

(1991) 10 KL CK 0037
In the High Court Of Kerala
Case No : W.A. No. 943 of 1991

Mrs. Sheela Thomas and Others

APPELLANT

Vs

The State of Kerala and Another

RESPONDENT

Date of Decision : 21-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1992 Ker 156 : (1992) 75 CompCas 681 : (1992) 1 ILR (Ker) 215

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : Govind K. Bharathan, for the Appellant;

Final Decision : Dismissed

Judgement

Paripoornan, J.—The petitioners in O.P. No. 4666 of 1991-E are the appellants in this writ appeal. The respondents in the writ appeal are the respondents in the Original Petition State of Kerala and the Kerala Financial Corporation. Appellant No. 1 (first petitioner in the O.P.) is the wife of late V.M. Thomas and appellants 2 to 4 (Petitioners 2 to 4) are the children of late V.M. Thomas. Late V.M. Thomas owned a Small Scale Industrial Unit. He obtained substantial loans from the second respondent Corporation. The petitioners/appellants allege that as per the agreement entered into between late V.M. Thomas and the Corporation, for amounts due the rate of interest was only 5.5% simple interest per annum. The Corporation unilaterally increased the rate of interest to 15%. It is averred that late V.M. Thomas protested against the unilateral action of the Corporation in increasing the rate of interest. However, the deceased paid the entire instalments due from him for avoid unpleasant consequences. The appellants state that by un-authorisedly increasing the rate of interest there has been considerable overpayment to the second respondent. It is stated that the repayment in respect of the loan ranged from 24-8-1976 to 28-4-1988. The loan availed of was in the sum of Rs. 1,88,102/- and the repayment made till 28-4-1988 came to Rs. 6,00,230.90. The amount swelled to a huge figure because of the

increased rate of interest. A Bench of this Court in M.F.A. No. 106/84 and 110/1984, by judgment dated 30-8-1988 (Exts. P1 A and P1B) held that the Corporation can charge only 5 1/2 interest for loans availed of by Small Scale Industrial Units. The recovery of enhanced rate of interest unilaterally was unauthorised and the excess interest so calculated and realised from late V.M. Thomas is refundable. The appellants/petitioners filed Ext. P2 representation dated 18-9-1990 before the 2nd respondent Corporation stating the above facts. The Corporation is simply folding its hands. It has not refunded the excess amount realised, so far. The appellants/petitioners have not been favoured with any reply to Ext. P2 representation. It is in these circumstances the appellants, as petitioners, filed the Original Petition praying for the grant of a declaration that any amount collected from late V.M. Thomas in excess of amount calculated at 5.5% interest is absolutely illegal, arbitrary and unreasonable and for a direction to the second respondent to refund the amount so collected in excess with past and future interest at 12% per annum.

2. Padmanabhan, J. by judgment dated 25-6-1991, dismissed the Original Petition. A direction was given to the second respondent to dispose of Ext. P2 representation early. The learned single Judge held that for getting refund of the excess amount realised from the predecessor of the appellants, the remedy of the appellants lies before a civil court and not by filing a petition under Article 226 of the Constitution of India. Aggrieved by the judgment of the learned single Judge dated 25-6-1991, the petitioners in the Original Petition have come up in writ appeal.

3. We heard counsel for the appellants Mr. Govind K. Bharathan. Counsel forcibly argued that once it is proved that there is excessive or unauthorised collection of amounts from the predecessor of the appellants, the second respondent Corporation was bound to refund the same and in case of inaction or refusal, the appellants can invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Counsel submitted that the decisions of the Supreme Court point out that against the arbitrary action of the State and its instrumentality, the remedy under Article 226 of the Constitution is available and the fact that the jural relationship between late V.M. Thomas and the Corporation was contractual in nature will not in any way alter the situation.

4. We are unable to accept the above plea, in the facts and circumstances of this case. It is the appellants' plea that their predecessor late V.M. Thomas could be charged only with 5 1/2% interest and the judgments (Exts. P1A and P1B) rendered by this Court in M.F.A. Nos. 110 and 106 of 1984 having held so, the excess amount collected is refundable. That itself is a matter which requires investigation. It is difficult to say that the excess amount collected becomes refundable automatically and without anything more, in view of Exts. P1A and P1B judgments. Even assuming that it is so, it cannot be denied that the normal remedy for obtaining refund of excess or unauthorised collection of amounts from a person by the State or by the instrumentality of the State, is by filing a suit in

the civil court. After adverting to the relevant decisions of the Supreme Court and of this Court, one of us (K. A. Nayar, J.) delivering the judgment of the Full Bench, in *Geetha Timbers v. State of Kerala*, 1990 (1) KLT 402 at page 412, paragraph 17, stated the law thus :

"This Court has held time and again that in contractual matters writ petition will not normally be entertained. For enforcement of contractual rights parties should avail remedies by way of civil suit and should not invoke the extraordinary jurisdiction available under Article 226 of the Constitution of India."

There is an earlier Bench decision of this Court taking the same view, to which one of us (Paripoornan, J.) was a party. See *V.A. David and Another Vs. Kerala State Financial Corporation and Others*,

5. In the light of the categoric pronouncement of the Full Bench and the Division Bench of this Court, based on the Supreme Court decisions, it is idle to contend that notwithstanding the fact that the jural relationship between late V.M. Thomas and the Corporation was contractual in nature, for excess or overpayments alleged to have been made, an action will lie under Article 226 of the Constitution of India. We are of the view that the appellants should, if at all, pursue the normal remedy open to them in a civil court.

6. Counsel for the appellants brought to our notice the following decisions of the Supreme Court to contend that the petition filed under Article 226 of the Constitution of India for refund of excess or unauthorised amounts will lie: *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, , *Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others*, and *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, . We are of the view that the above decisions have not laid down that a petition under Article 226 of the Constitution is, in all circumstances, maintainable even where the jural relationship which gave rise to the cause of action is purely contractual in nature. The decisions of the Supreme Court, brought to our notice, were rendered in different context and circumstances.

7. The learned single Judge directed consideration of Ext. P2 representation by the second respondent Corporation. It is only fair that the second respondent-Corporation dispose of the same at an early date.

8. The writ appeal is without merit. It is dismissed. The Registrar shall send a copy of this judgment to the second respondent Managing Director, Kerala Financial Corporation, Vellayambalam, Thiruvananthapuram.