
(2013) 03 KL CK 0068

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30691 of 2010

Kairali Purusha Swasraya Samithi

APPELLANT

Vs

Authorised Officer, S.B.I.

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Revenue Recovery Act, 1890 — Section 2(xiv), 2(xvi), 5, 5(2), 5(b)

Citation : AIR 2013 Ker 127 : (2014) 1 BC 689 : (2013) 2 ILR (Ker) 307 :
(2013) 2 KHC 46 : (2013) 2 KLJ 36 : (2013) 2 KLT 36

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : B. Pramod, for the Appellant; R.S. Kalkura, A.S. Sajush Paul and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—Heard the learned counsel for the petitioner and the learned standing counsel for respondents 1 and 2. Petitioner claims to be a self help group formed by 15 fishermen, a list of which is Ext. P1. From Annexure R1 produced along with the statement filed by the standing counsel for respondents 1 and 2, it appears that for the purpose of acquisition of the inboard unit of country fishing boat with engine and other utensils, having a total investment of Rs. 20 lakhs, the group availed of a loan of Rs. 10 lakhs from the respondent bank. Default was committed in repayment and therefore, the account was classified as NPA. Thereafter, SARFAESI proceedings were initiated and finally, Bank obtained an order from the Chief Judicial Magistrate Court, Alappuzha under S. 14 of the said Act. Thereafter, the Advocate Commissioner appointed by that Court issued Ext.P5 notice requiring the petitioner to hand over possession of the secured asset to him. Simultaneously, the debt was advised for revenue recovery and accordingly Ext. P8 notice under S. 7 of the Revenue Recovery Act was issued. It is challenging Exts. P5 and P8, the Writ Petition was filed.

2. From the contentions raised by the counsel for the petitioner, it is evident that

the petitioner filed an application for debt waiver before the 4th respondent Commission. Although copy of that application has not been put to use, Ext. P3 receipt issued by the Commission acknowledging receipt of the application has been produced. It is stated that the said application is pending and therefore, the petitioner is entitled to the benefit of moratorium as declared by the Government as per Ext. P4. Though the period of Ext. P5 has expired, counsel says that the period has been extended thereafter and that it is still in force.

3. Submissions made by the learned counsel for the bank is that the loan availed of by the petitioner group and the debt in question are not covered by the provisions of the Kerala Fishermen Debt Relief Commission Act, 2008 and therefore, pendency of the application before the 4th respondent or Ext. P4 notification cannot prevent the bank from proceeding for recovery of its dues.

4. Having heard the learned counsel for the parties, I am inclined to agree with the learned counsel for the bank. A reading of the provisions of the Act show that the Act was intended to extend urgent relief to traditional fishermen in distress. In the Act, "institutional creditor" stands defined in S. 2(xvi) as under:

"Institutional creditor" means the State Bank of India or any Subsidiary Bank within the meaning of clause (k) of Section 2 of the State Bank of India (Subsidiary Bank) Act, 1959 or any Nationalised or Scheduled Bank.

5. It is thus evident that the first respondent bank is an institutional creditor within the meaning of the Act. S. 5 of the Act provides for the powers and duties of the Commissioner. In so far this case is concerned, S. 5(b), (c) and (d) and sub-s.(2) are relevant and therefore, they are extracted below for reference:

(b) to determine, in the case of creditors other than institutional creditors, a fair rate of interest and an appropriate level of debt, as the Commission may consider just and reasonable to be payable by the indebted fishermen in the disaster affected area.

(c) to undertake conciliation for the settlement of disputes between the indebted fishermen and the creditors other than institutional creditors on the basis of the fair rate of interest and appropriate level of debt determined under clause (b).

(d) to adjudicate the disputes between indebted fishermen in the disaster affected area and the creditors, other than institutional creditor and to pass awards which shall be binding on both parties:

Provided that before passing an award under this clause the creditor shall be given an opportunity of being heard.

(2) Issue orders keeping in abeyance the repayment of all debts of fishermen in the disaster affected areas to the creditors other than to institutional creditors considering the shortage in the availability of fish, fall in price, loss due to natural calamity etc., for a period of time limit not exceeding the period between six months and one year:

Provided that the issuance of orders shall be subject to the awards and directions of Commission under sub-section (1).

6. From a perusal of these provisions, it can be seen that the power of the Commission to determine the fair rate of interest and appropriate level of debt, to undertake conciliation for the settlement of disputes and to adjudicate disputes between the indebted fishermen and the creditors are to the exclusion of institutional creditors. Similarly, power under S. 5(2) to issue orders keeping in abeyance the repayment of all the debts of fishermen in disaster affected areas also excludes institutional creditors. In other words, powers and duties of the Commission as provided in the aforesaid sub-sections to S. 5 specifically exclude debts due to institutional creditors, which include the first respondent bank.

7. Counsel for the petitioner relied on S. 9, which provides for special provisions in respect of settlement of loans taken by fishermen of disaster affected areas. A reading of this provision shows that although power has been conferred on a member authorized by the Commission, to reschedule the term loans, to provide facilities or to waive interest or penal interest, that can only be through mutual understanding. Similar is the case with S. 10 conferring power of re-scheduling of loan taken from financial institutions. For the reason that the financial institutions mentioned therein are financial institutions owned or fully controlled by Government, which is the Government of Kerala as per S. 2(xiv) of the Act. In other words, from the above provisions of the Act, it can be seen that the Commission has no power to deal with debts of the nature availed of by the petitioner group and therefore, even if an application is pending, as claimed by the petitioners, that cannot be a reason to take refuge under Ext. P4 Government Order or any similar order issued by the Government. Therefore, I do not find any justification in interfering with Exts. P5 or P8.

The Writ Petition is dismissed. Needless to say that this judgment will not stand in the way of the petitioner availing of further remedies that are available.