(2013) 11 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition (L) No. 2808 of 2013

D.J. Exim India Pvt. Ltd. APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 BOM CK 0001

Hon'ble Judges : V.M. Kanade, J;M.S. Sonak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.S. Sonak, J.—Heard the learned counsel appearing on behalf of the Petitioners and the earned senior counsel appearing on behalf of the Respondent No. 7.

2. By this petition field under Article 226 of the Constitution of India the Petitioners are seeking a writ of mandamus or any other order / direction for quashing and setting aside the impugned letter dated 10.10.2013 issued by the Respondents to the Petitioners. The Petitioners are also seeking a direction restraining the Respondents from publishing the photographs of the Petitioners its Directors / Guarantors and lastly it is prayed that the direction may be given directing the Respondents to decide the proposal of the Petitioners for restructuring the loan account of the Petitioners within a specified period.

3. Brief facts which are necessary for the purposes of deciding this petition are as under:

The Petitioner No. 1 is a private limited company incorporated under the provisions of the Indian Companies Act, 1956. The Petitioner Nos. 2 and 3 are its Directors. The Respondent No. 1 is a State Bank of India which is a nationalised bank. The Petitioners have availed of credit facilities from the Respondent Bank from time to time. However according to the Petitioners since April 2013 they were not in a position to repay the amounts which were due and payable to the bank on account of recession in the market and due to the financial crunch faced by them.

4. A proposal for restructuring of the loan amount was given to the Respondent by letter dated 04.09.2013 and the Respondents were called upon to regularise the account in order to avoid the possibility of the account being declared as a NPA account.

5. Thereafter the State Bank of India initiated proceedings in view of the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. On 01.10.2013 they also issued notices to the Petitioners as well as the guarantors u/s 13(2) of the Securitization Act.

6. The Respondents thereafter issued a letter dated 10.10.2013 in which they had threatened the Petitioners and its Directors / Guarantors that if the loan amount is not regularised within 10 days the photographs of the directors and guarantors will be published in newspapers. Being aggrieved by the said letter the Petitioners have approached this court seeking the reliefs which are claimed by them in the prayer clauses in paragraph 25 of the petition.

7. Learned counsel appearing on behalf of the Petitioners submitted that under Rule 8 of the Securitization Rules the bank has a right to publish the names and addresses of the directors and guarantors if they have defaulted in payment of the loan amount. However there was no provision under the Act or the Rules giving authority to the bank to publish the photographs of its directors. It is submitted that the said purported action of the Respondents is high handed, callous, illegal, unconstitutional, arbitrary and unwarranted. It is submitted that right of privacy of the Petitioners and the guarantors will be violated. It is further submitted that the Petitioners have given a proposal for restructuring of the said loan account. However the said proposal has not been taken into consideration. The learned counsel appearing on behalf of the Petitioners further submitted that the RBI as also the provisions of the said Act do not permit the banks to publish the photographs of the Directors and guarantors as a means to recover the loan amount. The learned counsel appearing for the bank has placed reliance on the judgment of the learned Single Judge of the Calcutta High Court in Writ Petition No. 10315 of 2013 in the case of Ujjal Kumar Das and Anr. vs. State Bank of India and Ors. And Writ Petition No. 9850 of 2013 Messrs. Allianz Convergence Private Limited and Ors. vs. The General Manager, State Bank of India and Anr. Reliance is also placed on the judgment of the Kerala High Court in Writ Petition No. 10864 of 2013 and Writ Petition No. 20686 of 2013 it was submitted that though the Kerala High Court and the Calcutta High Court had held that the act of publication of photograph in the newspaper is impermissible in law and unconstitutional. It was however pointed out that the Bench of High Court of Madras had held in the case of Mr. K.J. Doraisamy Vs. The Assistant General Manager, State Bank of India, Erode Branch and The Chief Manager (PBD), State Bank of India, Erode Branch (0837), Madras. Judgment of the High Court of Madhya Pradesh in Ku. Archana Chauhan Vs. State Bank of India, had held the

validity of the publication of photographs of wilful defaulters holding that such publication is in public interest and is not violative of the right of privacy of a person under Article 226 of the Constitution of India.

8. On the other hand, Mr. Chinoy, the learned senior counsel appearing on behalf of the respondents submitted that the State Bank of India was not resorting to publication of photographs in a routine manner in each and every case. It was submitted that however in the present case the Board which took a decision regarding publication of photograph had after taking into consideration the material which was placed before it had come to the conclusion that the Petitioners had committed various acts of misfeasance and had tried to divert the fund which was received by them by accepting them in cash and diverting it to other parties. Learned senior counsel invited our attention to paragraph 32 of the affidavit in reply filed by the State Bank of India and submitted that as per the policy of the State Bank of India only in case of wilful defaulters and those who are guilty of misfeasance the bank was resorting publication of photographs. It is submitted that the bank also had put in place an internal mechanism to ensure that in all such cases a final decision in the matter of publication of photograph is to be taken by the Senior Executive Officer not below the rank of Chief General Manager. It was then submitted that there was no legal bar either under the Act or the Rules prohibiting the bank from publishing the photograph of the defaulters. Our attention is also invited to Rule 8 of the said Rules. It was submitted that firstly the bank was authorised to publish the names and addresses of the wilful defaulters and secondly they were permitted to do so in order to caution invariable buyers from purchasing the property which was mortgaged by the defaulters with the bank. It was therefore submitted that there being no legal bar in publishing the said photographs it was not open for the Petitioners to contend that publication of the photograph violate the rights of privacy of the Petitioners. Reliance is placed on the judgment of the Apex Court in the case of V.T. Khanzode and Others Vs. Reserve Bank of India and Another, It was further submitted that in view of the findings given in the misfeasance report, the decision was taken not to consider the proposal of restructuring given by the Petitioner herein.

9. It was further submitted that so far as the two judgments, namely, the Judgment of Calcutta High Court and Kerala High Court are concerned, intra-count appeals have been filed and the said appeals were pending before the Division Bench of the respective High Courts.

10. After having heard both the counsel at length, in our view, submissions made by the learned counsel for the Petitioners cannot be accepted. It is an admitted position that the Petitioners have not denied that they are unable to pay the amount which is due and payable to the bank in fact the proposal for restructuring of the land has also been given by the petitioners to the State Bank of India. It is not in dispute therefore that the Petitioners are defaulters and the total amount claimed by the bank comes to about Rupees Fifty Three crores

approximately. The bank has also initiated proceedings under the Securitization Act and notices have issued u/s 12(2) of the said Act and further action has been taken under the provisions of the said Act. Rule 8 of the said Rules merely permits and allows the bank to publish the names of the wilful defaulters. Rule 8 reads as under:-

"8. Sale of immovable secured assets.-

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspaper one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction; or

(d) by private treaty.

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include, -

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the website of the secured creditor on the Internet.

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing."

11. A perusal of the said Rule clearly indicates that the bank has the right to publish the name of the defaulters by giving their names and addresses and two fold purpose is served as a result of the said publication of the names, firstly the fact that these persons are wilful defaulters is made known to the public at large and secondly it also tends to caution the prospective buyers who may be offered the property which is mortgaged by these defaulters with the bank. This being the primary objective for the publication of the notice, in our view, there would be no impediment in publication of photographs of wilful defaulters and particularly those defaulters who have committed various acts of misfeasance.

12. In the affidavit in reply filed by the State Bank of India they have stated in paragraph 16 various acts of misfeasance purportedly committed by the petitioners therein. It is stated that the Petitioners have failed to pay interest and the loan amounts and that they admitted their default in the letters which were addressed to the bank. Secondly it is contended in the affidavit in reply that the conduct of the Petitioners was not bonafide, fair and honest. The report which was received by the bank suggested that the Petitioners had tried to divert the sale proceeds by (a) squaring off sales against purchases made by the company, (b) by collecting cash against sales realization from the debtors / buyer instead of routing the sales receipts through Bank transaction. Thirdly it is contented that the Petitioners had also availed loan from Dhanalakshmi Bank without the consent of the Respondent bank. Fourthly it was contended that the company has extended its corporate guarantee to secure the loan of its associate concern without prior consent / NOC from the Respondents Bank. Fifthly, it is stated in the affidavit in reply that the CBI had already started investigation in respect of certain transactions in the month of October 2012 and FIR has been registered on 26.06.2012 for the offences punishable u/s 120B r/w 420, 465, 467, 468, 471

of I.P.C. The Petitioners further state that the Petitioner company has statutory dues of Rs.9.2 crores as per the audited balance sheet of the year 2012-2013. These allegations however are disputed by the learned senior counsel appearing on behalf of the Petitioners. Further the fact remains that the bank has come to the conclusion that the Petitioners were not only wilful defaulters but had committed various acts of misfeasance and a report to that effect was received and was shown to the committee which considers the question as to whether the photographs of the wilful defaulters should be published or not. In the present case therefore we are satisfied that after having arrived at a conclusion about the acts of misfeasance by the Petitioner bank, the Senior Executive officer not below the rank of Chief General Manager had arrived at a decision to publish the photographs.

13. We are also of the view that in each and every case whenever person is declared as a wilful defaulters bank should not publish the photographs in a routine manner and only after following mechanism of examining the facts and circumstances of each case the bank should consider whether the photographs should be published. We are satisfied that the decision taken by the bank in this case cannot be faulted.

14. So far as two judgments on which reliance has been placed on behalf of the petitioners are concerned, the said decisions are challenged by the bank and the intra-count appeal is pending before the Division Bench. Even otherwise after going through the said judgment with respect we do not agree with the view expressed by the two learned Single Judges of the two High Court. Further the Apex Court in the case of V. T. Khandoze vs. Reserve Bank of India has observed in paragraph as under:

"Section 58(1) of the Act confers power on the Central Board of Directors of the Bank to make regulations in order to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Act. It seems to us clear that it is not only convenient but manifestly necessary to provide for the service conditions of the Bank''s staff in order to give effect to the provisions of the Act. The Act was passed in order to constitute a Bank for achieving economic purposes of the highest national importance : regulating the issue of Bank notes, keeping reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. It is, in our view, not open to any question either on the basis of reason or authority that the power to provide for service conditions of the staff is at least incidental to the obligation to carry out the purposes for which the Bank was constituted. As observed in Armour v. Liverpool Corporation 1939 Ch. 422, 434, 435.

To assist in removing from the minds of its employees the fear of an unprotected old age, to foster their happiness and contentment, and to procure their good and efficient service, are objects which, even if economic considerations alone count, are incidental, if not vital, to the proper carrying on of any undertaking as well by a municipal as by any other corporation.

The doctrine of ultra vires in relation to the powers of a statutory corporation has to be understood reasonably and so understood, "whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires." (See Attorney- General v. Great Eastern Rly. Co.) (1880) 5 ACT 473 (HL). The Central Board has, therefore, the power to make service regulations u/s 58(1) of the Act."

The Apex Court has therefore clearly held that whatever has to be done fairly and is also regarded as incidental to or consequential upon those things which the legislature has authorised to do ought not to be held by judicial construction to be ultra-vires. In the present case Rule 8 specifically authorised the bank to publish the names and addresses of the wilful defaulters. There is no legal bar either in the said rule or under any provisions of the Act which expressly prohibits the bank from publication of photographs and therefore the action of the bank in publishing the photographs cannot be held to be ultra-vires. Ratio of the judgment in our view squarely applies to the facts of the present case. In the result, it is not possible to accept submissions of learned counsel appearing on behalf of the bank, the petition therefore is dismissed. At this stage, learned counsel appearing on behalf of the Petitioners states that the statement made by the bank not to publish the photographs may be extended for a period of four weeks from today. Learned counsel appearing on behalf of the banks submits that the said statement is extended for a period of one week. In our view it would be appropriate if this statement made by the bank is extended for a period of three weeks.

15. Parties to act on a copy of the order duly authenticated by the registry of this court.

