
(1999) 02 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 511 of 1993

Mohan Singh and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 23-02-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 99 CompCas 81 : (1999) 2 ShimLC 297

Hon'ble Judges : D. Raju, C.J.; Lokeshwar Singh Pantia, J

Bench : Division Bench

Advocate : Rajesh Mandhotra, for the Appellant; Sureshwar Thakur, Addl. CGS for respondent No. 1, K.S. Rathore and K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—The above writ petition has been filed seeking for a declaration to quash Sub-clause (c) of Clause 3 of annexure filed as PB as also the decision rendered by the third respondent dated July 16, 1991, filed as annexure PE whereunder the third respondent came to the conclusion that the petitioners are not entitled to any other reliefs enumerated in the letter of the Reserve Bank of India dated September 19, 1990, and declare as a consequence thereof that the petitioners are entitled to the reliefs as envisaged in the proceedings filed as annexures PB, PB-1 and PH.

2. In order to appreciate the grievance of the petitioners it is necessary to advert to certain factual details. Petitioner No, 1 who is the proprietor of the second petitioner concern is carrying on business in the manufacture of furniture under the name and style of Himachal Furniture Industries at Thakur Dwara, Tehsil Palampur in District Kangra. He obtained initially a medium term loan of Rs. 10,000 and thereafter a further loan of Rs. 30,000 under the cash credit limit and under the said accounts, amounts were outstanding due and remained unpaid to the bank which necessitated the third respondent-bank to file a suit in C. S. No. 29 of 1983 on the file of this court. The said suit came to be decreed on

April 13, 1984, in a sum of Rs. 66,291.48 with future interest of 14 per cent. per annum from April 25, 1983. The decree was by way of a consent decree since the defendants conceded the claim and permission was granted to pay the decretal amount in instalments. Since the petitioners-judgment debtors did not pay the sum as undertaken and permitted to be paid in instalments, the decreeholder bank filed E. P. No. 3 of 1990 for execution and when the execution petition came up before the court, the first petitioner gave a statement on April 9, 1992, stating that he is a victim of the riots of 1984 and that in the riots not only his workshop was gutted in fire but he has also received serious injuries disabling him from work for four years and that though anyhow he wanted to liquidate the decretal amounts by way of instalments of Rs. 3,000 per month and, therefore, he may be given concession in interest if found entitled to it and as a matter of fact he had specifically given an undertaking to deposit in instalments of Rs. 3,000 per month with the decreeholder bank at Palampur. It was also stated by him that if he did not abide by the undertaking, action may be taken against him in accordance with law. The fact remained that he did not abide by the undertaking given and notice of contempt for having disobeyed and violated the undertaking even has also been issued by this court.

3. While matters stood thus, taking advantage of the fact that his request for relief in the form of interest subsidy under the Central Interest Subsidy Scheme for November, 1984 riot-affected borrowers came to be rejected by the third respondent-bank, which is the decreeholder bank, the present writ petition came to be filed for the reliefs noticed supra. Reiterating the stand taken in the petition filed, Mr. Rajesh Mandhotra, learned counsel for the petitioners contended that the petitioners must be held entitled to the benefit of interest subsidy under the scheme in question and that Sub-clause (c) of Clause 3 of the scheme must be considered to be not applicable to cases of consent decree passed before the proclamation of the scheme in question and that in any event the said clause if held to be applicable to cases like the one under our consideration the same is liable to be struck down as arbitrary, unreasonable and discriminatory and, therefore, violative of Article 14 of the Constitution of India. In support of the said claim, reliance has been placed on the decisions reported in Harjit Singh and others Vs. Union of India and others, ; Carew and Company Ltd. Vs. Union of India (UOI), ; R. Venkataswami Naidu and Another Vs. Narasram Naraindas, ; N.K. Jain and others Vs. C.K. Shah and others, ; U.P. Bhoodan Yagna Samiti, U.P. Vs. Braj Kishore and Others, ; Tirath Singh Vs. Bachittar Singh and Others, and Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others,

4. Per contra, K. D. Sood, learned counsel appearing for the third and fourth respondent-banks, while reiterating the stand taken in the reply filed on their behalf contended that having regard to the peculiar facts and circumstances of the case that the decree was passed by consent on April 13, 1984, and thereafter during the execution proceedings also the petitioners-judgment debtors undertook to pay the amount in instalments and obtained an order to

that extent on April 9, 1992, from this court, the petitioners are not entitled to the benefit of the scheme particularly in the light of the specific provisions stipulated in Clause 3(c) of the scheme. Learned counsel also contended that the contumacious conduct of committing a breach of an undertaking given to this court as also the fact that the petitioners have means and financial position to pay the decretal amount renders them ineligible to the benefits of interest subsidy, envisaged in the scheme. Learned counsel also contended that Clause 3(c) is quite in accordance with law and being a matter of policy and also a matter of concession, not only the same cannot be challenged by the petitioners but there are no merits in the grievance of arbitrariness or unreasonableness alleged and consequently there are no merits in the writ petition. Learned counsel also disputed the claim of alleged discrimination by the scheme in enacting Clause 3(c). Learned counsel for respondents Nos. 1 and 2 also adopted the same line of submissions as projected by learned counsel for the bank.

5. We have carefully considered the submissions of learned counsel appearing on either side. The decision in *Harjit Singh and others Vs. Union of India and others*, , was rendered in the context of a claim that the scheme for subsidised rate of interest should be made applicable not only in respect of the loans from the banks-Government of India/Reserve Bank, but to all loans taken from other financial institutions as well by including them in the terms of the banks in the relevant circulars, the spirit of the circular being to extend the benefits to help the victims of riots of 1984. It may be pointed out at this stage that this very scheme came to be made on the directions issued by the Supreme Court and on account of an assurance given by the learned Attorney General, and it is in this context that an application was filed in the earlier writ petition which was disposed of and while dealing with such an application, the directions of the nature came to be issued to the Government to extend the benefit of the scheme, to loans taken from other financial institutions as well. We are unable to appreciate the relevance of the said judgment to the question involved in this case with reference to either the interpretation to be given to Clause 3(c) of the scheme or in adjudging the legality and validity of the said clause. The other decisions relied upon merely pertain to the construction to be placed on a provision of an Act or rule with particular reference to the intention of the Legislature or the need for construing the statute as a whole taking into account at times even a preamble portion of the enactment and the manner of construing words which are capable of more than one meaning and permits of doubts which need clarification, we do not consider it necessary to refer to the principles laid down therein in detail, inasmuch as they have no relevance to the present case.

6. Clause 3(c) of the scheme known as the Central Interest Subsidy Scheme for the November, 1984, riot-affected borrowers which was held to come into force with effect from September 17, 1990, and which alone has been referred to and relied upon for the petitioners, reads as follow :

"(c) Cases where the amount due under an eligible loan has already been repaid

and the accounts adjusted or cases where a compromise has been arrived at between the bank and the borrower or cases in respect of which consent decrees have been passed in a court of law shall not be reopened."

7. In the light of the said scheme the Reserve Bank of India also issued a letter to all the scheduled commercial banks drawing their attention to the scheme and the need for implementing the same. The scheme contains definition of "borrowers" "bank" as also "effective date" to mean December 31, 1989, and "eligible loans". The scheme also defined what was considered to be "deserving case" and thereafter while providing for the relief and specified the extent of relief, viz., of charging borrowers interest at 6 per cent. per annum for all eligible loans outstanding as on the effective date for the period from November 1, 1984, and if the loan is granted on or before November 1, 1984, from the date of grant of loan, if granted subsequently to the effective date. An exception has also been engrafted in the provisions of the scheme itself of which Sub-clause (c) of Clause 3 constitutes one such exception. From the terms of the said sub-clause extracted supra it could be seen that where the amount due under the eligible loan has already been repaid and accounts are adjusted or in cases where compromise has been arrived at between the bank and the borrowers or cases in respect of which a consent decree has been passed in a court of law, the same has been ordered to be not reopenable. The intention disclosed in this clause is specific and clear and does not admit of any doubt or room for controversy. The decrees passed by consent in a court of law or cases in which compromise has been arrived at between the bank and the borrowers are placed on par with the loans already repaid and accounts adjusted, apparently and obviously for the reason that when the borrower himself has expressed his willingness or consent to pay the amount, there is no need or scope for granting the benefit of interest subsidy envisaged in the scheme. The submissions of learned counsel for the petitioners that this clause will have no application to a case in which the decree by means of consent was passed prior to the commencement of the scheme has no merit. The words "consent decree has been passed" are not only meant to include and cover but are also capable of taking within them such decrees and in our view are meant deliberately and specifically to rope in mainly such cases. In respect of litigation in which the decrees have to be passed subsequent to the coming into force of the decree, the parties would be alive to the benefits available under the scheme and, therefore, the very clause, in our view, is mainly intended to cover past cases as well. In the light of such unmistakable expression of intention of the framers of the scheme, there is hardly any need for applying the general principles of construction to be adopted in cases where the language is of doubtful import or content ; consequently, we see no merit in the said submissions of learned counsel for the petitioners.

8. So far as the challenge made to the constitutional validity of the scheme is concerned we are of the view that the very scheme is a benefit flowing from out of a policy decision taken by the Government under the directions of the apex court. The provision of the nature engrafted as Sub-clause (c) of Clause 3 are not

an insignificant provision so that it could be contended that the authorities did not seriously bestow thought over the matter in engrafting such a provision. On the other hand, the said provision appears to have been specifically introduced with a definite purpose and to deny the benefit of the interest subsidy scheme to the three categories or class of cases envisaged in the said clause. It is part of the very scheme of interest subsidy and being a scheme of concession only subject to such conditions specifically stipulated therein, it is not given for the courts to delete or eliminate or strike down the condition alone to extend the benefit to every one or enlarge the scope of applicability of the scheme itself to all and substitute the intention of the court to that of the State by enlarging the scope of the scheme itself. Doing so would amount to not only the courts substituting their view in areas of discretion vested with the statutory authorities but also would result in re-enacting of the scheme by the courts, as it suits the courts. The stand taken by learned counsel for the petitioners that the clause in question, so far as it differentiate between a contested decree or a consent decree perpetuates discrimination cannot meet with our acceptance. As indicated earlier the decree passed by a court of law with the consent of the borrowers or any compromise arrived at between the lending bank and the borrowers having been made with Volition and consent of the borrowers will stand definitely on a separate footing than the case of a decree passed on contest and both the categories of decrees cannot be treated on par as belonging to the same class. The conduct of the petitioners in this case in not only conceding to the decree to be passed by consent but undertaking to pay the sum in instalments during the course of the execution proceedings also and the violation of the undertaking given to the court cannot also be brushed aside as insignificant, as contended for the respondents, in appreciating the grievance of the petitioners at this stage. In any event, if at all there is any scope for extending any benefit of the scheme to a further clause or category of loans which has been specifically excluded from the scheme "or as to whether such exclusion made earlier has to be modified and the excluded categories also are to be extended also with similar benefits they being merely matters of policy will lie within the purview of the Government of India for consideration and the grievance, if any, of the petitioners can be and have to be addressed only to the Government and the courts cannot come to the rescue of the petitioners, as the scheme stands when the intention underlying the scheme also being apparently clear and specific. Having regard to the further fact that the very scheme is itself a concession, the plea of arbitrariness or unreasonableness made has no meaning, whatsoever.

9. For all the reasons stated above, we are unable to persuade ourselves to agree with the challenge made to the constitutional validity of Clause 3(c) of the scheme. The writ petition, therefore, fails and shall stand dismissed.

10. The interim order passed in C. M. P. No. 1132 of 1993 shall stand vacated.