**(2007) 03 P&H CK 0128**

**In the Punjab And Haryana At Chandigarh**

Kapoor Enterprises APPELLANT

Vs

State of Punjab and Others RESPONDENT

**Date of Decision :** 06-03-2007

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2007) 03 P&H CK 0128

**Hon'ble Judges :** Rajesh Bindal, J;M.M. Kumar, J

**Bench :** Division Bench

**Final Decision :** Allowed

# Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for issuance of direction to respondent Nos. 2 to 6 to immediately release the margin money under the Margin Money Scheme of the Khadi Village and Industry Commission (KVIC). It has further been prayed that the order dated 28.5.2002 (P-6), passed by the State Level Officer & Member Secretary, Punjab Khadi & Village Industry Board, Chandigarh, declining the request of the petitioner to release the margin money subsidy to it, be set aside.

2. The facts of the case are that the Punjab Khadi and Village Industries Board (for brevity, ''the Board'') is a State owned autonomous body and it has been set up to promote village industries in the rural area. The Board gets funds, which include loan and margin money/subsidy from the Khadi and Village Industries Commission, Bombay, which is an agency of Government of India. The main aim and object of this agency is to promote village based industries by distribution of funds as per requirements of all the States.

3. M/s Kapoor Enterprises, petitioner herein, is a proprietorship concern and engaged in the manufacturing of ''Corroborated Boxes''. On 20.4.2000, the Punjab State Cooperative Bank Limited, Chandigarh, addressed a letter to the Chairman of the Board-respondent No. 2 intimating that the KVIC had allowed the Central Cooperative Banks to entertain the cases for disbursement of money

 

to the eligible persons under the Margin Money Scheme and accordingly a request was made for directing the Divisional Offices and District Offices to pass on the cases under the said Scheme to the Central Cooperative Banks, so that the scheme could be adopted by them in letter and spirit (P-1). Thereafter, wide publicity of the scheme launched by the KVIC was made through local as well as national newspapers. It is appropriate to mention here that as per the Scheme, 25% of the project cost for the projects up to Rs. 10 lacs was to be provided as ''Margin Money''. In other words, for a project up to Rs. 10 lacs, the interested person was required to invest Rs. 7.5 lacs (75%) from his own contribution and remaining Rs. 2.5 lacs (25%) were to be provided as subsidy by the KVIC. On coming to know about the Margin Money Scheme, the sole proprietor of the petitioner, namely, Shri Sunil Kapoor approached the Fazilka Central Cooperative Bank Limited-respondent No. 6 and applied for grant of a loan of Rs. 7.5 lacs for setting up factory for manufacturing Corroborated Boxes. After having financed their project from respondent No. 6 Bank, the petitioner applied to the Board through Respondent No. 6 Bank for margin money scheme of the KVIC. On 29.3.2001, the General Manager, District Industries Centre, Ferozepur-respondent No. 5, approved the case of the petitioner and directed respondent No. 6 Bank to release and sanction the case of the petitioner on top priority basis (P-2). Respondent No. 6 Bank disbursed a total sum of Rs. 7,50,000/-to the petitioner as per the details given in Annexure P-3, which reads as under:

Dak Amt. Total 11/06/01 5,88,500 5,88,500/ 19.7.2001 40,000 6,28,500/ ? 5,000 6,33,500/ ? 1,195 6,34,695/ ? 3,800 6,38,495/ ? 45,005/- 6,83,500/ 22.11.01 2,16,600/- 7,01,160/ ? 28,470/- 7,33,630/ ? 1,50,000/- 7,48,630/-

4. A perusal of the above table would show that an amount of Rs.5,88,500/-was disbursed to the petitioner for the first time on 11.6.2001 and subsequently remaining amount was disbursed on two dates i.e. 19.7.2001 and 22.11.2001. Thereafter the petitioner established its unit and started manufacturing of corroborated boxes by engaging 22 persons as full time labour and 5 as seasonal labour. On 7.3.2002, an official of the Board, namely, Shri Sukhdev Singh, Block Level Extension Officer, Abohar, visited the factory of the petitioner for verification and submitted the following report (P-4):

The unit is in working order, all the machinery and equipments are new and the work is quite satisfactory. Their margin money subsidy may please be released.

5. On 4.3.2002, respondent No. 6 Bank forwarded the case of the petitioner to the Board for release of margin money of Rs. 2.50 lacs (P-5). However, vide letter dated 28.5.2002 (P-6), the Board rejected the case of the petitioner for release of margin money subsidy on the ground that the loan amount was sanctioned by respondent No. 6 Bank on 11.6.2001, whereas it was authorised to handle the cases of margin money scheme by the Board on 19.11.2001. The aforementioned order/letter dated 28.5.2002 is subject matter of challenge in the instant case. On 15.6.2002, again respondent No. 6 Bank sent a communication to the Member Secretary of the Board- respondent No. 3

 

specifically pointing out that the case of the petitioner was sponsored by the Punjab K.U.I.B., Ferozepur, through General Manager, District Industries Centre, Ferozepur, vide their letter dated 29.3.2001 (P-2) and, therefore, again a request was made for re-examination of the case and to release the margin money in favour of the petitioner (P-7). It has been asserted that the petitioner is carrying on the business of manufacturing of corroborated boxes satisfactorily and abiding by all the legal formalities and also regularly paying sales tax. On 4.3.2003, the petitioner again made a request to respondent No. 6 Bank for consideration of their case for release of margin money and in turn respondent No. 6 Bank again sent a letter to respondent No. 3 on 8.6.2003. On 18.11.2003, again the sole proprietor of the petitioner sent a detailed representation to the Chairman of the Board (P11). In these circumstances, the petitioner approached this Court by filing instant petition on 8.3.2004.

6. A joint written statement has been filed by respondent Nos. 2 and 3 whereas a separate written statement has been filed by respondent No. 6 Bank. On 12.1.2006, learned Counsel appearing for respondent No. 4 Commission made a statement that he would adopt the written statement filed on behalf of respondent Nos. 2 and 3. No written statement has been filed on behalf of respondent Nos. 1 and 5.

7. In the written statement respondent Nos. 2 and 3 have taken the stand that respondent No. 4 Commission issued a circular dated 2.5.2001, in relation to implementation of KVIC Margin Money Scheme through Cooperative Banks without prior approval of the Commission and on reimbursement basis from respective State/UT Khadi and Village Industries Board (R-1). On 19.11.2003, respondent No. 2 Board convened its meeting and after examining the balance sheets of last three years of the Punjab State Cooperative Banks and Punjab State Cooperative Agricultural Development Bank, it was decided that the aforementioned banks were having sufficient resources for making advances in the cases to be sponsored under the Scheme. Accordingly, the aforementioned banks were approved for implementation of the margin money scheme (R-3). On the basis of the aforementioned decision, dated 19.11.2001 (R-3), respondent No. 3 issued letters dated 23.11.2001 to the aforementioned Banks intimating about the decision taken by the Board and also sent the circular issued by the KVIC containing details of the Scheme. In the said letter it was, however, mentioned that cases financed prior to the date of issuance of letter i.e. 23.11.2001, were not to be eligible for release of Margin Money Subsidy (R2). It has been asserted that since in the case of the petitioner loan was disbursed on 11.6.2001, whereas the decision was taken by the Board on 23.11.2001 to include Cooperative Banks, therefore, the same does not fall under the Margin Money Scheme of KVIC and accordingly the same was rejected vide letter dated 28.5.2002 (P-6). It has also been averred that since no approval was ever granted by the Board and the loan was sanctioned by respondent No. 6 Bank on its own, therefore, the case of the petitioner is not covered under the Margin Money Scheme and the same has been rightly rejected.

 

8. In its written statement, respondent No. 6 Bank has taken the stand that it is only a ''Service Bank'' and has granted the loan on the recommendation of District Industries Centre, Ferozepur-respondent No. 5. The benefit of Margin Money Scheme is to be granted by the Board and it has nothing to do with the same.

9. Mr. S.P.S. Tinna, learned Counsel for the petitioner has vehemently argued that the respondent Board being the executing agency is under a legal obligation to disburse the Margin Money Subsidy to the petitioner. Learned Counsel has submitted that there is no misrepresentation on the part of the petitioner and it had approached the respondents after wide publication of the Scheme in the newspapers. Once the case of the petitioner has been recommended by respondent No. 5 and loan sanctioned by respondent No. 6 Bank, which constitute 75% of the cost of the project, it was incumbent upon the respondent Board to release balance 25% of the project cost, inasmuch as, the petitioner fulfilled all the requirements of the Scheme floated by the Khadi and Village Industries Commission. He has drawn our attention to the fact that the petitioner unit has commenced its production and after verification conducted on 7.3.2002 it has been found that the unit is in working order and recommendation has been made for release of margin money (P4).

10. Mr. N.S. Jagdeva, learned Counsel for respondent Nos. 2 and 3 has reiterated the stand taken in the written statement to contend that once the respondent No. 6 Bank was approved by the Board only on 23.11.2001 and the loan to the petitioner could not be sanctioned and disbursed on 11.6.2001, therefore, its case does not fall under the Scheme as per stipulation made in the communication dated 23.11.2001 (R-2), which is to the effect that the cases financed prior to the said date were not to be eligible for release of margin money subsidy. According to the learned Counsel, the petitioner''s unit has failed to fulfill the necessary qualifications for becoming eligible for disbursement of the margin money subsidy.

11. After hearing learned Counsel for the parties and perusal of record, we are of the considered view that this petition deserves to succeed. It is admitted position that the petitioner applied for the benefits under the Scheme after coming to know about the Scheme published in the local and national level newspapers. It is also not a case of any misrepresentation or concealment on the part of the petitioner. Admittedly, the case of the petitioner was recommended by respondent No. 5 and on that basis respondent No. 6 Bank sanctioned and disbursed the loan in favour of the petitioner to the tune of Rs. 7.5 lacs. Thereafter, the petitioner established its unit and also commenced production. The respondent Board has declined the case of the petitioner only on the ground that respondent No. 6 Bank was approved by the Board on 23.11.2001 whereas loan in the case of the petitioner was sanctioned and disbursed on 11.6.2001. At this stage it is appropriate to refer to the minutes of the meeting of the Board, held on 19.11.2001 (R-3), which reads as under:

 

The Committee examined the balance sheets of the last three Years of the Punjab State Cooperative Banks and Punjab State Cooperative Agricultural Development Bank. It was observed that, the banks are in profit and both the banks have sufficient resources for making advancement in the cases to be sponsored under this scheme.

The committee approved, both the banks for implementation of margin money scheme. It was also decided in the meeting that, it the concerned Managing Directors. Informed of the decisions by a forwarding copy of the instructions issued by KVIC, Mumbai for implementation of the Margin Money Scheme. They may also be requested to circulate these instructions for meticulous compliance by their Branch Managers, who may further be advised to cover maximum number of beneficiaries as sufficient subsidy will be available under this scheme from the KVIC. The subsidy is however, to be claimed from the Member Secretary, Punjab Khadi and Village and Industries Board, Chandigarh. For this purpose prescribed performa is enclosed with the circular of KVIC Mumbai.

Sd/ Member Secretary

12. A perusal of the above extracted minutes of the meeting of the Board held on 19.11.2001 (Annexure R3) would highlight that nothing was said about eligibility of the cases financed by the Co-operative Banks prior to the date of meeting. However, the Member-Secretary of respondent Nos. 2 and 3 on the basis of the decision taken on 19.11.2001 has on its own added the lines which were to the effect that the cases financed by the Co-operative Banks prior to the date of meeting were not to be considered eligible, as is evident from the perusal of communication sent by the Member Secretary on 23.11.2001 (Annexure R2). It has not been satisfactorily answered by the learned Counsel for respondent Nos. 2 and 3 as to how the last line in communication dated 23.11.2001 has been incorporated, which is to the effect that "It is clarified the cases financed prior to this date will not eligible for release of Margin Money subsidy.", despite the fact that there was no such decision taken by the Board in its meeting dated 19.11.2001.

13. It appears that originally Margin Money Scheme was resolved by the Khadi & Village Industries Commission, Mumbai on 28 & 29.10.1988 in pursuance to decision taken in its 485th meeting. The original scheme has been produced on record by the learned Counsel for respondent Nos. 2 & 3, which is Mark ''A''. A perusal of Mark ''A'' would show that the Khadi & Village Industries Commission, Mumbai, in its 485th meeting held on 28 & 29.10.1988 had decided to implement its Margin Money Scheme through Private Sector Scheduled Commercial Banks on selective basis after verification and approval of intending Bank''s latest balance sheet and the Margin Money portion was to be paid on actual reimbursement basis to the bank by the respective States/U.T. Khadi & Village Industries Board out of Margin Money amount placed with them by Khadi & Village Industries Commission. It appears that in pursuance to the Margin Money scheme circulated by the Chief Executive Officer of Khadi & Village

 

Industries Commission, Mumbai, vide his communication dated 20.4.2000 (Annexure P1), the case of the petitioner has been processed. It is no doubt true that on 2.5.2001 (Annexure R1) some modifications have been incorporated in the scheme. It is, thus, established that the Margin Money Scheme had come into existence in the year 2000 and accordingly the case of the petitioner was processed by respondent No. 6 in June 2001. Therefore, there is no cause for concluding that the insertion of sentence in communication dated 23.11.2001 clarifying that the cases financed prior to that date i.e. 23.11.2001 were not to be considered eligible for release of Margin Money Subsidy because no such decision was taken by the Board in its meeting dated 19.11.2001 and the scheme had come into existence in 1998. We are further of the view that nonthing hinges on the date of authorising the disbursement of the loan by respondent No. 6 as the scheme had come into existence in 1998. Moreover, a perusal of the scheme would show that maximum number of beneficiaries were intended to be covered by the scheme as sufficient amount of subsidy was made available under the scheme by Khadi & Village Industries Commission.

14. For the reasons stated above, this petition succeeds. The order dated 28.5.2002 (P-6) is hereby quashed. Respondent Nos. 2 and 3 are directed to release the Margin Money subsidy to the tune of Rs. 2.5 lacs in favour of the petitioner expeditiously but not later than two months from the date of receipt of certified copy of this order. The petitioner is held entitled to cost of Rs. 10,000/-.

 