

(1993) 09 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 5869 to 5879 of 1993

Krishnamma

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 29-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1993) ILR (Kar) 3510 : (1993) 4 KarLJ 252

Hon'ble Judges : Shivashankar Bhat, J

Bench : Single Bench

Advocate : Basava Prabhu Patil, for Patil Associates, for the Appellant; Radesh Prabhu, for Tukaram S. Pai, for R-1 and Vasan Associates for R-3, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—The petitioners are aggrieved by the action of the first respondent-Bank (referred as "the Bank" hereinafter) in levying interest on the deferred interest. The petitioners are borrowers from the Bank. They availed of the loan facility provided for the development of rubber. According to them the Rubber Board launched a scheme known as Rubber Plantation Development Scheme, in order to increase the production of natural rubber in India by accelerating new plantations on modern scientific lines. This Scheme envisages concession in the matter of interest and levy of interest. In fact the Rules for the period 1985-89 provide for the payment of the loanee's share of interest from the 8th year of planting and the principal sum was to be paid from the 10th year of planting. These petitioners obtained various loans and the figures indicate that these are all small amounts ranging between Rs. 3,700/- and Rs. 37,000/-. They entered into Agreements with the Banks in the standard form. The years of the Agreements vary between the year 1984 and 1986. According to the petitioners they are not liable to pay compound interest. It is their case that the Bank has been levying compound interest on the deferred interest. In other words the

accrued interest includes the interest on the yearly interest which gets accumulated and the same shall have to be paid on the due dates stated in the agreement in question. The petitioners have pointed out that the requisite finance comes from the second respondent (hereinafter referred as "NABARD") and the Bank has to disburse the amounts and collect the same on repayment in terms of the directions of the NABARD.

2. The Bank in its statement of objections questioned the maintainability of these Writ Petitions. Further, the Bank also questioned the binding nature of the Rules framed by the Rubber Board, since the Rubber Board has no control over the Bank, The Bank further contends, that, the interest on deferred interest could be collected even as per the directions of NABARD and that the petitioner cannot take advantage of the norms prescribed by the NABARD in respect of the loans advanced after 1.7.1987. The loans advanced prior to the said date could be burdened with the interest on deferred interest also.

3. The question, therefore, is whether these Writ Petitions are maintainable and if so whether the action of the Bank in levying interest on deferred interest is reasonable, fair and unarbitrary.

4. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, termination of the appointment of the Government Advocate in the State by a single order was challenged. Since the post of a Government Counsel is a public office, the appointment of a Government Counsel was held as not a mere professional engagement, and it was not purely contractual. Alternatively, it was also held that reasonableness of the exercise of the contractual power can be examined, under certain circumstances, while exercising the Writ jurisdiction. After referring to the Preamble, Part iii and Part IV of the Constitution and the object behind them, the Court observed in paras 21 and 22:

"This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14 - non-arbitrariness which is basic to rule of law - from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in the State action in any sphere of its activity contrary to the professed ideals in the Preamble, in our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Article 14 in contractual matters, The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with

their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public Interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of Judicial Review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions."

5. Therefore, if the bargain was between the unequals and the State is in a dominant position while entering into the contract, and the question involved does not involve solving a doubtful case, the reasonableness of the State's action in the contractual field may be subjected to judicial scrutiny by applying Article 14 of the Constitution,

6. Here, I may add a further cautious approach, as a matter of judicial restraint and to be on the safe side, in these cases before me:-

When the action of the State has an impact on a class of people and the action is the result of a definite expressed policy, said action shall have to stand the test of reasonableness, because, the policy behind the action has an element of legal principle evolved by the State, If the principle underlying such an action has no application to the admitted facts and is patently unreasonable, it will not be in the public interest to permit the State to apply the said principle.

7. In the above Decision rendered in Kumari Shri. Iekha Vidhyarthi's case, Supreme Court again observed at para 24:

"The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even the contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity,"

Further, in paras 26 and 27;

"It is significant to note that emphasis now is on reviewability of every State action because it stems not from the nature of function, but from the public nature of the body exercising that function; and all powers possessed by a public authority, however conferred, are possessed "solely in order that it may use them for the public good". The only exception limiting the same is to be found in specific cases where such exclusion may be desirable for strong reasons of a public policy. This, however, does not justify exclusion of reviewability in the contractual field involving the State since it is no longer a mere private activity to be excluded from public view or scrutiny.

Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately-accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract."

At para 38, the Court observed:

"The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy, the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in for following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that "be you ever so high the laws are above you". This is what men in power must remember, always."

8. Petitioners are admittedly agriculturists. They have obtained loans from the Bank under a particular Scheme and the Scheme held out a promise that interest on the loan is deferred for 7 years and during the gestation period no interest is actually payable; payment of interest is postponed and the accumulated interest of the gestation period is to be paid in instalments only thereafter. The period of gestation is the period during which petitioners do not derive any income from the rubber plantation. The Scheme was formulated to encourage rubber production in the Country. With this background in mind, if the position of the petitioners is weighed against that of the Bank, it is clear that the Bank is in a

dominant position and has a superior bargaining power. The Bank is a Nationalised Bank; it advanced the loans in question in pursuance of the directions of NABARD, which is also an instrumentality of the State.

9. The only principle sought to be projected by the Bank is, that, levy of interest on deferred interest is an established banking practice and the relationship between the Bank and the petitioners is that of a creditor and debtor. However, this principle relied upon by the Bank, is a principle evolved during the earlier days when concept of Welfare State has not been developed. The principle relied upon by the Bank cannot have any bearing on the beneficial Scheme evolved and enforced by the State and its instrumentalities; this conservative principle, certainly, has relevancy in other fields of the banking activity of the Bank. But, I do not think, it has any relevancy while considering the validity of the Bank's action which has a direct impact on a beneficial Scheme of the State under which the loans are advanced.

10. The Bank asserts, that NABARD has permitted it to levy interest on deferred interest in respect of the loans advanced prior to 1st July 1987. There are two aspects to this proposition of the Bank:

(1) Whether NABARD has made it a condition that such interest on deferred interest should be levied at all, or whether, NABARD made an enabling provision giving a discretion to the Bank to levy such an interest or not to levy it; (2) whether, there is any special feature distinguishing the loans advanced prior to 1.7.1987 from the similar loans advanced after 1.7.1987?

11. As to the first aspect, Annexure "H" the Circular issued by the Head Office of the Bank to its Branches says:

"Branches are aware that the gestation period for horticulture and plantation crops range from 3 to 7 years depending upon the fruit bearing age. During the gestation period, the growers are not in a position to repay the interest. NABARD earlier used to defer the interest on refinance as long as the Bank does not recover the interest during the gestation period. Subsequently NABARD had permitted the Banks to charge interest on such deferred interest at the same rate as charged on the loans to the ultimate borrowers.

NABARD as well as the Banks received several representations from beneficiaries that charging of interest on deferred Interest will lead to compounding of interest causing too much a burden to the ultimate borrowers, The representations received from the borrowers was reviewed by the National Bank, On the basis of the review, the NABARD advised the Banks not to charge interest on deferred interest. Regarding the deferment facility to the corporate bodies, the NABARD had advised the Banks to take decision for deferment in respect of each corporate body individually and to pass on the benefit to the deserving case.

Further NABARD has also agreed to defer interest on refinance to the Banks and the deferred interest will be recovered by the NABARD at 6.5% or 8% per annum

depending upon the purpose of the loan.

The charging of interest on deferred interest was again reviewed by the NABARD in consultation with the Reserve Bank of India.

NABARD has since reviewed the entire process of deferment of interest during the gestation period and has issued fresh guidelines to the Banks in consultation with the RBI, The revised guidelines on deferment of interest are as under:

A - area based scheme - The Branches shall defer interest during the gestation period and interest on deferred interest need not be charged. This procedure will become effective for the loans disbursed from 1st July 1988.

The Branches shall collect interest on deferred interest for the loans sanctioned and disbursed prior to 30th June 1988."

12. I do not find any peremptory direction of NABARD to the Bank to levy interest on deferred interest prior to 1.7.1987; NABARD has obviously left it to the discretion of the Bank, However, subsequent to 1.7.1987, no such discretion is given and the Bank cannot levy interest on deferred interest." In fact in the letter written by the NABARD to all the Banks on 27.5.1987 (Ann.C), it is stated that subsequent to 25.3.1967, NABARD had indicated that banks may charge interest on such deferred interest at the same rate as charged on the loans to the ultimate borrowers." The second aspect involves the validity of the differentiation made between the earlier loanees and the loanees who obtained, the loan after 1.7.1987, it is not the case of anyone before me that there is a difference between a person who obtained the loan to develop a rubber plantation prior to 1.7.1987 and after the said date. Nature of the cultivation and the gestation period are the same, whether development was initiated earlier or after 1.7.1987. In such a situation, treating the two set of persons, who are similar in nature regarding the loans obtained, would be a vice requiring surgery under Article 14 of the Constitution, The principle applied by the Supreme Court in D.S. NAKARA v. UNION OF INDIA AIR 1983 SC 130 wherein an artificial date of retirement of pensioners to classify them was held to be arbitrary and the differential treatment meted out to one set of pensioners was rectified by the Supreme Court by applying Article 14 of the Constitution.

13. In the background of the above principles, the term of loan-contracts entered into between the petitioners and the Bank require to be examined.

14. There is no dispute that the Loan Agreements in all these cases are identically worded; each agreement is in a printed form, mixed with Hindi and English sentences; Annexure "A" is one such agreement. It refers to the loan application of the borrower made on 21.9.1985 for a sum of Rs. 10,000/- and its grant. Clauses 3 and 4 which are very relevant, read thus:

"The borrower hereby confirms having agreed to repay to the Bank the principal sum of Rs. 10,000/- in instalments on the due dates mentioned in Second Schedule hereto.

The borrower agrees to pay interest on the said principal sum of Rs. 10,000/- or on so much thereof which remains unpaid from time to time at the rate of 2,5% p.a. above the RBI rate subject to the minimum of 12,5% p.a on 31st March, 30th June, 30th September and 31st December in each year failing which the borrower agrees that such of that interest which remains unpaid shall be added to the loan account and shall be treated as principal amount and interest will be calculated on that sum total

The interest payable by the borrower shall be subject to the changes in the interest rates made by the Reserve Bank of India from time to time and the borrower agrees to pay the interest at such rates fixed by the Reserve Bank of India.

The notification in the Notice Board in Bank premises regarding the variation of rate of interest from time to time as per the direction of the Reserve Bank of India or the Head Office of the Bank shall be sufficient notice to me and I agree to pay interest at the rate notified in the Notice Board from time to time until all dues are cleared in full."

"4. The borrower agrees that if quarterly interest and/or any instalment of principal is not paid on due dates the arrears in the loan shall bear overdue interest at the rate fixed by the Bank for such loans from time to time until the interest and/or the instalment of the principal in arrears as the case may be is paid."

The Second Schedule written in hand in the place provided for reads:

"accrued interest for the initial 7 years should be paid on 1990 and 1991. The principal to be paid at Rs. 200/- per year commencing from 30.5.1992 and the last instalment falls due on 30.5.1996."

15. Clause 2 of the agreement insists that the advance shall be utilised exclusively for the purpose mentioned in the agreement; Clause 9 provides for the assignment of the debt by the Bank in favour of the Industrial Development Bank of India, Agricultural Refinance Corporation etc. First Schedule refers to the disbursement of the loan in several instalments; sum of Rs. 6,343/- to be disbursed immediately; thereafter in the year 1986, Rs. 1,173/- is to be advanced; other disbursements are:- in 1987, Rs. 966/-, in the year 1988, Rs. 759/- and in 1989, the balance of Rs. 759/-. The opening part of the agreement refers to the purpose of the loan being "Rubber Development"

16. The Bank relies on Clause 3 of the agreement referred to above, which enables it to levy interest by compounding the arrears every quarter

17. This Court has held that in respect of agricultural loans, "quarterly rests" are not permitted and at the most "yearly rest" may be permitted - (vide; Bank of India Vs. C.R. Ramalinga Gupta and Others, this refers to the earlier Ruling).

18. Here the loan is not an ordinary agricultural loan, but a loan for rubber

development Admittedly it takes about 7 years for rubber plant to yield any income; policy of the State is to encourage rubber development and agriculturists are encouraged to develop plantations. Bank gets the requisite funds from NABARD and NABARD has given a discretion to the Bank to charge interest on deferred interest, provided the loan was earlier to 1.7.1987, The Bank has thought it fit to apply the Clause 3 which is in a printed form governing all kinds of advances.

19. if there is a conflict or contradiction between a printed clause in a set form and a written clause, the written clause is treated as that of a special clause governing the parties to the document.

20. Therefore, if there is a difference between Clause 3 and the 2nd Schedule, the 2nd Schedule should prevail.

21. Second Schedule clearly says that accrued interest is payable on 1990 and 1991; the accrued interest Is payable in two instalments at 5th and 8th years of the initial advance and the principal sum is payable thereafter in further instalments, it cannot be understood that this statement in the schedule as permitting the levy of interest on deferred interest either quarterly or yearly. The very purpose of the advance is lost by increasing the burden of the interest on the borrower, in this process of levying, even a simple interest on the "accrued interest" at the end of every year, Bank has not advanced its case, that it is entitled to levy interest every quarter and add the said interest to the principal sum so as to compound the interest quarterly, It has come out with a new formula under which it insists that it can levy interest on the accrued interest every year, at a simple rate. Its case is that "accrued interest" includes simple interest on deferred interest and this levy is not "any overdue" or "penal interest". This statement is nothing but jugglery in words.,

22. The idea behind the 2nd Schedule is to have the yearly interest accumulated, which shall have to be paid in two instalments at the 5th and 6th year. Bank contends that this Court cannot re-write the Agreement. But, here, the Bank itself has re-written the Agreement by asserting that quarterly rests contemplated under Clause 3 of the Agreement is not being insisted upon, but, interest is levied on the accrued interest at the end of every year and that further interest, is not added on to the principal sum at all. In other words, the Bank has to some extent realised that Clause 3 cannot be, insisted upon too technically, having regard to the Scheme under which the loan is advanced.

23. As a matter of legal and Constitutional principle, this levy of interest on accrued interest (even though at a simple rate) seems to me impermissible.

24. The background leading to the advances, the discretionary power given to the Banks by the NABARD and the artificial nature of the date 1.7.1987 to classify the borrowers into two types, are to be cumulatively considered and if so, the levy of interest on accrued or deferred interest has to be held as arbitrary, unfair and unreasonable, contrary to Article 14 of the Constitution of

India. It is so declared.

25. Consequently, the respondents are directed not to levy any interest on accrued/deferred interest until the due dates of instalments to pay the accrued interest. Accordingly the accounts shall be recast and excess collections made from the petitioners, if any, shall be adjusted towards the principal sums due from each of them.

26. In the result, for the reasons stated above, these Petitions are allowed. Rule made absolute. No costs.