
(2008) 01 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6893 of 2006

Meeran Minerals and Others

APPELLANT

Vs

Central Bank of India and Another

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 8
Banking Regulation Act, 1949 — Section 21, 21(2), 21(3), 35A, 35A(1)
Constitution of India, 1950 — Article 12, 14, 21, 226
Contract Act, 1872 — Section 62
Reserve Bank of India Act, 1934 — Section 3
State Bank of India Act, 1955 — Section 18

Citation : (2008) 01 AP CK 0019

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Ch.Siva Reddy, for the Appellant; M.P.Ugle, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri T.V.L. Narasimha Rao, learned Counsel representing the writ petitioners, Sri Ch.Siva Reddy, learned Counsel representing the 1st respondent and Sri M.P.Ugle, learned Counsel representing the 2nd respondent.

2. The Writ Petition is filed for a Writ of Mandamus declaring the impugned letter dated 3.3.2006 issued by the 1st respondent bank to the petitioners as violation of Mandatory Guidelines under OTS 2005 of the 2nd respondent illegal, discriminatory, indiscrete and contrary to Sections 21 and 35A of the Banking Regulation Act, 1949 and also violation of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India and consequently directing the 1st respondent bank to receive amount under OTS 2005 Scheme from the petitioners for full and final settlement of their dues and pass such other suitable orders.

3. Sri T.V.L.Narasimha Rao, learned Counsel representing the writ petitioners had

taken this Court through the contents of the affidavit filed in support of the Writ Petition and the respective stands taken in the counter affidavits filed by respondents 1 and 2 as well and would maintain that the stand taken by the opposite parties that these are the only guidelines relating to One Time Settlement Scheme and hence they cannot be enforced in a Court of law, cannot be sustained. The learned Counsel also would maintain that in the light of the language employed in the said Scheme and the guidelines, they are perfectly enforceable and hence suitable directions are to be given.

4. Per contra, Sri Siva Reddy and Sri Ugle, learned Counsel representing respondents 1 and 2 had taken this Court through the respective stands taken in the counter affidavits and would maintain that these guidelines are not enforceable in a Court of law and a Writ of Mandamus cannot be issued on the strength of such guidelines. The learned Counsel representing respondents 1 and 2 also placed reliance on certain decisions to substantiate their submissions.

5. Heard both the learned Counsel and perused the respective pleadings of the parties and the material produced before this Court.

6. The 4th petitioner had sworn to the affidavit filed in support of the Writ Petition. It is averred that the 1st respondent is a statutory Corporation constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at Mumbai and one of its branches at Kurnool (A.P.) represented by its Branch Manager and hence the 1st respondent is an "Instrumentality of State" in terms of Article 12 of the Constitution of India. Further it is stated that the 2nd respondent is a Statutory Corporation constituted for the purposes of taking over the Management of the Currency from the Central Government and of carrying on the business of Banking besides being the licensing, controlling and monitoring authority of commercial and co-operative banking outfits and their business. Its entire capital is owned and held by the Government of India and thus it is an "instrumentality of State" in terms of Article 12 of the Constitution of India. It is also averred that the 1st and 2nd applicant units are proprietary concerns and self-employment ventures of 4th petitioner's two sons who are MBA and Mining Diploma holders respectively and are situated side by side near the Quartz Mining areas and are non-polluting tiny units under SSI category situated in a rural place catering livelihood to 20 families in the aggregate and both the Units manufacture Quartz related powders from Mining extractions to cater the raw material needs of Ceramic industries, Tyre Manufacturing Industries and Glass Manufacturing Industries such as M/s. Associated Glass Industry, Erragadda, Hyderabad, M/s. Krishna Ceramics, B.B.Nagar, Hyderabad, M/s. St. Gobin Glass Industry, Sriperambadur, Madras, M/s. Larsen & Toubro Ltd., Glass Division, Nasik, M/s. Mysore Lamps, Yaswantpur, Bangalore, M/s. Kalpana Lamps, Ranipet, Madras, M/s. Regency Ceramics, Yanam, Pondichery and M/s. St.Gobain Fiber Glass, Timmapur, Hyderabad. Further it is stated that the 1st respondent Bank sanctioned to the 1st applicant two term loans amounting to Rs. 6,47,000/- and

a working capital cash credit limit of Rs. 40,000/- on 6.1.2000 under the Government sponsored Schematic lending of Khadi Village Industries Corporation (KVIC) for manufacturing Quartz Powder. The Unit was fully grounded by 24.10.2000 on owned plot of the proprietor with construction of sheds and buildings and erection of plant and machinery/equipment utilizing the bank funds and promoter's margin. It is also averred that the 1st respondent bank also sanctioned to the 2nd applicant two term loans amounting to Rs. 3,27,000/- and a working capital cash credit limit of Rs. 75,000/- on 6.1.2000 under the Government Sponsored Schematic lending of KVIC for manufacturing Quartz Sand. The Unit was fully grounded by 24.10.2000 on owned plot of the proprietor with construction of sheds and buildings and erection of plant and machinery/equipment utilizing the bank funds and promoter's margin. It is also stated that the 3rd petitioner has been claimed as mortgagor of her house property vide door No. 45/24/K-63-4 and 45/24/K-63-5 at Ashok Nagar, Kalloor village, Kurnool to the debt extended by the 1st respondent bank to the 1st and the 2nd petitioners. Further, both the 3rd and 4th petitioners have been claimed as guarantors to the said debts. It is also further averred that the KVIC provided back-end subsidy/margin money amount of Rs. 3,00,000/- and Rs. 1,70,000/- to the respective Units under Minority Quota which was received through the 1st respondent bank during the month of July, 2000. The Units became sick during 2002 year though running on sustaining levels as on this day due to the commissions and omissions on the part of the 1st respondent bank. The 1st respondent bank not only fixed repayment terms contrary to the KVIC Scheme but also deprived the Units from the working capital leverage by adjusting the subsidy received from the KVIC to the credit facility accounts of the 1st and the 2nd petitioners without any due communication of details of appropriation. Further it is stated that the Units are categorized as NPAs as on 31.3.2002. However, the 1st respondent bank did not reverse the interest applied to the accounts of the credit facilities for the Quarters ended September, 2001 and December, 2001 as mandated under the Guidelines on Prudential Norms such as Income Recognition and Asset Classification by the 2nd respondent. It is further stated that the petitioners repaid nearly a sum of Rs. 5,00,000/- to the credit of Credit Facility Accounts outstanding in the name of the 1st and the 2nd petitioners after the said accounts were categorized as NPA. It is averred that the 2nd respondent issued Guidelines on One Time Settlement Scheme for SME Accounts via its letter Ref. No. RPCD.PLNFS.BC. No. 39/06.2.31/2006-06 dated 3.9.2005 which are mandatory, non-discretionary and non-discriminatory and hence shall have to be implemented by the Public Sector Banks uniformly including the 1st respondent bank. It is further stated that the credit facility accounts of the 1st and the 2nd petitioners maintained with the 1st respondent bank are "Doubtful Assets" as on 31.3.2004 and hence are entitled to be covered under the OTS-2005 Scheme of the 2nd respondent. It is also stated that the total amount payable by the 1st petitioner and the 2nd petitioner put together is the aggregate of the outstanding balances in the four term loan accounts and two cash credit accounts of the 1st and the 2nd petitioners respectively as on

30.6.2001 (including the interest up to 30.6.2001) less amounts paid by the petitioners since 1.7.2001 till this day. It is also stated that the 1st respondent invited the petitioners to offer for settling their dues under OTS-2005 vide its letter dated 25.10.2005. In pursuance of the same, the petitioners made an application dated 2.1.2006 to the 1st respondent bank seeking crystallization of their dues in terms of OTS-2005 directed by the 2nd respondent and offered to pay an amount of Rs. 13,30,137/- as per the approximation in the wake of the 1st respondent bank refusing to give a detailed and full account statements ab initio. It is also stated that the 1st respondent bank addressed a letter to the petitioners vide reference No. KUR:65:05-06:569, dated 3.3.2006 as a reply to the petitioner's letter dated 2.1.2006 refusing to grant receipt of amount to be crystallized under OTS-2005 which is a clear contravention of the guidelines of the 2nd respondent. Aggrieved by the letter vide reference No. KUR:65:05-06:569 dated 3.3.2006 of the 1st respondent bank, the petitioners filed the present Writ Petition seeking crystallization of their dues under OTS-2005 by the 1st respondent bank and a direction to the 1st respondent bank to receive the said amount as full and final settlement of the dues of the petitioners in terms of the guidelines of the 2nd respondent, and several grounds also had been averred and the guidelines relating to one time settlement and the correspondence and the representations also had been placed before this Court.

7. The Senior Manager, Central Bank of India, Kurnool, had sworn to the counter affidavit filed on behalf of the 1st respondent. It is also averred in paragraph 3 that the petitioners 1 and 2 are the sole proprietary concerns and they approached the 1st respondent bank for financial assistance for running their respective businesses of manufacture of quartz related powders. They took quartz mines on lease from the Government of Andhra Pradesh in the name of the 4th petitioner and the loan proposals were sponsored by the Khadi Village Industries Corporation (KVIC). On request of the 1st and 2nd petitioners, the 1st respondent Bank sanctioned loan facilities on 6.1.2000. The petitioners 1 and 2 utilised the cash credit and term loan accounts as sanctioned by the respondent-Bank and in the course of time the petitioners closed the cash credit account. As on today the 1st petitioner is due of Rs. 7,60,694/- and interest thereon from 1.1.2002 in term loan account. The 2nd petitioner is due of Rs. 3,67,594/- and interest thereon from 1.1.2002. For repaying the loan amounts, the petitioners have executed the loan documents, and both the petitioners 1 and 2 had hypothecated their respective plant and machineries apart from mortgaging the landed property situated in Sy. No. 558/A, B Orvakal village, Kurnool District. The 3rd and 4th petitioners stood as guarantors and the 3rd petitioner also mortgaged the house property bearing No. 45/25/K-63-4 and 5, Ashok Nagar, Kurnool towards the security for the repayment of the above said loans. The value of the mortgage properties are Rs. 23,30,425/-. It is also stated that the petitioners did not run the Units on the expected levels and failed to repay the loan amounts as agreed upon. Since the repayments were not forthcoming, the loan accounts of both the 1st and 2nd petitioners were classified as Non-

Performing Assets as per the Reserve Bank of India guidelines on 31.3.2001. The Reserve Bank of India had introduced in phased manner the prudential norms for income recognition, asset classification and provisioning for the advances portfolio of the banks so as to move towards greater transparency in the public accounts. For the purpose of asset classification, non-performing asset was defined as a credit facility in respect of which the interest and/or instalment of principal has remained past due for a specified period of time. During 2001, when the accounts of the petitioners 1 and 2 were classified as non-performing assets, the period specified was two quarters and when the account is classified as non-performing asset, the interest shall not be debited to that account and interest shall not be taken as income from any non-performing asset. In the normal course if interest is debited to the account after two quarters expecting the recovery in that account, subsequently it should be reversed or provided for if same is not realized and that interest shall be kept in suspense account. But banks are given discretion in debiting interest to as an NPA account. Debiting and non-debiting of interest in NPA accounts is for the purpose of reporting the actual income of the bank to Reserve Bank of India every year. However recovery of interest from the borrowers is not waived in case of non-performing assets after classifying an account as NPA. Therefore, the interest debited in the accounts of the petitioners 1 and 2 for the quarters September and December, 2001, will make no difference whether it is reversed or not. Since the interest portion was already reported to RBI as interest income of the bank for that period, this respondent bank did not reverse the said interest from the accounts of petitioners 1 and 2. Further, unless the account is brought into order, once the account is classified as non-performing asset, it will continue to be non-performing asset. It is further stated that the respondent bank received the margin money of Rs. 3,00,000/- in case of the 1st petitioner and Rs. 1,70,000/- in case of the 2nd petitioner from the KVIC and the same was adjusted towards the loan accounts as per the rules. As per KVIC guidelines, the borrowers shall not utilize the margin money/subsidy amount but if the repayments are not coming, the bank shall credit the said amount to the loan accounts after 2 years so that the installment liability of the borrowers shall be reduced. As the petitioners were not repaying the installments regularly this respondent bank credited the subsidy/margin amount to their respective loan accounts as per the norms and that was in the knowledge of the 1st and the 2nd petitioners. Further it is stated that the 2nd respondent i.e., the Reserve Bank of India had issued guidelines on One Time Settlement Scheme for SME (small or medium enterprises) accounts. It is stated that the circulars issued by the Reserve Bank of India are either mandatory or directory or advisory depending upon its tenor, contents, intent and provisions under which they have been issued. The directives issued by Reserve Bank of India under Sections 21 and 35A of Banking Regulation Act, 1949 are binding being statutory directions and the banks are under legal obligation to follow the mandatory directions issued by Reserve Bank of India. The guidelines issued by Reserve Bank of India are expected to be followed by banks in letter and spirit. However, as the guidelines by Reserve

Bank of India on One Time Settlement (OTS) Scheme were not issued u/s 21 or Section 35A of the Banking Regulation Act, they do not have statutory effect and not binding on the banks. In the OTS scheme the amount specified is the minimum amount to be recovered but not be maximum amount. Since the minimum amount is prescribed in the OTS scheme, the banks have discretion to accept either the minimum amount as stated therein or any amount over and above the said minimum depending upon the value of security and other factors. By the very nature of things, a settlement involves consent and it is a voluntary act of the party. In the matter where a creditor is enforcing its rights upon a debtor, the debtor has no legal right to claim that the claim be settled on favourable terms proposed by him whereby the claim of the creditor is reduced. As the transaction between the petitioners and the 1st respondent is a commercial transaction, the terms of contract cannot be modified or altered in the writ jurisdiction under Article 226 of the Constitution. It is stated that in a loan granted in terms of contract, grant of OTS or reschedule of the loan amount is really a modification of the contract which can only be given by the mutual consent of the parties. These guidelines are applicable to the SME sector and within that sector, there shall not be any discretion or discrimination of accounts for implementing the same. The words "non- discretionary" or "non-discriminatory" used in the guidelines are in relation to the accounts in the said SME category. Since the banks are advised to give wide publicity and to give notices to the eligible borrowers, the 1st respondent bank sent notice dated 25.10.2005 to the petitioners to avail the One Time Settlement facility. In the said notice the bank has very clearly stated to submit the proposal to forward to higher authorities to get their approval if falls within the guidelines of Reserve Bank of India. Sending the letter calling for proposal for One Time Settlement itself is not the acceptance of any amount offered by the borrowers. The 3rd petitioner submitted the proposal agreeing to pay Rs. 13,30,137/-. If this proposal is accepted, the bank has to waive Rs. 10,81,151/- which is uncharged interest. To reduce the amount of waiver of interest, the 1st respondent bank advised the petitioners to improve the offer as valuable securities shall be discharged by the bank vide their letter dated 3.3.2006. Instead of arriving at a negotiated settlement, the petitioners have filed the present Writ Petition with mala fide intention to delay and avoid the repayment of the loans. It is pertinent to mention that the accounts of the 1st and 2nd petitioners were classified as non-performing assets in 2001 and till now they had not cleared the dues nor made any attempts to clear. When this bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Security Interest Act, 2002, the petitioners approached the Debt Recovery Tribunal in S A 122/2005 and obtained, but the said appeal was dismissed on 14.11.2005. Now to avoid the repayment of the loan availed, the petitioners filed the Writ Petition. Certain specific averments were made traversing the grounds No. 1 to 4 which had been raised in the affidavit filed in support of the Writ Petition.

8. In the counter affidavit filed by the 2nd respondent, Reserve Bank of India, a

preliminary objection had been raised that the Writ Petition itself is not maintainable. It is averred that the Reserve Bank of India (the bank), a body corporate constituted by Section 3 of the Reserve Bank of India Act 1934 to regulate the issue of Bank notes and keeping of the reserves with a view to securing monetary stability in India and to operate the currency and credit system of the country to its advantage. The Bank is the sole note issuing authority. Bank notes issued by the Bank are legal tender under Sections 22 and 39 of the Reserve Bank of India Act. The Bank regulates and controls the money in the country. The Bank also acts as statutory banker to the Government of India and all State Governments and also manages their public debts. The Bank regulates and supervises commercial banks and cooperative banks in the country. The Bank exercises various powers and discharge various statutory functions under Foreign Exchange Management Act, 1999, Banking Regulation Act, 1949, Reserve Bank of India Act, 1934 etc. Further it is averred that the Bank issued guidelines dated 3rd September 2005 in exercise of the powers conferred u/s 36 of the Banking Regulation Act, 1949 to public sector banks at the request of Government of India. It is also stated that the public sector banks are governed by statutes constituting them like State Bank of India Act, 1955, State Bank of India (Subsidiary Banks) Act, 1959, Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Board of Directors of public Sector Banks is appointed by Central Government in consultation with Reserve Bank. Public Sector banks constitute a different and distinct class by themselves. In terms of Section 18 of State Bank of India Act, 1955 and Section 8 of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, its subsidiary banks and other nationalized banks are governed by the directions issued by the Central Government in consultation with Governor, Reserve Bank of India. The Government of India, Ministry of Finance prepared a policy packet for stepping up credit to small and medium enterprises (SMEs) and placed the same before the Parliament on 10th August, 2005. The Government forwarded the policy paper vide letter dated 11th August, 2005 to Reserve Bank of India and other public sector banks requesting therein to take all necessary steps to follow the policy in letter and spirit. The policy paper in paragraph 5 provided inter alia, as under:

One time settlement scheme to apply to small scale NPAs account in the books of the bank as on March 31, 2004 will be introduced. The scheme will be in force up to March 31, 2006.

A copy of the letter dated 11th August, 2005 of Ministry of Finance is enclosed to the Counter Affidavit. As requested by the Government of India, the Reserve Bank vide letter RPCD PLNF.BC No. 31/06.02.31/20 dated 19th August, 2005 issued the policy package for stepping up credit to SMEs to Chairman/Managing Director of all public sector banks. As the policy was placed by the Government before the Parliament and was addressed to public sector bank, the same was considered for issuance to public sector banks. One time settlement scheme was

formulated by the Reserve Bank on the basis of statement made by the Finance Minister before the Parliament on 10th August, 2005 in the policy paper submitted for stepping up credit to SMEs and the Reserve Bank issued guidelines on one time settlement scheme for SME account vide RPCD.PLNFS.BC. No. 39/06.02.31/2005-06 dated 3rd September, 2005. Para 4 of the said guideline specifically provide that any deviation from the above settlement guidelines for any borrower shall be made only by the Board of Directors. These guidelines have not been issued u/s 35A of the Banking Regulation Act, 1949, therefore, they are directory in nature and each bank has to apply its decision in individual cases. The respondent No. 2 relied on the decisions of the Supreme Court in Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others, , which is popularly known as Palai Central Bank case. In paragraph 45 of the Judgment, the Supreme Court has observed, inter alia, as under:

In view of the history of the establishment of the Reserve Bank as a Central Bank of India, its position as a banker's bank, its control over banking companies and banking in India, its position as the issuing bank, its power to license banking companies and cancel their licenses and the numerous other powers, it is unanswerable that between the Court and the Reserve Bank, the momentous decision to wind up a tottering or unsafe banking company in the interest of the depositors, may reasonably be left to the Reserve Bank. No doubt, the Court can also, given the time, perform this task. But the decision has to be taken without delay, and the Reserve Bank already knows intimately the affairs of banking companies and has had access to their books and accounts. If the Court were called upon to take immediate action, it would almost always be guided by the opinion of the Reserve Bank. It would be impossible for the Court to reach a conclusion unguided by the Reserve Bank if immediate action was demanded. But the law which gives the same position to the opinion of the Reserve Bank is challenged as unreasonable. In our opinion, such a challenge has no force.

In Corporation Bank Vs. D.S. Gowda and Another, the Supreme Court in paras 16 and 21 of the Judgment has observed as under:

16. As pointed out earlier, under the Banking Regulation Act, wide powers are conferred on the Reserve Bank to enable it to exercise effective control over all banks. Sections 21 and 35A enable it to issue directives in public interest to regulate the charging of interest on loans or advances made from time to time. It is in exercise of this power that it issued the Circulars referred to earlier fixing the rates of interest to be charged from borrowers. The Corporation Bank was nationalized with effect from 11.7.1980. Since the suit in question was filed in 1978 it was governed by the said guidelines which prescribed a minimum rate of 12.5% per annum. Any bank which committed a breach of the directives was liable to be penalized u/s 47A. A bank could ignore the directive on pain of being penalized. Therefore, before issuing guidelines or directives the Reserve Bank must be taken to have given serious thought to the nature of directives to be issued.

21. It was further contended that the rates of interest prescribed by the Reserve Bank take into consideration the true financial and economic policy of the country and operate as benchmarks against which private lending parties are supposed to adjust and compare their own rates of interest and, therefore, the Court should ordinarily show reluctance to interfere in such matters as it may have the effect of disturbing the economic policy meticulously framed and implemented in the country. We find considerable substance in this line of reasoning, particularly where the minima and the maxima are prescribed by the Reserve Bank

In *Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India*, , has observed as under:

Reserve Bank of India which is banker's bank is a creature of statute. It has large contingent of expert advice relating to the matters affecting the economy of entire country and nobody can doubt the bona fides of the Reserve Bank, in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate banking system in the country.

The Supreme Court has further observed:

Courts are not to interfere with economic policy, which is the function of experts. It is not the function of the Courts to sit in judgment over the matters of economic policies and it must necessarily be left to the expert bodies.

In *B.O.I. Finance Ltd. Vs. Custodian and Others*, the Supreme Court has observed in paragraphs 25 to 27 as under:

Section 21 of the Banking Regulation Act, and Sub-section (2) in particular, entitles the Reserve Bank of India to give directions to the banking companies with regard to the matters specified in the said section. Sub-section (3) provides that every banking company shall be bound to comply with any directions given to it under the said Section. Section 35A(1) also contains the power of the Reserve Bank of India to give directions and the same reads as under:

35-A(1) Where the Reserve Bank is satisfied that -

- (a) in the public interest; or (aa) in the interest of banking policy; or
- (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or
- (c) to secure the proper management of any banking company generally; it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions;

There can obviously be no doubt, as is evident from the plain reading of the said

provisions that the directions issued under Sections 21 and 35A are binding on the banking companies. Section 36(1)(a) and 1(b), on which reliance is placed, reads thus:

36(1) The Reserve Bank may -

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions and generally give advice to any banking company;

(b) on a request by the companies concerned and subject to the provisions of (Section 44A) assist as intermediary or otherwise, in proposals for the amalgamation of such banking companies.

Referring to Section 36(1)(a), we find that it empowers the Reserve Bank to "caution or prohibit" the banking companies from entering into any particular type of transaction or generally to give advice to the said banking companies. This provision not only enables the Reserve Bank to assume an advisory role but it also gives it the power to prohibit a banking company against entering into any particular transaction/s or class of transactions. The use of the words "caution or prohibit" in Section 36(1)(a) clearly implies that when the Reserve Bank of India prohibits the banking companies from entering into any particular transaction, then such a direction which is issued would be binding on the banks and has to be complied with. While the Reserve Bank of India has the power u/s 36(1)(a) of the Act to give advice or to caution the banking companies which may not be binding on the banking companies, but when the Reserve Bank prohibits the banking companies against their entering into any particular transaction or class of transactions, the said prohibition has to be regarded as being binding. The power to prohibit, given by Section 36, will be meaningless if it was not meant to be binding on the banking companies.

In *E. Sathyanarayana v. R.B.I. (Karn)* (2002) 112 Comp Cas 272 (Karn), while considering the guidelines issued by Reserve Bank of India on 27 May, 1999 for constitution of Settlement Advisory Committees and guidelines for settlement of debts due to nationalized banks, the Karnataka High Court on page 276 observed as under:

Section 21 of the Act referred to above contemplates that if the RBI is satisfied that it is necessary or expedient for it in public interest or in the interest of depositors or banking policy to it and to determine the policy in relation to the advance of loans to the persons to be followed by the banking companies as the case may be shall be bound to follow the policy to be determined. By perusing the guidelines mentioned in the circular issued by the Chief General Manager of RBI, it is not mentioned as to whether the RBI is satisfied and found that it is expedient in public interest or in the interest of depositors or in the interest of the banking policy to accept the said guidelines issued by the Chief General Manager. By reading the entire document of the circular produced by the petitioners and the so called guidelines purported to have been issued by the RBI

it is clear that the petitioners have not shown that the said guidelines have been issued by the RBI as defined under the Reserve Bank of India Act of 1934, except contending that the Chief General Manager of RBI, who is the competent authority under the provisions of the Act has issued the circular. Even in the said circular, it is not disclosed that the same has been issued by him either in the interest of the public or the depositors or the banking policy. In this view of the matter, this Court has to record a finding and hold that the guidelines contained in the circular referred to above upon which much relevance is placed upon by the petitioners counsel placing reliance upon the judgments of the Apex Court, this Court and Andhra Pradesh High Court are not the guidelines issued in terms of Section 21 of Banking Regulation Act, 1949.

The Court has further observed as under-

Apart from the said undisputed facts, there is no existing legal right accrued in favour of the petitioners to demand the respondent nationalized banks in these petitions to enforce the guidelines against them upon which they are relying and there is no corresponding statutory obligation to be performed by the respondent banks. On the other hand, the petitioners/debtors are bound by the loan agreement entered into with the respective nationalized banks to enforce the same against the petitioners/debtors as per the terms and conditions of the loan agreements.

In *Mono Caps (India) v. State Bank of India and Ors.* (2004) 122 Comp Cas 517 (AP), the Delhi High Court has observed as under:

The question whether guidelines would apply to cases where decrees have been passed, had been considered by the High Court of Bombay, in Writ Petition No. 973 of 2003 titled *Chemosyn Ltd. v. Union Bank of India*. The Reserve Bank of India clarified the position with regard to the guidelines:

These guidelines do not cover the cases where decrees have already been passed. The objective of the RBI guidelines is to provide a fast track channel of recovery of NPAs. Whereas in the case of decreed debts, the banks can straightaway execute the same and recover their dues. In the case of decreed debts the question of compromise/settlement does not arise". This approach has a rationale inasmuch as the cases in which decrees have been obtained, the bank can straightaway execute the same and recover the dues. It would therefore be seen that the circulars are directory in nature and do not have the status of guidelines issued in terms of Section 21 of the Banking Regulation Act, 1949.

In *Sardar Prem Singh v. Bank of Baroda*, decided on 24.2.2004 2004 (3) CCC 205, the Division Bench of Allahabad High Court has observed in paras 4 and 5 as under:

4. Granting one time settlement is really re-scheduling of the loan, and only the bank can do that. This Court under Article 226 of the Constitution cannot direct for one time settlement. The Court can only interfere when there is violation of

law, but no such violation has been pointed out.

5. Learned Counsel for the petitioner has referred to the guidelines of the Reserve Bank of India for recovery of non-performing assets mentioned in the letter of respondent No. 1, dated 24.8.2000 (Annexure 1 to the petition). In our opinion these guidelines are only for the internal guidance of the Banks and the Financial Institutions, but a party who has taken the loan cannot derive any benefit from these guidelines, and these guidelines of the Reserve Bank of India do not confer any right on a party which has taken the loan to get one time settlement. These guidelines are purely execute instructions and not statutory directions. Hence no right can be claimed by any one on their basis.

It is also averred that the averments made in the affidavit filed in support of the Writ Petition are not true and correct and specifically denied the averments made therein and several further averments had been made in paragraphs 20 to 30 and in the light of the specific stand taken, the dismissal of the Writ Petition had been prayed for.

9. The above are the respective stands taken by the parties.

10. Though the pleadings to be in short, the parties made them to be elaborate and the question involved in the present Writ Petition being plain and simple. The said facts need not be repeated in elaboration again.

11. The petitioners are claiming the benefits under the guidelines specified supra, the One Time Settlement Scheme. The said guidelines of One Time Settlement Scheme for SMEs had been produced before this Court. As the contents of the same being self-explanatory, they need not be elaborated. The ground of Doctrine of Legitimate Expectation had been raised and further specific stand had been taken that the 1st respondent Bank had failed to perform its legal duty, which is imposed by the 2nd respondent under the provisions of Sections 21 and 35A of the Banking Regulation Act, 1949. It is also stated that the 1st respondent Bank ignored the guidelines issued under the OTS-2005 for public sector banks vide its letter Ref. No. RPCD.PLNFS.BC No. 39/06.02.31/2005-06 dated 3.9.2005 and specific stand had been taken that those guidelines are mandatory, non-discretionary and non-discriminatory.

12. In the light of the specific stand taken by the 2nd respondent in the counter affidavit as well, there cannot be any doubt whatsoever that these guidelines specified supra are not enforceable in a Court of law and a Writ of Mandamus or suitable directions on the strength of which cannot be issued.

13. The learned Counsel representing the 1st respondent placed strong reliance on the decision of the Madras High Court in Writ Petition No. 2528 of 2006, dated 14.2.2006, wherein the learned Judge of the Madras High Court observed as hereunder:

On a perusal of the guidelines dated 3.9.2005 issued by the Reserve Bank of India, I find that the said guidelines do not refer to either Section 21 or Section

35A of the Banking Regulation Act, or state any terms contained therein. A further reading of the various terms contained in the guidelines would show that they are not in consonance with the terms contained in the above referred two provisions viz., Sections 21 and 35A of the Banking Regulation Act. The guidelines are more in the nature of providing enabling situations either for the bank or for any borrower to seek for settlement of a loan transaction, and for recovery of non-performing assets below Rs. 10 crores. Therefore, it is very difficult to hold that the guidelines dated 3.9.2005 issued by the Reserve Bank of India should be construed as one issued u/s 21 or 35A of the Banking Regulation Act.

As far as the decision relied on by the learned Counsel for the petitioner as reported in AIR 1998 SCC 3000 (supra) is concerned, the Hon'ble Supreme Court have specifically mentioned that the circulars issued therein by the Reserve Bank of India were the circulars issued under Sections 21 and 35A of the Banking Regulation Act. Therefore, when the circulars were issued specifically under the relevant provisions, whatever observation given by the Hon'ble Supreme Court, will definitely have greater implications in those circulars, which we are concerned are not the one issued either u/s 21 or 35A of the Banking Regulation Act. It cannot also be held that merely because such guideline was issued by the Reserve Bank of India, it will have statutory force and that the respondents are bound to follow the said circular.

As far as the decision reported in AIR 2001 SCC 3095 (supra) is concerned from paragraph 51 onwards, the Hon'ble Supreme Court has only laid down the proposition of law as regards the directions issued under Sections 21A and 35A of the Banking Regulation Act.

In the light of the same...which we are concerned is not the one issued either u/s 21 or 35A of the Banking Regulation Act, the ratio laid down in the above referred two decisions cannot be applied.

On the other hand in the decision reported in Digivision Electronics Ltd. Vs. Indian Bank, , the Division Bench has specifically held to the effect that the Writ Petition under Article 226 of the Constitution of India cannot lie to alter the terms of the contract between the borrower and the banking institution. The Division Bench has held as under:

Some of learned Counsel submitted that the Court should direct one time settlement or fixing of instalments or rescheduling the loan. In Tamil Nadu Industrial Investment Corporation Ltd. Vs. Millenium Business Solutions Pvt. Limited and Another, it has been held that this Court cannot pass any such order in writ jurisdiction, since directing one time settlement or granting installments is really rescheduling the loan, which can only be done by the bank or financial institution which granted the loan. This Court under Article 226 of the Constitution cannot reschedule a loan. A writ is issued when there is violation of law or error of law apparent on the face of the record, and not for rescheduling

loans. The Court must exercise restraint in such matters, and not depart from well settled legal principles.

Similarly, in the decision reported in Tamil Nadu Industrial Investment Corporation Ltd. Vs. Millenium Business Solutions Pvt. Limited and Another, , the Division Bench has made it clear that under Article 226, the High Court cannot have any right to direct one time settlement or for rescheduling of loan or to fix installments.

14. Further strong reliance had been placed on the decision of the Madras High Court in Tamil Nadu Industrial Investment Corporation Ltd. v. Millenium Business Solutions Pvt. Ltd. and Anr. 2005 1 L.W.58 (DB) wherein the Division Bench after referring to decisions in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, ; Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, ; Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, ; Dr. Umakant Saran Vs. State of Bihar and Others, ; M/s. M.M.Accessories, Jogi Ram Puri Road, Naziabad and Anr. v. M/s. U.P. Financial Corporation, Kanpur and Anr. (2002) 46 All L R 261; Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others, ; Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, ; Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, ; Gajraj Jain Vs. State of Bihar and Others, and Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, observed as under:

In our considered opinion it is not proper for the Court to interfere in such matters relating to recovery of loans. Such matters are contractual in nature and writ jurisdiction is not the proper remedy for this. A writ lies when there is an error of law apparent on the face of the record, or there is violation of law. No writ lies merely for directing one time settlement or for directing rescheduling of the loan or for fixing instalments in connection with the loan. It is only the bank or the financial institution which granted the loan which can re-schedule it or fix one time settlement or grant instalments. The Court has no right under Article 226 of the Constitution to direct grant of one time settlement or for re-scheduling of the loan, or to fix instalments. No doubt Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right of for "any other purpose". However, by judicial interpretation the words "any other purpose" have been interpreted to mean the enforcement of any legal right or performance of any legal duty. In the present case, the writ petitioner has really prayed for a mandamus to the Corporation to grant it a one time settlement, but no violation of any law has been pointed out. In our opinion, no such mandamus can be issued in this case, and hence the writ petition should not have been entertained. A mandamus is issued only when the petitioner can show that he has a legal right to the performance of a public duty by the party

against whom the mandamus is sought.

The Court should exercise judicial restraint and not interfere with the matters which do not pertain to its proper domain. A loan is granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide Section 62 of the Contract Act, 1872. The Court cannot alter the terms of the contract.

Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held by up Court orders under Article 226 proceedings which were really warranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not on mere sympathy or compassion. No doubt, there may be hardship to a party, but unless violation of law is shown, the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons.

15. In the light of the views expressed by the learned Judge of the Madras High Court, where similar question arose for consideration and also the view expressed by the learned Division Bench of the Madras High Court and also in the light of the several decisions which had been referred to even in the counter affidavit of the 2nd respondent and the specific stand taken by the 2nd respondent-Reserve Bank of India, coupled with the stand taken by the 1st respondent in this regard, this Court is thoroughly satisfied that these guidelines are not enforceable guidelines in a Court of law and no Writ of Mandamus can lie to enforce such guidelines.

16. The Writ Petition being devoid of merit the same shall stand dismissed. There shall be no order as to costs.