovery and the

Court is ensuring the payment, the certificate of leave is refused. The learned counsel for the petitioner also request for stay of the order. But we do not see any reason to stay the order, since we have directed the payment of 15 Crores as against the claim of Rs. 22.29 Crores.